

25, 1951

In the Privy Council.

No. 42 of 1950.

ON APPEAL FROM THE SUPREME COURT OF CANADA

UNIVERSITY OF LONDON
M.C.1.
12 NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

30727

BETWEEN

BENNETT & WHITE (CALGARY) LIMITED

(*Plaintiffs*) APPELLANTS

AND

MUNICIPAL DISTRICT OF SUGAR CITY No. 5

(*Defendants*) RESPONDENTS.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal by special leave from the Judgment of the Supreme Court of Canada (Kerwin, Taschereau, Rand, Estey and Locke, JJ.), which reversed the Judgment of the Appellate Division of the Supreme Court of Alberta which had affirmed the Judgment of the Trial Judge Shepherd, J. declaring a certain assessment and taxation of the Appellants by the Respondents to be invalid.

2.—The Appellants are a body corporate with head office at the City of Calgary in the Province of Alberta. The Respondents are a Municipal District incorporated under the Municipal Districts Act of the Province of Alberta.

3.—By Agreement dated the 16th day of July, 1946, between the Appellants and His Majesty the King represented therein by the Minister of Agriculture of Canada, the Appellants agreed to construct for His Majesty two tunnels being a diversion tunnel and an irrigation tunnel. These tunnels were part of a dam known as the St. Mary Dam which was an integral part of a large irrigation project of national importance being carried on by the Government of Canada within the boundaries of the Respondents.

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APPELLANTS' CASE

RECORD

4.—The important clauses of the said contract are as follows (omitting non-essentials) :

p. 113, l. 1

CLAUSE 3 : " The Contractor (the Appellants) shall, at his own expense
" provide all and every kind of tools, implements,
" machinery, plant, materials, articles and things necessary for
" the due execution and completion of all and every the
" works "

p. 117, ll. 25 to 35

CLAUSE 12 : " The said price or prices, as a whole, shall cover
" not only the particular descriptions of work and materials
" mentioned therein, but also all and every kind of work, labour, 10
" tools, plant, materials, equipment, articles and things whatsoever,
" necessary for the full execution, completion and delivery, ready
" for use, of the entire work as herein contracted for "

p. 119, l. 15 to
p. 120, l. 8

CLAUSE 15 : " All machinery, tools, plant, materials, equipment,
" articles and things whatsoever, provided by the Contractor or
" by the Engineer under the provisions of sections 14 and 16,
" for the works, and not rejected under the provisions of section 14,
" shall from the time of their being so provided become, and,
" until the final completion of the said work, shall be the property
" of His Majesty for the purpose of the said works, and the same 20
" shall on no account be taken away, or used or disposed of,
" except for the purposes of the said works, without the consent
" in writing of the Engineer. His Majesty shall not, however, be
" answerable for any loss, or damage, whatsoever, which may at
" any time happen to such machinery, tools, plant, materials,
" equipment, articles or things. Upon the completion of the
" works and upon payment by the Contractor of all such moneys,
" loss, costs and damages, if any, as shall be due from the
" Contractor to His Majesty, or chargeable against the Contractor,
" under this contract, such of the said machinery, tools, plant, 30
" materials, equipment, articles and things as shall not have been
" used and converted in the works or disposed of by His Majesty
" under powers conferred in this contract, shall, upon demand,
" be delivered up to the Contractor in such condition as they
" may then be in."

p. 122, l. 15 to
p. 123, l. 25

CLAUSE 18 : " should the Contractor make default in the
" completion of the works within the time limited
" under this contract, then the Minister may
" take all the work out of the Contractor's hands and all
" materials, articles and things whatsoever, and all horses, 40
" machinery, tools, plant and equipment and all rights, proprietary
" or otherwise, licenses, powers and privileges, whether relating to
" or affecting real estate or personal property, acquired, possessed
" or provided by the Contractor for the purposes of the works,
" or by the Engineer under the provisions of this contract, shall

“ remain and be the property of His Majesty for all purposes
 “ incidental to the completion of the works, and may be used,
 “ exercised and enjoyed by His Majesty as fully, to all intents and
 “ purposes, connected with the works as they might theretofore
 “ have been used, exercised and enjoyed by the Contractor”

CLAUSE 48: “ The Contractor shall upon the execution of this p. 141, ll. 5 to 20
 “ agreement furnish to His Majesty the King a Bond with sureties
 “ satisfactory to His Majesty the King, in the sum of Three
 “ Hundred and Ninety-nine Thousand, Four Hundred and Fifty-
 10 “ eight Dollars, conditioned upon and as security for the full and
 “ complete keeping, observing and performing by the Contractor
 “ of all terms and conditions of this Agreement, and the due
 “ performance of the work agreed to be done in accordance with
 “ the terms thereof.”

4.—When originally tendering for the contract His Majesty had required p. 42, ll. 16 to 29
 the Appellants to state on the tender forms what equipment the Appellants
 would supply. Subsequently pursuant to the terms of the contract and p. 41, ll. 31 to
 for no other purpose the Appellants moved into the boundaries of the p. 43, l. 13
 Respondents and on to the site of the works (being Crown lands) certain
 20 personal property consisting of machinery, tools, materials, moveable
 buildings, equipment and articles for the purpose of carrying out the
 construction of the diversion tunnels. At the time that the assessment p. 43, ll. 14 to 33
 hereinafter mentioned was made the Appellants were in default. The
 Appellants were seriously behind the time schedule provided in Clause 3
 of the contract, in that the diversion tunnel which was to be completed
 by April 24th, 1947, was not completed until sometime during the
 year 1948.

5.—The Respondents in the year 1947 entered the Appellants on Exhibit 2, p. 176
 the Respondents' personal property assessment roll for the sum of and Exhibit, 3,
 30 \$183,147.00 in respect to the property mentioned in the preceding paragraph. p. 189
 In so doing the Respondents purported to act under the authority of the
 Assessment Act and Municipal Districts Act of the Province of Alberta,
 relevant extracts from which are set forth in the Appendix to this case.

6.—The Appellants appealed this assessment to the statutory tribunals Exhibit 16, p. 192,
 established by the Assessment Act. These statutory tribunals were the Exhibit 17, p. 193,
 “ Court of Revision,” the membership of which consisted of the municipal Exhibit 18, p. 195,
 council of the Respondent, and the “ Alberta Assessment Commission,” Exhibit 19, p. 196,
 the membership of which consisted of three provincial officials holding Exhibit 5 p. 197
 office at the pleasure of the provincial Lieutenant-Governor-in-Council.
 40 The Court of Revision increased the assessment to \$184,162.00 but the
 Assessment Commission reduced it \$124,450.00 and on this basis the
 Respondents levied taxes and penalties against the Appellants in the sum

RECORD

of \$3,915.27. In arriving at an assessment of \$124,450.00 the Alberta Assessment Commission did so on the basis of the full value of the property and made no allowance for the interest of His Majesty.

Exhibit 6, p. 199,
l. 24 to p. 200, l. 2

7.—On 5th April, 1948, at a time when the contract with His Majesty was still in full force and at a time when the personal property was still subject to the terms of the contract the Respondents wrote a letter to the Appellants stating that unless the taxes were paid by 13th April, the Respondents would have a Bailiff “seize and if necessary sell” enough of the Appellants’ goods and chattels to satisfy the claim for taxes.

p. 3, l. 20 to p. 4, l. 6

8.—The Appellants thereupon commenced this Action in the 10
Trial Division of the Supreme Court of Alberta on the 15th day of April, 1948, and prayed for (*inter alia*) a declaration that the said assessment and taxes were void and illegal on the following grounds :

- (a) That the personal property under assessment was, during the taxation period in question, the property of His Majesty, and as such exempt from assessment and taxation, and
- (b) That in any event the major portion of the property under assessment consisted of “motor vehicles” which, under the provisions of the Assessment Act, were expressly exempt from assessment and taxation. 20

p. 5, l. 11

And the Appellants further prayed for an injunction to restrain the threatened seizure of the property which would have effectively prevented the Appellants from carrying out the contract with His Majesty.

p. 6

p. 18, l. 23

p. 15, l. 40 to p. 16
l. 6

9.—The Respondents delivered a Statement of Defence and counterclaimed for (*inter alia*) a declaration that the assessment and taxation were validly imposed and for judgment against the Appellants for the amount of the taxes and penalties. By paragraph 19 of its Statement of Defence the Respondents prayed for a declaration that they were entitled to seize the said goods and chattels or the interest of the Appellants therein in order to enforce payment not only of the taxes then claimed but also 30
for taxes “that may subsequently become owing under . . . future
“assessments.”

pp. 211 to 219
p. 219, ll. 32 to 36

10.—By Judgment of the Honourable Mr. Justice Shepherd, dated the 16th day of April, 1949, it was declared that the said assessment was invalid and it was ordered that the Appellants’ name be struck off the Respondents’ tax roll in respect of the said personal property for the year 1947, and the Respondents’ counterclaim was dismissed.

pp. 222 to 224

11.—The Respondents appealed from the trial Judgment to the Appellate Division of the Supreme Court of Alberta.

12.—The Appellate Division of the Supreme Court of Alberta (consisting of Harvey, C.J.A., Frank Ford, J. and W. A. Macdonald, J.) by Judgment dated the 23rd day of June, 1949, unanimously dismissed the Appeal. RECORD
pp. 225 to 226

13.—The Respondents appealed from the Judgment of the Appellate Division to the Supreme Court of Canada.

14.—The Attorney-General for Canada intervened upon the Appeal to the Supreme Court of Canada and supported the position of the Appellants. The Attorney-General for Canada asserted a claim to the personal property in question on the ground that it was the property of His Majesty and as such exempt from assessment or taxation. The Attorney-General has not further intervened in these proceedings.

15.—The Supreme Court of Canada by formal Judgment entered the 19th day of May, 1950, unanimously allowed the Appeal, dismissed the Appellants' action and granted to the Respondents on the counterclaim a declaration that the taxation was properly imposed on the Appellants. Rand, J. (with whom Taschereau, Estey and Locke, J.J. concurred) directed that the assessment roll should be modified by eliminating therefrom certain items which were held to be "motor vehicles" and as such exempt from assessment and taxation (amounting in all to about ten per cent. of the total assessment) and by further providing that the Respondents could not distrain upon the property taxed while it remained under the obligations of the contract with His Majesty. Kerwin, J. who delivered separate reasons for judgment did not direct any modifications with regard to motor vehicles but did give similar directions limiting the right of distraint. pp. 242 to 243
p. 259, ll. 30 to 33
p. 266, ll. 36 to 38
p. 251, ll. 18 to 27

16.—In brief, the Appellants submit that neither the Assessment Act nor the Municipal Districts Act contain any provisions making any person liable to taxation in respect of personal property, in contradistinction to the provisions regarding other types of taxation. The only subject of personal property taxation is the property itself. Furthermore, there is no machinery in the legislation for enforcing payment and under such circumstances the sole remedy, if any, of the taxing authority is to seize and sell the property on the theory that the taxes are in the nature of a lien or charge against the property. In the special circumstances of this case two main questions arise :

- (1) Did the Crown have such an interest in the property that it was not taxable regardless of any question of enforceability ; or
- (2) Did the Crown have such an interest in the property that there could be no taxation by reason of the impossibility of enforcing the same without depriving the Crown of its interest in the property.

17.—The Trial Judge held that full effect should be given to the words of Clause 15 of the agreement vesting the property in the Crown and that p. 219, ll. 19 to 25

RECORD

therefore the property was not subject to taxation. This exemption is brought about by Section 125 of the British North America Act and Section 5 (1) of the Assessment Act which are set forth in the Appendix to this case.

p. 225, ll. 23 to 25
p. 225, ll. 25 to 32

18.—The Appellate Division held that the property alone was subject to the tax but that in any event the Crown had such an interest in the property that it could not be seized and sold with the consequence that while the property was subject to the obligations of the contract it was exempt from taxation.

p. 255, l. 32, to
p. 258, l. 2
p. 257, ll. 34 to 39

19.—The majority of the Supreme Court of Canada (per Rand, J.) held, although not stated expressly, that the tax was imposed on the person in respect of the property, and not on the property itself. It was further held that the interest of the Crown if any was not such as to prevent the imposition of taxation. It was further held that the Respondents could distrain on any goods and chattels of the Appellants in order to enforce payment, but that the Respondents could not distrain on the property under assessment as long as it remained subject to the obligations of the contract. Kerwin, J. delivered separate reasons for judgment in which he did not deal with these problems. His Judgment is based upon the short ground that, in his view, the Appellants were bound by the decision of the Alberta Assessment Commission. Kerwin, J. does not expressly state that the Respondents may distrain on any of the Appellants' goods and chattels but he does state that the Respondents cannot seize the property under assessment while it is subject to the terms of the agreement. The majority on the other hand disagreed with Kerwin, J. and expressly held that the Appellants are not precluded by the decision of the Commission. The Trial Judge and the Appellate Division had previously reached the same conclusion.

p. 266, ll. 36 to 38

pp. 244 to 251

p. 250, ll. 21 to 42

p. 251, ll. 18 to 27

p. 266, ll. 20, 30
p. 213, l. 23 to
p. 214, l. 35, p. 226,
ll. 11 to 13

p. 225, ll. 23 to 25

p. 255, l. 36 to
p. 256, l. 18

20.—With regard to the question whether taxation is imposed on the property or on the person in respect of the property, it was held by the Appellate Division: "As to personal property the power given is to tax property and not persons in respect of an interest therein." In the Supreme Court of Canada, Rand, J. referred to various sections of the Assessment Act and Municipal Districts Act when dealing with this problem, but it is submitted that neither in the sections referred to by Rand, J. nor elsewhere in the legislation under consideration is there any provision which authorizes the taxation of the person in respect of personal property. There are a number of sections which expressly impose taxation on the person in respect of every other type of taxes, e.g. land taxes and business taxes, but none of these sections by their terms apply to personal property taxation. The sections from which Rand, J. has given extracts do not, it is submitted, impose taxation; in the main they are procedural sections dealing with the situation where taxes have been imposed on the person by the other taxing sections and consequently these sections can only relate to types of taxation

other than personal property taxation. The only sections which deal with the taxation as such of personal property are (omitting non-essentials) :

RECORD

THE ASSESSMENT ACT :

Sec. 8 (2) the council of any municipality may provide by by-law passed not later than the first day of May in any year, that in the said year all personal property within the municipality shall be liable to assessment and taxation

THE MUNICIPAL DISTRICTS ACT :

10 288 the council shall authorize the secretary-treasurer to levy upon the assessed value of all land, improvements and personal property a tax

Rand, J. agrees that personal property taxes cannot be collected as a debt as can other taxes, but he goes on to state that the legislature has "instead provided the means of distress." In this connection, Rand, J. must necessarily have in mind Sec. 310 (4) of the Municipal Districts Act, which he previously referred to as that is the only suggested authority for distress. That section, however, by its terms only authorizes distress on the "goods or chattels of the person taxed," which, it is submitted, means
 20 that the section only applies where a person has been taxed by some other section of the Statute, and Section 310 (4) is consequently inapplicable to personal property taxation. As pointed out by the Privy Council in Provincial Treasurer of *Alberta v. Kerr* (1933) A.C. 710, at p. 718, "it is "at least unusual to find a tax imposed on property and not on persons," but it is submitted that there is here an actual case of a tax of that nature. It is submitted that Rand, J. erred in stating that the two conceptions carry "no practical significance of distinction" for if it is held that the Crown had an interest in the property a tax on the property as such would be invalid, whereas a tax on a person in respect of that property might be
 30 valid if the legislation were clearly drawn so as to impose such a tax notwithstanding the fact that the Crown had an interest therein. It is submitted that Rand, J. has failed to give effect to the established principle that clear and definite language is required in a taxing statute in order to impose liability. As stated by Lord Tomlin in *Munro v. Commissioner of Stamp Duties* (1934) A.C., p. 61, at p. 68 : "It is not always sufficiently "appreciated that it is for the taxing authority to bring each case within "the taxing Act and that the subject ought not to be taxed upon refinements "or otherwise than by clear words." Or as it was put by Lord Atkinson in *Attorney-General v. Milne* (1914) A.C. p. 765, at p. 771 : "To succeed
 40 "the Crown must bring the case within the letter of that enactment. It is "not enough to bring the case within the spirit of it, or to show that if the "section be not construed as the Crown contends it should be construed, "property which ought to be taxed will escape taxation evils, if

p. 257, ll. 25 to 33

p. 256, l. 8

p. 256, l. 34

RECORD

“ such they be, must, if they exist, be cured by legislation. Judicial tribunals
 “ must in interpreting these taxing Acts stick to the letter of the statute.”

21.—With regard to the question whether the personal property was the property of the Appellants or His Majesty or whether His Majesty had an interest therein, the Trial Judge held, following a number of English and Canadian authorities that :

p. 219, ll. 19 to 25

“ . . . the words of Clause 15 mean exactly what they say
 “ and no other clauses in the agreement take away or abridge
 “ the rights of the Crown in the plant and materials which I hold
 “ to be the property of the Crown, and as such exempt from 10
 “ assessment and taxation by the defendant municipality.”

In the Appellate Division no concluded opinion was expressed on this point, but in the Supreme Court of Canada, Rand, J. held :

p. 255., ll. 4 to 21

“ These stipulations make it clear to me that what has been
 “ vested in the Crown, in relation to the plant and equipment,
 “ is a group of rights and powers to the extent of the contractor’s
 “ title or interest in them ; and that the contractor employs
 “ his own property as he would ordinarily do but within those
 “ restrictions both as to its use and its residence. The effect of
 “ the language is not, ‘ I give you the property but subject to 20
 “ ‘ my use of it for the purposes of the contract ; ’ it is rather,
 “ ‘ I give you the right to have the property kept on your land
 “ ‘ and its use applied to those purposes whether I fulfil them or
 “ ‘ someone else does.’ That arrangement is virtually identical
 “ with that in *Keen v. Keen*, Ex p. Collins (1902) 1 K. B. 555.
 “ Such was the situation at the time of the assessment.”

It is submitted that the one case cited on this point by Rand, J., namely *Keen v. Keen*, Ex. p. Collins, involves the interpretation of a clause substantially different from the clause in the present case. On the other hand, clauses similar to the clause in the present case were interpreted 30 in the following cases where the opposite conclusion was reached : *Blake v. Izard*, 16 W. R. 108 ; *Reeves v. Barlow*, 12 Q. B. D. 436 ; *Hart v. Porthgain Harbour* (1903) 1 Ch. 690 ; *Metropolitan Water Board v. Dick, Kerr & Co.* (1917) 2 K. B. 2, (later reversed on other grounds) ; and in these cases it was held that the person for whom the work was being performed had a vested title in the personal property.

22.—The Appellants contend that while the property is subject to the obligations of the contract the property is not subject to taxation, not only by reason of the provisions of the British North America Act and the Assessment Act, but also by reason of the inability in law of the taxing 40 authority to enforce payment of the taxes out of the property. On this

- point, Ford, J.A. states : " As seizure and sale is a consequence of tax-ability, I think it follows that while the interest of His Majesty continues " the property is not subject to taxation." As there is no machinery in the legislation for enforcing payment of personal property taxes it follows that seizure and sale is the only remedy which can be open to the taxing authority, and if seizure and sale cannot be resorted to in the case of the property here under assessment then the tax itself is abortive. Rand, J. and Kerwin, J. both recognize that the property cannot be seized and sold as they direct that the Respondents " cannot distrain upon the
- 10 " property taxed while it is under the obligations of the contract." Considering that the property in question might remain under the obligations of the contract for years, considering that the property might be totally consumed before the contract is terminated, considering that the Appellants are entitled to the return of such property only " as shall not have been " used and converted in the works or disposed of by His Majesty " and only " upon the completion of the works and upon payment of all " such moneys, loss, costs and damages " as shall be due by the Appellants to His Majesty, and considering that the Appellants were in default under the contract at all relevant times, it is submitted that the preferable view
- 20 is that property in such situation cannot be taxed, and not merely that the enforcement of the payment of the taxes is suspended. It is submitted that the latter view contemplates that the property will necessarily be returned to the Appellants intact, but this is an unwarranted assumption. If the property is never returned the taxes would remain forever suspended, which would result in a situation which could not have been contemplated or intended by the legislature, namely that the right to present taxes should depend on future unpredictable events. It is submitted that the solution of the Appellate Division is more practical, more certain and more in keeping with the intention of the legislature than the solution of the Supreme
- 30 Court of Canada.

- 23.—Assuming that the Appellants' contention that personal property taxes are taxes on property and not persons is not accepted, the Appellants contend that nonetheless the taxes were not validly imposed. The evidence established that the Appellants were taxed without regard to the interest of His Majesty in the property, with the result that the Appellants were taxed for both the Appellants' interest and His Majesty's interest. It is submitted that there is no authority in the taxing legislation which authorizes such a procedure. In this respect the legislation draws the clearest distinction between personal property taxation and land taxation.
- 40 In the case of land only the legislature has expressly directed that limited interests of every kind are subject to taxation, and that such limited interests are to be taxed as though they were the entire interest (e.g. Sec. 293 of the Municipal Districts Act). Rand, J. further holds that a subject may be taxed " as if, for the purpose of amount, he were the owner of the Crown's interest," and he cites *Fairbanks v. Halifax* (1928) A. C. 117, for this proposition. That case, it is submitted, was based on legislation

p. 225, ll. 37 to 40

p. 266, l. 37

p. 119, l. 36 to
p. 120, l. 9p. 38, l. 41 to
p. 41, l. 11

p. 257, l. 42

RECORD

which expressly directed taxation of that nature, whereas the legislation here under consideration contains similar provisions only in the case of land and is silent on the question of taxing limited interests in personal property.

24.—With regard to the question of possession of the property under assessment, the Trial Judge held that the Crown had legal possession. In the Supreme Court of Canada it was held by Rand, J. that the “contractor is undoubtedly to remain in actual and legal possession of the “plant and equipment while he is not in default.” In as much as the contract expressly provided that the property should “on no account be “taken away, or used or disposed of, except for the purposes of the said 10
“works, without the consent in writing of the Engineer” it is submitted that the Appellants did not have legal possession, but rather had a mere right of user. In connection with Rand, J.’s qualification regarding default, the evidence established that the Appellants were in default at all relevant times. But in any event it is submitted that possession has no bearing or relevancy on the question of the right to levy taxes on the Appellants. The only reference to possession of personal property is found in Section 26 (1) of the Assessment Act which is the section which sets forth the duties of the secretary-treasurer of a municipality in preparing the assessment roll. He is instructed (*inter alia*) to set out “the name of the 20
“person who is the owner or of the person who is in legal possession of “assessable personal property or the names of both such persons.” It is submitted that this cannot be considered to be a taxing section as such a conclusion would mean that this official has been given an uncontrolled discretion to select arbitrarily who is to pay the tax as between the owner and the person in possession. The reason for entering a name in the assessment roll is to furnish the secretary-treasurer with a list of names of persons to whom assessment slips are to be sent. It is entirely reasonable that the person in possession should receive notice that the property has been taxed, but it is entirely unreasonable that the person in possession 30
should be subjected to taxation merely by reason of possession.

25. The Appellants also contend that the major portion of the property in question consisted of dumptrucks, tractors, bulldozers, carryalls, gas locomotives, etc., and that these chattels are “motor vehicles” and as such are expressly exempt from taxation under Sec. 5 (1) (z) of the Assessment Act. On this question the lower courts are silent, but in the Supreme Court of Canada, Rand, J. held that only dumptrucks are “motor “vehicles” and that the other items are not. In support of this ruling, Rand, J. refers to the definition of “motor vehicle” contained in the Vehicles and Highway Traffic Act of the Province of Alberta, which definition 40
expressly excludes traction engines or vehicles running on rails. There are, however, three other definitions of “motor vehicle” in the legislation of the Province of Alberta which include some or all of such vehicles :

The Public Service Vehicles Act, R.S.A. 1942, ch. 276, Sec. 2 (g) where the definition does not exclude “tractors” ;

p. 215, ll. 15 to 18

p. 253, l. 30

p. 119, l. 27

p. 43, ll. 15 to 33

Exhibits 8 to 15
inc., pp. 203 to 210

p. 259, ll. 3 to 32

The Fuel Oil Tax Act, R.S.A. 1942, ch. 45, Sec. 2 (f), where the definition expressly includes "tractors";

RECORD

The Garageman's Lien Act, R.S.A. 1942, ch. 233, Sec. 2 (b), where the definition does not exclude tractors.

Furthermore the definition of "vehicle" in the very Act relied on by Rand, J. includes "traction engine" and excludes only electric or steam railway vehicles. (The Vehicles & Highway Traffic Act, R.S.A. 1942, ch. 275, Sec. 2 (n).) It is submitted that the Vehicles and Highway Traffic Act has no more relation to the Assessment Act than any of the other
 10 three statutes mentioned, and if the definition of the word "motor vehicle" is a matter to be determined by reference to other legislation the preponderance of definitions is in favour of the inclusion of traction and gasoline rail equipment. Rand, J. also refers to Sec. 119 of the Vehicles and Highway Traffic Act, which relates to the right of municipalities to impose a tax for the use of public highways. It is submitted that the section quoted has no bearing on the matter. Rand, J. does not refer to the cases in England and Australia which have held similar equipment to be "vehicles" or "motor cars" (which is a specialized form of "motor
 20 "vehicle"): See *Dennis v. Leonard* (1929) 141 L.T. 94, where an Austin agricultural tractor was held to be a "motor car"; *Shire of Tungamah v. Merrett* (1912) 15 C.L.R. 407, where the High Court of Australia decided that a "tractor engine" was a vehicle; and *Falkinier v. Whitton* (1917) A. C. 106 (P. C.) where a road train consisting of eleven units, the first of which was a power unit, were all held to be "vehicles." There is no definition of
 30 "motor vehicle" in the Oxford Dictionary, but "vehicle" is defined as follows:

"6. A means of conveyance provided with wheels or runners
 "and used for the carriage of persons or goods; a carriage, cart,
 "wagon, sledge, or similar contrivance."

30 "7. Any means of carriage, conveyance or transportation;
 "a receptacle in which anything is placed in order to be moved."

The evidence established that most of the items which it is contended are motor vehicles consist of self-contained movable chattels which both operate and move from place to place under motor power transmitted by engines or motors installed internally. They are used for the purpose of conveying dirt, rocks, muck, etc. from place to place. The remaining items consist of accessories or attachments to, or integral parts of, these vehicles and the evidence is that they are essential to the operation of the vehicles and cannot be operated by themselves. If traction equipment
 40 are "motor vehicles" a very substantial portion of the property under assessment is exempt. It is not possible to state what portion of the total assessed value of \$124,450.00 relates to motor vehicles as that figure

p. 43, l. 34 to p. 55,
 l. 34 and p. 73, l. 44
 to p. 77, l. 14

RECORD

was the amount of the assessment as fixed by the Alberta Assessment Commission and it was not itemized. If the contention of the Appellants is right it is entirely probable that at least one-half of this amount consists of "motor vehicles." It is submitted that in accordance with the decision of the Supreme Court of Canada in Montreal, *Light, Heat and Power Co. v. City of Westmount* (1926) S.C.R. 515, (per Anglin, C.J.C. at p. 522) the entire assessment must be quashed where a substantial portion of it consists of exempt property and where there is no itemization which would enable the Court to apportion the assessment between taxable property and exempt property.

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p. 259, l. 33 to
p. 266, l. 30

26.—With regard to the question of *res judicata* the Appellants adopt the reasoning of Rand, J. as well as that of both lower courts holding that the Appellants are not precluded from bringing these proceedings by reason of the decision of the Court of Revision and the Alberta Assessment Commission.

27.—The Appellants submit that the Judgment of the Supreme Court of Canada is wrong and ought to be reversed and the Judgment of the Trial Judge restored for the following amongst other

REASONS

1. BECAUSE the personal property was at the date of the 20 assessment and taxation vested in the Crown.
2. BECAUSE the tax in question is imposed upon the personal property and not upon any person in respect of such property.
3. BECAUSE while the property is subject to the obligations of the contract with the Crown it is not subject to taxation.
4. BECAUSE The Assessment Act and The Municipal Districts Act provide no machinery for enforcing the collection of personal property taxes and at most the same can only be realized by seizure and sale of the personal property taxed and not by distraint against other goods and chattels of the 30 Appellants.
5. BECAUSE in any event the Appellants' interest in the personal property was a limited interest and taxation of limited interests in personal property is not authorized by The Assessment Act or The Municipal Districts Act.

6. BECAUSE the Appellants were taxed both for its interest in the personal property and for His Majesty's interest therein.
 7. BECAUSE the Appellants did not have legal possession of the personal property and in any event personal property taxes cannot be imposed upon the Appellants by reason of legal possession.
 8. BECAUSE a substantial portion of the personal property consists of motor vehicles which are exempt from assessment and taxation.
- 10
10. BECAUSE of the reasons of the Trial Judge, Shepherd, J. and of the Appellate Division of the Supreme Court of Alberta.

R. H. BARRON.

In the Privy Council.

No. 42 of 1950.

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AND

MUNICIPAL DISTRICT OF SUGAR
CITY No. 5 (*Defendants*) RESPONDENTS.

CASE FOR THE APPELLANTS

LAWRENCE JONES & CO.,
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Solicitors for the Appellants.