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**THE GOVERNOR AND COMPANY OF ADVENTURERS
OF ENGLAND TRADING INTO HUDSON'S BAY
(also known as HUDSON'S BAY COMPANY)**

v.

**ASSESSMENT AREAS OF VANCOUVER (09)
CAPITAL (02), RICHMOND DELTA (11) et al**

Supreme Court of British Columbia (A790425)

Before: MR. JUSTICE M.R. TAYLOR

Victoria, March 23, 1979

E.H. Alan Emery for the Appellant
R.B. Hutchison for the Respondents

Reasons for Judgment (Oral)

April 10, 1979

I am asked by way of case stated from the Assessment Appeal Board, under the *Assessment Act*, S.B.C. 1974, ch. 6, to say whether the Board erred in holding that the appellant's cash registers are properly assessable.

It is clear, and admitted, that these registers constitute "machinery". The issue which is raised, and the only issue, is whether they are "placed", so as to fall within the definition of "improvements" contained in the *Assessment Act*, for purposes other than taxation under the *Municipal Act*, R.S.B.C. 1960 ch. 255, *Vancouver Charter*, S.B.C. 1953 ch. 55, and *Taxation Act*, R.S.B.C. 1960 ch. 376.

For the Assessment Authority, Mr. Hutchison very forcefully asserted that in finding that the registers are "placed" the Board made a finding of fact, and that the case stated therefore does not raise an issue of law, and accordingly ought to be dismissed as not stating a question which can properly be put to the Court in these proceedings. Had the Board simply said that it had found the machines were "placed", without more, perhaps that would be so. But the Board, in the course of the case stated and in the course of its reasons, says, very properly, what are its findings of fact with respect to the "placing" of these machines. Paragraphs 9 and 10 of the case stated say:

9. The Bay does not maintain in its stores permanent cashier stations, and cashier stations are set up in respect to particular needs of a particular day or period of time in the operation of a store. Cash registers as a regular practice are intended to be and are moved about between stores and from floor to floor within a particular store and from one location on a floor to another. The cash registers are generally placed on portable tables measuring approximately two feet by four feet or on wheeled carts.

10. All of the Bay stores have a great number of electrical outlets into which the cash registers may be connected and all stores have a significantly greater number of computer outlets than cash registers.

And in its observations at page 5 of its decision, when it is considering the exempting regulation and for that reason describing the findings of fact which it has made with respect to these machines, the Board says:

Notwithstanding, therefore, that these machines are moved about from store to store and between different floors in a particular store, it is obvious that they remained stationary or immobile in a particular position in the performance of their specific commercial or industrial purposes.

It becomes evident that I have before me a statement by the Board of the facts on which it bases its conclusion in law that the machines are "placed".

When I look at the facts found by the Board, I am obliged then to look to the authorities which have been cited by counsel and ask, in the terms of the question posed in the case stated, whether the Board erred in law when on the basis of those findings of fact it reached the conclusion in law that these machines were "placed".

I find it impossible within the meaning of *Northern Broadcasting Company Limited v. District of Mountjoy* (1950) S.C.R. 502, as explained and applied in *Orr v. City of Vancouver* (1955) 16 W.W.R. 25, to say that these machines have been placed within the meaning of the Act. I find nothing in *Trans Mountain Oil Pipeline Company v. Town of Hope* (1966) 56 W.W.R. 705 (B.C.C.A.) which qualifies, or detracts from, the statement of law contained in the *Orr* case. It seems to me that it is a pure question of law that I am asked to decide. I decide it by answering the case stated in the affirmative; that is to say that the Board did err in holding the cash registers to be properly assessable.

Clause 3-3 (a) of the regulations, to which reference was made, does not purport to define the word placed. It exempts certain items otherwise falling within the definition of "improvement". It cannot assist in the resolution of this problem, which involves the question whether these cash registers could in law fall within that definition.

I wish to say, in conclusion, that I am not asked whether these machines fall within the definition of "improvements" by reason of being "fixtures or similar things", or by being "affixed", in the sense in which those expressions are used in the definition of "improvements" in the *Assessment Act*. The Board accepts that they are not fixtures. Having in mind the definition of fixtures in law, particularly as laid down in *Stack v. T. Eaton Company* (1904) 4 O.L.R. 335 (Ont. C.A.) which requires no more than the slightest degree of affixation, and in view of the fact that these machines are connected by electric wires to the building, I have doubts as to the correctness of that assumption, but perhaps they could have been dispelled had the matter been argued. It is an issue which remains to be decided.

The appellant will have its costs of these proceedings.