The following version is for informational purposes only

ASSESSMENT COMMISSIONER;
ASSESSMENT DISTRICTS OF LILLOOET, VANCOUVER, COMOX,
AND NEW WESTMINSTER;
THE CORPORATIONS OF THE DISTRICTS OF KENT AND POWELL RIVER

v.

BRITISH COLUMBIA ELECTRIC COMPANY LIMITED

Supreme Court of British Columbia. (X607/58)

Before: MR. JUSTICE H.W. MCINNES

Vancouver, July 30, 1958

Lloyd G. McKenzie for the Assessment Commissioner and the Assessors of the appellant jurisdictions.
John L. Farris, Q.C. and W.H.Q. Cameron for the British Columbia Electric Company, respondent.

Reasons for Judgment

This matter comes before me by way of a case stated by the Assessment Appeal Board under the provisions of the *Assessment Equalization Act*. After reciting the facts in connection with the controversy, a series of 12 questions are posed.

Questions 1 to 7 are submitted on behalf of the appellants and Questions 8 to 12, inclusive, are submitted on behalf of the respondent, which also complains of various matters in respect of the assessments.

Before proceeding to consider the questions propounded, it might be well to refer to certain relevant sections of the *Taxation Act*, chapter 332, R.S.B.C. 1948, and amending Acts. By section 2 (a) and (b), "improvements" are defined in part as follows;

> "Improvements" includes:-
>
> (a) All buildings, fixtures, machinery, structures, and things erected upon or under or affixed to land or to any building, fixture, or structure therein, thereon, or thereunder, and, without limiting the generality of the foregoing, shall include aqueducts, tunnels, bridges, dams, reservoirs, roads, *transformers, and storage-tanks of whatever kind or nature, but shall not include such fixtures, machinery, or things other than 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*: [The italics are mine.]
>
> (b) The pole-lines, cables, towers, poles, wires, and transmission equipment of any electric light, electric power, telephone, or telegraph company, and pipelines for transportation of water, petroleum, petroleum products, or gas.

Section 30 provides the method of assessment and reads as follows:-

30. Land and improvements shall be assessed at their actual value. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

Section 29 (2) reads as follows:

> (2) Any structure, aqueduct, pipe-line, tunnel, bridge, dam, reservoir, road, storage-tank, *transformer or sub-station, pole-lines, cables, towers, poles, wires or transmission equipment, or other improvement, that extends over, under, or through land may be separately assessed to the person owning, leasing, maintaining, operating, or using the same, notwithstanding that the land may be owned by some other person*. [The italics. are mine.]

The first question posed is as follows:

> "1. Was the Assessment Appeal Board correct in finding that the assessable value, if any, resulting from the clearing of trees from the sites of reservoirs should be assessed against land and not against improvements?

I agree in the main with the reasons given by the majority of the Assessment Appeal Board. I cannot, however, agree with them when they say, as they do, that the reservoir is "land." It is specifically included in the definition of "improvements" in section 2 of the *Taxation Act*. There is a distinction, however, between a reservoir and a site which is chosen for a reservoir. The circumstances, briefly, were these. A portion of this land which lay behind a dam constructed by the company was chosen as the site for the reservoir. For the purposes of the company it was necessary to do nothing to this land in order to enable the company to store the water required, but before the company was entitled to store water it was required as a condition of so doing to clear the site of the reservoir in such manner as might be directed by the Controller of Water Rights" after consultation with the Parks Division of the B.C. Forest Service," and, as stated in the reasons of the Appeal Board, this permit contained the following words: "This permit is appurtenant to the. land to which the aforesaid water licence is appurtenant."

In other words the clearing was for the benefit of the public and was of no benefit whatever to the company. But while the cost of clearing was considerable, it did not enhance the value of the reservoir as such one iota and is therefore not taxable as an improvement.

> "2. Was the Board correct in finding that the reservoirs under appeal are land rather than improvements?"

In the view I have expressed it is unnecessary to consider this question further, other than to reiterate what I said that while the reservoir itself is an improvement, the cost of clearing the land chosen as site for the reservoir is not taxable as an improvement.

> "2A. Were reservoirs properly assessed?"

The answer is "no" for the reasons already given.

> "3. Was the Board correct in finding that the assessable value, if any, resulting from the clearing of trees from the transmission-line rights-of-way should be assessed against land and not against improvements?"

I agree with the reasons given by the Appeal Board and the answer is in the affirmative. I only wish to deal with the submission made by counsel for the appellant to the effect that before a transmission-line could be constructed, the land over which it passed would have to be cleared. If that argument is valid, then anyone intending to build a home in a heavily wooded area, such as the British Properties in West Vancouver formerly were and in part still are, would have to have his lot cleared before he could build a house upon it. Can it be argued that the cost of clearing the lot as a necessary preliminary to building the house would be an integral part of the cost of that dwelling? It seems clear to me that the question has only to be asked to refute itself. If, for example, a portion of the same block of land had already been cleared and a house were built thereon identical in all respects with that built on the lot which had to be cleared, could it be said that the house on the lot where the clearing was required to be done was worth more than that built on the lot already cleared? The effect of the clearing would be to bring that lot into the same price range as the one already cleared. In short, the clearing enhanced the value of the land, not the improvement thereon.

It appears to me that the provisions of section 29 (2) of the Act have some relevance in considering whether or not the cost of clearing the site for the transmission-line can properly be taxable as an improvement. In that subsection the transmission-line is broken down into its component parts in these words: "pole-lines, cables, towers, wires for transmission equipment, or other improvements that extend over, under or through land may be *separately* assessed to the person owning, leasing, maintaining, operating or leasing the same, *notwithstanding that the land may be owned by some other person*." [The italics are mine.] If it was intended that the expense of preparing the site for the transmission-lines were to be taxable as an improvement, it would have been an easy matter to have said so in the above subsection.

> "4. Was the Board correct in finding that the assessable value, if any, resulting from the clearing of trees adjacent to the transmission-line rights-of-way should be assessed against improvements and not against land?"

The answer to 4 is "no."

> "5. Was the Board correct in finding that the assessable value, if any, resulting from specialists' fees incurred as part of the cost of the clearing of trees from part of the transmission-line right-of-way should be assessed against the land and not against the improvement?"

The answer to 5 is "yes," on the basis that it formed part of the cost of clearing the land and did not increase the value of the improvements.

> "6. Was the Board correct in finding that the assessable value, if any, resulting from the amount paid by the taxpayer for stumpage and royalties on trees on part of the transmission-line (less the amount realized on the sale of timber) as part of the cost of clearing of trees from the transmission-line right-of-way should not be assessed against the improvement?"

The answer to 6 is "yes," on the basis that it formed part of the cost of clearing the land and did not increase the value of the improvements.

> "7. Was the Board correct in finding that the value, if any, resulting from the clearing and grubbing of land prior to the construction of improvements placed thereon should be assessed against the land and not against the improvement?"

The answer to this question is "yes." To use an example of what the result of assessing this as an improvement I would refer back to the analogy or example which I used in dealing with Question 3. Assuming the company wished to complete two substations, one in the rough and mountainous terrain of the Bridge River area and the other in the Fraser Valley: in the first

instance it might be necessary to carry on extensive drilling and blasting operations so as to level the site suitable for construction of a building, whereas in the other the preparation could be a very simple and inexpensive operation; assuming further the two substations were identical in structure, is it reasonable to say that the one in the Bridge River area has a higher assessable value than the one in the Fraser Valley? It may well be that the land has been improved by levelling but the value of the building has not been increased, and that cost obviously should be levied against the land and not against the improvement thereon.

"8. Were roads and trails properly assessed?"

In my view the answer to this question is "no." The method adopted in the assessing of roads and trails was as follows: The company charged up the costs of roads and trails to each particular project which they were intended to serve. The Assessor, in arriving at his assessment figure, has taken from the company's records the costs of the roads and trails in respect of each project and totalled them and then added this total cost to the cost of the transmission-lines as improvements. The roads and trails are not separately assessed but, as stated, are lumped in one total sum. No inspection of the roads or trails as they now exist has been made by the Assessor. By section 30 of the *Taxation Act* (*supra*) it is provided, *inter alia*, "in determining the actual value the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue and rental value."

As stated, the Assessor has had regard only to the original cost without taking into consideration the present state or present use of such roads and trails. Many of these roads and trails, particularly in the mountainous areas, if not maintained may well have been washed out and be non-existent, and, of course, in that case are of no further value. Many of these roads and trails may be in use by logging companies and may no longer be required by the company. On the other hand many of the roads and trails may be a valuable asset in maintaining and servicing the company's transmission-lines, and as such would have a real value as a necessary adjunct to the transmission-lines. In my view the company is entitled to have these roads and trails in each assessment district separately identified and assessed. While under section 30 of the Act the Assessor may give consideration to the company's original construction costs of these roads and trails, he is, in my view, not entitled to do so to the complete exclusion of all other considerations, and in this particular instance to their present use and also their present state of repair. As already stated, many of them may no longer be in existence, and assuming that such roads and trails may be required in future, then in such a case they would have to be replaced entirely or in large measure. In such a case the original cost would have to be reduced by the cost of replacement or repair.

I am mindful that by section 2 roads are included in the definition of improvements. Nevertheless the company is entitled to have a realistic assessment of these roads (and trails) in their present state, and this the Assessor has failed to do.

For the foregoing reasons, in my view the assessment of the roads and trails is improper and the answer to Question 8 is therefore "no." In the result and in view of my answer to Question 8, I find it unnecessary to deal with Questions 9, 10, 11, and 12.

In the course of the argument before me the following cases were cited and considered by me in giving judgment: *The King* v. *Bridge River Power Co. Ltd. et al.* (1949) S.C.R. 246; *Sun Life Assurance Co. of Canada* v. *the City of Montreal* (1950) S.C.R. 220; *Re Assessment Equalization Act re Royalite Oil Co. Ltd.* (1957) 23 W.W.R. (N.S.) 328; *R.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351; *Montreal Island Power Co.* v. *Town of Laval des Rapides* (1935) S.C.R. 304; *Canadian National Railway Co. et al.* v. *Vancouver (City)* (1950) 2 W.W.R. 337; *Re Rattenburg* (1913) 12 D.L.R. 851; *Winnipeg City* v. *T. Eaton Co.* (1944) 2 W.W.R. 541; *Montreal Light, Heat & Power Consolidated* v. *City of Westmount* (1926) S.C.R. 515; *Vancouver Waterfront Ltd.* v. *City of Vancouver* (1936) 1 W.W.R. 248; *Victoria* v. *Bowes* (1901) & B.C.R. 363; *Bennett & White* v. *Sugar City* (1951) 4 C. 786.

This appeal involves a matter of considerable importance, and it is a matter of extreme regret to me that under the provisions of the Statute I am unable to withhold my judgment for a longer period and give the matter fuller consideration.