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NORTHLAND NAVIGATION COMPANY LIMITED

v.

CITY OF PRINCE RUPERT

Supreme Court of British Columbia (X376/58)

Before: MR. JUSTICE HARRY J. SULLIVAN

Vancouver, May 26, 1958

J.R. Cunningham for the Appellant
O.F. Lundell for the Respondent

Case Stated by Assessment Appeal Board

1. By indentures of lease dated the 23rd of March, 1953, and the 23rd of September, 1955, respectively, copies of which are attached hereto and marked Exhibits 1 and 2 respectively, Her Majesty the Queen in the right of the Province of British Columbia leased to the appellant, Northland Navigation Company Limited, the buildings known as Sheds 7 and 8, and Sheds 4 and 5 situate upon a wharf owned by Her Majesty.

2. By description the buildings so leased are as follows:(a) By Exhibit 1, Sheds 4 and 5, being a portion of one continuous building, contiguously roofed, and divided into sheds by partitions.

(b) By Exhibit 2, Sheds 7 and 8, being one building, contiguously roofed, and divided into sheds by a partition.

3. The sheds above referred to are set upon a public wharf owned and controlled by Her Majesty the Queen in the right of the Province of British Columbia. The top of such wharf forms the first floor of the buildings set thereon.

4. Public pedestrian and vehicular traffic has access to the said wharf on all perimeters of the buildings, in common with the appellant herein.

5. The appellant, by licence, is permitted to use the said wharf for purposes incidental to loading and unloading its vessels.

6. The said wharf is constructed as follows:-

(a) Wooden and cement pilings extending above and below high-water mark in the said harbour and driven into the ground and harbour bed.

(b) Timbers measuring approximately 12 by 12 inches laid upon the top of these piles.

(c) On top of the said timbers, pieces of lumber measuring approximately 6 by 10 inches laid on edge.

(d) Pieces of lumber measuring approximately 3 by 12 inches laid side by side to form a floor or decking on top of the wharf.

7. Vessels other than those owned and (or) operated by the appellant may and do dock along the face of the said wharf, subject to the rights of the appellant set out in leases held by the appellant.

8. The said pilings are so placed that access may be gained on the water between the said pilings and below the said timbers.

9. The Assessment Appeal Board, under and by virtue of subsection (1) of section 51 of the *Assessment Equalization Act*, 1953, chapter 32, and amendments thereto, doth hereby submit this stated case, and humbly requests the opinion of this Honourable Court on the following question of law: "Is the appellant liable, with respect to the sheds leased as aforesaid, to assessment thereon as improvements, under and by virtue of the provisions of section 333 (5) of the *Municipal Act*, chapter 42, British Columbia Statutes of 1957?"

Reasons for Judgment

In these proceedings by way of stated case the Assessment Appeal Board requests the Court's opinion upon a question of statutory interpretation.

Appellant is lessee from the Crown in the right of the Province of four warehousing or shipping sheds which are set upon a Government dock or wharf in the seaport of Prince Rupert, British Columbia. Said wharf--of concrete and timber construction-is built upon "land" as defined by section 2 of the *Municipal Act*, chapter 42, Statutes of British Columbia, 1957, and the fee thereof is in the Crown in the right of the Province. The lessee holds and occupies the enclosed areas of the sheds in question to the exclusion of all other persons, firms, or corporations, but by the terms of its leases (Exhibits 1 and 2) is obliged to share mooring rights and rights of passage over the wharf area, approaches, and passageways with other users thereof.

On June 13, 1956, in proceedings similar to the present submission, my learned brother McInnes, J., considered the liability of appellant to assessment and taxation by respondent in respect of its holdings as lessee pursuant to the terms of said leases (Exhibits 1 and 2) in the light of statutory provisions then in force.

At that time the *Municipal Act*, chapter 232, R.S.B.C. 1948, provided, inter alia, as follows:

> 241. (1) Lands, the fee of which is in the Crown, either in right of the Province or of the Dominion or in any Board of Harbour Commissioners, but which are held under pre-emption or lease, or agreed to be sold, granted. or conveyed, or which have been sold, granted, or conveyed, and lands, the fee of which is in the Crown, either in the right of the Province or of the Dominion or in any Board of Harbour Commissioners but which are held or occupied otherwise than by or on behalf of the Crown, and lands which are held by any person by agreement to purchase under the "Soldiers' Land Act" or the "Better Housing Act," or the "Soldiers' Settlement Act, 1917," of the Dominion, or the "Soldiers' Settlement Act, 1919," of the Dominion, or "The Veterans' Land Act, 1942," of the Dominion, shall with the improvements thereon be liable, while so held or occupied or during the existence of such agreement, to assessment and taxation in the manner provided in this section from the date of pre-emption record or lease, or agreement to sell, grant, or convey, or sale, grant, or conveyance, or occupation, as the case may be, but such taxation shall not in any way affect the rights of His Majesty in the lands. Such lands with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements. Subject to the provisions of subsection (2), the taxes imposed on such lands and improvements shall be a liability only of the holder or occupier thereof, recoverable in the manner set out in sections 284 and 285; and, subject

> as aforesaid, such lands and improvements shall not be liable to tax sale, nor shall such taxes become a lien or charge on the lands and improvements: Provided, however, that nothing in this section contained shall apply to lands held of the Crown in the right of the Province under timber lease or timber licence; provided further that the interest of any person in land held under timber lease or timber licence from the Crown in right of the Dominion shall while so held be liable to assessment and taxation in respect of the actual value of his interest only.

Section 2 of the said *Municipal Act*, as it then stood, provided, *inter alia,* as follows:

> In this Act. unless the context otherwise requires:-
>
> "Occupier" means one who is qualified to maintain an action for trespass.

McInnes, J., held in effect (and rightly, in my respectful opinion) that the statutory language just quoted, whilst sufficient to create liability to assessment and taxation of a holder or occupier of Crown lands alone, or Crown lands along with the improvements thereon, was ineffective for the purpose of creating such liability where the person sought to be taxed was in possession of improvements only.

Subsequent to the expression of such opinion (and presumably by reason thereof) the statutory language so considered by McInnes, J., was revised in important respect at the next session of the Legislature. A new Act (assented to on March 28, 1957) repealed and re-enacted the statutory law applicable, *inter alia*, to the instant problem. The new Act (chapter 42 of the Statutes of British Columbia, 1957) defines" improvements" for all purposes other than for levying school rates, in manner to include:

> (d) Rafts, floats, docks, and other such devices which are anchored or secured, whether the land or property to which they are anchored or secured belongs to the owner or not, and buildings, fixtures, machinery, structures, storage-tanks, and similar things *erected or affixed thereon*, but does not include such fixtures, machinery, and similar things, other than rafts, floats, docks, buildings, and storage-tanks, as, if so erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property.
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> [The italics are mine.]

The new Act, by section 333 thereof, also extended the powers of municipal corporations to assess and tax the holders or occupier of improvements situate on Crown lands and leased to them by the Crown. Said section 333 provides as follows:

> 333. (1) Lands the fee of which is in the Crown, or in some corporation or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown, are, with the improvements thereon, liable to assessment and taxation in accordance with this section.
>
> (2) The lands referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements.
>
> (3) The taxes imposed on the lands and improvements referred to in subsection (1) are, subject to subsection (4), a liability only of the holder or occupier thereof, recoverable in the manner set out in this Act, but the said lands and improvements are not liable to tax sale, nor are such taxes a lien or charge on such lands and improvements.

> (4) Lands which have been sold, granted, or conveyed by the Crown in right of the Province, and in respect of which the Crown grant has not been registered, are, together with the improvements thereon, liable to tax sale, and the taxes imposed thereon are a lien and charge on such lands and improvements, and all the provisions of this Act as to assessment, taxation, recovery of taxes, and tax sale apply, mutatis mutandis.
>
> (5) This section applies, mutatis mutandis, to improvements owned by, leased to, held, or occupied by some person other than the Crown, situate on lands the fee of which is in the Crown, or in some corporation or organization on behalf of the Crown.

In the Privy Council, referring to Provincial taxation Statutes of this type, Lord Reid in *Bennett & White* v. *Sugar City* (1951) 3 W.W.R. 111 said at page 131:

> In cases, at least where land has been concerned, it has been held that if the language of the provincial statute is sufficiently explicit and compelling, A. may be taxes in respect of property "belonging" to B. Even where B. is exempt, e.g. where B. is the Crown, property belonging to B. may be taken as a fictional measure of the tax to be eligible from A., provided always the Act makes this intention perfectly clear.

In my opinion the new legislation reflects, sufficiently clearly, the intention of the Legislature to remedy the defects which McInnes, J., held to exist in the statutory language which he had to consider two years ago. The language used in the (new) section 333 would not suffer by revision; e.g., the imaginary statutory provision drafted by Mr. Lundell to support his able argument as to the true meaning of the term "mutatis mutandis" as used in subsection (5) better complies with Lord Reid's requirement of explicit and compelling language than does the present section. However that may be; the intention of the new statutory provisions to authorize assessment and taxation of improvements (only) leased by appellant from the Crown is obvious to me and in my opinion has been expressed with sufficient explicity and compulsion.

The question submitted, "Is the appellant liable, with respect to the sheds leased as aforesaid, to assessment thereon as improvements, under and by virtue of the provisions of section 333 (5) of the *Municipal Act*, chapter 427, British Columbia Statutes of 1957?" is answered in the affirmative.