

14, 1932

In the Privy Council.

No. 45 of 1931.

ON APPEAL FROM THE COURT OF KING'S  
BENCH FOR THE PROVINCE OF QUEBEC  
(APPEAL SIDE) CANADA.

BETWEEN

THE MONTREAL LIGHT, HEAT & POWER CON-  
SOLIDATED (*Defendant*) and THE MONTREAL  
LIGHT, HEAT & POWER COMPANY (*Co-  
Defendant*) - - - - - *Appellants*

AND

THE CITY OF OUTREMONT (*Plaintiff*) - - - *Respondent.*

CASE OF THE RESPONDENT.

1. This is an appeal from a judgment of the Court of King's Bench (Appeal Side) for the Province of Quebec, rendered on the 30th October, 1930, affirming a judgment of the Superior Court, dated 14th October, 1929, wherein the Respondent's (Plaintiff's) action against the Appellants (Defendant and Co-Defendant) for the payment of \$3,262.82, with interest at six per centum per annum from December 1st, 1926, was maintained with costs. RECORD.  
p. 109.  
p. 46, l. 30.

2. One of the Appellants, The Montreal Light, Heat & Power Company, is the owner of a distribution system of gas and electricity within the Respondent's territory. The other, The Montreal Light, Heat & Power Consolidated, holds and operates such system for its own benefit, by paying a fixed annual dividend of 8 per cent. to the shareholders of the Montreal Light, Heat & Power Company.

3. The Respondent, the City of Outremont, was incorporated as such in 1915 by Act of the Legislature of the Province of Quebec, 5 George V, Ch. 93, then succeeding the Town of Outremont, which had been incorporated by Act of the same Legislature in 1895, 58 Victoria, Chapter 55.

4. The material facts of the case are few and uncontested.

The claim is for municipal and school taxes imposed upon the Appellants' gas mains, which run underground along the streets and other public

RESPONDENT'S CASE.

- RECORD. highways within the Respondent's territory. Such mains are naturally directly connected with the generating plant situate outside the Respondent's limits.
- p. 152, l. 43. 5. On August 24th, 1904, by contract before A. C. Lyman, a notary public, one of the Appellants, The Montreal Light, Heat & Power Company, was granted by the Respondent, the Town of Outremont, the exclusive privilege or *franchise* of building and operating for a period of thirty years, a gas distribution system for private and public use within the City limits, on specified terms and conditions, one of which was exemption from taxes for the term of twenty years. 10
- p. 156, l. 11.
- p. 173. 6. On June 7th, 1916, The Montreal Light, Heat & Power Company transferred and made over to the Civic Investment & Industrial Company, a subsidiary, all its rights and privileges under the aforesaid contract with the Respondent, the deed between the two companies being in the form of a 98 years lease, whereby the Civic Investment was to hold, possess and operate for that given period, all the properties, rights and privileges owned by the parent Company and its subsidiaries.
7. The main clauses of this latter agreement, in so far as the parties herein are concerned, read as follows :—
- p. 174, l. 35. 1. For the space and term of ninety-eight years, commencing 20 August 1st, 1916, the Contractor undertakes to work, manage and operate the plant, machinery and apparatus generally belonging to the Company or operated by it under the agreements hereinabove referred to, at the sole risk and expense of the Contractor, and by means of its own officers, employees and servants, the whole in such manner as to perform to the fullest extent all the general duties and obligations which the Company may be under towards the public in virtue of its charter or in virtue of the charters of any of the subsidiary Companies hereinabove referred to, whose franchises and charter rights are presently exercised by the Company under the 30 agreements hereinabove referred to.
- \* \* \* \* \*
- p. 175, l. 40. 7. The Contractor agrees in consideration thereof to pay all the debts and liabilities of the Companies now existing or which may hereafter exist during the currency of the present agreement.
- \* \* \* \* \*
- p. 176, l. 33. 12. The Contractor binds and obliges itself to pay all costs and expenses of operation of every description including municipal taxes, assessments on property owned by the Companies and occupied by the Contractor and to keep the property of the Companies 40 free and clear of all liens and encumbrances arising from taxes and assessments or from any act of the Contractor during the continuance of the present agreement.
- p. 176, l. 41. 13. The Contractor binds and obliges itself during the continuance of this agreement to faithfully execute and perform all

contracts, covenants and agreements in respect of which the Companies may now be liable towards any third persons. RECORD.

8. That emphyteutic lease—or holding and operating contract, as the Appellants elect to name it—was not however brought to the knowledge of the Respondent, and does not even appear to have been registered in the Registry Office of Montreal. Therefore the property owned and formerly operated in the City of Outremont by The Montreal Light, Heat & Power Company, and especially the gas mains in question, continued as theretofore to appear on the valuation roll in the latter's name.

10 9. Less than two years later, The Civic Investment & Industrial Company had its name changed into that of the Montreal Light, Heat & Power Consolidated, by the Act (Quebec) 8 Geo. V, Ch. 111 (1918).

10. The Respondent, however, was in some way made aware of the change of possessor and holder for, from 1918 on, all letters sent to the City by the Company bore the subscription "Montreal Light, Heat & Power Consolidated."

11. The twenty years exemption from taxes having expired on August 24th 1924, the Respondent, in making its valuation and tax collection rolls for the year which was to commence on November 1st of the same year, 20 proceeded to impose municipal and school taxes on the gas mains in question. p. 204.

12. Its authority for levying municipal taxes rested upon Section 521 of the Cities & Towns Act (R. S. Q. 1925, ch. 102), which applies to the Respondent, and reads as follows:—

521. The council may impose and levy, annually, on every immoveable in the municipality, a tax of not more than two per cent. of the real value as shown on the valuation roll . . .

Respondent's authority for collecting School taxes for that year was derived from Section 537 of the same Act, which reads as follows :

30 537.—The council shall, on the requisition of the school commissioners or trustees of any school municipality situated within the municipality, accept the school assessment roll or the certified extract therefrom presented by them, and order the treasurer to collect such taxes, in the same manner and at the same time as municipal taxes.

as well as from Section 1 of 16 George V, Ch. 74, (an Act to amend the Charter of the City of Outremont,) the latter part of which we beg leave to quote, to wit :

40 The city may, under an agreement with the school commissioners or school trustees of any school municipality situated within the municipality, upon a resolution to that effect passed by the said school commissioners or trustees, as the case may be, and by the council of the city, have the certified school assessment roll or a certified extract from such roll delivered to it, and pay the school commissioners or trustees the amount, mentioned in such school

RECORD.

assessment roll or extract therefrom, less the amount of a commission not exceeding one per cent., at the dates and in the manner agreed upon.

No such commission shall, however, be collected by the city, as long as it is obliged by law to collect the Protestant school tax and the school taxes on immoveables entered on the neutral panel, gratuitously.

and finally, from resolutions adopted thereunder, on March 10th and 11th, 1919, respectively, by both the School Commissioners (Roman Catholic) and School Trustees (Protestant) for the City, viz. :

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\* \* \* \* \*

p. 190, l. 38.

It was proposed by Trustee Allen, and unanimously Resolved :

1. That the Board of Protestant School Trustees of Outremont respectfully ask the Council of the City of Outremont to make the collection of the School Taxes at the same time and in the same manner that the collection of Municipal Taxes are made in accordance with Article 2867 of Revised Statutes of the Province of Quebec, 1909,—(62 V., C. 28, s. 373;) commencing July 1919.

2. That the said City of Outremont takes at its own account and assumes the responsibility of all taxes of this School Board.

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p. 191

3. That the City of Outremont also collects the School Taxes of neutrals and makes the distribution between the different School Boards interested in proportion to the number of pupils of each of said municipalities, in accordance with the School Law passed to that effect.

4. That the Council of the City of Outremont be requested to pay to this Board the total amount of Taxes inserted in the Collection Roll, including the share of the neutrals, in two equal payments, of which the first will be payable on the 31st day of December and the other the 30th day of June of each year.

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\* \* \* \* \*

p. 192, l. 11

Il est proposé par Mr. le Commissaire H. Milette et unanimement résolu :

1.—Que la Commission Scolaire d'Outremont prie respectueusement le conseil local de la Cité d'Outremont de faire la perception de ses taxes Scolaires en même temps et de la même manière que se fait la perception des taxes municipales, à partir du 1er juillet 1919, conformément à l'article 2867 des Statuts refondus de la Province de Québec, 1909.—(62 V., c. 28, s. 373);

2.—Que la dite Cité d'Outremont prenne à sa charge et assume la responsabilité des taxes de cette municipalité scolaire;

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3.—Que la Cité d'Outremont se charge également de la perception de la taxe scolaire de la propriété neutre, en fasse la répartition entre les différentes Commissions scolaires intéressées au pro rata des

élèves de chacune des dites Municipalités, conformément à l'article RECORD.  
de la loi scolaire relativement à cet effet ;

4.—Que le Conseil local de la Cité d'Outremont soit prié de payer à cette Commission le montant total des taxes porté au rôle de perception, y compris la part de la taxe neutre en deux versements égaux, dont l'un sera effectué le 31 décembre et l'autre le 30 juin de chaque année.

5.—Que le Secrétaire-Trésorier soit chargé de faire parvenir à la Cité d'Outremont une copie de la présente résolution.

10 Extract from minutes of a meeting of the Council of the City of p. 193.  
Outremont, held on the second day of April, 1919.  
It was resolved :—

20 That the offers of the School Commissioners of the Parish of St. Viateur, and of the Parish of Ste. Madeleine, and of the Protestant School Trustees of the City of Outremont, submitted to and duly recommended by the Finance Committee of this Council at a meeting held on the 17th day of March, 1919, for the purpose of the taking over by the City of the collection of the School Taxes hereafter to be imposed by the respective School Authorities ; and for the payment by the City to the said School Authorities of the total product of their respective School Taxes in two equal semi-annual instalments, of which the first shall become due and payable on the 31st day of December, and the second on the 30th day of June in each year, be and are hereby accepted, subject to the following conditions, viz. :—

That a commission of one per cent of the total product of the Tax be paid to the City by the several School Authorities for this work.

30 That the arrangement be not found in contravention of any of the legal powers and duties of the Council, or of the School Authorities.

That the collection of all Arrears of School Taxes at present accrued, be continued by the School Authorities themselves.

which were sanctioned by the Act above referred to (16 Geo. V, Ch. 74) of which Section 2 reads as follows :—

40 2. The resolution passed by the School commissioners of the Municipality of the City of Outremont, in the electoral district of Westmount, on the 10th day of March, 1919; the resolution passed by the school commissioners of the municipality of the City of Outremont, in the electoral district of Westmount, on the 11th day of March, 1919, and the resolution passed by the council of the City of Outremont, on the 2nd day of April, 1919, are hereby declared legal and valid to all intents and purposes.

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13. The Education Act (R. S. Q. 1925, ch. 133) which re-enacts in that respect the 1909 Statutes, provides for the creation in municipalities of mixed population, of three panels of school taxes: Protestant, Roman Catholic and neutral. Both Catholic and Protestant Boards impose and collect their own taxes from their respective ratepayers. On the neutral panel are carried the properties belonging to incorporated companies, such as the Appellants herein, and such taxes are collected by the majority Board (the School commissioners), which then proceed to remit to the minority Board (School Trustees) its share according to the number of children frequenting the school of either school corporation. 10

14. Under the Acts and resolutions above quoted, the school taxes on the Appellants' properties were therefore to be collected for the year commencing November 1st, 1924, by the Respondent for *the school commissioners for the City of Outremont*, to be shared by the latter with the School Trustees.

15. In 1925, the law was changed for the City of Montreal and suburbs, one of which is the Respondent. Section 16 of the Act 15 Geo. V, Ch. 45, enacts that:—

1. \* \* \* \* \*

2. From and after the 1st of July, 1925, in the various cities, towns or other local municipalities mentioned in paragraph 1 of this section, there is hereby imposed a uniform tax at the rate of twelve mills in the dollar, upon all the immoveable property inscribed in the neutral panel of each such city, town or local municipality, to be apportioned between Protestant and Roman Catholic education as by law provided. 20

3. \* \* \* \* \*

4. \* \* \* \* \*

5. The taxes above mentioned shall be levied and collected by the proper municipal authorities, at the same time as the municipal taxes, and, notwithstanding any special or general provision of law governing any such municipality, the amount of the said Protestant school tax so levied and the share of the said tax upon the neutral panel accruing for the benefit of Protestant education, shall be paid over to the Central Board by the proper municipal authorities, as soon as collected, in accordance with the provisions of section 12, at such date or dates as may be fixed by the Central Board; insofar, however, as the City of Montreal is concerned, the payment of the amounts accruing under this Act shall be made in accordance with the provisions of the Act 10 George V., chapter 40, section 5. 30

This latter Act was amended in 1926, but with reference only to payments to be made by the Municipalities to the School Corporations. 40

16. As the claim covers three years, commencing respectively November 1st 1924, 1925 and 1926, the case as regards school taxes is governed for the first of those years by Sections 537 and 539 of the Cities and Towns

Act, by the resolutions of the school commissioners and school trustees above quoted, and by 16 Geo. V, Chapter 74; for the years 1925-1926 and 1926-1927, by the Acts 15 George V, Chapter 45 and 16 George V, Chapter 47. RECORD.

17. Action was first entered against the Montreal Light, Heat & Power Consolidated, which had been for over six years openly in possession of the properties involved, and which the Respondent believed to be only a new name for the Montreal Light, Heat & Power Company. The examination on discovery of G. R. Whatley having disclosed the separate existence of the Civic Investment & Industrial Co., which had become The Montreal Light, Heat & Power Consolidated, the Respondent then moved to have The Montreal Light, Heat & Power Company joined in the action as co-defendant with The Montreal Light, Heat & Power Consolidated. Its motion was granted and the writ and declaration amended accordingly and served again upon both the Appellants. Whereupon The Montreal Light, Heat & Power Company filed an exception to the form, complaining that the judgment rendered on the motion to amend did not warrant its being joined in the action as *co-Defendant*. The exception to the form was dismissed by judgment rendered in the Superior Court on April 11th, 1927, which was affirmed by the Court of King's Bench on November 10th, 1927. This latter judgment was not appealed from so that the exact position of the Appellants in the case is definitely set, and they are on an equal footing and not, as they contend respectively, "Defendant and *mise-en-cause*."

18. They filed separate pleas, the common grounds of which may be summarized as follows :

- (a) That the valuation and collection rolls of the Respondent are *ultra vires* in so far as they apply to gas mains in question, in other words, such gas mains are not immoveable property ;
- (b) That under the terms of the statutes referred to in paragraph 3 of the statement of claim (declaration), the Superior Court is without jurisdiction to hear a claim for school taxes.

19. The Montreal Light, Heat & Power Consolidated further averred that not being the owner of any land in the City, it could not be assessed as "occupant or other possessor," under Section 534 of the Cities & Towns Act, which states that :

534. Municipal taxes, imposed on any land, may be collected from the tenant, occupant or other possessor of such land as well as from the owner thereof, or from any subsequent acquirer of such land, even where such tenant, occupant, possessor or acquirer is not entered on the valuation roll."

20. The Montreal Light, Heat & Power Company, in spite of the judgment of the Court of King's Bench, (Appeal Side) affirming that of the Superior Court which had dismissed its exception to the form contended that inasmuch as the action could not stand against The

RECORD. Montreal Light, Heat & Power Consolidated, it could not be maintained against itself, The Montreal Light, Heat & Power Company, as the latter was only "mise-en-cause." Then relying on the franchise contract of August 24th, 1904, between itself and the Town of Outremont, The Montreal Light Heat & Power Company urged as a further means of defence that the proper construction of that contract entailed an exemption from taxes of the same duration as the franchise itself, to wit: thirty years, and furthermore, that the effect of such contract was to subrogate The Montreal Light, Heat & Power Company to the rights of the Respondent, in such a way as to make its properties within the Respondent's limits non-assessable as municipal property. 10

pp. 46, l. 30 et seq. 21. On the issue thus joined, the case was tried before the Superior Court, which gave judgment on October 14th, 1929, dismissing the Defendants' pleas and maintaining the action for \$3,262.82, which included p. 58, l. 44. \$1448.21 for municipal taxes, and \$1361.43 for school taxes, this latter claim having been reduced by \$86.78 at trial.

22. The main issue, to wit: whether the Appellants' gas mains are immovable property within the meaning of the Cities & Towns Act, was not discussed at length by any of the Judges in the Courts below, who rightly considered themselves bound by the judgment handed down by the Supreme Court of Canada, in the case of *The City of Westmont vs. The Montreal Light, Heat & Power Consolidated*, wherein it was 20

HELD that the pipes, poles, wires and transformers are immoveables within the meaning of that term as used in art. 5730 of the Cities and Towns Act, R.S.Q. 1909, and are subject to taxation as such. *Belair v. Ste. Rose* (63 Can. S.C.R. 526) foll. (*Canada Law Reports*—Supreme Court, 1926, p. 515.)

23. The Supreme Court of Canada was unanimous in holding that gas mains, power transmission wires, poles and transformers were immoveables within the meaning of section 5730 R.S.Q. 1909 (now 521 of Ch. 102, R.S.Q. 1925). Mr. Justice Idington's dissent was to the effect that meters placed in houses, should follow the same rule and be rated also as immovable property. 30

The following extract from Chief Justice Anglin's notes covers the whole matter :

The Cities and Towns' Act of 1903 (3 Edw. VII, c. 38) was embodied in the R.S.Q. 1909, as arts. 5256-5884 and was subsequently re-enacted as c. 65 of the statutes of 1922 (2nd Session) 13 Geo.V, Section 474 of the Act of 1903 (art. 5730 of the R.S.Q., 1909; s. 510 of the Act of 1922) reads as follows : 40

The council may impose and levy, annually, on every immovable in the municipality a tax not exceeding two per cent. of the real value as shewn in the valuation roll.

Nothing in the city charter excludes or qualifies the application of this provision.



By art. 2731 of the R.S.Q. 1909, Boards of School Commissioners are empowered to impose assessments "upon all taxable property in the municipality." Taxable property, is, by art. 2521 (16) declared to mean "the real estate liable for school taxes," and by art. 2521 (15), as amended by 4 Geo. V, c. 22, s. 1 (1914) real estate if defined as

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"including everything that is immovable by virtue of  
 "the municipal laws governing the territory of school  
 "municipalities."

10 The sole question with regard to the statutory power to impose the taxes sued for—municipal and school alike—is whether the subjects of taxation in this instance are immovables within the meaning of that term as used in art. 5730 of the R.S.Q. 1909. That question formed the principal matter of discussion at bar; but, while not free from difficulty, it would seem to be concluded adversely to the appellant by the decision of this Court in *Belair v. Ste. Rose*, as to the gas mains and electric poles and wires, which, for the reasons there stated, must be regarded as "buildings (bâtiments)" within the meaning of art. 376 C.C. and, therefore,  
 20 "immovable by their nature." In that case three things were distinctly held: (a) that the scope of the word "immovable" in art. 5730 (R.S.Q. 1909) is to be ascertained by reference to the provisions of the Civil Code, arts. 376 *et seq.*; (b) that the word "buildings" (bâtiments) in art. 376 C.C. is used in the sense of "constructions"; (c) that it is immaterial to its taxibility under art. 5730 that a construction is erected on land which does not belong to the person who owns the construction. There is no distinction in principle which would justify the taxation of the bridge in that case under art. 5730 as an immovable and warrant  
 30 the exemption of the appellant's gas mains, and electric poles and wires in the present case as movables. The materials of which the structures—bridge and distribution systems alike—were comprised were all movables before being placed *in situ* and made part of such structures. Once incorporated in the structures, however, the materials lost that character; and the structures themselves took on the character of immovables.

Nor does it appear to matter for the present purpose whether the immobilization of the pipes, poles and wires be attributed to their physical connection with the land in or upon which they are placed, or with the buildings from which they radiate as parts of a distribution system. In either view they are immovables actually (in the sense of physically) situated in the municipality and thus "come within the letter of the law" which confers the power to tax. *Partington's Case*. The immobilization of the transformers may not be so clear. But they are usually attached to the company's poles and form an integral part of the system quite as much as the wires strung on the poles to carry the current.

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For these reasons, as well as those stated by Mr. Justice De Lorimier and Mr. Justice Tellier, and upon the authorities cited by those learned judges, the pipes, poles, wires and transformers must be regarded as taxable immovables. Particular reference may be made to art. 445 of the charter of the City of Westmont, 8 Édw. VII, c. 89, s. 39.

(Can. Law R. Sup. Ct., 1926, pp. 519-21.)

24. As for Mr. Justice Tellier (of the Court of King's Bench), whose reasons are adopted by Chief Justice Anglin, his reasons for judgment are an exhaustive study of the question at issue. On the main point, they read as follows :—

1. Les biens dont il s'agit sont-ils meubles ou immeubles ?

Ils consistent, comme nous l'avons vu ci-dessus, dans la partie des lignes électriques et de la canalisation du gaz qui se trouve sur le territoire municipal de Westmont. Ils comprennent des poteaux plantés en terre, dans les rues ou sur des terrains de particuliers, pour supporter les fils et les transformateurs électriques ; les fils eux-mêmes, ainsi que les transformateurs qui sont fixés à ces poteaux ; les compteurs d'électricité qui tiennent aux fils et qui enregistrent la somme de courant consommée ; les tuyaux à gaz qui sont enfouis dans le sol ; et les compteurs auxquels ces tuyaux aboutissent, qui en sont le complément nécessaire, et qui sont installés dans les bâtisses des consommateurs.

Toutes ces choses, même prises isolément, et sans égard au fait qu'elles font corps avec les usines et qu'elles en sont en réalité le prolongement, peuvent-elles être des meubles ? La négative ne me paraît pas douteuse. L'article 376 C. Civ., en fait des immeubles par nature. Aux termes de cet article, les fonds de terre et les bâtiments sont immeubles par leur nature. Et par "bâtiments," le Code entend ici, d'après les commentateurs du Code civil français, — le quel est semblable au nôtre sur ce point, — toutes constructions, tous travaux ou ouvrages quelconques, superficiels ou souterrains, quelles qu'en soient la matière, la forme et la destination, dès que ces ouvrages sont attachés au sol, de manière à faire corps avec lui. Ainsi, sont compris sous cette dénomination de "bâtiments" non seulement les bâtiments proprement dits, tels que les maisons d'habitation, magasins, ateliers, hangars, granges, etc., mais aussi les travaux d'art de toute espèce, tels que ponts, puits, fours, digues, barrages, tunnels, tuyaux servant à la conduite des eaux, clôtures, etc. Les exemples que je donne là sont ceux des commentateurs eux-mêmes, dont j'ai aussi emprunté en partie le langage. (Sic : 1 Planiol, nos 2207, 2209 :—9 Demolombe, no 103 ;—5 Laurent, no 409 ;—2 Aubry & Rau, par. 164, n. 5, 6 ; 5 Baudry-Lacantinerie, no 26 ; 2 Boileux, art. 529 ; Fuzier-Herman ; Massé & Vergé sur Zachariae, par. 253, sous-par. 5 ; Boyer, C.c. art. 518).

La défenderesse admettrait que les choses dont il s'agit sont immeubles, si elles étaient placées sur des fonds qui lui appartiennent. Elle en ferait alors des immeubles par destination. Mais étant donné que ces choses sont installées dans les rues ou sur des fonds autres que les siens, elle soutient que ce sont des meubles. Je suis d'opinion qu'elle a tort. Une ligne de transmission ou de distribution d'électricité, à moins que son installation ne soit que provisoire et momentanée, ne saurait être classée parmi les immeubles par destination, pas plus que l'usine elle-même d'où lui vient le courant et dont elle est véritablement partie intégrante. Conçoit-on une usine électrique sans des fils pour transmettre le courant, des transformateurs pour le réduire, au besoin, et des compteurs pour l'enregistrer? Et puis, avec des fils de transmission, ne faut-il pas, soit des poteaux plantés en terre ou d'autres constructions pour les supporter, soit des canaux pour les enfouir?

Tout cela ne forme qu'un tout qui est immeuble par nature, parce qu'il adhère au sol et qu'il y est incorporé. Chacun des éléments dont ce tout se compose a perdu son individualité et s'est confondu dans le tout. Sans doute, on peut défaire une ligne électrique, déplacer des poteaux, des fils, des transformateurs, des compteurs, et refaire de ces choses-là, selon le cas, des meubles. Une clôture sur une terre se défait facilement et se change souvent de place aussi. Cela ne l'empêche pas d'être immeuble par nature, tant qu'elle n'est pas défaite. Ainsi le vaut l'article 376.

Ce que je viens de dire de l'usine électrique et de ses lignes de transmission ou de distribution s'applique, également, *mutatis mutandis*, à l'usine à gaz, à la canalisation du gaz et aux compteurs qui en dépendent.

La défenderesse soutient que parce qu'elle a construit dans la rue ou sur des terrains qui ne lui appartiennent pas, ses constructions ne peuvent être immeubles.

C'est encore une erreur. Tous les auteurs, sauf un peut-être, reconnaissent que la construction élevée sur le fonds d'autrui est immeuble, du moment qu'elle adhère au sol. Je pourrais multiplier les citations. Je n'en ferai que quelques une: (voir autorités ci-contre).

La défenderesse prétend que pour déterminer si les choses qu'elle possède dans Westmount sont meubles ou immeubles, il faut les considérer isolément et sans égard au fait qu'elles sont reliées à des usines dont elles dépendent, vu que ces usines sont situées en dehors de Westmount. Même si on procédait de cette façon, je suis d'avis que le résultat serait le même, je l'ai déjà dit plus haut. Mais cette façon de procéder ne saurait être admise. Les limites des municipalités n'importent aucunement quand il s'agit de déterminer si une chose est meuble ou immeuble. Ce qui est immeuble dans une municipalité le serait également dans une autre, en droit civil, du moins, et *vice versa* pour les meubles. Une ligne de trans-

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mission d'électricité, immeuble là où sont ses usines, ne devient pas meuble au-delà des limites municipales. J'en dis autant des tuyaux de canalisation d'une usine à gaz. La règle que propose là la défenderesse ne tient pas debout. Supposez une installation électrique complète dans une seule municipalité. Evidemment, c'est un immeuble, puis qu'elle tient au sol par son usine, par les poteaux, de sa ligne, etc. . . . Va-t-on soutenir que, par le seul fait du démembrement de la municipalité, une partie de l'installation deviendrait meuble? Absurdité!

(Quebec Reports, 38 K.B., pp. 408-411)  
and further (pp. 413-414)

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Passons maintenant à la loi scolaire.

Les pouvoirs que possède la commission scolaire en matière de taxation lui viennent de la loi de l'instruction publique qui se trouve aux S.R.Q., 1909.

L'article 2730 fait un devoir aux commissaires et syndics d'écoles "d'imposer, dans leurs municipalités respectives des taxes pour le soutien des écoles sous leur contrôle."

D'après l'art. 2836, "l'évaluation des propriétés qui a été faite par ordre des autorités municipales doit servir de base aux cotisations imposées par les corporations scolaires."

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Pour éviter des complications et possiblement des impasses, le législateur, à l'art. 2521, paragraphe 15, (tel qu'amendé par la loi 4 Geo. V, ch. 22, art. 1) a fait des équivalents, des mots: "biens-fonds," "terrain," et "immeuble"; et il a décrété que tout ce qui est immeuble en vertu des lois municipales, l'est également pour les fins scolaires. On conçoit, en effet, que sans une telle disposition il n'eut pas été facile dans bien des cas de baser un rôle de perception scolaire sur le rôle d'évaluation des autorités municipales; car on sait que chaque ville a sa charte et que, souvent, elle diffère de celles des autres, tandis que la loi de l'instruction publique s'applique partout, à la ville comme à la campagne, sauf de très rares exceptions.

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Donc, ce qui est porté comme immeuble imposable au rôle d'évaluation des autorités municipales de la cité de Westmouut, est également immeuble imposable pour la commission scolaire de la même cité.

La loi de l'instruction publique a, du reste, une disposition particulière pour la taxe des compagnies à fonds social comme la défenderesse. Elle se lit comme suit:

"2891. Sujet aux dispositions de l'article 2898, les commissaires  
" ont seuls, dans une municipalité scolaire, le droit d'imposer et de  
" percevoir des cotisations sur les biens immeubles des corporations  
" et des compagnies légalement constituées; mais ils doivent  
" annuellement remettre aux syndics, quand il y en a, une part du  
" produit des cotisations ainsi imposées et perçues sur ces corpora-  
" tions et compagnies, dans la même proportion que l'allocation du

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“ gouvernement a été divisée entre eux et les syndics, pour la même année, suivant les dispositions de l'article 2789.”

RECORD.

C'est en vertu de cet article que la commission scolaire de Westmount a imposé les taxes dont il s'agit ici.

Donc, pour les fins scolaires comme pour les fins municipales les dits biens que la défenderesse possède dans Westmount sont imposables.”

25. The trial Judge (de Lorimier) in the Superior Court, had previously followed the same line of reasoning, as appears from the following extract 10 from the judgment :—

Considérant que les poteaux, câbles ou fils électriques et les transformateurs ainsi que les maîtres tuyaux à gaz dont la défenderesse, pour les fins de son industrie, se sert dans la municipalité de la demanderesse, sont immeubles selon la loi ;

L'article 376 de notre Code civil édicte que les bâtiments sont immeubles par nature comme les biens fonds ;

Nos codificateurs disent : “ les fonds de terre et les bâtiments y érigés sont immeubles par nature (de Lorimier, Bibliothèque du Code civil, vol. 3, p. 247) ;

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Or, les poteaux et les tuyaux à gaz qui nous occupent sont des bâtiments parce qu'ils sont des constructions incorporées dans le sol, une partie intégrante (Daloz, Rép. Supplément, Vo. Biens, nos. 2, 3, 4, 5 et 8) ;

L'expression de “ bâtiments ” employée par l'article comprend, dit Colin-Capitant, non seulement les constructions complètes, mais tous les travaux de maçonneries ou de fer édifiées dans le sol (vol. I, 3ième édition, p. 680, nos. 1 et 2) ;

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Et Planiol, tôme I, no. 2207, nous donne la définition suivante de bâtiment : “ Par édifice, il nous faut comprendre non seulement les bâtiments proprement dits, tels que les maisons d'habitation, magasins, articles, hangars, granges, etc. mais aussi les travaux d'art de toute espèce, tels que ponts, puits, fours, digues, barrages, tunnels, etc. ” ; par conséquent, (continue-t-il), il faut définir ici les édifices “ tout assemblage de matériaux consolidés à demeure, soit à la surface du sol, soit à l'intérieur ” ;

Les auteurs auraient pu ajouter, comme autres exemples de bâtiments, les systèmes d'éclairages par l'électricité et par le gaz qui sont ici des travaux d'art en bois et en fer ;

40

On le voit, il faut que les matériaux soient consolidés à demeure, mais, comme le dit Fuzier-Herman (Code civil art. 518, nos. 2 et 5) : “ Il n'est pas nécessaire toute fois, que la construction pour être considérée comme immeuble soit fixée au sol à perpétuelle demeure, il suffit d'une incorporation même temporaire, pourvu qu'elle ne soit pas purement passagère et accidentelle ” (Voir aussi Planiol, tôme I, Les Biens, nos, 2203, 2207, 2208 ; Daloz, Code Civil, art. 518, nos. 1, 2 et 4 ; Daloz, Dictionnaire Pratique de Droit, Vo. Biens,

RECORD.

Nos. 3 et 4; Colin-Capitant, Droit civil, 3ème édit., Des Immeubles, tôme 2, titre I, n. I, immeuble par nature, p. 681; Beaudry-Lacantinerie, tôme 5, Des Biens, art. 519, n. 27);

\* \* \* \* \*

On a prétendu que pour que le bâtiment soit immeuble il faut qu'il soit incorporé au fonds de terre de son propriétaire;

C'est l'opinion contraire qui prédomine (Dalloz, Code civil, art. 518, nos. 6, 16, 17 et 23; Dalloz, Rép. Supplément, n. 4; Fuzier-Herman, Code civil, art. 518, n. 8; Colin-Capitant, Droit civil, 3ème édit. première catégorie; Immeubles par nature, n. 2, p. 681; Planiol, t. I, n. 2208; Baudry-Lacantinerie, t. 5, Des Biens, art. 519, p. 24, n. 27, 9, 84, Nos. 93 et 94);

Ces bâtiments, de même que les fonds de terre, sont donc immeubles par nature; le texte de notre article 376 ne fait pas de distinction entre le bâtiment construit sur le sol du propriétaire ou du tiers; il est immeuble "d'une manière absolue et indépendamment de la qualité du constructeur"; (Dalloz, Rép. Sup. vo. Biens, Nos. 3 et 4);

(30 Revue de Jurisprudence, pp. 83-85-86.)

26. It may be useful to point out here that section 376 of the Quebec Civil Code, and section 518 of the French Code Napoléon are identical in their wording and, in the French language, read as follows:—

Les fonds de terre et les bâtiments sont immeubles par leur nature."

And in the "Répertoire Pratique" (Dalloz) verbis "Destination des biens" (Vol. 2, p. 92, No. 15), we read the following:—

Il a été jugé, conformément à cette doctrine, que les bâtiments et les constructions élevés sur un terrain dépendant du domaine public, en vertu d'une permission de l'autorité administrative, constituent par leur nature, des immeubles tant qu'ils adhèrent au sol, encore que la permission ait été stipulée révocable.

27. The unanimity of the French authors and Courts of law leaves no room for doubt under the Code Napoléon, and the foregoing show that their authority has been constantly accepted as conclusive by Canadian Courts, for the sound reason that both French and Quebec laws are identical in that respect.

28. In conclusion it may be safely stated that neither the correctness of the Respondent's claim nor the regularity or validity of its Bylaws, resolutions or Rolls are contested, save, and except, of course, in so far as they affect the Appellants' properties.

29. As a further ground of common defence, the Appellants raised the issue of jurisdiction by contending that a claim for school taxes could not be entertained by the Superior Court, because of want of jurisdiction.

p. 17, l. 17.  
p. 18, l. 37.

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The Record shows that the trial Judge (Loranger) and the five judges of the Court of King's Bench were unanimous in dismissing that contention, and in holding that, under the Cities and Towns Act (Ch. 102, R.S.Q. 1925) the Education Act (Ch. 133 R.S.Q. 1925), the Code of Civil Procedure as well as under the provisions of special Statutes applying to the Respondent—above quoted—the action for municipal and school taxes, as taken, was properly brought before the Superior Court.

RECORD.  
pp. 53 et seq.  
pp. 109, 118,  
1. 7.

30. Mr. Justice Loranger, who tried the case, after having examined that question in all its aspects, concludes :—

10 La Cour Supérieure a juridiction pour entendre et juger la présente cause; p. 58, l. 15.

1. Parce que en vertu de la Charte, la collection des taxes scolaires et municipales doit se faire par une seule et même action, et que rien ne défend de porter telle action devant la Cour Supérieure si le montant le permet.

2. Parce que cette cause est de nature hypothécaire, et affecte des droits futurs; comme telle elle est évocable à la Cour Supérieure.

20 Ce serait faire un circuit d'action que de la renvoyer en Cour de Circuit, pour que celle-ci à son tour la renvoie devant la Cour Supérieure."

31. Mr. Justice Tellier, of the Court of King's Bench, after a close study of the Code of Civil Procedure (sec. 54) and of the Education Act (sec. 499) upon which the Appellants' contention seems to rest, draws the following conclusions :—

30 Il faut conclure, je crois, que l'obligation d'intenter devant la Cour de circuit ou la Cour de magistrat, les poursuites en recouvrement des taxes ou rétributions scolaires, sans égard au montant réclamé, n'est que pour le cas où se sont les Commissaires ou syndics d'écoles qui poursuivent. Les corporations municipales n'y sont pas assujetties. Cette conclusion s'harmonise assez bien avec le texte même des articles 498 et 499 de la Loi de l'instruction publique. En effet, l'article 498 énonce que les commissaires ou syndics sont autorisés à poursuivre en recouvrement des cotisations et rétributions qui leur sont dues; et l'article 499 décrète que leurs poursuites doivent être intentées devant la Cour de Circuit ou la Cour de Magistrat. Il n'est dit nulle part, soit dans la Loi de l'instruction publique, soit dans celle des cités et villes, que la disposition exceptionnelle de cette article 499, s'applique également au cas où la perception des taxes ou rétributions scolaires se fait par la corporation municipale. Il semble logique de croire que, dans ce cas, la corporation municipale est régie, non par la loi de l'instruction publique, mais par sa propre loi. Il est vrai que la disposition de l'article 54 est plus générale ou plus large que celle du dit article 499. Mais, entre les deux, du moment qu'il y a désaccord, je crois que celle de l'article 499 doit l'emporter, d'abord, parce p. 113, l. 23.

RECORD.

qu'elle est d'une loi spéciale, et ensuite parce que, dans un cas comme celui qui nous occupe, elle est vraiment la seule qui soit praticable.

p. 114.

Ajoutons que la Cour Supérieure est, par excellence, le tribunal de première instance. Elle a toujours juridiction, sauf dans les cas où la loi la lui dénie (C.p.c. 48). Toute disposition qui la prive de sa juridiction, est nécessairement exceptionnelle et doit par conséquent, s'interpréter restrictivement. Entre deux testes égaux, dont l'un lui connaîtrait sa juridiction, et l'autre la lui enlèverait, le premier, je crois, devrait l'emporter, surtout s'il était le plus praticable des deux.

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En vertu de sa charte, telle qu'amendée par le statut II Geo. V, c. 114, art. 4, la demanderesse était autorisée à réclamer les taxes dont il s'agit, par voie d'action personnelle devant la Cour de circuit, ou la Cour de magistrat, ou devant le maire, ou des conseillers agissant *ex officio* comme juges de paix, ou devant la Cour du recorder s'il y en a une à Outrement. Mais rien, dans le dit statut ne lui enlevait le recours de droit commun, devant la Cour Supérieure.

Du reste, la demanderesse ne s'est pas contentée d'une action purement personnelle. Ses conclusions sont à l'effet que les défenderesses soient condamnées personnellement et, en outre, qu'il soit déclaré que, pour le paiement des dites taxes, elle possède un *privilege ou droit de préférence*, sur les tuyaux à gaz dont il s'agit (Loi de l'instruction publique, art. 249). Aucune loi n'enlève à la Cour Supérieure sa juridiction pour une action de cette nature.

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Les défenderesses n'ont donc pas raison de contester, comme elles le font, la juridiction de la Cour Supérieure. Leur objection à ce sujet doit être écartée, non parce qu'elle n'a pas été faite préliminairement, car on est toujours à temps pour invoquer le défaut de juridiction *ratione materiae*, mais parce qu'elle est mal fondée, en droit.

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32. Mr. Justice Hall makes a careful review of the legislation governing the matter and pays especial attention to the Statute (Quebec) 15 Geo. V, Ch. 45, whereby the school taxes are assessed on protestant and neutral property, no longer by school commissions, but indeed by the law itself which effectively incorporated such school taxes with the municipal taxes proper, and accordingly states :

p. 127, l. 19.

It seems to be impossible to evade the conclusion, therefore, that, since the Corporation was entitled to take action before the Superior Court for the recovery of its municipal taxes, if it was to collect the school taxes at the same time, and in the same manner, the Superior Court was the tribunal having jurisdiction.

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It is, in my opinion, impossible to believe that it was the intention of the Legislature that two separate actions before two distinct jurisdictions should be taken by the Corporation for the respective taxes. That would be an unnecessary duplication of litigation, and it might lead to conflicting rulings, if, for instance,



while the Superior Court held that gas mains were immoveable and subject to taxation, the Circuit Court should find that gas mains were not immoveables and not subject to school taxes. RECORD.

And then, immediately after, he sets forth a further reason in support of his conclusions in the following words :—

In this connection it is worthy of note that the question of jurisdiction was not raised in the *Westmount* case above referred to before any of the Courts; and the Superior Court, having assumed and exercised its jurisdiction, that jurisdiction was never questioned either in this Court or before the Supreme Court of Canada. p. 127, l. 24.

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I concur, therefore, with the learned Trial Judge in the opinion that the Superior Court had jurisdiction.

33. Indeed, Respondent stressed that latter point before both the Superior Court and Court of King's Bench and still begs leave to submit that in the *Westmount* case (above referred to) the Superior Court, the Court of King's Bench and finally the Supreme Court of Canada having in succession maintained the City of Westmount's action against one of the present Appellants for school as well as municipal taxes under the very same legislation as is applicable herein, all these courts have thereby implicitly affirmed the Superior Court's jurisdiction to deal with suits wherein the payment of both municipal and schools taxes is demanded together by the same action. Respondent's authority for such contention rests with section 171 of Code of Civil Procedure which reads as follows : pp. 107, 108.

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171. If, nevertheless, the court has no jurisdiction by reason of the subject matter of the action, the reference may be demanded at any stage of the case; and if the reference is not demanded, the Court is obliged of its own motion, to refer the case to the proper authority.

34. Besides, the dismissal of that part of the claim which relates to school taxes would entail duplication of law-suits before different courts with conflicting decisions as a possible result. 30

35. Apart from those common grounds of defence, Appellants have raised separate issues, the first of which is the proper construction of the franchise contract passed between the Montreal Light, Heat and Power Company and the Respondent, on August 24th 1904. According to the Appellants, section 27 of that contract would involve a tax exemption of thirty years, the duration of the franchise itself, since the then Town of Outremont had subrogated the Montreal Light Heat and Power Company in all its rights for the supply of gas.

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27th. The said Town of Outremont hereby assigns and transfers unto the said Contractors, thereof accepting all the rights it may possess in connection with the supply of gas in residences or otherwise, in its streets, lanes, avenues, roads and public places, the said Contractors being subrogated in all the rights accorded by law in that p. 159, l. 37.

RECORD.

respect during the period of thirty years, dating from the date of this contract; and during that period the said Town shall not lay or permit any other person, persons, Company or Companies to lay pipes on its streets, lanes, avenues, roads and public places for the purposes of supplying gas. All works made by the Contractors for the erection or repair of their plant within the Town shall be subject to the control of the Council or of the person appointed by the Council to supervise the same.

While, on the other hand, section 26th of the same contract grants to the Appellant an exemption of only 20 years on its equipment for gas distribution, which was at the time the maximum period permitted by the law :

p. 159, l. 30.

26th. The Town hereby exempts from taxation and license all property of the Contractors within the limits thereof forming part of their system for supplying gas within the Town during a period of twenty years, to be computed and reckoned from the date of these presents.

36. All the learned judges of the Courts below refused to admit the view that any such construction could be given to the contract or to the clause 27th thereof relied upon by Appellants, and more specially so, in face of clause 26th, which is abundantly clear.

Mr. Justice Hall says :

p. 124; l. 11.

Clause 26 of the contract, providing for an exemption from taxation during the period of 20 years, is, in my opinion, conclusive evidence that the parties, when the contract was drawn, contemplated the imposition of a tax for the balance of the term of the franchise.

And Mr. Justice Tellier :

p. 111, l. 46.

2. Le contrat du 24 août 1904, entre la demanderesse et The Montreal Light Heat & Power Company, empêche-t-il la demanderesse de traiter les dits tuyaux à gaz comme des biens imposables ?

p. 112.

Non, pas aujourd'hui. L'exemption stipulée dans ledit contrat n'était que pour vingt ans. Or ce terme de vingt ans est expiré; et les taxes présentement réclamées, et pour lesquelles la demanderesse a obtenu jugement, sont postérieures audit terme.

37. Nothing needs to be added, save perhaps that any exemption intended to run for a longer period than twenty years would have been illegal as *ultra vires* of the powers of the municipality under section 4559 of the R.S.Q. 1888, in force at the time and which reads as follows :

4559. The council may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding twenty years, any person who carries on any industry, trade or enterprise whatsoever, as well as the land used for such industry, trade or enterprise, or agree with such person for a fixed sum of money

payable annually for any period not exceeding twenty years, in RECORD.  
 commutation of all municipal taxes.

The law has been changed since, but not in a way favourable to the Appellants' contention. On the contrary, all such exemptions from taxes are now prohibited.

38. The next means of defence of one of the Appellants, the Montreal Light, Heat & Power Company, seems hardly worth mentioning. In paragraph 10 of its plea, it is alleged that should the action fail as against the Montreal Light, Heat & Power Consolidated, it can no longer stand  
 10 against the Montreal Light, Heat & Power Company, since the latter is only an accessory party a *mis-en-cause* and not properly a defendant. p. 19, l. 36.

39. In this connection, it is apparent from the record that the Montreal Light, Heat & Power Company was joined in the action as a co-defendant, or in the wording of the amended writ of summons, " *mise-en-cause comme co-défenderesse*," this being done under sections 521 and 525 of the Code of Civil Procedure which reads as follows :—

521. Non-joinder in the suit of a person whose presence is necessary does not entail nullity, if by amendment he is made a party to the action.

20 525. When a new defendant is joined in an action, he must be served with a copy of the writ of summons and of the declaration in the ordinary manner; and the action, in so far as he is concerned, is considered to have commenced only with such service.

The above-named Appellant appealed before the Court of King's Bench from the judgment of the Superior Court, which had allowed its being joined to the action as co-defendant. This appeal was dismissed, and the judgment of the Court of King's Bench was not appealed from, and therefore became *res judicata*.

Mr. Justice Tellier dealt with that point in the following terms :—

30 La régularité de sa (The Montreal Light, Heat & Power Company) p. 115, l. 3.  
*mise-en-cause comme co-défenderesse ne me paraît pas discutable. L'article 521 C.p.c. l'autorisait. Tout ce que requiert cet article et l'article 525 a été fait. La procédure est régulière.*

*Au mérite, ladite Compagnie ne peut se plaindre : les tuyaux affectés sont à elle.*

Mr. Justice Hall, after reviewing the proceedings upon the motion to amend, the amendment, the exception to the form and the appeal from the judgment dismissing same, reaches the same conclusion :

40 I conclude, therefore, that the Montreal Light, Heat and Power  
*Company* was validly joined to the action as co-defendant with the Montreal Light, Heat & Power *Consolidated*. p. 122, l. 31.

40. The Respondent's claim against the other Appellant, the Montreal Light, Heat & Power Consolidated, rests : Firstly : On Sections 567 to

RECORD. 582 of the Quebec Civil Code and the emphyteutic lease (or holding and operating contract as one may choose to call it) of June 7th, 1916, and especially on section 12 thereof, which reads as follows :—

p. 176, l. 33.

12. The Contractor binds and obliges itself to pay all costs and expenses of operation of every description including municipal taxes, assessments on property owned by the Companies and occupied by the Contractor and to keep the property of the Companies free and clear of all liens and encumbrances arising from taxes and assessments or from any act of the Contractor during the continuance of the present agreement.

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and secondly : on section 534 of the Cities and Towns Act, to wit :

534. Municipal taxes, imposed on any land, may be collected from the tenant, occupant or other possessor of such land as well as from the owner thereof, or from any subsequent acquirer of such land, even where such tenant, occupant, possessor or acquirer is not entered on the valuation roll.

It is admitted that the name of the Montreal Light, Heat & Power Consolidated does not appear on the Respondent's valuation and collection Rolls which truly and rightly mention as proprietor the Montreal Light, Heat & Power Company. Ignoring entirely the emphyteutic lease, the Montreal Light, Heat & Power Consolidated alleged in Paragraph 9 of its plea : " That Defendant is not the proprietor, holder or in possession of any " land within the municipality, upon which the gas mains in question in " this case are located," thereby urging that the word " land " as found in section 534 of Cities and Towns Act, must be construed strictly so as not to include in its scope the gas mains in question.

p. 18, l. 1.

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pp. 173 et  
seq.

41. The contract of June 7th 1916 between the Montreal Light, Heat & Power Company and the Civic Investment & Industrial Co. (now the Montreal Light, Heat & Power Consolidated) has first to be considered. Respondent's humble submission is that, whatever name may be given to it by Appellants, it is well and nicely an emphyteutic lease, and as such is ruled and governed by sections 567 to 578 of the Quebec Civil Code. All essential elements of an emphyteutic lease are to be found therein, namely : the long duration, 98 years ; the obligation for the lessee to develop and improve, and finally the obligation to pay " all land charges to which the " property is subjected " (Civil Code 576).

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p. 176, l. 33.

Besides and without prejudice to the foregoing, section 12 of the said contract specially provides that the Montreal Light, Heat & Power Consolidated shall pay " all costs and expenses of operation of every " description including municipal taxes, assessments on property . . . "

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42. Such is the view taken by Mr. Justice Hall, in the Court of King's Bench, when he says :

p. 129, l. 12.

We find then that the contract, although not so specifically denominated, contains all the essentials of an emphyteutic lease, is a contract by which the proprietor of an immoveable conveys it

for a time to another, the Lessee subjecting himself *to make improvements*; to pay the Lessor an annual rent, and to such other charges as may be agreed upon.

RECORD.

10 The improvements effected by the Lessee—that is—The Montreal Light, Heat & Power Consolidated, which necessarily include the extensions of, and additions to, the gas mains in question, were, it is clear, made by the Montreal Light Heat & Power Consolidated, out of those receipts, which, by the terms of the contract, became its own property; since it is provided that the “Contractor” shall retain as its remuneration all the earnings and income arising from the Company’s lands and buildings, and the operation of its plant and apparatus as the Contractor’s own property and for the Contractor’s own purposes, subject only to the deduction of such sums as may be requisite to pay a dividend as hereinbefore provided upon the present capital stock of the Company.

In my opinion, therefore, the argument submitted by Counsel for the City, based upon the interpretation of this contract as an emphyteutic lease is well-founded.

20 Having reached that conclusion, he does not deem it necessary to express any opinion upon the meaning and extent of section 534 of Cities and Towns Act. p. 131.

43. Mr. Justice Letourneau (dissenting in part in the Court of King’s Bench), while making no comments on the contract, states that, in his opinion, such contract was not referred to in the Respondent’s statement of claim (declaration) as a specific basis for the claim, and could not, therefore be considered as such by the Court.

The following is an extract from his notes covering the point :

p. 116, l. 9.

30 Pour ce qui est d’un recours contre Montreal Light Heat & Power Consolidated, je crois qu’il n’était pas ouvert à l’Intimée, du moins quant aux taxes municipales.

Il nous faut d’abord éliminer l’idée de baser un recours sur les termes mêmes du contrat intervenu entre les Compagnies, ou sur l’effet que pourrait produire ce contrat comme bail emphytéotique. Car, outre qu’on a plutôt, à ce contrat, pourvu à constituer “a holding Company—holding and operating Company” (Whatley, p. 106) qu’à faire un bail emphytéotique, je dis que ceci exigerait que l’action eut été libellée en conséquence.

40 Or, bien loin de là, et au lieu d’invoquer en la déclaration l’obligation d’un tiers assumée par contrat, en s’est attaqué à The Montreal Light Heat & Power Consolidated comme si cette compagnie eut été débitrice *en loi*. On dit bien incidemment que les défendresses auraient passé entre elles “an emphyteutic lease or agreement under private seal,” mais c’est expressément comme “holder and in possession *animo domini*” de l’immeuble endetté pour taxes (allégation 1 de la déclaration), que The Montreal Light, Heat &

RECORD.

Power Consolidated est poursuivie; à l'allégation 6, l'Intimée est plus explicite encore :

" 6. That in consequence, Plaintiff has the right to proceed by the present action against the Defendants, one as the owner, and the other as possessor and holder " animo domini " of the said immoveable property, for the recovery of said taxes and assessments in capital, interest and costs, which the Defendants refuse and neglect to pay, and to have its privilege declared good and valid and affecting the immoveable property hereinabove mentioned."

C'est donc comme " holder," " occupant " ou " possessor " que l'Intimée recherche The Montreal Light, Heat and Power Consolidated." 10

With all due respect, it is humbly submitted on behalf of the Respondent that the contract referred to was alleged in the declaration (Statement of claim) and filed of Record and that the Courts below were right in taking cognizance thereof in its full extent and meaning; moreover, paragraph 1st. of the declaration describes it as an emphyteutic lease, thereby referring to 567 et seq. of the Civil Code as well as to every section of the contract itself, insofar as they apply to the case.

p. 14, l. 34.

44. Let us now turn to section 534 of the Cities and Towns Act, relied upon by both the Respondent and the Montreal Light, Heat & Power Consolidated. The latter's contention may be summarized as follows: " I occupy or possess no land in the City, therefore, I cannot be assessed as ' tenant, occupant, or other possessor of such land,' even where such tenant, occupant, possessor or acquirer is not entered on the valuation roll." The issue is thereby set out squarely: Is the word " land " in section 534, to be construed strictly and restrictively, or should its meaning be extended to make it, under the Cities and Towns Act, a synonymous of immoveable, immoveable property, or real property? 20

p. 18

45. All the judges of the Courts below, including Mr. Justice Letourneau, agree that, inasmuch as the School taxes are concerned, that word " land " is not to be distinguished from the words " immoveable or immoveable property," for section 2, par. 15 of the Education Act (R. S. Q. 1925, Ch. 133) clearly sets out that: 30

p. 114, l. 32.  
p. 115, l. 29.  
p. 118, l. 6.

(15) The words " real estate," " land " or " immoveable " mean all lands, held or occupied by one person or by several persons jointly, including the buildings and improvements thereon and including everything that is immoveable by virtue of the municipal laws governing the territory of school municipalities;

Accordingly, the judgment of the Court of King's Bench is unanimous insofar as the school taxes are concerned. 40

46. No such definition though is to be found in the Cities and Towns Act. Whence the Appellants contend that section 534 must be construed strictly and that the words " land " " immoveable," " real estate," are by no

means interchangeable, under the Cities and Towns Act. Such is also RECORD.  
Mr. Justice Letourneau's opinion :

La règle est que les taxes foncières doivent être réclamées des p. 117.  
personnes portées au Rôle (*Lalonde v. Seguin*, 32 R. de J., p. 209),  
et je ne vois qu'une exception à cette règle, celle que fait la loi  
(art. 534) et qui permet qu'on puisse en outre s'adresser au locataire,  
à l'occupant ou autre possesseur d'un terrain, même si ce locataire,  
cet occupant ou cet autre possesseur n'est pas lui-même porté au  
Rôle.

10 C'est manifestement à cette disposition exceptionnelle de la  
loi, que pensait l'Intimée en rédigeant sa déclaration amendée, et  
ladite Intimée ne peut, avec une demande ainsi formulée, prétendre  
à une autre base. Le malheur, c'est que cet article 534 se borne  
à parler des "taxes municipales imposées sur un terrain . . .,"  
et, lorsqu'il s'agit d'une disposition exceptionnelle, étendant à un  
recours pour taxes et dont les termes sont absolument clairs, il ne  
peut être question d'équité, d'analogie, ni même d'intention du  
législateur (voir l'opinion de Lord Cairns que citait M. le juge Carroll  
dans *Town of Westmount v. Montreal Light, Heat & Power Co.*,  
20 B.R. 244, voir p. 254). Les termes de la disposition qui est  
20 invoquée sont clairs et formels et à moins de vouloir dire que le mot  
"terrain" comprend tout immeuble, les tuyaux à gaz, etc., il nous  
faut reconnaître que cette disposition ne peut ici jouer en faveur  
de la Cité Intimée. La Cour Suprême dans *Montreal Light, Heat &  
Power Consolidated v. The City of Westmount* (1926 C.L.R. p. 515)  
nous suggère (voir notes du Juge en Chef, p. 523 du rapport) que  
dans un cas comme celui-ci, il faut donner aux termes leur sens  
propre et usuel.

30 De sorte qu'avec la loi telle que je la comprends, et telle qu'elle  
est en réalité il me semble, l'Intimée ne pouvait à la faveur de  
l'article 534, de la Loi des Cités et Villes (S.R.Q. 1925, Chap. 102),  
s'adresser à un "holder" "occupant" ou "Possessor" pour les  
taxes municipales que lui devait pour un système de tuyaux à gaz,  
la propriétaire véritable de ces tuyaux, effectivement portée au  
rôle.

40 A mon humble avis, l'action contre *The Montreal Light, Heat &  
Power Consolidated* aurait dû être renvoyées du moins quant aux  
taxes municipales, puisqu'à raison des définitions statutaires (S.R.Q.  
1925, Ch. 133, art. 2, para. 15), on pourrait m'objecter que l'inter-  
prétation restrictive que j'ai cru devoir donner à l'article 534 de  
l'Acte des Cités et Villes ne s'applique plus dès qu'il s'agit de taxes  
scolaires.

47. Mr. Justice Hall did not deem it necessary to express an opinion p. 131.  
on that particular point, since he had reached his conclusions through  
another way. Mr. Justice Tellier holds, contrary to Mr. Justice Letourneau's

RECORD. view, that the gas mains in question are taxable under Section 534 of the Cities and Towns Act, as well as under Section 249 of the Education Act.  
p. 114, l. 32.

4. La Montreal Light, Heat and Power Consolidated peut-elle être recherchée, pour les taxes dont il s'agit, sans que son nom figure au rôle de perception de la demanderesse ?

Je crois qu'elle le peut.

La dite compagnie possède et exploite elle-même l'installation et les tuyaux au moyen desquels la municipalité d'Outremont et ses habitants sont approvisionnés de gaz. Cela suffit, suivant l'article 534 de la Loi des cités et villes et l'article 249 de la Loi de l'instruction publique, pour qu'elle puisse être recherchée personnellement. La demanderesse a un égal recours contre le propriétaire, le locataire, l'occupant ou le possesseur des dits tuyaux à gaz. 10

L'action est donc bien dirigée, contre la Montreal Light, Heat & Power Consolidated.

And Messrs. Justices Howard and Galipeault concurred in the judgment.

48. The Respondent's submission, which appears to have been favourably received by the Courts below, is that under the Cities and Towns Act (R.S.Q. 1925, Ch. 102) as well as under the Education Act (Ch. 133) those words *land, immoveable, real estate, real property*, are equivalent in their meaning and interchangeable. 20

In fact, the Cities and Towns Act makes an indifferent use of them, regardless of their strict sense, and employs now "land," now "immoveable," then "property" always to mean "immoveable."

Thus section 491 (R.S.Q. 1925, ch. 102) enacts that :

491. If the owner of any *lot of land* be unknown, the assessors shall insert the word "unknown" in the column of names of owners . . .

Now section 499 (R.S.Q. 1925, ch. 102) : 30

499. If any *property* be omitted from the roll prepared by the assessors, the Council may order such officers to value such property and to add it to the roll.

Then Section 502 :

502. After every change of owner or occupant of any *lot of land* set forth in the valuation roll in force, the council . . . may erase the name. . . .

Again Section 533 :

533. Any person, not being the owner, who pays municipal taxes imposed in consideration of the land which he occupies, shall be subrogated without other formality, in the privileges of the municipality on the moveable or immoveable property of the owner, and may, unless there be an agreement to the contrary, withhold from the rent or from any other debt which he owes him, or recover from him by personal action, the amount which he has paid in principal, interest and costs. 40



What, if that person "who is not the owner" pays the taxes due on a building owned by someone who does not own the land upon which it is built, as is sometimes the case, and which is therefore valued and assessed separately? Will that occupant be deprived of the subrogation to which he is entitled under that section?

RECORD.

Finally section 520 of the same Act illustrates better than any other the interchangeableness of those terms.

520. The following *property* shall not be subject to taxation :

- 10 A. *Lands* belonging to His Majesty or held in trust for the service of His Majesty.
- B. The *property* of the Federal and Provincial Governments and the municipal corporations.
- C. That belonging to *fabriques* or religious charitable or educational institutions. . . .
- D. *Property* possessed and used for public worship. . . .
- E. *Immoveables* used for libraries open to the public. . . .
- F. All educational *establishments* (in french: maisons). . . .

49. If the Appellants' views were to be adopted, it would lead to the unexpected conclusion that in Cities and Towns of the Province of  
20 Quebec, His Majesty could be under legal obligation to pay municipal taxes on a house which he might be pleased to own therein. It is common knowledge that everywhere in the Province, all properties held in the name of the Crown, the buildings as well as the lands upon which they are built are exempt from taxation.

50. The Respondent submits that the Appeal should be dismissed and the judgment of the Court of King's Bench (appeal side) dated the 30th October 1930, and that of the Superior Court, dated the 14th October 1929, should be affirmed for the following, among other

### REASONS.

- 30 1. Because the correctness of the claim and the validity, *in se*, of by-laws, resolutions or contracts which are at the basis thereof, are proven and not questioned.
- 2. Because the gas mains assessed are immoveable within the meaning of the laws in force within the Respondent's territory.
- 3. Because the contract (franchise) passed on August 24th, 1904, between the Respondent (then the Town of Outremont) and the Montreal Light, Heat & Power Company did not and could not, under the law then in force, entail an  
40 exemption from municipal taxation for a longer period than twenty years.

4. Because the subrogation stipulated in the aforesaid Contract in favour of the said Montreal Light, Heat & Power Company, its assigns and successors in law, was only in respect of the supply of gas to the citizens of the Town, and cannot be construed as placing the said Company's properties on an equal footing with those of the Town for a period of thirty years.
5. Because, as regards the Appellant, the Montreal Light, Heat and Power Company, it is the owner of the aforesaid property entered on the valuation and tax collection Rolls of the Respondent, and as such, was rightly joined in the action as Co-defendant. 10
6. Because there is *res judicata* insofar as the aforesaid Appellant's standing in the case is concerned.
7. Because, as regards the Appellant, The Montreal Light, Heat & Power Consolidated, the said Appellant is liable jointly and severally with the other Appellant for municipal and school taxes as occupant under section 534 of the Cities and Towns Act.
8. Because the said Appellant is also bound to the payment of the aforesaid taxes by the terms and provisions of the contract passed on June 7th 1916 between the Montreal Light, Heat and Power Company and the Civic Investment and Industrial Co. (now the Montreal Light, Heat & Power Consolidated), as well as under the provisions of Sections 567 *et seq.* of the Quebec Civil Code. 20
9. Because, under (a) the Quebec Code of Civil Procedure, (b) the Education Act (R.S.Q. 1925, ch. 133), (c) The Cities and Towns Act and the special provisions thereof applicable to the Respondent (R.S.Q. 1925, Ch. 102), and (d) the (Quebec) Acts 15 Geo. V, Ch. 45 and 16 Geo. V, Ch. 47, the Superior Court has jurisdiction to deal with a law suit for school taxes as claimed herein, together with municipal taxes, in one and same action by the municipality. 30
10. Because, such jurisdiction of the Superior Court was implicitly affirmed by the Supreme Court of Canada and the Courts below in the case of *City of Westmount vs. Montreal Light, Heat & Power Consolidated* (Canada Law Reports, 1926, Supreme Court p. 515 *et seq.*) in virtue of Section 171 of the Quebec Code of Civil Procedure. 40
11. Because of the reasons given by the Judges in the Court below.

C. P. BEAUBIEN.  
J. H. MICHAUD.

In the Privy Council.

No. 45 of 1931.

*On Appeal from the Court of King's Bench for the  
Province of Quebec (Appeal Side) Canada.*

BETWEEN

THE MONTREAL LIGHT, HEAT & POWER  
CONSOLIDATED (*Defendant*) and THE  
MONTREAL LIGHT, HEAT & POWER  
COMPANY (*Co-Defendant*) - - *Appellants*

AND

THE CITY OF OUTREMONT (*Plaintiff*)  
*Respondent.*

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CASE OF THE RESPONDENT.

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