

HIRAM WALKER &amp; SONS LIMITED.... APPELLANT;

1933

AND

\*Feb. 15.

\*Mar. 15.

THE CORPORATION OF THE TOWN }  
 OF WALKERVILLE ..... } RESPONDENT.

## ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Assessment and taxation—Assessability of “racks” for storage of barrels of whisky during maturing and aging process, elevator, fan, sprinkling system, electric wiring—Assessment Act, R.S.O., 1927, c. 238—“Real property” (s. 1 (h) (4))—Exemption of “fixed machinery used for manufacturing purposes” (s. 4 (19)).*

*Held*, that certain structures, known as “racks,” for storage of barrels of whisky during the maturing and aging process, were, along with the erections enclosing them, assessable under the *Assessment Act*, R.S.O., 1927, c. 238, as being real property, and the racks not being “machinery” within the exemption in s. 4 (19) of “fixed machinery used for manufacturing purposes”; but that the maturing and aging of the whisky was a part of the process of manufacture, and an elevator (for hoisting the barrels, etc.) and a fan (for the circulation of heated air), being used in connection with such process, came within said exemption; that the sprinkling system and electric wiring were not machines, therefore not exempt, and were assessable.

APPEAL from the judgment of the Court of Appeal for Ontario (1) which set aside the judgment of the Ontario Railway and Municipal Board (which had varied the judgment of Coughlin C.C.J.) and restored the judgment of Coughlin C.C.J., holding that the property in question of the present appellants was real estate and not personalty, and that it was not “fixed machinery used for manufacturing purposes” within the exemption provided by s. 4 (19) of the *Assessment Act*, R.S.O., 1927, c. 238, and that therefore the property was assessable under the said Act. The nature of the property in question is described in the judgment now reported. Subject to a certain variation of the judgment below, the appeal to this Court was dismissed with costs.

Section 1 (h) of the said Act provides:

“Land,” “Real Property” and “Real Estate” shall include:—

\* \* \*

(4) All buildings, or any part of any building, and all structures, machinery and fixtures, erected or placed upon, in, over, under, or affixed to land;

\*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crocket JJ.

(1) (1931) 41 Ont. W.N. 6.

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Section 4 provides:

All real property in Ontario \* \* \* shall be liable to taxation, subject to the following exemptions:—

\* \* \*

(19) All fixed machinery used for manufacturing or farming purposes, including the foundations on which the same rests; but not \* \* \*

*J. B. Aylesworth* for the appellant.

*N. C. MacPhee* for the respondent.

The judgment of the court was delivered by

SMITH J.—The appellant carries on business at Walkerville as a distiller and vendor of whiskies, and requires the subjection of its products to a process known as maturing and aging, and, for the carrying on of this process, has had constructed what are known as racks, by which each barrel of liquor is held in suspension with free circulation of air and ready accessibility to every barrel.

The question which arises is whether these racks and certain electrical and other equipment in two of these racks are assessable under the *Assessment Act*, R.S.O., 1927, ch. 238, as land. The racks in question consist of upright timbers in parallel rows, so designed that between each two such rows the barrels of liquor can be suspended on their sides on wooden cross pieces, or barrel slides bolted to the uprights. On either side of each such pair of rows, and separating them from the next pair, sufficient room remains for a walkway from which each barrel may be inspected or identified. The uprights in all the lowest or first rows are “dowelled” to an oak sill which supports them, which sill in turn rests upon a concrete ridge or wall underneath the row. To each pair of uprights are three tiers of barrels. Superimposed on the rows of uprights is a second storey of similar rows, with similar cross pieces and barrel slides, and so on until there are in all nine storeys or tiers of these uprights, with their cross pieces and barrel slides, reaching a height of some 86 feet.

This network of timbers and cross-pieces is all bolted or spiked together in such a way that, when completed, it makes a strong structure, one of those in question accommodating 55,000 barrels of whisky. This structure, and the walls surrounding it, are erected together, the outer wall being fastened to the uprights of the rack next the walls

by means of bolts protruding inwardly from the wall on each side of an upright, across which bolts a strap of iron is placed and fastened on the inner side of the upright. This fastening is repeated at proper intervals throughout the length of the walls and at each storey. The outer walls are of brick, 22 inches thick at the bottom, tapering to 12 inches at the top. The roof of the building rests, not on the walls, but upon the rack.

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I am of opinion, notwithstanding the able argument of appellant's counsel, that the Court of Appeal was right in concluding that the rack and building constitute a single structure, so interlaced and bound together that one cannot be separated from the other so that it may be said that the rack is a chattel separate from the building.

It is no doubt true, as argued, that the rack could be dismantled by unbolting the various pieces that are bolted together, and withdrawing the spikes or nails so that the material might be reconstructed into a similar rack upon another site. Before this could be done, it would be necessary to take the roof off, because the rack is its only support. Then it would be necessary to unfasten all the bolts by which the walls are tied to the uprights of the rack. The final result would be that there would be left a building 173 feet long by 142 feet wide and 86 feet high, without a roof. These walls, of course, without internal connections or external buttresses, would necessarily collapse ultimately through wind pressure.

I am unable to conclude that this process of removing the racks could be done without damaging the building, which, it is admitted, is part of the land.

It is argued, however, that these racks are fixed machinery, used for manufacturing purposes, and therefore exempt from assessment under subsection 19 of section 4 of the Act, which is in part as follows:

All fixed machinery used for manufacturing or farming purposes, including the foundations on which the same rests; \* \* \*

I am of opinion that maturing and aging is part of the process of manufacture of the whisky, as the liquor is not in condition to be placed upon the market until that process is completed, but I agree with the Court of Appeal that the racks are not machinery, within the meaning of the Act.

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In the case of *Chamberlayne v. Collins* (1), quoted in the reasons by the Court of Appeal, Davey, L.J., defined machinery:

\* \* \* to be the adaptation of mechanical means to a particular end by the application of natural forces.

I agree with what is said by the Court of Appeal that it would be straining the word "machinery" out of its true significance as used in the statute to apply it to this system of racks for the storage of barrels of liquor. The section is one providing for an exemption, and the word "machinery" should not be given a wider meaning than its ordinary signification.

I am unable, however, to agree with the opinion expressed in the Court of Appeal and by the learned county judge that the use of the elevator has nothing to do with the process of manufacture. In my view, as already stated, the maturing and aging of the whisky is a part of the process of manufacture. The placing and keeping of the barrels in these racks with the necessary attention to a circulation of heated air is all in connection with the manufacturing process, and any fixed machinery used for the carrying on of that process is, in my view, fixed machinery used for manufacturing purposes. The elevator therefore is, I think, exempt.

The circulation of heated air throughout the building is carried on by means of a fan, which distributes the heated air throughout the building, and causes circulation. The fan is certainly fixed machinery and is used in connection with the aging process, and therefore for manufacturing purposes, so that this heating apparatus also is, in my view, exempt.

The sprinkling system and the electric wiring are not machines, and have therefore been rightly held to be not exempt.

With the slight variation indicated, the appeal will be dismissed with costs.

*Appeal dismissed with costs, subject to a certain variation in judgment below.*

Solicitors for the appellant: *Bartlet, Aylesworth & McGladdery.*

Solicitors for the respondent: *MacPhee & Riordan.*