1951
*May 23, 24
*Oct. 2.

IN RE THE ASSESSORS OF THE PARISH OF BATHURST IN THE COUNTY OF GLOUCESTER ..... APPELLANTS;

AND

THE KING

AND

JOSEPH L. RYAN, JUDGE OF THE GLOUCESTER COUNTY COURT, EX PARTE DEXTER CONSTRUCTION COMPANY LIMITED ..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK (APPEAL DIVISION)

Assessment—Taxes—Personal Property—Situs—Contractor having head office and chief place of business in one parish and equipment and machinery in another—Where taxable—"Place of business"—Meaning—The Rates and Taxes Act, R.S.N.B. 1927, c. 190, s. 20.

The Rates and Taxes Act, R.S.N.B. 1927, c. 190, s. 20 provides that all personal property shall be assessed to the owner in the parish where he resides except that if he has a "place of business" in another parish all personal property connected therewith or employed therein shall be assessed in the parish where he has such place of business. The respondent, whose head office was in the Parish of Lancaster, Saint John County, contracted to pave among others, a road leading through the Parish of Bathurst, Gloucester County, to Douglastown,

*PRESENT: Kerwin, Rand, Estey, Locke and Fauteux JJ.

Northumberland County, and acquired 59 acres of land in Bathurst Parish on which it erected 38 buildings, including an office, mess hall, sleeping camps, repair shops, an asphalt plant and a gravel-crushing plant. During the winter months moveable equipment was stored at the property and some 20 men employed in repairing it. The Bathurst Parish Assessors purporting to act under the authority of s. 20 assessed the respondent's personal property in the parish at $600,000. On appeal to the County Court Judge the latter reduced the assessment to $275,000 but otherwise confirmed it. On appeal by way of *certiorari* to the Appeal Division, Supreme Court of New Brunswick, the assessment was set aside on the grounds that the company had no place of business in Bathurst Parish within the meaning of s. 20 of the Act.

Held: (Reversing the decision of the New Brunswick Supreme Court, Appeal Division).

1. That on the facts the assessors could properly find the existence of a business carried on at a "place" in the parish of Bathurst within the meaning of s. 20 of *The Rates and Taxes Act*. *De Beers Consolidated Mines Ltd.* v. *Howe* [1906] A.C. 455 and *Kirkwood* v. *Gadd* [1910] A.C. 422 referred to and distinguished; *Swedish Central Ry. Co.* v. *Thompson* [1925] A.C. 495, *Mitchell* v. *Egyptian Hotels Ltd.* [1915] A.C. 1022, and *San Paulo (Brazillian) Ry. Co.* v. *Carter* [1896] A.C. 31, referred to.
2. That only the machinery and other property used for repairing and storing purposes could be taken to be "connected with or employed in" the business: what was repaired or stored, was not in that language.
3. That in making the assessment the assessors proceded upon a wrong principle in whole or in part but a legal and correct assessment could have been made and as provided by s. 126 the matter should be remitted to them for re-assessment on the principles laid down by this Court. *The King* v. *Assessors of Woodstock* [1924] S.C.R. 457.

Estey J. would have allowed the appeal reducing the amount of the assessment to $175,000.

APPEAL from the judgment of the Appeal Division of the Supreme Court of New Brunswick (1) whereby an appeal from the judgment of His Honour Joseph L. Ryan, Judge of the County Court of Gloucester, was allowed and a rule absolute ordered to quash the assessment by the Assessors of the Parish of Bathurst upon the personal property of the Dexter Construction Co. Ltd.

C. F. Inches K.C. for the appellants.

J. J. F. Winslow K.C. and *M. G. Teed K.C.* for the respondent.

(1) (1950) 26 M.P.R. 1.

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The judgment of Kerwin, Rand, Locke and Fauteux JJ. was delivered by:—

RAND J.:—The respondent is a company whose main business is the construction of paved highways. Its head office is at Fairville, New Brunswick, and it is not disputed that its residence in the sense of the locus where its central management and control is exercised, is at that place. During the early part of 1947 the company entered into several contracts with the Government of New Brunswick for reconstructing and paving certain roads in Gloucester County, including one section, about 50 miles in length, of the main highway between Bathurst and Douglastown, in Northumberland County, lying to the south. To enable this and any other work in that district of the province awarded it to be carried out, the company acquired about 59 acres of land in the parish of Bathurst. On this land, part of which seems to have been a gravel pit, 38 buildings were erected in the spring of 1947. They consisted of an office, 23 sleeping camps, kitchen, mess hall, storehouse, oil house, shovel shop, truck shop, machine shop, welding shop, 4 stock buildings and a paint shop. There were set up also on this land, an asphalt plant and a gravel crushing plant. The office was opened not later than in May.

During the following winter the units of moveable equipment used for the road work mentioned as well as other units had been kept in storage and repaired at this station by a staff of 20 men.

For the summer operations approximately 200 men were engaged. They included crews for both the asphalt and the gravel crushing plants and the several shops, the truck and machine operators and the general road forces. A superintendent and gang foreman were in immediate charge of the field operations. General instructions would be received from the head office or from an executive field officer. In the office at the Bathurst headquarters three clerks were employed. From slips turned in each night, they made up the employees' time and wages for which they issued weekly cheques drawn on a bank in the City of Saint John. Records were kept of the supplies of food, oil, gas, repair parts and other materials for and used in the several shops and on the road work.

The moveable equipment consisted of trucks, tractors, loaders, bulldozers, shovels and graders. There were also spreaders and other units forming part of or used in connection with the asphalt and crushing plants, machines and tools in the shops, and the furniture and equipment of the office.

The municipality claims to be entitled to tax that property. The general taxing clause is s. 20 of *The Rates* and Taxes Act, sub-secs. (1) and (2) of which are as follows:—

20. (1) All personal property within, or without the Province, owned by an inhabitant of the Province, shall be assessed to the owner in the parish where he resides, subject to the following exceptions:

(*a*) Where any person has a shop, factory, office or place of business in a parish other than that in which he resides, or in which shop, factory, office or place of business he carries on his trade, profession, calling, or business, all his personal property connected with or employed in his trade, profession, calling or business so carried on, shall be assessed to him in the parish where he has such shop, factory, office, or place of business:

(*b*) Where any person has two or more shops, offices, factories or other places of business situate in different parishes, at which he carries on his trade, profession, calling or business, he shall be assessed in each parish for the portion of his personal property connected with, or employed in the business carried on thereat, * * *

By s. 11:—

For the purpose of assessment on property or income, every person carrying on business in any parish shall be deemed to be an inhabitant thereof.

"Person" includes any corporation liable to be rated.

S. 25, ss. (1) provides that personal estate belonging to a joint stock company "having a place of business within the Province, may be assessed within the parish in which it has a place of business in the name of the corporation, or of the president, manager or agent thereof, * * *; and s.s. (3):—

Stocks or goods or any other personal estate, except shares in ships or shipping, used in any trading or mercantile business including any fur bearing animals kept in captivity for breeding purposes or in connection with the business of fur farming, in any city, town or parish, belonging to any person or persons not resident therein, or to any corporation not having its principal place of business therein, may be assessed in such city, town or parish in the name of the owner or owners of such business or of the agent or manager thereof, in such city, town or parish, and such personal estate shall not be liable to be rated or assessed against the owner or owners thereof in the city, town or parish where he or they reside or in the case of a corporation, in the city, town or parish where such corporation has its principal place of business * * *

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The language of the statute has been more or less preserved in its earliest form. Intended to meet the usual and simpler modes of "business" and reflecting possibly the difficulties in attributing characteristics of personality to corporations, the object of s. 25 is not free from doubt, but for the purposes of this case, the essential requirement under both sections 20 and 25 is that the company should have had a "place of business" at which it carried on business within the parish: and the property to be taxed must have been connected with or employed in the business so carried on.

The original assessment was on a valuation of $600,000. It was made, apparently, on an estimate little better than a guess that the company had three times as much equipment as that of another company which some workman "had heard" was valued around $250,000. An appeal was taken to the County Court Judge who reduced the amount to $275,000 but otherwise confirmed it. Neither the particulars of the reduction nor of the amount confirmed have been given us and we are left in the dark as to the basis on which the judge proceeded.

The proceedings were then brought by *certiorari* before the Appeal Division of the Supreme Court and by a unanimous judgment (1), the entire assessment was set aside on the ground that the facts did not show a business being carried on as required and that there was consequently no jurisdiction to make it. That conclusion was founded upon what were considered to be principles laid down in *De Beers Consolidated Mines Limited* v. *Howe* (2), and *Kirkwood* v. *Gadd* (3), and the first question is whether the Court has properly interpreted these two judgments.

Both of them deal with the rather complicated provisions of The Income Tax Act of the United Kingdom, and it is essential in deducing rules or conceptions from those cases that the intricacies of that law be clearly appreciated. In *De Beers* the issue was whether a mining company, incorporated in South Africa and carrying on the business of diamond mining there, was subject to income tax in England. In order to be so, it was necessary, under Schedule D to the second section of The Income

(1) (1950-51) 26 M.P.R. 1. (2) [1906] A.C. 455.
(3) [1910] A.C. 422.

Tax Act, 1853, that it reside in the United Kingdom, and the question was whether it did or not. Following decisions in *Calcutta Jute Mills* v. *Nicholson* (1), and *Cesena Sulphur Co.* v. *Nicholson* (1), the House of Lords laid it down that a company is to be deemed to reside where it keeps house and does business, and that it kept house and did business where its central management and control actually was. The majority of directors and life governors of the company lived in England, their meetings were held in London, and they exercised the real control in all the important activities of the company except the actual mining operations. It was found, therefore, as a fact that in London that central management and control did abide. From this it followed that the company resided in England and carried on some part of its business there. As a result, it came under the charge of the rule of Schedule D that rendered it liable to taxation on the whole of its profits. But it was never suggested that the company was not also carrying on business in South Africa; its business extended to both countries. The decision meant simply that for the purposes of income tax in England the company was resident and doing business there of a central managing and controlling character. The language of Lord Loreburn, "practically all the important business of the company except the mining operations" implies, obviously, that these operations were themselves part of the "important business". But no one questions the fact here that the company through the same degree of control is resident at Fairville; there is no question of residence at all: it is one of doing business at a place of business; and on the authority of *De Beers,* that business is being conducted both at Fairville and in the parish of Bathurst.

In *Kirkwood's* case, the question was whether, under the Money-Lenders' Act, the money-lender was bound to carry on every detail of his business at his registered address, and it was held that he was not. The language of Lord Atkinson must be interpreted in the light of the controversy which he was considering. The acts which were in question were the negotiation of the detailed terms of the loan and the ascertainment of the items of property by which it was to be secured, and it was pointed out that,

(1) (1876) 1 Ex. D. 428.

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in order to carry on the business, some parts of the transactions must necessarily take place elsewhere than at the lender's headquarters. I am unable to see that the decision can, in the slightest way, assist in the construction of the Rates Act.

The case of *Swedish Central Railway Co.* v. *Thompson* (1) is of some interest in presenting another aspect of the question decided in *De Beers*. There the company was incorporated under The Companies' Act, 1862 and 1867, with the object of constructing and working a railway in Sweden. The railway had been leased for 50 years at an annual rent. The central control and management of the business originlly in England was later transferred to Sweden, and in that state of things the taxation was claimed. A committee had been appointed to transact formal administrative matters in the United Kingdom, such as the transfer of shares, affixing the seal to certificates, and signing cheques on the London bank account. All dividends were declared in Sweden and the only moneys transmitted to the United Kingdom were for dividends to the shareholders living there. The annual rent was paid to the company in Sweden. It was held, notwithstanding the central direction in Sweden, that there was a sufficient corporate activity in the United Kingdom to establish a residence for the purposes of taxation. The clause of the schedule applied covered the case where, the central management and control of the business not being carried on in whole or part in the United Kingdom, but a residence for limited purposes being there, tax was chargeable on the amount of profits actually received in that country. What was held, in short, was that a company for different categories of tax could have two residences.

In *Mitchell* v. *Egyptian Hotels Limited* (2), a case of similar facts, Lord Parker, at p. 1037, in the course of his speech, cited the decision of the House in *San Paulo* v. *Carter* (3), to the effect that "a trade or business cannot be said to be wholly carried on abroad if it be under the control and management of persons resident in the United Kingdom, although such persons act wholly through agents and messengers resident abroad. Where the brain which

(1) [1925] A.C. 495. (2) [1915] A.C. 1022.
(3) (1896) 14 App. Cas. 493.

controls the operations from which the profits and gains arise is in this country, the trade or busines is, at any rate partly, carried on in this country."

It is obvious that in these cases there was no thought that the business in its entirety was being carried on in the United Kingdom, and likewise it cannot be said that because the head office of the company in this appeal is in Fairville, its total business is to be deemed concentrated at that point. Paragraph (*b*) of 20(1) contemplates any number of shops, offices, factories or other places of business in different parishes which can constitute, in many forms, branches of one provincial activity, and in interpreting the legislation the difference between ascertaining the conditions upon which personal property can be taxed by a local administration and those by which a company with a highly ramified organization is to be subject to income tax must be kept in mind.

What s. 20 envisages is a business localized at a place in a parish which attracts to itself certain personal property to which it gives a local habitation: a taxation based on the presence of personal property in a parish other than that of the owner's residence but associated with a place of business. Carrying on a business cannot be intended to include every act of management or related to performance which affects it. A business to be conducted in its entirety within a specific local area can, in these days, embrace only the simplest body of simple transactions. S. 20 clearly extends to businesses that are branch activities of a central organization: and the facts here indicate that the company has other units of plant and other groups of equipment elsewhere in the province. Once a complex of repeated or systematized business operations becomes localized about a place and presents its moveable property in more than a mere unfixed or transient employment in the parish, then the precise period of its presence there becomes of minor importance. One can imagine, for example, a special sale of a bankrupt stock conducted in a parish, say, for three months and in premises rented for that period only. How could it be maintained that that was not a business carried on at a shop or place in the parish? Yet its duration would be only a fraction of what was involved in the facts before us. The situation must

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be visualized from the standpoint of the community. Here, for well over a year, these operations of preparing roadbed, gathering and treating gravel, making surfacing material and applying it to the roads, storing and repairing the machines used, hiring, paying and discharging workmen, employing truckers with their vehicles, all under an immediate superintendence centralized at a headquarters, aggregate to what in the ordinary meaning of the words is roadmaking business. The business of the company here lies not in negotiating or making contracts but in performing them: contracts are or may be necessary, no doubt; financing and account books, likewise; but these are formal elements of the operating activities of the company.

The question on *certiorari* is whether on the facts before us the assessors could properly find the existence of a business carried on at a "place" in the parish, and in my opinion they could have done so.

But a further question arises of the scope of the business so centered at Bathurst. It was contended that only the work done in the parish could be taken into account: but that misconceives the statute. The business is what is carried on, at, and from, the place of business within the parish; its reaches of operation are not restricted.

There is no evidence, however, that the work in Kent County was directed from Bathurst. The main road from Bathurst to Douglastown in Northumberland County I take to have been under that direction. Local time offices are stated to have been kept in both Northumberland and Kent counties but it is not clear whether in the former there was other work than that of the main road or not. The fact that all equipment for the three counties was stored and put into condition at Bathurst during the winter does not annex it, in the sense of the statute, to the business conducted in Bathurst: in that branch of the operations, only the machinery and other property used for repairing and storing purposes could be taken to be "connected with or employed in" the business: what is itself repaired or stored is not within that language.

But the whole of that property was included in the statement submitted by the officers of the company and included in the assessment. The latter was made, too, certainly in amount, as an entirety: assessed at $600,000

by the assessors and $275,000 by the County Court Judge, it was a single sum for the total property, and not the sum of individually valued items. This was not a case for such a mode of valuation: the items are disparate and should have been severally valued. The amount representing the property used otherwise than for the work carried on from Bathurst cannot therefore be struck out of the assessment; and that it is not of a *"de minimis"* character is clear.

The authority for dealing with the appeal on *certiorari* is s. 126 of The Rates Act, s.s. (*b*) of which reads:—

> If the Supreme Court, upon any such hearing, is of opinion that any such assessment is not good in law for the reason that the assessors, in making such assessment, proceeded upon a wrong principle in whole or in part, and that a legal and correct assessment could have been made by such assessors, the Court shall remit the assessment to the assessors, and the assessors shall proceed *de novo* to make a new assessment in regard to the particular person or company assessed in and by the assessment so brought before the Court, upon such correct principles as may be set forth or intimated by The Court on the hearing of the matter under the writ of *certiorari* or the judgment delivered by the court in quashing or finding wrong said assessment, which new assessment shall relate in law to the time when the assessment so quashed or found wrong, in whole or part, was made, and may be dealt with as if made at the time of making the first assessment, and the same shall stand as good at law and in fact, as the said first assessment would have stood and been, had it been legally made, and said second assessment may be enforced to the same extent, and in like manner as the first assessment could have been, had it been according to law.

That the assessment proceeded upon a wrong principle "in whole or part" but that "a legal and correct assessment could have been made by" the assessors follows from the conclusions already expressed. A remission of the assessment to the assessors as authorized by the subsection should, I think, have been directed by the Appeal Division below and is what this Court should now direct. That was the view taken by Duff J. (as he was) in *The King Ex Parte Bank of Nova Scotia* v. *Assessors of Woodstock* (1), in which a somewhat similar error was made in assessment principle.

The appeal should be allowed, the assessment set aside and returned to the assessors for a re-assessment on the principles laid down. The appellants will have one-half of their costs in this Court and the respondents their costs in the Appeal Division and before the County Court Judge.

(1) [1924] S.C.R. 457 at 462.

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ESTEY J.:—The Assessors of the Parish of Bathurst, County of Gloucester in the Province of New Brunswick, imposed, in 1948, a tax upon the real and personal property of the Dexter Construction Company Limited (hereinafter referred to as the Company). These taxes were imposed under the provisions of *The Rates and Taxes Act* (R.S.N.B. 1927, c. 190). The Company admits liability for the tax upon its real property, but contends that the provisions of the statute do not authorize the parish to impose a tax upon its personal property.

The assessment of the personal property at $600,000 by the assessors was reduced by the Judge of the County Court to $275,000. The Appellate Division of the Supreme Court held the personal property of the Company was not liable to the imposition of a tax by this parish (1).

The Company, contractors with head office at Fairville, Parish of Lancaster in the County of Saint John, constructed roads throughout New Brunswick and, in 1947, was awarded a contract to construct and pave the highway from Bathurst to Douglastown, passing through the Parishes of Bathurst and Allardville in the County of Gloucester, and Alnwick and Newcastle in the County of Northumberland.

The Company brought its equipment and facilities for the execution of its work under this contract from either its head office at Fairville or from other parts of the Province where it had carried on construction work. The superintendent, foremen and those directing the work were employees of the Company directed to this work from the head office at Fairville. Many of the workmen were employed locally.

The Company, in connection with this work, purchased a parcel of land in the Parish of Bathurst and built thereon a building of portable construction, which included an office and sleeping quarters. It was built "in 8 ft. wide sections, so they will fit on a flat-bottom truck to take away." There were other buildings used for the purposes of a kitchen, mess hall, store house, oil house, shovel shop, truck shop, machine shop, welding shop, paint shop and plant stock. Neither the construction nor the particulars of these buildings were given in detail, but the case has been

(1) (1950-51) 26 M.P.R. 1.

presented upon the basis that when the work under this contract was executed these buildings would either be removed or no longer used.

The Company did purchase some material for the road locally, as well as certain camp supplies. At the camp office tally and weigh sheets of materials and supplies received were kept, as well as the men's time, and the cheques, during the active construction operations, were issued from that office covering the men's time and the payment for the materials and supplies purchased locally. These were apparently the only cheques issued from that office. They were all drawn upon the Company's bank account at Fairville and daily reports were sent to the head office where the books were kept. There was no bank account in the Parish of Bathurst and no cheques were received there. During the winter all cheques were issued from head office.

The Company commenced the construction of this highway in 1947. When cold weather came on in November, 1947, it stored and repaired its equipment, during the winter, in the Parish of Bathurst, and about May 20, 1948, resumed the work of constructing the highway.

The Rates and Taxes Act (R.S.N.B. 1927, c. 190) is generally "applicable to all parishes, cities and towns" in the Province. Under the heading "Assessment of Personal Property," s. 20 provides that, apart from the exceptions there specified, "All personal property within or without the Province, owned by an inhabitant of the Province, shall be assessed to the owner in the parish where he resides." That the Company had both its head office and principal place of business and, therefore, within the view expressed in *De Beers Consolidated Mines, Limited* v. *Howe* (1), resided at Fairville, Parish of Lancaster, County of Saint John, within the meaning of s. 20(1) (*a*), is not disputed.

The Parish of Bathurst contends that the personal property comes within the exception of s. 20(1) (*a*):

20. (1) All personal property within or without the Province, owned by an inhabitant of the Province, shall be assessed to the owner in the parish where he resides, subject to the following exemptions:

(*a*) Where any person has a shop, factory, office or place of business in a parish other than that in which he resides, or in which shop,

(1) [1906] A.C. 455.

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factory, office or place of business he carries on his trade, profession, calling or business, all his personal property connected with or employed in his trade, profession, calling or business so carried on, shall be assessed to him in the parish where he has such shop, factory, office or place of business;

The word "or" in this sub-s. (*a*), where it appears after the word "resides" and before the phrase "in which shop," in my opinion should be read "and." It, therefore, follows that not only must the Company have a shop, factory, office or place of business, but it must therein carry on its trade or business, and the personal property, to be taxable, must be connected with, or employed in its trade or business.

Our attention was directed to a number of cases in which phases similar to "he carries on his trade * * * or business" were considered. In *San Paulo (Brazilian) Ry. Co.* v. *Carter* (1), and *De Beers Consolidated Mines, Ltd.* v. *Howe, supra,* the House of Lords held that, as the place from which the direction and control emanated was in England, the Company was carrying on business there and subject to income tax. Even in the *San Paulo* case Lord Davey stated at p. 43:

> The business is therefore in very truth carried on, in and from the United Kingdom, although the actual operations of the company are in Brazil, and in that sense the business is also carried on in that country.

In *Kirkwood* v. *Gadd* (2), it was held that that part of the business of money-lending transacted in a place other than the registered office of the money-lender did not constitute a carrying on of business within the language of the Money-Lenders Act.

The Rates and Taxes Act expressly contemplates the taxation of personal property at a place of business other than the head office, the principal place of business or the place from which direction and control emanate and, therefore, the considerations so important in the foregoing cases are not conclusive in determining that other place of business contemplated in s. 20.

The foregoing authorities as well as others, and, indeed, the cases decided in Canada, lead to the conclusion that to decide whether or not a company carries on business within the meaning of a particular statute it is first necessary to construe the phrase as used in the particular statute

(1) [1896] A.C. 31. (2) [1910] A.C. 422.

and then to determine, as a question of fact, whether the operation or activity in question comes within the phrase so used and construed.

The business of the Company is admittedly the construction of highways. The pertinent issue is, therefore, granting the Company carried on business in the Parish of Lancaster in the County of Saint John, did it also carry on business within the Parish of Bathurst within the meaning of s. 20? S. 20 requires that three essentials be established in order that a tax upon personal property may be imposed. The Company must have a place of business in the parish, at which it carries on its business and in connection with which it uses the personality. If these three essentials be present then it would seem that the Company is carrying on business within the meaning of that section.

The evidence discloses, with great respect to those who hold a contrary view, that the Company had a place of business, within the meaning of s. 20, at Bathurst. Permanent records were not kept at Bathurst, but it was there that the men's time was recorded, their wages computed and the cheques issued therefor. It is fair to assume that a labourer would attend at that office to complain of any error in his cheque. The supplies purchased locally were recorded and vendors paid therefor by cheques issued from this place of business. Moreover, in connection with the construction of this highway, it would appear that those at head office, as well as those directing and supervising the work of construction, treated the premises at Bathurst as a place of business. It was the place to which at least those associated with the construction work and the local people went to deal with the Company. There is no question but that a large amount of equipment was used upon the highway and used in connection with the business that was carried on at Bathurst. It, therefore, appears that the three essentials required by s. 20, in order that the tax might be imposed, are here present.

Counsel for the respondent pressed that, as the direction and control of the business emanated from the head office in Fairville, and once the contract was completed the facilities at Bathurst would be removed or abandoned, that within the meaning of s. 20 it could not be said that the Company carried on business in the Parish of Bathurst.

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These considerations might well be conclusive under another statute. *The Rates and Taxes Act,* however, contemplates that personal property may be taxed at a point other than that place from which the direction and control emanate. Moreover, that Act does not make the imposition of the tax contingent upon the existence of a permanent place of business; it rather provides that if the three essentials are present the tax may be imposed. The assessors, in determining the amount of the assessment at $600,000, made no distinction between the personal property connected with, or employed by the Company in its business at Bathurst and that present at Bathurst but used elsewhere. Before the learned County Court Judge the Company made this distinction very clear. Mr. Russell Dexter, with whose evidence the learned Trial Judge was favourably impressed, stated that the cost of all equipment at Bathurst was $546,000, while the cost of that used at Bathurst was $341,255. He admitted that a roller was omitted from this latter item, of which he did not have the cost. It is, however, significant that the cost price of the equipment, as given by the expert Farrell, was $348,000. It is, therefore, a fair conclusion that the roller accounted for the difference. The expert Farrell then deposed that the present worth of that equipment used in connection with the business at Bathurst was $175,554.92.

The municipality, before the learned County Court Judge, did not adduce evidence to contradict or vary either that given by Mr. Dexter as to the amount of the equipment used at Bathurst or the valuation of the same as fixed by Mr. Farrell. A suggestion that there may be other equipment that ought to have been included, as used in connection with business at Bathurst, does not, in the circumstances, involve a question of principle, but rather one of additional items and value thereof and, therefore, not a basis for remitting the matter to the assessors.

The learned County Court Judge did reduce the assessment to $275,000, but did not indicate the precise basis upon which he did so. The matter was then brought before the Appellate Division of the Supreme Court in *certiorari* proceedings and I have no doubt that had the learned judges of that Court held that the Company was assessable they would, under the provisions of s. 126(*a*), have struck

from the assessment that part which was not supported by the evidence and directed that the assessment should be in the sum of $175,000, or, under s. 126 (*d*), would have directed that the amount of the assessment should be $175,000 and that the assessors correct the assessment list to that effect.

I would, therefore, vary the assessment accordingly and allow the appeal.

Appeal allowed, assessment set aside and returned for re-assessment. Appellants to have half their costs in this Court, the respondents their costs in the Appeal Division and before the County Court Judge.

Solicitor for the appellants: *Albany J. Robichaud.*

Solicitors for the respondent: *Sanford & Teed.*