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**SWAN VALLEY FOODS LIMITED  
(CRESTON VALLEY FOODS LIMITED)**

v.

**ASSESSMENT APPEAL BOARD**

British Columbia Court of Appeal

Before: MR. JUSTICE J.D. TAGGART, MR. JUSTICE E.E. HINKSON, and MR. JUSTICE J.D. LAMBERT

Vancouver, May 1, 1980

P.W. Klassen for Appellant, British Columbia Assessment Authority  
B.W.F. McLoughlin, Q.C. for the Respondent, Swan Valley Foods Ltd. (Creston Valley Foods Ltd.)

**Reasons for Judgment of Mr. Justice E. E. Hinkson (Oral)**

May 1, 1980

TAGGART, J.A. (Oral): I will ask my brother Hinkson to give the first judgment.

HINKSON, J.A.: The respondent, Swan Valley Foods Ltd. and its successor, Creston Valley Foods Ltd., appealed a decision of the Assessment Appeal Board by way of Stated Case to the Supreme Court of British Columbia, pursuant to the provisions of section 67, subsection 2 of the *Assessment Act*.

That appeal was allowed with costs and the case was remitted to the Assessment Appeal Board for further consideration. When the bill of costs came on for taxation, there was a dispute as to whether or not there was any amount involved. The Supreme Court Rules, by rule 57, subrule 33, provide the "amount involved" in the taxation of costs under these rules includes the value of the subject-matter of the proceeding. Subrule 34 provides

"Subject to these rules, or to any rule of law, the amount involved shall be determined against a plaintiff by the claim made, and against a defendant by the judgment or decision. The Registrar may receive evidence to determine the amount involved."

The Registrar determined that there was an amount involved. Counsel for the appellant informed us that it was agreed between the parties that if there was an amount involved it was in excess of \$30,000 for the purpose of taxation. The decision, of the Registrar was reviewed by a judge in chambers. That judge upheld the decision of the Registrar and confirmed that there was an amount involved and that as a result, the costs should be taxed on that basis.

The only issue raised on the present appeal is as to whether or not in an appeal by way of Stated Case, pursuant to the provisions of section 67, subsection 2 of the *Assessment Act*, there is an amount involved for the purpose of taxation of costs. It is the contention of the appellant that there is no amount involved.

In support of that submission, reference has been made to a number of decisions involving estates. The appellant commenced his recitation of authorities with the decision in the Sinclair

Estate, *Kendall vs. Sinclair*, (1951) 2 Western Weekly Reports, new series 633. The next case was *Official Administrator vs. Millen et al.* (1952), 5 WWR, new series 239, and finally Re McEwen Estate, *Darling vs. Stevens and Little*, (1965), 54 WWR, 682.

In my view, those cases have no bearing on the issue raised on the present appeal. It seems to me the starting point is the provisions of the *Assessment Act* in section 67, subsection 2. That subsection provides in part,

"A person affected by a decision of the Board on appeal, including a municipal corporation on the resolution of its Council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only. . . ."

It seems to me that the only way in which the taxpayer in the present case was affected by the decision of the Board was in respect of the tax payable pursuant to the assessment that was being considered by the Board.

Upon that view of the matter, there was an amount involved. The amount involved was the amount of tax that in this particular case, the taxpayer was concerned with paying as a result of the decision of the Board. In the Stated Case, the taxpayers' position was that taxes were going to be assessed upon the basis of an assessment arrived at on a certain legal basis. The taxpayer was resisting payment of those taxes upon the contention that the Board had proceeded upon an error in law, but, the essence of the subject-matter before the court in the Stated Case was the amount of taxes involved as a result of the assessment.

And so, I have no hesitation in concluding that there was an amount involved within the meaning of rule 57, subrule 33. The learned judge in chambers came to the correct conclusion and as a result I would dismiss the appeal.

TAGGART, J.A.: I agree.

LAMBERT, J.A.: I agree.

TAGGART, J.A.: The appeal then is dismissed. Thank you gentlemen. Mr. Klassen, you have had a difficult week, but it has been a pleasure having you with us.

MR. KLASSEN: Thank you.