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B.C. HYDRO AND POWER AUTHORITY

v.

ASSESSOR OF AREA 5 - PORT ALBERNI

Supreme Court of British Columbia (A872550) Vancouver Registry

Before: MR. JUSTICE MEREDITH

Vancouver, December 11, 1987

John R. Lakes for the Appellant
John E.D. Savage for

Reasons for Judgment December 16, 1987

The Assessment Appeal Board by a decision dated May 28th, 1987 held that the large mobile diesel generators situated at Bamfield are "improvements" for school and hospital purposes as defined by the *Assessment Act*. The Board held that the generators were "placed" on the land. The relevant definition reads in part:

> "Improvements" for purposes other than for general municipal and provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act*, includes
>
> (a) all . . . machinery. . . and similar things. . . placed in, on, . . . land. . .

The appellant B.C. Hydro appeals the decision, states the facts and asks whether the Board erred in law. I hold it did not.

The Board adopted the criteria set forth by Mr. Justice Taylor in the Woodward Stores appeal, Stated Case No. 167, and held those criteria applicable to the diesel generators in the present case. I respectfully agree with that analysis. But I would, for myself, be content with the application of the criteria set forth by Mr. Justice Kellock in the leading case, the decision of the Supreme Court of Canada, in *Northern Broadcasting* v. *Mount joy*, [1950] S.C.R. 502. In that case the Court, as Mr. Justice Taylor says, "considered whether a transformer installed in a concrete vault and a transmitter which was connected to the transformer by wires, had been "placed" within the meaning of the Ontario assessment statute".

These are the observations of Mr. Justice Kellock at pp. 510- 511:

> With respect to "placed", I do not think it is used in the Statute as equivalent merely to "brought upon" so as to take in mere personal property which is intended to be shifted about at will. It involves the idea of setting a thing in a particular position with some idea of permanency.
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> * * *
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> In the context of the Statute, I think the Legislature must be taken to have had in mind the including of things which, although not acquiring the character of fixtures at common law,

> nevertheless acquire "locality" which things which are intended to be moved about, do not.
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> * * *
>
> I therefore conclude that it is sufficient in the present case to bring the two articles here in question within the meaning of "land" in the Statute, that they are heavy articles placed each in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises.

In the present case the generators were placed with "some idea of permanency", they acquired a "locality", and above all they remained where they were while generating power. That is to say, they remained where they were "so long as they are used for the purpose for which they were placed upon the premises".

The answers to all the questions therefore will be "no". The Assessment Appeal Board did not err in law.

The respondent has argued in any event that the appeal does not involve a matter of law, as it must, but involves matters of fact or of combined fact and law. There may well be legal merit in that submission. But as this Court has entertained as matters of law many similar questions, I think it too late for me, at any rate, to consider that question.

The respondent will have its costs.