ASSESSMENT COMMISSIONER

v.

MARATHON REALTY COMPANY LIMITED

Supreme Court of British Columbia (96/1977) Victoria Registry

Before: MR. JUSTICE J.G. RUTTAN

Victoria, February 10, 1977

Robert Hutchison, for the Appellant
A.G. Graham, for the Respondent

Reasons for Judgment February 11, 1977

This is an appeal on a question of law from a decision of the Assessment Appeal Board pursuant to section 67 (1) of the *Assessment Act*, being chap. 6, S.B.C. for 1974. The grounds of appeal are these:

> 1. The Assessment Appeal Board erred in law in the construction of section 331 (3) of the *Municipal Act*, chap. 255, R.S.B.C. 1960.
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> 2. The Assessment Appeal Board erred in law when it failed to find that the structure which was the subject matter of the proceedings before it was a bridge within the meaning of section 320 (1) (c) of the *Municipal Act*, chap. 255, R.S.B.C. 1960.
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> 3. The Assessment Appeal Board erred in law in failing to find that the structure which was the subject matter of the proceedings before if was an improvement not included within the meaning of section 331 (3) of the *Municipal Act*.

A preliminary issue to be settled is whether or not these grounds relate to issues of law or issues of fact. It is not disputed that, if the findings made by the Assessment Appeal Board were findings in fact, not law, then I have no jurisdiction to entertain this motion: See decision of McFarlane, J. (as he then was) in *Canadian Pacific Railway Company* v. *City of Vancouver* (1964) 50 W.W.R. 302 at p. 308:

> "There is a large number of reported cases dealing with the distinction between questions of law and of fact. I shall refer only to the decision of the Supreme Court of Canada in *Tisdale (Tp.)* v. *Hollinger Consolidated Gold Mines* (1933) S.C.R. 321, affirming (1931) O.R. 640, in which Cannon, J., delivering the judgment of the court, said at p. 323:
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> > '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.'"

It will be useful here to set forth the relevant sections of the *Municipal Act* in review. They are:

> 331 (3) "Notwithstanding the definition of 'improvements' and the provisions of subsection (1) of section 330, the tracks of a railway company, inclusive of all structures, erections, and things (other than buildings and those things set out in clause (c) of subsection (1) of section 320) necessary for the operation of a railway, shall, for the purpose of assessment and taxation, be deemed to be land. . ."

> 320 (1) (c) "all bridges, coal-bunkers, corrals, stand-pipes, fuel-oil storage tanks, oil-fuelling equipment, water-tanks, station-houses, engine-houses, roundhouses, turntables, docks, wharves, freight-sheds, power-houses, transmission stations or substations, and the separate equipment for each of them, the property of such company within the municipality, and the separate value of each."

In submitting that the Board exercised its right of making a finding of fact, not reviewable in this Court, Mr. Graham submitted the Board found, after considering the evidence adduced by both parties, and the authorities cited, that the improvements in question fell within the definition of a "structure, erections and things" necessary for the operation of a railway as defined in section 331 (3) of the Act, and this being a finding of fact, I am not permitted to interfere with it.

But the *Hollinger* case is authority for the proposition that a conclusion of law may often by involved when a statute is being interpreted. In that case Mr. Justice Cannon said at p. 16:

> ". . . upon the evidence adduced and the findings of the Board, we would be precluded from interfering therewith, *if we agree, in law, with their view as to the meaning of the statute. 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*." (my italics)

See also *Bell* v. *Ontario Human Rights Commission* (1971) S.C.R. 756, 18 D.L.R. (3d) 1 as referred to and followed by my brother Hutcheon in *C. E. & V. Holdings Limited* v. *Assessment Appeal Board* (1975) 4 W.W.R. p. 667.

So in the present case the Board was asked to determine whether or not, under the terms of the *Assessment Act*, certain improvements which consisted in structures that created an overpass of railway lines over a highway, were taxable as "structures" under section 330 (1) of the Act, or as "bridges" under section 320 (1) (c) of the Act. As in the *Hollinger* case, there is here a question of construction, a matter of definition which is an issue of law. In coming to their finding of what category these particular improvements fall into, and there is no dispute that they are described as overpasses carrying railway lines over a highway, it is necessary first of all to interpret what is meant by the definition "structure". Certainly in one sense all the items save possibly the railway tracks are "structures". Some, however, are excluded pursuant to section 320 (1) (c). Finding that these particular improvements fall within the category of structures under section 330, the Board is required to interpret section 330 and to define what is included under "structures". They did so on the hearing before them by considering the dicta of Lord Denning in the *Cardiff Rating Authority and Cardiff Assessment Commission* v. *Guest Keen Baldwin's Iron and Steel Co.* (1949) 1 K.B. 385, (1949) L.J.R. 713, (1949) 1 All E.R. 27. It is significant that Lord Denning in the course of his judgment at p. 396 of (1949) 1 K.B. had this to say:

> "The question is what is the proper conclusion from those primary facts. *Insofar as that involves a 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, their conclusion of fact is one for a tribunal of fact with which an appellate court will not interfere. . ." (my italics)

I emphasize that quotation. I think that is the procedure that must be followed in the present case. It must be a clear interpretation given of the words in the statute and that is a decision of law, and, thereafter, the Board has the sole discretion, as the tribunal of fact, to decide whether or not the situation applies to the particular facts, to the particular case before them.

The Board was also referred by Mr. Graham to the decision of C.J. Williams of the Manitoba High Court in the case of *Re Colhoun* and *East Kildonan* (City) (1959) 27 W.W.R. 529, together with the various dictionary definitions of "bridges". The Board concluded that the definition of "bridge" in the modem sense does not specifically include a structure necessary for the operation of a railway. This appears to me to be putting it backwards, and more properly it should be stated that a structure necessary for the operation of a railway does not necessarily include a bridge. In any event, in hearing these authorities and exercising the reasoning to this point, the Board was arriving at a conclusion in law from definition and authority which enabled them to properly interpret the statute before them. Having arrived at their definition, they then applied it to this particular structure and found that it is a structure wholly within section 330. The exercise of that reasoning is one of fact and could not be challenged. But the finding of what is a structure in the terms of these two sections of the statute, is an exercise of legal reasoning drawing a legal conclusion, and so is available to review in this Court.

I turn, therefore, to consider whether the conclusions in law of the Board were correct ones. I consider here the decision of C.J. Williams (*supra*) and the definitions referred to in that judgment of what constitutes a bridge.

C.J. Williams said (at p. 540):

> "But I have come to the conclusion that in this case the word 'bridge' must receive the modern dictionary meaning as applied to a work such as is being considered here." He then refers to the various definitions and concludes with:
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> > "In early times a bridge was probably thought of as a structure crossing water but now it seems clear that the meaning is much broader and is as defined above. In these times, particularly in large cities and densely populated areas, it has become necessary to carry highways or other roadways over railway lines, streets and even buildings."

To which I would add, following Mr. Hutchison's suggestion, that the meaning would also include the reverse to carrying a highway, and include cases where railways are carried over highways.

Lest it be thought that there is a distinction between "overpass" and "bridge" and that the structure in the present case is not a bridge but an overpass, I refer again to C.J. Williams' definition where he says that an overpass is to be defined as:

> "a bridge, road, or culvert for highway traffic above a river, canal, or other road."

I conclude that the sections of the statute here are simply to be construed in law as holding that tracks of a railway, including all structures except buildings and certain items as set out in section 320 (1) (c), are taxable land. The exceptions include all bridges, including of course railway bridges which are as defined by C. J. Williams and by dictionary definition to include overpasses.

In the present case it remains the duty of the Board to decide whether or not the structure in this case is or is not a railway bridge. This is a finding of fact to be made from the evidence which I have not seen. If it is such a bridge, the structure in question must fall to be taxed under section 320.

I therefore direct that the Board reconsider their decision subject to my direction on the definition of "structures" and "bridges" in these two sections of the *Municipal Act*.