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ASSESSMENT COMMISSIONER

v.

ROBERT G. McMINN

Supreme Court of British Columbia (802162) Victoria Registry

Before: MADAM JUSTICE P.M. PROUDFOOT (in chambers)

Victoria, February 11, 1981

J.K. Greenwood for the Appellant
D.R. Wilson for the Respondent

Reasons for Judgment

February 18, 1981

This matter comes before me by way of stated case. The Court is asked by the appellant to answer only one question, specifically, question 3:

"Did the Assessment Appeal Board err in law in holding that 'the land in question forms part of an overall integrated farming operation' when there was no evidence that the land outside the fenced area was used in or operated as part of the farm operation at all and there was no evidence that the land was 'integrated' into the farm operation at all."

The appeal to the Court by the Commissioner is from the decision of the Assessment Appeal Board. The facts are as set out in the statement of facts attached to the stated case.

The respondent owns three pieces of property totalling 346.49 acres. Approximately 139 acres are fenced and have been classified as farm land. The remaining acreage has been classified as rural. Mr. McMinn had owned the land for twenty-six years but started his farming operation in 1976. The property had been farmed since 1924 and was classified as farm land for the 1979 tax roll.

The assessor took the position that the unfenced portion, which admittedly was not actively being used for the farming operation, should accordingly not receive that classification but rather be classified as rural. The respondent's position was that while indeed the portion outside the fence was not used directly for the production of agricultural products in 1979 the placement of the fence was at his choice, that there was no intention to farm only the 139 acres. Mr. McMinn contended that he could not do everything at one time. The fencing of the 139 acres was all part of the long range scheme of development and good farm management. The intention on the part of McMinn is clear that all the acreage will be actively used and fully developed as part of the integrated farm operation.

The question to be resolved is whether the land outside the fenced area forms part of an "overall integrated farming operation". This property was Classified as a farm as I have said from 1924. As I have also indicated, Mr. McMinn purchased it twenty-six years ago with a farming classification. In 1976 he commenced to actively farm the property with the intention of developing the entire acreage. In 1979 the acreage was still assessed as a farm. There is no doubt that had Mr. McMinn perimeter fenced the property or had no fence at all and allowed his cattle to roam the classification would have not been altered. I am forced to conclude because Mr. McMinn chose to selectively place a fence around 139 acres he now finds himself in the position that the assessor is deciding he is only farming 139 acres. The balance of his property is accordingly being classified as rural.

The real issue is the meaning to be placed on the word "use". B.C. Regulations to the *Assessment Act* No. 288/79 under the heading "Schedule, Standards Prescribed by the Assessment Commissioner for the Classification of Land as a Farm (pursuant to section 26 (2) of the *Assessment Act*) reads:

"1. . . .

(2) Notwithstanding the definition of 'stock raising,' land *used* for stock raising purposes in 1978 that was classified as a farm for 1979 shall continue to be classified as a farm as long as

"(a) the *use* of the land for that purpose continues. . . ."

(my emphasis)

The Assessment Appeal Board it seems applied s. 7 of this Schedule which reads as follows:

"7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production."

I agree with Mr. Wilson's argument that while the acreage outside the 139 acres may not actively used, Mr. McMinn is embarking on a plan to bring this entire acreage into a farming operation. He contemplated its use and was taking logical steps towards that end. Counsel for the respondent asks me to apply an extended definition to the word "use". Mr. McMinn told the Board his plans and they obviously accepted this and gave this extended definition to that word. I find authority for this extended meaning to the word "use" in the *Newcastle City Council v. Royal Newcastle Hospital* case [1959] A.C. 248, which held that an owner can use land by keeping it in its virgin state for its own special purposes. In that case "use" is defined as "to obtain the benefit of, to employ to any purpose, to enjoy the benefit of and to avail oneself of". The Shorter Oxford English Dictionary contains this definition of the word use:

". . . The act or fact of using, holding, or possessing land or other property so as to derive revenue, profit, or other benefit from it . . ."

There was evidence before this Board to support the proposition that Mr. McMinn was setting out on a logical course to develop his entire property. The entire holding is an integrated farming operation. The assessor placed far too much importance on the fence built around the 139 acres. Question 3 is answered in the negative. The Board did not err in their finding. The appeal is dismissed.