BRITISH COLUMBIA FOREST PRODUCTS LIMITED

v.

ASSESSMENT DISTRICTS OF COWICHAN AND VICTORIA

British Columbia Court of Appeal

Before: MR. JUSTICE C.H. O'HALLORAN
MR. JUSTICE C.W. TYSOE and
MR. JUSTICE J.O. WILSON

May 30, 1962

H.P. Legg for the Appellant Company
Lloyd G. McKenzie, Q.C. and Paul V. Gadvan for the Respondent Provincial Assessors of the respective jurisdictions

Reasons for Judgment of Mr. Justice O'Halloran

This is an appeal from a judgment of Mr. Justice Hutcheson which came before him by way of stated case involving section 39 of the *Taxation Act*, chapter 367, R.S.B.C. 1960, as amended by the Statutes of 1961, reading as follows:-

> 39. Notwithstanding the provisions of section 31 , the assessed value of tree farm land, exclusive of any improvements thereon, shall be ascertained only by giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees.

I am not satisfied that the learned Judge fell into error, and I accept and adopt what he said in the appeal book, pare 245, lines 4 to 27:-

> In my view the "present use of the land" as applied to the Crown granted land in question is the use of that land as a tree farm but does not mean or include the method by which the land was so used. The assessor is bound by section 39 to ascertain the assessed value of the tree farm land only by giving consideration to the present use of that land, that is as a tree farm. This is for the harvesting of forest trees from that land. In my opinion the assessor is not required by the provisions of section 39 to give consideration to the method by which the particular owner for the time being of that tree-farm saw fit to carry out that harvesting or to move the logs resulting from the cutting carried on upon the tree farm or to that owner's choice of the market through which he would dispose of those logs. On the other hand, for example, the assessor or appraiser would be prohibited by section 39 from considering in arriving at the assessed value the potential value the Crown granted land might have if put to other uses than that of a tree farm.

> The method adopted by the assessors to arrive as the assessed value was by the comparative sales approach, and in that way arrive at a weighted average stumpage value for Tree Farm No. 16.

Appraiser M. Malcolm in his evidence in chief and also under cross-examination gave a full explanation of the principles he applied in assessing the tree-farm in question here.

I find no error, nor did the learned Judge appealed from, in the manner in which the appraiser applied those principles; he applied those principles with the uniformity and with the objectivity demanded by accepted applicable judicial decisions.

For the above reasons I would dismiss the appeal.

Reasons for Judgment of Mr. Justice Tysoe

I am in general agreement with what has been said by my brother Wilson in his reasons for judgment, which I have had the privilege of reading, and I concur in the dismissal of this appeal.

Reasons for Judgment of Mr. Justice Wilson

This appeal is from the determination by Hutcheson, J., of a case stated to him by the Assessment Appeal Board under section 51 of the *Assessment Equalization Act*. I cite the stated case:

> 1. Was the basis of the assessment of the appellant's tree-farm land as determined by the timberland appraiser and confirmed by the Assessment Appeal Board in its decision dated the 15th day of November, 1961, ascertained in accordance with section 39 of the *Taxation Act*, chapter 376 of the Revised Statutes of British Columbia, 1960, or with the said section 39 as amended by sections 7 and 8 of the *Taxation Act Amendment Act*, 1961, chapter 61 of the Statutes of British Columbia, 1961?
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> 2. Was the Assessment Appeal Board correct in law in finding that there was no evidence before the Board that the *Tax Department* zones within which the entire tree-farm is situate constitute an unfair division?
>
> 3. Was the Assessment Appeal Board correct in law in finding that there was no evidence before the Board that timber operators are unduly affected by the present division of *Tax Department* zones?

I find myself in general agreement with the reviewing Judge and with his reasons for judgment, but I feel I should, in justice to the able argument presented by counsel for the appellant, write a few words of my own.

The assessment under review is that of a tree-farm and section 39 of the *Taxation Act*, chapter 376, R.S.B.C. 1960, as re-enacted in 1961, is applicable. I cite the section:-

> 7. Section 39 is repealed and the following substituted:-
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> 39. Notwithstanding the provisions of section 31, the assessed value of tree-farm land, exclusive of any improvements thereon, shall be ascertained only by giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees."

The learned trial Judge has held that "present use" of the land means simply "use as a tree-farm." This is, generally speaking, correct.

But the present use must be a proper and economic use. If the owner is not harvesting or marketing in a proper and economic manner, the Assessor is entitled to assess the land on the basis of what revenue should be derived from it by proper present use. If he did not do this, but assessed it on the basis of an improper and uneconomic present use by the owner, he would, of course, be committing the cardinal error of assessing on the basis of value to the owner (*see* judgment of O'Halloran, J.A., in *Canadian National Railway Company et al.* v. *Vancouver (City)* (1950) 2 W.W.R. 337).

But this does not mean that evidence of the present use being made by the owner of the land is to be excluded. It may be relevant but it is not conclusive.

The Assessor based his valuation on sales of timber in the Cowichan Lake area by the Crown and by the Canadian Pacific Railway Company, and on stumpage rates set by the Crown in cutting permits issued to the farm-owners. There can, of course, be no criticism of the method of using records of sales of comparable property as the basis of an assessment. The appellant leaned heavily on the fact that the Chief Forester for British Columbia had, in March, 1961, agreed that he would in future sales of Crown timber or in the future issuance of cutting permits in the Cowichan Lake area make an allowance for the cost of transporting logs to tidewater. This, the appellant contended, constituted an admission that past sales of Crown timber used by the Assessor as one basis of valuation had been at too high a price, or at too high an upset price. Perhaps it does involve such an admission. But the Assessor is in this part of his work concerned with actual prices, with what the timber fetched in the market, and not with what it should have fetched. Therefore, he was perfectly right in adhering to records of actual sales. Sales after March, 1961, of Crown timber may be at lower prices, and allowances may be made for this by the Assessor in future assessments, but, in so far as he depended on market prices, he would have been wrong to make such an allowance in this case because the market price is what is paid by the buyer, not what is asked by the seller.

I would dismiss the appeal.