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SC 112 City of Vancouver v. Canadian Stevedoring et al

**CITY OF VANCOUVER**

**v.**

**CANADIAN STEVEDORING COMPANY LIMITED,  
CASCO TERMINALS LIMITED,  
EMPIRE STEVEDORING COMPANY LIMITED  
CANADIAN NATIONAL RAILWAYS, and  
NATIONAL HARBOURS BOARD**

Supreme Court of British Columbia (No. A780331)

Before: MR. JUSTICE A.B. MACFARLANE

Vancouver, March 10, 1978

R.C.P. Walker for the Appellant

A.K. Wooster for Canadian Stevedoring Company Limited and Casco Terminals Limited

W.E. Ireland for Empire Stevedoring Company Limited and Canadian National Railways

M.M. De Weerd and A. Smith for National Harbours Board

**Reasons for Judgment**

March 10, 1978

The following question is submitted for the opinion of the Court:-

"Were Casco, Empire, and C.N.R. or any of them, occupiers of Crown land in any or all of the years 1972, 1973, 1975, 1976, and 1977 within the meaning and for the purposes of the relevant statutes?"

The same question with respect to the year 1974 was before Hutcheon, J. and on June 23, 1975 he answered that question in the negative.

It is conceded that the facts upon which Hutcheon, J. based his decision are the same, except as to the years in question, as were found and stated by the Assessment Appeal Board in the matter which now comes before me.

That the Board found the same facts and, but for the judgment of Hutcheon, J. , would have concluded upon those facts that the respondents were occupiers, is clear from the following words found on page 5 of the reasons of the Board:-

"While we, as laymen, may look upon the foregoing facts as constituting Casco et al as occupiers and subject to assessment, we must accept the ruling thereon made by Mr. Justice Hutcheon, i.e. at law Casco et al are not . occupiers , and are not assessable."

The judgment of Hutcheon, J. is based upon an analysis of not only the provisions of the contract which still apply, but upon a review of the operations on the facilities in question. The Board had this to say, on page 4 of its reasons:-

"1. The operations on the several piers, docks, etc. whether by Casco, Empire or CNR, are virtually the same from 1972 to 1977.

2. If the operations on the docks in 1972 would not have constituted Casco et al occupiers, the same would apply for each year to 1977. On the other hand, if the operations would have constituted Casco et al occupiers in 1972 they would have been rightly so classified up to 1977."

Those statements of fact support what counsel have conceded, namely, that the question which comes before me is to be decided upon the same facts that Hutcheon, J. considered in making his judgment.

The judgment of Hutcheon, J. is, in my view, determinative of the issue before me and the answer to the question posed must be in the negative.