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TRANS MOUNTAIN OIL PIPELINE COMPANY

v.

TOWN OF HOPE
and
THE CORPORATIONS OF THE DISTRICTS OF BURNABY AND SUMAS

Appeal Court of British Columbia

Before: MR. JUSTICE H.W. DAVEY, MR. JUSTICE A.E. LORD, and MR. JUSTICE ANGELO E. BRANCA

Vancouver, May 6, 1966

C.C.I Merritt, Q.C. and A.C. Ree for the Appellant
J. Alan Baker, Q.C. for the Town of Hope
W.L. Sterling for the District of Burnaby
F.S. Rosborough for the District of Sumas

Reasons for Judgment of Mr. Justice Davey

This is an appeal by Trans Mountain Oil Pipe Line Company from answers to a case stated by the Assessment Appeal Board under section 51 of the *Assessment Equalization Act*, R.S.B.C. 1960, chapter 18, the result of which was to affirm the assessment of certain tanks forming part of the appellant's pipe-line transmission system or being adjuncts thereto. Only questions of law may be raised by a stated case. There is no appeal of any kind on questions of fact or mixed fact and law.

The questions raised by the stated case appear to be matters of fact and of mixed fact and law, and the case itself does not explicitly state the question of law on which the opinion of the Court is sought; it will not be helpful to recite the questions. In my respectful opinion, it would have been better in the first instance to have remitted the case back to the Board to have the questions properly propounded and to state clearly the points of law to be decided. But that was not done, and in my opinion the appeal having reached us in its present form, we ought to decide the questions of law that emerge from the reasons of the Board, which form part of the case, as was done by the Ontario Divisional Court in *Re Canada Co. and Township of Colchester North* (1916) 38 O.L.R. 183. But I express the hope of Meredith, C.J.C.P., in that case that the form of the case may not be adopted as a guide in the future.

The facts found by the Board in their reasons for judgment, and reported in the stated case, show that the tanks in question serve various functions in the operation of the pipe-line. The question is whether they are assessable as improvements under the provisions of the *Municipal Act,* R.S.B.C. 1960, chapter 255: the *Taxation Act*, ibid., chapter 376, and the *Assessment Equalization Act*, *supra*. No point turns on slight differences in some of these definitions. The definition of "improvements" contained in section 2 of the *Municipal Act* will be sufficient for present purposes:

> "improvements" for all purposes other than levying school rates includes

(a) all buildings, fixtures, machinery, structures, and similar things erected in, 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, includes aqueducts, tunnels (excluding mine-workings), bridges, dams, reservoirs, roads, transformers, and storage-tanks of whatever kind or nature, but does not include such fixtures, machinery, and similar 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;

"improvements" for the purpose of levying school rates includes

(a) all buildings, fixtures, machinery, structures, and similar things erected or placed in, 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, includes aqueducts, tunnels (excluding mine-workings), bridges, dams, reservoirs, roads, transformers, and storage-tanks of whatever kind or nature, and also includes such fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going concern operation so erected, affixed. or placed by a tenant.

The respondents submit that it is the use to which the tanks are capable of being put that determines whether they are storage-tanks. The appellant contends that it is the use to which the tanks are being put that determines their assessability, and that they are on the facts found by the Board not storage-tanks, but holding-tanks, used only to hold oil for short periods of time for the operation of the pipeline. In the alternative, appellant submits that if they are storage-tanks, they are not affixed to the ground in such a way as to make them realty, and the Acts authorize the assessment and taxation of only real property, not personal property.

Respondents submit in the alternative that if the tanks are not storage-tanks, they are at least buildings or structures, and if structures they are assessable in any event for school purposes, and for general purposes if they could not be removed if they were tenant's fixtures. From this recital the following questions of law emerge to be decided by this Court:

(1) What is the meaning of the term "storage-tanks" as used in the definition of improvements, and does it cover the tanks in question on the facts found by the Board?

(2) What is the meaning of the words ". . . structures, and similar things erected in, upon, or under or affixed to land. . ." in the definition of improvements for general purposes, and the meaning of those words with the addition of "or placed" in the definition for school purposes, and do they cover the tanks in question on the facts found by the Board?

(3) Do the Acts make personal property assessable if it falls into the category of improvements as defined by the Acts?

The pith of the Board's reasoning on the first question is found in the following passage in its reasons for judgment.

Here, however. the product is liquid and is passing into and out of very large containers admittedly designed to contain a large supply of oil and for whatever purpose requisite to the operations of the Appellant. It is necessary to decide whether these tanks are "storage" tanks. In the ordinary meaning of that phrase, as it is understood today, the unanswered question is, why so many tanks, some of very large capacity, if they are not intended to and do not hold oil for continuous periods of time, whether it be to maintain pressures, to prevent corrosion, or for other reasons?

After careful consideration, the Board finds that the tanks in question are storage tanks. The fact that various "batches" pass through them, consigned to various owners, is not

> considered definitive. The suggestion that they are like oil trucks or freight cars is not acceptable because they lack mobility as do warehouses.

In my opinion this passage shows that the Board considered the mere fact that the tanks were used to hold oil was sufficient to make them storage-tanks in law. With deference, I am unable to agree. In my opinion "storage" in this context means something more than holding, although in some other contexts it may mean no more than that (see the definition of the verb "store" in the New Oxford Dictionary, item 3). Item 2 of that definition defines the word: "To keep in store for future use; to collect and keep in reserve; to form a store, stock or supply of; to accumulate, hoard." The dates given in the dictionary of first appearance of the word in a particular sense show that "store" has long been used as in item 2, but its use as a synonym of "hold" is comparatively recent, dating from 1911. Certainly in general usage it introduces the concept expressed in item 2. In a Taxing Statute I think it must receive the older and more restricted meaning it bears in general use, unless the Legislature has indicated a contrary intention, of which I find no evidence.

In short, to be storage-tanks they must be used primarily to store oil in the meaning of item 2.

I said primarily, because the Legislature has chosen to classify the tanks by a word that expresses their function. Most of the tanks perform more than one function, and accordingly their assessability as improvements must be determined by their primary function. It also follows that it is the principal or predominant use, not their capacity for another use to which they are not presently being applied as contended by respondents, that determines whether they are storage-tanks.

Applying that definition of storage-tanks to the facts as found by the Board leads to the following conclusions in law:

> (1) The two tanks at Hope do not fall within that definition. They are part of a safety device by which a valve automatically drains oil from the main pipe-line when pressure grows too great. The pressure is reduced by releasing oil from the pipe-line, and it is caught in these tanks, and returned to the pipe-line when the danger is past. They have been used only once in the past 12 years, and then for a casual purpose, when the pipe-line had to be cut and lifted to enable a highway crossing to be installed. The oil was held in the tanks for 48 hours until the crossing had been completed.
>
> (2) So far as the tanks at Sumas, Burnaby, and Westbridge are concerned, the Board has set out in the stated case and its reasons detailed findings of fact concerning their purpose and function. In my opinion it cannot be said of them on the facts as found, as it can of the Hope tanks, that they cannot be storage-tanks within the meaning of the definition. At least some of them may be essentially part of the machinery and equipment by which the pipe-line is operated and not storage-tanks at all, but the category into which they fall depends on the inferences to be drawn from the facts as found by the Board, and the manner in which they are interpreted. That involves a decision on a question of fact beyond the power of this Court on a stated case.

Turning now to the second question I have propounded: I think that on the facts found by the Board the tanks are in any event clearly structures within the meaning of that word as used in the definitions of "improvements," even though they are not affixed to the soil, and merely rest upon the ground through their own weight. That seems to follow from the following cases: *Hobday* v. *Nicol* (1944) 1 All E.R. 302, per Humphreys, J., at pages 303 and 304; *Cardiff Rating Authority* v. *Guest Keen Baldwins Iron & Steel Co., Ltd.* (1949) 1 All E.R. 27, per Denning, L.J., at page 31, and Jenkins, J., at pages 35 and 36. The facts in the stated case show these tanks were erected upon the land. Moreover, it is clear they were placed upon the land within the meaning of "placed" as defined in *Northern Broadcasting Company* v. *District of Mountjoy* (1950) S.C.R. 502, per

Kellock, J., at pages 510 and 511, thus meeting the second condition required to make the structures improvements within the meaning of the definition.

In so far as the tanks are storage-tanks, they are improvements for all purposes. In so far as they are structures, but not storage-tanks, they are improvements for school purposes, but not for general purposes if they are fixtures, machinery, or similar things, not being buildings, which if affixed by a tenant would be removable as his personal property as against his landlord. Sufficient facts have not been found to enable me to determine whether in law they, if not buildings, would be removable as tenant's fixtures.

Dealing now with the third question of law, appellant's counsel argues that the several Acts do not make personal property assessable even if it falls within the definition of improvements to land, and that these tanks, not being affixed to the land, are chattels and so personal property. He contends that the Acts draw a clear distinction between real and personal property. In some respects that is so, but not for the purposes of assessment. For those purposes, the common-law distinction between real and personal property seems to have been dropped for a more practical distinction between land and its improvements as defined in the Act, and chattels which are not improvements to land, thus arbitrarily cutting across the classical distinction between real and personal property. In my respectful opinion these tanks arc assessable as improvements if they fall within the respective definitions, even though at common law they may be chattels; e.g., the transformers and transmitters in *Northern Broadcasting Co.* v. *District of Mountjoy*, *supra*, per Kellock, J., at page 511.

No useful purpose will be served by attempting to answer the questions raised by the stated case. About all that can be done is to allow the appeal, set aside the assessments, and remit the matter to the Board to reconsider and determine on the evidence already before it the assessability of the several tanks in the light of the law as declared upon this appeal. If there is any legal or practical impediment to the Board determining the assessability of these tanks at this late date, I would hear counsel as to what form our judgment ought to take. I would allow the appellant the costs of the appeal and the proceedings in the Court below.

Reasons for Judgment of Mr. Justice Lord May 6, 1966.

I agree with my brother Branca that this appeal should be dismissed. The facts and issues in this appeal have been fully set out by my brother Branca. The appellant laid great stress on his submission that the tanks in question were personal property and the evidence did not show them to be "storage-tanks" and were, therefore, not assessable as improvements. I cannot see that it makes any difference because, in any event, they must surely come within the category of a "structure." I am, with respect, in agreement with the reasoning of Spence, J., as he then was, in *City of London* v. *John Labbatt Ltd.* (1954) 1 D.L.R. 441, where he found that various tuns and tanks used in the process of brewing in the defendant's brewery were "structures." The stated case herein sets out, *inter alia*, that: "4. All these tanks at each location are subsidiary parts of an integrated oil transportation system." The tanks at Sumas are described as an "integral part of the system." The tanks in their several locations were variously described for such purposes as

> "segregating batches for different refineries";
>
> "to accumulate oil to meet delivery requirements";
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> "to provide flexibility of the system";
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> "to ensure proper maintenance";
>
> "for safety purposes," and
>
> "to provide a gravity flow."

There can be no doubt from the size of these tanks, varying from 10,000 to 150,000 lbs. capacity, and from the use they are put to and from the fact that they have to be cut to pieces to be removed, that they have been placed or erected in their positions with "some idea of permanency," and "with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises: "*Northern Broadcasting Company Ltd.* v. *District of Mountjoy* (1950) S.C.R. 502, per Mr. Justice Kellock, at p. 511. Nor can there be any doubt, in my opinion, from the facts as related in the stated case, that all the tanks form part of an integrated oil transportation system. They meet the test indicated by Mr. Justice Kellock and accordingly are structures, and they are "affixed" to the oil pipe-line within the meaning of the definition of "improvements" in section 2 of the *Municipal Act*. See also *Assessment Commissioners for Metropolitan Toronto* v. *Eglinton Bowling Co.* (1958) 11 D.L.R. 195, an appeal under the Ontario *Assessment Act*, where it was held that bowling alleys on leased premises came within the meaning of "structures. . . placed upon. . . land" within the meaning of that Act; and see *Hobday* v. *Nicol* (1944) 1 All E.R. 302; and *Richmond* v. *Ashton* (1961) 31 D.L.R. 12.

In *Trans Mountain Oil Pipe Line Company* v. *Jasper School District No. 3063* (1958) S.C.R. 349, where "improvements" were defined to include "all structures and fixtures erected upon, in, over, under or affixed to the parcel of land assessed," it was held by Rand, J., speaking for the Court, that the oil pipe-line of the company was a "structure." It would seem, therefore, that here we have a structure, the tanks, affixed to a structure, the oil pipe-line, which brings such tanks within both of the definitions of "improvements" which includes, *inter alia*, "all . . .structures. . . affixed to any. . . structure." They are therefore assessable.

I would like to add some comments respecting Questions 1 and 5. Question 1 reads as follows:

> "1. Did the Board err in deciding that the only question was whether the said tanks were 'storage-tanks' within the meaning of section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255."

This question involves an interpretation of the scope of the section and as such can be properly regarded as a question of law. With great respect, I feel that the learned trial Judge was in error when he answered the question in the negative. In my opinion the Board interpreted the section too narrowly in stating what the "*only question*" was. In fact, it is inconsistent with the Board's statement in the stated case at A.B. p. 84, where it is said: "The *only issue* is whether the tanks are assessable." This issue is reflected in Questions 3 and 4 as to whether the tanks were "improvements" within the meaning of section 2, which allows for a consideration as to whether the tanks are "structures," quite apart from whether they may be storage-tanks.

However, Question 5 asks the specific question as to whether the Board erred "in deciding that all the said tanks were 'storage-tanks' within the meaning of the said Act." The learned trial Judge's answer was: "The Board's decision on this is on a matter of fact and, therefore, not reviewable by me." I am in respectful agreement with that answer. At any rate the finding is at least one of mixed fact and law and is not reviewable.

In *Township of Tisdale* v. *Hollinger Consolidated Gold Mines Ltd.* (1933) S.C.R. 321, there were disputed assessments in respect to land, including the buildings, plant and machinery thereon. The company claimed it was not assessable under a section which read:

> "The buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground, or storing the same, . . . the minerals in, on or under such land, shall not be assessable."

Mr. Justice Cannon, speaking for the Court, said at p. 323:

"The construction of a statutory enactment is a question of law, while the question of whether the particular matter or thing is of such a nature or kind as to fall within the legal definition of its term is a question of fact."

At pp. 325-6 he observed:

"The question as to whether the properties assessed or on which the buildings, plant and machinery are found are 'mineral lands' is one of fact, as well as that whether or not any particular substance is a 'mineral' within the meaning of the statute in which the word is used, there being no definition in the Act. (*Union Natural Gas Company of Canada* v. *Corporation of the Township of Dover* (1920) 60 Can. S.C.R. 640, at 642.) We agree with the late Mr. Justice Grant of the Appellate Division, when he says ((1931) O.R. at 645):

'Upon the evidence which was adduced, and upon the findings made by the Ontario Railway and Municipal Board, it appears to me quite clear that the Board must be taken to have decided that the lands in question were mineral lands. within the meaning of section 40, subsection 4; and as their finding in that regard is one of fact, this Court is precluded from interfering therewith.'"

After a thorough analysis of the evidence as to the nature, use and functions of the tanks in question, the Board has found that they are of such a nature or kind as to fall within the meaning of "storage-tanks" in the definition. This is a finding of fact and as the learned trial Judge said: "It follows as a matter of law that they are assessable as such."

It is difficult to make proper answer to the questions as framed, but I adopt the answers given by the learned trial Judge to Questions 2, 3, 4, and 5, but for the reasons assigned above, I would answer Question 1 in the negative. This makes no material change in the result arrived at by the learned trial Judge. The main point for decision was the assessability of the tanks, on which issue the appellant has failed. The appeal is dismissed but the answer to Question 1 shall be varied as indicated. Costs of the appeal to the respondent.

Reasons for Judgment of Mr. Justice Branca May 6,1966.

Trans Mountain Oil Pipeline Company appeals from the decision of Gould, J., in a case stated by the Assessment Appeal Board under the provisions of section 51 of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, which is strictly confined to points of law.

Five questions were reserved for the opinion of the Court in the stated case which recited much of the evidence taken before the Board, which then gave extended reasons for arriving at its decision.

The questions and answers are set out in the reasons for judgment of Gould, J., as follows:

"1. Did the Board err in deciding that the only question was whether the said tanks were 'storage-tanks' within the meaning of section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255?"

Answer: No, and its further decision, that the said tanks are "storage-tanks," effectively disposes of the sole issue herein-namely, assessability.

"2. Did the Board err in failing to decide that all or any of the said tanks were personal property and therefore they were not assessable within the meaning of the said Act?"

Answer: The answers to this double-barrelled question would be superfluous in the light of the disposition of the main issue herein.

"3. Are any of the said tanks 'improvements' within the definition of '"improvements" for the purpose of levying school rates,' contained in section 2 of the said Act, and are they assessable for such purposes?

Answer: The Assessment Appeal Board has found as a matter of fact that the tanks are "storage-tanks" within the definition of '"improvements' for the purpose of levying school rates," contained in section 2 of the Act. It follows as a matter law that they are assessable as such.

"4. Are any of the said tanks 'improvements' within the definition of '"improvements" for all purposes other than levying school rates,' contained in section 2 of the said Act, and are they assessable for such purposes?"

Answer: Same answer, *mutatis mutandis*, as that to Question 3 above.

"5. Did the Board err in deciding that all the said tanks were 'storage-tanks' within the meaning of the said Act?"

Answer: The Board's decision on this is on a matter of fact and, therefore, not reviewable by me.

There are two subsections defining improvements for two types of taxation in section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255; the same read as follows:

"improvements" for all purposes other than levying school rates includes

(a) all buildings, fixtures, machinery, structures, and similar things erected in, 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, includes aqueducts, tunnels (excluding mine-workings), bridges, dams, reservoirs, roads, transformers, and storage-tanks of whatever kind or nature, but does not include such fixtures, machinery, and similar 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;

"improvements" for the purpose of levying school rates includes

(a) all buildings, fixtures, machinery, structures, and similar things erected or placed in, 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, includes aqueducts, tunnels (excluding mine-workings), bridges, dams, reservoirs, roads, transformers, and storage-tanks of whatever kind or nature, and also includes such fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going-concern operation so erected, affixed, or placed by a tenant;

For the sake of brevity I shall refer to the first subsection as the "all purpose" section and the second as the "school rate" section.

In the "all purpose" section, "improvements" generally include "all buildings, fixtures, machinery, structures, and similar things erected in, upon, or under or affixed to land . . ." and including without restricting the generality of the named things "storage-tanks of whatever kind or nature."

Under this section, improvements such as fixtures, machinery, and similar things are excepted if of such a character that if erected or affixed by a tenant would, as between landlord and tenant, be removable by the tenant as chattels or personal property. In other words, personal property such as fixtures or machinery and similar things, but excluding buildings and storage-tanks

belonging to a tenant and of a character which the tenant could remove from the demised premises as between the tenant and his landlord, are not classified as improvements but are specifically exempted.

Under the "school rate" section there is no such exemption. Moreover, the section seems considerably broader as it covers not only "all buildings, fixtures, machinery, structures, and similar things erected. . ." but also "*placed* in, upon, or under. . ." Here again in this section "storage-tanks of whatever kind or nature" are specifically included as improvements.

The appellant submits that the learned trial Judge erred in not answering Question 2, and further submits that the tanks in question, whether in fact storage-tanks or not, are in law personal property not affixed to the lands either in fact or in law, and that personal property is not assessable or taxable under the said sections, and that the learned trial Judge should have reviewed the decision of the Board and have concluded that the said tanks were and are not improvements within the sections above quoted and therefore not assessable.

Under the "school rate" section the appellant's submission rests upon thin ice indeed. For example, a building or a structure may rest on skids in or upon land and yet not be so affixed to it as to become a part of it in the sense that it is a fixture at common law, yet can it be said that it is not a building or a structure such as is contemplated and included in this section either as erected or placed in, upon, or under, or affixed to land?

That this submission is not acceptable appears to be amply demonstrated in *Northern Broadcasting Company Limited* v. *The Improvement District of Mountjoy* (1950) S.C.R. 502, where the Supreme Court of Canada had to decide whether a transformer and a transmitter unattached to the building but merely resting thereon by their own weight come within the definition of land, real property, and real estate, which the Statute said shall include "all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, under, or affixed to land."

Kellock, J., in giving the majority judgment of the Supreme Court of Canada, recites the problem for solution as follows, at page 509:

> The second question which arises is as to whether or not a machine merely "placed" upon land without having acquired the character of land at law falls within the definition.

The learned Judge, at page 510, discusses the words "erected," "placed," and "affixed" and states as follows:

> I am content to assume that the Statute of 1897 was concerned only with fixtures at common law in the sense that they had become part of the realty.
>
> Appellant says that no change was effected by the Statute of 1904. If this argument be sound, the dropping of the words "so affixed to any building as to form in law part of the realty" as applied to "machinery" is without significance and the insertion of the word "placed" serves no purpose save to render the Statute tautologous. To so construe the Statute would be contrary to settled principle.
>
> Prima facie, therefore, the words "erected," "placed" and "affixed" do not connote the same things, and the word "placed" at least must connote something less than is involved in the word "affixed."
>
> With respect to "placed," I do not think it is used in the Statute as equivalent merely to "brought upon" so as to take in mere personal property which is intended to be shifted about at will. It involves the idea of setting a thing in a particular position with some idea of permanency. Thus, merely to bring a gas engine and portable saw upon premises

> would not be to "place" them upon the land within the meaning of the Statute, any more than would be the case with a table, or a chair, or a typewriter, or similar articles.
>
> "Placed" is defined in the Shorter Oxford Dictionary as "to put or set in a particular place, position or situation."
>
> In the context of the Statute, I think the Legislature must be taken to have had in mind the including of things which, although not acquiring the character of fixtures at common law. nevertheless acquire "locality" which things which are intended to be moved about do not.

He then states that the language used in this section indicates an intention to continue the assessment of chattels which, although not fixtures at law, nevertheless were not things intended for use to be moved from place to place.

He then concluded that it was sufficient to bring the two chattels in question within the meaning of land because they were heavy articles and each was placed in a particular spot with the idea of remaining there so long as each chattel was used for the purpose for which it was placed on the premises.

It would be seen that "placed" was not intended to embrace personal property which was brought upon the land and which was intended to be shifted at will, but it did involve the idea of setting a thing in place for use with some idea of permanency.

In the instant case all the tanks under consideration are huge and heavy and were erected and rest upon the land, upon the same site for many years, and were used for the purpose for which they were intended and are completely immobile as tanks and are not movable at all unless cut to pieces and destroyed as tanks for the purposes of removal.

In the case of *Re Assessment Equalization Act, 1953*, *re Orr's Assessment* (1955) 16 W.W.R. 25, Wilson, J. (now Chief Justice, Supreme Court), had to deal with the assessability of cobbler's machinery belonging to a tenant, and in arriving at his decision he cites from the *Northern Broadcasting* case and concludes that the machinery as placed belonged to a class of things intended to be moved about at will and not permanently positioned, and were, therefore, not within the definition of improvements.

The appellant's submission that the tanks in question were personal property and not assessable within the "school rate" section must fail.

Does the submission bear weight in so far as the "all purpose" section is concerned? Stripping the section of its irrelevant verbiage, the pertinent parts thereof read as follows: "Improvements include all buildings, fixtures, machinery, structures, and similar things, including storage-tanks of whatever kind or nature, erected in or upon lands." It would follow that whether the tanks are affixed thereto or not would be a matter of indifference. In addition, the tenant's fixture part of the section would be of no benefit to the appellant as storage-tanks are specifically excluded from the exception.

The case of *The King* v. *Bridge River Power Co. Ltd. et al.* (1949) S.C.R. 246 is of little or no relevance on the point in question as it had to deal with the interpretation of the section in the *Public School Act* and in the *Education Act* couched in language quite different from that used in the two sections in the *Municipal Act* quoted, although one of the sections dealt with exceptions in reference to tenant's fixtures. It is a curious thing that in the *Northern Broadcasting* case the *Bridge River Power* case was not considered, although it was decided some two years before.

In the *Burnaby* and *B.C. Electric* case (unreported), the reasons of Coady J., do not set forth specifically the chattels which were under consideration, but the learned trial Judge did state that

the property assessed consisted of fixtures, machinery, or things which as between landlord and tenant would be removable by the tenant as personal property.

In the *Municipal Act* v. *District of Burnaby* case (Shell Oil) Wilson, J. (now C.J.S.C.), was dealing with things assessed which the appellants submitted in a large part were not improvements within the definition defining that term in the *Municipal Act*, which was then much the same as it is now. In the second paragraph of his judgment (unreported) he stated:

> Roughly, the property claimed by the appellant to be non-assessable consists of the entire oil refining plant of the appellant in Burnaby excepting buildings, storage tanks and some other erections which are conceded to be attached to the freehold and assessable.

It will be seen that there the appellant was not seeking to appeal the assessability of buildings, storage-tanks, and some other erections.

The learned trial Judge held that the entire oil-refining plant belonging to the appellant were fixtures coming within the *Hellawell* v. *Eastwood* (1852) 20 L.J. Ex. 154, in the sense that they were installed for the more complete enjoyment and use as chattels and not for the permanent and substantial improvement of the dwelling. It does not appear that the *Northern Broadcasting* case, then already decided, was considered by the learned Judge in giving his judgment.

The learned trial Judge refused to accede to the respondent's submission that the plant might come within the connotation of structure. There was evidence before the learned trial Judge that plants of the nature under discussion were customarily sold and moved from site to site.

I am of the opinion, therefore, that it is quite immaterial whether the tanks in question were mere chattels or personal property, as in either event under the *Northern Broadcasting* case they come specifically within the definition of improvements and are specifically excluded from the exception relating to tenant's "fixtures, machinery, . . . and similar things," unless a working tank, as appellant's counsel termed the tanks in question, is not in law a storage-tank, and unless it can be said that tanks of this nature do not come within the connotation of structures erected in, upon, or under, or affixed to land or structures therein, thereon, or thereunder.

Therefore, the remaining and all-important point is whether or not some or all of the tanks in question which the appellant designated as "working tanks" are storage-tanks within the meaning of improvements in both the "all purpose" and "school rate" sections, or, in the alternative, whether the said tanks are structures.

The appellant urges that it is the use to which the tanks are put that determines the quality of the tanks as storage-tanks, and if this submission were acceptable at law, then some of the tanks in question might well be excluded from the definition. The respondents in reply contend that it is the suitability of the tanks as storage-tanks and not the use to which the same are put that is determinative of that issue, and in the alternative submit that whether or not the tanks are working tanks or storage-tanks, the tanks in question come within the meaning of the word "structure" at law and are therefore to be included as improvements under both sections.

The meaning of the word "includes" is well set forth in *Dilworth* v. *Commissioner of Stamps, Dilworth* v. *Commissioner for Land and Income Tax* (1899) A.C. 99 by Lord Watson in delivering the judgment of the Privy Council, and at pages 105 and 106 he states as follows:

> The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

It would appear that a storage-tank as such is specifically included in the definition of improvement, and is therefore assessable. Applying the test in the *Dilworth* case, any kind of a tank might well be included in the definition of improvement if it can come within the meaning of a structure; a structure might well in its comprehensive meaning include a working tank or a holding tank.

In *Trans Mountain Oil Pipe Line Company* v. *Jasper School District No. 3063* (1958) S.C.R. 349, the Supreme Court of Canada held that the whole oil pipe-line system belonging to the appellant company came within the meaning of structure. Counsel for the appellant in Court conceded that such a pipe-line was part of the land. In the last-named case the section being considered read as follows:

> "buildings and improvements" include "all structures and fixtures erected upon, in, over, under or affixed to the parcel of land assessed."

Rand, J., in delivering the judgment of the Court at page 352, stated as follows:

> By s. 2 (j), unless the context otherwise requires, land means "land, tenements and hereditaments and any estate or interest therein, "including minerals and growing timber. By s. 2 (i) "buildings and improvements" include "all structures and fixtures erected upon, in, over, under or affixed to the parcel of land assessed." Section 12. dealing with a special situation, has application here:
>
> > "(1) In case there are upon, in, over, under or affixed to any land, which is exempt from assessment and taxation, any buildings, structures or erections, whether affixed to the land or not, which are the property of some person other than the owner of the land, then the owner of any such buildings, structures or erections shall be liable to assessment and taxation in respect thereof as if the same were land, and all such buildings, structures and erections shall be assessed at their fair actual value separately from the land forming the site thereof."
>
> These provisions are sufficiently wide to embrace the property in question.

The respondents submit that upon that reasoning an object such as one of these tanks affixed to such a structure comes well within the meaning of structure.

In *Hobday* v. *Nicol* (1944) 1 All E.R. 302, the Court of Appeal in England had to consider whether or not the row of galvanized tanks erected by the respondent, which were filled with earth or a hard core, along the banks of a river in some places in two tiers and resting solely by their own weight came within the meaning of structure in a by-law reading as follows:

> No person shall, without the consent in writing of the Board, erect or construct or cause or knowingly suffer to be erected or constructed any building, fence, post, pylon, wall or structure on the bank of the main river. . .

Humphreys, J., in giving the judgment of the Court at pages 303 and 304, stated:

> "Structure," as I understand it, is anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built together, constructed as to make one whole, which then is called a structure.
>
> What was this thing? We see from the photographs, and from the admirably clear description in the case, that it was a thing of very considerable size.

> We were told by counsel for the appellant, who has been at pains to add them up, that there were 53 of these separate receptacles. They are called "tanks." They were originally probably water-tanks; but they are receptacles. They were put in in a certain form, in some places a single line of them, and in some places two tiers one above the other, with some object: they were put there so that they might be permanent; and for that purpose they were filled with earth or rubble or hard core so as to make them heavy and keep them in the place where they were. The whole thing when constructed to my mind, looking at the photographs and paying attention to the description, is remarkably like a wall: and "wall" is one of the words which is used in this by-law. I do not say it is necessary-indeed, it is not necessary-to find that they were a wall; but I say that, if that which we see in the photographs is not a structure, then I do not myself know what would amount to a structure. I think it is perfectly obvious that this arrangement of tanks is a structure in the ordinary acceptation of the word.

And then concludes as follows:

> I can only say, regretting as I always do regret to have to come to a conclusion different from that of the justices, that I have come to the conclusion that, not only is this arrangement a structure, but it is precisely the type of structure which is expressly forbidden to be put upon such a place as it was put on without the consent of the Board.

In *Cardiff Rating Authority and Cardiff Assessment Committee* v. *Guest Keen Baldwin's Iron and Steel Company Limited* (1941) 1 K.B. 385, Denning, L.J., was dealing with the question as to whether movable tilting furnaces resting by their own weight on steel rollers were rateable as being "a building or structure" or "in the nature of a building or structure," and at page 396 he stated as follows:

> The learned recorder has held that they are not structures, or in the nature of structures, and Mr. Comyns Carr says that his finding is a finding of fact with which an appellate court should not interfere. That is, however, an over-simplification. The primary facts, that is, the real facts relating to the physical state of the tilting furnaces and mains, are not in dispute. The question is what is the proper conclusion from those primary facts. In so far as that involves the proper interpretation of the words of the order, it is a question of law. Once, however, those words have received a clear interpretation, which can be applied by laymen as well as by lawyers, then, so long as there is a proper direction as to their meaning, the conclusion of fact is one for a tribunal of fact, with which an appellate court will not interfere, unless the conclusion is one which could not reasonably be drawn from the primary facts.
>
> In this case the learned recorder seems to have thought that these were not structures or in the nature of structures because they were movable. In my opinion, that was a misdirection. A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a *structure*, but it may be "in the nature of a structure" if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site. Thus, a floating pontoon, which is permanently in position as a landing stage beside a pier, is "in the nature of a structure," even though it moves up and down with the tide and is occasionally removed for repairs or cleaning. It has, in substance, all the qualities of a landing stage built on piles. So, also, a transporter gantry is "in the nature of a structure," even though it is moved along its site. It has the same qualities as a fixed gantry, save that it moves on its site. Applying this interpretation to the facts of this case, I think that a tilting furnace is "in the nature of a structure." It has a permanent site and has the same

> qualities as any other furnace, save that it moves. The only difference is that, in order to run off the molten ore, it is tipped up instead of being tapped. Again, the mains are "in the nature of a structure." They have a permanent site and have the same qualities as any fixed mains, save that they are moved occasionally for cleaning or repairs.

Jenkins, J., deals with the definition as follows at pages 402 and 403:

> It would be undesirable to attempt, and. indeed, I think impossible to achieve, any exhaustive definition of what is meant by the words "is or is in the nature (If a building or structure." They do, however, indicate certain main characteristics. The general range of things in view consists of things built or constructed. I think, in addition to coming within this genera! range, the things in question must, in relation to the hereditament, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament, i.e., things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces. I do not, however, mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings or structures or things in the nature of buildings or structures, because by some feat of engineering or navigation it is brought to the hereditament in one piece. For instance, floating docks or pontoons, items specifically mentioned in class 4, would not, I think, be excluded merely on account of having been towed complete to the hereditament instead of having been built or constructed there. The question whether a thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration, but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure or in the nature of a building or structure.

Applying that reasoning to the tanks in question, it would appear that the tanks in question are of a size which connotes being built or constructed on the site as opposed to being brought there; they are things which, after installation, have remained on the site permanently and are removable only by a process amounting to taking to pieces. Jenkins, L.J., stated that whether or not the thing was physically attached to the land was only a relative consideration. Each of the tanks in the instant appeal, whether storage-tanks, working tanks, or holding tanks, has been either *erected* upon land or *erected* upon land and *affixed* to a structure (pipe-line) under the land.

In my judgment, therefore, it is sufficient to bring each of the said tanks within the definition of improvements in both subsections to say that they are structures, and as such are improvements and so assessable under both the "all purpose" and the "school rate" subsections.

I vary the answer to Question 1 as indicated in the judgment of my brother Lord. The appeal is dismissed, costs to the respondent.