BETHLEHEM COPPER CORPORATION LTD.

v.

ASSESSMENT APPEAL BOARD

British Columbia Court of Appeal (CA 760672)

Before: MR. JUSTICE H.A. MACLEAN, MR. JUSTICE A.E. BRANCA, and MR. JUSTICE J.D. TAGGART

Vancouver, May 18, 1977

J.F. Tollestrup for the Appellant
R.B. Hutchison for the Respondent

Reasons for Judgment of Mr. Justice Taggart (Oral)

(On appeal from the decision of Fulton, J.)

MACLEAN, J.A.: I would ask my brother Taggart to deliver the judgment.

TAGGART, J.A. (Oral): This is an appeal from a judgment dismissing a stated case because there was no point of law involved. The stated case was brought from the decision of the Assessment Appeal Board.

Section 67 of the *Assessment Act* in subsection (2) provides:

> "At any stage of the proceedings, the board on its own initiative, or at the request of one or more persons affected by the appeal, may submit, in the form of a stated case for the opinion of the Supreme Court, a question of law arising with the appeal . . ."

Section 67, subsection (4), provides:

> "Where a case is stated, the secretary of the board shall forthwith file the case, together with a certified copy of the evidence dealing with the question of law taken during the appeal, in the Supreme Court Registry, . . ."

The stated case submitted to the trial judge, after reciting the description of the land which was the subject of the assessment appeal, said this in paragraph four:

> "In its decision dated December 14, 1974, hereto annexed as Annexure I, the Board stated that
>
> > "At this stage of the operation of the mine, there is insufficient evidence to show that a rate of diminishing return should be applied for assessment purposes."

Two questions of law were included in the stated case, the first being found in paragraph 8 (a), and the second in paragraph 8 (b). The first question reads in this way:

> "Was the Board correct in rejecting as a proper principle to be employed in assessing the value of a mining property, the diminishing nature of its major asset, the ore body?"

The second question was:

> "Has the appellant been effectively deprived of its right of appeal by the failure of the Board to provide a complete transcript of the proceedings before it?"

That second question depends on the following statement of fact contained earlier in the stated case:

> "The transcript supplied was only a partial one and contains many significant interruptions in the continuity of the evidence to the extent that it is impossible to know what evidence the Board relied on in coming to its decision."

The trial judge, quite correctly in my opinion, concluded that the real question presented for resolution was not a question of law. It seems to me, indeed, that the first question which I have set out incorrectly states the effect of the decision of the Assessment Appeal Board. The words "in rejecting" are used in the question propounded, but as I read what the board did, they did not reject the principle contended for by the appellant. On the contrary, they simply said that there was insufficient evidence to permit of the application of that principle in this case. That to me is not a question of law at all, but merely one of the weight to be given to the evidence which was before the Assessment Appeal Board.

Once the conclusion is reached that the first question propounded is not a question of law, it seems to me that the second question must fall by the wayside because the obligation under the Act is not to provide a full and complete transcript, but only to provide a transcript "dealing with the question of law taken." There being here no question of law to be taken, there arises no obligation on the board to provide a transcript.

In these circumstances it seems to me that the trial judge was quite right in acceding to the respondent's preliminary objection and in dismissing the stated case because it did not raise a question of law.

I would accordingly dismiss the appeal.

MACLEAN, J.A. (Oral): I agree.

BRANCA, J.A. (Oral): I agree.

MACLEAN, J.A.: The appeal by way of stated case is dismissed.