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*April 27, 28
*Oct. 5

HIS MAJESTY THE KING IN THE Right of the Province of British Columbia ..... APPELLANT;

AND

BRIDGE RIVER POWER CO. LTD., VANCOUVER POWER CO. LTD., and BURRARD POWER CO. LTD. RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA

Assessment and Taxation—Schools—"Improvements"—"Improvements done to land"—Whether tunnel, machine shop equipment, transformers, assessable—"actual cash value"—Whether basis of valuation correct—Taxation Act, c. 282, Public Schools Act, c. 253,—R.S.B.C., 1936.

This appeal involved the assessment and taxation under the *Taxation Act*, c. 282, and the *Public Schools Act*, c. 253, R.S.B.C., 1936, of an intake canal and certain acqueducts or tunnels. The intake canal is an open ditch leading from the river to the canal intake. The tunnels are for the purpose of carrying water for the development of hydro-electric power. In some the water flows against the bare rock, others are partially or fully lined with reinforced concrete, and others are

*PRESENT: Rinfret C.J. and Kerwin, Rand, Estey and Locke JJ.

mere openings through the rock to allow the passage of a steel pipe to carry water. The issue to be determined was whether such objects constituted "improvements" as defined by the *Taxation* and *Public Schools* acts respectively.

A second issue was whether machinery and equipment in a machine shop and transformers, not attached to but merely resting by their own weight upon the land, or in a building, are "improvements" within the meaning of s. 2 of the *Public Schools Act,* as amended.

Held: That what is to be assessed is land, and the land is more valuable with the buildings, canal and tunnel thereon or therein than without them, the land in the condition in which the assessor found it is therefore assessable under the *Taxation Act.*

Held: Also that the intake canal and tunnels are at least "*things* erected upon or affixed to land",—they are not "improvements"—and the same result therefore follows under the *Public Schools Act* as under the *Taxation Act. Rector of St. Nicholas* v. *London City Council* [1928] A.C. 469 followed; *Maritime Telegraph & Telephone Co.* v. *Antigonish,* [1940] S.C.R., 616 and *McMullen* v. *District Registrar,* 30 B.C.R., 415, distinguished.

Held: Also that the machines and transformers retain their character of personalty, and not being part of the real estate so as to constitute an "improvement" thereto, are not assessable or taxable under the *Public Schools Act.*

Per Rand J. (dissenting)—The basis of valuation employed by the assessor and the court of revision was contrary to that laid down by s. 30 of the *Taxation Act,* and since the mandatory provision of the statute to tax has not been complied with, the case should go back to the court of revision in which the error in law was made. *Cedar Rapids Manufacturing & Power Co.* v. *Lacoste,* [1914] A.C. 569; *Maritime T. & T. Co.* v. *Antigonish, supra.*

The machines and transformers were properly included in the assessment.

APPEAL by His Majesty the King in the right of the Province of British Columbia from the judgment of the Court of Appeal of that Province (1), affirming the judgment of Manson J. allowing appeals from the Court of Revision concerning the assessment as "improvements" under the *Taxation Act,* R.S.B.C., 1936, c. 282, and amendments, of certain tunnels and intake canals, and allowing a cross-appeal in part, of the assessment of certain equipment, machinery and transformers as "improvements" under the Public Schools Act, R.S.B.C., 1936, c. 253 and amendments.

J. A. MacInnes, K.C. for the appellant.

J. W. deB. Farris, K.C. and *W. H. Q. Cameron,* for the respondents.

(1) [1948] 1 W.W.R. 223.

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The judgment of the Chief Justice, Kerwin, Estey and Locke, JJ. was delivered by:—

KERWIN J.:—This is an appeal by His Majesty the King in the right of the Province of British Columbia from a judgment of the Court of Appeal for that Province, affirming three orders of Manson J. so far as the appellant's appeals therefrom were concerned, and allowing a cross-appeal in part. By the judgment under review, the appeals were consolidated. The matters in dispute relate to the assessment and levying of taxes for the year 1947 on the three respondent companies, Bridge River Power Company Limited, Vancouver Power Company Limited, and Burrard Power Company Limited, (*a*) for provincial revenue under the *Taxation Act,* R.S.B.C. 1936, c. 282, and amendments, (*b*) for public school revenue under the *Public Schools Act* R.S.B.C. 1936, c. 253, and amendments. It will be convenient to consider first the points upon which the appellant appealed to the Court of Appeal, all of which are included in the appeal to this Court, and then the matter of the companies' cross-appeal to the Court of Appeal, which so far as it was allowed is also included in the present appeal.

The *Taxation Act* provides for the division of the province into assessment and collection districts and the appointment of assessors and collectors for those respective districts. The assessor in each district is to prepare an annual assessment roll on which he is to enter

> (*a*) The names and last known addresses of all persons liable to assessment and taxation in the assessment district:
>
> (*b*) A description of all taxable property * * * within the district:
>
> (*c*) The assessed value, quantity, or amount of the property * * * and the taxes thereon.

By section 4 all property within the province shall be liable to taxation and every person shall be assessed and taxed on his property. By section 2 "Property" includes land, and "Land" includes land covered by water, and all quarries and substances in or under land, other than mines or minerals, and all trees and underwood growing upon land, and all improvements, building fixtures, machinery, or things erected upon or affixed to land or to any building thereon, but shall not include such improvements, fixtures, machinery, or things other than buildings as, if so erected

or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property. "Improvements" means buildings, fixtures, and things erected upon or affixed to land, and improvements done to land.

Section 30 sets forth the basis of assessment in these words:—

30. Land shall be assessed at its actual cash value in money. In determining the actual cash value of land in money, the Assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the land would sell at auction, or at a forced sale, or in the aggregate with all the land in the assessment district, but he shall value the land by itself, and at such sum as he believes the same to be fairly worth in money at the time of assessment. The true cash value of land shall be that value at which the land would generally be taken in payment of a just debt from a solvent debtor.

By section 113 of the *Public Schools Act* as amended in 1946, all the provisions of the *Taxation Act* apply to the assessment, levying, collection and recovery of all taxes imposed under the *Public Schools Act*.

First, as to Bridge River Power Company Limited. In accordance with the provisions of the *Taxation Act*, the proper assessor assessed this company on certain lots admittedly owned by it at values for the bare unimproved land which are not in question. To these valuations he added an assessed value for improvements on each lot, the nature of which must now be explained. The company operates a hydro-electric undertaking in the Bridge River area of the assessment district. At the upper end is Bridge River from which the company constructed "an intake canal" about 60 feet wide at the top and about 40 feet deep to a cylindrical intake tower approximately 40 feet in diameter, built of reinforced concrete and approximately 60 feet in height and equipped with devices to prevent trash and flotsam from flowing through a tunnel lined with reinforced concrete throughout, and constructed by the company, through a mountain, from the intake tower to the tunnel's outlet on the shore of Seton lake. At the outlet is a surge chamber. The difference in elevation between the intake and outlet is about 1200 feet. At the time of the assessment very little power was generated but a dam was being constructed below the diversion point

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on the river, which when completed will back the water up to the necessary level at the intake. The intake canal is temporary and will be abandoned when the dam is completed.

The assessor assessed this company, with reference to the first lot at the upper level, under the heading of "improvements" for the intake canal at his estimate of the original value, $12,000, less a depreciation of 75 per cent, or a net of $3,000, and that part of the tunnel on the lot, 1339·5 feet, "together with portal and operating appurtenances", at his estimate of the original value $355,131, less a depreciation of 40 per cent, or a net of $213,000. In connection with each of the other lots, he assessed the company for the number of feet of the tunnel therein, and on the lot with the outlet he included the surge chamber. His estimates of the original value were based upon the admitted figures as to the original cost. No question is raised as to the correctness of these figures or as to the reasonableness of the depreciation.

Section 4 of the *Taxation Act* is clear that all property within the Province is liable to taxation. "Property" includes land and "Land" includes improvements, buildings, fixtures, machinery, or things erected upon or affixed to land. What is to be assessed is land and surely the land is more valuable with the buildings, canal and tunnel thereon or therein than without them. On that basis and leaving aside for the moment the question of amount, there can be no difficulty in determining that the land in the condition in which the assessor found it is assessable under the *Taxation Act*.

Under the *Public Schools Act* as amended in 1946, all moneys required to be raised for school purposes shall be assessed and levied in respect of the assessed value of land and 75 per centum of the assessed value of taxable improvements. By the new interpretation clause, improvements, for the purposes of taxation under the Act, means all buildings, structures, fixtures, and things erected upon or affixed to land, or to any building, structure, or fixture thereon, including machinery, boilers, and storage-tanks erected upon, affixed to, or annexed to any building, structure, or fixture, or erected upon or affixed to the land, and includes the poles, cables, and wires of any telephone, tele-

graph, electric light, or electric power company, and the track in place used in the operation of a railway. It will be noticed that the *Public Schools Act* provides for the separate assessment of land and improvements so that the latter may have the advantage of 25 per cent deduction. There can be no question as to the intake tower and the surge chamber and, with respect, I find no more difficulty as to the intake canal and tunnel. All of these are at least "*things* erected upon or affixed to the land." A wider term than things is difficult to conceive and that the canal and tunnel are erected upon or affixed to land seems to me to be plain. I am led to this conclusion by a consideration of the intent and terms of the Act itself, and of the several cases cited by counsel for the appellant, I think it necessary to refer only to one, *Rector of St. Nicholas* v. *London County Council* (1). There it was sought to construct an underground chamber in a disused burial ground to be used as an electricity transformer station. The *Disused Burial Grounds Act* prohibited the erection of any building upon any disused burial ground. The proposed chamber was to be wholly underground except for two ventilators projecting about 9 inches above the surface. At page 474, Lord Hailsham, after stating that their Lordships entertained no doubt that the proposed transformer chamber was a building and that this was not seriously contested, continued:—

> But the appellants' counsel contended that even if the chamber were a building it would not be a "building erected upon" the churchyard. It was argued that this expression must be limited to buildings raised substantially above the ground level and interfering with the use of the churchyard for the purposes of an open space. In their Lordships' view the language of the statute cannot be so limited. The erection of the building is commenced as soon as the foundation has been excavated, and a building is erected upon the site upon which it is built, none the less because no part of it is raised above the ground level as existing at the date of its erection.

So far, therefore, as concerns what might be termed the main question with reference to the Bridge River Power Company Limited, the same result followed under the *Public Schools Act* as under the *Taxation Act*.

The Court of Appeal were of opinion that tunnels were not "improvements" but for the reasons given I am unable to agree. In view of the mandatory provisions of the

(1) 1928 A.C. 469.

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Taxation Act as to the time within which a decision must be given, Mr. Justice Manson had been unable to reserve consideration of the matter and at the conclusion of the argument before him dealt with the contention of the present appellant that the decision of this Court in *Maritime Telegraph and Telephone Co.* v. *Antigonish* (1), must be taken to have overruled the judgment of the British Columbia Court of Appeal in *McMullen* v. *District Registrar of Titles,* (2), upon the point that the "scrap iron" cases in Ontario were no longer applicable.

(3) *In re Bell Telephone Co. and the City of Hamilton;* (4) *In re London Street Railway Co.;* (5) *In re Queenston Heights Bridge Assessment;* (6) *In re Toronto Electric Co. Assessment;* (7) *Consumers Gas Co.* v. *Toronto.*

An examination of the reasons of Mr. Justice Davis, Mr. Justice Hudson and myself, who constituted the majority, will show that nothing was said as to the Ontario decisions but that we proceeded on the ground that there was evidence, as explained by Sir Joseph Chisholm in the Nova Scotia Court *in banco,* upon which the assessors could and did make their valuation in accordance with the Nova Scotia statute. The *McMullen* case was concerned with the interpretation of sections 174 and 175 of the *Land Registry Act,* which provided for the payment of registration fees calculated upon the market value of the land at the time of application for registration, and it has no bearing upon the decision of this court in the *Antigonish* case or upon the present appeal since all that was involved in the *McMullen* case was a mountain with a tunnel through it. Without further information as to the evidence upon which that case was decided, I refrain from further comment upon it. It does not, in my view, affect the decision in the present appeal where there is evidence as to the value of the land, both to the present owner and to others, and where the land under consideration with its improvements and appurtenances is apparently a complete unit for the development of electrical energy by water power.

(1) [1940] S.C.R. 616.
(2) (1922) 30 B.C.R. 415.
(3) (1898) 25 O.A.R. 351.
(4) (1900) 27 O.A.R. 83.
(5) (1901) 1 O.L.R. 114.
(6) (1901) 3 O.L.R. 620.
(7) (1895) 26 O.R. 722.

Any doubts there may have been in respect of the proper rule to be applied in Ontario in the assessment of the plant of telephone and telegraph companies were removed by legislation but it might be noted that in *Re Ontario and Minnesota Power Co. Ltd.* and *Town of Fort Frances* (1), Chief Justice Meredith in a judgment concurred in by Garrow, Maclaren and Magee JJ.A., ventured to think that the earlier decisions had placed too narrow a construction on the provisions of the *Assessment Act*. However that may be, the Courts there had been confronted with a situation where the assessors were confined to assessments in wards for the purposes in question. Another decision of the British Columbia Court of Appeal, referred to by Manson J., *The First Narrows Bridge Co. Ltd.* v. *City of Vancouver* (2), was a question of assessment of that part of the company's Lions Gate Bridge which lay within the boundaries of Vancouver. The majority of the court considered the scrap iron cases of assistance in construing the provisions of the charter of the City of Vancouver but, again, what was in question was only that part of a bridge within the city boundaries. In the present case the lands and improvements of the Bridge River Power Company Limited in question are in one assessment district and, therefore, no jurisdictional difficulties arise.

It has already been noted that section 30 of the *Taxation Act* applies to assessments under the *Public Schools Act*. The criterion set forth in the last sentence of section 30 is met by the evidence before the Court of Revision at page 57. I take this evidence to mean, not that the assessor considered the original cost less depreciation to be the basis upon which the valuation should be made, though it was a factor to be considered, but that, taking everything into consideration, the resulting figure represented even less than the actual cash value in money at which, by section 30, land is to be assessed. There was no contradiction of this evidence as the witnesses for the companies declined on more than one occasion to give any evidence of the assessable value, and subsection 3 of section 112 of the *Taxation Act* provides that the burden of proof shall, in all cases, be upon the party appealing to the Court of

(1) (1916) 35 O.L.R. 459. (2) (1940) 55 B.C.R. 304.

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Revision. The company appealed to that court and the onus was therefore on it. Before Manson J., by consent the same evidence as had been given before the Court of Revision was used without any additions. A solvent debtor would undoubtedly consider what the land as improved is worth to him, or, under the *Public Schools Act,* what the land and improvements were worth to him, before handing them over to a creditor in payment of a just debt.

While there is nothing in the evidence on the matter, it was stated that the company's authority to construct the dam and divert the water is under the provisions of the *Water Act,* the current statute being chapter 63 of the 1939 Statutes of British Columbia. Without embarking upon an extensive examination of the provisions of this Act, it is sufficient to note that thereby the property in and the right to the use and flow of all the water at any time in any stream in the province are for all purposes vested in the Crown in the right of the province, except only in so far as private rights therein have been established under special acts or under licences issued under the present or some former act. A licence entitles a holder thereof to divert and use beneficially, for the purpose and during or within the time stipulated, the quantity of water specified, and to construct, maintain and operate such works as are authorized under the licence and are necessary for the proper diversion, carriage, distribution and use of the water or the power produced therefrom. By section 11:—

> Every licence and permit that is made appurtenant to any land, mine or undertaking shall pass with any conveyance or other disposition thereof.

We do not know the exact nature and form of the licence held by the company but, again referring to the provisions of section 30 of the *Taxation Act,* the matter of the licence would be something that would be taken into consideration by a creditor in taking the land in payment of a just debt from a solvent debtor.

Mr. Justice Manson proceeded upon another ground which was urged before us, viz., that the decision in the *McMullen case* must be taken to have received legislative sanction by the enactment (or re-enactment) of the interpretation clauses of the *Taxation Act.* The rule relied on

appears in *Barras* v. *Aberdeen Steam Trawling and Fishing Co.* (1), followed in *McMillan* v. *Brownlee* (2), 318, and is stated by Viscount Buckmaster, at page 411 of the *Barras* case as follows:—

> It has long been a well established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it.

Lord Warrington of Clyffe and Lord Russell of Killowen stated the rule in similar terms. But the words must be used in a similar context or in reference to the same subject-matter. The *McMullen case,* as already noted, dealt with the *Land Registry Act* which provided for the payment to the Registrar on application to register a conveyance of a fee calculated upon the market value of the land. The *Land Registry Act* deals with a matter entirely different from that covered by the *Taxation Act* and the rule therefore has no application.

I turn now to the case of the Vancouver Power Company Limited. That company has a hydro-electric power plant some miles from Vancouver. I accept the following statement of facts as it appears in the appellant's factum and which statement has not been questioned:—

> The plant has two separate power-houses, and the water for power is taken to the power-houses by two pipe-lines direct from Lake Buntzen, which has an elevation of 390 feet above the power-houses. Lake Buntzen did not have a sufficiently stable supply of water, so the company constructed an aqueduct or tunnel to drain water from Lake Coquitlam to augment the Lake Buntzen supply. This tunnel is nearly 2½ miles in length, with concrete-gate structures at the intake portal to control the flow of water from Lake Coquitlam and a concrete structure at the outlet into Lake Buntzen for protective purposes. Other than for a short distance at both ends, the tunnel is unlined. The first power-house was erected in 1903, and the water from Lake Buntzen was taken through a battery of eight pipes let into a dam thrown across the northern outlet of the lake. This battery of pipe-lines led down to the original power-house, 390 feet below, on the shore of Burrard Inlet. This is known and referred to as the No. 1 pipe-line. Part of this pipe-line system was laid on the surface of the ground, but on the way to the power-house it was found necessary to construct a tunnel through a rocky bluff in which tunnel the pipe-lines are installed.
>
> In or about 1911, in order to supply electric power required, the company constructed a second power-house. The dam at Lake Coquitlam was raised in order to impound more water, and the tunnel from Lake Coquitlam to Lake Buntzen was enlarged. To get water to the secondary

(1) [1933] A.C. 402. (2) [1937] S.C.R. 318.

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power-house erected in 1911, it was found necessary to construct a tunnel 1,800 feet through a rocky hill from Lake Buntzen to a point immediately above the second power-house, which tunnel terminated in a large open tank called a "surge tank," and from this surge tank three pipelines or penstocks were laid down the hill to supply three generating units in the No. 2 plant. This system, designated as Buntzen No. 2 pressure tunnel, is a fully lined tunnel.

The assessor for the proper district assessed the company for the land as unimproved at a figure which is not disputed and (omitting a number of items which are not before us) the following tunnels:—

Coquitlam Buntzen tunnel	$472,337
Buntzen No. 1 pipe-line tunnel	16,485
Buntzen No. 2 pressure tunnel	155,422

He ascertained the actual cost of these tunnels from the records of the company and then allowed a depreciation of 50 per cent. At pages 87 and 88 of the case, he gave the above figures as his valuation of the actual value and explains his reasons. These I take to mean, as in the evidence of the assessor of the Bridge River Power Company's land, that cost less depreciation was a factor to be taken into consideration together with other matters in arriving at the actual cash value referred to in section 30 of the *Taxation Act*. His evidence is not contradicted except in the sense of the contention of this company, as in the case of the other two companies, that unless a licence under the *Water Act* was held and unless transmission lines, etc., be taken into consideration, the tunnels actually had no value. For the reasons already given in connection with the Bridge River Power Company, this contention cannot prevail.

As to the Burrard Power Company Limited, it is sufficient to state that the main point puts in question the assessability of a tunnel, unlined save for the two portals and a section of about 200 feet near the middle of the tunnel, which tunnel is built underground for the purpose of a hydro-electric power development. Except that it makes a difference in the total cost, the fact that the tunnel is in the main unlined has no significance. The same assessor who had assessed the Vancouver Power Company Limited, at page 104 of the record, testified:—

> Well, as I previously outlined in regard to the Vancouver Power Company I obtained the original cost figures from the B.C. Electric Company; and with due regard to what I considered normal depreciation,

having in mind the continued permanency of the operation or at least the generation of the electrical energy at that point, I determined the value of the tunnel by allowing a depreciation of 50 per cent. Again I think I created an assessment there which is certainly in favour of the company. The tunnel was constructed in 1928, according to my information.

Q. Furnished by whom?

A. That information was furnished by the company. The tunnel was put in operation in 1928. From 1928 to 1946—that is eighteen years. Assuming the depreciation at 1 per cent yearly, which seems to be the accepted rate of depreciation on accepted structure of this kind, I should have depreciated only 18 per cent.

The reference to the B.C. Electric Company is explained by the fact that the three respondents are subsidiaries of the British Columbia Electric Railway Company Limited. Again, this evidence was not contradicted as to value and the same result follows as in the other two cases.

There remains for discussion the assessment under the *Public Schools Act* of the machines in the machine shop of Bridge River Power Company Limited and of certain transformers set up by that Company at various points in their transmission line. The answer to the question depends upon whether the machines and transformers are within "improvements" as defined in the 1946 amendment to the *Public Schools Act* as set out earlier in this opinion. It is admitted that they are not affixed to, or annexed to, but it is argued that they are erected upon, the land or a building, structure or fixture thereon. The machines and transformers rest by their own weight either on the land or in a building or, in the case of some of the transformers, on skids. The appellant relies upon *Smith* v. *Stokes* (1), and *Williams* v. *Weston-Super-Mare Urban District Council* (2). The headnote to the first case states the point that was determined in these words:—

Stat. 5 & 6 W. 4, c. 50 s. 70 enacts that it shall not be lawful to erect or cause to be erected any steam engine within twenty-five yards from any part of any carriageway, unless it shall be within some house or other building, or behind some wall, or fence, sufficient to conceal or screen it from the carriageway, so that it may not be dangerous to passengers, horses, or cattle: Held that a portable steam engine, upon wheels and drawn by horse power, used to drive a threshing machine within a barn, but not fixed thereto or to the soil, was within this enactment.

In the second case a local authority, as authorized by a section of their special act, passed a by-law providing that no person should, except as therein provided, "erect any

(1) (1863) 4 B. & S. 84.

(2) (1910) 26 T.L.R. 506.

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booths, tents, sheds, stands, stalls, shows, exhibitions, swings, roundabouts, or other erections on any part of the parades, foreshores, sands, or wastes: Provided that the foregoing prohibition shall not apply in any case where upon application to the Commissioners for permission to erect any booth, tent, shed, stand, stall, show, exhibition, swing, roundabout, or other erection on any part of the parades, foreshore, sands, or wastes upon such occasions and for such purpose as shall be specified in such application the Commissioners may grant, subject to compliance with such conditions as they may prescribe, without making any charge therefor, permission to any person to erect such booth, tent, shed, stand, stall, show, exhibition, swing, roundabout, or other erection." The intent and object of the legislation and by-law in question in these cases was so entirely different from the point before us that the decisions have no relevancy.

Prior to 1946, real and personal property was assessable for Public School purposes but by the amendments of that year to the Act every one is to be assessable and taxable on the assessed value of his taxable land and 75 per centum of the assessed value of improvements as defined. It would appear, therefore, that anything that retained its character as pure personality and did not become part of the land was not assessable. The last part of the definition of "Land" in the *Taxation Act* reads "but shall not include such improvements, fixtures, machinery, or things other than buildings as, if so erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property." No such provision appears in the *Public Schools Act*. Without adopting any test that may be applicable as betwen vendor and purchaser, mortgagor and mortgagee, or landlord and tenant, it is sufficient to say that the machines and transformers in question retained their character of personality and that not being part of the real estate so as to constitute an improvement thereto are not assessable or taxable.

The appeal is therefore allowed. The orders of the Court of Appeal and of Manson J. are set aside and the orders of the Court of Revision restored, except as to those machines and transformers in question before us. That leaves the matter with no order as to the costs of the

appeals to Manson J. but, as the appellant has succeeded substantially in all the proceedings that have been taken since then, he is entitled to his costs not only in this court but in the Court of Appeal.

RAND J. (dissenting in part):—I am unable to agree with the view of the Court of Appeal that the tunnels here are not taxable. The word "Improvements" is thus defined in section 2 of the *Taxation Act*:—

> "Improvements" means buildings, fixtures, and things erected upon or affixed to land, and improvements done to land, but shall not include the cost of surveying land:

and "Land":—

> Land includes land covered by water, and all quarries and substances in or under land, other than mines or minerals, and all trees and underwood growing upon land, and all improvements, buildings, fixtures, machinery, or things erected upon or affixed to land or to any building thereon, but shall not include such improvements, fixtures, machinery, or things other than buildings as, if so erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property:

The court assumed that all improvements were included in the scope of land but held that tunnels were not "improvements done to land". This interpretation is, I think, much too narrow and it would conflict with the purpose of the statute clearly indicated by the language used to embrace generally all work on land adding value to it.

But Mr. Farris argues that "land" does not take in all improvements; that the latter as land are limited to those "erected upon or affixed to land". The definitions are no doubt somewhat repetitious and overlapping and are inartistically drawn, but to restrict the word as argued would likewise go far to defeat the obvious scope of value intended to be drawn within taxation. The words "all improvements" in the definition of land should be given the full effect of their own definition; if that were not so, "improvements done to land" although so particularly added to the definition would have no operation except in section 31 and the use there would, on the contention made, be futile.

Nor have I any hesitation in holding that tunnels are "improvements erected upon or affixed to land". Certainly this language does not limit improvements to the surface of the land. The tunnels, as part of their structures, have

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concrete walls and contain pipes to carry water and are annexed to surface works at each end; and treating them, with the connected works, as I think they should be treated, as a single body of improvement, they are both erected upon and affixed to land: *Rector of St. Nicholas* v. *London County Council,* (1); *Lavy* v. *London County Council,* (2).

But I am unable to take the basis of valuation employed by the assessor and by the Court of Revision as other than original cost less depreciation which I think clearly contrary to that laid down in the statute by section 30:—

> 30. Land shall be assessed at its actual cash value in money. In determining the actual cash value of land in money, the Assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the land would sell at auction, or at a forced sale, or in the aggregate with all the land in the assessment district, but he shall value the land by itself, and at such sum as he believes the same to be fairly worth in money at the time of assessment. The true cash value of land shall be that value at which the land would generally be taken in payment of a just debt from a solvent debtor.

What is contemplated is that the land taxed, embracing all its possibilities and risks of sale or utilization and without reference to any privilege or interest not annexed to or forming part of it and divorced from any larger work or system, the property of the owner, shall have its present value ascertained by a judgment related to the criteria mentioned in the section: *Cedar Rapids Manufacturing and Power Co.* v. *Lacoste,* (3); *Maritime T. & T. Co.* v. *Antigonish,* (4). No doubt cost and depreciation are relevant to that mode of ascertainment, but they are only relevant and they do not themselves constitute the mode. I agree with Mr. Farris that the so-called scrap value cases do not lay down a rule of law; in them the conclusion was that the value of the property taxed was only what would be obtained by selling the property as scrap. In each case, under such a statutory provision as we have here, the question is, what is the value of the property taxed? What could be obtained for it as it stands on the basis laid down by the statute?

On the other hand, I cannot agree that since the method applied was wrong, the property escapes taxation. The statute is mandatory in its direction to tax and has not

(1) [1928] A.C. 469.
(2) [1895] 2 Q.B. 577.
(3) [1914] A.C. 569.
(4) [1940] S.C.R. 616.

yet been complied with. The case must then go back to the Court of Revision in which the error in law was made.

The Court of Appeal reversed the holding of Manson J. affirming the Court of Revision that the machinery in the machine shop of the appellant, Bridge River Company, and certain transformers set up by that company along its power lines and connected and used as part of the essential operating equipment with them, were assessable. The definition of "improvements" in the *Public Schools Act* is as follows:—

> "Improvements" for purposes of taxation under this Act, means all buildings, structures, fixtures, and things erected upon or affixed to land, or to any building, structure, or fixture thereon, including machinery, boilers, and storage-tanks erected upon, affixed to, or annexed to any building, structure, or fixture, or erected upon or affixed to the land, and includes the poles, cables, and wires of any telephone, telegraph, electric light, or electric power company, and the track in place used in the operation of a railway.

Keeping in mind the purpose of the statute, I find no difficulty in holding that machines, consisting of a lathe, drill press, shaper and accessories, driven by a gasoline motor, set up and forming part of the permanent equipment of the shop, are machinery "erected upon" a building, even though they are maintained in position by their own weight. The same conclusion applies to the transformers. Both of these items were then properly included in the assessment.

I would, therefore, allow the appeal, but in view of the ground on which the allowance proceeds, without costs in this court, in the Court of Appeal, and in the appeal before Manson J.

Appeal allowed with costs in this court and the Court of Appeal.

Solicitor for the appellant: *H. Alan Maclean.*

Solicitor for the respondents: *A. Bruce Robertson.*