

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Montreal Street Railway Company v. the City of Montreal, from the Supreme Court of Canada; delivered the 14th November 1905.

Present at the Hearing:

LORD DAVEY.

LORD JAMES OF HEREFORD.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

[*Delivered by Sir Andrew Scoble.*]

The main question in this Appeal is whether the City of Montreal is entitled, under its contract with the Montreal Street Railway Company, to claim percentages upon the gross earnings arising from the whole operation of its railway, whether within or without the limits of the City of Montreal, or whether such percentages are payable only in respect of such earnings as arise from the operation of its railway within the limits of the City.

The contract was authorized by the City authorities by "By-law No. 210, concerning the establishment and operation of an Electric Passenger Railway in the City of Montreal by the Montreal Street Railway Company," which was accepted by the Company on the 28th December 1892. The contract itself was executed by the parties on the 8th March 1893. At the time of its execution the Company had in operation a railway worked by horse traction, situate in the City, with short extensions into some of the adjacent municipalities.

The Article of the Contract relating to the payment of percentages is Article 36, and is in these terms: "The Company shall pay to the City annually, from the 1st of September 1892, upon the total amount of its gross earnings arising from the whole operation of its said railway, either with cars propelled by electricity or with cars drawn by horses" certain specified percentages. The reason for including both methods of traction or propulsion by horses or by electricity, is stated to be that the change from horse power to electric power was necessarily to be gradual, and might, under Article 15 of the Contract, possibly not be completed until the 1st September 1895.

The question which their Lordships have to determine is what is meant by the phrase, "its said railway," and upon this point the Courts in Canada have arrived at different conclusions. Mr. Justice Davidson, who heard the case in the Superior Court, in the first instance, held that the percentage was limited to the earnings of the railway in the City, and upon appeal to the Court of King's Bench his decision was affirmed by a majority of three to two. But upon appeal to the Supreme Court of Canada, the judgment of the Court of King's Bench was reversed by a similar majority of three to two. There were thus six Judges in favour of the one view, and five of a contrary opinion. Under these circumstances their Lordships had no hesitation in humbly advising His Majesty to allow special leave to appeal to the King in Council.

The law applicable to the construction of this contract is thus expressed in Article 1018 of the Civil Code of Lower Canada: "All the clauses of a contract are interpreted the one by the other, giving to each the meaning derived from the entire Act." Regarded in this light,

the contract is for the establishment and operation of an electric passenger railway in the City of Montreal. Article 1 provides that "the Montreal Street Railway Company shall establish and operate, subject to the conditions hereinafter mentioned, lines of railway for the conveyance of passengers in the City by means of cars propelled by electricity, in the streets hereinafter mentioned, and in all other streets which may hereafter be determined by the Council of the City of Montreal." Article 12 provides that "the *tracé* of routes in the different streets of the City, as well as the establishment and transfer connections, shall be made and shall remain under the control of the City Council. Until further orders the cars shall run in the streets mentioned in the schedule of routes herein-below indicated." This schedule is given in Article 46, and enumerates 19 routes, all of which are in the City, and many of which purport to run "from the eastern City limits" to "the western limits of the City of Montreal." As regards the privileges conferred on the Company with regard to the use of electric power in the streets, the right to open the streets, and so forth, the City could only deal with the streets within its jurisdiction; nor had it power to regulate times and fares beyond its own limits. Every outside municipality, into whose area the Company might desire to extend its operations, had independent powers in these respects, and with them the Company had to make separate arrangements. Indeed, the only reference in the contract to areas outside the limits of the City is contained in Article 44, which provides that "in the case of annexation by the City of any of the outside municipalities, the Company shall be obliged, within three months after being ordered by the Council, to extend their system through that

“ new annexed portion of territory not already
 “ provided with electric cars, and to furnish a
 “ similar service as is furnished to the City.”
 No such annexation, their Lordships are in-
 formed, has taken place, but the insertion of
 this provision is a clear indication that the City
 considered that the territories of outside muni-
 cipalities were not included in the scope of the
 contract.

Looking at the contract as a whole, it appears
 to their Lordships that the lines of railway
 contemplated by it were, as defined in Article 1,
 “ lines of railway for the conveyance of passen-
 “ gers in the City,” and that the expressions “ the
 “ said railway,” “ the said railway tracks,” and
 “ its said railway,” wherever they occur in the
 contract, must be taken to refer to the lines
 within the limits of the City. The percent-
 ages, therefore, claimable by the City, are only
 upon the gross earnings arising from the whole
 operation of the lines within those limits.

It is true, as pointed out by some of the
 learned Judges in the Courts below, that Article
 37 of the Contract requires the Company to
 “ render quarterly a true and just account and
 “ statement in writing of the whole of their
 “ gross earnings, and allow proper inspection of
 “ all books, accounts, returns, and vouchers for
 “ the purpose of checking and verifying such
 “ accounts by the City Treasurer, City Auditor,
 “ or other accountant appointed by the City
 “ Council”; and it was held by Mr. Justice
 Girouard that this clause was “ clearly intended
 “ to give an indisputable effect to Clause 36, and
 “ to permit the City to collect without trouble or
 “ question its proportion of the gross earnings of
 “ the railway.” But their Lordships are of opinion
 that Clauses 36 and 37 must be read together,
 and, when so read, lead to no such conclusion.
 Some of the earnings of the Company arose from

traffic which began and ended within the limits of the City; but another, and possibly a greater, part was derived from traffic which originated in the City and terminated in the suburbs, or originated in the suburbs and terminated in the City. For all traffic attributable to the operation of the railway in the City, wherever it originated or terminated, the Company was accountable. The accounts of the whole earnings had, therefore, to be submitted and checked, in order that the proper percentage payable to the City might be ascertained and verified.

A second question discussed in the local Courts was as to the method on which the accounts between the City and the Company had been adjusted. From the nature of the case, it was impossible to separate the earnings inside from those outside the City, with anything approaching mathematical accuracy; and accordingly the Judge of First Instance, by an Order of the 19th November 1898, very properly referred it to two experts, one of whom was the Treasurer of the City of Montreal and the other the Comptroller of the Canadian Pacific Railway Company, to examine into the method of calculation to be adopted in order to secure a just apportionment. These gentlemen reported that "after considering divers other methods by which such apportionment might be arrived at," they were of opinion "that the system now pursued by the Montreal Street Railway Company is the most practical one and in its operation just, but that if any change were to be made it would be to increase the earnings per car mile in favour of the outside districts." The learned Judge adopted their report, and it was confirmed by the Judgment of the majority of the Court of King's Bench. Their Lordships see no reason to dissent from this conclusion.

Their Lordships will humbly advise His Majesty that this Appeal ought to be allowed, and the Judgment of the Supreme Court reversed with costs, and that of the Court of King's Bench confirmed. The Respondents must pay the costs of the Appeal.
