THE CORPORATION OF THE TOWNSHIP OF WATERS (*Defendant*)	APPELLANT;	1959 Mar. 18, 19, 20 *Apr. 28

AND

THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED (*Plaintiff*)	RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Taxation—Municipality—"Concentrator"—Assessment of an "iron ore recovery plant"—Whether exempt from assessment—Whether liable to business tax—The Assessment Act, R.S.O. 1950, c. 25, ss. 6, 33.

The function of the plant erected in the defendant municipality by the plaintiff company was to separate by a process of heat and leaching iron ore-bearing material from other elements such as sulphur, copper and nickel. At the completion of this process, the ore was in powder form and it was then compressed into pellets for sale to the industry. The iron ore-bearing material entering the plant had previously been separated, in another plant located 3½ miles away, from other minerals found in the ore as originally mined by the plaintiff.

The municipality sought to tax the plaintiff in respect of the plant for both land and business taxes. The trial judge held that the plaintiff company was not liable for either tax, and this judgment was affirmed by the Court of Appeal.

Held: The company was not liable to pay either tax.

The work done in the plant was concentration of materials and, therefore, the plant was a concentrator and was not assessable under s. 33(4) of *The Assessment Act*. The alternative contention that only concentrators situate upon mineral land were exempt under s. 33(4), could not be entertained. This was not a term of the exemption.

As to the business assessment under s. 6, nothing in the nature of manufacturing was carried on at the plant.

APPEAL from a judgment of the Court of Appeal for Ontario[1], affirming a judgment of Wells J. Appeal dismissed.

C. L. Dubin, Q.C., and *W. A. Inch*, for the defendant appellant.

T. T. Weir, Q.C. and *B. M. Osler, Q.C.*, for the plaintiff, respondent.

The judgment of the Court was delivered by

*PRESENT: Kerwin C.J. and Locke, Abbott, Martland and Judson JJ.

[1] [1958] O.R. 168, 12 D.L.R. (2d) 648.

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LOCKE J.:—This is an appeal from a judgment of the Court of Appeal for Ontario[1] which dismissed the appeal of the present appellant, the defendant in the action, from a judgment delivered by Wells J. at the trial. By that judgment it was declared that the buildings of the respondent company, situate on the property in question, are not assessable for taxation by the respondent, that the appellant is not liable for taxation by the respondent in respect of the said buildings, and directing the respondent to remove from its assessment roll for the years 1955 and 1956 the entries relating to the appellant of which notice of assessment had been given.

The questions to be decided turn upon the interpretation to be given to subs. (4) of s. 33 and cl. (*e*) of s. 6 of *The Assessment Act*, R.S.O. 1950, c. 24.

Subsection (4) reads:

> The buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground, or storing the same, and concentrators and sampling plant, and, subject to subsection 7, the minerals in, on or under such land shall not be assessable.

The facts to be considered in dealing with the matter are not in dispute. The respondent company is the owner of a number of mines in the Sudbury area and the principal metallic contents of the ore are nickel and copper. The ore as mined, after being broken into pieces some 4 to 6 inches in thickness, is taken to the respondent's plant at Copper Cliff for treatment. There the ore is crushed and ground to a powder and the nickel and copper content separated from the rock by a floatation process. The residue is then subjected to a magnetic treatment which results in the removal of further material, the main content of which is iron. This material which contains, in addition, small quantities of nickel and copper, sulphur and some waste rock, is then carried suspended in water a distance of some $3\frac{1}{2}$ miles to the ore reduction plant or concentrator which is the subject matter of the dispute. Some 30,000 to 40,000 tons of ore a day are brought to the works at Copper Cliff and approximately 1,000 tons of magnetic material, which is high in iron, is treated at the plant in Waters Township.

[1] [1958] O.R. 168, 12 D.L.R. (2d) 648.

At this plant the material is subjected to heat to drive off the sulphur content, which is treated as valueless, and to further heat and leaching to recover the nickel and copper which is sufficient in quantity to be of value and is sent elsewhere for further treatment. The waste rock, which constitutes approximately 5 per cent. of the material when it reaches the plant, is for the greater part removed and the remaining material which is after the removal of the moisture content in powder form is pelletized into small iron balls about an inch in diameter.

According to the evidence of Louis Renzoni, an engineer and metallurgist in the employ of the respondent company, who described the process, the material carried suspended in water from the plant at Copper Cliff has an iron content of 60 per cent. and, after the removal of the nickel, copper, sulphur and waste rock, this is raised to 68 per cent. In this form it is readily saleable to steel mills. Without the removal of the nickel, copper and sulphur it would be unsaleable. The process is one that has been developed by the respondent company and enables it to recover substantial quantities of iron from its ore which were formerly not extracted.

The contention of the appellant is that the plant in question is not a concentrator within the meaning of subs. (4) and is accordingly not exempted. It is further contended that upon the true construction of the subsection the concentrators which are exempted must be situate upon mineral land and it is said that there is no evidence that this is the case in the present matter.

There is no definition of the word "concentrator" in *The Assessment Act* and no help is to be obtained from the dictionary definitions, since the term is applied apparently to apparatus used for a variety of purposes other than mining. Thus, it is defined in the new Oxford Dictionary as an apparatus for concentrating solutions or other products of manufacture. As it relates to mining, the word is not descriptive of a machine or apparatus but rather of the buildings or plant in which the process known in mining as concentration is carried on. The question to be determined is as to whether, at this property, the process of concentration is carried on.

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Concentration, as it relates to mining, is defined in Webster's last edition as the improvement of ore by removing waste as by currents of water. In Funk and Wagnall's Dictionary it is defined in this sense as the removal of the less valuable parts of ore preparatory to smelting. As the subsection relates to mining and mining activities, evidence might properly have been received as to what is commonly understood by persons engaged in that business in Canada to be concentration *Unwin v. Hanson*[1], Lord Esher at 119; *Maxwell,* 10th ed., p. 54.

The case for the respondent is that the treatment of the material at the plant was simply a continuation of the process commenced at the Copper Cliff concentrator, the entire process being designed to recover the valuable metal contained in the ore by separating it from the waste. The nickel and copper had been removed by flotation at the Copper Cliff plant and the iron, with small quantities of nickel and copper, by the magnetic treatment from the residue. At the Waters Township plant the application of heat and the leaching process were merely further steps in the work of recovering the iron in a marketable form and removing from the material the sulphur, copper, nickel and most of the waste rock which contaminated the iron concentrates. Renzoni, who had been engaged for more than twenty years by the company in his professional capacity, considered that the entire process was that of concentration. In reply to a question in cross-examination, he said that the plant at Copper Cliff was commonly described as a concentrator and, as the evidence shows, the processes there carried on were, in relation to the iron bearing material, simply continued at the plant in question.

The learned trial judge expressed the view in the course of the cross-examination that the evidence of the witness should be confined to describing the procedure that was followed. However, later in the examination, in answer to a question from him as to the treatment to which the material was subjected at the plant, the witness said that in the result they had concentrated from 60 per cent. to 68 per cent. of iron. The witness was asked however, in re-examination, to say what the technical meaning of the

[1] [1891] 2 Q.B. 115.

word "concentrate" was, to which he replied that it was a material that falls short of being a pure material which has been concentrated from a more impure state and that, in other words, it is a material in the process of purification.

For the appellant, Henry Urquhart Ross, an assistant professor of metallurgy at the University of Toronto, was called. The witness expressed the opinion that while the work done at Copper Cliff was undoubtedly properly described as concentration, the work done at the plant in question should not be so described. While not disagreeing in any way with what had been said by Renzoni as to what was done at the plant, he was of the opinion that the application of heat during the process of the removal of the sulphur, since it worked a chemical change, was not properly a process of concentration and, speaking generally, said that the use of chemicals in the course of the recovery of ores was not to be considered as concentration. In my view of the evidence of this witness, which I have carefully considered, neither of these contentions survived the test of cross-examination. The heat applied for the purpose of eliminating the sulphur was a step taken to remove an impurity from the iron concentrate. The heat applied thereafter and the leaching were merely further steps taken to remove material which, while some of it was of value, was a contaminant in the iron ore and would have prevented its sale. The removal of the majority of the remaining rock waste was as to that material merely a continuation of what had been done at Copper Cliff.

In my opinion, the evidence supports the finding made at the trial that the work done in this plant was concentration of the material and, accordingly, the plant itself properly designated as a concentrator.

The passage from the judgment of Meredith C.J.O. in *Re McIntyre Porcupine Mines Ltd. and Morgan*[1], which has been referred to as being a definition of the word "concentrator" is rather a definition of the process of concentration and supports my conclusion as above stated.

[1] (1921), 49 O.L.R. 214 at 217, 62 D.L.R. 619.

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The appellant contends in the alternative that only concentrators situate upon mineral land are exempted by subs. (4). In my opinion, this is not a term of the exemption and I have come to this conclusion upon my consideration of the language of the subsection which I think to be clear. The buildings, plant and machinery in, on or under mineral land, referred to in the opening words of the subsection, are, as it states, those used mainly for obtaining minerals from the ground or storing them. These words would include the plant and machinery used underground for the recovery and removal of the ore to the surface and the necessary buildings situate upon the surface associated with such operations and which would usually be at or in the vicinity of the entrance to the shaft. Concentrators and sampling plants have nothing to do with these processes and the subsection treats them separately, and to give the language the suggested meaning would require to read into the section words that are not there. Both Wells J. and Roach J.A., who delivered the unanimous judgment of the Court of Appeal, reached this conclusion upon a consideration of the language of the subsection.

In the reasons for the judgment of the Court of Appeal it is said that assistance in interpreting subss. (4) is to be obtained by a consideration of subss. (5), (8) and (9) of s. 34. From the fact that it is said that the taxes to be computed on profits under subs. (5) are in lieu of taxes that would be computed on the assessment of tax items enumerated in subs. (4), were it not for the fact of their being exempted from assessment under subs. (4), it seems apparent that when the matter was argued before the Court of Appeal it was not drawn to the attention of that court that the municipality had received a payment under the regulations made under subs. (1) of s. 33(*a*) in respect of the years in question and, accordingly, by reason of the provisions of subs. (2) of that section, was prohibited from assessing or taxing the profits of any mine or mineral work under subss. (5) or (8) of s. 33. This being so, it would not appear that there could be double taxation under *The Assessment Act*. The respondent as the owner of a mine is liable to taxation under the provisions of subs. (4) of *The Mining Tax Act*, R.S.C. 1950, c. 237, but counsel for both

parties before us took the stand that under that section any profit arising from the operations in Waters Township are not affected. If this be right, it would not appear that any question of double taxation arises. I should also point out that what was decided in the case of the Township of *Tisdale v. Hollinger Consolidated Gold Mines Ltd.*[1], was that while the property in question was exempt from taxation under *The Assessment Act* the mining company was liable under the provisions of *The Mining Tax Act,* R.S.O. 1927, c. 28.

The remaining question is as to the liability of the respondent to business assessment under the provisions of s. 6 of *The Assessment Act* which, so far as it is necessary to consider the same, reads:

> (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him, as follows:—
>
> (*e*) Subject to clause j, every person carrying on the business of a manufacturer for a sum equal to 60 per cent of the assessed value, and a manufacturer shall not be liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such land.

The contention that anything in the nature of manufacturing is carried on at the plant in question appears to me to be quite without foundation. The process there carried out results in the separation of the iron, nickel and copper content of the concentrate from each other and from the waste rock and, so far as the iron concentrate is concerned, thereafter compacting it by partial fusion into small balls, a form in which it can be conveniently used by a manufacturer, in this case a steel mill. The situation is no different, in my opinion, than if the concentrate were shipped in powder form. The reason that it is not so shipped is that, in that form, it would not be usable in a blast furnace. In so far as the small quantities of nickel and copper recovered are concerned, it is shown that these were shipped either to the smelter or refinery of the respondent where the metal is after further treatment produced in a form in which it may be used by a manufacturer.

[1] [1931] O.R. 640, 4 D.L.R. 239; affirmed [1933] S.C.R. 321, 3 D.L.R. 15.

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These are the only issues which are raised by the pleadings in this action. I express no opinion on the question as to the liability of the respondent for any profits arising from the operations in Waters Township under the provisions of *The Mining Tax Act*.

I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Miller, Maki & Inch, Sudbury.

Solicitors for the plaintiff, respondent: Osler, Hoskin & Harcourt, Toronto.

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*PRESENT: Locke, Cartwright, Fauteux, Abbott and Martland JJ.