

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 and Power Consolidated and
The Montreal Light, Heat and Power Company.**

Bodies politic and incorporate, duly incorporated, having their head offices
and chief places of business in the City and District of Montreal.

**(Defendants and Mis-en-Cause in the Superior Court and Appellants
in the Court of King's Bench)**

APPELLANTS

and

The City of Outremont

A body politic and corporate, duly incorporated, having its head office and
principal place of business in the city of Outremont, District of Montreal.

(Plaintiff in the Superior Court and Respondent in the Court of King's Bench)

RESPONDENT

RECORD OF PROCEEDINGS

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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

10 BETWEEN

**The Montreal Light, Heat and Power Consolidated and
The Montreal Light, Heat and Power Company**

Bodies politic and incorporate, duly incorporated, having their head offices
and chief places of business in the City and District of Montreal.

**(Defendants and Mis-en-Cause in the Superior Court and Appellants
in the Court of King's Bench)**

APPELLANTS

20 and

The City of Outremont

A body politic and incorporate, duly incorporated, having its head office and
principal place of business in the City of Outremont, District of Montreal.

(Plaintiff in the Superior Court and Respondent in the Court of King's Bench)

RESPONDENT

30

RECORD OF PROCEEDINGS

No. 1.

Writ and Declaration

40 Province de Québec
District de Montréal
Cour Supérieure

No 14082

In the
Superior
Court
No. 1
Writ and
declaration.
16 Dec. 1926

George Cinq, par la Grâce de Dieu, Roi du Royaume-Uni de la
Grande-Bretagne et d'Irlande et des Possessions britanniques d'au delà
des mers, Défenseur de la Foi, Empereur des Indes.

A tous huissiers de la Cour supérieure de la province de Québec,
immatriculés au district de Montréal.

Salut:

In the
Superior
Court

No. 1
Writ and
declaration.
16 Dec. 1926
(Continued)

Nous vous enjoignons de citer

The Montreal Light Heat & Power Consolidated, corporation légalement constituée, ayant son principal établissement dans les Cité et District de Montréal,

Défenderesse

— & —

10

~~The Montreal Light Heat & Power Company, corporation légalement constituée, ayant son principal établissement dans les Cité et District de Montréal, Mise en Cause comme co-défenderesse suivant jugement de cette cour du 22 mars 1927.~~

à comparaître au greffe de Notre Cour supérieure, séante à Montréal, au palais de justice, dans le délai de six jours après le jour de la signification du présent bref, (outre, s'il y a lieu, un jour par cinquante milles de distance additionnels, le délai ne devant pas toutefois excéder vingt jours), pour répondre à la demande de La Cité d'Outremont, corporation légalement constituée, ayant son principal établissement dans la Cité d'Outremont, District de Montréal, expliquée dans la déclaration (ou requête libellée) ci-jointe. 20

Faute par le (s) défendeur (s) de comparaître dans ledit délai, jugement pourra être rendu contre lui (ou eux) par défaut. 30

Nous vous enjoignons en outre de faire, le ou avant le dernier jour du délai pour comparaître, rapport audit greffe des présentes et de vos procédures y relatives.

En Foi de Quoi Nous avons fait apposer aux présentes le sceau de Notre Cour supérieure et le seing du protonotaire d'icelle, à Montréal, le seizième jour du mois de décembre en l'an de Notre-Seigneur mil neuf cent vingt-six. 40

J. M. Latour,

Député-protonotaire C. S.

Je, soussigné, résidant à Montréal, dans le district de Montréal, l'un des huissiers de la Cour supérieure de la province de Québec, reçus et immatriculés pour ledit district, certifie que, le 21ème jour du mois de décembre mil neuf cent vingt-six entre 4 et 5 heures de l'après-midi j'ai signifié à la défenderesse en cette

cause le présent bref d'assignation, la déclaration et les comptes y annexés, en lui en laissant copies certifiées véritables, en laissant les dites pièces à son principal bureau d'affaires, en les Cités et District de Montréal en parlant à une personne raisonnable en charge du dit bureau et que j'ai noté, sous ma signature, le jour de la signification au dos de ladite copie du bref ainsi signifiée.

In the Superior Court
No. 1
Writ and declaration.
16 Dec. 1926
(Continued)

10 Je certifie, de plus, que la distance de ma résidence au lieu de la signification est de mille , et que la distance du palais de justice à Montréal, au lieu de la signification, est d'un mille et que mes frais de signification sont de \$1.35, tel que détaillé ci-après:

Signification.....	\$1.00	Mille.....	35
	<hr/>		\$1.35

Daté à Montréal, le 21 décembre 1926.

20

(Signé) R. Robitaille,
Huissier.

DECLARATION

Plaintiff declares:—

30 1o.—The Defendant Company is the proprietor, holder and in possession as such of immoveable property consisting of gas mains forming part of their system for supplying gas within the limits of the City of Outremont;

40 2o.—That in virtue of Plaintiff's collection rolls, including collection rolls for school taxes and assessments, the taxes and assessments, as more fully appears by reference to certified extracts thereof herewith produced and attached hereto to form part hereof, amounting to \$3,349.60 (including interest at six per centum per annum accrued to December 1st, 1926), have been imposed on the said immoveable property of the Defendant and are now exigible, with interest at six per centum per annum to be computed from the 1st. of December 1926;

3o.—That said school taxes and assessments for the year ending the 30th. of June 1925, are so claimed by Plaintiff under the authority of a resolution of the School Commissioners for the Municipality of the City of Outremont in the County of Westmount, passed on March 10th. 1919, of another resolution by the School Trustees for the Municipality of the

In the
Superior
Court.
—
No. 1
Writ and
declaration.
16 Dec. 1926
(Continued)

City of Outremont in the County of Westmount, passed on the 7th. of March 1919, and also of a resolution passed by the City Council of the City of Outremont on the 2nd. day of April 1919, certified copies whereof are filed herewith, the said resolutions having been declared legal and valid for all intents and purposes by the Statutes of Quebec, 11 Georges V, Chap. 114, s. 3;

40.—That said School assessments and taxes for the years ending 10 respectively on the 30th. day of June 1926 and 1927, are so claimed by Plaintiff under the authority of the Statutes of Quebec, 15 Georges V, Chap. 45, as amended by the Act 16 Georges V, Ch. 47;

50.—That Defendant has been duly requested to pay the said taxes and assessments and that all required notices have been given and all prescribed formalities have been fulfilled to collect the amount of said taxes and assessments with interest as aforesaid; 20

60.—That in consequence, Plaintiff has the right to proceed by the present action against the Defendant as the owner, possessor and holder of the said immoveable property, for the recovery of said taxes and assessments in capital, interest and costs, which the Defendant refuses and neglects to pay, and to have its privilege declared good and valid and affecting the immoveable property hereinabove mentioned.

WHEREFORE Plaintiff prays that the Defendant be summoned 30 to appear before this Court to answer the present demand and to have its privilege, for the taxes and assessments aforesaid with interests and costs thereon due by the Defendant, declared good and valid and affecting the immoveable property hereinabove mentioned, and further prays that the Defendant be condemned to pay to Plaintiff the said sum of \$3,349.60, with interest at six per centum per annum computed from the 1st of December 1926, the whole with costs. 40

Montreal, December 16th. 1926.

Beaubien, Lamarche & Michaud,
Attorneys for Plaintiff.

No. 2.
Plea of the Defendant

In the
Superior
Court
—
No. 2
Plea of
Defendant
31st Jan. 1927

1. As to paragraph 1 of Plaintiff's Declaration, Defendant denies the same.

2. As to paragraph 2 thereof, Defendant denies the same as drawn, and especially denies that any taxes whatsoever have been legally imposed upon it.

3. As to paragraph 3, Defendant says that the said resolutions speak for themselves and denies that it is affected thereby.

4. As to paragraph 4, Defendant says that the Statutes therein referred to speak for themselves, but Defendant denies that it is in any way affected thereby.

5. As to paragraphs 5 and 6, Defendant denies the same.

And Defendant further pleads:—

6. That all the rolls and proceedings referred to in Plaintiff's Declaration, as well as the valuation rolls upon which the collection rolls are supposed to be based, were and are null and void and *ultra vires* insofar as they purported to value the gas mains and equipment therein referred to and to impose any tax or assessment upon Defendant in respect thereof.

7. That the Plaintiff has never been legally authorized to value or assess the gas mains referred to in paragraph 1 of Plaintiff's Declaration, nor in assessing the said property did Plaintiff comply with the provisions of its Charter, and the said assessments are therefore wholly null and void.

8. 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.

9. That Defendant, while denying that it is the proprietor, holder or possessor as aforesaid, alleges that the gas mains in question in this case were laid at the request of the Plaintiff itself for its convenience and that of its citizens and as required by the terms of a contract passed between Plaintiff and the Montreal Light, Heat & Power Company, and Defendant could not remove same if it wished to do so.

WHEREFORE Defendant, denying that it is liable for any amount whatsoever to Plaintiff, prays that Plaintiff's action be hence dismissed with costs.

Montreal, 31st January, 1927.

Brown, Montgomery & McMichael,
Attorneys for Defendant.

No. 3.

Plaintiff's Motion to amend writ and declaration

In the
Superior
Court.
No. 3
Plaintiff's
Motion to
Amend writ
and
declaration
12 Mch 1927.

1.—WHEREAS Plaintiff has sued the present Defendant for the recovery of \$3,349.60, for arrears of taxes and assessments on the immoveable property, consisting of gas mains within the limits of the City of Outremont, of which the Defendant Company is alleged to be the proprietor, holder and in possession as such; 10

2.—WHEREAS said immoveable property on the valuation and collection rolls of the Plaintiff appears in the name of The Montreal Light Heat & Power Company, a body corporate having its head office at Montreal, who is the bare owner of said assessed and taxed property, though the present Defendant is the holder and in possession as proprietor of the said immoveable property under the terms of an emphyteutic lease or agreement under private seal, an uncertified copy of which being already filed of record by the Company Defendant, as Exhibit P. 3 with the examination on discovery of the Assistant-Secretary-Treasurer of said Company, and the original of which is in the possession of the Defendant, who will be called upon to file same in due time and place; 20

3.—WHEREAS in view of the fact that the said Montreal Light Heat & Power Company is the bare owner of said immoveable property, and as such is the company whose name is mentioned on the valuation and collection rolls of the Plaintiff, it is desirable that the said Montreal Light Heat & Power Company should be made a party in the present case, jointly and indivisibly with the present Defendant, so that by the judgment to be rendered herein the conclusions of Plaintiff's declaration may apply to and be binding upon all interested parties; 30

4.—WHEREAS as a result of the mise-en-cause of the said The Montreal Light Heat & Power Company, Plaintiff's declaration should be amended in conformity with the facts above stated, and to render the conclusions thereof applicable to both companies; 40

5.—WHEREAS Plaintiff has prepared such amended declaration, which is annexed hereto to form part hereof

6.—WHEREAS until the filing of said Exhibit P-3, Plaintiff ignored what were the true and exact relations between The Montreal Light Heat & Power Consolidated and The Montreal Light Heat & Power Company, the same having never been divulged to said Plaintiff.

WHEREFORE Plaintiff prays that by judgment to be rendered on the present motion, it be allowed to amend the writ and declaration in the present action, by adding thereto as co-defendant, the said The Montreal Light Heat & Power Company, and by modifying and adding to the allegations and conclusions of said declaration, the facts set forth and conclusions submitted with and annexed to the present motion, the whole for all legal purposes and under such conditions as this Honourable Court may impose.

In the
Superior
Court.
No. 3
Plaintiff's
Motion to
Amend writ
and
declaration
12 Mch 1927
(Continued)

10

Montreal, March 12th, 1927.

Beaubien, Lamarche & Michaud,
Attorneys for Plaintiff.

20

No. 4.

Plaintiff's amended writ and declaration

District de Montréal
Province de Québec
Cour Supérieure
No. 14082

No. 4
Plaintiff's
amended writ
and
declaration
22 Mch 1927

30

George V, par la Grâce de Dieu, roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des possessions britanniques d'au delà des mers, Défenseur de la Foi, Empereur des Indes.

A tous huissiers de la Cour Supérieure de la province de Québec, immatriculés au district de Montréal.

Salut:

40

Nous vous enjoignons de citer The Montreal Light Heat & Power Consolidated, corporation légalement constituée, ayant son principal établissement dans les Cité et District de Montréal,

Défenderesse,

The Montreal Light Heat & Power Company, corporation légalement constituée, ayant son principal établissement dans les Cité et District de Montréal,
Mise-en-cause,
comme co-défenderesse suivant jugement de cette Cour du 22 mars 1927,

In the
Superior
Court.
No. 4
Plaintiff's
amended writ
and
declaration
22 Mch 1927
(Continued)

à comparaître au greffe de notre Cour supérieure, séante à Montréal, au palais de justice, dans le délai de six jours après le jour de la signification du présent bref, (outre, s'il y a lieu, un jour par cinquante milles de distance additionnels, le délai ne devant pas toutefois excéder vingt jours), pour répondre à la demande de La Cité d'Outremont, corporation légalement constituée, ayant son principal établissement dans la Cité d'Outremont, District de Montréal,

Demanderesse. 10

expliquée dans la déclaration (ou requête libellée) ci-jointe.

Faute par le (s) défendeur (s) de comparaître dans ledit délai, jugement pourra être rendu contre lui (ou eux) par défaut.

Nous vous enjoignons en outre de faire, le ou avant le dernier jour du délai pour comparaître, rapport audit greffe des présentes et de vos procédures y relatives. 20

En Foi de Quoi Nous avons fait apposer aux présentes le sceau de Notre Cour supérieure et le seing du protonotaire d'icelle, à Montréal, le 22ème jour du mois de mars en l'an de Notre-Seigneur mil neuf cent vingt-sept.

J. M. Latour,

Député-protonotaire C.S. 30

Plaintiff declares:—

1. That the Defendant, The Montreal Light Heat & Power Company, is the proprietor, and the Defendant, The Montreal Light Heat & Power Consolidated, is the holder and in possession "animo domini" of immoveable property consisting of gas mains forming part of their system for supplying gas within the limits of the City of Outremont, which property is so held respectively by each company defendant, under the terms of an emphyteutic lease or agreement under private seal, passed and dated at the City of Montreal on the 7th. of June 1916, between The Civic Investment & Industrial Company (now The Montreal Light Heat & Power Consolidated) and The Montreal Light Heat & Power Company, an uncertified copy of which supplied by the Defendants as a true copy of the original is already filed of record as Exhibit P-3, and the original of which is in the possession of said Defendants, who will be called upon to file same in due time and place; 40

2. That in virtue of Plaintiff's collection rolls, including collection rolls for school taxes and assessments, the taxes and assessments, as more fully appears by reference to certified extracts thereof herewith produced and attached hereto to form part hereof, amounting to \$3,349.60 (including interest at six per centum per annum accrued to December 1st. 1926), have been imposed on the said immoveable property of the Defendants and are now exigible, with interest at six per centum per annum to be computed from the 1st. of December 1926;

In the
Superior
Court.
No. 4
Plaintiff's
amended writ
and
declaration
22 Mch 1927
(Continued)

10

3. That said school taxes and assessments for the year ending the 30th. of June 1925, are so claimed by Plaintiff under the authority of a resolution of the School Commissioners for the Municipality of the City of Outremont in the County of Westmount, passed on March 10th. 1919, of another resolution by the School Trustees for the Municipality of the City of Outremont in the County of Westmount, passed on the 7th. of March 1919, and also of a resolution passed by the City Council of the City of Outremont on the 2nd. day of April 1919, certified copies whereof are filed herewith, the said resolutions having been declared legal and valid for all intents and purposes by the Statutes of Quebec, 11 Georges V, Chap. 114, s. 3;

20

4. That said School assessments and taxes for the years ending respectively on the 30th day of June 1926 and 1927, are so claimed by Plaintiff under the authority of the Statutes of Quebec, 15 Georges V, Chap. 45, as amended by the Act 16 Georges V, Ch. 47;

30

5. That Defendants have been duly requested to pay the said taxes and assessments and that all required notices have been given and all prescribed formalities have been fulfilled to collect the amount of said taxes and assessments with interest as aforesaid;

40

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.

WHEREFORE Plaintiff prays that the Defendants be summoned to appear before this Court to answer the present demand and to have its privilege, for the taxes and assessments aforesaid with interests and costs thereon due by the Defendants, declared good and valid and affecting the immoveable property hereinabove mentioned, and further prays that each of the Defendants be condemned to pay to Plaintiff the said sum of

In the Superior Court
\$3,349.60, with interest at six per centum per annum computed from the 1st. of December 1926, and costs.

No. 4
Plaintiff's
amended writ
and
declaration
22 Mch 1927
(Continued)

Montreal, March 22nd, 1927.

Beaubien, Lamarche & Michaud,
Attorneys for Plaintiff.

No. 5.

10

Exception to form by Mis-en-Cause

No. 5
Exception
to form by
Mis-en-Cause
1 April 1927.

WHEREAS in the Writ of Summons herein, the Mise-en-cause is described as "Mise-en-cause comme co-défenderesse suivant jugement de cette Cour du 22 mars 1927"; and

WHEREAS the *dispositif* of the Judgment therein mentioned, namely the Judgment of this Honourable Court of the 22nd March, 1927, reads as follows:—

"PERMET de mettre en cause la Montreal Light, Heat & Power Consolidated (sic.) et d'amender en conséquence par demande-resse les pièces de procédures en par la demanderesse payant une somme globale de \$25.00 et PERMET de plaider de novo,"—the word "Consolidated" being a typographical error for "Company"; and

30

WHEREAS the description of the Mise-en-cause in the Writ as above cited is consequently irregular, unauthorized and illegal and constitutes an irregularity which causes a prejudice to the Mise-en-cause.

WHEREFORE Motion by way of Exception to the Form on behalf of the Mise-en-cause The Montreal Light, Heat & Power Company that the Writ and service herein, in so far as the said Mise-en-cause is concerned, be declared illegal, irregular and null, and that Plaintiff's action, so far as the said Mise-en-cause is concerned be dismissed with costs *sauf à se pourvoir*.

Montreal, 1st April, 1927.

Brown, Montgomery & McMichael,

Attorneys for Mise-en-cause The Montreal Light,
Heat & Power Company.

No. 6.

Defendant's plea

In the
Superior
Court.

No. 6
Defendant's
plea.

8 April 1929.

1. As to paragraph 1 of the said Declaration, Defendant admits that the copy of agreement filed as Exhibit P-3 is a true copy of the original, which agreement speaks for itself; otherwise the said paragraph is denied, and the Defendant now pleading particularly denies that there is
10 any *lien de droit* between it and the Plaintiff.

2. As to paragraph 2, Defendant says that the collection rolls therein referred to speak for themselves, but Defendant denies that it is in any way affected thereby or made liable thereunder.

3. As to paragraph 3, Defendant says that the said resolutions speak for themselves but denies that it is affected thereby, and Defendant moreover pleads that under the terms of the Statute referred to in said
20 paragraph this Honourable Court is without jurisdiction to deal with the matters therein dealt with and referred to.

4. As to paragraph 4, Defendant says that the Statutes therein referred to speak for themselves, but Defendant denies that it is in any way affected thereby.

5. As to paragraph 5, Defendant denies the same and particularly that Plaintiff ever assumed to assess the Defendant for any of the taxes
30 claimed herein.

6. As to paragraph 6, Defendant denies the same and avers that so far as it is concerned there is no *lien de droit* whatsoever between it and the Plaintiff.

And, without waiver of the foregoing, Defendant further pleads:—

7. That all the rolls and proceedings referred to in Plaintiff's
40 Declaration, as well as the valuation rolls upon which the collection rolls are supposed to be based, were and are null and void and *ultra vires* insofar as they purported to value the gas mains and equipment therein referred to and to impose any tax or assessment upon Defendant in respect thereof.

8. That the Plaintiff has never been legally authorized to value or assess the gas mains referred to in paragraph 1 of Plaintiff's Declaration, nor in assessing the said property did Plaintiff comply with the provisions of its Charter, and the said assessments are therefore wholly null and void.

9. 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.

10. That Defendant, while denying that it is the proprietor, holder or possessor as aforesaid, alleges that the gas mains in question in this case were laid at the request of the Plaintiff itself for its convenience and that of its citizens and as required by the terms of a contract passed between Plaintiff and The Montreal Light, Heat and Power Company, and Defendant could not remove same if it wished to do so. 10

WHEREFORE Defendant, denying that it is liable for any amount whatsoever to Plaintiff, prays that Plaintiff's action be hence dismissed with costs.

Montreal, 8th. April, 1929.

Brown, Montgomery & McMichael, 20
Attorneys for Defendant.

No. 7.

Plea of Mise-en-cause.

No. 7
Plea of
Mise-en-cause
8 April 1929.

1. As to paragraph 1 of the said Declaration, the Mise-en-cause admits that the copy of agreement produced as Exhibit P-3 is a true copy of the original, but otherwise the said paragraph is denied. 30

2. As to paragraph 2, the Mise-en-cause denies the same as drawn and specially denies that any taxes whatsoever have been legally imposed upon it.

3. As to paragraph 3, the Mise-en-cause says that the said resolutions speak for themselves but denies that it is affected thereby, and Mise-en-cause moreover pleads that under the terms of the Statute referred to in said paragraph this Honourable Court is without jurisdiction to deal with the matters therein dealt with and referred to. 40

4. As to paragraph 4, the Mise-en-cause says that the Statutes therein referred to speak for themselves but denies that it is in any way affected thereby.

5. As to paragraphs 5 and 6, the Mise-en-cause denies the same.

And without waiver of the foregoing the Mise-en-cause further pleads:—

6. That all the rolls and proceedings referred to in Plaintiff's Declaration, as well as the valuation rolls upon which the collection rolls are supposed to be based, were and are null and void and *ultra vires* insofar as they purported to value the gas mains and equipment therein referred to and to impose any tax or assessment upon the Mise-en-cause in respect thereof.

In the
Superior
Court.
—
No. 7
Plea of
Mise-en-cause
8 April 1929.
(Continued)

10 7. That the Plaintiff has never been legally authorized to value or assess the gas mains referred to in paragraph 1 of Plaintiff's Declaration, nor in assessing the said property did Plaintiff comply with the provisions of its Charter, and the said assessments are therefore wholly null and void.

8. That the Mise-en-cause 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.

20 9. That the gas mains in question in this case, and which are sought to be taxed, were laid and installed under and in virtue of a certain contract between the Plaintiff and the Mise-en-cause entered into on the 24th day of August, 1904, under the terms of which the Plaintiff, for the purpose of obtaining a supply of gas for its municipality and the inhabitants thereof and for the considerations therein mentioned, assigned and transferred to the Mise-en-cause all its rights in connection with such supply in its streets, lanes, avenues, roads and public places, the Mise-en-cause being subrogated to all the rights of the Plaintiff during the period of the said contract. The said mains were installed at the request and instance of Plaintiff and in fulfillment of the obligations of the
30 Mise-en-cause, and upon stipulated conditions as to net revenue and otherwise which it is incompetent for Plaintiff to vary or diminish by the imposition of the taxes herein claimed.

10. That, notwithstanding the interlocutory Judgments herein to which the Mise-en-cause respectfully excepts, the Mise-en-cause cannot be condemned unless the principal Defendant is condemned, the Mise-en-cause having been called in to the present action only as an incident
40 thereof insofar as its presence was necessary.

WHEREFORE the Mise-en-cause, denying that it is liable for any amount whatsoever to Plaintiff, prays that Plaintiff's action be hence dismissed with costs.

Montreal, 8th April, 1929.

Brown, Montgomery & McMichael,
Attorneys for the Mise-en-cause.

Plaintiff's answer to Defendant's Plea

In the
Superior
Court.

No. 8
Plaintiff's
answer to
Defendant's
Plea.
April 22nd
1929.

10.—As to paragraph 1st:—Plaintiff prays act of the admission therein contained and joins issue on the remainder of said paragraph;

20.—As to paragraph 2:—Plaintiff joins issue on the negative allegations thereof;

10

30.—As to paragraph 3:—Plaintiff joins issue on the negative allegations contained in the first part thereof and denies the allegation concerning the lack of jurisdiction of this Honorable Court; Plaintiff further avers that such contention may not now be urged in the Defendant's plea, but should have been raised at an earlier stage by means of a declinatory exception;

40.—As to paragraphs 4 and 5:—Plaintiff joins issue on the negative allegations thereof;

20

50.—As to paragraphs 6 & 7:—Plaintiff denies as ill-founded both in law and in fact the allegations therein contained;

60.—As to paragraph 8:—Plaintiff avers that the allegations thereof are irrelevant, and illegally pleaded and cannot in law support Defendant's conclusions;

70.—As to paragraph 9:—The contract therein referred to speaks for itself and the allegations of the Defendant's plea based thereon are altogether irrelevant and illegally pleaded; moreover, it appears from the said contract that the property now owned by the Defendant and held by the other Defendant within the limits of the Plaintiff was to be exempted from taxation for a certain period of time which had expired when the taxes now sought to be recovered were imposed;

30

80.—As to paragraph 10:—The allegations thereof are denied as ill-founded both in law and in fact;

90.—The Defendant's plea is ill founded in law and in fact and should be dismissed.

40

WHEREFORE Plaintiff, persisting in its conclusions, prays that the plea of the Defendant, Montreal Light, Heat & Power Company be dismissed and Plaintiff's action maintained, with costs.

Montreal, April 22nd. 1929.

Beaubien, Lamarche & Michaud,

Attorneys for Plaintiff.

No. 9.

Plaintiff's answer to plea of Mis-en-Cause

In the
Superior
Court

No. 9
Plaintiff's
answer to
plea of
Mis-en-cause
April 22nd
1929.

10. —As to paragraph 1st:—Plaintiff prays act of the admission therein contained and joins issue on the remainder of said paragraph;

20. —As to paragraph 2:—Plaintiff joins issue on the negative al-
10 legations thereof;

30. —As to paragraph 3:—Plaintiff joins issue on the negative al-
legations contained in the first part thereof and denies the allegation con-
cerning the lac of jurisdiction of this Honorable Court; Plaintiff further
avers that such contention may not now be urged in the Defendant's plea,
but should have been raised at an earlier stage by means of a declinatory
exception;

40. —As to paragraphs 4 and 5:—Plaintiff joins issue on the nega-
20 tive allegations thereof;

50. —As to paragraph 6:—Plaintiff joins issue on the negative al-
legations thereof and denies as ill-founded both in law and in fact the
other allegation of the said paragraph;

60. —As to paragraphs 7 & 8:—Plaintiff denies the allegations
thereof as ill-founded both in law and in fact;

70. —As to paragraph 9:—Plaintiff avers that the allegations there-
30 of are irrelevant and illegally pleaded and cannot in law support Defen-
dant's conclusions;

80. —As to paragraph 10:—The contract therein referred to speaks
for itself and the allegations of the Defendant's plea based thereon are
altogether irrelevant and illegally pleaded; moreover, it appears from the
said contract that the property now owned by the Defendant and held by
the other Defendant within the limits of the Plaintiff was to be exempted
from taxation for a certain period of time which had expired when the
40 taxes now sought to be recovered were imposed;

90. —The Defendant's plea is ill-founded in law and in fact and
should be dismissed.

WHEREFORE Plaintiff, persisting in its conclusions, prays that
the plea of the Defendant, Montreal Light, Heat & Power Consolidated be
dismissed and Plaintiff's action maintained, with costs.

Montreal, April 22nd, 1929.

Beaubien, Lamarche & Michaud,
Attorneys for Plaintiff.

Plaintiff's Evidence on Discovery, G. R. Whatley.

DEPOSITION OF G. R. WHATLEY,

Examined on the part of the Plaintiff on Discovery.

On this twenty-eighth day of February in the year of Our Lord nineteen hundred and twenty-seven, personally came and appeared: 10
George Robert Whatley, Assistant Secretary-Treasurer of the Company Defendant, residing in Montreal, aged fifty-two years, a witness produced on the part of the Plaintiff on Discovery, who after being duly sworn, doth depose and say as follows:

Examined by Mr. J. A. Lamarche K.C., of counsel for the Plaintiff:—

Q.—You are here taking the place of Mr. C. S. Bagg, the Secretary-Treasurer of the Company Defendant who was summoned? 20

A.—Yes.

Q.—Did you bring with you the several documents mentioned in the subpoena duces tecum served on Mr. Bagg?

A.—Yes, I brought all I could get together.

Q.—In the Defendant Company's Plea, it is referred to a contract between the City of Outremont and the Montreal Light, Heat & Company; have you got a copy of that contract?

A.—Yes.

Q.—Will you please exhibit it? 30

A.—Yes.

(The witness exhibits the document.)

Q.—You now show me a certified copy of a contract or agreement passed between the City of Outremont and the Montreal Light, Heat & Power Company, before A. C. Lyman, Notary, and dated the 24th day of August, 1904; is this the only contract the Company Defendant refer to in its Plea?

A.—Yes.

Q.—Will you file a certified copy of that contract as Exhibit P-1 40
at enquete?

A.—We have only the one certified copy of the document, and, with your consent, I will file an uncertified copy, subject to verification.

(The copy is filed and marked P-1).

Q.—Have you got in your possession any request in writing of the City Plaintiff concerning gas mains in the limits of the City of Outremont?

A.—Yes, sir. The records prior to 1915 are not available, having been destroyed.

Q.—What documents have you got?

A.—They are letters from the City of Outremont to the Power Company requesting the installation of gas mains.

Q.—In connection with the execution of the contract between the Company and the City of Outremont?

A.—Yes. I have letters here; May, 1915, November 5th, 1919; April, 1920; another letter of May 27th, 1920; an extract from the Minutes of the Council of May 1920; another letter September 30th, 1920; another letter October 15th, 1920; April 6th, 1921; a request of July 7th, 1923. That is all I have been able to dig up out of our files.

Q.—Will you show me these letters?

A.—Yes, sir.

(The witness shows the letters he has just referred to, and Counsel for Plaintiff takes communication of same.)

Q.—You have no correspondence, letters or other requests, previous to the 29th of May, 1915, which is the first letter in date of those you have mentioned?

A.—That is all I have been able to get. In fact we have worked a week digging up our files, and finding those letters. I could make a further search and ascertain whether there are any others in the cellar, but I hardly think there will be much success. The letters are not attached to the contract as they come in, they are handled by the different departments. The contract itself is on the third floor and the letters are dealt with through the Mains Department, the mains and Service Department.

Q.—What I find in the Plea is that the gas mains were laid at the request of the City of Outremont itself; now, those gas mains, apparently, were laid in execution of the contract, a copy of which you have just filed?

A.—The request I have filed speaks for itself. As to other requests, if any, which are not in my possession, I cannot answer presently.

Q.—Will you produce those several letters, under reserve of Plaintiff's right not to insist upon their filing after examination thereof has been made?

Mr. G. H. Montgomery, K.C., of counsel for the Defendant:— The documents in question, having been exhibited to Plaintiff's Counsel, in response to the subpoena, and having been examined by him, the Defendant's Counsel calls for their production.

Under reserve of the above objection, said documents are filed as Exhibit P-2.

By Mr. Lamarche:—

Q.—Have you got with you contracts, or agreements, or resolutions under which the Defendant Company is in the rights and obligations of the Montreal Light, Heat & Power Company?

A.—I have a copy of an agreement, yes.

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Court
No. 10
Plaintiff's
Evidence on
discovery,
G. R. Whatley
Examination
28 Feb. 1927.
(Continued)

Q.—What you now show me is an uncertified copy of a Memorandum of Agreement, dated the 7th of June, 1916, between the Civic Investment & Industrial Company, and the Montreal Light, Heat & Power Company, in which intervened the Montreal Gas Company and other companies mentioned in Clause 19 of said Memorandum of Agreement?

A.—That is correct.

Q.—The Civic Investment & Industrial Company therein mentioned is known under what name since this Memorandum of Agreement?

A.—It is known as the Montreal Light, Heat & Power Consolidated the name having been changed by Statute in February, 1918. (Quebec Statutes, 8 Geo. V, chap. 111.)

Q.—Now, you have got the original of the contract?

A.—Yes, we have it.

Q.—It is a contract under private seal?

A.—Yes, dated June 7th, 1916. A copy is filed as Exhibit P-3, subject to the same reserve as for Exhibit P-2.

Q.—Is this the only contract or Memorandum of Agreement concerning the relations between the Montreal Light, Heat & Power Company, and the Montreal Light, Heat & Power Consolidated?

A.—Yes, that is the only one I know of.

Q.—Where is the head office of the Montreal Light, Heat & Power Company?

A.—83 Craig Street West, Montreal.

Q.—Where is the head office of the Montreal Light, Heat & Power Consolidated?

A.—83 Craig Street West, Montreal.

Q.—The same office?

A.—Yes.

Q.—Have you got in your possession notices of assessment sent by the City of Outremont?

A.—I have not it in my possession here, no.

Q.—Now, the officers of the two companies are both the same, I suppose?

A.—Yes.

Q.—The present Defendant Company is the holding company, is it?

A.—The Montreal Light, Heat & Power Consolidated is the holding company, — holding and operating company. That is to say, the Consolidated Company holds the majority of the shares of the Montreal Light, Heat & Power Company, and operates the property under the agreement filed as Exhibit P-3.

Q.—If the Defendant Company operates the other companies mentioned in Exhibit P-3, and particularly the Montreal Light, Heat & Power Company, who is paying the bills of the Montreal Light, Heat & Power Company?

A.—That was all agreed by the terms of the contract.

Q.—Which company is doing the works that are required for the

laying of the pipes, gas mains, repairs, etc, within the limits of the City of Outremont? In the
Superior
Court

A.—The actual work is done by the Montreal Light, Heat & Power Consolidated, that is to say the Defendant Company, under the provisions of the contract, Exhibit P-3. No. 10
Plaintiff's
Evidence on
discovery,
G. R. Whatley
Examination
28 Feb. 1927.
(Continued)

Q.—You have stated already that the Montreal Light, Heat & Power Consolidated held a great majority of the shares of the Montreal Light, Heat & Power Company?

10 A.—Yes.

Q.—And the reason of the existence of the Montreal Light, Heat & Power Company is the outstanding shares which the Consolidated Company did not buy yet?

A.—That may be one of the reasons.

And further Deponent saith not.

20

No. 11.

Plaintiff's Evidence, E. T. Sampson.

DEPOSITION OF ERNEST THOMAS SAMPSON,

A witness produced on behalf of Plaintiff.

30 On this twentieth day of September in the year of Our Lord One thousand, nine hundred and twenty nine personally came and appeared, Ernest Thomas Sampson of the city of Outremont, City Clerk and Treasurer of the City of Outremont, a witness produced on behalf of the plaintiff, who being duly sworn doth depose and say as follows: No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Examination
20 Sept. 1929

Examined by Mr. Michaud, of counsel for Plaintiff:—

Q.—You are the city clerk and treasurer of the City of Outremont, the plaintiff in the present case?

A.—Yes.

40 Q.—Will you take communication of exhibit No. 1 filed with the return which appears to be extracts of the collection rolls of the city for the years 1924-1925, 1925-1926, and 1926-27, showing the amount due, or presumed to be due, by the defendant to the plaintiff for municipal and school taxes for those three years, and will you state whether the signature E. T. Sampson that appears there is your signature?

A.—Yes, sir.

I might just mention with regard to school taxes for 1924, that they do not include the school taxes of St. Madeleine Parish, which were collected by themselves in subsequent years.

In the
Superior
Court
No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Examination
20 Sept. 1929
(Continued)

By Mr. Montgomery:—

Q.—Is it the same roll for both?

A.—It is the valuation roll.

By Mr. Michaud:—

Q.—Will you take communication of these nine sheets of paper which are entitled “Valuation and collection rolls for the years 1924-1925, 1925-1926, and 1926-1927, for municipal and School taxes for the City of Outremont, and which appear to be extracts from those rolls including the school taxes, and say whether this is your signature that appears on each of the certificates? 10

A.—It is my signature, with the same qualification that the St. Madeleine School taxes for the year 1924-1925 are not claimed.

Q.—Those extracts bear the name of the Montreal Light, Heat and Power Company: Is that one of the defendant companies?

A.—Yes.

Q.—Will you file those certified extracts of valuation and collection roll for the three years already mentioned as exhibit P-1 at enquete. 20

A.—Yes.

Q.—Will you now take communication of eleven sheets of paper which purport to be copies of resolutions approving the valuation rolls, and imposing the tax, as well as certificates of publication and posting for each of the years 1924-1925, 1925-1926 and 1926-1927, and say whether this is your signature on each of those papers?

A.—Yes.

Q.—Will you file those sheets as P-2 at enquete?

A.—Yes. 30

Q.—Will you now take communication of further documents, being nine in number, purporting to be a certified copy by you of by-laws Nos. 158 of the City of Outremont, 161 and 167 of the same City, amending each other with regard to the imposition of police and fire protection tax in the city, and say whether this is your signature on these documents, together with certificates of posting and publication of all those by-laws?

A.—Yes.

Q.—Those are true copies of the by-laws?

A.—Yes, sir.

Q.—Will you file those as exhibit P-3 at enquete? 40

A.—Yes.

Q.—Will you also take communication of exhibits Nos. 2, 3, and 4 of plaintiff with return, which appear to be copies of resolutions adopted by the School Commissioners (Catholic) for the City of Outremont, and Protestant Board of School Commissioners, and by the City Council, with regard to the collection of school taxes by the city, to the benefit of those two School Boards, and say whether this is your signature on Exhibit No. 4?

A.—Yes.

Q.—And exhibits No. 2 and No. 3 already referred to, were deposited in your office?

A.—Yes.

Plaintiff's files as exhibit P-4 at enquete copy of resolution adopted by the School Commissioners for Outremont (Roman Catholic) of September 15th, 1924, fixing the rate of the school taxes for that year.

It is admitted by the parties as being a true copy of the original resolution hereinabove referred to.

10 Q.—Exhibit P-2, at enquete, already filed, contains also notices that the taxes carried on the rolls therein mentioned, are due and payable for each of the years already mentioned?

A.—Yes sir.

Q.—And those notices have been given in public as reported in the certificates?

A.—Yes.

Cross-examined by Mr. George H. Montgomery, K.C., of counsel for Defendants:—

20 Q.—Taking first your valuation and collection rolls, exhibit P-1 at enquete, do you find the name of the defendants, Montreal Light, Heat and Power Consolidated, anywhere mentioned?

A.—In the first roll.

Q.—In any of them? Exhibit P-1 I think you can safely answer no to that?

A.—No.

Q.—You have perhaps seen the copy of the contract between the Montreal Light, Heat and Power Company and the City of Outremont?

30 A.—Yes.

Mr. Montgomery:—I take it my learned friends will admit that the copy which is filed by the witness as exhibit P-1, with the examination on discovery, is admitted to be a true copy?

Mr. Beaubien:—Yes.

By Mr. Montgomery:—

40 Q.—As regards the school taxes, in your declaration or statement of claim, it is suggested that the school assessments and taxes for the years ending 1926-1927 are claimed under the authority of 16 of the Quebec Statutes, 15 George V, chapter 45, and 16 George V, chapter 47?

A.—That was the amendment to the Protestant Board?

Q.—Yes.

A.—Yes.

Q.—I see by the provision of the latter statute, 16, George V, it is provided that if there is any surplus over the amounts required to be paid to the School Commissioners or Trustees, that it is to be returned to the ratepayer?

A.—Yes. That applied, I believe, for two years. It has since been repealed, as far as Outremont is concerned in the amendment.

In the
Superior
Court

No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Examination
20 Sept. 1929
(Continued)

Cross-
examination

In the
Superior
Court
—
No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Cross-
examination
20 Sept. 1929
(Continued)

Q.—In any event that was applicable to Outremont at that time?

A.—There will be a reduction for these one or two years.

Q.—For these two years?

A.—I forget exactly.

Q.—Two or three years?

A.—Yes, sir.

Q.—And can you tell us what that reduction will be — what per-
centage? I assume you have been returning it to others on the Neutral
panel?

10

A.—I can only give you an approximate idea.

By Mr. Beaubien:—

Q.—You can get it and file it

A.—Yes, I can file it.

By Mr. Montgomery:—

Q.—Will you file then as exhibit D-1 at enquete, a statement or
memorandum, showing the proportion of the school taxes for which the
defendant is entitled to a credit?

20

A.—I will do that.

Q.—You will no doubt recognize the chain of letters which were
filed with the examination on discovery as exhibit P-2?

A.—I recognize all these letters as authentic letters.

Q.—Some of them are signed by you and others by the city en-
gineer, Mr. DuChastel?

A.—Yes.

Q.—Have you made any search to see whether there are any others
of a similar kind?

30

A.—According to the subpoena you sent me, I have a whole mass
of correspondence.

Q.—You have not tried to go through it?

A.—I have not attempted to go through it, there is so much of it.

Q.—You might possibly go through it afterwards and see if there
are any other letters of a like nature: You will do so?

A.—Yes, I will do so.

40

Q.—In the meantime I will ask you to file as exhibit D-2 at enquete,
a letter of a similar nature dated the 5th of November, 1920: That letter
is signed by you?

A.—Yes, sir.

Q.—To save you the trouble of the search which you were request-
ed to make, I understand that it is admitted by the plaintiff that there are
other similar letters and that generally speaking similar requests have
been made on the city from time to time?

A.—Yes.

Q.—The gas mains in question in this case are laid upon the public streets of Outremont I understand?

A.—Yes.

Q.—Have you the by-laws which were passed providing for this contract?

A.—By-laws 58, 64, 65, 59. They are the by-laws relating to the franchise.

10 By Mr. Beaubien:—

Q.—The Montreal Light, Heat and Power?

A.—Passed in 1904. There are various dates.

By Mr. Montgomery:—

Q.—Will you file as exhibit D-3 copy of by-law No. 59 concerning supply of gas to the town of Outremont, adopted on the 23rd of May 1904?

A.—Yes.

20 Q.—And will you file as exhibit D-4 a copy of by-law No. 65 adopted on the 30th of July, 1904, replacing By-law 59, and relating to the supply of gas?

A.—Yes.

Q.—These are the two by-laws which were passed preceeding the contract which has already been filed?

A.—I will have to verify that.

Q.—I think they are referred to in the contract?

A.—Yes, that is right.

30 Q.—By-laws somewhat similar in terms were passed relating to the electric portion of the contract?

A.—Yes.

Q.—For instance, what I refer to in the contract as by-law No. 64 would deal with the electric end and we would not be concerned in producing it in this case?

A.—No, not in this case.

Re-examined by Mr. Michaud of counsel for Plaintiff:—

40 Q.—Will you take communication of the following letters, namely one of December 4th, 1915, written by the defendant, the Montreal Light Heat and Power Company to the plaintiff, second, one dated March 22nd, 1917, written by the Civic Investment and Industrial Company operating the Montreal Light Heat and Power Company and other companies again to the plaintiff, and a third one dated June 14th, 1917, addressed by the Montreal Light Heat and Power Company operated by the Civic Investment and Industrial Company to the plaintiff, and last a fourth letter dated May 17th, 1918, addressed by the other defendant the Montreal Light Heat and Power Consolidated operating the Montreal Light Heat and Power Company and other companies, again to the plaintiff, and will you say whether those were received by the plaintiff?

A.—Yes.

In the
Superior
Court
—
No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Cross-
examination
20 Sept. 1929
(Continued)

Re-examina-
tion

In the
Superior
Court
No. 11
Plaintiff's
Evidence,
E. T.
Sampson.
Re-examina-
tion
20 Sept. 1929
(Continued)

Mr. Montgomery K.C., of counsel for Defendant objects to this evidence as irrelevant and as not being covered by the pleadings.

The Court reserved the objection.

Q.—Will you file those four letters as exhibit P-5 at enquete?

A.—Yes.

Q.—You notice the first of those letters, that of December 4th, 1915, bears the letter head of the Montreal Light Heat and Power Company?

10

A.—Yes.

Q.—The letter of the 22nd of March 1917, the letter head reads the Civic Investment and Industrial Company operating Montreal Light, Heat and Power Company?

A.—Yes.

Q.—The letter of June 14th, 1917, the letter head reads Montreal Light, Heat and Power Company operated by the Civic Investment and Industrial Company?

A.—Yes.

Q.—And that of May 17th, 1918 reads Montreal Light, Heat and Power Consolidated, which is the name of the other defendant operating the Montreal Light, Heat and Power Company?

20

A.—Yes.

Q.—Did the City of Outremont, the plaintiff herein, ever receive any notice, formal or informal of the transfer of rights and interest under the contract filed with the examination on discovery of G. R. Whatley, between the City and the defendant, the Montreal Light, Heat and Power Company, by this latter company to any other firm, corporation or person?

30

Mr. Montgomery of counsel for Defendant objects to this question as irrelevant and as not being covered by the pleadings.

The Court reserved the objection.

A.—Not to my knowledge.

Q.—You are the City clerk of the City of Outremont?

A.—City Clerk and Treasurer.

Q.—The correspondence addressed to the City of Outremont first passes through your hands?

40

A.—Addressed simply to the city it would come to me first.

Q.—Since how long?

A.—Since 1911, 18 years.

And further Deponent saith not.

Evidence of Defendant and Mis-en-Cause, C. D. Turcotte.

In the
Superior
Court
—
No. 12
Evidence of
Defendant
and
Mis-en-cause,
C. D.
Turcotte.
Examination
20 Sept. 1929.

DEPOSITION OF CHARLES DONAT TURCOTTE

A witness produced on behalf of the Defendant and Mis-en-cause.

10 On this twentieth day of September, in the year of our Lord, one thousand nine hundred and twenty nine, personally came and appeared: Charles Donat Turcotte of the city of Montreal, Office Manager of the Gas Distribution of the Montreal Light, Heat and Power Consolidated, aged forty five years, a witness produced on behalf of the Defendant and Mis-en-cause, who being duly sworn doth depose and say as follows:

Examined by Mr. Geo. H. Montgomery, K.C., of counsel for Defendant:—

20 Q.—I understand that you have been connected with the Gas Distribution Department of the Montreal Light, Heat and Power Company for a great many years, Mr. Turcotte?

A.—Twenty six years.

Q.—During all the time in issue in this case in any event?

A.—Yes, sir.

Q.—You were there when this contract was originally made in 1904?

A.—Yes, sir.

30 Q.—And I suppose, generally speaking, you are familiar with the gas service, that is, of the installation of the mains, and their location in the city of Outremont?

A.—I am.

Q.—That really comes under your special branch, keeping a record of those things and so on?

A.—It does.

Q.—Where are the mains located? In the streets or on your private property:

A.—All in the streets.

40 Q.—That is, the public streets of the city of Outremont?

A.—The public streets of the city of Outremont.

Q.—You have no gas manufacturing plant or gas holders in the city of Outremont?

A.—No.

Q.—To what are your mains connected on the supply end?

A.—To the service.

Q.—They emanate, do they not, from the manufacturing plant or holders in the city of Montreal?

A.—Holders located in the city.

In the
Superior
Court
No. 12
Evidence of
Defendant
and
Mis-en-cause,
C. D.
Turcotte.
Examination
20 Sept. 1929.
(Continued)

Q.—And extended into Outremont, as it were?

A.—Yes, sir.

Q.—And on the public streets of Outremont?

A.—Yes, sir.

Q.—You have not any private lands there?

A.—No.

Q.—When I say private lands, I mean lands belonging to either of the Defendant companies?

A.—No.

Q.—Are you familiar with the letters which have been produced as Exhibit P-2 with the examination of Mr. Whatley on discovery?

A.—Yes, sir.

Q.—You are now looking at the letter of what date?

A.—Letter of the 29th of May, 1915, from the Secretary-Treasurer of the city of Outremont, Mr. Sampson, to the Montreal Light, Heat and Power Company.

Q.—That is a letter requesting you to instal your mains?

A.—Yes, sir.

Q.—Just run over them and see if you have anything special to say in connection with any one of them?

A.—The next letter here is one dated November 5, 1919, addressed to the Montreal Light, Heat and Power Company, by Mr. Duchastel, City Engineer.

Q.—That relates to the Wiseman Avenue extension?

A.—It relates to Wiseman Avenue, and insists that the gas main to supply some houses on Wiseman Avenue be laid, or else they would have to take the matter before the Public Utilities Commission at once, and mentions that this was in accordance with the resolution passed by the Council of Outremont.

Q.—Without going through them all Mr. Turcotte, and speaking generally, have the mains in Outremont been laid for the purpose of getting a profit, involuntarily, or have they been laid under pressure from the city of Outremont?

A.—Under continuous pressure, and I think this letter is very typical of all the requests and demands and orders we have had from the city of Outremont. We were asked verbally..... ..

Mr. Michaud:—We object to this answer so far as it goes to interpret the letters, which speak for themselves.

The Court reserves the objection.

Witness continuing:—We were asked by the city of Outremont to extend the gas main lines in territory unprofitable; the lots in Outremont are much wider than those of other municipalities, and most of the buildings are self-contained; therefore, it made the gas main extensions most unprofitable, and the Aldermen of the city, and the Council, and all others concerned, continuously were after us and wanting to force us; I

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think they appreciated that the contract was very exacting, and we could not get the consumers at the time. When the town saw that the company could not derive a reasonable interest on its outlay, they used different clauses to force the company.....

In the
Superior
Court

No. 12
Evidence of
Defendant
and
Mis-en-cause,
C. D.
Turcotte.
examination
20 Sept. 1929.
(Continued)

Mr. Michaud of counsel for Plaintiff objects to this answer as irrelevant and not pleaded.

Objection reserved.

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Q.—In any event, Mr. Turcotte, you were held very strictly to the terms of your contract and were obliged to lay these mains against your will?

A.—We were forced throughout to do it.

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I would say that in view of the retroactive nature of the By-Laws, it did not make it very encouraging to build, and the city expected us to stretch conditions to that extent. We even suggested at the time — I think we suggested to the Manager of the city at one time, we wanted to prove to his satisfaction that the revenue would not even yield five percent after two years; the case was at Wiseman Avenue, and the Manager was not satisfied with our suggestion. He said: "I wish you would bring it up in two years." We brought it up in two years, and it was a good deal less than five percent.

Q.—These were pipes that you had installed on their insistence, and you proved to them afterwards that they did not give the required revenue of six percent under the contract?

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A.—Yes.

Q.—I think there are instances where the City Council themselves recognizing it, have advanced the money for the laying of these mains, have they not?

A.—Yes, sir.

Q.—In accordance with the Statute?

A.—Yes. In that case the city was more satisfied than ever that the revenue was not such as to really force the company, and they agreed to make the deposit required to warrant the interest on the outlay that the company was not deriving from its extensions.

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Q.—I understand Outremont is a rather expensive place to instal, in rocky soil?

A.—Yes, very much so.

Same objection.

Same reserve.

Q.—Except for the purpose of supplying this service to the city of Outremont which you were required to do, have these pipes any value?

A.—They have not even the value of scrap.

In the
Superior
Court

No. 12
Evidence of
Defendant
and
Mis-en-cause,
C. D.
Turcotte.
Examination
20 Sept. 1929.
(Continued)

Mr. Michaud of counsel for Plaintiff objects to this question as not pleaded.

Objection reserved.

Q.—They obviously could not be removed so long as they were used for supplying the service?

A.—No.

Q.—Or utilized for any other purpose?

A.—That is the only purpose, if they would cease our total system would be scrap iron. 10

Q.—It would not pay for the removal of it?

A.—No, far from it. I was going to say that we would have been very anxious to make a case before the Public Utilities Commission, but the city of Outremont did not give us a chance to do that. We would have liked to satisfy them, however, that it was a loss.

Q.—The supply of gas to Outremont was a loss?

A.—Yes.

Cross-
examination

Cross-examined by Mr. C. P. Beaubien, K.C., of counsel for Plaintiff under reserve of objections:— 20

Q.—All the evidence that you have given refers to the placing of the pipes in the streets of the town a good many years ago?

A.—To the installation.

Q.—To the installation, practically the first installation of the pipes in new streets that were then opened in a new city?

A.—All over Outremont.

Q.—The city of Outremont was then, I believe, a very small town?

A.—We have only referred back to 1915. 30

Q.—In 1915 the City of Outremont was a small town?

A.—It was not quite as large as it is today.

Q.—Are you aware what the population of Outremont was in 1915? 1915?

A.—No.

Q.—You do not know what it was?

A.—No.

Q.—You do not know that it was not one third of what it is today? Do you know that? 40

A.—I do not know.

Q.—Do you know the population of Outremont now?

A.—I dont know.

Q.—You dont know that the population of Outremnot exceeds that of Westmount?

A.—I don't know. At that it would not be very large.

Q.—Some twenty three thousand or twenty four thousand. I suppose you would not contend that your pipes now actually, or within the last year, were not worth anything in the city of Outremont?

A.—No, I would not say that.

Q.—They are bringing to you now a normal revenue are they not?

A.—I would not say that even today. I would not say that, no, because the building By-Laws of Outremont have not been changed that I know of.

Q.—I am talking of your pipes?

A.—And it prevents, in my opinion, extending our system to a greater extent and getting revenue from it.

10 Q.—Would you claim that the territory of Outremont is not as paying a territory as the average territory that you are serving around the city of Montreal: Would you claim that?

A.—Not when you make a comparison with the congested part of the city. Take, for instance, some of the streets, take the centre of the city we will say, where you have on one lot of twenty five feet six dwellings as compared with one lot of forty feet in Outremont where householders and the families are not as great in number as they are in the heart of the city. It is not the two persons that pay and that lunch down town that will increase the revenue; it is the family which cooks for six
20 and eight or ten persons three times a day.

Q.—Mr. Turcotte, to shorten the matter, would you indicate any town lying around the city of Montreal served by the Montreal Light, Heat and Power Company that is a better territory, taking it all in all for your gas pipes, than Outremont?

A.—There are streets.

Q.—Name them?

A.—And nice houses, and beautiful streets, but from an installation point of view.....

30 Q.—That is not an answer to my question?

A.—From the installation point of view I do not think the conditions are advantageous at all.

By Mr. Montgomery:—

Q.—What Mr. Beaubien wants are the names.

By Mr. Beaubien:—

Q.—Will you answer my question?

40 A.—I could not tell you. You would have to get the Comptrollers of Service.

Q.—You could not tell us?

A.—I could not advise you.

Q.—I am going to help you. Would you consider Cote des Neiges a better territory than the city of Outremont?

A.—I would not say that but there are a lot of big apartments that have gone up lately.

Q.—That is not my question: I am asking you whether it is a better paying territory than Outremont. That is my question to you. Can you say yes?

A.—I would not say yes.

In the
Superior
Court
No. 12
Evidence of
Defendant
and
Mis-en-cause,
C. D.
Turcotte.
Cross-
examination
20 Sept. 1929.
(Continued)

Q.—Would you say that Model City is a better territory than Outremont?

A.—I would not say that it is better.

Q.—You cannot say?

A.—No.

Q.—And therefore, you cannot say now that the territory of the city of Outremont is not as paying a territory for the Montreal Light, Heat and Power Company within the last year, as the territory of any of these cities served by your company and lying in close range to the city of Montreal? 10

A.—I have not got the figures with me that you want.

Q.—You cannot say?

A.—I have not the figures. It is for another Department to produce the figures on that.

By Mr. Montgomery:—

Q.—That is not in your Department?

A.—No. 20

And further Deponent saith not.

No. 13.

Judgment on Plaintiff's Motion to Amend Writ and Declaration, Bruneau J.

No. 13
Judgment on
Plaintiff's
Motion to
Amend Writ
and
Declaration
Bruneau, J.
March 22,
1927.

Province de Québec,

District de Montréal.

No 14082.

COUR SUPERIEURE

Le 22ième jour du mois de mars, 1927.

La Cour, après avoir entendu les parties par leurs procureurs au mérite de la motion de la demanderesse demandant d'amender le bref et la déclaration en cette cause en mettant en cause Montreal Light Heat & Power Consolidated, co-défenderesse et en modifiant les allégations et conclusions de la déclaration ainsi que les faits annexés à la présente motion, pour les causes et les raisons y mentionnées. 40

Permet de mettre en cause la Montreal Light Heat & Power Consolidate, et d'amender en conséquence par demanderesse les pièces de procédures en par la demanderesse payant une somme globale de \$25.00 et PERMET de plaider *de novo*.

A. A. Bruneau,
J. S. C.

Judgment on Exception to the form by Mis-en-Cause, Bruneau J.

Canada,
Province de Québec,
District de Montréal.
10 No 14082.

COUR SUPERIEURE.

Le 11 avril, 1927.

In the
Superior
Court
No. 14
Judgment on
Exception to
the form by
Mis-en-Cause.
Bruneau J.
April 11,
1927.

LA COUR:

ATTENDU que la mise en cause se pourvoit par l'exception à la forme suivante:

20 "Whereas in the writ of summons herein, the mise-en-cause is de-
scribed as "Mise-en-cause comme co-défenderesse suivant jugement de
"cette Cour du 22 mars 1927"; and

"Whereas the *dispositif* of the judgment therein mentioned, name-
ly the judgment of this Honourable Court of the 22nd March, 1927,
reads as follows:

30 "Permet de mettre en cause la Montreal Light Heat & Power
"Consolidate (sic), et d'amender en conséquence par demanderesse
"les pièces de procédures en par la demanderesse payant une som-
"me globale de \$25.00 et Permet de plaider de novo" — the word
"Consolidated" being a typographical error for "Company"; and

"Whereas the description of the mise-en-cause in the writ as above
cited is consequently irregular, unauthorized and illegal and constitutes
an irregularity which causes a prejudice to the mise-en-cause;

40 "Wherefore motion by way of exception to the form on behalf of
"the mise-en-cause The Montreal Light Heat & Power Company that
"the writ and service herein, in so far as the said mise-en-cause is con-
cerned, be declared illegal, irregular and null, and the plaintiff's action
"so far as the said mise-en-cause is concerned be dismissed with costs
"sauf à se pourvoir";

STATUANT:

CONSIDERANT que le tribunal, par son *dictum*, tel que dicté au greffier, et entré au dos de la motion de la demanderesse pour amender, "a permis de mettre en cause la "Montreal Light Heat and Power Co" et d'amender en conséquence les pièces de procédures en par la deman-

In the
Superior
Court

No. 14
Judgment on
Exception to
the form by
Mis-en-Cause.
Bruneau J.
April 11,
1927.

deresse payant une somme globale de \$25.00; Permis de plaider *de novo*”;

CONSIDERANT que sur ce *dictum*, le rédacteur du jugement a écrit le dispositif suivant: “Permet de mettre en cause la Montreal Light Heat & Power Consolidate, etc.”, substituant ainsi le mot “*Consolidate*” à celui de *Co.*, c’est-à-dire “*Company*”;

CONSIDERANT que la dite exception à la forme invoque ainsi une erreur purement matérielle (clerical error): 10

VU l’article 546 du Code de procédure, permettant au juge, *en tout temps*, à la demande d’une des parties, de corriger les erreurs matérielles entachant un jugement; (Voyez les autorités citées sous cet article dans l’affaire de *Arthur v. Baillargeon*, 19 R. P. 392);

CONSIDERANT qu’une exception à la forme n’était pas nécessaire dans la présente espèce: il suffisait de demander au juge la correction de la dite erreur matérielle; 20

CONSIDERANT qu’il incombe plutôt à la demanderesse qu’à la mise en cause de faire une pareille demande puisque l’amendement avait été fait à sa demande;

CONSIDERANT que, dans les circonstances, vu la correction faite par le dispositif du présent jugement, la dite exception à la forme doit être rejetée, mais dépens compensés;

PAR CES MOTIFS: Substitue, dans la désignation de la mise en cause, le mot “*Company*” à celui de “*Consolidate*,” tant dans le dispositif du jugement du 22 mars 1927, que dans les autres procédures où il peut se rencontrer; Rejette la dite exception à la forme, dépens compensés. 30

A. A. Bruneau,
J. C. S.

No. 15.

Judgment of the Court of King's Bench dismissing Appeal from Judgment rendered
11th April, 1927, by Bruneau, J.

In the
Court of
King's
Bench.
—
No. 15
Judgment of
the Court of
King's Bench
dismissing
Appeal from
Judgment
rendered by
Bruneau, J.
11th April
1927.
10 Nov. 1927

CANADA
Province de Québec.
10 No 160.
No 14082 S.C.

COUR DU BANC DU ROI
(En Appel)

Montréal, le dixième jour de novembre, mil neuf cent vingt-sept.

20 PRESENTS:

LES HONORABLES JUGES: LAFONTAINE, J. C.,
ALLARD
BERNIER
RIVARD
HALL

30 LA COUR, après avoir entendu les parties par leurs avocats, sur le mérite du présent appel, examiné le dossier de la procédure en Cour de première instance, et sur le tout, délibéré:

CONSIDERANT qu'il n'y a pas mal jugé dans le jugement rendu par la Cour Supérieure, siégeant à Montréal, dans le district de Montréal, le onzième jour d'avril, mil neuf cent vingt-sept, et dont est appel, renvoie le dit appel, CONFIRME le dit jugement, avec dépens contre l'appelante, en faveur de l'intimée.

40 (Vraie Copie)

(Signé) Victor Allard,
J. K. B.

Hector Charland,
Député Greffier C. d'Appel.

Notes du Juge Allard

In the
Court of
King's
Bench.
—
No. 15-A
Reasons of
Hon. Justice
Allard.

Par son action, en date du 16 décembre 1926, la demanderesse a poursuivi la défenderesse, lui réclamant un montant de \$3,349.60, pour taxes municipales et scolaires imposées par la demanderesse sur un immeuble situé dans la Cité demanderesse, et dont la défenderesse était propriétaire et en possession suivant les allégations de la dite déclaration. 10

A cette action, la défenderesse a plaidé entr'autres moyens, le suivant:—

“The 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”

Après enfilure de ce plaidoyer, la demanderesse ayant interrogé *au préalable* Mr. Georges Robert Wathley, secrétaire-trésorier, reçu pour la première fois l'information que la Mise-en-cause, The Montreal Light Heat & Power Co., était et est le nu-propriétaire du dit immeuble, la défenderesse en étant toutefois l'occupant et le possesseur et que la dite Mise-en-cause était portée au rôle d'évaluation de la demanderesse comme propriétaire. 20

Sur ces informations, la demanderesse, le 12 mars 1927, fit motion qu'il lui soit permis d'amender son bref et sa déclaration, en y ajoutant comme co-défenderesse, la dite Compagnie Appelante et de modifier, en conséquence les allégations et conclusions de sa déclaration. 30

Le 22 mars 1927, la Cour Supérieure présidée par Mr. le Juge Bruneau, a accordé la dite motion et permis à la dite demanderesse de mettre en cause la dite Appelante, et d'amender en conséquence sa dite déclaration.

Notons tout de suite que, par une erreur cléricale reconnue telle, et dont l'Appelante ne veut pas se prévaloir, le jugement désigne erronément la Mise-en-cause en la désignant et décrivant: “Montréal Light Heat & Power *Consolidated* au lieu de Company. 40

Le même jour, 22 mars 1927, la demanderesse faisait signifier à la dite Mise-en-cause Appelante, son bref et sa déclaration tels qu'amendés suivant la permission et l'autorisation de la dite Cour Supérieure.

Le 1er avril 1927, l'Appelanteproduisait à l'encontre des dits brefs et déclaration ainsi amendés une exception à la forme où elle allgue: “Whereas in the writ of Summons herein, the Mise-en-Cause is describ-

“ed as Mise-en-Cause” comme co-défenderesse suivant jugement de cette “Cour du 22 mars 1927;” and “Whereas the dispositif of the judgment therein mentioned, namely the judgment of this honorable Court of the “22nd March 1927, reads as follows:”

In the
Court of
King's
Bench.
—
No. 15-A
Reasons of
Hon. Justice
Allard.
(Continued)

10 Permet de mettre en cause la Montréal Light Heat & Power Consolidated (sic) et d'amender en conséquence par demanderesse les pièces de procédures en par la demanderesse payant une somme globale de \$25.00, et permet de plaider *de novo*, the word “consolidated” being a typographical error for “Company”, and—

Whereas the description of the Mise-en-Cause in the writ as above cited is consequently irregular, unauthorised and illegal and constitutes an irregularity which causes prejudice to the Mise-en-Cause.

20 Wherefore motion.....that the writ and service.....be declared illegal irregular and null.

Le 11 avril 1927, la dite Cour Supérieure, présidée par Mr. le Juge Bruncau, renvoya la dite exception à la forme, par le motif que l'irrégularité dont se plaint l'Appelante. n'est qu'une pure erreur cléricale. et qu'il incombe plutôt à la demanderesse qu'à la Mise-en-Cause de se plaindre de cette prétendue irrégularité, que le juge, sur demande, pouvait corriger hors de Cour, le savant Juge toutefois corrigeant la dite erreur en substituant le mot “Company” à celui de “Consolidated.”

30 C'est de ce jugement qu'il y a appel. Sur permission d'un des juges de cette Cour.

Comme on peut le voir en relisant la dite exception à la forme de l'Appelante, ses moyens d'exception sont contenus dans le 3e paragraphe de sa motion. La Mise-En-Cause soutient que sa description au bref qui lui a été signifié est irrégulière, illégale, non autorisée et conséquemment irrégulière.

40 Par son jugement en date du 11 avril 1927, la Cour Supérieure paraît l'avoir considérée comme je la considère moi-même. Elle me paraît être une exception à la forme basée sur le fait que l'Appelante est décrite irrégulièrement au bref.

Mais d'après la prétention des savants procureurs de l'Appelante. le juge aurait renvoyé sa motion d'exception à la forme, en se basant sur cette erreur cléricale dont je parle plus haut, à laquelle l'Appelante avait formellement renoncé à l'audition, et négligeant de décider le véritable point en litige.

In the
Court of
King's
Bench.
No. 15-A
Reasons of
Hon. Justice
Allard.
(Continued)

Je dois avouer que, sans le bénéfice du mémoire écrit de l'Appelante, et de son argument devant nous, j'aurais moi-même commis la même erreur reprochée au juge de la Cour de première instance.

L'Appelante précise, dans son mémoire ses moyens d'exception à la forme comme suit:—

First that the judgment on the motion to amend is not capable of the construction placed upon it by the plaintiff in view of the variation of the dispositif of said judgment from the conclusions of plaintiffs' action. 10

Second---Where two interpretations of this dispositif are open, one of which involves the inference that the learned Judge delivered a judgment which is obviously erroneous in point of law, and the other involving an inference that the learned Judge exercised a discretionary jurisdiction which he had, under the Code of Procedure to call in the appellant as a bare Mise-en-Cause, even though such relief was not sought by plaintiff, nor did its granting seem to be of material assistance to an adjudication upon the rights of the parties, the latter interpretation is to be preferred. 20

The first interpretation is wrong because under chapter 102 R. S. Q. 1925, art. 534, the plaintiffs action against the defendant first sued was gone and the purpose of the amendment obviously was not to add but really to substitute a defendant and such an amendment is not permitted. 30

Ne perdons pas de vue qu'il s'agit ici d'une exception à la forme. Les seuls moyens que l'Appelante pouvait opposer à l'action de la demanderesse, par cette exception, sont énumérés à l'art. 174 C. P. C.:—1er: Irrégularités dans le bref, la déclaration, et la signification. 2e: Incapacité des parties. 3e: Absence de qualité de chacune d'elles. 4e: Les causes de la demande non exposées dans le bref ou la déclaration. Enfin 5e: L'objet de la demande irrégulièrement décrit.

L'Appelante a évidemment basé son exception sur le 1er paragraphe de cet article. 40

Et à mon sens, elle a tort. L'Appelante est régulièrement et légalement décrite. Le savant procureur de l'Appelante paraît être sous l'impression que d'après notre loi, une personne obligée à la dette déjà réclamée d'un autre par première action ne peut être mise-en-cause, comme défenderesse ou co-défenderesse dans cette première action; je ne puis partager cette opinion. L'article 525 C. P. C. me paraît formel et autorise la procédure suivie dans l'espèce.

La demanderesse ayant été informée que l'Appelante était aussi responsable de la dette exigée de l'autre défenderesse, avait le droit en vertu de cet art. 525, de joindre l'Appelante à la Montreal Light Heat & Power Consolidated.

In the
Court of
King's
Bench.
No. 15-A
Reasons of
Hon. Justice
Allard.
(Continued)

10 Par quelle procédure obtenir cette *jonction union*, sinon par motion pour mise-en-cause de l'appelante. A ce moment l'action contre la *Consolidated* était pendante, *was not gone*, suivant l'expression de l'Appelante. De plus il ne faut pas croire que seule la partie à qui le demandeur a intérêt de faire connaître le jugement qu'il sollicite doit être mis en cause.

Le co-débiteur peut l'être, peut être joint à une première action dirigée contre un ou plusieurs débiteurs.

Pour obtenir la mise-en-cause de l'Appelante, la demanderesse devait alléguer ce qu'elle a fait, que l'Appelante était obligée solidairement avec l'autre défenderesse, à la somme réclamée.

20

A mon avis, la procédure est régulière, le jugement est bien fondé et l'appel devrait être renvoyé.

Je confirmerais donc avec dépens.

No. 15-B.

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Notes du Juge Bernier

Mettant de côté la question des erreurs cléricales qui se sont glissées dans la désignation des parties, défenderesse et mise-en-cause, dans les procédures, il demeure ceci :—

No. 15-B
Reasons of
Hon. Justice
Bernier.

La demanderesse fit une motion à l'effet de mettre l'appelante en cause comme co-défenderesse conjointe et solidaire.

40

Cette demande fut accordée.

Seulement, le dispositif du jugement, accordant cette motion, n'ajoutait pas les mots : comme co-défenderesse.

L'appelante peut-elle demander, par une exception à la forme, le rejet de l'action quand à elle, sous le prétexte que le jugement interlocutoire ne permettait pas, dans les termes de son dispositif, de l'adjoindre comme co-défenderesse, mais seulement comme mise-en-cause ?

Je ne le crois pas.

In the
Court of
King's
Bench.
No. 15-B
Reasons of
Hon. Justice
Bernier.
(Continued)

Le jugement interlocutoire du 22 mars 1927, est un tout; il commence par réciter la demande d'amendements à l'effet de mettre l'appelante en cause *comme co-défenderesse*; puis, il accorde la motion en disant: permet de la mettre en cause, et d'amender en conséquence, par la demanderesse, les pièces de procédure.

En conséquence de ce jugement, un nouveau bref fut émis, mettant l'appelante comme co-défenderesse, et, avec une déclaration amendée, le tout fut signifié à l'appelante. 10

C'est par une exception à la forme que l'appelante demande maintenant le rejet de l'action quant à elle, en raison de cette divergence de mots, ou plutôt de cette omission des mots: *comme co-défenderesse*, dans le dispositif du jugement.

Si en réalité, l'appelante ne doit rien, ou si en droit, elle ne peut être poursuivie, ni condamnée, elle devra invoquer ses moyens autrement que par exception à la forme. 20

L'appel doit être rejeté avec dépens.

No. 15-C
Reasons of
Hon. Justice
Hall.

No. 15-C.

Notes of Mr. Justice Hall

30

The City Respondent, on or about the 16th December, 1926, took action against the Montreal Light, Heat & Power Consolidated, claiming the sum of \$3,349.60 taxes due on certain gas mains belonging to the Company within the limits of the City of Outremont.

To this action the Company pleaded that it was not the proprietor, holder or possessor of the gas mains in question, which were laid at the request of the City itself, in accordance with the terms of a contract passed between it and the Montreal Light, Heat & Power Company. 40

In view of this plea, the City Respondent examined one of the officers of the Company-Defendant, that is, the Montreal Light, Heat & Power Consolidated, to discover the relations between that Company and the Montreal Light, Heat & Power Company, and learning that the gas mains belonged to the latter Company, presented a motion asking leave to amend their action by adding thereto as co-defendant the said Montreal Light, Heat & Power Company.

This motion was granted by judgment rendered on the 22nd March, 1927, but instead of following the exact wording of the City Respondent's conclusion, the order read merely: "Permet de mettre en cause la Montreal Light Heat & Power Consolidate" (sic) This should have been Company.

In the
Court of
King's
Bench.
No. 15-C
Reasons of
Hon. Justice
Hall.
(Continued)

10 In accordance with this judgment, the City Appellant served a new Writ of Summons, wherein the mis-en-cause (the present Appellant) was described as: "Mise-en-cause comme co-défenderesse suivant jugement de cette Cour du 22 mars 1927."

The Appellants attack this Writ by way of Exception to the Form. on the ground that this description of the Mis-en-cause was irregular and unauthorized and not covered by the judgment referred to.

By the judgment now appealed from, the learned Trial Judge dismissed the Exception to the Form.

20

It appears from the judgment that the learned Trial Judge was under the impression that the misdescription complained of was the clerical error in the original judgment describing the Mis-en-cause as Montreal Light, Heat & Power Consolidated, instead of Montreal Light, Heat & Power Company. The Company Appellant is not attacking the amended Writ and the declaration on the ground of the clerical error, but on the ground that the judgment of the 22nd March, 1927, does not authorize the City Respondent to call in the Appellant as co-defendant, but only as Mis-en-cause.

30

This contention is based on the argument that the judgment on the original motion to amend is not capable of the construction placed upon it by the Plaintiff, in view of the variation between the dispositif of the said judgment, and the conclusion of the City Respondent's motion: and, secondly, because an amendment in accordance with the conclusions of the motion would obviously have been illegal since it would have authorized not merely the addition of a necessary party, but, in reality, the substitution of a new Defendant.

40

This would have been a ground for an objection to the motion to amend, or an appeal from the judgment authorising the amendment, on the ground that it authorises an illegal amendment. In spite of the fact that the judgment itself does not in so many words authorise the introduction into the action of the Company-Appellant as a co-defendant, it is difficult, in view of the recital in the judgment itself, to escape the conclusion that such was the intention.

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—
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As will be seen, on reference to the judgment the Court declares that, after having heard the parties on the City Respondent's action to amend, by adding thereto "Montreal Light, Heat & Power Consolidated," that is "Company," as co-defendant, it grants permission to call in the said Company.

It is undoubtedly important that the connection between these two Companies should be fully established at the trial of the case, and, in my opinion, the amended declaration does not go beyond the intention of the judgment of the 22nd March. 10

It follows, therefore, that the judgment of the 11th April is well-founded, and that the appeal should be dismissed, with costs.

Nov. 5th, 1927.

20

No. 16.

Judgment of the Superior Court, Loranger, J.

In the
Superior
Court
—
No. 16
Judgment of
Hon. Justice
Loranger.
14 Oct. 1929.

Province de Québec,
District de Montreal.

No 14082.

30

JUDGMENT OF THE SUPERIOR COURT, LORANGER, J.

Le 14 octobre 1929.

Présent: L'Honorable Juge Loranger.

Il s'agit d'une action en recouvrement de taxes municipales et scolaires au montant de \$3,345.60 que la demanderesse entend collecter des deux compagnies défenderesses, elle demande à la Cour de déclarer les propriétés des défenderesses affectées au paiement des dites taxes. 40

Au cours de l'instance, la demanderesse a produit un retrait au montant de \$86.78 laissant due une balance de \$3,262.82, pour laquelle elle demande jugement.

Les défenderesses plaident séparément. La compagnie Montreal Light Heat & Power ne doit rien parce que:

a) La demanderesse n'ayant pas le droit d'imposer de taxes sur les tuyaux à gaz (gas mains), le rôle de perception sur lequel elle base sa demande est nul, "ultra vires" et ne crée aucun lien de droit entre les parties.

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b) Parce que la défenderesse n'est pas propriétaire des terrains où sont posés ces tuyaux à gaz.

10 c) Parce que ces tuyaux ont été posés à la demande et réquisition de la demanderesse, en vertu d'un contrat passé entre les parties.

La co-défenderesse (mis en cause) Montreal Light Heat & Power Consolidated ne doit rien parce que:

a) Le rôle de perception tel que préparé est nul "ultra vires", en autant que la demanderesse a voulu taxer les tuyaux à gaz (gas mains).

20 b) Parce que la défenderesse n'est pas propriétaire du terrain sous lequel les tuyaux à gaz ont été posés.

c) Parce que ces tuyaux ont été posés en vertu d'un contrat par lequel la demanderesse transporte tous ses droits à la défenderesse durant la durée du contrat.

30 d) Parce que la défenderesse n'est en vérité qu'une mise en cause, et ne peut être condamnée que si la défenderesse principale est condamnée.

La demanderesse répond généralement et demande jugement suivant ses conclusions.

Tous les faits sont admis, les lettres, contrats, arrangements sont produits de consentement.

40 Il est admis que la défenderesse, Montreal Light Heat & Power Consolidated remplace et est aux droits et aux obligations de la Civic Investment Industrial Company, dont le nom apparaît au contrat comme exhibit P-3.

Les parties soumettent leur cause sur la question de droit seulement.

La Cour pour rendre plus lucide l'étude de la question croit devoir la formuler en six propositions.

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10.—La cité demanderesse a-t-elle le droit d'imposer des taxes sur des immeubles situés dans les limites de son territoire et d'en faire la perception ?

20.—Les tuyaux à gaz (gas mains) sont-ils des biens imposables ?

30.—Les défenderesses sont-elles propriétaires et en possession des tuyaux à gaz posés dans les limites de territoire de la demanderesse ? 10

40.—Les défenderesses sont-elles propriétaires d'immeubles dans la cité d'Outremont ?

50.—La clause de contrat par laquelle la demanderesse transporte ses droits à la défenderesse Montreal Light Heat & Power dans les rues où sont posés les tuyaux à gaz, a-t-elle pour effet d'enlever à la demanderesse le droit d'imposer une taxe sur les dits tuyaux à gaz alors que la clause de contrat accordait à la défenderesse une exemption de taxe durant 20 ans est expirée ? 20

60.—La Cour Supérieure a-t-elle juridiction pour entendre et juger une cause dans laquelle on demande en même temps le paiement de taxes municipales et de taxes scolaires.

La question de juridiction n'a pas été plaidée, elle a été soulevée à l'argument seulement.

30

PREMIER POINT:

La demanderesse a-t-elle le droit d'imposer une taxe sur les immeubles situés dans son territoire ?

Poser la question, c'est la résoudre.

Personne ne contestera qu'une corporation a le droit de prélever 40 des taxes tant sur les immeubles que sur certains meubles dans les limites de son territoire.

Le code municipal consacre le principe général. La loi des Cités et Villes, le confirme, puis dans notre cas la charte de la cité demanderesse lui confère expressément ce droit. (443-477).

La réponse à la première question est dans l'affirmative. Oui, la demanderesse a le droit de prélever des taxes et de les percevoir.

DEUXIEME POINT :

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Les tuyaux à gaz (mains) sont-ils des biens imposables? Nous avons dit qu'une corporation a le droit de prélever une taxe sur les immeubles situés dans son territoire.

10 Or les tuyaux à gaz bien que meubles en apparence, étant attachés au système de canaux, conducteurs de gaz, et reliés à l'usine principale qui le fournit, ne forment avec elle, qu'un tout, une seule exploitation. Ils ne sont que la prolongation de l'usine à travers les rues de la municipalité demanderesse, ils sont attachés à perpétuelle demeure et comme tels sont devenus immeubles, de par leur nature. C'est d'ailleurs ce qu'a jugé la Cour Suprême dans la cause de Westmount vs Montreal Light Heat & Power Consolidated, Canada Law Right 1926 p. 515 Held: that the pipes, poles, wires, are immoveable within the meaning of that term as used in art. 5730 of the Cities and Towns Act and are subject to taxation as such.

20 Held also: that though the words immoveable and real estate and real property are not in practice interchangeable, the terms real estate and real property should be taken for the purposes of the taxation by laws and resolutions to include property which is held to be immoveable by nature, as the pipes, poles, wires and transformers.

30 L'Article 2 de la Charte d'Outremont, déclare que la Cité d'Outremont sera régie par la loi des Cités et Villes. La Charte d'Outremont reproduit par ailleurs la grande majorité des articles de la loi des Cités et Villes, et spécialement quant aux pouvoirs de prélever les taxes municipales.

Il en est de même du pouvoir des Commissions Scolaires de prélever. Ces Commissions ont par statut le pouvoir d'imposer des taxes sur tout bien fonds imposables, de la municipalité, "all taxable property in the municipality" (version anglaise)

Les biens imposables sont les immeubles sujets à la taxe municipale et scolaire.

40 La seule question vraiment est de savoir si les tuyaux à gaz sont des immeubles dans le sens du statut, qui veut que tout immeuble soit par nature bien imposable, et sujet à la taxe municipale et scolaire.

Voir Bélair—Ste Rose, 63 Can. S. C. R. 526. Je réfère les parties aux notes très précises du juge en chef Anglin, re Westmount vs Montreal Light Heat & Power Consolidated, 1926 Can. Law R.p. 520, et les faisant miennes je déclare avec lui: That the gas mains, poles and wires must be regarded as buildings batiments, within the meaning of Art. 476 C.C. and therefore immoveable by their nature.

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Whether immobilisation of the pipes, be attributed physical connection with the land in or upon which they are placed, or with the buildings from which they radiate as parts of distribution system, they are immoveable actually situated in the municipality and thus "come within the letters of law which confers the power to tax". Et plus loin, le savant Juge ajoute: the pipes, poles, must be regarded as taxable immoveable p. 521 voir pages 523, 524 Canada Law Reports 1926.

Le code Napoléon Art. 523 mentionne spécialement que des tuyaux 10 à conduite d'eau sont des immeubles par nature. Migneault Vol. 2, p. 407 enseigne la même doctrine et rapporte un jugement par le juge en Chef Tait 15 L.N. p. 22, qui consacre que les tuyaux à gaz, installés et posés dans les rues, sont des immeubles par nature et partant sujets à taxation.

5 Laurent No. 409.

9 De Molombre No 200.

Je conclus et répons dans l'affirmative à la deuxième question. 20
Oui, les tuyaux à gaz, sont biens imposables, parce qu'ils sont immeubles par nature, et situés dans les limites de territoire de la cité demanderesse.

TROISIEME POINT :

Les défenderesses sont-elles propriétaires des tuyaux à gaz?

Oui, la défenderesse Montreal Light Heat & Power est la proprié- 30
taire des systèmes de conduits à gaz. Ceci est incontestable. Elle est portée au rôle d'évaluation comme telle et ne conteste pas d'ailleurs son titre de propriétaire (owner). Quant à la défenderesse Montreal Light Heat & Power Consolidated, elle est en possession à titre de propriétaire. C'est elle qui possède, qui opère, qui entretient, et qui a le contrôle de tout le système de distribution. Il suffit de jeter un coup d'oeil sur le contrat que la Montreal Light Heat & Power a passé avec la Civic Investment Industrial Company dont elle a accepté toutes les obligations, pour se convaincre qu'elle a accepté de payer les taxes et redevances qui pour- 40
raient être imposées.

La clause 12 du contrat Exh. P-3 se lit comme suit: The contractor (C'est la défenderesse Montreal Light Heat & Power Consolidated) builds and obliges itself to pay all cost and expenses of operating of every description including municipality taxes, assessments on property owned by the companies and occupied by the contractor.

Voir aussi les clauses 1, 3, 4, 8, 12, 14, 15. la défenderesse considère le système de distribution "as the contractor's own property and for the contractor's own purpose.

La défenderesse est donc en possession à titre de propriétaire, et opère le système comme le sien propre. Or l'art. 489 de la Charte d'Outremont autorise et permet de réclamer les taxes imposées sur un terrain (immeuble) aussi bien du locataire de l'occupant ou autre possesseur que du propriétaire, lors même que tel locataire ou occupant ou possesseur n'est pas inscrit sur le rôle d'évaluation.

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10 Il est établi que la défenderesse Montreal Light Heat & Power, est portée au rôle comme propriétaire, donc elle est tenue de payer la taxe imposée. Par ailleurs, la défenderesse Montreal Light Heat & Power Consolidated, bien que n'étant pas inscrite au rôle d'évaluation n'en est pas moins la locataire et possesseur des tuyaux à gaz; et comme telle, est redevable à la cité de la taxe imposée sur les biens immeubles, qu'elle détient à titre d'occupant, de locataire ou de possesseur.

La réponse à la troisième question est dans l'affirmative. Oui, les défenderesses sont l'une propriétaire et l'autre locataire, et en possession, des tuyaux à gaz, dans la cité d'Outremont.

20

QUATRIEME POINT :

Les défenderesses sont-elles propriétaires d'immeubles dans la cité d'Outremont?

Oui, pour les raisons ci-haut données en réponse aux réponses à la deuxième et à la troisième question.

CINQUIEME POINT :

30

La clause du contrat pour laquelle la demanderesse a transporté ses droits à la défenderesse Montreal Light Heat & Power, dans les rues où sont posés les tuyaux à gaz, a-t-elle pour effet d'enlever à la demanderesse le droit d'imposer une taxe sur les dits tuyaux à gaz, alors que, la clause qui accordait une exemption de taxe a pris son effet, et que le délai des vingt ans est maintenant expiré.

40 Par la clause 26 du contrat passé entre la demanderesse et la défenderesse Montreal Light Heat & Power, la Cité d'Outremont accorde une exemption de taxe durant une période de vingt ans à compter de la date du contrat.

C'était le 24 août 1904, les vingt ans sont bien écoulés.

La défenderesse Montreal Light Heat & Power prétend que l'esprit du contrat est d'accorder l'exemption pour toute la durée du contrat parce que par la clause 27 la demanderesse transporte tous ses droits à la défenderesse "all rights it may possess in connection with the supply of gas, in its streets, lanes..... avenues....the said contractors being subrogated in all the rights accorded by law in that respect during the period of thirty years (c'est la durée du contrat).

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La défenderesse prétend qu'elle agit comme agent de la demanderesse pour fournir le gaz, qu'elle aurait pu procurer elle-même à ses citoyens, et que, étant aux droits de la demanderesse elle la représente; or comme la défenderesse ne peut se taxer elle-même il s'en suit qu'elle ne peut pas taxer la défenderesse pour les tuyaux qu'elle a posés en exécution d'un engagement pris en qualité d'agent de la demanderesse.

Je ne puis accepter cette manière de voir, cette interprétation de contrat est erronée. 10

La demanderesse n'avait pas le droit par sa charte d'accorder une exemption de taxe pour une période plus longue que 20 ans. Elle a atteint la limite de ses pouvoirs en accordant 20 ans. L'exemption de taxe ne se présume pas, elle doit être formulée, légalement autorisée par le conseil, et bien déterminée quant à la durée.

Rien dans le contrat ne laisse présumer que l'intention de la demanderesse a été d'étendre l'exemption au-delà des 20 ans. D'ailleurs 20 l'eut-elle exprimée, que cela aurait été "ultra vires" de ses pouvoirs.

La demanderesse a transporté ses droits durant l'espace de trente ans, quant à ce qui concerne l'approvisionnement de gaz, c'est-à-dire le droit de poser, d'enlever, de réparer des tuyaux, et de se servir des rues à cet effet.

C'était se lier à ne pas accorder à d'autres compagnies le permis de fournir également le gaz aux citoyens puisque la défenderesse avait le contrôle des rues où ses tuyaux étaient posés. 30

La demanderesse a respecté son engagement, durant 20 ans la défenderesse a joui de l'exemption de la taxe.

Le délai expiré la cité demanderesse reprend la liberté de lui imposer les taxes que la loi lui permet d'imposer. Elle reste cependant tenue de respecter la clause du contrat qui l'oblige durant 30 ans, à laisser à la défenderesse le contrôle des rues où les tuyaux sont posés.

Elle a transporté les droits qu'elle avait. Elle n'a pas pu trans- 40 porter celui de l'exemption pour une période au-delà de 20 ans puisqu'elle n'avait pas ce droit, la Charte le défend expressément (art. 521.)

Je ne vois rien dans les deux clauses 26 et 27 qui puisse donner lieu à l'interprétation que la défenderesse en fait.

Que la défenderesse ait été sous contrat, que les tuyaux aient été posés à la requisition pressante de la demanderesse, peu importe, cela ne change pas la position des parties, et ne modifie en rien leurs obligations réciproques.

La défenderesse est aux droits de la demanderesse pour les fins de l'exploitation et du contrôle des rues, rien de plus. Elle n'est pas l'agent de la demanderesse. Au contraire, c'est la défenderesse elle-même propriétaire du système complet qui a requis les services de la Montreal Light Heat & Power Consolidated, à qui elle confie le soin d'opérer en la mettant en possession à titre de propriétaire de tout le système de tuyaux posés ou à être posés, dans la cité d'Outremont, avec obligation de voir à l'approvisionnement de gaz, conformément au contrat passé avec la demanderesse.

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La Cour répond dans la négative.

Non, la clause 27 du contrat n'a pas enlevé à la demanderesse le droit de prélever une taxe sur les biens imposables de la défenderesse, après l'expiration des 20 ans d'exemption accordés par le contrat.

SIXIEME POINT :

20

La Cour Supérieure a-t-elle juridiction pour entendre et juger une cause par laquelle on demande en même temps le paiements des taxes municipales et scolaires?

Ce point n'a pas été plaidé. La cause a été entendue en premier sur exception à la forme, portée et jugée en appel de nouveau sur motion pour amender.

30

En aucun temps les défenderesses ont pensé que la Cour d'Appel n'avait pas juridiction pas plus que la Cour Supérieure.

Les Cours tenues d'office de renvoyer la cause pour défaut de compétence n'ont pas jugé qu'elles excédaient leur juridiction en passant jugement.

40 Dans la cause de Westmount vs Montreal Light Heat & Power les taxes municipales et scolaires étaient réclamées par la même action. Toutes les Cours se sont prononcées y compris la Cour Suprême, et aucune de ces Cours a cru excéder sa juridiction en entendant et jugeant la cause.

N'y aurait-il pas là, à première vue, une jurisprudence suffisante établie, pour autoriser cette Cour à déclarer que la Cour Supérieure a bien juridiction en la matière.

Cependant, comme il est permis de soulever en tout temps avant jugement la question de juridiction, je crois devoir examiner la question à son mérite.

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La cité *est obligée* de percevoir les taxes scolaires *en même temps et de la même manière* que les taxes municipales si elle en est requise par la Commission Scolaire.

S. R. Q. 1909 — Article 5746.

S. R. Q. 1925 — Ch. 102, Article 537.

Charte de la Cité, Article 492.

10

Le conseil de la cité a été requis de faire cette perception par les Commissions Catholiques et protestantes par leurs résolutions des 10 et 11 mars 1919.

Il s'est rendu à cette demande par sa résolution du 2 avril 1919 et a, de cette façon, "ordonné au trésorier de faire la perception de ces taxes de la même manière et en même temps que les taxes municipales" (Charte, art. 492).

20

Ces trois résolutions ont force de loi par 11 Geo. V, Ch. 114, art. 3.

Que doit faire le trésorier en recevant cet ordre?

C'est l'article 5748 S. R. Q. 1909 (devenu l'article 539 du chapitre 102 des S. R. Q. 1925) qui répond à cette question en édictant que dans le cas "*le trésorier porte au rôle général de perception le montant de ces taxes, les perçoit et les remet ensuite au Secrétaire-Trésorier des écoles* (Charte Article 494.)

30

Porter ces taxes au rôle général de perception a pour effet de les confondre avec les taxes municipales, pour ne faire avec ces dernières qu'une seule perception.

C'est pourquoi l'art. 539 du Chapitre 102 a ajouté à l'ancien article 5748 des S. R. Q. 1909 la disposition déclaratoire suivante. "Dans ce cas les poursuites en recouvrement de taxes doivent être intentées par la corporation municipale.

40

La poursuite en recouvrement n'est qu'un incident de la perception, ou, si l'on veut, le moyen de percevoir.

Or, la loi générale et la charte obligent la Cité à faire cette perception en même temps et de *la même manière* que celle des autres taxes.

"De la même manière" cela veut dire a n'en pas douter par la même procédure et en conséquence par la même action.

C'est l'économie générale de cette législation qui, en autant que le contribuable est concerné, a pour effet de confondre absolument taxes municipales et taxes scolaires.

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C'est ce que la législature indique de façon assez claire lorsque par la loi 11 Geo. V, Ch. 114 (amendant la Charte de la Cité) Elle a modifié pour la cité l'article 5755 des S. R. Q. 1909, qui se lisait comme suit :

10

5755.—“Le paiement des taxes municipales peut être également réclamé par une action intentée, au nom de la municipalité, devant la Cour de Magistrat ou la Cour de circuit du comté ou du district, ou devant le maire, ou deux ou plusieurs conseillers agissant *ex officio* comme juges de paix, ou devant la Cour du recorder, s'il y en a une.”

et se lit maintenant comme suit :

20

5755.—“Le paiement des taxes municipales et des taxes scolaires dans les cas auxquels il a été pourvu par les articles 5748, 5748a et 5748b, peut être également réclamé par une action intentée, au nom de la corporation, devant la cour de magistrat ou la Cour de circuit du comté ou du district, ou devant le maire, ou deux ou plusieurs conseillers agissant *ex-officio* comme juges de paix, ou devant la Cour du recorder s'il y en a une.”

30 Remarquons enfin que cet article dit que le paiement des taxes municipales et des taxes scolaires.....“*peut* être réclamé par une action intentée au nom de la corporation devant.....la Cour de circuit du comté ou du district.”

Si le législateur avait voulu laisser subsister à l'égard des taxes scolaires l'obligation de poursuivre devant la Cour de circuit, il aurait fait la distinction, ou du moins il n'aurait pas eu le soin d'amender pour la Cité l'article 5755, car alors pourquoi *permettre* ce qui, d'après les prétentions des défenderesses, était auparavant ordonné.

40

Si on a *permis* de réclamer ces taxes devant la Cour de Circuit c'est d'abord :

(a) Qu'on a compris qu'elles étaient assimilées entièrement aux taxes municipales ;

(b) C'est ensuite qu'on a compris que cette assimilation décrétée par les mots “en même temps et de la même manière” voulait dire “par la même action.”

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Or, comme cette action d'après la loi générale peut être pour les taxes municipales intentée devant la Cour Supérieure ou devant la Cour de Circuit, on a voulu étendre de façon claire cette disposition aux taxes scolaires.

— II —

Il y a plus: en admettant en principe le défaut de juridiction de la Cour Supérieure à l'égard des taxes scolaires réclamées en l'action, il n'en reste pas moins vrai que la cause telle que présentée par les défenderesses en est une "évocable" à la Cour Supérieure, en vertu de l'article 49 C. P. par. d; puisqu'elle affecte des droits futurs. Et a pour objet d'affecter les immeubles de la défenderesse et de les grever d'une hypothèque. Il me semble que les actions de nature hypothécaires sont du ressort de la Cour Supérieure. 10

Dans ce cas il fallait invoquer l'incompétence de la Cour par exception déclinatoire. 20

A défaut et vu la faculté d'évocation, cette récusation du tribunal ne saurait être reçue maintenant.

MOQUIN vs DINGMAN, (Révision) 44 C. S. 341.

"HELD: 1.—When an action exclusively within the jurisdiction of the Circuit Court is brought in the Superior Court, and the defendant takes no exception to it by a declinatory plea, if it be of the class of cases that may be evoked to the Superior Court, the question of jurisdiction cannot be raised for the first time in the Court sitting in review." 30

Il est vrai que l'article 171 C.P. ordonne au tribunal de "renvoyer d'office devant qui de droit" l'instance sur laquelle il n'a pas juridiction, mais il s'agit évidemment des causes qui ne sont pas susceptibles d'évocation et dans lesquelles toute la chose ou tout le montant en litige tombe sous la juridiction de la Cour de Circuit. 40

En outre les défenderesses ne demandent pas le renvoi devant le tribunal compétent, mais simplement le renvoi de l'action, ce qu'elles ne peuvent obtenir et ce que la Cour ne peut pas accorder en vertu de l'article 171 C. P.

On nous opposera peut-être le jugement rendu par l'Honorable Juge White, en 1898, dans la cause: Township of Dudswell -vs- Quebec Central Railway Co. 1 Q.P.R. 383.

La réclamation était identique à la nôtre, mais la cause ne l'est pas entièrement et surtout le savant Juge n'avait pas alors pour sa direction l'article 5755 tel qu'amendé pour la Cité par le Statut 11 Geo. V, Ch. 114, ci-dessus cité.

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10 La municipalité cherchait à recouvrer les taxes scolaires en même temps que ses taxes municipales en vertu de l'article 952 de l'ancien code (nouveau, article 691) identique à l'article 537 de la loi des cités et villes.

Mais le code municipal ne contenait ni ne contient une disposition semblable à l'article 539 de la Loi des Cités et Villes qui, lui, ordonne au trésorier dans ce cas de porter les taxes scolaires à son rôle général de perception.

En outre, la question d'évocation ne s'est pas présentée dans cette cause, car les défenderesses avaient procédé par exception déclinatoire.

20 L'exception a été maintenue pour partie avec réserve du recours de la demanderesse, mais, encore une fois, dans les circonstances et sous une législation différentes de celles qui entourent la présente cause.

— III —

30 La proposition que nous soutenons, nous paraît absolument conforme à l'esprit qui a inspiré la législation contenue aux articles 537 et 539 de la Loi des Cités et Villes (S. R. Q. 1925, Ch. 102).

On a voulu débarrasser les commissions scolaires de leurs perceptions, mais évidemment sans rendre celles-ci plus onéreuses pour la municipalité non plus que pour les contribuables.

40 On a voulu que les contribuables puissent s'acquitter d'un seul coup; et la municipalité percevoir d'un seul coup; c'est pour cela qu'on a dit en "même temps et de la même manière."

S'il fallait admettre que dans ce cas la municipalité obligée de poursuivre dut être contrainte de prendre deux actions au lieu d'une, cela veut dire doubles frais pour elle si le contribuable est insolvable ou si les immeubles ne rapportent pas suffisamment ou, dans l'autre cas, double frais contre le contribuable et contre les immeubles assujettis.

C'est évidemment contre l'économie de cette législation et contre celle du code de procédure, qui cherchent à simplifier les recours en justice plutôt qu'à les multiplier.

Observons, enfin, que l'article 54 C.P. ne se rapporte qu'aux taxes scolaires ce qui permet de conclure qu'il prévoit le cas où l'action est pour taxes scolaires seulement à la poursuite des commissaires d'écoles et non pas le cas différent ou, sous l'autorité de l'article 539 du chapitre 102, ces taxes sont versées au rôle des taxes municipales et confondues avec ces dernières.

10

Cet article 54 doit être interprété restrictivement, car il exclut de la juridiction de la Cour Supérieure des causes qui autrement lui seraient soumises.

A la sixième question nous répondons oui. La Cour Supérieure a juridiction pour entendre et juger la présente cause;

1o—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.

20

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

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.

30

Il est certain que si la présente cause avait été intentée devant la Cour de Circuit, les défenderesses l'auraient évoquée en Cour Supérieure, à raison de l'importance de la décision à être rendue et du désir qu'elle a manifesté à l'argument d'avoir sur cette question la décision du plus haut tribunal de l'empire.

Du moment que la cause était du ressort de la Cour Supérieure sur "évocation" la Cour Supérieure a juridiction pour l'entendre.

40

Aucune exception n'ayant été faite, la cause telle que prise est du domaine de la Cour Supérieure et doit être jugée par elle.

Pour ces motifs ci-haut donnés la Cour:

CONSIDÉRANT que la demanderesse a prouvé les allégués essentiels de sa déclaration, renvoie les défenses, maintient l'action de la demanderesse pour \$3,262.82, condamne conformément à ce qui est demandé

par les conclusions de la demande chacune des défenderesses à payer la dite somme de \$3,262.82 avec intérêt à 6% à compter du 1 décembre 1926; déclare de plus les immeubles des défenderesses situés dans les limites de la ville d'Outremont, affectés au privilège de la demanderesse pour le paiement des dites taxes municipales et scolaires, dues en vertu du présent jugement le tout avec dépens.

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Hon. Justice
Loranger.
14 Oct. 1929.
(Continued)

10

L. J. Loranger,
J. C. S.

No. 17

Appellant's Factum

20 THE FACTS

PART I —

This is an appeal from a Judgment of the Superior Court for the District of Montreal rendered by the Hon. Mr. Justice Loranger, 14th October, 1929, maintaining the Respondent's action for \$3,262.82, condemning each of the Appellants to pay the said sum with interest at 6% from 1st December, 1926, and declaring the immoveables of the Appellants situated in the City of Outremont to be affected by the privilege of the Respondent for the payment of the Municipal and School Taxes due in virtue of the Judgment, the whole with costs.

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40 By its By-Law No. 65 passed 30th July, 1904 (Exhibit D-4, Case, p. 23) replacing By-Law No. 59 to the same effect (Exhibit D-3, Case, p. 16), the Town of Outremont authorized the execution of an agreement with any incorporated company or private individuals granting the right to furnish and supply gas to the Town Corporation and its citizens for a term not exceeding thirty years upon the terms set forth in the By-Law, it being recited that it was "greatly in the interest of the Town of Outremont that gas should be furnished to the said Town for street lighting, and that it should also be supplied to its citizens for domestic purposes." Pursuant to By-Law No. 65, the Town of Outremont entered into an agreement with the Mis-en-cause executed before A. C. Lyman, Notary, 24th August, 1904 (Exhibit P-1, Case, p. 29), providing for the supply of gas to the Town for a term of thirty years to light the roads, lanes, streets, avenues and public places therein, and the supply of gas to the citizens of the Town for cooking, lighting, heating and manufacturing purposes. By this Agreement the mis-en-cause was bound at the request of the Town to lay mains and service pipes in streets whenever the Mis-en-cause could derive a revenue of 6% on the outlay or as soon as it was

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guaranteed a certain number of consumers, per unit length of main, and the Town assigned and transferred to the Mis-en-cause all rights in connection with the supply of gas in the Town, the Mis-en-cause being subrogated in all such rights during a period of thirty years, the Town agreeing not to permit anyone else to lay gas pipes on its streets, it being, however, provided that all works made by the Mis-en-cause for the erection or repair of their plant within the Town should be subject to the control of the Council or of the person appointed by it. The town also exempted from taxation and license all property of the Mis-en-cause in the Town forming part of their gas system during a period of twenty years. As a result of this Agreement various gas mains and pipes have been laid in the public streets of Respondent, always at its request and under pressure on its part. By Agreement dated 7th June, 1916 (Exhibit P-3, Case, p. 40), the Defendant, the name of which was at that time "The Civic Investment & Industrial Company," took over the operation of the Mis-en-cause from 1st August, 1916, and has carried on such operation since that time.

10

The Respondent proceeded to assess the gas mains located in its streets for the years 1924-25, 1925-26 and 1926-27, entering them in the Valuation Rolls in the name of the Mis-en-cause as proprietor. The Rolls for these three years also cover School Taxes, the School Commissioners and School Trustees of the City of Outremont having requested the Respondent to collect the School Taxes (Plaintiff's Exhibits Nos. 2 and 3, Case, pp. 65 and 67.

20

The present action was taken by the Respondent against the Defendant for the recovery of Municipal and School Taxes on the gas mains located in the City of Outremont for the years mentioned above, the amount claimed being \$3,349.60, this amount having been subsequently reduced to the amount of the Judgment by a retraxit produced in respect of certain School Taxes. After plea filed the Respondent moved to amend the Writ and Declaration by adding the Mis-en-cause as Co-defendant. This motion was adjudicated upon by Bruneau J. (Case, p. 121), the pertinent part of the *dispositif* of the judgment reading:—

30

"Permet de mettre en cause la Montreal Light Heat & Power
"Consolidate, et d'amender en conséquence par demanderesse les
"pièces de procédures."

40

In the amended Writ (Case, p. 6) the Mis-en-cause was referred to as "Mise-en-cause comme co-défenderesse suivant jugement de cette Cour "du 22 mars 1927." The Mis-en-cause then moved by way of exception to the form on the ground that the description of the Mis-en-cause in the amended Writ was unauthorized and illegal, concluding that the Writ and service in so far as the Mis-en-cause was concerned be declared illegal,

irregular and null and that the action as regards the Mis-en-cause be dismissed. In adjudicating upon this motion (Case, pp. 122 and 123) Bru-
neau J. treated it as being merely an objection to a typographical error--
“Consolidate” for “Company”—and dismissed the motion, merely sub-
stituting the word “Company” for the word “Consolidate”. The appeal
of the Mis-en-cause from the last mentioned Judgment was dismissed by
the Court of King’s Bench (Case, p. 124), no reasons being given.

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10 In its amended declaration Respondent alleged that the Mis-en-
cause was the proprietor and the Defendant the holder and in possession
animo domini of immoveable property consisting of the gas mains in
question, the same being so held by each under the provisions of the
Agreement of 7th June, 1916 (Exhibit P-3, Case, p. 40), alleged the im-
position of the taxes, set up the Statutes authorizing the collection of
school taxes by the Respondent, and in concluding for condemnation ask-
ed that its privilege be declared good and valid and affecting the gas
mains.

20

By its plea the Defendant denied that there was any *lien de droit*
between it and the Respondent, that it was in any way affected by the
collection roll, or had ever been assessed for any of the taxes claimed, and
denied the jurisdiction of the Superior Court to deal with the matter of
school taxes, and further pleaded that all the rolls and proceedings of
the Respondent were null and *ultra vires* as regards the valuation of gas
mains and the imposition of any assessment upon the Defendant in res-
pect thereof, that the Respondent was not legally authorized to value or
30 assess the mains, that the Defendant was not the proprietor, holder or in
possession of any land in the Municipality, and that the gas mains were
laid at the request of the Respondent for its convenience and that of its ci-
tizens, and as required by the contract of 4th August, 1904 (Exhibit P
-1, Case, p. 29), and the Defendant could not remove them if it wished
to do so.

40 The Mis-en-cause by its plea denied that any taxes had been legally
imposed upon it, and denied the jurisdiction of the Superior Court to deal
with the matter of school taxes, and further pleaded that all the rolls and
proceedings of the Respondent were null and *ultra vires* in purporting to
value the gas mains and impose a tax on the Mis-en-cause in respect there-
of, that the Plaintiff was not legally authorized to assess the gas mains,
that the Mis-en-cause was not the proprietor, holder or in possession of any
land in the Municipality, that the gas mains were installed in virtue of the
contract of 4th August, 1916, under the terms of which the Respondent for
the purposes of obtaining a supply of gas for its Municipality and the
inhabitants thereof and for the considerations therein mentioned trans-
ferred to the Mis-en-cause all its rights in connection with such supply,
the Mis-en-cause being subrogated in all the rights of the Respondent

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during the term of the contract and the gas mains having been installed at the request of the Respondent and in fulfilment of the obligations of the Mis-en-cause, and upon conditions as to net revenue and otherwise which could not be varied by the Respondent by the imposition of the taxes in question, and that notwithstanding the interlocutory judgments, the Mis-en-cause, having been called into the action only as an incident thereof insofar as its presence was necessary, could not be condemned unless the Defendant were condemned.

10

By its answers to the pleas of the Defendant and the Mis-en-cause, the Respondent joined issue on the denials contained in the pleas and denied the other allegations thereof, averring that the allegations relating to the contract of 4th August, 1904, were irrelevant and that the contract provided for an exemption from taxation which had expired when, the taxes in question were imposed.

By the evidence and letters and resolutions produced it was established that the gas mains were laid in execution of the contract of 4th August, 1904, and at the instance of the Respondent and under pressure on its part. It was also established by the evidence that except for the purpose of supplying the service which under the terms of the contract of 4th August, 1904, the Mis-en-cause was bound to supply, the gas mains were of no value whatever and would not be worth removing, also that neither of the Appellants was the owner of any land within the limits of the Municipality Respondent.

PART II — THE JUDGMENT

30

The Appellants respectfully submit that the Judgment appealed from is erroneous in that:—

(1) It holds that the gas mains sought to be taxed are taxable because they are immoveables by nature and situate within the limits of the Respondent;

(2) holds that the contract between the Mis-en-cause and the Respondent did not prevent the imposition of taxes after a period of twenty years from its date, although such imposition would have the effect of varying the terms of the contract;

(3) It holds that the Superior Court had jurisdiction as regards the demand for School Taxes as well as in respect of that for Municipal Taxes; and

(4) The Defendant is condemned in spite of the fact that the property sought to be taxed could not in any event be considered as "land", and therefore taxes in respect thereof could not be claimed from an occu-

pant; and no condemnation against the Defendant being possible, the Mis-en-cause is nevertheless condemned, thus in effect permitting the substitution of a new Defendant where the action had originally been taken against the wrong party.

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PART III—THE ARGUMENT

10 1. IT WAS NOT WITHIN THE POWER OF THE RESPON-
DENT TO TAX THE GAS MAINS OF THE MIS-EN-CAUSE.

Without making a complete exposition of this point which the learned trial judge decided adversely to the Appellants upon the authority of *Montreal Light, Heat & Power Consolidated and The City of Westmount*, Canada Law Reports, 1926, S. C. R. 515, the Appellant's submission is that, even admitting for the sake of argument that the gas mains in question are immoveable by nature, yet they are not taxable by the Re-
20 spondent because such immobility could exist only.

(a) by reason of their being incorporated in and forming part of the streets themselves, or

(b) as forming an integral part of the Gas Generating Station which is located outside the limits of the Municipality Respondent (within which the Appellants owned no lands—Case, p. 115, 11. 16-20) and having no character of immoveable when consid-
30 ered apart from it,

and because the Respondent has no power to tax buildings or constructions separately from the land upon which they are located. The word "immoveable" used in 1909 R.S.Q., Art. 5730 (now R.S.Q. 1925, Chapter 102, Section 521) by which the taxing power is conferred, is not defined by the Statutes governing the Respondent, and it is clear from the provisions of such Statutes dealing with the matter of valuation, assessment, etc., that the only thing which is taxable is *land with its accessories*.

40 It is clear that the word "immoveable" as used in the article just referred to requires interpretation as it could not be said to extend to everything which the Civil Code declares to be immoveable, such, for instance, as rights of action which tend to obtain possession of an immoveable (C.C., Art. 381) or the capital of unredeemed constituted rents that were created before the promulgation of the Code (C.C., Art. 382). Interpretation being necessary, the other provisions of the Respondent's Charter dealing with the whole subject of taxation must be examined, and the only conclusion which can be reached from such an examination is that the word "immoveable" as used in the article referred to does not

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include buildings or constructions apart from the land on which they are located. The principle is well recognized that taxing Statutes are subject to a strict interpretation and the power to impose a tax cannot be inferred but must be expressed in clear and unambiguous language.

The above remarks apply equally as regards School Taxes, as nothing which is not taxable by the Municipality is taxable by the School Commissioners.

10

2. EVEN IF THE GAS MAINS IN QUESTION WERE TAXABLE, THE RESPONDENT WOULD BE PRECLUDED BY THE TERMS OF ITS AGREEMENT WITH THE MIS-EN-CAUSE FROM IMPOSING ANY TAX THEREON.

The present case is distinguishable from that of *Montreal Light, Heat & Power Consolidated and The City of Westmount*, Canada Law Reports, 1926, S.C.R. 515: in that case there was no contractual relationship between the parties, whereas in the present instance there is a contract under the provisions of which the gas mains were installed and by the terms of which the Respondent is bound.

20

The relations of the Respondent and the Mis-en-cause are governed by the contract of 24th August, 1904 (Exhibit P-1, Case, p. 29), which fixed their respective rights and obligations, and this contract cannot be varied by either of the parties thereto. It is submitted that the taxation of the gas mains in question constitutes a variation of the contract and a taking away of certain rights of the Mis-en-cause thereunder. There are two points to be considered in this connection:—

30

First. The Mis-en-cause is the *préposé* of the Respondent itself and is subrogated in all its rights with regard to lighting in the Municipality Respondent, including the right to the same freedom from taxation as the mains would have enjoyed had they been installed by the Respondent itself.

40

The Town of Outremont was incorporated in 1895 (58 Victoria, Chap. 55) under the provisions of the Town Corporations General Clauses Act (R.S.Q. 1888, Articles 4178 *et seq.*) By the provisions of Article 4471 the Town was authorized "to provide for the lighting of the Town in any manner deemed advisable."

By an amendment to its Charter, 4 Edward VII, Chapter 58, assented to on the 2nd June, 1904, it was provided by Article 6 that:—

“The town shall have power, by by-laws approved by the majority, in number and in value, of the electors who are proprietors and who have voted on such by-laws, to construct, maintain and operate a lighting plant and system, by gas, electricity, or other process, and to lease, sell or otherwise dispose of the same.”

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10 In accordance with the power so conferred upon it, the Town passed By-Laws Nos. 59 and 65 (Exhibits D-3 and D-4, Case, pp. 16 and 23). By the terms of these By-Laws and by paragraph 27 of the contract passed under them (Exhibit P-1, Case, p. 29) the Town assigned to and subrogated the Mis-en-cause in all its rights in connection with the supply of gas in the Town, at the same time providing that all works made by the Mis-en-cause should be subject to the control of the Town.

This paragraph of the contract reads as follows:—

20 “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 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
30 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.”

The Appellants' submission is that being subrogated in all the rights of the Corporation and a Contractor for it in the exercise of its corporate power to provide a system of gas, one of the rights in which the Mis-en-cause was so subrogated was that of all freedom from taxation of the gas mains.

40 Second. The contract in effect guaranteed to the Mis-en-cause a return of six per cent. on the outlay for the laying of mains. Paragraph 23 of the contract reads, as follows:—

“23rd. Moreover, the said Contractors shall be bound to lay mains and service pipes in all other streets or parts of streets, as soon as requested by the Town, provided the sewers or water pipes have been put therein whenever the said Contractors can derive a net revenue of six per cent. on the outlay necessitated by the laying of such mains and service pipes, or as soon as they are

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“guaranteed getting as many consumers as will average to them
“two consumers for every one hundred and fifty feet of main to
“be laid, one of which said two consumers may be a street lamp as
“before specified, or if a suitable excavation for the pipes and fill-
“ing in is made for the Contractors, in which case it will not be ne-
“cessary that sewers or water pipes shall have been laid in such
“streets. Said Contractors will lay the pipes at their own expense;
“the Contractors to be allowed a reasonable delay to lay the necess-
“ary pipes which shall be done in the Summer time.”

10

The laying of mains was made under pressure on the part of the Respon-
dent as appears from various letters (Exhibit P-2, Case, pp. 50 to 57) and
in certain cases at least to have produced less than the six per cent. to
which the Mis-en-cause was entitled (evidence of C. D. Turcotte, Case, p.
116). It is also to be noted that by the Act 7 George V, Chapter 66, Sect-
ion 2, provision is made for advances by the Town to the Mis-en-cause of
money to defray the cost of extending gas mains where under the contract
there was no obligation to make such extensions, and this was taken ad-
vantage of, as for instance in the case referred to in the resolution and
letter reproduced on pages 54 and 55 of the Case.

20

The Appellants submit that the rate of return to the Mis-en-cause
was governed by the contract and fixed by its terms, and that the im-
position of taxes upon the gas mains constitutes a variation of the contract
in this respect which it is not open to the Respondent to make.

30

As regards the effect of the contract, the learned trial judge holds
that the twenty-year exemption from taxation provided for by Clause 26
of the contract was the maximum exemption from taxation which the
Town could grant, that the contract indicate no intention to grant a
longer exemption which, had it been expressed, would have been *ultra*
vires, and that the Town could not transfer the right to an exemption for
a period beyond twenty years. There is no doubt that the powers of the
Town as regards the granting of exemptions from taxation did not extend
beyond the granting of an exemption for a period of twenty years, but
it is submitted that the inclusion of a twenty years' exemption in the con-
tract does not have the effect of restricting or limiting the rights con-
ferred upon the Mis-en-cause by paragraphs 23 and 27 of the contract
which must be given their full effect without reference to the exemption
from taxation. The intent of the contract can best be gathered from the
portion thereof dealing with the supply of electricity which provided
(Clause 12th, Case, p. 33) for an exemption during the term of the con-
tract and a further exemption during a renewal thereof; it is clear that
the freedom from taxation was intended to be for the term of the contract
and concurrent with it. We are not dealing here merely with the matter

40

of an exemption from taxation granted for the purpose of aiding in the establishment or maintenance of some industrial enterprise, but with a contract to which the Respondent is a party, and by the terms of which it is bound without the right to vary them directly or indirectly in any way whatsoever.

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10 *St. Louis v. Western Union Telegraph Company*, 4 American Electrical Cases, 102 (U.S. Supreme Court 1893) at page 112:—

20 “Again, it is said that by ordinance No. 11604, the city contracted with defendant to permit the erection of these poles in consideration of the right of the city to occupy and use the top crossarm of any pole for its own telegraph purposes, free of charge; and in support of that proposition the case of *New Orleans v. Southern Telephone & Telegraph Co.*, 40 La. Ann. 41, is cited. But in that case it appeared that the telephone company had set its poles and constructed its lines under and by virtue of the grant made by the ordinance, and hence the conditions named therein were held part of the contract between the city and the telephone company, which the former was not at liberty to disregard. As stated in the opinion, page 45: ‘Obviously, upon the clearest considerations of law and justice, the grant of authority to defendant, when accepted and acted upon, became an irrevocable contract, and the city is powerless to set it aside or to interpolate new and more onerous considerations therein. Such has been the well-recognized doctrine of the authorities since the *Dartmouth College Case*, 4 Wheat. 518.’ The same principle controlled the cases of *Commonwealth v. New Bedford Bridge*, 2 Gray 339; *Kansas City v. Corrigan*, 86 Missouri 67; *Chicago v. Sheldon*, 9 Wall. 50.”

40 *City of St. Louis v. Western Union Telegraph Company*, 5 American Electrical Cases, 43 (U.S. Circuit Court, 1894). Phillips J. at page 45:—

“I understand the law to be that the grant of an easement or a use by the State or municipality like the plaintiff city, by ordinance with a condition attached to be performed by the grantee beneficial to the grantor, when accepted by the grantee and acted on by both parties, constitutes a contract between them, from which neither party can recede except upon the terms provided for or contemplated by the contract.”

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And at page 46:—

“In *City of New Orleans v. Great Southern, Etc., Co.*, 40 La. Ann. 41, 533, where the city, after granting the right to the telegraph company, on condition of furnishing to the city certain free telephonic facilities sought to impose a charge of five dollars per pole, the court, *inter alia*, said:

“ ‘Either she is bound according to the terms of her position accepted and acted upon by defendant, or she is not bound at all. Obviously, upon the clearest consideration of law and justice, the grant of authority to defendant, when accepted and acted upon, became an irrevocable contract; and the city is powerless to set it aside, or to interpolate new or more onerous considerations therein.’ ” 10

“So in *Rutland Electric Light Co. v. Marble City Electric Light Co.*, 26 Atl. Rep. 635, the Supreme Court of Vermont say:

“ ‘An ordinance authorizing a telephone company to maintain lines on streets, without limitation as to time, for a stipulated consideration, when adopted and acted upon by the grantee by a compliance with its conditions, becomes a contract which the city cannot abolish or alter without the consent of the grantees.’ ” 20

3. THE SUPERIOR COURT DID NOT HAVE JURISDICTION AS REGARDS THE DEMAND FOR SCHOOL TAXES. 30

The question of jurisdiction as regards School Taxes appears to have been definitely decided in the sense that the Circuit Court has exclusive jurisdiction whatever the amount in issue and whether or not the action is hypothecary.

Some of the cases in the earlier jurisprudence would appear to have decided that where the action was hypothecary it should be brought in the Superior Court by way of exception to the general rule of Article 54 C.C.P. Here, of course, the action is not hypothecary but only concludes for a declaration of privilege. But even if it were hypothecary, the jurisprudence is now fixed in the sense that the Superior Court has no jurisdiction. See:— 40

Commissaires d'Ecoles de la Paroisse de Sainte-Anastasie v. Samson, 58 S.C. 376 (Court of Review);

Morin v. Les Commissaires d'Ecoles de Ste. Euphemie, 60 S.C. 76 (Court of Review);

Municipalité Scolaire St. Charles-Bas-du-Sault v. Gaunt, 60 S.C. 360.

The learned trial judge states that the question of jurisdiction was not pleaded, but this apparently takes no account of paragraph 3 of the Pleas of the Defendant and the Mis-en-cause (Case, pp. 10 and 11) in which the question of jurisdiction was squarely raised. He then apparently goes on to find a jurisprudence to the effect that the Superior Court has jurisdiction established by the fact that neither the Superior Court on exception to the form, nor the Court of King's Bench on appeal from the judgment thereon dismissed the action for want of jurisdiction and that in the case of *Montreal Light, Heat & Power Consolidated and The City of Westmount*, Canada Law Reports, 1926, S.C.R. 515, none of the Courts, including the Supreme Court, considered that it exceeded its jurisdiction in hearing and adjudicating upon the case. This absence of judicial expression could not, of course, be considered as equivalent to a judicial pronouncement and the learned trial judge goes on to deal with the question in detail.

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In the first place the learned trial judge finds that under the provisions of the Cities and Towns Act, R.S.Q. 1925, Chapter 102, Section 539, which reads as follows:—

“If the municipal council has ordered, by resolution, that the collection of school taxes be made at the same time and in the same manner as municipal taxes, the treasurer shall enter in the general collection roll the amount of such taxes, collect them and remit them forthwith to the secretary-treasurer of schools. In such case actions to recover taxes shall be taken by the municipal corporation.”

the Respondent was bound to proceed to the collection of the School Taxes by the action for the recovery of Municipal Taxes on the theory that the School Taxes being included in the General Collection Roll became merged with the Municipal Taxes, and that the words “in the same manner” meant “by the same action.” He finds support for this proposition in the wording of 1909 R.S.Q., Article 5755, as replaced for the Respondent and reading as follows:—

“5755. The payment of municipal taxes and of school taxes, in cases provided for in articles 5748, 5748a and 5748b, may be also claimed by an action brought in the name of the corporation before the Magistrate's Court, or the Circuit Court for the county or district, or before the mayor, or two or more councillors acting ex officio as justices of the peace, or before the recorder's court if there be one.”

(the change in this Article consisted in the addition of the words underlined following the words “municipal taxes”), stating that if the legislator had wished to allow the obligation of suing for school taxes before

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the Circuit Court to remain, it would have made a distinction or at least would not have taken the pains to amend Article 5755 for the Respondent in order to permit that which, according to the Appellant's contention, was previously ordered. In answer to this the Appellants submit that the Superior Court, which under the provisions of the Code of Civil Procedure has no jurisdiction with regard to the recovery of school taxes, is not given such jurisdiction by Section 539 or Article 5755 just quoted or by any other provisions of the Statutes relating to the Respondent. The jurisdiction of the Courts is specifically dealt with by the Code of Civil Procedure and any extension or limitation of those jurisdictions, otherwise than by amendment to the Code itself, requires the clearest and most unambiguous language, and cannot be imported by inference. 10

Articles 48 and 54 of the Code of Civil Procedure read as follows:--

“48. The Superior Court has original jurisdiction in all suits “or actions which are not exclusively within the jurisdiction of “the Circuit Court or of the Exchequer Court of Canada; and in “the district of Quebec it has exclusive original jurisdiction in “cases of petition of right.” 20

“54. The Circuit Court has ultimate jurisdiction, to the exclusion of the Superior Court;

“1. In all suits wherein the sum claimed or the value of the “thing demanded is less than one hundred dollars, saving the exceptions contained in Article 55, such cases as fall exclusively “within the jurisdiction of the Exchequer Court of Canada, and “matters of petition of right; 30

“2. In all suits for school-taxes or school fees, and all suits “concerning assessments for the building and repairing of churches, “parsonages, and churchyards, whatever may be the amount of such “suits.”

From these articles it is clear that the jurisdiction in suits for school taxes is given to the Circuit Court and that the Superior Court has no jurisdiction in that respect; as noted above, this reading of the articles is in accordance with the most recent jurisprudence on the subject. There is nothing in Section 539 of the Cities and Towns Act (which is a reproduction of R.S.Q. 1909, Article 5748, with the addition of a provision that actions to recover school taxes being collected by the Municipality shall be taken by the Municipal Corporation) which could even by inference be said to confer any jurisdiction upon the Superior Court. The only powers which a Municipal Corporation has are those which are expressly given to it by Statute, and such powers are to be exercised in accordance with the Statutory provisions which are applicable. The Cities and Towns Act, by 40

which the Respondent is governed, describes in detail the methods to be adopted in the collection of municipal taxes, but without Sections 537 and 539 those methods would be applicable only to municipal taxes and the Municipality could not include school taxes in its own Collection Roll, and there would be no provision to which it could look for guidance in the matter. These sections make what may be termed the "mechanics" of collection as applied to municipal taxes applicable to school taxes as well, and a careful reading of Section 539 makes it clear that nothing more than this was contemplated; after presuming the giving of an order that the collection of school taxes shall be made at the same time and in the same manner as the municipal taxes, the section provides that the Treasurer shall enter the amount of the school taxes in the General Collection Roll of the Municipality and shall collect them and hand them over to the school authorities. There is no suggestion that the school taxes are merged with the municipal taxes; on the contrary it is clear that the Municipality acts merely as the agent of the school authority.

As regards Article 5755 as replaced for the Respondent, the reason, though perhaps not the necessity, for its amendment is obvious. Articles 5748a and 5748b to which it refers dealt with the collection of school taxes by the Respondent on the basis of a commission of one per cent., and declared legal and valid the resolutions of the School Commissioners, School Trustees and Municipal Council, produced as Plaintiff's Exhibits Nos. 2, 3 and 4 (Case, pp. 65, 67 and 68); the amendment was made because the collection of school taxes by the Respondent had been definitely provided for. The article itself, however, cannot be said to alter the situation as regards the matter of jurisdiction; the remedies which the article provides for are in addition to the other methods of collecting taxes provided for by the Statute, and by its terms it is permissive only. By Article 54 C.C.P. the jurisdiction as regards suits for school taxes has been definitely taken away from the Superior Court and given to the Circuit Court, and the suggestion that the economy of the law is to avoid a multiplicity of actions and thus keep down the cost of collection of taxes, or that Article 54 C.C.P. contemplated only the cases where school taxes were sued for separately and not cases where it was sought to recover them in an action for the municipal taxes, can hardly avail in the absence of any provision expressly or even by necessary inference conferring upon the Superior Court a jurisdiction which by the terms of the Code of Civil Procedure is expressly withheld from it.

In the second place the learned trial judge finds that the present case was one subject to evocation to the Superior Court in virtue of Article 49 C.C.P., paragraph *d*, as affecting future rights and having for its object the charging of the immoveables of the Defendants with a hypothec, and that the incompetency of the Court should have been invoked by declinatory exception.

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The suggestion that a suit for school taxes brought in the Circuit Court would be subject to evocation to the Superior Court is one which does not appear to have been made in recent years. In a case of *Les Syndics de la Paroisse de Ste. Cunégonde v. Coursol et al.*, M.L.R., 1 S.C. 214, it was held:—

“Qu’une action réclamant le premier paiement d’une répartition pour la construction d’une Eglise, laquelle répartition est payable en douze versements annuels, ne peut être évoquée à la Cour Supérieure de la Cour de Circuit comme affectant des droits futurs, ce dernier tribunal seul ayant juridiction”.

After referring to the exclusive jurisdiction of the Circuit Court in suits for school taxes under Article 1053 (now 54) C.C.P., Mathieu J. says at page 215 that the disposition of Article 1058 (now 49) dealing with evocation cannot be invoked

“vu que cette disposition du dit article 1058 est une disposition générale qui ne peut prévaloir sur celles de l’article 1053 qui sont spéciales sous le cas prévu”.

In a later case (1898) of *Les Commissaires d’Ecoles de la Cité de St-Henri v. La Cité de St-Henri*, 14 S.C. 144, which dealt with school taxes, it was held:—

“On ne peut évoquer à la Cour Supérieure une action intentée en Cour de Circuit pour le recouvrement de taxes scolaires, quand même cette action affecterait des droits futurs.”

In this case an action was brought in the Circuit Court for school taxes and the Defendant, denying the Plaintiff’s right to tax the property in question, claimed a right of evocation to the Superior Court on the ground that future rights were involved. After setting out the provisions of Articles 54, 55 and 49 C.C.P., Mathieu J. says at page 145:—

“Ainsi par le premier (*evidently a clerical error for ‘second’*) paragraphe de l’article 54, le code de procédure a accordé à la Cour de Circuit une juridiction exclusive et en dernier ressort sur toute demande pour taxes ou retributions d’écoles, quelqu’en soit le montant, sans excepter, comme il l’a fait dans le premier paragraphe, les demandes mentionnées dans l’article 55. L’article 49 paraît aussi se référer, par ses termes, aux dispositions du paragraphe 2 de l’article 55, et il ne donne l’évocation que pour les causes mentionnées dans le paragraphe 1 de l’article 54, qui auraient rapport aux demandes mentionnées dans le paragraphe 2 de l’article 55, et il ne donne point l’évocation pour les causes mentionnées dans le paragraphe 2 de l’article 54”.

It is submitted that the interpretation given by this judgment is the correct one and actions for school taxes are in no case subject to evocation to the Superior Court.

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A case similar to the present one was that of *Corporation of Township of Dudswell v. Quebec Central Ry. Co.*, 19 S.C. 116, where it was held:—

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“In a suit in the Superior Court, claiming municipal taxes to an amount exceeding \$100, accompanied with a demand for school taxes, a declinatory exception asking the dismissal of that portion of the demand which is for school taxes, on the ground that the Circuit Court has exclusive jurisdiction, will be maintained, notwithstanding art. 170 C.C.P., it being impossible in such a case to transmit the whole record to the Circuit Court”.

20

This was an action in the Superior Court by a Municipality for municipal and school taxes; the defendants made a declinatory exception asking that the demand before that court be rejected as regards the school taxes, the Circuit Court having exclusive jurisdiction under Article 54 C.C.P. paragraph 2. The plaintiffs answered, first, that Article 170 C.C.P. provides only for a reference to the competent court and not dismissal, and second, that under Article 952 of the Municipal Code (quoted below) the Municipality, on demand of the School Commissioners, is bound to order its Secretary-Treasurer to collect the school taxes in the same manner and at the same time as the municipal taxes, and that they were acting in obedience to this law. In dealing with the second ground, White J. says at page 117:—

30

“It is quite clear that the article of the municipal code does not purport to be granting jurisdiction to courts.

40

“It was intended simply to give power to the secretary-treasurer of the municipal council to demand payment of school taxes at the same time, and in the same manner as the collection of municipal taxes is provided for under art. 951 M.C., by serving or causing to be served upon the ratepayer a special notice to the effect that the taxes are due; and under art. 952 M. C., if after fifteen days from the service of this special notice the sums due by the ratepayer should not be paid, the secretary-treasurer may levy them by seizure and sale of the goods and chattels of the ratepayer, which may be found in the municipality; such levy to be made by the issue of a warrant addressed to a bailiff, signed by the mayor of the municipality.

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“So far as the collection of taxes is concerned by suit before the courts, the article of the municipal code must be held to be subordinate to the article of the Code of Civil Procedure, which is the only law regulating the jurisdiction of the Courts.

“In suing before courts the article of the municipal code would be well and sufficiently observed, by simultaneous suits, one instituted for municipal taxes before the competent tribunal, and the other for the school taxes before the Circuit Court”.

On the first point he holds that Article 170 C.C.P. does not specially provide for such a case as the one under consideration where part of the claim is within the jurisdiction of the Superior Court and the remainder within the exclusive jurisdiction of the Circuit Court; that there is no one court competent to hear both demands; that the whole action cannot be referred to the Circuit Court, and that Article 170 C.C.P. applies only where the whole record may be sent to a competent court.

The learned trial judge observes that the last mentioned case is distinguishable from the present one in as much as the Municipal Code contained no provisions corresponding to 1909 R.S.Q., Article 5755, as replaced for the Respondent, and Section 539 of the Cities and Towns Act, but there does not in fact appear to be any substantial difference in view of Article 952 of the Municipal Code which then read as follows:—

“952. The local council must on the requisition of the school commissioners or trustees of any school municipality situated within the limits of the local municipality, accept the school assessment roll or the certified extract therefrom presented by them and order the secretary-treasurer to collect such taxes in the same manner and at the same time as municipal taxes.

In the case of *The Corporation of the Township of Acton v. Felton, et al.* (Court of Review), 24 L.C.J. 113, where the action was brought in the Superior Court for both municipal and school taxes, the action was dismissed as regards the latter.

4. THE DEFENDANT CANNOT IN ANY EVENT BE CONDEMNED.

It is difficult to follow the reasoning of the learned trial judge in coming to the conclusion that the Defendant is liable for the taxes in question. In the first place he finds (Case, p. 125, l. 33) that the Defendant is in possession of the gas mains “à titre de propriétaire”; the terms of the Agreement between the Defendant and the Mis-en-cause (Exhibit P-3, Case, p. 40) which governs the situation make it clear that

such is not the case. The learned trial judge's conclusion appears to be derived from a reading of Clauses 1, 3, 4, 8, 12, 14 and 15 of the agreement to which he refers as establishing that under the agreement the gas system was considered as "the Contractor's (Defendant's) own property." This is obviously incorrect. What the agreement (Clause 15, Case, p. 45) says shall be "the Contractor's own property" is "all the earnings and income arising from the *Company's* (Mis-en-cause) lands and buildings and the operation of its plant and apparatus." That the lands, buildings, plant and apparatus (including the gas mains in question) remain the property of the Mis-en-cause is also evidenced by the terms of Clause 14 (Case, pp. 44 and 45) which provides that upon default of the Contractor to perform its obligations the Company shall "resume possession of its plant and premises" and that the Contractor shall "vacate the lands, buildings and premises of the Company and shall restore to the Company its plant and apparatus." These provisions leave no room for the contention that the Defendant is in possession of the gas mains as owner.

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20

Reference is then made to Clause 12 of the Agreement referring to the payment of taxes by the Defendant, but whatever the undertaking in this respect as between the Defendant and the Mis-en-cause it cannot be taken advantage of by the Respondent. The Respondent's action is not based upon any such undertaking, which is not even alleged, and there is nothing in the Agreement to indicate an intention to confer any rights upon third parties; in the latter connection see *Belanger v. Montreal Water & Power Company*, 50 S.C.R., pages 356 *et seq.*, where Anglin J. says at page 366:—

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40 "No doubt, under the Civil Code in the Province of Quebec (art. 1029) as under the Code Napoleon in France (art. 1121), provision is made for stipulations in contracts in favour of persons not parties to them but for whose direct benefit such stipulations are intended; and in cases in which it is established that it was meant to confer upon such third parties rights of action in respect to such stipulations, such rights may exist. But every contractual stipulation for the benefit of another (*stipulation pour autrui*) does not give to that other a right of action to enforce it. Such a right arises only where it was the intention of the parties to the contract to confer it—an intention the existence or non-existence of which must be determined by the interpretation of the contract. *Watts-Ward et cie v. Cels* (S.C. 1901, 1. 270)."

The learned trial judge then refers to Article 489 of the Charter of the Respondent, now Article 534 of the Cities and Towns Acts, R.S.Q. 1925, Chapter 102, which reads as follows:—

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“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 ac- “quirer is not entered on the valuation roll.”

The ordinary principle is that in order to be taxed a person must be entered on the valuation and collection rolls: see *Lalonde v. Seguin*, 32 R. de J. 209. The article just quoted is an exception to this general rule and must be restrictively construed. The learned trial judge refers to the Defendant as being the tenant and possessor of the gas mains, and as such liable to the Respondent for the tax imposed upon the immoveable property which it holds as occupant, tenant or possessor. It is, however, to be noted that the only taxes which this article permits to be collected from a tenant, occupant or other possessor are municipal taxes imposed on any *land*. In this case there is no land in question. See *Montreal Light, Heat & Power v. Westmount*, 44 S.C.R. 364. It is interesting to note that Westmount subsequently had its Charter amended (8 Edward VII, Ch. 89, Sec. 43), replacing the word “land” in the three places where it occurred in the article corresponding to Article 534 quoted above by the word “immoveable.” The word “land” is not defined by the Cities and Towns Act and must therefore be given its ordinary meaning as pointed out by Anglin C.J. in *Montreal Light, Heat & Power Consolidated v. The City of Westmount*, Canada Law Reports, 1926, S.C.R. 515 at page 523, where he says in dealing with the words “real estate” or “real property”: “These terms must, therefore, be given “their ordinary and natural meaning.” Hence it is impossible to maintain that gas mains would be covered by the word “land” and consequently the taxes in question cannot be recovered from the Defendant. The learned trial judge’s reasoning (Case, p. 130, l. 10) appears to be that “land” (“terrain”) is an immoveable and that the gas mains are immoveables and therefore are “land”; the fallacy of this is obvious.

Reference has been made above to the general principle that taxing statutes are subject to a strict interpretation. This principle is recognized in *Town of Westmount v. Montreal Light, Heat & Power Company*, 20 K.B., where Carroll J. says at page 254:—

“Le principe est très bien exprimé par Lord Cairns dans la “cause de *Partington vs. Attorney General*, L. R. 4, H. of L., p. “100:

“If the person sought to be taxed comes within the letter of “the law, he must be taxed however great the hardship may appear “to the judicial mind to be. On the other hand, if the Crown seeks “to recover the tax and cannot bring the subject within the letter

“of the law, the subject is free, however apparently within the
“spirit of the law the case might otherwise appear to be. There-
“fore, the Crown fails if the case is not brought within the words
“of the statute interpreted according to their natural meaning. In
“other words, if there be admissible, in any statute, what is called
“an equitable construction, certainly such a construction is not
“admissible in a taxing statute, where you can simply adhere to the
words of the Statute.”

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See also *Maxwell, Interpretation of Statutes*, Sixth Edition, page 503:—

“Statutes which impose pecuniary burdens also, are subject
“to the same rule of strict construction. It is a well-settled rule
“of law that all charges upon the subject must be imposed by clear
“and unambiguous language because in some degree they operate
“as penalties. The subject is not to be taxed unless the language
“of the statute clearly imposes the obligation.....In a case of
“reasonable doubt the construction most beneficial to the subject
“is to be adopted.”

20

5. IF THE ACTION FAILS AS AGAINST THE DEFENDANT IT CANNOT BE MAINTAINED AS AGAINST THE MIS-EN-CAUSE.

The authorization to put Montreal Light, Heat & Power Company
30 *en cause* was granted merely as an incident of the action against the Defendant. There is no provision of law which authorizes the adding of a separate and distinct Defendant, and short of this there is no way in which the action could succeed as against the Mis-en-cause if it fails as against the Defendant.

It is clear that a new Defendant could not be substituted for the one against whom the action was originally taken. It is certainly not permissible to bring an action against one person and then, finding that
40 an error has been made, join as Defendant the person against whom the action should have been brought in the first instance. In the present case the addition of Montreal Light, Heat & Power Company as a new Defendant would have just the same result as the above proceeding and would be merely the doing indirectly of something which could not be done directly.

Articles 513-526 of the Code of Civil Procedure (dealing with amendments) all refer to irregularities in an action taken against the proper Defendant, as pointed out by McCorkill J. in *Craig v. Bourgeois*, 9 Practice Reports 417, at page 422, and the reference in Article 525 to

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the joining of a new Defendant in an action would apply only in cases such as the joining of a defendant in warranty or the liquidator of a company which had become insolvent (*The Comet Motor Co. Ltd. v. The Dominion Mutual Fire Insurance Co.*, 11 Practice Reports, p. 314).

As stated by Roy J. in *La Cité de Québec et al. v. Quebec Railway, Light, Heat and Power Company*, 64 S.C., at page 192:—

“Il s'ensuit donc que si l'on accordait aux demanderesses la 10
“permission d'amender qu'elles sollicitent on se trouverait à subs-
“tituer une autre défenderesse à celle qui a été assignée, chose qui
“n'est pas permise par le Code de procédure civile”.

and at page 193:—

“On ne peut donc, au moyen d'une motion pour amender, in-
“troduire dans une cause un nouveau défendeur, ou substituer un 20
“défendeur à un autre. La jurisprudence est bien fixée sur ce
“point”.

The Judgment of Bruneau J. of 11th April, 1927 (Case, p. 122), dismissing the exception to the form made by the Mis-en-cause, the appeal from which was dismissed by the Court of King's Bench, cannot be taken as deciding this point as an examination of its *considerants* shows that it dealt merely with the clerical error in the name of the Mis-en-cause.

The Appellants respectfully submit that the Judgment appealed 30
from should be set aside and the Plaintiff's action dismissed, the whole
with costs.

MONTREAL, 1st April, 1930.

BROWN, MONTGOMERY & McMICHAEL,

Attorneys for Appellants.

Factum de l'Intimée

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L'appel est d'un jugement final rendu par la Cour Supérieure pour le District de Montréal (Loranger J.) le 14 octobre 1929, maintenant telle qu'intentée l'action de la Demanderesse pour taxes municipales et scolaires au montant de \$3,349.60, avec les intérêts tels que réclamés, moins toutefois celle de \$86.78 suivant retraxit produit, laissant une somme nette de (3,262.82).

Première Partie

LES FAITS

20 Par contrat notarié reçu le 24 août 1904 par A. C. Lyman, notaire, l'Intimée concéda à l'une des appelantes, la Montreal Light Heat & Power Company, le privilège exclusif d'installer dans les limites de son territoire un système de distribution de gaz et d'électricité. Ce privilège, couramment appelé "franchise", était ainsi accordé pour une durée de trente ans et pourvoyait à ce que les tuyaux ou conduites à gaz fussent exemptés de taxes pendant 20 ans (P-1 on discovery, page 37, clause 26).

30 Le 7 juin 1916, la Montreal Light Heat & Power Company transporta à la Civic Investment & Industrial Co. les droits que lui conférait ce contrat de franchise, au moyen d'un contrat sous seing privé par lequel la Civic Investment prenait à son compte pour 98 ans l'exploitation de toute l'entreprise possédée utilement jusque là par la Montreal Light Heat & Power Company. L'une des clauses de ce contrat met nommément à la charge de la Civic Investment le paiement de toutes taxes et cotisations municipales et scolaires, et toutes charges d'entretien de quelque nature qu'elles soient. C'est dans son ensemble un contrat d'exploitation (holding and operating contract) assimilable à l'emphytéose.

40 Ce contrat ne fut jamais dénoncé formellement à l'Intimée, qui avait inscrit sur son rôle d'évaluation et de perception ce système de distribution au nom de la Montreal Light Heat & Power Company qui n'a jamais cessé d'en être propriétaire.

Elle put connaître le changement de possesseur par la correspondance échangée entre elle et la Montreal Light, Heat and Power Consolidated, qui n'était que la Civic Investment sous un nouveau nom, ce changement de nom ayant été autorisé par la loi 8 Geo. V. Chapitre 111.

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Les vingt ans d'exemption prévus au contrat du 24 août 1904 expirés, l'Intimée et, avec elle, les Commissaires d'écoles pour la Municipalité d'Outremont, imposèrent donc sur les tuyaux à gaz en question, les taxes autorisées par la loi et les règlements municipaux.

Les propriétés imposées figurent pour les taxes scolaires sur la liste neutre comme appartenant à une compagnie constituée en corporation, et c'est par conséquent la Commission Scolaire catholique romaine qui avait charge de les percevoir. 10

Par résolutions adoptées respectivement par les commissions scolaires catholiques et protestante d'Outremont, les 10 et 11 mars 1919 et acceptées par l'Intimée le 2 avril de la même année, en conformité de la loi des Cités et Villes et de la Charte de l'Intimée, cette dernière fut chargée et devint obligée de percevoir les taxes scolaires dues à ces deux commissions, avec obligation pour elle de remettre à la Commission Scolaire catholique romaine le produit des taxes imposées sur la propriété des Appelantes. 20

Mais en 1925, la Loi 15 Geo. V, Chapitre 45, vint modifier cet état de choses et imposa directement sur les immeubles appartenant à la liste neutre, une taxe déterminée que l'Intimée fut chargée de percevoir pour en remettre le produit à chacune des commissions suivant leurs droits.

C'est pourquoi l'action réclame les taxes scolaires aussi bien que les taxes municipales pour trois années à compter du 1er novembre 1924, de sorte qu'il y a lieu d'appliquer à une partie de la réclamation, la Loi des Cités et Villes, et, à la dernière, la Loi 15 Georges V, Chapitre 45. 30

L'action est dirigée à la fois contre la Montreal Light Heat & Power *Company*, propriétaire du système de distribution, et contre la Montreal Light Heat & Power *Consolidated*, qui l'exploite en vertu du contrat que nous avons mentionné.

PROCEDURES

40

L'action avait d'abord été intentée à la Montreal Light Heat & Power *Consolidated* qui, ouvertement et publiquement, était en possession des biens, et qui, aux yeux de l'Intimée et à la lumière de la correspondance échangée, ne devait et ne pouvait être que la M. L. H. & P. *Company* sous un autre nom; car on ignorait nécessairement l'existence de la Civic Investment et son rôle transitoire, de sorte que la M. L. H. *Company* n'avait cessé de figurer au rôle comme propriétaire.

Mise au courant, par l'examen au préalable de G. R. Whatley, de la situation respective des Appelantes, l'Intimée demanda la permission de joindre à l'action ou de mettre en cause comme co-défenderesse, la Montreal Light Heat & Power *Company*, ce qui fut accordé par jugement accordant sa motion en ce sens (P. 121).

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10 Le bref et la déclaration furent donc amendés en conséquence et signifiés de nouveau aux deux Appelantes. Sur ce, la Montreal Light Heat & Power *Company* présenta une exception à la forme se plaignant de ce qu'elle était mise en cause ou jointe à l'action comme co-défenderesse alors que le jugement, disait-elle, permettait de la mettre en cause sans autre désignation.

Cette exception à la forme fut rejetée (Jugement, p. 122) et ce dernier jugement fut confirmé par cette Cour, le 10 novembre 1927 (p. 124) par un jugement maintenant passé en force de chose jugée.

20 La position des deux Appelantes se trouve maintenant nettement établie et c'est à deux défenderesses que nous avons affaire, et non pas à une défenderesse et une mise-en-cause.

30 LA DECLARATION (pp. 7, 8) relate d'abord le contrat intervenu entre la Montreal Light Heat & Power *Company* et la Civic Investment, devenue la Montreal Light Heat & Power *Consolidated*, le 7 juin 1916, pour l'exploitation de l'entreprise de distribution du gaz et de l'électricité; elle contient ensuite les allégations ordinaires de l'imposition des taxes et l'énoncé des résolutions des commissions scolaires et de la législation qui obligent l'Intimée à percevoir les taxes scolaires en même temps que les siennes; elle conclut au jugement contre les deux Appelantes "chacune pour le tout," c'est-à-dire conjointement et solidairement.

Les deux Défenderesses ont plaidé séparément, mais invoquent comme moyens communs;

40 (a)—Que les rôles d'évaluation et de perception sont ultra vires, en autant qu'ils s'appliquent aux tuyaux de gaz en question, autrement dit que ces biens ne sont pas des immeubles;

(b)—Que la Cour Supérieure est sans juridiction à l'égard des taxes scolaires réclamées dans l'action.

Comme moyens distincts et particuliers, chacune d'elles invoque les suivants:

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La Montreal Light Heat & Power Consolidated.

1.—Que n'étant pas propriétaire du terrain sur ou sous lequel sont installés les tuyaux, elle ne peut être taxée comme occupante en vertu de l'article 534 de la Loi des Cités et Villes (ch. 102), qui permet de percevoir les taxes imposées sur un terrain, de l'occupant ou locataire même s'il n'est pas inscrit au rôle;

2.—Que l'installation a été faite au bénéfice de l'Intimée et qu'il est hors de son pouvoir d'enlever les tuyaux, même si elle le voulait. 10

La Montreal Light Heat & Power Company.

1.—Persistant à se considérer comme mise-en-cause et non comme défenderesse, malgré le jugement de la Cour Supérieure confirmé en Appel sur l'exception à la forme, elle plaide que l'Intimée devant être déboutée de sa demande contre la *Montreal Light Heat & Power Consolidated* doit l'être également contre elle, la *Company* qui, allègue-t-elle, n'est que partie accessoire comme mise-en-cause; 20

2.—L'intention des parties au contrat du 24 août 1904 entre elle et l'Intimée était de faire durer l'exemption aussi longtemps que la franchise, c'est-à-dire trente ans, puisque la *Montreal Light Heat & Power Company* a été subrogée aux droits de la Cité. Bien plus, cette subrogation aurait eu pour effet de rendre les immeubles de la *Montreal Light Heat & Power Company*, exempts de taxes au même titre que ceux de l'Intimée elle-même. 30

LA REPONSE n'ajoute rien au débat et se contente dans l'un et l'autre cas d'alléguer que le prétendu défaut de juridiction à l'égard des taxes scolaires aurait dû être invoqué par le moyen exception déclinatoire. Quant à l'interprétation qui doit être donnée au contrat, l'Intimée y réfère et particulièrement à la clause qui limite l'exemption à vingt ans.

LE JUGEMENT rejette l'un après l'autre les moyens de défense, affirme la juridiction de la Cour Supérieure à l'égard des taxes scolaires et condamne les deux Appelantes "chacune pour le tout" à la somme de \$3,262.82 avec intérêts tels que réclamés. 40

Deuxième Partie

RAISONS A L'APPUI DU JUGEMENT.

L'Intimée soumet humblement que ce jugement est bien fondé pour entre autres raisons, les suivantes:

1.—La réclamation de l'Intimée pour taxes est prouvée sans contradiction de la part des Appelantes;

2.—Les tuyaux à gaz sur lesquels les taxes ont été imposées sont des immeubles, au sens de la loi en vigueur dans le territoire de l'Intimée;

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3.—Le contrat (franchise) du 24 août 1904 n'a ni la portée, ni le sens que lui attribuent les Appelantes, car:

- 10 (a) Le texte même contredit cette assertion;
- (b) S'il prétendait accorder une exemption de taxes de 30 ans, il serait du fait même à cet égard illégal et ultra vires;
- (c) La subrogation invoquée par les Appelantes n'a d'autre but et d'autre effet que d'empêcher toute autre compagnie et même l'Intimée d'entrer en concurrence avec elles.

20 4.—Les deux Appelantes doivent être condamnées conjointement et solidairement au paiement des taxes:

(a) La M. L. H. & P. *Consolidated* tant:

1°. comme occupante en vertu de l'article 534 de la Loi des cités et villes (S. R. Q. 1925, Chapitre 102);

30 2°. qu'en vertu du contrat d'exploitation du 7 juin 1916, entre la M. L. H. & P. *Company* et la Civic Investment & Industrial Co.

(b) La M. L. H. & P. *Company*:

1°. Comme propriétaire portée au rôle;

2°. Comme co-défenderesse à l'action.

40 5.—Elles doivent être condamnées conjointement et solidairement au paiement des taxes scolaires, aussi bien que des taxes municipales, et cela sous l'empire:

(a) Du Code de procédure, et de la Loi de l'Instruction publique (S. R. Q. 1925, ch. 133);

(b) De la Loi des cités et villes et des dispositions particulières applicables à l'Intimée;

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(c) De la Loi spéciale 15 Georges V, Chapitre 45; qui, tour à tour reconnaissent la juridiction de la Cour Supérieure en l'espèce.

(d) Du jugement rendu dans la cause de la Cité de Westmount vs M. L. H. & P. *Consolidated*, lequel affirme la juridiction de la Cour Supérieure à l'égard des taxes scolaires, de façon décisive encore qu'implicite. (C. P. Art. 171).

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Troisième Partie

DISCUSSION

1.—*La réclamation de l'Intimée pour taxes est établie sans contradiction de la part des Appelantes.*

L'intimée a produit à l'appui de sa demande les extraits certifiés de ses rôles d'évaluation et de perception pour les trois années concernées, de même que pour la première année, l'extrait du rôle de perception des Commissaires d'Ecoles pour la municipalité d'Outremont. 20

Les taxes scolaires de la liste neutre pour les années 1925-26 et 1926-27 sont imposées directement par la Loi 15 Georges V, Chapitre 45, et leur perception est mise à la charge de la Cité, qui en devient personnellement responsable à l'égard des commissions scolaires.

Quant aux taxes spéciales, l'Intimée a produit des copies certifiées des règlements les imposant, accompagnées des certificats de publication. 30

Elle a produit également les résolutions des Commissaires et des Syndics d'Ecoles pour la municipalité d'Outremont, les requérant de percevoir les taxes scolaires (Pièces No 1, No 2, No 3 et No 4 de la Demanderesse avec le rapport; Pièces P-1, P-2, P-3 et P-4 à l'enquête, pp. 65, 67, 68, 69, 73, 76, 79, 83, 87).

Les Appelantes n'ont pas attaqué la validité de cette preuve, qui est du reste inattaquable, et elle est complétée à leur avantage par le re-traxit produit au montant de \$86.78, réduisant la demande et le jugement à la somme de \$3,262.82. 40

2.—*Les tuyaux à gaz sur lesquels les taxes ont été imposées sont des immeubles au sens de la loi en vigueur dans le territoire de l'Intimée.*

Nous ne croyons pas avoir à discuter ici cette question, qui a reçu une solution définitive dans la cause de City of Westmount vs M. L. H. & P. *Consolidated* (38 B. R. 406, C. S. C. R. 1926, page 515).

Les notes de M. le Juge Tellier contiennent un exposé lumineux et complet que tout commentaire ne saurait qu'affaiblir.

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Nous y référons respectueusement la Cour, en nous contentant de remarquer qu'ici ce sont les seules conduites à gaz (gas mains) qui sont taxées.

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10 3.—*Le contrat (franchise) du 24 août 1904, n'a ni la portée, ni le sens que lui attribuent les Appelantes.*

C'est l'un des points sur lesquels les appelantes ont assisté tant dans leurs défenses qu'à l'audience. A les entendre, la *M. L. H. & P. Company* aurait été par ce contrat substituée à l'Intimée (dans le temps la Ville d'Outremont), à un tel point que pour les fins du contrat sa personne juridique se serait confondue avec celle de l'Intimée elle-même; d'où elles concluent:

20 (a) Que l'exemption de taxes devait durer aussi longtemps que la franchise, c'est-à-dire trente ans;

(b) Que les propriétés de la compagnie servant à la distribution du gaz doivent être considérées comme propriétés de l'Intimée, et par suite exemptées de taxes pour la même période.

30 C'est, à la vérité, une interprétation bien large, si large, si inattendue même qu'elle mérite qu'on s'y arrête.

(a) *Le texte du contrat contredit cette assertion.*

Nous avouons qu'il nous est impossible de trouver dans ce contrat une seule clause ou une seule phrase qui puissent supporter semblable assertion. Tout au contraire, il y est clairement pourvu à une exemption pour une période de vingt ans. (Clause 26, page 37).

40 A qui les Appelantes feront-elles croire que si l'intention de l'Intimée avait été d'exempter de taxes ces tuyaux, elle aurait pris la peine de stipuler une exemption de vingt ans.

(b) *Une exemption de 30 ans aurait été ultra vires et illégale.*

Si le contrat avait le sens et la portée que lui prêtent les Appelantes, il eût été du coup illégal comme dépassant les pouvoirs accordés à l'Intimée et contrevenant à la prohibition formelle de la loi, telle qu'édictee par l'article 518 du Statut 3, Edouard VII, Chapitre 38, en vigueur à cette époque.

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Les parties au contrat n'ignoraient pas cette disposition de la Loi des cités et villes telle qu'elle existait dans le temps, et qui limitait à 20 ans le droit d'exemption des cités et villes, et prétendre qu'elles ont voulu aller au-delà, c'est, pour les Appelantes, s'accuser elles-mêmes d'avoir cherché un moyen de contourner la loi et d'en enfreindre les dispositions formelles, ou, autrement dit, alléguer leur propre turpitude.

Cette intention de violer la loi ne saurait se présumer chez elles. et encore moins chez l'Intimée. Il faut donc lire le contrat à la lumière de la loi alors en vigueur et conclure que les parties ont voulu et ont effectivement convenu d'une exemption de 20 ans, ce qui était la limite permise et ce qui est du reste conforme au texte du contrat. 10

(c) *La subrogation invoquée par les Appelantes n'a d'autre but et d'autre effet que d'empêcher toute autre compagnie et même l'Intimée d'entrer en concurrence avec la M. L. H. & P. Company.*

Mais, réplique la M. L. H. & P. Company, en vertu de la clause 27, vous m'avez subrogée dans tous vos droits, au point de vous enlever à vous-même le pouvoir que vous donnait la loi d'installer un service municipal de distribution du gaz. Mes propriétés affectées à cette fin sont donc devenues pour les fins de taxation vos propriétés, c'est-à-dire, des propriétés municipales exemptées de taxation.

Encore une fois, c'est aller bien loin, bien plus loin que ne va le contrat lui-même, dont la clause en question se lit comme suit:

“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 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.” (Page 37). 30 40

Il nous paraît impossible de découvrir dans ce texte la signification que prétendent y trouver les Appelantes. Qu'on étende, en effet, autant que le permettent la loi et la logique le sens du mot “subrogation”, on n'arrivera jamais à lui faire signifier, dans le cas qui nous occupe, la substitution d'un propriétaire à un autre. Or, pour devenir exempts de taxes,

les immeubles en question doivent être la propriété de l'Intimée, et non pas avoir simplement pris la place de ceux que la municipalité aurait pu construire aux mêmes endroits (13 Georges V, Chapitre 65, Article 509 (b); S.R.Q. 1925, Chapitre 102, Article 520 (b)).

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Les Appelantes sont-elles prêtes à admettre que leurs tuyaux à gaz appartiennent à l'Intimée? Sinon, elles ne peuvent se prévaloir depuis le 24 août 1924, d'aucune exemption.

10 Il est une autre interprétation conforme celle-là aux faits, à la logique et à la loi: c'est que la *M. L. H. & Power Company* a voulu dans le temps se prémunir contre un danger qui pouvait devenir redoutable pour elle, celui d'avoir à subir la concurrence de la municipalité où elle installait son service, et empêcher ainsi qu'il ne lui arrivât à Outremont ce qui lui arrive à Westmount pour l'électricité.

Poussée dans ses derniers retranchements, la *M. L. H. & P. Company* ajoute au paragraphe 9 de sa défense (p. 12) que l'Intimée, lui
20 ayant garanti par contrat un certain revenu net, ne saurait diminuer indirectement ce revenu par le prélèvement de taxes.

Il s'agit toujours du même contrat et c'est à la clause 23 que les Appelantes réfèrent.

Est-il besoin de dire qu'on n'y trouve nulle part semblable garantie, mais simplement pour la *M. L. H. & P. Company* l'obligation d'installer des tuyaux à la demande de la Cité, chaque fois qu'elle pourra en retirer un revenu de 6%.

30 Du reste, ces conditions ont été modifiées plus tard, en 1916, alors que la Législature a autorisé l'Intimée à avancer les sommes nécessaires à l'installation des conduites de gaz. et cela au moyen de la Loi 7, Georges V, chapitre 66, qui se lit à cet égard. comme suit:

40 "5668a.—Le conseil de la cité, par un vote des deux tiers de ses membres, peut de temps à autre, avancer à la *Montreal Light Heat and Power Company*, certaines sommes d'argent pour payer le coût du prolongement des conduits principaux de gaz dans les rues, parties de rues, ou dans les parties de la cité où ladite compagnie n'est pas tenue en vertu de son contrat avec la cité, à l'exécution de ces prolongements."

Il ne s'agit pas, en effet, de reprendre sous une forme détournée les profits garantis à la *M. L. H. & P. Company*, mais bien seulement de lui éviter des risques de pertes, de lui éviter même une exploitation non profitable; mais on ne saurait à aucun titre tirer d'une semblable convention la conclusion que prétendent imposer les Appelantes, conclusion contraire au contrat originaire de 1904, et surtout, conclusion prohibée par la loi.

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4.—*Les Appelantes doivent être condamnées conjointement et solidairement au paiement des taxes.*

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La M. L. H. & P. *Consolidated* doit l'être tant comme occupante, en vertu de l'article 534 du Chapitre 102, qu'en vertu de l'obligation qu'elle a assumée par le contrat d'exploitation du 7 juin 1916. La M. L. H. & P. *Company* doit l'être comme propriétaire portée au rôle et comme défenderesse à l'action au même titre que l'autre compagnie.

10

(a) *La M. L. H. & P. Consolidated* doit être condamnée:

1°.—*Comme occupante en vertu de l'article 534 de la Loi des Cités et Villes (S. R. Q. 1925, Chapitre 102), lequel se lit comme suit:*

“534.—Les taxes municipales imposées sur un terrain peuvent être réclamées aussi bien du locataire, de l'occupant ou autre possesseur de ce terrain que du propriétaire, de même que de tout acquéreur subséquent de ce terrain, lors même que tel locataire, occupant, possesseur ou acquéreur n'est pas inscrit sur le rôle d'évaluation.”

C'est l'un des arguments de la défense que nous relevons ici, et l'un de ceux dont il est fait le plus grand état.

En admettant, disent les Appelantes, que nos tuyaux à gaz soient des immeubles, ils ne sont certainement pas un *terrain* et, par suite, la M. L. H. & P. *Consolidated*, qui n'est pas propriétaire, qui n'est pas portée au rôle, ne saurait être tenue au paiement des taxes.

Cet argument qui peut paraître impressionnant à première lecture ne résiste pas à un examen un tant soit peu attentif des lois applicables en l'espèce.

L'article que nous venons de citer remonte par son origine à la Loi 40 Victoria, Chapitre 29, Article 370, adoptée en 1878, et qui fut, sauf erreur, la première loi des Cités et Villes édictée en notre Province.

Il a toujours été reproduit textuellement depuis dans toutes les refontes et Statuts subséquents. C'est ainsi qu'on le retrouve à l'article 4544 des Statuts de 1888, à l'article 5743 de ceux de 1909, et enfin, sous une forme identique à l'article 534 du Chapitre 102.

Il nous paraît évident que lorsque cette disposition a été introduite en 1878 dans notre législation municipale urbaine, nul ne songeait à imposer des taxes sur des tuyaux à gaz ou des fils électriques qui n'exis-

taient nulle part dans la Province. Les seuls immeubles que l'on pouvait avoir en vue à ce moment étaient les terrains et les constructions qui, presque invariablement, avaient un seul et même propriétaire, et dont le cas était clairement régi par le Code Civil.

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On avait donc raison d'être alors moins difficile sur le choix des termes et on ne l'est pas devenu davantage depuis. C'est ainsi que la Loi des cités et villes emploie indistinctement les mots "immeubles"
10 "propriétés immobilières" (Article 530, "terrain" (Articles 533 et 534), ou simplement à l'article 531 le mot "propriété", lequel signifie de toute évidence "un terrain" puisqu'il s'agit dans ce dernier article de subdivision en lots à bâtir.

D'autre part, la Loi de l'Instruction Publique, qui pourvoit à l'imposition des taxes scolaires, les confond également par la définition qu'elle en donne au paragraphe 15 de l'article 2, qui se lit comme suit :

20 "15°.—Les mots "bien-fonds", "terrain" ou "immeuble" désignent toute propriété foncière possédée ou occupée par une seule personne ou par plusieurs personnes conjointement, et comprennent les constructions et améliorations qui s'y trouvent. Ils comprennent aussi tout ce qui est immeuble en vertu des lois municipales régissant le territoire compris dans la municipalité scolaire; (S. R. Q. 1925, Chapitre 133, article 2, paragraphe 15°)."

Plus loin, l'article 367 du même chapitre 133 emploie le mot "propriété", qui figure au titre et au sous-titre de la 4ème Partie de ce Chapitre consacré à l'évaluation des propriétés et à l'imposition des taxes.
30

Mais là où apparaît le mieux cette équivalence de termes aux yeux de la loi et l'usage indifférent qu'elle en fait, c'est à l'article 520 du Chapitre 102, qui, en énumérant les biens non imposables, emploie tour à tour en leur donnant le même sens, les mots "terrains," "immeubles," "biens," "propriété" et "maison". Lisons plutôt :

40 "520. 1.—Sont des biens non imposables :

(a) Les *terrains* appartenant à Sa Majesté.....

(b) Les *propriétés* du Gouvernement fédéral.....

(c)

(d) Les *biens* possédés et employés pour le culte public, les évêchés, les presbytères.....

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(e) Les *immeubles* employés pour les bibliothèques.....

(f) Toutes *maisons* d'éducation qui ne reçoivent aucune subvention.....

2.—.....

3.—Les propriétaires et occupants des *immeubles* mentionnés dans les paragraphes (c), (d), (e) et (f) du paragraphe 1 du présent article, sont néanmoins tenus, etc.....” 10

Le texte anglais de ces divers articles contient une traduction littérale des termes français, et emploie tour à tour les mots “immoveable”, “immoveable property,” “land,” ou simplement “property.”

Il n'y a donc pas lieu de distinguer, pour les fins qui nous occupent, entre la valeur relative de ces diverses expressions, qui toutes peuvent se ramener à une seule, i. e. le mot “immeuble,” dont elles sont synonymes. 20

C'est ce que nous paraît avoir clairement décidé cette Cour, dans la cause de Westmount (38 B. R. 406). C'est la conclusion à laquelle en est arrivée la Cour Suprême en confirmant ce jugement. (Voir C. S. C. R. 1926, page 523).

Mais il y a plus, et c'est la lecture des deux articles 533 et 534 du Chapitre 102, qui fournit à notre humble avis l'argument décisif.

Ces articles, dont l'ordre devrait être interverti, se lisent comme suit: 30

“533.—Quiconque, n'était pas propriétaire, paye les taxes municipales imposées à raison du *terrain* qu'il occupe, est subrogé de plein droit aux privilèges de la municipalité, contre les biens meubles et immeubles du propriétaire, et peut, à moins de convention contraire, retenir sur le prix du loyer ou sur toute autre sommes qu'il lui doit, ou recouvrer de lui, par action personnelle, le montant qu'il a payé en capital, intérêts et frais.”

“534.—Les taxes municipales imposées sur un *terrain* peuvent être réclamées aussi bien du locataire, de l'occupant ou autre possesseur de ce terrain que du propriétaire, de même que de tout acquéreur subséquent de ce terrain, lors même que tel locataire, occupant, possesseur ou acquéreur n'est pas inscrit sur le rôle d'évaluation.” 40

L'intention du législateur est évidente: il a voulu donner à la municipalité son recours contre tout possesseur, mais il a voulu aussi protéger ce dernier contre l'éviction qu'entraînerait pour lui la vente de la propriété pour taxes.

Mais qui osera prétendre qu'en édictant ces deux articles, le législateur avait en vue le possesseur d'un *terrain*, et non pas plutôt et principalement le possesseur et surtout le locataire d'une simple partie d'un immeuble bâti, par exemple: un magasin au rez-de-chaussée d'une maison à plusieurs étages.

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10 Il s'agit ici d'une subrogation toute spéciale qui s'opère de plein droit, et qui est bien différente de celle prévue à l'article édicté pour l'Intimée par la Loi 11 Georges V, Chapitre 114, s. 1, et ajouté avec de légères différences à la Loi des cités et villes par 19 Georges V, Chapitre 36.

Dans ce dernier cas, en effet, le consentement du débiteur propriétaire est requis, de même que la mention de la subrogation sur le reçu donné par la municipalité, ce que n'exige pas l'article 533.

20 S'il fallait donner au mot "terrain" le sens restreint que veulent lui attribuer les Appelantes, cette disposition destinée à protéger le locataire deviendrait illusoire. Il faut donc, à notre humble avis, lire "immeuble" au lieu de "terrain", comme il faut également lire "immeuble" au lieu de "terrain" à l'article 491 de la même loi, qui statue que: "Si le propriétaire d'un *terrain* est inconnu, les estimateurs écrivent le mot "inconnu" dans la colonne des noms des propriétaires, en regard de la désignation de ce terrain"; à l'article 502 qui pourvoit aux changements sur le rôle en cas de mutation de propriétaire ou d'occupant d'un "terrain";
30 comme il faut lire "immeuble" au lieu de "propriété" à l'article 499 qui prévoit les omissions au rôle.

Tant il est vrai que dans l'espèce, à vouloir trop restreindre le sens des mots, on glisse insensiblement dans l'absurde.

2°.—*La M. L. H. & P. Consolidated est responsable des taxes en vertu du contrat d'exploitation du 7 juin 1916, entre elle-même, sous le nom de Civic Investment & Industrial Co., et la M. L. H. & P. Company.*

40 Il n'est peut-être pas inutile de déterminer la nature de ce contrat. L'Intimé, au paragraphe 1er de sa déclaration (page 7), l'appelle un bail emphytéotique, et il semble bien qu'il en est ainsi.

Sans doute on n'y trouve nulle part les mots "emphytéose" ou "bail emphytéotique," mais ce ne sont pas les mots qui importent. On y trouve en réalité toutes les clauses et conditions essentielles de l'emphytéose, tel que défini aux articles 567 et ss. du Code Civil.

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L'obligation d'améliorer, non pas à la vérité de façon explicite, mais la correspondance échangée par la suite entre l'Intimée, d'une part, et la Civic Investment puis la M. L.H. & P. *Consolidated*, d'autre part, le démontre de façon irréfutable.

L'obligation pour l'emphytéote, i. e. la M. L. H. & P. *Consolidated* "d'acquitter tous les droits réels et fonciers," et, en particulier, les taxes municipales et scolaires (P-3 on discovery, clause 12, page 44).

10

Les Appelantes prétendront peut-être que c'est un contrat d'une nature spéciale, un contrat innommé. Qu'il nous soit permis de répondre que la lecture de ce contrat permet de lui donner un nom, de l'assimiler à l'emphytéose, par conséquent sujet à l'application de l'article 576 C. C. qui impose à l'emphytéote l'obligation d'acquitter tous les droits réels et fonciers dont l'héritage est chargé.

Allons plus loin et supposons pour un instant qu'il ne s'agissait pas d'un emphytéose. Il n'en reste pas moins vrai que la Civic Investment, — devenue la M. L. H. & P. *Consolidated* — s'est obligée par la clause 12 de son contrat, à acquitter toutes ces taxes. Voici comment elle se lit:

20

"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." (P. 3 on discovery. page 44).

30

En vain les Appelantes prétendront-elles que ce moyen n'est pas plaidé. A notre humble avis, il l'est explicitement et formellement au paragraphe 1er de la déclaration amendée (page 7), qui allègue le contrat et en produit une copie (en réalité cette copie a été produite lors de l'examen au préalable de G. R. Whatley, antérieurement à la signification du bref et de la déclaration amendés). Cette copie forme partie de la déclaration comme si elle y était transcrite.

40

Enfin, si la Cour en vient avec nous à la conclusion que nous sommes en présence d'un emphytéose, il n'était pas besoin pour l'Intimée d'alléguer cette stipulation, puisqu'elle est déjà contenue dans cette loi publique qui s'appelle le Code Civil.

Sinon, nous nous trouvons en présence d'une stipulation au profit d'un tiers, et ce tiers, l'Intimée, a signifié sa volonté d'en profiter en signifiant son action. (C. C. 1029).

La responsabilité de la *M. L. H. & P. Consolidated* ne saurait donc à notre humble avis, être révoquée en doute.

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Examinons celle de la *M. L. H. & P. Company*.

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10 (b) *La M. L. H. & P. Company*: 1°.—*Est débitrice des taxes comme propriétaire portée au rôle d'évaluation*; 2°.—*Est défenderesse à l'action comme l'autre appelante, et doit être condamnée au même titre.*

Les rôles produits (pp. 90-93) indiquent comme propriétaire la *M. L. H. & P. Company*.

“Mais, dira-t-elle peut-être, s'il est vrai que le contrat du 7 juin 1916 est un bail emphytéotique, j'ai cessé d'être propriétaire et mon nom devrait disparaître du rôle puisque aux termes de l'article 569 C. C. l'emphytéose emporte aliénation.”

20 Cette expression: “emporte aliénation” est inexacte ou tout au moins incomplète, et tout le titre qui traite de l'emphytéose le fait bien voir.

Ainsi l'emphytéote ne peut détériorer l'immeuble baillé (C.C. 578), ce qui serait le droit indéniable du propriétaire. S'il fait des améliorations non prévues au bail, le bailleur a droit de les retenir aux mêmes conditions que le locateur à un bail ordinaire. (C. C. 582). Il paye une rente fixe qui, dans notre cas, s'appelle un dividende de 8% aux actionnaires de 30 la *M. L. H. & P. Company* en versements trimestriels ou semi-annuels (p. 3 on discovery, page 44, clause 11). (C. C. 575). Enfin et surtout il n'a que l'action possessoire qui appartient au possesseur, mais non l'action pétitoire que seul le propriétaire peut exercer. (C. C. 572).

40 Ce qui est aliéné en réalité, c'est le *domaine utile* de la chose, comme on disait dans l'ancien droit français. Aussi, Mignault n'hésite-t-il pas à dire: “Donc, pendant la durée du bail, le preneur a toute l'utilité de la chose. Ce n'est pas à dire que le bailleur soit dessaisi de son droit, il n'en a perdu que la jouissance; *il est toujours propriétaire* et il peut vendre l'immeuble baillé, sauf le droit de l'emphytéote, si ce dernier a fait enregistrer son bail.” (Droit Civil Canadien, volume 3, page 196).

C'est à bon droit que cette Appelante figure encore au rôle de l'Intimée comme propriétaire.

Il existe une autre raison qui oppose à ses prétentions, une fin de non recevoir péremptoire: c'est que ni elle, ni la *M. L. H. & P. Consolidated* n'ont à aucun moment dénoncé à l'Intimée le contrat du 7 juin 1916. Ce contrat, n'étant pas susceptible d'enregistrement puisqu'il n'affectait au-

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cun lot de terre cadastré dans le territoire de l'Intimée, cette dernière ne pouvait être tenue d'en prendre connaissance. Tout ce qu'elle a connu c'est le changement de possesseur révélé par la correspondance subséquente, dont plusieurs lettres sont produites, par exemple, la pièce P-5d à l'enquête (pp. 64-65), qui est une lettre signée: "Montreal Light Heat & Power Consolidated"; jamais non plus l'une ou l'autre des Appelantes n'a présenté au Conseil de l'Intimée la requête prévue à l'article 502 de la Loi des Cités et Villes, pour obtenir le changement au rôle du nom du propriétaire. C'est donc que la *M. L. H. & P. Company* n'a jamais cessé de se considérer propriétaire et qu'aujourd'hui même elle ne récusé pas cette qualité. 10

2°.—*La M. L. H. & P. Company est défenderesse à l'action comme l'autre Appelante, et doit être condamnée au même titre.*

Elle — la *M. L. H. & P. Company* — s'est si bien sentie incapable de plaider aliénation de sa part, que pour demander le rejet de l'action contre elle, elle est obligée de prétendre qu'elle n'est que partie accessoire, que mise en cause en l'action. et que si cette dernière doit être rejetée contre la *M. L. H. & P. Consolidated*, en vertu de l'article 534, sur l'interprétation du mot "terrain", le recours exercé ne saurait subsister contre elle. 20

Nous ne croyons pas qu'il soit besoin ici d'argumenter sur ce point qui a été réglé par un jugement de cette Cour rendu le 10 novembre 1927. et maintenant passé en force de chose jugée (p. 124). Rappelons simplement la succession des faits: 30

Action d'abord intenté contre la *M. L. H. & P. Consolidated*.

Après l'examen au préalable de Whatley au cours duquel a été révélée pour la première fois l'existence du contrat d'exploitation, l'Intimée demande la permission de joindre à l'action, comme co-défenderesse, la *M. L. H. & P. Company* et d'amender en conséquence le bref et la déclaration. Cette permission lui est accordée par jugement rendu le 22 mars 1927 (p. 121), qui se lit dans son dispositif, comme suit: 40

"Permet de mettre en cause la *M. L. H. & P. Consolidate* (erreur d'écriture, qui devra se lire "Company", de l'admission des parties) et d'amender en conséquence par Demanderesse les pièces de procédures...."

A la suite de ce jugement, l'Intimée fait émettre un nouveau bref où le rôle de la nouvelle défenderesse dans l'action est décrit comme suit: "mise en cause comme co-défenderesse suivant jugement de cette Cour du 22 mars 1927." (p. 6, ll. 26-7).

La M. L. H. & P. *Company* se plaint aussitôt de cette désignation par exception à la forme, dans laquelle, après avoir relaté le jugement ci-dessus, elle allègue ce qui suit:

“Whereas the description of the mise-en-cause in the writ as above cited, is consequently irregular, unauthorized and illegal and constitutes an irregularity which causes a prejudice to the mise-en-cause.”

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10 En d'autres termes, elle se plaint que l'assignation dépasse le jugement qui l'a permise (pp. 8 et 9).

Cette exception à la forme est rejetée le 11 avril 1927 (pp. 122-3).

La Défenderesse en appelle et le jugement est confirmé par cette Cour le 10 novembre 1927 (p. 124).

20 L'exception à la forme étant rejetée, le bref d'assignation se trouve maintenu dans son intégrité et ce bref d'écrit la M. L. H. & P. *Company* comme co-défenderesse.

Co-défenderesse elle est, et co-défenderesse elle restera, en dépit de tous les titres et en-tête dont elle pourra couronner ses procédures dans la cause.

30 Quels que soient les motifs du jugement qui ont rejeté son exception, le dispositif en est formel et ne prête à aucune équivoque. Elle a tenté de le faire réformer, son appel a été rejeté et ce dernier arrêt a maintenant force de chose jugée.

Du reste, rien n'empêche l'Intimée de prendre contre elle des conclusions, même si elle n'avait été que mise en cause. Les autorités et les précédents ne manqueraient pas à l'appui de cette proposition. Mais, encore une fois, nous ne croyons pas que ce soit maintenant le moment de soulever cette question, à laquelle cette Cour a, par son arrêt du 10 novembre 1927, donné une solution définitive.

40 Nous croyons donc être en droit de demander contre les deux Appelantes, une condamnation conjointe et solidaire.

5.—*Les Appelantes doivent être condamnées au paiement des taxes scolaires réclamées par l'action, en même temps que les taxes municipales, car la juridiction de la Cour Supérieure est reconnue en l'espèce par toute la législation applicable, et affirmée par le jugement rendu dans la cause de Westmount vs M. L. H. & P. Consolidated précitée.*

L'absence de juridiction de la Cour Supérieure à l'égard des taxes scolaires n'a été soulevée par les Appelantes qu'en défense et non par le moyen d'une exception déclinatoire.

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Les taxes scolaires réclamées par l'action s'élèvent pour les trois années, à la somme totale de \$1,448.21 (Pièce No 1 de la Demanderesse avec le rapport, pp. 93-101), dont il faut déduire celle de \$86.78, montant du Retraxit, laissant une somme nette de \$1,361.43.

Il nous reste donc à passer en revue la législation applicable à l'espèce.

(a) *Le Code de procédure civile et la Loi de l'Instruction publique* 10
(S. R. Q. 1925, Ch. 133).

Les Appelantes ont appuyé leur défense sur l'article 54 C. P. qui se lit comme suit:

“La Cour de Circuit connaît en dernier ressort et privative-
ment à la Cour Supérieure:

1.—..... 20

2.—De toute demande pour taxes ou rétributions d'écoles et pour cotisations.....quel qu'en soit le montant.”

D'autre part, la Loi de l'Instruction Publique relative aux poursuites était édictée jusqu'en 1925, dans les termes suivants:

“2971.—Les commissaires ou les syndics d'une municipalité scolaire peuvent intenter toutes les actions et poursuites qu'ils jugent 30
nécessaires pour le recouvrement des sommes dues, tant pour les cotisations scolaires et la rétribution mensuelle que pour les arrérages de ces taxes.

“2972.—Les actions et poursuites intentées en vertu de l'article 2971 peuvent être portées devant la Cour de Circuit, si le montant réclamé n'excède pas celui de la juridiction attribuée à ces tribunaux.” (S. R. Q. 1909).

On se trouvait donc en présence de deux textes contradictoires. 40

Mais la question se compliquait encore des dispositions du code de procédure relative au droit d'appel, au droit d'évocation et à la juridiction de la Cour Supérieure lorsque la demande se rapporte à des droits immobiliers ou est en déclaration d'hypothèque.

Il n'y a donc pas lieu d'être surpris que notre jurisprudence ait hésité à se fixer définitivement sur ce point, comme en témoignent les quelques arrêts suivants:

The school commissioners of Westmount vs Galarneau, 44 C. S. 385, (Révision 1912).

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10 “HELD: The second paragraph of art. 54 C. P. which gives ultimate and exclusive jurisdiction to the Circuit Court in all suits for school taxes or school fees applies only to actions directed against defendants personally, and in which, after condemnation, all seizable property, movable and immovable, is subject to execution. Hence, in the chief place of a district, the Superior Court has exclusive jurisdiction in hypothecary actions for school taxes of any amount.”

Les syndics de la paroisse de St-Paul de Montréal vs la Compagnie des terrains suburbains de Montréal (C. S. 1903), 6 R. P. 444.

20 “JUGE: Qu'une action par laquelle on réclame un montant inférieur à \$100. mais qui contient des conclusions tendant à faire déclarer certains immeubles hypothéqués au paiement de cette somme et faire condamner la partie défenderesse à les délaissier en justice, à défaut par elle de payer le montant du jugement, est du ressort de la Cour Supérieure, quel que soit le montant réclaté.”
School trustees of the municipality of St. Henri vs Salomon, (Révision 1897), 11 C. S. 329.

30 “HELD: Article 1053 of the Code of Procedure, which says that the Circuit Court has ultimate jurisdiction to the exclusion of the Superior Court in all suits of school taxes or school fees, does not apply where the action is a hypothecary one. In such case, under articles 1142 and 1054 of the Code of Procedure, the Superior Court has jurisdiction.”

CONTRA:

School commissioners of Coteau St-Pierre vs Edmond Bernard, (C. S. 1916) 18 R. P. 201.

40 “JUGE: Une action pour taxes scolaires dirigée contre le débiteur personnel de la taxe, est toujours du ressort de la Cour de Circuit, bien que les conclusions demandent que l'immeuble soit déclaré affecté et hypothéqué au paiement de cette taxe.”

Les commissaires d'écoles de la ville St-Paul vs la Compagnie de placements de la cité, (Révision 1916), 18 R. P. 298.

“JUGE: 1.—(infirmant Archibald, J. en C. supp.) La Loi de l'Instruction publique, art. 2521 et seq. S. R. Q., n'empêche pas de poursuivre le recouvrement des taxes scolaires par action ordinaire.

2.—Les actions pour taxes scolaires, même accompagnées de conclusions hypothécaires sont, quel que soit le montant réclamé, de la compétence exclusive de la Cour de Circuit.”

Ce que nous pourrions dire ici n'ajouterait rien à ce que contiennent les décisions que nous venons de citer.

Qu'il nous soit permis, cependant, de remarquer tout d'abord qu'il s'agissait dans chacun de ces cas d'actions intentées par les Commissaires d'écoles eux-mêmes, et non par la Corporation Municipale. Les décisions contraires à nos prétentions que nous venons de citer ne peuvent donc être que difficilement invoquées contre nous, puisque nous procédons ici sous l'empire d'une législation spéciale que nous étudierons plus loin. 10

Le seul jugement qui puisse vraiment nous être opposé est celui rendu par M. le Juge White en 1898 dans la cause :

Corporation of Township of Dudswell vs Québec Central Ry. Co., 19 C. S. 116. 20

“HELD: In a suit in the Superior Court, claiming municipal taxes to an amount exceeding \$100. accompanied with a demand for school taxes, a declinatory exception asking the dismissal of that portion of the demand which is for school taxes, on the ground that the Circuit Court has exclusive jurisdiction, will be maintained, notwithstanding art. 170 C. C. P., it being impossible in such a case to transmit the whole record to the Circuit Court.” 30

Dans cette cause, la municipalité cherchait à recouvrer des taxes scolaires au montant de \$43.56, en même temps que ses taxes municipales s'élevant à \$142.14 et ce, en vertu de l'article 952 de l'ancien Code Municipal (art. 691 du nouveau) identique à l'article 537 de la Loi des Cités et Villes.

Mais le Code Municipal ne contenait alors, ni ne contient maintenant une disposition semblable à l'article 539 de la Loi des Cités et Villes, qui lui, ordonne au trésorier de porter les taxes scolaires à son rôle général de perception. 40

De plus, le montant des taxes scolaires réclamées était inférieur à \$100., et enfin la Défenderesse a contesté la juridiction de la Cour Supérieure par le moyen d'une exception déclinatoire. La question d'évocation n'a donc pas été soulevée comme elle aurait pu l'être dans notre cause si nous avions intenté notre action devant la Cour de Circuit (C. P. Art. 49).

La cause était donc “évocable” à la Cour Supérieure, puisqu’elle affectait clairement des droits futurs et qu’elle a pour objet de grever de privilège et d’hypothèque les immeubles des appelantes.

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Il nous paraît donc qu’il fallait en ce cas invoquer l’incompétence de la Cour par exception déclinatoire. A défaut et vu la faculté d’évocation, cette récusation du tribunal ne saurait être reçue en défense, car elle aurait précisément pour effet de priver la partie demanderesse de son droit d’évoquer la cause à la Cour Supérieure si cette dernière l’avait auparavant référée à la Cour de Circuit sur exception déclinatoire.

Moquin vs Dingman (Revision) 44 C. S. 341.

“HELD: 1.—When an action exclusively within the jurisdiction of the Circuit Court is brought in the Superior Court, and the defendant takes no exception to it by declinatory plea, if it be of the class of cases that may be evoked to the Superior Court, the question of jurisdiction cannot be raised for the first time in the court sitting in review.”

M. le Juge White, dans la cause de *Dudswell vs Quebec Central* précitée, en arrive à décider que dans le cas où la commission scolaire a confié à la municipalité la perception de ses taxes, cette dernière devrait intenter deux actions simultanées, l’une en Cour Supérieure pour les taxes municipales, l’autre en Cour de Circuit pour les taxes scolaires. Ce qui, à notre humble avis, va directement à l’encontre de l’esprit de notre procédure, qui tend à diminuer le nombre des actions et le montant des frais plutôt qu’à les multiplier. Voici comment il s’exprime:

“In suing before courts the article of the municipal code would be well and sufficiently observed by simultaneous suits, one instituted for municipal taxes before the competent tribunal, and the other for the school taxes before the Circuit Court.” (19 C.S. p.118).

En 1925, l’article 2972 des Statuts refondus de 1909 a été remplacé par le suivant, qu’on retrouve textuellement aujourd’hui sous le No 499 du Chapitre 133 des Statuts de 1925.

“499.—Les actions et poursuites en vertu de l’article 498, quel qu’en soit le montant, doivent être intentées devant la Cour de Circuit ou la Cour de magistrat ayant juridiction dans le territoire où la municipalité scolaire est située en tout ou en partie.

Il y a appel à la Cour du Banc du Roi composée de trois juges des décisions rendues par ces tribunaux, lorsque le montant réclamé excède cinq cents dollars.

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Cet appel s'exerce de la même manière que l'appel des décisions des recorders ou des Cours de recorder, en vertu des articles 9 à 16 de la Loi des Cours de recorder (chap. 106)."

La modification apportée par la loi 15 George V, Chapitre 40, s. 23, a donc eu pour effet de rendre l'ancien article 2972 conforme à l'article 54 du Code de procédure, mais n'a rien ajouté à ce dernier. Il ne règle donc pas le conflit de jurisprudence qui s'est élevé autour de cet article 54 et des articles 43 et 49 du même code. Et quant aux appelantes, 10 il les place dans cette impasse: ou accepter la juridiction de la Cour Supérieure, ou se voir interdit tout recours en appel, puisque le tribunal qui, aux termes de cet article, devrait l'entendre, n'existe plus,—“la Cour du Banc du Roi composée de trois juges.”

Mais le silence même du législateur en 1925, constitue, à notre humble avis, un fort argument à l'appui de notre proposition. L'article 499, comme l'article 54 C. P., se contente d'étendre la juridiction de la Cour de Circuit à *tout montant* réclamé pour taxes scolaires; il ne dit rien 20 quant à la *nature* de ces actions. Si le législateur avait voulu conférer à la Cour de Circuit juridiction pour instruire les actions en déclaration d'hypothèque lorsqu'il s'agit de taxes scolaires, il eût été facile pour lui de le faire en insérant les mots “la nature” avant “le montant”, de sorte que l'article 499 se serait lu comme suit: “Les actions et poursuites en vertu de l'article 498, quels qu'en soient la nature et le montant, doivent être intentées etc.....”

Puisqu'il ne l'a pas fait et que nous sommes ici en présence d'une loi d'exception qui doit être interprétée strictement, il faut donc conclure qu'il n'avait en vue que les actions personnelles. 30

Il faut conclure également, à la lecture de l'article 498 (reproduisant l'article 2971 des statuts de 1909), que cette disposition ne vise que les actions intentées par les commissaires d'écoles et non par celles introduites par les municipalités, à qui le rôle scolaire a été transporté.

Il faut conclure enfin que ces défenses ou restrictions ne peuvent 40 être invoquées à l'encontre de l'Intimée en l'espèce qui nous occupe.

Mais il existe au soutien de la proposition que nous soumettons, d'autres raisons plus décisives encore, et nous les trouvons dans la Loi des Cités et Villes et dans la Charte de l'Intimée.

(b) *La Loi des Cités et Villes et les dispositions particulières applicables à l'Intimée.*

L'article 537 du chapitre 102, reproduisant l'article 5746 S. R. Q. 1909, transcrit lui-même textuellement dans la charte de l'Intimée, se lit comme suit:

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10 “537.—Le conseil doit, à la réquisition des commissaires ou des syndics d'écoles de toute municipalité scolaire située dans les limites de la municipalité, accepter le rôle ou un extrait certifié du rôle des cotisations pour les écoles, présenté par eux, et ordonner au trésorier de faire la perception de ces taxes *de la même manière et en même temps* que les taxes municipales.”

Le Conseil de l'Intimée a été requis de percevoir les taxes scolaires par les résolutions adoptées par les deux commissions catholique et protestante, les 10 et 11 mars 1919, et a accepté de faire cette perception par sa résolution du 2 avril 1919 (Pièces Nos 2, 3 et 4 avec le rapport, pp. 65, 67 et 68).

20 L'Intimée est donc devenue obligée de percevoir les taxes scolaires *en même temps et de la même manière* que ses taxes municipales, et toujours en vertu de l'article 537, a transmis ses ordres en conséquence à son trésorier.

Que doit faire le trésorier en recevant cet ordre. C'est l'article 539 qui répond dans les termes suivants:

30 “539.—Si le conseil municipal a ordonné, par résolution, la perception des taxes scolaires en même temps et de la même manière que les taxes municipales, le trésorier porte au rôle général de perception le montant de ces taxes, les perçoit et les remet ensuite au secrétaire-trésorier des écoles. Dans ce cas les poursuites en recouvrement des taxes doivent être intentées par la corporation municipale.”

40 Ou nous nous trompons fort, ou, comme le remarque le juge de première instance: “Porter ces taxes au rôle général de perception a pour effet de les confondre avec les taxes municipales pour ne faire avec ces dernières qu'une seule perception.” (Dossier, page 134, ll. 20-22).

Ces textes sont déjà clairs et complets en eux-mêmes, mais il y a plus:

La résolution de la Commission Scolaire catholique romaine (chargée de la perception de la taxe neutre) rend l'Intimée responsable du paiement de ces taxes et l'oblige à les remettre intégralement, sans égard à la perception en deux versements payables le 30 juin et le 31 décembre de chaque année. Lisons plutôt:

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

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 prorata des élèves de chacune des dites municipalités, conformément à l'article de la loi scolaire relativement à cet effet;

10

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.” (Page 66).

L'Intimée a accepté cette obligation et la loi 11 Geo. V, Ch. 114. Art. 3, l'a confirmée à tous égards en ajoutant après l'article 5748 S. R. Q. 1909, les deux suivants:

20

“5748a.—La cité peut, en vertu d'une convention avec les commissaires ou syndics d'écoles de toute municipalité scolaire située dans la municipalité, sur résolution à cet effet passée par lesdits commissaires ou syndics d'écoles, suivant le cas, et par le conseil de la cité, se faire remettre le rôle certifié de cotisation scolaire ou un extrait certifié de ce rôle de payer aux dits commissaires ou syndics d'écoles le montant mentionné sur tel rôle de cotisation scolaire ou extrait d'icelui, moins le montant d'une commission n'excédant pas un pour cent. aux dates et de la manière convenues.

30

5748b.—La résolution passée par les commissaires d'écoles de la municipalité de la Cité d'Outremont, dans le comté de Westmount, le *dirième jour de mars 1919*, la résolution passée par les commissaires d'écoles de la municipalité de la cité d'Outremont, dans le comté de Westmount, le *onzième jour de mars 1919*, et la résolution passée par le conseil de la cité d'Outremont, le *deuxième jour d'avril 1919*, sont par la présente loi déclarées légales et valides à toutes fins et intentions.”

40

Il est à remarquer que le texte anglais, de l'article 5748a, qui est l'original, porte que la cité “may acquire”, traduit en français par l'expression “se faire remettre”, qui a certainement moins de force.

C'est en réalité ce qui arrive. L'Intimée achète ou acquiert les taxes scolaires à leur pleine valeur, s'engage à les payer elle-même, et les perçoit comme elle le veut, à son profit. Tout ce qu'elle peut retenir c'est la faible proportion de 1% et, encore, ce droit lui a été enlevé par une loi subséquente.

N'y en a-t-il pas là assez pour établir que ces taxes, scolaires à leur origine, sont devenues pour les fins de la perception, de véritables taxes municipales.

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D'ailleurs, comme le remarque le juge de première instance, quel sens attribuer à ces mots: "*en même temps et de la même manière,*" sinon celui de "par la même action." L'action, après tout, n'est qu'un incident de la perception, n'est qu'un moyen de percevoir lorsque les autres ont failli. Quelle raison y a-t-il dès lors d'imposer à la municipalité l'obligation de prendre deux actions distinctes et de multiplier ainsi les frais que devra supporter ou le contribuable, ou la propriété imposée, au détriment de tous les intéressés et au bénéfice de personne.

C'est bien là, à notre humble avis, — et pour reproduire ici encore le jugement a quo — "l'économie générale de cette législation qui, en autant que le contribuable est concerné, a pour effet de confondre absolument taxes municipales et taxes scolaires.

"C'est ce que la législature indique de façon assez claire lorsque "par la loi 11 Geo. V, Ch. 114 (amendant la Charte de la cité); elle a modifié pour la cité l'article 5755 des S. R. Q. 1909, qui se lisait comme suit:

"5755.—"Le paiement des taxes municipales peut être également réclamé par une action intentée, au nom de la municipalité. "devant la Cour de Magistrat ou la Cour de Circuit du comté ou du district, ou devant le maire, ou deux ou plusieurs conseillers agissant ex officio comme juges de paix, ou devant la Cour du recorder s'il y en a une."

et se lit maintenant comme suit :

"5755.—"Le paiement des taxes municipales et des taxes scolaires dans les cas auxquels il a été pourvu par les articles 5748. "5748a et 5748b, peut être également réclamé par une action intentée, au nom de la corporation, devant la cour de magistrat ou la Cour de circuit du comté ou du district, ou devant le maire, ou deux ou plusieurs conseillers agissant ex-officio comme juges de paix, ou devant la Cour du recorder s'il y en a une."

"Remarquons enfin que cet article dit que le paiement des taxes municipales et des taxes scolaires.....peut être réclamé par une action intentée au nom de la corporation devant.....la Cour de circuit du comté "ou du district."

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“Si le législateur avait voulu laisser subsister à l'égard des taxes scolaires l'obligation de poursuivre devant la Cour de Circuit, il aurait fait la distinction, ou du moins il n'aurait pas eu le soin d'amender pour la Cité l'article 5755, car alors pourquoi *permettre* ce qui, d'après les prétentions des défenderesses, était auparavant ordonné.

“Si on a *permis* de réclamer ces taxes devant la Cour de Circuit c'est d'abord:

10

“(a) Qu'on a compris qu'elles étaient assimilées entièrement aux taxes municipales;

“(b) C'est ensuite qu'on a compris que cette assimilation décrétée par les mots: “en même temps et de la même manière” voulait dire “par la même action.”

“Or, comme cette action d'après la loi générale peut être pour les taxes municipales intentée devant la Cour Supérieure ou devant la Cour de Circuit, on a voulu étendre de façon claire cette disposition aux taxes scolaires.” (Dossier, pp. 143-5) 20

(c) *La Loi 15 Georges V, Ch. 45, article 16.*

Ce que nous venons de dire s'applique plus particulièrement aux taxes dûes pour l'année 1924-25.

En 1925, une législation nouvelle est venue modifier cet état de chose à l'égard des taxes imposées sur les propriétés de la liste protestante et de la liste neutre. 30

Ce ne sont plus les commissions scolaires qui imposent la taxe sur les protestants et les neutres, c'est la loi elle-même, qui se lit à l'article 16, paragraphe 2, comme suit:

“2.—Dès le 1er juillet 1925, dans les diverses cités, villes ou autres municipalités locales mentionnées dans le paragraphe 1 du présent article, il est *par la présente loi*, imposé une taxe uniforme, au taux de douze millièmes dans la piastre, sur tous les immeubles inscrits sur la liste neutre de chacune de ces cités, villes ou municipalités locales, pour être répartie entre les protestants et les catholiques, aux fins de l'éducation.” 40

Ce paragraphe a été modifié par 16 Georges V, Chapitre 47, et par 17 Georges V, Ch. 42, mais dans sa partie finale seulement, concernant la transmission du produit de la taxe neutre.

On le voit, il n'est plus question ici de requisition par la municipalité scolaire ou d'acquisition de rôle par la municipalité; la taxe est imposée par la loi en prenant comme base le rôle d'évaluation municipal, et c'est à la municipalité qu'incombe par cette même loi, l'obligation de la percevoir et d'en remettre le produit aux corporations scolaires intéressées. C'est ce que décrète le paragraphe 5 du même article 16, dans les termes suivants:

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10 “5.—Les taxes ci-dessus mentionnées sont prélevées et perçues
par les autorités municipales compétentes, *en même temps* que les
taxes municipales et, nonobstant toute disposition de la loi, spéci-
ale ou générale, régissant la municipalité, le montant de ladite taxe
scolaire protestante ainsi prélevée et la part de ladite taxe dans la
liste neutre destinée à l'éducation protestante, sont remis au bu-
reau central par les autorités municipales compétentes, aussitôt
qu'elles sont perçues conformément aux dispositions de l'article 12.
20 À la date ou aux dates qui peuvent être fixées par le bureau central,
en tant toutefois que la cité de Montréal est intéressée, le
paiement des montants qui deviennent dus en vertu de la présente
loi, doivent être faits en conformité des dispositions de la loi 10
George V, Chapitre 140, section 5”.

Dès l'année suivante, cependant, la législature a voulu enlever tout
risque aux commissions scolaires et a obligé les municipalités à leur re-
mettre en quatre versements égaux, non pas ce qu'elles auraient perçu
elles-mêmes, mais les sommes entières portées au rôle comme représen-
tant la taxe sur les protestants et les neutres. Elle a, à cette fin, amendé
30 ce paragraphe 5, de façon à ce qu'il se lise comme suit:

40 “5.—Les taxes ci-dessus mentionnées sont prélevées et perçues
par les autorités municipales compétentes, *en même temps* que les
taxes municipales, et nonobstant toute disposition de la loi, spéci-
ale ou générale, régissant la municipalité, le montant de ladite taxe
scolaire protestante ainsi prélevée et la part de ladite taxe dans la
liste neutre destinée à l'éducation protestante, sont remis au bu-
reau central par les autorités municipales compétentes, sans égard
à leur perception, en quatre versements, dont le premier doit être
de quarante pour cent, payable dans un mois à compter de la date
fixée par ladite municipalité, comme la date régulière de la taxe
sur les immeubles, pour les fins municipales et scolaires à la fois; le
deuxième de vingt pour cent payable deux mois après la date ré-
gulière de la taxe sur les immeubles; le troisième de vingt pour
cent payable quatre mois après la date régulière de la taxe sur les
immeubles; et le quatrième, qui doit représenter la balance du mon-

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tant de la taxe ci-dessus mentionnée et est payable sept mois après la date régulière de la taxe sur les immeubles, mais, dans tous cas, pas plus tard que le 30 juin de chaque année;.....” (16 Geo. V, ch. 47).

Enfin, la loi 17 George V, Chapitre 42, s. 2, a rendu cette obligation de remettre le montant intégral des taxes plus rigoureuse encore, si possible, en légiférant quant aux taxes pour l'année scolaire finissant le 30 juin 1926, et allant jusqu'à permettre au conseil municipal d'emprunter pour opérer ce paiement, avec intérêt, à la corporation scolaire. 10

Nous sommes loin des prétendues rigueurs de l'article 54 C.P. et du débat soulevé autour de cet article sur la question de juridiction.

Il nous semble impossible de confondre de façon plus absolue taxes municipales et taxes scolaires de la liste neutre — et ce sont celles-là qui nous intéressent, puisqu'il s'agit de biens possédés par une compagnie à fonds social — puisque le rôle de taxes scolaires est lui-même supprimé pour les neutres et les protestants; et c'est à la lumière de cette législation qu'apparaît plus évidente encore la vérité de la proposition que nous avons soumise au début, et que le jugement formule dans les termes suivants: 20

“La proposition que nous soutenons nous paraît absolument conforme à l'esprit qui a inspiré la législation contenue aux articles 537 et 539 de la Loi des Cités et Villes (S. R. Q. 1925, ch. 102). 30

“On a voulu débarrasser les commissions scolaires de leurs perceptions, mais évidemment sans rendre celles-ci plus onéreuses pour la municipalité non plus que pour les contribuables.

“On a voulu que les contribuables puissent s'acquitter d'un seul coup et la municipalité percevoir d'un seul coup: c'est pour cela qu'on a dit en “même temps et de la même manière.” 40

“S'il fallait admettre que dans ce cas la municipalité obligée de poursuivre dut être contrainte de prendre deux actions au lieu d'une. cela veut dire doubles frais pour elle si le contribuable est insolvable ou si les immeubles ne rapportent pas suffisamment ou, dans l'autre cas, doubles frais, contre le contribuable et contre les immeubles assujettis.

“C'est évidemment contre l'économie de cette législation et contre celle du code de procédure, qui cherchent à simplifier les recours en justice plutôt qu'à les multiplier.” (pp. 137-138).

(d) *Le jugement dans la cause de Westmount (C. S. C. R. 1926, p. 515) affirme la juridiction de la Cour Supérieure de façon décisive encore qu'implicite (C. P. art. 171).*

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10 Nous soumettons en terminant que cette question de juridiction a été réglée de façon formelle et décisive par les divers jugements rendus dans une cause absolument identique à la nôtre, celle de la Cité de Westmount vs La M. L. H. & P. *Consolidated*. Tout comme l'Intimée, en effet, la Cité de Westmount réclamait le paiement des taxes scolaires en s'appuyant comme nous sur la Loi des Cités et Villes, Art. 537 et 539.

Trois cours de justice ont successivement passé jugement et aucun des juges appelés à se prononcer n'a émis d'opinion contraire à celle que nous défendons.

20 En vain les Appelantes prétendront-elles qu'à la suite d'une entente entre les parties, cette question de juridiction n'a pas été soulevée.

Nulle entente ne saurait prévaloir contre les termes rigoureux de l'article 171 C. P., qui oblige le tribunal saisi d'une affaire qu'il est incompétent à entendre à raison de la matière, "de renvoyer d'office devant qui de droit."

30 On ne songera certainement pas à prétendre que cette partie de la réclamation de Westmount a pu échapper à l'attention des juges. On se heurterait pour cela à une présomption irréfutable et on se heurterait de plus au texte même des jugements ou aux notes des savants juges qui les ont rendus.

40 Nous sommes donc obligés de conclure, et les Appelantes avec nous, que puisque les tribunaux ont accueilli la demande de la Cité de Westmount pour taxes scolaires au même titre que pour les taxes municipales, que puisqu'ils n'ont pas prononcé d'office le renvoi (ce qui aurait voulu dire dans ce cas le rejet de la partie de la demande se rapportant aux taxes scolaires) c'est qu'ils ont l'un après l'autre reconnu que la Cour Supérieure, où avait originé l'instance, avait juridiction.

Encore une fois le consentement des parties ne saurait conférer à la Cour une juridiction que la loi lui enlève, quand cette incompétence est *ratione materiae*.

Perreault vs la corporation de Lévis & Fournier, 30 C. S. 123.

Le dispositif du jugement se lit comme suit (page 127):

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“Pour ces motifs, nous concluons que le jugement en question est un jugement provisoire et qu'il n'y avait pas lieu d'en appeler devant la Cour de Révision.

L'appel doit être rejeté. Mais vu que cette objection a surgi dans le cours du délibéré *et n'a pas été invoquée par l'Intimé, ni dans son factum, ni dans la plaidoirie orale*, nous décidons que chaque partie paiera ses frais en Cour de Révision.”

10

Martel vs La Corporation de Marston, 11 R. P. Q., p. 11.

“JUGE (en révision): 1.—La Cour de révision n'a pas juridiction pour entendre un appel sur une enquête demandant l'annulation d'une évaluation municipale.

2.—(Cimon J., dissident). Lorsqu'un appel à la Cour de Révision est renvoyé, faute de juridiction, il le sera sans frais, si ce défaut de juridiction a été soulevé par la Cour elle-même.”

20

Dans les notes de l'Honorable Juge-en-Chef on relève le passage suivant (page 12):

“Nous sommes disposés à renvoyer la révision sans frais, parce que le défaut de juridiction du tribunal *n'a pas été soulevé par les parties, mais par la Cour elle-même*.

Les deux parties ont prétendu à l'audience qu'il y avait lieu à révision, lors de la remarque qui leur fut faite que la Cour de Révision ne pouvait réviser le jugement a quo.”

30

Price Brothers & Co. & Pierre Tanguay & al., 24 Cour Suprême, p. 133.

“HELD:—The appeal was quashed without costs as the objection to the jurisdiction was not taken by the Respondents in the manner provided by the Rules of Practice.”

Voir notes du rapporteur (page 134) et celles du Juge-en-chef (page 135).

40

Pour tous ces motifs nous nous croyons bien fondés à demander le rejet de cet appel et la confirmation du jugement a quo, avec dépens des deux cours.

Montréal, le 27 mars 1930.

BEAUBIEN & MICHAUD,
Procureurs de l'Intimée.

No. 19.

Judgment of the Court of King's Bench

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King's
Bench.
—
No. 19
Judgment of
the Court of
King's Bench.
30 Oct. 1930

CANADA

COURT OF KING'S BENCH

Province of Quebec

(Appeal Side)

10

Montreal, Thursday the thirtieth day of October, one thousand nine hundred and thirty.

PRESENT :

HON. MR. JUSTICE TELLIER

HON. MR. JUSTICE HOWARD

HON. MR. JUSTICE LETOURNEAU

20

HON. MR. JUSTICE HALL

HON. MR. JUSTICE GALIPEAULT.

THE COURT having heard the parties by their respective Counsel upon the merits of the present appeal, examined the record and proceedings in the Court below, and deliberated:

30 CONSIDERING that there is no error in the judgment appealed from, to wit: the judgment rendered by the Superior Court sitting at Montreal, in the district of Montreal on the 14th day of October, one thousand nine hundred and twenty-nine.

DOTH AFFIRM the same with costs to the Respondent against the Appellant.

Mr. Justice Letourneau dissenting in part.

40

A. Rives Hall,

J. K. B.

NOTES DU JUGE TELLIER

Cette action est en recouvrement de taxes municipales et scolaires 10
Elle n'était dirigée, au début, que contre la compagnie Montreal Light.
Heat and Power Consolidated. Plus tard, la demanderesse, avec la per-
mission de la Cour, a mis en cause, comme co-défenderesse, la compagnie
dite The Montreal Light, Heat and Power Company.

Les taxes réclamées ont été imposées sur des tuyaux à gaz enfouis
dans les rues de la cité d'Outremont et servant à la distribution du gaz
d'éclairage et de chauffage, pour les besoins de la dite cité et de ses habi- 20
tants.

La demanderesse réclame les taxes scolaires, en même temps que
les taxes municipales, parce qu'elle a été autorisée à les percevoir, par
résolutions des commissions scolaires intéressées, adoptées conformément
à la Loi des cités et villes, articles 537 et 539, et à la Loi de l'instruction
publique, article 398.

Le montant réclamé était originairement de \$3,349.60. Il a plus
tard été réduit à \$3,262.82. Par ses conclusions amendées, la demande- 30
resse a demandé jugement contre chacune des deux défenderesses, pour
tout le montant réclamé. Elle a en outre demandé à la Cour de déclarer
que, pour les taxes susdites, elle a, sur les dits tuyaux à gaz, un privilège
bon et valide.

L'action a été intentée devant la Cour supérieure.

Les deux défenderesses ont plaidé séparément. 40

Elles prétendent, l'une et l'autre, que les tuyaux à gaz, que la de-
manderesse a portés à son rôle d'évaluation et qui ont ensuite été taxés.
ne sont pas des immeubles, mais des meubles; et qu'en conséquence, ils ne
sont imposables ni pour fins municipales, ni pour fins scolaires.

Elles prétendent en outre que, même si ces tuyaux sont immeu-
bles, la demanderesse ne peut les traiter comme imposables, vu le contrat
qui existe entre elle et The Montreal Light, Heat and Power Company,
contrat en date du 24 août 1904, et en vertu duquel elle s'est substitué

cette compagnie pour approvisionner de gaz, pendant un terme de trente ans, la municipalité d'Outremont et ses habitants, et s'est engagée, pour un terme de vingt ans, à n'imposer aucune taxe sur les biens de la compagnie.

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A part cela, les deux défenderesses objectent l'une et l'autre que le recouvrement des taxes scolaires ne peut être poursuivi devant la Cour supérieure. Elles basent leur objection sur les dispositions de l'article 10 54 du Code de procédure civile et de l'article 499 de la Loi de l'instruction publique.

La Montreal Light, Heat and Power Consolidated ajoute, pour sa part, qu'elle ne peut être recherchée pour les taxes dont il s'agit, parce que son nom ne figure sur aucun rôle.

Enfin, The Montreal Light Heat and Power Company prétend de son côté qu'elle a été mise en cause irrégulièrement; et que, dans ces conditions, aucune condamnation ne peut être prononcée contre elle.

20 La Cour supérieure, écartant ces divers moyens de défense, a fait droit à l'action, par un jugement final dont voici le dispositif (Montréal, 14 octobre 1929, Loranger, J.);

30 “Renvoie les défenses, maintient l'action de la demanderesse pour \$3,262.82, condamne conformément à ce que demandé par les conclusions de la demande, chacune des défenderesses à payer la dite somme de \$3,262.82 avec intérêt à 6% à compter du 1er décembre 1926; déclare de plus les immeubles des défenderesses situés dans les limites de la ville d'Outremont, affectés au privilège de la demanderesse pour le paiement des dites taxes municipales et scolaires, dues en vertu du présent jugement, le tout avec dépens.” Les défenderesses appellent de ce jugement.

Examinons un à un leurs divers moyens de défense.

1.—Les tuyaux à gaz en question sont-ils des immeubles?

40 Je crois qu'il faut répondre affirmativement à cette question. C'est en ce sens que cette Cour et, après elle, la Cour suprême ont jugé dans la cause de The Montreal Light, Heat and Power Consolidated vs La Cité de Westmount, qui ne différait guère de celle-ci (38 B. R. 406;— C. L. R. 1926, p. 515, 524), et dans la cause de The Lower St Lawrence Power Company vs L'Immeuble Landry, limitée, (C.L.R. 1926, p. 655, 664).

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

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Non, pas aujourd'hui. L'exemption stipulée dans le dit 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 au dit terme.

3.—La demanderesse a-t-elle droit de poursuivre devant la Cour supérieure le recouvrement des taxes scolaires?

Aux termes de l'article 54 du Code de procédure civile, la Cour de circuit connaît en dernier ressort et primitivement à la Cour supérieure, de toute demande pour taxes ou rétributions scolaires. Et, suivant l'article 499 de la Loi de l'instruction publique, les actions ou poursuites des commissaires ou syndics d'écoles, en recouvrement de cotisations ou rétributions scolaires, quelqu'en soit le montant, doivent être intentées devant la Cour de circuit ou la Cour de magistrat.

Si la présente action était portée par une des commissions scolaires intéressées, il n'y a aucun doute que la Cour supérieure serait sans juridiction pour en connaître au mérite. Mais tel n'est pas le cas.

Les articles 54 du Code de procédure civile et 499 de la Loi de l'instruction publique, sont-ils applicables, au cas où l'action est portée, non par les commissaires ou syndics d'écoles, mais par une corporation municipale dûment autorisée?

La question, à première vue, n'est pas sans difficulté.

L'article 539 de la Loi des cités et villes édicte ce qui suit:

"539. Si le conseil municipal a ordonné, par résolution, la perception des taxes scolaires en même temps et de la même manière que les taxes municipales, le trésorier porte au rôle général de perception le montant de ces taxes, les perçoit et les remet ensuite au secrétaire-trésorier des écoles. Dans ce cas, les poursuites en recouvrement des taxes doivent être intentées par la corporation municipale."

Ce qui est permis dans cet article a été fait, à Outremont. Le conseil municipal ayant ordonné, par résolution, la perception des taxes scolaires "en même temps et de la même manière que les taxes municipales" le trésorier a porté au rôle général de perception le montant de ces taxes; et, vu le défaut des défenderesses, la corporation municipale a intenté la présente poursuite.

La Cité d'Outremont, qui poursuit, est donc autorisée à percevoir les taxes scolaires dont il s'agit "en même temps et de la même manière que les taxes municipales." Or elle ne peut le faire, semble-t-il, du moment qu'une poursuite devient nécessaire, qu'en poursuivant devant la Cour supérieure, puisque c'est là qu'elle doit poursuivre, pour ses taxes municipales. S'il lui fallait poursuivre en Cour de circuit, pour les taxes scolaires, vu le montant réclamé, et en Cour supérieure, pour les taxes municipales, la perception des deux taxes ne se ferait, ni "en même temps" ni "de la même manière."

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Remarquons que le trésorier de la Cité, pour se conformer à la disposition de l'article 539, a du porter à son rôle général de perception le montant des taxes scolaires à percevoir. Les dites taxes scolaires, telles que fixées et déterminées par le rôle de cotisation de chacune des commissions scolaires, sont devenues parties intégrantes du rôle général de perception de la Cité. C'est en vertu de ce rôle que la Cité percevra. Le rôle, une fois en vigueur, sera son titre de créance. Et, s'il lui faut poursuivre, elle basera sa poursuite sur son rôle. Elle réclamera de la partie en défaut, non pas deux créances distinctes, mais une seule, c'est-à-dire le total formé par l'addition des taxes municipales et des taxes scolaires.

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 ce 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 leurs 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 cet 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 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.

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 juridic-

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tion, est nécessairement exceptionnelle et doit par conséquent, s'interpréter restrictivement. Entre deux textes 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.

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 Outremont. Mais rien, dans le dit statut ne lui enlevait le recours de droit commun, devant la Cour supérieure. 10

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. 20

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. 30

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. 40

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

5.—La compagnie dite The Montreal Light, Heat and Power Company est-elle régulièrement en cause, et peut-elle être condamnée?

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La régularité de sa 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.

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10 Au mérite, la dite compagnie ne peut se plaindre: les tuyaux affectés sont à elle.

Par ces motifs et par ceux du premier juge, dans la mesure où ils s'accordent avec les miens, je confirmerais le jugement de la Cour supérieure, tout en rédigeant le dispositif avec un peu plus de précision; et je rejetterais l'appel, avec dépens.

J. M. Tellier,

J. C. B. R.

20

No. 20b

Reasons of Honourable Justice Howard

No. 20B
Reasons of
Hon. Justice
Howard.

30 For the reasons assigned by my brothers Tellier and Hall, I should dismiss this appeal with costs.

(Signed) E. Edwin Howard,

J. K. B.

No. 20c

Notes du Juge Létourneau

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40

M. le juge Hall, dans ses notes, a clairement relaté les circonstances de la cause et nettement posé les cinq questions auxquelles donne lieu l'appel.

Je m'accorde avec lui et j'adopte ses conclusions, sauf quant à la quatrième question, celle de savoir si MONTREAL LIGHT HEAT & POWER CONSOLIDATED pouvait être recherchée pour les taxes dont il s'agit.

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Je note toutefois qu'à l'endroit de la troisième question, celle qui a trait à une prétendue juridiction *exclusive* de la Cour de Circuit, j'hésiterais à prétendre que l'objection ne fut plus possible dans un plaidoyer au fond, car enfin, il s'agirait d'un défaut de juridiction *ratione materiae*.

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. 10

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. 20

Or, bien loin de là, et au lieu d'invoquer en la déclaration l'obligation d'un tiers assumée par contrat, on 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 défenderesses 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 & POWER CONSOLIDATED est poursuivie; à l'allégation 6, l'Intimée est plus explicite encore: 30

"60.—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". 40

C'est donc comme "holder," "occupant" ou "possessor" que l'Intimée recherche THE MONTREAL LIGHT, HEAT & POWER CONSOLIDATED.

Pourquoi a-t-elle cru devoir aussi poursuivre et pour la même dette, la propriétaire portée au Rôle?.....On ne peut voir là qu'une précaution, bien utile en vérité, dans l'espèce.

La règle est que les taxes foncières doivent être réclamées des 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.

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10 C'est manifestement à cette disposition exceptionnelle de la loi, que pensait l'Intimée en redigeant 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).
20 Les termes de la disposition qui est 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 note 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 renvoyée, du moins quant aux taxes municipales, puisqu'à raison des définitions statutaires (S.R.Q. 1925, Ch. 133, art. 2, par. 15), on pourrait m'objecter que l'interprétation 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.

S'ensuit-il que cette libération partielle de The Montreal Light, Heat & Power Consolidated, devait pour autant entraîner celle de l'autre défenderesse, The Montreal Light, Heat & Power Company, puisque celle-ci n'aurait été mise en cause que subséquemment à l'institution de l'ac-

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tion? Je ne le crois pas, puisque par décision de la Cour passée en force de *chose jugée*, cette autre partie est régulièrement devenue défenderesse à l'action, et que les conclusions permettaient qu'elle fut condamnée comme elle l'a été.

Je ferais donc droit à l'appel en autant qu'il s'agit de Montreal Light, Heat & Power Consolidated, mais pour les taxes municipales seulement, et je confirmerais quant au reste.

10

Sévérin Létourneau,

J. C. B. R.

No. 20d

20

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The City of Outremont is declared by its Charter (5 Geo. V, chap. 93, to be governed by the provisions of the Cities & Towns Act, then Revised Statutes of Quebec 1909, Sections 5256 et seq.

The Cities & Towns Act was redrafted in 1922 (93 Geo. V, chap. 65) and is now, with certain minor alterations, R. S. Q. 1925, chap. 102.

The authority of the City to impose and levy taxes is found in Section 521, which reads as follows:— 30

“The council may impose and levy, annually, on every *immovable* in the municipality a tax of not more than 2% of the real value as shown in the valuation roll.”

Among the powers conferred upon the City by its original Charter, was that necessary for the establishment and management of a system of lighting and heating. (R.S.Q. '909, 5667 and 5675). The former article was amended for the City of Outremont by the Act above referred to (5 Geo. V, chap. 93) to read as follows:— 40

“5667: The council may by by-law, approved by the majority in number and in value of the electors who are proprietors and who vote on such by-law, establish and operate a lighting plant and system by gas, electric or other process for the requirements of the public or private individuals or Companies, and may lease, sell or otherwise dispose of the same.”

On the 24th August, 1904, the City entered into a contract by which it transferred to the Montreal, Light, Heat & Power Company its rights in connection with the supply of gas, etc. The relevant paragraph of the contract reads as follows:—

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10 “27: 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 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
20 appointed by the Council to supervise the same.”

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At the same time the Company was declared to be exempt from taxation for the period of 20 years, to be computed and reckoned from the 24th August, 1904. (Sec. 26, p. 37).

30 As this exemption expired on the 24th August, 1924, the City proceeded to assess the gas mains belonging to the Company for municipal taxes for the year ending October 31st, 1925, and for school taxes for the year ending June 31st, 1925, as follows:—

Total for year 1924-25	661.82
1925-26	1,104.52
1926-27	1,494.75
		<hr/>
		3,261.09

40 (Exhibit P. 1 at Enquete, pages 90 and following).

There may be a question as to the right of the City to claim School taxes for the period June 30th, 1924, to August 24th, 1924, as the exemption did not terminate until the latter date; but as the Appellants have made no objection, and the amount at issue is small, the discrepancy may be ignored.

The name of the proprietor inserted in the valuation and collection rolls is “The Montreal Light, Heat & Power Company”.

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These taxes not having been paid, the City of Outremont, on the 16th December, 1926, took action, not against the Montreal, Light, Heat, & Power Company, but against the Montreal Light, Heat & Power Consolidated, claiming the sum of \$3,349.60, that is, the taxes for the three years above referred to, with interest accrued to the 1st December, 1916.

By its plea, filed on the 21st January, 1927, the defendant, that is, the Montreal Light, Heat & Power Consolidated, denied liability, or that it was in any way affected by the Statutes referred to. The City thereupon proceeded to examine the Assistant-Secretary, Mr. Whatley, when it was discovered, that by a contract, dated 7th June, 1916, (case, p.40) the Civic Investment & Industrial Company (now the Montreal Light, Heat & Power Consolidated) undertook, for the term of ninety-eight years commencing August 1st, 1916, to work, manage and operate the plant, machinery and apparatus generally belonging to the Montreal Light, Heat & Power Company.

The principal clauses of this contract, which are relevant to the present issues, may be briefly cited as follows:—

“2. The Contractor shall on the said first day of August, 1916, *enter into possession of the plant and premises* of the respective Companies, and thereafter during the continuance of this agreement *shall maintain and keep in good order and condition* so much of the apparatus of the respective Companies as may be necessary to carry on in an efficient and proper manner the business of manufacturing and selling gas and electricity or any other source of light, heat or power. which the Companies may have power to manufacture, buy or sell, so long as such business shall be remunerative.”

“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.”

“8. The Contractor shall have the right to use and occupy all the real estate, buildings, offices and stations of the Company respectively, and *to have the use and benefit of all the pipes and conduits and other apparatus and equipment* which have been established by any of the Companies in the public streets or elsewhere than on the “Companies’ properties aforesaid.”

“9. The Contractor shall furthermore have the right to exercise the franchise and charter rights of the Company, including the franchise and charter rights of the Companies hereinabove referred to presently exercised by the Company under the agreements aforesaid, and in virtue of its charter either in its own name or names of any of the Companies hereinabove referred to or intervening hereto.”

“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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10 “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.”

20 While, then, the Montreal Light, Heat & Power *Company* had transferred to the “Consolidated” the control and management of its operations, it nevertheless retained the ownership of its properties and, in consequence, the City found it necessary to amend its action so as to join to the proceedings the Montreal Light, Heat & Power *Company* as a co-defendant.

The conclusion of its motion in this connection reads as follows:—

“That it be allowed to amend the writ and declaration in the present action by adding thereto *as co-defendant* the said The Montreal Light, Heat & Power *Company*”.

30 This motion was granted by the Hon. Mr. Justice Bruneau, but the dispositif of the judgment did not reproduce the wording of the motion itself, particularly the words “as co-defendant”, but stated merely:

“Permet de mettre en cause la Montreal Light, Heat & Power Consolidated (sic), et d'amender en conséquence par demanderesse les pièces de procédures en par la demanderesse payant une somme globale de \$25.00 et permet de plaider de novo” — the word “Consolidated” being a typographical error for “Company”.

40 The City thereupon caused to be served upon both Defendants a new Writ and Declaration in which the Montreal Light, Heat & Power *Company* was described as “mis-en-cause comme co-défenderesse”. The Montreal Light, Heat & Power *Company* attacked the new writ and Declaration by way of exception to the form, on the ground that the description of the mis-en-cause in the Writ was irregular, unauthorized and illegal.

The learned Trial Judge, Mr. Justice Bruneau, in dismissing the exception to the form, seems to have treated the criticism of the description in question as one referring solely to the typographical error which

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substituted the word "Consolidated" for "Company". The Company, therefore, appealed from this judgment to this Court, when, in argument, it attacked the description of the Company *as co-defendant* as exceeding the dispositive of the original judgment authorising the amendment, and because a new party could not be added to an already instituted action.

While the formal judgment of the Court of Appeals merely dismissed the appeal in this connection without any detailed reasons, it is nevertheless evident from the notes of the members of the Court, that these additional objections were considered, and reference was made to Article 525 C.P.C., which provides for the joinder of a new defendant to an already pending action. 10

Mr. Justice Rivard clearly presented the point in issue as follows:

"L'exception à la forme revient à dire tout simplement ceci :— Vous ne pouvez pas régulièrement me mettre en cause comme *co-défenderesse*, puisque la cour Supérieure vous avait autorisée à m'appeler seulement comme *mise-en-cause*." 20

Est-ce donc une irrégularité de traiter comme défenderesse une personne qu'on est en droit de *mettre-en-cause*?

Il n'est pas besoin de réponse là-dessus; car il me paraît convenable d'interpréter le jugement comme autorisant l'intimée à mettre l'appelante en cause de la manière que cela était demandé par la motion, c'est-à-dire comme *co-défenderesse*".

I conclude, therefore, that the Montreal Light, Heat & Power *Company* was validly joined to the action as co-defendant with the Montreal Light, Heat & Power *Consolidated*. 30

The action is, then, directed against both Companies as co-defendants, and demands the payment of both the Municipal and School taxes.

While the two defendants have filed separate pleas, the same are to all intents and purposes identical in that they raise the same questions of law, although the Montreal Light, Heat & Power *Consolidated* has a special defence that, not being the owner of the gas mains in question, and not being *assessed on* the rolls, it is not affected by the Statutes referred to, and is not liable for the taxes in question. 40

The points at issue as submitted by the Appellants are:—

FIRST: IT WAS NOT WITHIN THE POWER OF THE RESPONDENT TO TAX THE GAS MAINS OF THE MIS-EN-CAUSE.

This submission is based upon the argument that gas mains are not immoveables, and that the City Respondent has no power to tax buildings or constructions separately from the land on which they are located.

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10 It is, in my opinion, unnecessary to make any extended reply to this argument, since the question has been finally decided by the judgment of the Supreme Court in Montreal Light, Heat & Power Consolidated vs City of Westmount (1926 S.C.R., p. 515), where it was held:—

“The pipes, poles, wires and transformers are immoveables within the meaning of that term as used in Article 5730 of the Cities & Towns Act R.S.Q. 1909, and are subject to taxation as such.”

The section of the Revised Statutes of 1909 referred to, was incorporated in the Charter of the City of Westmount, and it is the same section now reproduced as Section 521, R.S.Q. 1925, chap. 102, which specifies the taxing power of the present City Respondent.

20

I concur, therefore, with the learned Trial Judge; and the appeal on this point fails.

SECOND: EVEN IF THE GAS MAINS IN QUESTION WERE TAXABLE THE RESPONDENT WOULD BE PRECLUDED BY THE TERMS OF ITS AGREEMENT WITH THE MIS-EN-CAUSE FROM IMPOSING ANY TAX THEREON.

30

The Appellants submit that the taxing of the gas mains in question constitutes a variation of the contract of August 24th, 1904, and a taking away of certain rights of the Mis-en-Cause, that is, the co-defendant, Montreal Light, Heat & Power Company.

40

Since it is provided by Section 27 of the Contract above quoted, that the town subrogates the Contractors in all its rights in connection with the supply of gas, etc., it is argued that, among the rights in which the Company was subrogated, was the right to freedom from taxation of the gas mains. In other words, that, had the Corporation undertaken the work itself, and, in pursuance thereof, laid gas mains in its streets, it would not, and could not, have taxed its own property, and, therefore, in view of the subrogation, the Company-Appellant is entitled to enjoy the same immunity.

The learned Trial Juge points out that the Company-Appellant is in the enjoyment of the rights of the City Respondent for the purpose of exploitation of the business of supplying gas to the residents and nothing more, and that, consequently, it cannot be pretended that the subrogation carried with it immunity from taxation.

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The gas mains installed by the Company for the purpose of carrying out its obligations under the contract remain its own property, and, although it is stated that, having once been laid, they would never be removed even were the franchise to be terminated at the end of the 30-year term, nevertheless, it may be suggested that the Company itself would be the first to object should the City at that time presume to assume ownership, either for itself or for any new recipient of the franchise.

10

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.

But it is contended that the imposition of a tax is an attempt by the City, directly or indirectly to vary the terms of the contract, and, in support of this argument, reference is made to American jurisprudence, notably *St. Louis vs Western Union Telegraph Co.* (4 American Electrical cases p. 102).

20

It will be observed at once, upon an examination of the full report, that the case is not analogous to the present issues. In the *St. Louis* case, the City was not assessing the Telegraph Company's poles for the purpose of a general tax upon all real estate or immoveable property, but sought to impose a special tax upon the Company itself by way of license fee for each pole.

The distinction is, in my opinion, fundamental, and makes it impossible to apply the reasoning in that case to the circumstances of the present controversy.

30

THIRD: THE SUPERIOR COURT DID NOT HAVE JURISDICTION AS REGARDS THE DEMAND FOR TAXES.

The Appellants complain that the learned Trial Judge was in error in stating that the question of jurisdiction was not pleaded, and they refer in particular to the 3rd paragraph of their pleas, in which it is stated that the question of jurisdiction was squarely raised.

40

While it is true that the pleading in question contends that the Superior Court is without jurisdiction, that general issue is qualified by the words "under the terms of the Statute referred to".

The third paragraph of the declaration reads as follows:—

"30. That said school taxes and assessments for the year ending the 30th June, 1925, are so claimed by Plaintiff under the authority of a resolution of the School Commissioners for the Muni-

10 cipality of the City of Outremont in the County of Westmount, passed on March 10th, 1919, of another resolution by the School Trustees for the Municipality of the City of Outremont in the County of Westmount, passed on the 7th March, 1919, and also of a resolution passed by the City Council of the City of Outremont on the 2nd day of April, 1919, certified copies whereof are filed herewith, the said resolutions having been declared legal and valid for all intents and purposes by the Statutes of Quebec, 11 George V, Chap. 114, s. 3.” (Case, p. 7)

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To this the Appellants reply:—

20 “3. As to paragraph 3, the Mis-en-cause says that the said resolutions speak for themselves but denies that it is affected thereby, and Mise-en-cause moreover pleads *that under the terms of the Statute referred to* in said paragraph this *Honourable Court is without jurisdiction* to deal with the matters therein dealt with and referred to.”

The Statute referred to (11 Geo. V, chap. 114—1921) amends the Charter of the City of Outremont by inserting in the Revised Statutes two new Articles, Nos. 5748a and 5748b, providing that the City may take over the collection of school taxes, and ratifying the resolutions passed by the School Commissioners and by the City Council in that connection.

30 It is also replaced for the City of Outremont Article 5755 of the Revised Statutes 1909 by the following:—

40 “5755: The payment of municipal taxes *and of school taxes in cases provided for in Articles 5748, 5748a and 5748b, may be also claimed by an action brought in the name of the Corporation before the Magistrate's Court or the Circuit Court, or Court for the County and District, or before the Mayor, or two or more Councillors acting ex-officio as the Justices of the Peace, or before the Recorder's Court if there be one.*”

In view of the fact that the Article cited contains no reference to the Superior Court, it might appear at first sight that: “Under the terms of the Statute referred to”, the Superior Court is without jurisdiction to deal with the matters therein referred to.

But it is difficult to accept the view that the question of jurisdiction was squarely raised, the purpose and extent of the allegation is, to say the least, ambiguous, and the proper method of raising the question of jurisdiction would have been by way of a declinatory exception.

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For the collection of municipal taxes, the Superior Court has always had jurisdiction, but, under Art. 54 C.P.C., the Circuit Court has ultimate jurisdiction to the exclusion of the Superior Court "in all suits for school taxes..... whatever may be the amount of such suits."

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The amendment of 11 Geo. V, Chap. 114, authorises the Corporation to take an action, not only before the usual tribunal, the Superior Court, but also before the Magistrate's Court or the Circuit Court, etc. In that particular cases provided for in Arts. 5748, 5748a and 5748b, school taxes might be included in that action. 10

The reason for this change is not hard to understand.

Originally the School Commissioners, while they might require the Local Council to collect the taxes, if they did not avail themselves of that provision, were under the obligation of collecting the taxes themselves. But, so far as the City of Outremont was concerned, on and after the 19th March, 1921, the City itself had acquired the school assessment roll, and was bound to pay the School Commissioners or Trustees the full amount less a commission of not more than 1%. 20

The School Commissioners or Trustees were, therefore, relieved from all responsibility in this connection, and the school taxes were merged with the general municipal taxes which the Corporation itself was bound to collect.

A still further change was made in 1925. (15 Geo. V, chap. 45, sec. 16, par. 2) which reads as follows:— 30

"From and after the 1st July, 1925, in the various cities, towns or other local municipalities mentioned in paragraph 1 of this section (among others the City of Outremont) there is hereby imposed a uniform tax at the rate of 12 mills on the dollar upon all the immoveable property except in the neutral panel of each such City, to be apportioned as between Protestant and Roman Catholic each as by law provided." 40

5. The taxes above mentioned shall be levied and collected by the proper municipal authorities at the same time as the municipal taxes..... and shall be paid over.....*as soon as collected.*"

This last paragraph was again amended by 16 Geo. V, chap. 47, sec. 1, par. 8c), providing that the taxes in question should be paid over "independently of the collection thereof in four payments, etc."

So far then as concerns the school taxes, from and after the 1st of July, 1925, it would appear that they were virtually incorporated in and with the municipal taxes, and they became a debt payable to the Municipality itself, and were to be collected by the Municipality at the same time, and in the same manner as the municipal taxes.

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This was also the theory of the earlier legislation when the School Commissioners or Trustees had availed themselves of the authorisation
10 to require the Municipality to collect their taxes.

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In such an event the Municipal Council was under the obligation of collecting the School Taxes in the same manner and at the same time as municipal taxes.

(13 Geo. V, chap. 65 — sec. 526;

(Now R.S.Q. 1928, chap. 102, sec. 537).

It seems to be impossible to evade the conclusion, therefore, that,
20 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.

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
30 conflicting rulings, if, for instance, while the Superior Court held that gas mains were immovable and subject to taxation, the Circuit Court should find that gas mains were not immovables and not subject to school taxes.

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.

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

FOURTH: THE DEFENDANT CANNOT IN ANY EVENT BE CONDEMNED.

Counsel for the Appellants are careful to distinguish between the two Companies by constantly referring to the Montreal Light, Heat & Power *Consolidated* as the "Defendant", and to the Montreal Light, Heat & Power *Company* as the mis-en-cause only.

In the
Court of
King's
Bench.
—
No. 20D
Reasons of
Judgment.
—
Hon. Justice
Hall.
(Continued)

For the reasons given above, I am of the opinion that both Companies are equally defendants, but the arguments under the present head refer only to the Montreal Light, Heat & Power *Consolidated*.

In spite of the contract of the 7th June, 1916, by which the operation of the Company's plant was assumed by, and transferred to, the Montreal Light, Heat & Power *Consolidated*, the former remains the owner of its lands, buildings, plant and other apparatus, and it is that Company which is assessed on the tax rolls as the owner of the gas mains 10 in question.

The Montreal Light, Heat & Power *Consolidated* argues, therefore, that, not being owner, it cannot be condemned to pay these taxes.

In this connection, it is important to examine, with some detail, the contract between the parties in order to discover, if possible, its particular character.

It is, in the first place, a contract for the space and term of 98 20 years commencing August 1st, 1916, and among the obligations assumed by the contractor, that is, the Montreal Light, Heat & Power Consolidated, are the following:—

“To maintain and keep in good order so much of the apparatus of the respective Companies as may be necessary to carry on in an efficient manner the business of manufacturing and selling gas, etc.”;

(Clause 2; p. 24). 30

“To pay all debts and liabilities of the Companies;
(Clause 7; p. 43).

“To pay all costs and expenses of operation of every description, including municipal taxes, etc., and to keep the property of the Companies free and clear from all liens and encumbrances”;
(Clause 12; p. 44.)

Finally, to execute and perform all contracts, covenants and agreements in respect of which the Companies may now be liable towards any third persons; 40
(Clause 13; p. 44).

Among these last obligations were those arising out of the contract with the City Respondent, particularly that providing for the extension of gas mains, as might be required.

Now this work, since 1916, has been done by the Montreal Light, Heat & Power Consolidated.

“Q. Which Company is doing the works that are required for the laying of the pipes, gas mains, repairs, etc., within the limits of the City of Outremont?”

A. The actual work is done by the Montreal Light, Heat & Power Consolidated, that is to say the Defendant Company, under the provisions of the contract, Exhibit P-3.”

In the
Court of
King's
Bench.
—
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Judgment.
—
Hon. Justice
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(Continued)

10

(Case, p. 106).

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.

20

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.

30

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.

40

It necessarily follows from this that the Lessee enjoys all the rights attached to the quality of proprietor; (C. C. 569), and immoveable held under emphyteutic may be seized as real property under execution by the Lessee, by its creditors. (C. C. 571).

It is evident that it was the intention of the parties that at least for the purposes of taxation, the Contractor should appear as the ostensible owner of the different properties, for it is specifically provided that the contractor shall pay all municipal taxes and assessments.

It is argued that this provision, being a stipulation in a private contract between the two Companies for the benefit of a third party does not confer upon that third party, that is, the Corporation Respondent, any right to take advantage of the same. In other words, that the Mon-

In the
Court of
King's
Bench.
No. 20D
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Judgment.

treal Light, Heat & Power Company could alone be sued for the taxes, and that it might then, if it so desired, call in in warranty, the Montreal Light, Heat & Power Consolidated, but that the Respondents were without right to prosecute their claim directly against the latter.

Hon. Justice
Hall.
(Continued)

Since, in the present instance, both Companies are joined in the action as co-defendants, and, since the contract which clearly sets out the obligation resting upon the Montreal Light, Heat & Power Consolidated, is specifically referred to in the declaration, and incorporated in the record, it is, in my opinion, a magnification of technicalities to pretend that the Montreal Light, Heat & Power Consolidated is not personally liable for the payment of these taxes. 10

The learned Trial Judge has found a further justification of the condemnation of the Montreal Light, Heat & Power Consolidated, in the provisions of the Cities & Towns' Act (R. S. Q. chap 102, sec. 534, which reads as follows:

“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..... even where such tenant, occupant or possessor is not entered on the valuation roll.” 20

This Article has been amended so far as concerns the City of Westmount (8 Ed. 7, chap. 89, sec. 43) by replacing the word “land” in the three places where it occurred in the Article corresponding to Article 534 just cited, by the word “immoveable”. 30

It is pointed out, therefore, that, in this connection, the judgment of the Supreme Court in the City of Westmount case (S. C. R. 1926, p. 515) is not relevant to the present issues.

The learned Trial Judge, however, expressed the opinion that the word “land” (terrain) is here used as synonymous with “immoveable”, and that, therefore, the tenant, occupant or other possessor of such immoveable, even though not entered on the valuation roll may be held liable for the taxes. 40

While the Education Act (R. S. Q. c. 1335, 2 par. 15) declares that the words “real estate,” “land” or “immoveables” mean all lands — including the buildings and improvements thereon, there is no corresponding provision in the Cities & Towns' Act, or the Respondent's City's Charter.

I am not prepared to accept, in its entirety, the opinion of the learned Trial Judge in this connection. Circumstances might arise in which it would be dangerous to extend the interpretation of the word

“land” to include all immoveable; but, having come to the conclusion that the contract is, in effect, an emphyteutic lease, and that, as the Lessee, the Montreal Light, Heat & Power Consolidated enjoys all the rights attached to the quality of proprietor, I am of the opinion that it, at the same time, becomes liable to the obligations of the proprietor so far as concerns the payment of these taxes.

In the
Court of
King's
Bench.
No. 20D
Reasons of
Judgment.
Hon. Justice
Hall.
(Continued)

10 The Appellants last submission is:

FIVE: IF THE ACTION FAILS AS AGAINST THE DEFENDANT IT CANNOT BE MAINTAINED AS AGAINST THE MIS-EN-CAUSE.

I have already expressed the opinion that the Montreal Light, Heat & Power *Company* is the joint defendant, and whether the Montreal Light, Heat & Power *Consolidated* be, or be not, condemned, the former
20 must be found responsible for these taxes.

I conclude, therefore, that the appeal should be dismissed, with costs.

Montreal, October 1st, 1930.

(Signed) A. RIVES HALL,
J. K. B.

30

No. 21.

Petition for leave to appeal to His Majesty's Privy Council

MOTION ON BEHALF OF APPELLANTS

40 THAT WHEREAS by Judgment rendered by this Honourable Court on the 30th day of October, 1930, the Appeal of the Appellant was dismissed, and the Judgment *a quo* condemning Appellants to pay Respondent the sum of \$3,262.82 with interest was confirmed.

AND WHEREAS the present case concerns annual rentals and other matters in which the rights in future of the parties will be affected;

AND WHEREAS the Appellants believe themselves to be aggrieved by the said Judgment and desire to appeal therefrom to His Majesty in His Privy Council.

No. 21
Petition for
leave to
appeal to
His Majesty's
Privy Council.
8 Nov. 1930.
(Continued)

In the
Court of
King's
Bench.
—
No. 21
Petition for
leave to
appeal to
His Majesty's
Privy Council.
8 Nov 1930.
(Continued)

THAT the Appellants be permitted to appeal to His Majesty in His Privy Council from the Judgment rendered herein on the 30th day of October 1930, and that a delay be fixed by this Honourable Court within which the Appellants shall furnish good and sufficient security as required by law effectively to prosecute the said Appeal and to satisfy the condemnation and to pay such costs and damages as may be awarded by His Majesty in the event of the Judgment being confirmed — the whole with costs to the undersigned Attorneys.

10

Montreal, 8th Nov. 1930.

Brown, Montgomery & McMichael,

Attorneys for Appellants.

I, JOHN S. NORRIS, of the City of Westmount, District of Montreal, being duly sworn do depose and say:

1. That I reside at Civic No. 116 Aberdeen Avenue in the City of Westmount, Province of Quebec. 20

2. That I am the Vice-President and Managing-Director of the Appellant Companies and have a personal knowledge of the matters hereinafter set forth.

3. That the present case concerns annual rentals by which the rights in future of the parties will be affected in an amount greatly exceeding the sum of 12,000.00. 30

4. That in addition to the amount of the condemnation herein there is a similar action pending between the Respondent and the Appellants bearing the No. C-62962 of the records of the Superior Court, whereby the Respondent, the City of Outremont, is claiming from the Appellants the further sum of \$12,237.26 for municipal and school taxes for the years 1927-28, 1928-29 and 1929-30.

AND I HAVE SIGNED.

(Signed) John S. Norris.

40

Sworn to before me at the City of Montreal, in the Province of Quebec, this 11th day of November, 1930.

M. J. Brier,

A Commissioner of the Superior Court for the District of Montreal.

To Messrs. Beaubien & Michaud,
Attorneys for Respondent.

In the
Court of
King's
Bench.

Sirs:

Take Notice of the foregoing Motion and Affidavit and that the same will be presented to the Court of King's Bench sitting in Appeal at Montreal on the 15th day of November instant at ten o'clock in the forenoon—and govern yourselves accordingly.

No. 21
Petition for
leave to
appeal to
His Majesty's
Privy Council.
8 Nov. 1930.
(Continued)

10 Montreal, 8th November, 1930.

Brown, Montgomery & McMichael,
Attorneys for Appellants.

No. 22.

Judgment on above motion rendered 18 November 1930.

PRESENT :

20 HONOURABLE JUSTICE GUERIN
“ “ DORION
“ “ TELLIER
“ “ BERNIER
“ “ BOND

No. 22
Judgment on
above
Motion.
18 Nov. 1930.

No. 305

MONTREAL LIGHT, HEAT & POWER CONSOLIDATED,
Defendant.

—and—

30 THE MONTREAL LIGHT, HEAT AND POWER COMPANY,
Defendant-Mis-en-Cause, Appellants.

—and—

THE CITY OF OUTREMONT
Plaintiff-Respondent.

40 THE COURT, having heard the parties upon the merits of a motion presented by the Appellants, by which they pray, for the reasons mentioned therein, that they be permitted to appeal to His Majesty in his Privy Council from the judgment rendered on the 30th of October 1930 by the Court of King's Bench, Appeal Side, whereby the appeal of the Defendant and the Mis-en-cause was dismissed, and the judgment *a quo*, condemning them to pay the Respondent \$3,262.82 with interest and costs, was confirmed, and by which they further allege that the present case concerns annual rentals and other matters in which future rights of the parties shall be affected, and by which the Appellants pray that a delay be fixed by the Court of Appeal within which the Appellants shall furnish good and sufficient security as required by law to prosecute the said appeal in the event of the judgment being confirmed;

SEEING articles 68 and 1249 of the Code of Civil Procedure, SEEING also the affidavit filed in support of the present motion:

In the
Court of
King's
Bench.
No. 22
Judgment on
above
Motion.
18 Nov. 1930.
(Continued)

DOTH GRANT the said motion, security to be given within one month from this date to the satisfaction of the Clerk of the Court of Appeal, and in default of so doing it is ordered that the record shall be remitted to the Court below without any further order; the costs to follow suit.

E. Guerin,
J. K. B.

10

No. 23.

Notice for Security.

NOTICE

No. 23
Notice for
Security.
3rd Dec. 1930

To Messrs. Beaubien & Michaud,
Attorneys for Respondent.

20

Sirs:—

Take notice that, in accordance with the Judgment of this Honourable Court rendered on the 18th day of November, 1930, the Appellant will on Friday next the 5th day of December, 1930, at 11 o'clock in the forenoon give good and sufficient security that it will effectively prosecute the said appeal and that the security which they will offer will be a Bond of the Montreal Trust Company, a body corporate authorized by the laws of this Province to act as judicial surety, who will then and there justify as to its solvency, if so required, and govern yourselves accordingly.

30

Montreal, 3rd December, 1930.

Brown, Montgomery & McMichael,
Attorneys for Appellant.

40

No. 24.

Bail Bond.

In the
Court of
King's
Bench.
No. 24
Bail Bond
5th Dec. 1910

WHEREAS, on the 18th day of November one thousand nine hundred and thirty, judgment was rendered by the Court of King's Bench (Appeal Side), sitting at the City of Montreal, in the District of Montreal, in a certain cause between,

10 MONTREAL LIGHT, HEAT & POWER CONSOLIDATED,
Appellant,
and
LA CITE d'OUTREMONT,
Respondent.

20 WHEREAS, the said judgment has been appealed from the Court of King's Bench sitting in Appeal by the said Appellant to His Majesty in his Privy Council.

WHEREFORE THESE PRESENTS TESTIFY, that on the fifth day of December one thousand nine hundred and thirty came and appeared before me, Clerk of the Court of King's Bench (Appeal Side) for the District of Montreal, the "MONTREAL TRUST COMPANY" of Montreal, a body politic and corporate, having its Head Office in the City of Montreal, and duly authorized to become surety before the Courts by Order in Council dated the 28th day of February, one thousand nine
30 hundred and ten, under the provisions of the Act, 63 Victoria, Chapter 44, and herein represented and acting by the manager of the said Company, duly authorized by resolution of the Directors of the said the "Montreal Trust Company" duly certified copy of said resolution being hereunto annexed and by which the said Company has acknowledged and hereby acknowledges itself to be the legal surety of the said Appellant in regard to the said Appeal, and hereby promises and binds and obliges
40 itself that in case the said Appellant does not effectually prosecute the said Appeal, and does not satisfy the condemnation and pay all the costs and damages adjudged, in case the judgment appealed from is confirmed, then the said surety will satisfy the said condemnation and pay all costs and damages which may be hereafter adjudged, up to and including the sum of two thousand dollars (\$2,000.00) in case the judgment appealed from is confirmed, to the use and profit of the said Respondent, its successors and assigns.

And the said the "Montreal Trust Company" has signed these presents by its Manager.

Copy taken and acknowledged before me at Montreal, this 5th day of Dec. A.D. 1930.

No. 25.

In the Court of King's Bench.

No. 25
Consent of Parties as to Documents Comprising the Record of Proceedings:
15 Dec. 1930.

Consent of Parties as to Documents Comprising the Record of Proceedings.

The parties by their undersigned attorneys hereby agree that the transcript from the record to be submitted on the present appeal to HIS MAJESTY IN HIS PRIVY COUNCIL shall consist of the documents herein after mentioned under reserve to the parties of the right to refer to any other documents:

1 Writ and declaration	16th. Dec. 1926	
2 Plea	31st. Jan. 1927	
3 Plaintiff's Motion to amend.....	12th. Mar. 1927	
4 Plaintiff's amended writ and declaration	22nd. Mar. 1927	
5 Exception to form by Mis-en-cause	1st. Apl. 1927	
6 Defendant's Plea	8th. Apl. 1929	20
7 Plea of Mis-en-cause	8th. Apl. 1929	
8 Answer to Defendant's Plea	22nd. Apl. 1929	
9 Answer to Plea of Mis-en-cause.....	22nd. Apl. 1929	
10 Evidence on discovery		
11 Plaintiff's Evidence		
12 Defendan'ts Evidence (and Mis-en-cause)		30
13 Judgment on Motion to amend.....	22nd. Mar. 1927	
14 Judgment on exception to the form.....	11th. Apl. 1927	
15 Judgment of Court of King's Bench.....	10th. Nov. 1927	
15a Judge's Reasons.....		
16 Judgment of the Superior Court.....	14th. Oct. 1929	
17 Appellant's Factum	1st. Apl. 1930	40
18 Respondent's Factum	27th. Mar. 1930	
19 Judgment of Court of King's Bench.....	30th. Oct. 1930	
20 Judges' reasons		
21 Motion for leave to Appeal to Privy Council.....	8th. Nov. 1930	
22 Judgment on above Motion.....	18th. Nov. 1930	
23 Notice for Security	3rd. Dec. 1930	

24	Bail Bond	5th. Dec. 1930	In the Court of King's Bench.
25	Consent of parties as to Documents comprising the record of proceedings		No. 25
26	Fiat for transcript		Consent of Parties as to Documents
27	Consent of parties as to the printing and preparation of the record of proceedings.....		Comprising the Record of Proceedings
10 28	Consent of parties as to omission of documents		15 Dec. 1930. (Continued)

PART II.— EXHIBITS

Exhibits of Plaintiff with Declaration.

	No. 1—Extracts from Collection Roll of Plaintiff for 1924-25, 1925-26 years	and 1926-27
20	No. 2—Extract from the Minutes of a meeting of the Board of School Commissioners of the City of Outremont	10th March 1919
	No. 3—Extract from the Minutes of a meeting of the Board of School Trustees of the City of Outremont	7th March 1919
	No. 4—Extract from the Minutes of a meeting of the Council of the City of Outremont	2nd April 1919

Exhibits of Plaintiff at Examination on Discovery.

30	P-1—Copy of contract between the town of Outremont and the Mis-en-Cause, A. C. Lyman, Notary	24th. Aug. 1904
	P-2—(a) Letter from Plaintiff to Mis-en-Cause.....	29th. May 1915
	(b) Letter from Plaintiff to Mis-en-Cause	5th. Nov. 1919
	(c) Letter from Plaintiff to Mis-en-Cause	28th. April 1920
40	(d) Extract from the Minutes of a Meeting of the Council of the City of Outremont	26th. May 1920
	(e) Letter from Plaintiff to Mis-en-Cause	27th. May 1920
	(f) Letter from Plaintiff to Mis-en-Cause	30th. Sept. 1920
	(g) Letter from Plaintiff to Mis-en-Cause	15th. Oct. 1920
	(h) Letter from Plaintiff to Mis-en-Cause	6th. April 1921
	(i) Three letters from divers persons to the Defendant re-installation of gas mains on Dunlop, Wilder and Hartland Avenues	7th. July 1923

In the
Court of
King's
Bench.
No. 25
Consent of
Parties as to
Documents
Comprising
the Record of
Proceedings
15 Dec. 1930.
(Continued)

- P-3—Copy of Memorandum of Agreement between The
Civic Investment & Industrial Company and the
Mis-en-Cause and Resolutions annexed 7th. June 1916

Exhibits of Plaintiff at Enquete.

- P-1—Extracts from Valuation Roll of Plaintiff for 1924-25 1925-26
years and 1926-27 10
- P-2—(a) Copy of Resolution approving Valuation Roll
of Plaintiff for 1924-25 with certificates annexed.. 10th. Sept. 1924
(b) Copy of Resolution approving Valuation Roll
Plaintiff for 1925-26 with Certificates annexed ... 9th. Sept. 1925
(c) Copy of Resolution approving Valuation Roll
of Plaintiff for 1926-27 with Certificates annexed.. 22nd. Sept. 1926
- P-3—(a) By-law No. 158 of Plaintiff with copies of
notice and certificate annexed..... 27th. March 1918 20
(b) By-law No. 161 of Plaintiff with copies of no-
tice and certificate annexed 3rd. Sept. 1919
(c) By-law No. 177 of Plaintiff with copies of no-
tice and certificate annexed 4th. June 1924
- P-4—Copy of Resolution of Outremont School Commis-
sioners 15th. Sept. 1924 30
- P-5—(a) Letter from Mis-en-Cause to Plaintiff..... 4th. Dec. 1915
(b) Letter from The Civic Investment & Industrial
Company to Plaintiff.....22nd. March 1917
(c) Letter from Mis-en-Cause to Plaintiff..... 14th. June 1917
(d) Letter from Defendant to Plaintiff 17th. May 1918

Exhibits of Defendant and Mis-en-Cause at Enquete.

40

- D-1—Statement of Rebate on School Taxes 27th. Sept. 1929
D-2—Letter from Plaintiff to Defendant 5th. Nov. 1920
D-3—Copy of By-law No. 59 of Plaintiff 23rd. May 1904
D-4—Copy of By-law No. 65 of Plaintiff 30th. July 1904
Certificate of Clerk of Appeals.....
Certificate of Chief Justice

The words "Mis-en-Cause" serve to designate the Montreal L. H. & P. Company, which as appears from the amended writ of Summons, was described as "mis-en-cause as Co-Defendant"

In the
Court of
King's
Bench.

No. 25
Consent of
Parties as to
Documents
Comprising
the Record of
Proceedings
15 Dec. 1930.
(Continued)

Montreal, 15th. December 1930

Brown, Montgomery & McMichael,
Attorneys for Appellants.

10

Beaubien & Michaud,
Attorneys for Defendant.

No. 26.

20

Fiat for Transcript.

No. 26
Fiat for
Transcript.
19 Dec. 1930.

To

MM. Pouliot & Laporte,

Clerk of Appeals, Montreal.

30 We require the preparation of the transcript record in Appeal to
HIS MAJESTY'S PRIVY COUNCIL, the said transcript to be printed
at Montreal, by C. A. Marchand, the printer.

Montreal, 19th. December 1930

Brown, Montgomery & McMichael,
Attorneys for Appellants.

40

In the
Court of
King's
Bench.

No. 27.

Consent of Parties as to the Printing of the Record of Proceedings.

No. 27
Consent of
Parties as to
the Printing
of the
Record of
Proceedings.
19 Dec. 1930.

We do hereby consent that the transcript in appeal to His Majesty's Privy Council be printed here, and that the costs of the preparation, printing and transmitting the said transcript record to the Registrar of the Privy Council be taxed by the Clerk of Appeals.

10

Montreal, 19th. December 1930.

Brown, Montgomery & McMichael,
Attorneys for Appellants.

Beaubien & Michaud,
Attorneys for Respondent.

20

No. 28.

Consent of Parties as to Omission of Documents.

No. 28
Consent of
Parties as to
Omission of
Documents.
19 Dec. 1930.

Consent of parties for the omission of certain documents in the transcript record for the Privy Council

30

IN THE SUPERIOR COURT.

A. Inscription in Appeal

2. List of plaintiff's exhibits

7. Appearance

9. Notice

10. Consent

40

14. Plaintiff's list of exhibits

18. Appearance

19. Appearance

22. Inscription in Appeal of judgment of April 11/1927

24. Plea

25. Inscription

- 26. Notice
- 27. Notice
- 31a. Notice
- 32. Procès-Verbal
- 32a. Plaintiff's authorities
- 10 33. Defendant's lists of exhibits at Enquête
- 38. Plaintiff's list of exhibits at Enquete

In the
Court of
King's
Bench.
—
No. 28
Consent of
Parties as to
Omission of
Documents.
19 Dec. 1930.
(Continued)

IN THE COURT OF KING'S BENCH

Appellants' Appearance

Respondent's Appearance.

20 Montreal 19th, December 1930.

Brown, Montgomery & McMichael,
Attorneys for Appellants.

Beaubien & Michaud,
Attorneys for Respondents.

30

EXHIBITS

PART II.

Exhibit D-3 of Defendant and Mis-en-cause at Enquete.

Copy of By-Law No. 59 of Plaintiff.

40

Province of Quebec,
District of Montreal,
County of Hochelaga.

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.

—
D-3
Copy of
By-Law
No. 59 of
Plaintiff
23 May 1904

TOWN OF OUTREMONT

At a General Adjourned Session of the Council of the own of Outremont, held at the ordinary place of meetings of said Council in said own on the 23rd day of May, one thousand nine hundred and four, at

Exhibit of
Defendant
and
Mis-en-cause,
at Enquete.

D-3
Copy of
By-Law
No. 59 of
Plaintiff
23 May 1904
(Continued)

which were present, Messrs. Joyce, Beaubien, Levesque, McKenzie, Lamoureux, Gorman, Languedoc and Robson, all Councillors, forming a quorum under the presidency of Mayor W. W. Dunlop.

It is ordained and enacted by said Council of the Town of Outremont, and said Council doth hereby ordain and enact by By-Law number fifty-nine (59) concerning the supply of gas to the Town and its citizens as follows, to wit:

SECTION FIRST: Whereas it is greatly in the interest of the Town of Outremont that gas should be furnished to the said Town for street lighting and that it should also be supplied to its citizens for domestic purposes, the Council may by agreement passed with any incorporated Company or private individuals, hereinafter for the purposes of the present By-Law called contractors, grant to the said contractors in the manner, for the consideration and subject to the stipulations set forth in the present By-Law, the right to furnish and supply gas to the said corporation and its citizens, for a term not exceeding thirty years. 10

SECTION SECOND: The contractors to whom the aforesaid right will be granted by the Council, shall provide, erect, maintain and operate, except as hereafter provided, all the plant, system of conduits and all other apparatus whatsoever required for the furnishing and distribution of gas in conformity with the conditions hereof. 20

SECTION THIRD: The said Contractors will undertake for a term not exceeding thirty (30) years to be computed from the date of the agreement to be passed in conformity herewith to supply gas for the lighting of the roads, lanes, streets, avenues, and public places or squares or portions thereof in the said Town, when and where requested in writing by the said corporation. 30

SECTION FOURTH: The said Contractors shall have the right to charge for the said lighting of roads, lanes, streets, etc., a rate not exceeding seventeen dollars (\$17.00) per lamp per annum, including all lamps and all necessary accessories except the posts which shall be supplied by the corporation and shall remain the latter's property.

SECTION FIFTH: Each lamp so furnished by the contractors shall burn five cubic feet of gas per hour and shall be lighted from sunset to sunrise and the said contractors shall further be held to set all lamps and posts which the said Town shall judge necessary and repair the same without additional charge. 40

Should however the Town require to have a lamp removed or its site changed, the contractors shall have a right to charge for so doing, the sum of six dollars (\$6.00) in summer and seven dollars (\$7.00) in winter. All posts to replace broken posts shall be supplied by the Town and reset without charge by the said contractors.

SECTION SIXTH: The contractors shall light, clean and keep in proper order at all times, the lamps so required for said lighting, when the same will have reached one hundred (100) or more in number; until then, the cleaning lighting and keeping in repair of said lamps shall be done by the Town. The said Contractors shall not be held to supply gas to lamps situated at a greater distance than (150 ft.) one hundred and fifty, from the end of mains to be placed as hereinafter specified.

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.
D-3
Copy of
By-Law
No. 59 of
Plaintiff
23 May 1904
(Continued)

10 SECTION SEVENTH: The said Contractors by the aforesaid Agreement shall further bind themselves to supply and distribute to the citizens of the said Town and to all others who may apply for the same, on the conditions hereinafter mentioned, gas for cooking, lighting, heating and manufacturing purposes with a sufficient pressure and of the same quality as that furnished for the time being by the said Contractors within the City of Montreal. The price to be charged for such gas shall be the same as that exacted for the time being from the citizens of the City of Montreal, it being made an essential condition of said agreement
20 that the citizens of the said Town shall be entitled to all reductions in price which may be granted hereafter to the citizens of the City of Montreal.

SECTION EIGHTH: The said Contractors shall have the right to charge an extra ten cents (10c.) for one thousand cubic feet to the consumers not paying promptly to wit: within ten days of the mailing and delivering of accounts.

30 To facilitate the use of gas amongst the poorer classes of inhabitants of the said Town, the said Contractors shall bind themselves to supply gas for cooking, with the right of having two lights from the stove meter at the rate of one dollar and five cents (\$1.05) per one thousand cubic feet, to be supplied by the contractors by means or prepayment meters, to all inhabitants of the said Town desirous of using such gas meters and paying a rent not exceeding one hundred and fifty dollars (\$150.00) per annum.

40 SECTION NINTH: The Town shall in no manner be responsible for any sums of money whatsoever due to the said Contractors by gas consumers and the said Contractors shall themselves make the collection of sums thus due.

SECTION TENTH: The said contractors when furnishing and supplying gas to the said Town shall give a written notice of twenty-four hours to the corporation prior to the opening of any street, road, lane, avenue, public place or square or portions thereof within the Town except in case of emergency when such notice shall be given as soon as possible after the opening thereof.

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.

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No. 59 of
Plaintiff
23 May 1904
(Continued)

The said contractors shall be bound when executing such works to cause no interruption or obstruction of traffic in the said streets, lanes, roads, avenues, and public places or squares or portions thereof within the Town and shall not in any manner injure the pipes, sewers, and other corporation works.

SECTION ELEVENTH: The contractors shall carry on their works at all times in such manner as to prevent accidents, hurt or damages to life, health or property. All excavations made shall be guarded at all times and in addition shall be lighted during the night. 10

SECTION TWELFTH: As soon as any of the aforesaid works shall be completed the said contractors shall restore said roads, streets, lanes, avenues, public places or squares or portions thereof in their former condition and in case the said contractors neglect forthwith to conform to the present clause, the Town shall have the right to cause the said roads, streets, etc., or portions thereof to be restored at the contractors cost and expense. 20

The said contractors shall be responsible for all accidents caused by the execution of any of their works or the maintenance of their plant, conduits, etc., and shall hold the said Town indemnified of all damages whatsoever arising therefrom. All works of the said contractors shall be subject to the control of the Town Inspector.

SECTION THIRTEENTH: The said contractors, save and except the provisions of the three following sections, shall not be bound to lay their mains in the streets, where no sewers or water pipes have been placed until such sewers or water pipes have been laid therein. The said contractors shall be allowed to lay their pipes alongside the sewers or water conduits of the Town. 30

SECTION FOURTEENTH: The said Contractors shall bind and oblige themselves to lay their conduits, mains, service pipes, etc., in the following streets or portions of streets during the course of the present year one thousand nine hundred and four, to wit: on St. Louis Street from Hutchison Street to Bloomfield Avenue; on Bloomfield Avenue a distance of four hundred feet (400 ft.) in the north-westerly direction to be measured from St. Louis Street; on Durocher Street a distance of three hundred and sixty feet (360 ft.) in a north-westerly direction to be measured from St. Louis Street; on Querbes Avenue a distance of two hundred feet (200 ft.) in a north-westerly direction to be measured from St. Louis Street; on De l'Epée Avenue a distance of one hundred and eighty feet (80 ft.) in a north-westerly direction to be measured from St. Louis Street; on Hutchison Street from Fairmount Street to Van Horne Avenue; on 40

Van Horne Avenue from Hutchison Street to Wiseman Avenue and further on all streets intersecting said Van Horne Avenue when and where any of the conditions hereinafter recited in Section Sixteenth shall have been fulfilled.

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.

SECTION FIFTEENTH: The said Contractors shall further bind and oblige themselves to lay their conduits, mains service pipes, etc., during the year one thousand nine hundred and five along St. Louis Street and Côte St. Catherine Road from Bloomfield Avenue to the western limits of the said Town, on Bellingham Road from Côte St. Catherine Road to Maplewood Avenue.

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(Continued)

SECTION SIXTEENTH: The said Contractors shall equally bind and oblige themselves when so requested by the Town, to lay their conduits, mains, service pipes, etc., in any other street of the said Town, provided the sewers or water pipes have been laid therein; and

(a) When the said contractors can derive from the gas supplied on said street, a net revenue of six per cent (6%) on the outlay necessitated by the laying of such mains and service pipes therein; or

(b) When the said contractors are assured or guaranteed that they will obtain as many consumers as will average to them two consumers for every one hundred and fifty feet (150 ft.) of main to be laid therein, one of which said two consumers may be a street lamp, or

(c) When the excavation and refilling of the trench for the laying of the main are made for the contractors; in which case the said contractors will be allowed to execute the works required during summer and within a reasonable delay.

SECTION SEVENTEENTH: The said contractors shall lay free of charge all service pipes from the mains to the street line, the residents of the Town paying at the rate charged in the City of Montreal for such service pipes from the street line to their respective residences.

SECTION EIGHTEENTH: The said Contractors will supply meters to consumers at the rate of forty cents (40c.) for a three light and fifty cents (50c.) for a five light meter for every three months and said consumers shall be at liberty to supply their own meters subject to the necessary government inspection and certificate.

SECTION NINETEENTH: The said Town shall by the aforesaid agreement assign and transfer to the said contractors all rights it may possess in connection with the supply of gas within its limits the said contractors being subrogated in all the said rights for a period of thirty years to be computed from the date of the aforesaid agreement.

Exhibit of
Defendant
and
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at Enquete.

D-3
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23 May 1904
(Continued)

During such period the said Town shall not permit any other person or company to lay pipes in the said lanes, streets, avenues, roads or public places within said Town for the purposes of supplying gas.

SECTION TWENTIETH: The said Town moreover shall exempt from taxation or license all property of the said contractors forming part of their system for supplying gas within the Town for a period of twenty years to be computed from the date of the said agreement.

10

SECTION TWENTY-FIRST: The placing of the conduits, mains, service pipes, posts, lamps, or other parts or portions of the contractor's plant and the execution of all works in connection with the erection, repair and maintenance of said plant in the Town, shall be subject to the approval of the Council or of the engineer or other person appointed by the Council to supervise the same.

SECTION TWENTY-SECOND: The Town Engineer will be allowed to take tests to ascertain the amount of gas consumed by the lamps and their efficiency and all lamps found below the standard will be immediately replaced.

20

SECTION TWENTY-THIRD: In case of fault or negligence on the part of the said contractors to repair any of their lamps for street lighting or remove any cause of imperfection in the same as soon as possible, the Council shall have the right to deduct the price per hour paid for each lamp unlit or impaired in brilliancy. The said contractors shall not however be held liable for any interruption or diminution of the light given by any of the said lamps for street lightning which may be caused by fortuitous events "force majeure" strike of the employees or by causes beyond their control, and without their fault or negligence.

30

SECTION TWENTY-FOURTH: The Town shall have the power for the execution of any of its works to demolish or remove any part or portion of the contractor's plant without being therefore liable in damages. The Town however in such cases shall cause the said part or portion of the contractor's plant to be restored without any unnecessary delay. No rebate shall be deducted for any lamp that may be extinguished by reason of the execution of the aforesaid works.

40

SECTION TWENTY-FIFTH: In case of failure on the part of the contractors to furnish and maintain a service in conformity with the conditions contained in the agreement to be passed hereafter, the own may by resolution of its Council and without prejudice to its recourse in damages against the contractors, annul said agreement upon giving thirty days notice in writing to the said contractors.

SECTION TWENTY-SIXTH: The Mayor and Secretary-Treasurer are hereby authorized to sign in the name of the Town, the agreement or contract to be passed in accordance with the provisions hereof.

Exhibit of
Defendant
and
Mis-en-cause
at Enquete.

(Signed) W. W. Dunlop,
Mayor.

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23 May 1904
(Continued)

10

(Signed) J. Kruse,
Secretary-Treasurer.

Certified true copy,
E. T. Sampson,
City of Outremont.

City Clerk and Treasurer,

20

Exhibit D-4 of Defendant and Mis-en-cause at Enquete.

Copy of By-Law No. 65 of Plaintiff.

District of Montreal,

Province of Quebec,
County of Hochelaga.

TOWN OF OUTREMONT

Exhibit of
Defendant
and
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at Enquete.

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Plaintiff.

30

At a Special Session of the Council of the Town of Outremont, held at the ordinary place of meetings of said Council in said Town on the 30th day of July one thousand nine hundred and four (1904) at which were present: Messrs. Joyce, Lamoureux, Languedoc and Robson, all Councillors, forming a quorum under the Presidency of Mayor W. W. Dunlop.

40

IT IS ORDAINED AND ENACTED by said Council of the Town of Outremont, and said Council doth hereby ordain and enact by By-law number sixty-five (65) to repeal By-Law number fifty-nine (59) to provide gas to the Town and its citizens as follows, to wit:

SECTION FIRST: WHEREAS it is expedient to repeal By-law number fifty-nine (59) of the Town, enacted on the twenty-third day of May, one thousand nine hundred and four (1904) the same is hereby abrogated.

SECTION SECOND: WHEREAS it is greatly in the interest of the Town of Outremont that gas should be furnished to the said Town for street lighting and that it should also be supplied to its citizens for domestic purposes, the Council may by agreement passed with any incorporated

Exhibit of
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Company or private individuals, hereinafter for the purposes of the present By-law called contractors, grant to the said contractors in the manner, for the consideration and subject to the stipulations set forth in the present By-law, the right to furnish and supply gas to the said corporation and its citizens, for a term not exceeding thirty years.

SECTION THIRD: The said contractors will undertake for a term not exceeding thirty years (30) to be computed from the date of the agreement to be passed in conformity herewith to supply gas for the lighting of the roads, lanes, streets, avenues and public places or squares or portions thereof in the said Town, when and where requested in writing by the said corporation. 10

SECTION FOURTH: The said contractors shall have the right to charge for said lighting of roads, lanes, streets, etc., a rate not exceeding seventeen dollars (\$17.00) per lamp per annum, including all lamps and all necessary accessories except the posts which shall be supplied by the corporation and shall remain the latter's property. 20

SECTION FIFTH: Each lamp so furnished by the contractors shall burn five cubic feet of gas per hour and shall be lighted from sunset to sunrise and the said contractors shall further be held to set all lamps and posts which the said Town shall judge necessary and repair the same without additional charge.

Should however the Town require to have a lamp removed or its site changed, the contractors shall have a right to charge for so doing, the sum of six dollars (\$6.00) in summer and seven dollars (\$7.00) in winter. All posts to replace broken posts shall be supplied by the Town and reset without charge by the said contractors. 30

SECTION SIXTH: The contractors shall light, clean and keep in proper order at all times, the lamps so required for said lighting, when the same will have reached one hundred (100) or more in number: until then, the cleaning, lighting and keeping in repair of said lamps shall be done by the Town. 40

The said contractors shall not be held to supply gas to lamps situated at a greater distance than one hundred and fifty feet (150) from the end of mains to be placed as hereinafter specified.

SECTION SEVENTH: The said contractors by the aforesaid agreement shall further bind themselves to supply and distribute to the citizens of the said Town and to all others who may apply for the same, on the conditions hereinafter mentioned, gas for cooking, lighting, heating and manufacturing purposes with a sufficient pressure and of the same

quality as that furnished for the being by the said contractors within the City of Montreal. The price to be charged for such gas shall be the same as that exacted for the time being from the citizens of the City of Montreal, it being made an essential condition of said agreement that the citizens of the said Town shall be entitled to all reductions in price which may be granted hereafter to the citizens of the City of Montreal.

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Copy of
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(Continued)

10 SECTION EIGHTH: The said contractors shall have the right to charge an extra ten cents (10c.) per one thousand cubic feet to the consumers not paying promptly to wit, within ten days of the mailing and delivering of accounts.

20 To facilitate the use of gas amongst the poorer classes of inhabitants of the said Town, the said contractors shall bind themselves to supply gas for cooking, with the right of having two lights from the stove meter, at the rate of one dollar and five cents (\$1.05) per one thousand cubic feet, to be supplied by the contractors by means of prepayment meters to all inhabitants of the said Town desirous of using such gas meters and paying a rent not exceeding one hundred and fifty dollars (\$150) per annum.

SECTION NINTH: The Town shall in no manner be responsible for any sums of money whatsoever due to the said contractors by gas consumers and the said contractors shall themselves make the collection of sums thus due.

30 SECTION TENTH: The said contractors when furnishing and supplying gas to the said Town shall give a written notice of twenty-four hours to the corporation prior to the opening of any street, road, lane, avenue, public place or square or portions thereof within the Town except in case of emergency when such notice shall be given as soon as possible after the opening thereof.

40 The said contractors shall be bound when executing such works to cause no interruption or obstruction of traffic in the said streets, lanes, roads, avenues and public places or squares or portions thereof within the Town and shall not in any manner injure the pipes, sewers and other corporation works.

SECTION ELEVENTH: The contractors shall carry on their works at all times in such manner as to prevent accidents, hurt or damages to life, health or property. All excavations made shall be guarded at all times and in addition, shall be lighted during the night.

SECTION TWELFTH: As soon as any of the aforesaid works shall be completed the said contractors shall restore said roads, streets, lanes, avenues, public places or squares or portions thereof in their former

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(Continued)

condition and in case the said contractors neglect forthwith to conform to the present clause, the Town shall have the right to cause the said roads, streets, etc., or portions thereof, to be so restored at the contractors cost and expense.

The said contractors shall be responsible for all accidents caused by the execution of any of their works or the maintenance of their plant, conduits, etc., and shall hold the said Town indemnified of all damages whatsoever arising therefrom. All works of the said contractors shall be subject to the control of the Town inspector. 10

SECTION THIRTEENTH: The said contractors, save and except the provisions of the three following sections, shall not be bound to lay their mains in the streets where no sewers or water pipes have been placed until such sewers or water pipes have been laid therein, the said contractors shall be allowed to lay their pipes alongside the sewers or water conduits of the Town.

SECTION FOURTEENTH: The said contractors shall bind and oblige themselves to lay their conduits, mains, service pipes, etc., in the following streets or portions of streets during the course of the present year, one thousand nine hundred and four, to wit: on St. Louis Street from Hutchison Street to Bloomfield Avenue; on Bloomfield Avenue a distance of four hundred feet (400) in the north-westerly direction to be measured from St. Louis Street; on Durocher Street a distance of three hundred and sixty feet (360) in a north-westerly direction to be measured from St. Louis Street; on Querbes Avenue a distance of two hundred feet (200) in a north-westerly direction to be measured from St. Louis Street; on De l'Épée Avenue a distance of one hundred and eighty feet (180) in a north-westerly direction to be measured from St. Louis Street; on Hutchison Street from Fairmount Street to Van Horne Avenue; on Van Horne Avenue from Hutchison Street to Wiseman Avenue and further on all streets intersecting said Van Horne Avenue when and where any of the conditions hereinafter recited in Section Sixteen shall have been fulfilled. 30

SECTION FIFTEENTH: The said contractors shall further bind and oblige themselves to lay their conduits, mains, service pipes, etc., during the year one thousand nine hundred and five, along St. Louis Street and Côte St. Catherine Road from Bloomfield Avenue to the western limits of the said Town, on Bellingham Road from Côte St. Catherine Road to Maplewood Avenue. 40

SECTION SIXTEENTH: The said contractors shall equally bind and oblige themselves when so requested by the Town, to lay their conduits, mains, service pipes, etc., in any other street of the said Town, provided the sewers or water pipes have been laid therein;

(a) When the said contractors can derive from the gas supplied on said streets, a net revenue of Six per cent (6%) on the outlay necessitated by the laying of such mains and service pipes therein; or

Exhibit of
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at Enquete.

(b) When the said contractors are assured or guaranteed that they will obtain as many consumers as will average to them, two consumers for every one hundred and fifty feet (150) of main to be laid therein, one of which two consumers may be a street lamp; or

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(Continued)

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(c) When the excavation and refilling of the trench for the laying of the main are made for the contractors; in which case the said contractors will be allowed to execute the works required during summer and within a reasonable delay.

SECTION SEVENTEENTH: The said consumers shall lay free of charge all service pipes from the mains to the street line, the residents of the Town paying at the rate charged in the City of Montreal for such service pipes from the street line to their respective residences.

SECTION EIGHTEENTH: The said contractors will supply meters to consumers at the rate of forty-cents (40) for a three light and fifty cents (50c) for a five light meter for every three months and said consumers shall be at liberty to supply their own meters subject to the necessary government inspection and certificate.

SECTION NINETEENTH: The said Town shall by the aforesaid agreement assign and transfer to the said contractors all rights it may possess in connection with the supply of gas within the limits the said contractors being subrogated in all the said rights for a period of thirty years to be computed from the date of the aforesaid agreement.

During such period, the said Town shall not permit any other person or company to lay pipes in the said lanes, streets, avenues, roads or public places within said Town for the purposes of supplying gas.

SECTION TWENTIETH: The said Town moreover shall exempt from taxation or license all property of the said contractors forming part of their system for supplying gas within the Town for a period of twenty years to be computed from the date of the said agreement.

SECTION TWENTY-FIRST: The placing of the conduits, mains, service pipes, posts, lamps or other parts or portion of the contractor's plant and the execution of all works in connection with the erection, repair and maintenance of said plant in the Town, shall be subject to the approval of the Council or of the engineer or other person appointed by the Council to supervise the same.

Exhibit of
Defendant
and
Mis-en-cause
at Enquete.

SECTION TWENTY-SECOND : The Town Engineer will be allowed to take tests to ascertain the amount of gas consumed by the lamps and their efficiency and all lamps found below the standard will be immediately replaced.

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Copy of
By-Law
No. 65 of
Plaintiff.
30 July 1904
(Continued)

SECTION TWENTY-THIRD : In case of fault or negligence on the part of the said contractors to repair any of their lamps for street lighting or remove any cause of imperfection in the same as soon as possible, the Council shall have the right to deduct the price per hour paid for each lamp unlit or impaired in brilliancy. The said contractors shall not however be held liable for any interruption or diminution of the light given by any of the said lamps for street lighting which may be caused by fortuitous events, "force majeure" strike of the employees or by the causes beyond their control and without their fault or negligence. 10

SECTION TWENTY-FOURTH : In case of failure on the part of the contractors to furnish and maintain a service in conformity with the conditions contained in the agreement to be passed hereafter the Town may by resolution of its Council and without prejudice to its recourse in damages against the contractors, annual said agreement upon giving thirty days notice in writing to the said contractors. 20

SECTION TWENTY-FIFTH : The Mayor and Secretary-Treasurer are hereby authorized to sign in the name of the Town, the agreement or contract to be passed in accordance with the provisions hereof.

(Signed) W. W. Dunlop,
Mayor. 30

(Signed) J. Kruse,
Secretary-Treasurer.

Certified true Copy
E. T. Sampson,
City Clerk and Treasurer,
City of Outremont.

Plaintiff's
Exhibit on
Discovery.

40

Plaintiff's Exhibit P-1 on Discovery.

**Copy of Contract between the Town of Outremont and the Mis-en-cause,
A. C. Lyman, Notary.**

P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman
Notary.
24 Aug. 1904

BEFORE Mtre. Albert Clarence Lyman, the undersigned Notary Public, in and for the Province of Quebec, residing and practicing at the City of Montreal, in the said Province,

APPEARED: *The Town of Outremont*, a body politic and corporate, duly incorporated, having its principal place of business at the Town Hall in the said Town of Outremont in the District of Montreal, herein acting and represented by William W. Dunlop, residing at the said Town of Outremont, the Mayor thereof, and Julius Kruse, residing in the Town of St. Louis, in the District of Montreal, the Secretary-Treasurer of the said Town of Outremont, both specially authorized for all purposes of these presents by By-Laws numbers Sixty-four and Sixty-five (64 & 65) of the Municipal Council of the said Town which were enacted by the Municipal Council of said Town at a general session held on the Thirtieth of July last past (1904) a duly certified copy of each of said By-Laws is hereto annexed signed for identification by the parties hereto and the undersigned Notary and also by resolution of the said Council passed at its meeting held on the Thirtieth day of July last past (1904) a duly certified copy whereof is equally hereto annexed after having been signed "ne varietur" by the parties hereto and the undersigned Notary

Plaintiff's
Exhibit on
Discovery.
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P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman.
Notary.
24 Aug. 1904
(Continued)

20

Hereinafter called the Town
of the First Part
and

The Montreal Light, Heat & Power Company, Limited, a body corporate, duly incorporated, and having its principal place of business at the said City of Montreal, herein acting and represented by Herbert S. Holt, of the said City of Montreal, the President thereof, and H. H. Henshaw, of the same place, the Secretary thereof, both specially authorized for the purpose of these presents by a resolution passed at a meeting of the Directors of the said Company duly called and held on the Thirteenth day of April last past (1904) a duly certified copy whereof is hereto annexed signed for identification by the parties hereto and the said undersigned Notary

Hereinafter called the Contractors
of the Second Part

The said Contractors agree by these presents with the Town of
Outremont

40

In regard to Electric Lighting

1st. To light for a term of ten years from date hereof by means of electricity, the streets and parts of streets, lanes and public places of the said Town as provided below.

The Contractors hereby bind and oblige themselves to complete during the present year, nineteen hundred and four (1904) the placing of main wires on Cote Ste. Catherine Road from the Eastern Limits of the Town to the Western Limits thereof, on Van Horne Avenue, from Hut-

Plaintiff's
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Discovery.

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Copy of
Contract
between the
Town of
Outremont
and the

Mis-en-cause
A. C. Lyman,

Notary.

24 Aug. 1904
(Continued)

chison Street to Wiseman Avenue; on St. Louis Street from Hutchison Street to Cote Ste. Catherine Road; on Bloomfield Avenue, a distance of Six hundred feet to be measured from St. Louis Street; on Wiseman Avenue, a distance of Six hundred feet to be measured from Cote Ste. Catherine Road; on West End Avenue throughout its entire length; on Bellingham Road from Cote Ste. Catherine Road to Maplewood Avenue.

The Contractors further bind themselves to complete the placing 10
of like main wires on the Cemetery Road between Cote St. Catherine
Road and McCullough Avenue during the year nineteen hundred and
five (1905) and on Hutchison Street from Mount Royal Avenue to Van
Horne Avenue just as soon as the Town of St. Louis will have agreed to
place lamps on that thoroughfare.

2nd. The aforesaid streets and parts of streets and lanes and
public places of the said Town shall be lighted by means of incandescent
or enclosed series alternating arc lamps, or both, of the same quality ma- 20
nufacture and system, and during the same hours as those employed in
the City of Montreal; the lamps to be furnished by the Contractors to be
of the number, candle power and situation as may from time to time be
ordered in writing by the Council.

3rd. The said Contractors will furnish electric light which shall
be available day and night to those of the residents of the said Town si-
tuated not more than two hundred and fifty (250) feet from the main
wires of the Company on the terms and conditions now granted to the 30
residents of the City of Montreal, and any reduction hereafter made in
such rates to the residents of the City of Montreal shall equally be made
to the residents of the Town of Outremont.

4th. The said Contractors will be obliged to put and keep in good
order all wires, poles and lamps and all that pertains to the system of
electric lighting in the Town of Outremont, the wires to be covered with
insulating material and holds and will hold the said Town of Outremont
indemnified for all damages, accidents, and so forth (etc.) which might 40
result from the establishment and operation of the said system.

5th. The said Town hereby binds and obliges itself to pay to the
said Contractors for the said Street and public lighting, for and during
the term above mentioned the following prices, it being understood that
in the event of the contractors making a new contract with the City of
Montreal after the termination of the contract now existing, they shall
charge to the said Town the prices charged under such new contract to
the City of Montreal, provided the said prices do not exceed those men-
tioned in the present section, to wit:

For each arc lamp of Four hundred and eighty (480) watts the sum of Seventy-five Dollars (75.00) per annum; for each incandescent lamp of One hundred candle power (100 C.P.) Sixty Dollars (\$60.00) per annum; for each incandescent lamp of Sixty-five candle power (65 C.P.) Forty Dollars (\$40.00) per annum; for each incandescent lamp of Thirty-two candle power (32 C.P.) Twenty-two Dollars (\$22.00) per annum; and for each incandescent lamp of Sixteen candle power (16 C.P.) Sixteen Dollars (\$16.00) per annum.

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Notary.
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(Continued)

10 It is understood, however, that in the event of the Town adopting series incandescent lamps for the purposes of this contract, it shall, at its own cost and expense and by means of switches to be furnished by the Contractors, light and extinguish the said lamps, it being expressly understood that the lamps shall be lighted approximately during the hours between sunset and sunrise.

20 6th. The Town shall cause to be furnished and lit by the said Contractors at least a sufficient number of lamps for street lighting to afford the Contractors a revenue of at least one thousand (\$1,000.00) dollars per annum, it being understood that such lamps required to produce the aforesaid revenue of \$1,000. shall be located as per clause One.

7th. The Contractors shall, when requested in writing by the Town or its representative, transfer any lamp to such place as may be designated by the Town and the cost of such transfer, which shall be chargeable to and payable by the Town, shall be the actual cost only of labor and material.

30 The Contractors agree, however, if required, and without expense to the town, to substitute, for existing lamps, higher candle power lamps of a capacity not exceeding the highest candle power provided for by these presents.

8th. The Contractors shall furnish, if required by the Town, for any electric arc lamp or lamps, deemed advisable, a vertical half ground globe for the purpose of shading such house or houses as may be deemed advisable, and the cost of such globe, which shall be chargeable to and payable by the Town, shall be the actual cost of same to the Contractors.

40 9th. The placing of the poles and wires required shall be subject to the control of the Council, or of the Engineer or other person appointed by the Council to supervise same, the poles to be of sound timber divested of bark and as straight as possible, and to be planted at least four feet deep in the soil, and to be of the height of not less than twenty-five feet above the ground.

10th. The Town shall have the right, under the Contractors' supervision, to place fire alarm boxes on Contractors' poles and also to use the said poles for departmental lines of communication; the whole, however, at their own risk.

Plaintiff's
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—
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Copy of
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Outremont
and the
Mis-en-cause
A. C. Lyman.
Notary.
24 Aug. 1904
(Continued)

11th. If, in case of fire, it be necessary for the Fire Department to cut or remove any lines or wires or poles that may hamper the Fire Brigade in its work, the said Fire Brigade shall have the right to cut or remove said wires or poles without the Town becoming liable for any expense in so doing, and it shall be the duty of the Contractors to restore such poles or wires as soon as possible after the exigencies which caused their removal have ceased to exist, and that without expense to the Town. It is understood, however, that no deductions shall be made by the Town for any lights that may be extinguished by said contingencies.

10

12th. The Town hereby exempts from license or taxation all property of the Contractors within the limits thereof, forming part of their system for supplying electricity within the said Town during a period of ten (10) years. If however, the said Town at the expiration of the said period of ten (10) years renews and extends for a further period of ten (10) years, the operation of this contract, as far as it relates to the said electric service as provided in Clause 13, the said Town binds and obliges itself to further exempt from license and taxation all the property of the Contractors as above mentioned during the said renewal period of ten years.

20

13th. And in consideration of this present contract, and the terms thereof hereinbefore stipulated, the said Town doth hereby grant unto the said Contractors the exclusive right to furnish and supply to the said Town the electric light for street lighting for a term of ten (10) years from this date, and at the expiration of the said term of ten years, the Town shall have the right to renew and extend the operation of this contract so far as relates to the said electric service for another term of ten years.

30

In Regard to Gas Supply

14th. The Contractors bind and oblige themselves when required by the Town to supply for a term of thirty years from the date hereof gas through its pipes, to light the roads, lanes, streets, avenues and public places and portions thereof in the said Town, which may be indicated from time to time by the Council as hereinafter provided at the rate of Seventeen (\$17.00) Dollars per lamp per annum, including all lamps and all necessary accessories, except the posts which shall be supplied by the Corporation and remain their property, each lamp to burn Five (Five) cubic feet of gas per hour, and to be lighted from sunset to sunrise, and, moreover the Contractors shall set all lamps and posts that the said Town shall judge necessary and repair the same without additional charge; but if it is required to remove a lamp altogether or change its site, a charge of six dollars in Summer and Seven dollars in Winter will be made, being the same rate as charged the City of Montreal; posts to

40

replace broken ones to be supplied by the Corporation and reset without charge by the Contractors. The Contractors shall light, clean and keep at all times in proper order the said lamps, provided the number thereof in service is one hundred (100) or more. If the number in service be less than one hundred, the Town shall attend to the cleaning and lighting of the said lamps and likewise do all the necessary repairs to the same. The Contractors shall not be asked to supply gas to lamps at a greater distance than One hundred and fifty (150) feet from the end of their main pipes.

Plaintiff's
Exhibit on
Discovery.

P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman
Notary.
24 Aug. 1904
(Continued)

15th. The said Contractors promise and agree moreover to supply and distribute to the citizens of the said Town of Outremont and all others who may apply for same, on the conditions hereinafter mentioned, gas for cooking, lighting, heating, manufacturing purposes, which shall be of the same quality as that furnished for the time being to the citizens of the City of Montreal, and with a sufficient pressure, the price to be charged to be also the same as that charged for the time being to the citizens of the City of Montreal, it being well understood that the citizens of the said Town of Outremont shall be entitled to all reductions in price, which may be made by the Contractors to the citizens of the City of Montreal; the Contractors having the right as in the said City to charge an extra ten cents per one thousand (1,000) cubic feet to Consumers not paying promptly, that is within ten (10) days of the mailing and the delivering of their account.

To facilitate the use of gas amongst the poorer class of rate payers of the said Town of Outremont, the said Contractors bind themselves to supply gas for cooking with the right of having two lights from the stove meter at the rate of one dollar and five cents (\$1.05) per one thousand (1,000) cubic feet, to be supplied by the Contractors by means of prepayment meters to all inhabitants of the said Town of Outremont paying a rent not exceeding One hundred and fifty Dollars per year and who wish to have the prepaymentmeter as aforesaid.

16th. The Town will not be in away way responsible at any time for money due by gas consumers; the said Contractors shall make collections of money thus due.

17th. The said Contractors in furnishing and supplying gas to the said Town of Outremont shall give twenty-four hours' notice to the said Town before opening any street, road, lane, avenue, or public place of the said Town of Outremont, except in an emergency, then the notice shall be given as soon as possible after the opening, and the said Contractors shall be bound in executing the said works to cause no interruption or obstruction to traffic in the said streets, lanes, roads, avenues, and public places, and not to injure the water pipes and sewers or other property of the Town.

Plaintiff's
Exhibit on
Discovery.
—
P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman.
Notary.
24 Aug. 1904
(Continued)

18th. The Contractors in making these works shall take all necessary care and precaution to avoid and prevent accidents that would cause death or injury to persons and damages to property. All excavations made shall be guarded and, moreover, lighted during night.

19th. As soon as the aforesaid works shall be finished, the said Contractors shall put said roads, lanes, and public places or portion thereof, in their former condition, and in case the said Contractors neglect forthwith to conform to the present clause, the Council of the said Town of Outremont shall have the right to have the said works done at the said Contractors cost and expense, and the said Contractors shall be responsible for all accidents that may be caused by the execution of the said works and generally by the erection, maintenance, and operation of their plant, and shall answer to all actions for damages that may arise therefrom, and, moreover, all the works made by the said Contractors shall be under the control of the said Town of Outremont's inspector. 10

20th. Save and except the provisions of section Twenty-first and twenty-second and twenty-third the said Contractors will not be required to lay their mains on streets or portions of streets where there are no sewers or water pipes until such sewers or water pipes have been laid on such streets or portions of streets unless in special cases where the said parties have come to an understanding with respect thereto, the Contractors to be allowed to lay their pipes in the cuts made for sewers or water conduits. 20

21st. The Contractors bind and oblige themselves to lay, their mains, service pipes, etc., on the following streets or portions of streets during the course of the present year (1904) to wit: On St. Louis Street from Hutchison to Bloomfield Ave; On Bloomfield Avenue, a distance of four hundred feet in a north-westerly direction to be measured from St. Louis Street; On Durocher Street a distance of three hundred and sixty feet in a northwesterly direction, to be measured from St. Louis Street; on Querbes Avenue a distance of two hundred feet to be measured in a north-westerly direction from St. Louis street; on de l'Epée Avenue, a distance of one hundred and eighty feet in a north westerly direction to be measured from St. Louis Street; On Hutchison Street from Fairmount Street to Van Horne Avenue; On Van Horne Avenue from Hutchison Street to Wiseman Avenue, and on all streets intersecting said Van Horne Avenue when and where any of the said conditions stipulated in clause twenty-three (23) shall have been fulfilled. 30 40

22nd. The Contractors further bind and oblige themselves to lay their mains, service pipes, etc., during the year Nineteen hundred and five (1905) along St. Louis Street, and Cote Ste. Catherine Road from Bloomfield Avenue to the Western limits of the Town, and on Bellingham Avenue from Cote Ste. Catherine to Maplewood Avenue.

23rd. Moreover, the said Contractors shall be bound to lay mains and service pipes in all others streets or parts of streets, as soon as requested by the Town, provided the sewers or water pipes have been put therein whenever the said Contractors can derive a net revenue of six per cent on the outlay necessitated by the laying of such mains and service pipes, or as soon as they are guaranteed getting as many consumers as will average to them two consumers for every one hundred and fifty feet of main to be laid, one of which said two consumers may be a street lamp as before specified, or if a suitable excavation for the pipes and filling in is made for the Contractors in which case it will not be necessary that sewers or water pipes shall have been laid in such streets Said Contractors will lay the pipes at their own expense; the Contractors to be allowed a reasonable delay to lay the necessary pipes which shall be done in the Summer time.

24th. It is understood that the said Contractors shall put in service pipes free to the street line only, the owners of the houses lying back from the street line will have to pay for that part of the service pipes from the line of the street to the house at the same rate as charged in the City of Montreal.

25th. The contractors shall supply meters to consumers at the ordinary rentals, that is to say, forty cents for a three-light, and fifty cents for a five light meter for every three months, but consumers can have their own meters if they wish, subject to the necessary Government inspection and certificate.

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.

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 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.

In Regard to Electric Lighting & Gas Supply.

Plaintiff's
Exhibit on
Discovery.
—
P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman.
Notary.
24 Aug. 1904
(Continued)

Plaintiff's
Exhibit on
Discovery.
—
P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman,
Notary.
24 Aug. 1904
(Continued)

28th. The said Town obliges itself to pay to the said Contractors on or before the Fifteenth (15th) day of each month the prices named herein for all electric and gas lights supplied to it during the previous month, less such deduction as may be exigible for any unlit lamps due to causes within the Contractor's control.

29th. In case of failure on the part of the Contractors to furnish and maintain a service in conformity with the conditions of this contract, the Town may by resolution of its Council, without prejudice to its recourse in damages against the Contractors, annul said contract upon giving thirty days' notice in writing to the said Contractors. 10

30th. The Town engineer shall be allowed to make tests from time to time to ascertain the efficiency of the lamps supplied under this contract reporting to the Contractors any lamp or lamps which he may find to be inefficient, the Contractors on their part binding and obliging themselves forthwith to remedy all such inefficiencies that may be found to exist, provided the same be due to causes within their control. In case the said Contractors should omit to remove any such inefficiencies the Town shall have the right to deduct the price per hour paid for each lamp unlit or inefficient. The said Contractors shall not, however, be held liable for any interruption or diminution of the light given by any of the said lamps for street lighting which may be caused by fortuitous events "force majeure" strikes of employees or by causes beyond their control and without their fault or negligence. 20

The Contractors shall pay one half of the costs of these presents and for their own copy.

Whereof Acte: 30

Done and passed at the said City of Montreal on this Twenty-fourth day of August in the year of our Lord One Thousand Nine Hundred and Four.

And after due reading hereof the said parties acting and represented as aforesaid signed these presents with the said undersigned Notary in whose office they remain of record under the number Two Thousand Two Hundred and Thirty the whole according to Law.

(signed) The Montreal Light Heat & Power Co. 40
" H. S. Holt, President.
" H. H. Henshaw, Sec.-Treas.
" W. W. Dunlop, Mayor.
" J. Kruse, Sec.-Tr.
" A. C. Lyman, N. P.

A true copy of the original hereof remaining of record in my office.
(Sgn'd.) A. C. Lyman, N. P.

Province of Quebec,
District of Montreal,
County of Hochelaga.

Plaintiff's
Exhibit on
Discovery.

P-1
Copy of
Contract
between the
Town of
Outremont
and the
Mis-en-cause
A. C. Lyman.
Notary.
24 Aug. 1904
(Continued)

TOWN OF OUTREMONT

At a special meeting of the Council of the Town of Outremont, held at the ordinary place of meetings of said Council in said Town, on the
10 thirtieth day of July, one thousand nine hundred and four, at which were present: Councillors Joyce, Lamoureux, Robson and Languedoc forming a quorum under the Presidency of Mayor W. W. Dunlop.

It was proposed by Counc. Joyce seconded by Counc. Languedoc and resolved:

That the draft of contract concerning the electric and gas franchises of the Town, submitted by the M. L. H. & P. Co. be approved as
20 amended by the Town's solicitor.

That pending the performance of the formalities requisite to allow the same to be validly signed by the Town, authorization be given to the Company to begin the works required for their execution of this contract.

Further that this Council will not compel the said Company to lay gas mains on Hutchison Street, so long as sewers are not built therein, provided however the Company furnishes gas from some other source to
30 certain residents on said street to be mutually agreed upon between the Town and the Company.

I hereby certify that the above is a true extract from the minutes of the aforesaid meeting of the Council of the Town of Outremont.

(Sgn'd.) J. Kruse,
Secretary-Treasurer.

Plaintiff's
Exhibit

Plaintiff's Exhibit P-2 on Discovery.

on discovery. **A—Letter from Plaintiff to Mis-en-cause. B—Letter from Plaintiff to Mis-en-cause.**
P-2 C—Letter from Plaintiff to Mis-en-cause. D—Extract from the minutes of a
A.—Letter of meeting of the Council of the City of Outremont. E—Letter from Plaintiff
Mis-en-cause. to Mis-en-cause. F—Letter from Plaintiff to Mis-en-cause. G—Letter
29 May 1915. from Plaintiff to Mis-en-cause. H—Letter from Plaintiff to Mis-en-cause
I—Three letters from divers persons to the defendant re-installation
of gas mains on Dunlop, Wilder and Hartland Avenues.

— A —

10

Outremont, Que., 29th May, 1915.

The Montreal Light, Heat & Power Co.,
Craig Street West,
Montreal.

Gentlemen:—

Below please find Extract of Minutes of a General Meeting of
the Council of the City of Outremont, held on Wednesday, the 26th 20
instant:—

It was resolved:

“That the Montreal Light, Heat & Power Company be request-
“ed to forthwith install a Gas Main on that section of Elmwood
“Avenue, situated between Bloomfield and McDougall Avenues,
“which work should be completed before City commences to ma-
“cadamize this street as provided for in the estimates of the cur-
“rent year.”

30

Yours faithfully,

E. T. Sampson,
Secretary-Treasurer.

— B —

Outremont, Que., November 5th, 1919.

P-2
B.—Letter
from
Plaintiff to
Mis-en-cause.
5 Nov. 1919.

Montreal Light, Heat & Power Company,
Craig Street West,
Montreal, P. Q.

40

Attention of E. S. Stanton, Esq.,
Supt. Gas Distribution.

Re: Wiseman Avenue Gas Main Extension.

Gentlemen:—

Your letter of October 14th re above subject was referred to me.
I wish to correct some inaccuracies contained in this letter.

To total length of pipe to be laid, according to measurements made by us, is 840 feet. The number of consumers is not *seven* as you state, but *seventeen* and the names are as follows:—

	W. Ziff	No. 933	J. Felly,	No. 961
	Mr. Elliott,	934	G. DiMassimo,	965,
	M. Silverman,	935	D. Bisante,	965a,
	R. Tiernan,	936	S. Carestie,	965b,
10	E. Bélanger,	951	L. Marlard	967,
	Mr. Cardinal	953	J. Vigliarolo,	971,
	W. Doherty,	955	T. Delledonne	973,
	P. Beaudin,	959	C. Pellegrino,	975,
			C. Bouchard,	977.

Plaintiff's Exhibit on discovery
P-2
B.—Letter from Plaintiff to Mis-en-cause. 5 Nov. 1919. (Continued)

Mr. Dominique Bisante, living in rear of Wiseman Avenue (965a) is ready to lay to his domicile and to that of S. Carestie, the necessary piping from the street line, at his expense.

20 Mr. Ziff's landlord, Mr. Robert Neville, is ready to sign any order authorizing you to lay the pipe.

Unless you inform me at an early date, that you will undertake to lay this pipe, I will take this matter up with the Public Utilities Commission according to a Resolution passed by the Council of Outremont, on October 2nd, authorizing me to do so.

Yours very truly,

30

J. A. Duchastel
City Engineer and Manager.

— C —

Outremont, Que., April 28th, 1920.

Montreal Light, Heat & Power Company,
Craig Street West,
Montreal, P. Q.

P-2
—C—
Letter from Plaintiff to Mis-en-cause. 28 April 1920

40

Attention of E. S. Stanton, Esq.,
Supt., Gas Distribution.

Gentlemen:—

With further reference to the extension of gas mains on Kelvin, West End and Peronne Avenues, and to your letter of the 21st instant, I wish to state that this City is ready to enter into an arrangement with your Company for the laying of these pipes immediately, and stand the cost of this extension until such times that the number of consumers on these streets complies with the terms of the contract between us.

Plaintiff's Exhibit on discovery

P-2

Letter from Plaintiff to Mis-en-cause. 28 April 1920 (Continued)

It would be too bad in my mind to pave these streets, and in a short time, have to rip them all open to lay your gas mains. You would save a considerable amount by having this work done immediately, rather than wait until the consumers have moved in the houses.

You will also note that your pipe crosses on private property belonging to this City, from West End Avenue to St. Patrick Asylum, and that very shortly we intend to build six new cottages on that land and your pipe will be in the way of the foundations of these six cottages, therefore, you will be requested then to remove your pipe to the street, and in this case again, it will be cheaper for you to do this immediately. 10

Kindly give me your reply before next Wednesday, as I would like to submit same to the Council at a meeting to be held that day.

Yours truly,

J. A. Duchastel,
City Engineer and Manager.

— D —

20

P-2

Extract from Minutes of an adjourned General Meeting of the Council of the City of Outremont, Held on the 26 May 1920.

EXTRACT FROM MINUTES OF AN ADJOURNED GENERAL MEETING OF THE COUNCIL OF THE CITY OF OUTREMONT, HELD ON THE TWENTY-SIXTH DAY OF MAY, 1920.

“There was submitted the following offer by E. Stanton, Supt. Gas Distribution, on behalf of the Montreal Light, Heat & Power Company, viz:—

Montreal, 26th May, 1920.

30

“City of Outremont, P. Q., (attention of J. A. Duchastel, C. Eng. & Mngr

“Dear Sir:—

“Confirming telephone conversation of this morning and in reply “to your letter of April 28th regarding proposed Gas main extensions in “Kelvin and West End Avenues, as per blue print received, we beg to “advise you that we will undertake to pipe these streets if you will deposit “with our Company \$2,080.65 against Capital Cost involved, with the un- “derstanding that this amount will be refunded immediately the required “number of consumers have been secured. 40

“If the excavation work, back filling included, is done by *your* own “men, the amount of required deposit will be reduced from \$2,080.65 to “\$1,151.15.

“Trusting this will be satisfactory.”

(Signed) Montreal Light, Heat & Power Consolidated.

“ E. Stanton, Supdt. Gas Distribution.

“It was unanimously resolved:—

“That the offer now submitted from E. Stanton, on behalf of the
“Montreal Light, Heat & Power Consolidated to construct a Gas main ex-
“tension on Kelvin and West End Avenues, subject to the City making
“a deposit therefor of \$2,080.65, to be refundable to the said City by the
“said Company immediately the required number of consumers have
“been secured BE AND IS HEREBY ACCEPTED, subject however
10 “to the following modification, viz:—

“That should the City decided to undertake the work of ex-
“cavation and back filling in connection with the proposed gas
“main extension, then a further amount of \$1,151.15 shall also be
“refunded to the City by the said Company.”

Certified True Extract.

E. T. Sampson,
City Clerk.

20

— E —

Outremont, Que., May 27th, 1920.

Montreal Light, Heat & Power Company,
Craig Street West,
Montreal, P. Q.

Plaintiff's
Exhibit
on discovery
—
P-2
—D—
Extract from
Minutes of an
adjourned
General
Meeting of
the Council
of the City of
Outremont,
Held on the
26 May 1920
(Continued)

P-2
—E—
Letter from
Plaintiff to
Mis-en-cause.
27 May 1920

30

Attention of E. S. Stanton, Esq.,
Supt., Gas Dist'n Dept.

Re: Proposed Gas Main Extensions on West End
and Kelvin Avenues.

Gentlemen:—

Your letter of the 26th instant re above was submitted to the Coun-
cil last night.

40

It was decided to deposit with your Company a sum of \$2,080.65
against the capital cost involved in these extensions, with the under-
standing that this amount will be refunded as soon as the required num-
ber of consumers have been secured according to the terms of the con-
tract, viz: two for every 150 feet of main.

I have been authorized to do the excavating work and back-filling
for you on the understanding that as soon as this work is completed, you
will refund us the sum of \$1,151.15.

Plaintiff's
Exhibit
on discovery

P-2

—E—

Letter from
Plaintiff to
Mis-en-cause.
27 May 1920
(Continued)

We wish you to understand that we are depositing the above mentioned amount with you to facilitate things, and have the gas main extensions laid immediately, without any prejudice to our rights in the existing contract between us.

I wish to inform you that the excavating work will be started tomorrow morning.

Yours very truly,

10

J. A. Duchastel
City Engineer and Manager.

— F —

Outremont, Que., September 30th, 1920.

20

P-2

—F—

Letter from
Plaintiff to
Mis-en-cause
30th Sept.
1920.

Montreal Light, Heat & Power Company,
Craig Street West,
Montreal, P. Q.

Attention of E. S. Stanton, Esq.,
Supt., Gas Dist'n Dept.

Gentlemen:—

30

As we would like to complete the pavement on Peronne Avenue this year, I would be very much interested to receive from you your price for extending your gas main on that street, from its present location to Robert Avenue, and then in a northerly direction along Robert Avenue to the existing pipe crossing this street and supplying the St. Patrick Orphanage.

We would be willing to advance to your Company the money for this work until such times as sufficient consumers on this line have been secured, according to the terms of our contract. 40

The approximate length of this pipe would be 280 feet.

Yours very truly,

J. A. Duchastel
City Engineer and Manager.

— 167 —

— G —

Outremont, Que., October 15th., 1920.

Montreal Light, Heat & Power Company,
Craig Street West,
Montreal, P. Q.

Plaintiff's
Exhibit
on discovery
—
P-2
—G—
Letter from
Plaintiff to
Mis-en-cause.
15 Oct. 1920.

Attention of E. S. Stanton, Esq.,
Supt., Gas Dist'n Dept.

10

Re: Extension of Gas Service on Peronne Avenue.

Gentlemen:—

Your letter of the 6th instant, informing us that if we deposit with you \$639.00 against the cost of extending this line as outlined you will extend this pipe and refund us at the rate of \$50.00 per service pipe connection taken off the line of the proposed extension, is not at all satisfactory to us.

20

By not completing the pavement work on this street we thought this would be an inducement for you to lay your pipe.

We are quite willing to advance the money but we would wish the refund to be made as soon as the required number of consumers, according to our contract with you, has been obtained. In fact, an agreement exactly the same as the one adopted for the extension on the streets in that district, viz: West End and Kelvin Avenues.

30

I fail to see why you have not proposed this method to us, because you know we have other methods by which we can force you to lay this pipe and by which no deposits by the City are required.

Yours very truly,

J. A. Duchastel
City Engineer and Manager.

— H —

Outremont Que., April 6th, 1921.

40

Montreal Light, Heat & Power Company,
Craig Steet West,
Montreal, P. Q.

P-2
—H—
Letter from
Plaintiff to
Mis-en-cause.
6th April
1921.

Attention of E. S. Stanton, Esq.,
Supt., Gas Distribution.

Dear Sir:—

I beg to acknowledge receipt of your letter of the 4th instant re:

Plaintiff's
Exhibit
on discovery
— P-2
—H—
Letter from
Plaintiff to
Mis-en-cause.
6th April
1921.
(Continued)

extension of gas pipe along Glencoe Avenue and Willowdale Avenue.

You are probably not aware of the fact that Mr. Norris promised Mr. Cooke, in my presence, to extend this pipe free of charge if the City did the excavation, backfilling and repaving at the cost of the proprietors in which case no deposit would be required.

Will you kindly consult Mr. Norris in this matter and inform me how soon you are ready to proceed with the work under these arrangements.

10

Please bear in mind that we are not trying to do the Company in any shape or form, quite on the contrary, we could ask your Company to instal a gas street lighting standard on Willowdale Avenue, and this would constitute an additional consumer, according to the terms of the contract, and the extension asked for would be within the distance specified for five consumers.

Yours very truly,

J. A. Duchastel
City Engineer and Manager. 20

— I —

Montreal, July 7th, 1923.

— P-2
—I—
Three letters
from divers
persons
to the
defendant re-
Installation of
gas mains
on Dunlop,
Wilder and
Hartland
Avenues
7th July 1923

To the Montreal Light, Heat & Power Consolidated.

Dear Sirs:—

In consideration of your installing gas main and service in the street opposite my dwelling, free of expense or deposit on my part, I hereby agree to make connection therefrom to my dwelling and to sign a five year contract for gas service, according to your usual terms and conditions within 90 days from said installation. 30

Street	No.	Name	Signature
Dunlop Ave.	810	Mrs. Lallemand	A. J. Lallemand
Dunlop Ave.	814		Refused
Dunlop Ave.	816		Refused
Dunlop Ave.	815	P. Guidazio	Pierre Guidazio
Dunlop Ave.	817	J. Scott	John Scott
Dunlop Ave.	825	P. Guidazio	See No. 815
Dunlop Ave.	827	E. Brown	E. W. Brown
Dunlop Ave.	835	P. Guidazio	
Dunlop Ave.	837	"	
Dunlop Ave.	845	"	See No. 815
Dunlop Ave.	847	"	
Dunlop Ave.	855	"	
Dunlop Ave.	857	"	
Dunlop Ave.		R. J. Bell	
Dunlop Ave.			

40

Montreal, July 7th, 1923

To the Montreal Light, Heat & Power Consolidated.

Dear Sirs:—

In consideration of your installing gas main and service in the street opposite my dwelling, free of expense or deposit on my part, I hereby agree to make connection there from to my dwelling and to sign a five year contract for gas service, according to your usual terms and conditions within 90 days from said installation.

Street	No.	Name	Signature
Wilder Ave.	728	Frank H. Cole	Frank H. Cole
Wilder Ave.	732		Refused to sign
Wilder Ave.	735	B. of M. St. Peter St	Vacant
20 Wilder Ave.	739	C. W. Duckett	C. W. Duckett
Wilder Ave.	743	F. Leduc	
Wilder Ave.	760	H. R. Cockfield	H. R. Cockfield
Wilder Ave.	772		V. Marchand
Wilder Ave.	773	W. J. King	
Wilder Ave.	776	Hugh T. Love	H. T. Love
Wilder Ave.	780	S. W. Cuthbert	Stewart W. Cuthbert
Wilder Ave.	784	H. Candlish	H. Candlish
30 Cor. Van Horne		Dr. Dussault	F. P. Dussault
Cor. Van Horne		Dr. Dussault	F. P. Dussault
Wilder Ave.	821	Ernest Goyer	
Wilder Ave.	825	Edw. Godfrey	Refused to sign
“ “		A. E. Cadieux	A. E. Cadieux
“ “		J. E. Wilder	J. E. Wilder
“ “		J. E. Wilder	J. E. Wilder

Plaintiff's Exhibit on discovery — P-2 — I— Three letters from divers persons to the defendant re-Installation of gas mains on Dunlop, Wilder and Hartland Avenues. 7th July 1923 (Continued)

Montreal, July 7th, 1923.

40

To the Montreal Light, Heat & Power Consolidated.

Dear Sirs:—

In consideration of your installing gas main and service in the street opposite my dwelling, free of expense or deposit on my part, I hereby agree to make connection there from to my dwelling and to sign a five year contract for gas service, according to your usual terms and conditions within 90 days from said installation.

Plaintiff's Exhibit on discovery.	Street	No.	Name	Signature	
	Hartland Ave.	744	E. Deguise	E. Deguise	
P-2	" "	701	P. Cornforth		
—I—	" "	702	J. B. Lapointe		
Three letters from divers persons to the defendant re-Installation of gas main on Dunlop, Wilder and Hartland Avenues.	" "	754	J. C. McLelland		
7th July 1923 (Continued)	" "	718	M. Poyaner	M. Poyaner	
	" "	753	M. J. Heller	M. J. Heller	
	" "	724	Dr. Cipyhot		
	" "	750	B. St. John	B. St. John	10
	" "	740			
	" "	751	E. J. Johnson	E. J. Johnson	
	" "	784	J. A. Lamarche	Louise Quintin	
	" "	710	See over 724	C. J. McLelland	
	" "	759	Dr. A. A. Foucher	Mme A. A. Foucher	
	" "	760	Mr. Wm. Myerson		
	" "	711	C. H. Fildes		
	" "	785	J. E. Fifle	J. E. Fifle	
	" "	788		E. Lapierre	20
	" "	787	C. W. McConnell		
	" "	815	Alex. Cinqmars		
	" "		J. A. Chaput	J. A. Chaput	
	" "	855	A. Urquhart	Albert Urquhart	
	" "	881	Guimond	J. A. Guimond	
	" "	915	Singer	Refused	
	" "	917	Trudeau		

30

Plaintiff's Exhibit P-5 At Enquete.

Plaintiff's Exhibit.

A—Letter from Mis-en-cause to Plaintiff. B—Letter from The Civic Investment and Industrial Company to Plaintiff. C—Letter from Mis-en-cause to Plaintiff. D—Letter from Defendant to Plaintiff.

P-5

—A—
Letter from Mis-en-cause.
4 Dec. 1915.

— A —

Montreal, December, 4th, 1915.

Mr. J. Duchastel,
City Engineer,
Outremont, Que.

40

Dear Sir:—

Beg to acknowledge yours of the 25th ult., re matter of trees breaking down our wires.

We do not wish to take the stand that your men do not take proper care in cutting the trees but what we wish to emphasize is that should a very difficult undertaking be met with in regard to letting down large

limbs, etc., we would be very glad to have our men co-operate with you at the time.

Plaintiff's Exhibit.

P-5

—A—

As regards the number of times our wires have been broken by your men cutting trees, our records shows the following times:

Letter from
Mis-en-cause
4 Dec. 1915.
(Continued)

Nov. 17th—11.30 A. M.—Cote St. Catherine Road and Laurier Avenue.

Nov. 18th—10.20 A.M.—Cote St. Catherine Road south of Laurier Ave.

10 Nov. 27th— 3.35 P. M.—Cote St. Catherine Road and Sterling Avenue.

Our wires were found down in each of the above cases, due to branches falling on same.

Thanking you, we remain,

Yours truly,

The Montreal Light, Heat & Power Co.

20 LAK.HS.

A. Wilson

Engineer Electrical Distribution

Per L. A. Kenyon.

— B —

Montreal, 22nd March 1917.

30

J. Duchastel, Esq.,
City Engineer,
City of Outremont, Que.

P-5
—B—
Letter from
the Civic
Investment
and Industrial
Company to
Plaintiff.
22th March
1917.

Dear Mr. Duchastel:—

Re: Electric Cooking:

40 I have your letter of March 21st, instant, and have given instructions to our New Business Department to-day to make the rate for Outremont 1½c par KWH with minimum bill of \$2.00 per month; it does not pay and we cannot under any circumstances take the business without a monthly minimum.

Yours truly,

J. S. Norris,

Vice-President.

Plaintiff's
Exhibit

P-5

—C—

Letter from
Plaintiff to
Mis-en-cause.
14 June 1917.

Mr. Duchastel,
Engineer, Town of Outremont
Que.

Montreal, June 14th, 1917.

Dear Sir:—

10

We beg to acknowledge receipt of yours of the 8th inst. in the matter of charged ground wire opposite 47 Bellingham Road.

In this connection, please note that our Inspector reports that the wiring in the nearby Convent is grounded.

They have promised to have this ground removed, when the trouble should be done away with.

Thanking you for drawing this matter to our attention, we remain, 20

Yours truly,

The Montreal Light, Heat & Power Co.
L. A. Kenyon,

LAK. AG.

Asst. Engineer Electrical Distribution.

30

Montreal, May 17th, 1918.

P-5

—D—

Letter from
Defendant to
Plaintiff.
17 May 1918

Mr. J. Duchastel, B.A Sc.,
City Engineer,
City of Outremont, P. Q.

Dear Sir:—

Acknowledging receipt of your favor of May 14th instant, reporting lack of pressure on Sundays during the noon hour, will you please let us have the addresses of a few of the parties who have complained so we may investigate the matter as we are not aware there is any deficiency in the supply, and oblige, 40

Yours truly,

Montreal Light, Heat & Power Consolidated.
H. E. Mann,

Engineer Gas Department.

Plaintiff's Exhibit P-3 on Discovery.

**Copy of Memorandum of Agreement between The Civic Investment & Industrial Co.,
and the Mis-en-cause and resolutions annexed.**

Plaintiff's
Exhibit
on discovery.
—
No. P-3
Copy of
Memorandum
of Agree-
ment between
The Civic
Investment &
Industrial Co..
and the
Mis-en-cause
and
resolutions
annexed.
7 June 1916

Memorandum of Agreement made and entered into at the City of
Montreal on the Seventh day of June one thousand nine hundred and six-
teen,

10

Between:—

THE CIVIC INVESTMENT & INDUSTRIAL COMPANY,
a body corporate, having its head office at the City of Montreal, herein
acting and represented by its President and Secretary, duly authorized
for the purposes hereof, (hereinafter called "the Contractor"),

20

Party of the First Part,
and

THE MONTREAL LIGHT, HEAT & POWER COMPANY, a
body corporate, having its head office at Montreal aforesaid, herein act-
ing and represented by its President and Secretary, duly authorized for
the purposes hereof, (hereinafter called "the Company").

Party of the Second Part.

30

Whereas the Contractor is authorized by its charter to invest its
capital in the stock, bonds or debentures of any corporation having for
its object in whole or in part the exploitation of telephones or tramways,
or the supply of heat, water, light or power; and

Whereas it is furthermore provided in the charter of the Con-
tractor that it may acquire, lease, contract for, construct or equip the
enterprise and undertaking of any corporation in the stock, bonds or de-
bentures whereof it is authorized to invest, and may operate the same,
40 and for that purpose may use and exercise the name and charter powers
of such corporation; and

Whereas the Company is carrying on the business of supplying
heat, light and power, and is the owner of certain real estate and other
property used in connection with its business; and

Whereas the Company furthermore is in the exercise of its rights
under certain agreements made and entered into with its subsidiary
Companies, to wit:

Plaintiff's
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on discovery.

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and
resolutions
annexed.
7 June 1916
(Continued)

(a) An agreement entered into on the 2nd day of October, 1901, between The Montreal Light, Heat & Power Company and the Montreal Gas Company;

(b) An agreement entered into on the 2nd day of October, 1901, between the Montreal Light, Heat & Power Company and the Royal Electric Company;

(c) A supplementary agreement entered into on the 20th day of March, 1902, between the Royal Electric Company and The Montreal Light, Heat & Power Company, the Montreal & St. Lawrence Light & Power Company intervening. 10

(d) An agreement entered into on the 4th day of May, 1903, between The Montreal Light, Heat & Power Company, Lachine Rapids Hydraulic & Land Company, Limited, Standard Light & Power Company and Citizens Light & Power Company, Limited;

(e) An agreement entered into on the 6th day of February, 1907, between The Montreal Light, Heat & Power Company and the Provincial Light, Heat & Power Company. 20

and

Whereas the Contractor is desirous of extending its business, and the Company is willing to enter into a contract for the carrying on of its business by the Contractor on such terms as will ensure to the Company a guaranteed dividend on its capital stock;

30

Now, therefore these presents witness:

That the parties have covenanted and agreed as follows:—

1.—For the space and term of ninety-eight years, commencing 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 agreements hereinabove referred to. 40

2.—The Contractor shall on the said first day of August, 1916, enter into possession of the plant and premises of the respective Companies, and thereafter during the continuance of this agreement shall

maintain and keep in good order and condition so much of the apparatus of the respective Companies as may be necessary to carry on in an efficient and proper manner the business of manufacturing and selling gas and electricity or any other source of light, heat or power, which the Companies may have power to manufacture, buy or sell, so long as such business shall be remunerative.

Plaintiff's
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—
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and the
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and
resolutions
annexed.
7 June 1916
(Continued)

10 3.—All such plant or material as the Contractor may not require to use in the prosecution of the said business may be sold by it and the proceeds of such sales shall remain in the hands of the Contractor during the currency of this agreement at the credit of a sinking fund as hereinafter provided.

20 4.—Such of the real estate of the respective Companies as the Contractor may not require for the purposes of the said business shall be sold on the demand of the Contractor by the authority of the Board of Directors of the Company and the proceeds shall be credited in a like manner to such sinking fund.

30 5.—The sinking fund created by any such sales shall bear interest at the rate of four per centum per annum and such fund shall at the expiry of the present agreement, unless the same has been meantime applied by the Contractor for the improvement or extension of the plant or property of the Company or for the purpose of paying off the bonded debts of the Companies, be applicable towards refunding the shareholders of the Companies the capital they may have invested in the Companies respectively or towards the erection of new works by the respective Companies, if they should at the expiration of this agreement, decide to continue their business and to erect new works.

40 6.—To assist in the management and maintenance of the Company's plants, apparatus and business, it is hereby agreed that the Company shall deliver over to the Contractor immediately after the Contractor taking possession thereof all materials, stock in hand, cash or other assets the Company may have, hold or use in connection with its business.

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.

8.—The Contractor shall have the right to use and occupy all the real estate, buildings, offices and stations of the Companies respectively, and to have the use and benefit of all the pipes and conduits and other apparatus and equipment which have been established by any of the Companies in the public streets or elsewhere than on the Companies' properties aforesaid.

Plaintiff's
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and
resolutions
annexed.
7 June 1916
(Continued)

9.—The Contractor shall furthermore have the right to exercise the franchise and charter rights of the Company, including the franchise and charter rights of the Companies hereinabove referred to presently exercised by the Company under the agreements aforesaid, and in virtue of its charter either in its own name or in the name or names of any of the Companies hereinabove referred to or intervening hereto.

10.—Any amounts which the Contractor may advance for the purpose of discharging the bonded indebtedness of the several Companies hereinabove referred to maturing from time to time shall bear interest at the rate of six per centum per annum till the repayment thereof, and the Contractor shall furthermore be entitled to apply any sums standing at any time to the credit of the sinking fund as a result of sales to the repayment to itself, in so far as the same may suffice, of any sum so advanced with interest at the rate aforesaid, which interest shall be computed annually and added to the debit of the Company, the Companies hereby waiving and agreeing to waive any prescription which they might be otherwise entitled to claim or set up in respect of the said interest, as well as of the said advances, and the Contractor shall not be compelled to hand back any plant or property of the Companies at the expiration of this agreement until the amount due to it as aforesaid shall have been repaid.

11.—In consideration of the foregoing, the Contractor binds and obliges itself to pay to the Company either quarterly or half-yearly during the continuance in force of the present agreement such sums as may be necessary to pay a dividend at the rate of eight per centum per annum to the holders of shares in the said Company, to the extent of its present capital stock.

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.

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.

14.—It is further covenanted and agreed that if at any time the Contractor should fail to make any one of the half yearly payments hereinbefore stipulated and such default should continue for the space of ninety days after such payment shall have become due, and notice in writ-

ing of such default shall have been given by the Company to the Contractor, the Company shall have the right without further notice to the Contractor to resume possession of its plant and premises and thereupon the present agreement shall *ipso facto* cease and terminate, and the Contractor shall forthwith vacate the lands, buildings and premises of the Company and shall restore to the Company its plant and apparatus in the condition in which the same may then be, together with the sum or sums which may then be at the credit of the said sinking fund, as representing property of the Company sold under authority of this agreement. 10 nad the Company shall thereupon take possession of, use and enjoy its lands, buildings, machinery and apparatus as fully as if this agreement had never been executed, the whole without prejudice to the rights of the Company to claim from the Contractor such damages as it may be entitled to by reason of such breach of contract.

Plaintiff's Exhibit on discovery.
No. P-3
Copy of Memorandum of Agreement between The Civic Investment & Industrial Co., and the Mis-en-cause and resolutions annexed.
7 June 1916
(Continued)

15.—In consideration of the premises it is further agreed between the parties hereto that the Contractor shall retain as its remuneration for 20 the working and operation of the said plant and apparatus and for the performance by it of the obligations and duties hereby undertaken by it 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.

16.—The Contractor undertakes to provide for the benefit of the 30 said Companies such offices as the Companies may need for the transaction of their business and also to furnish the said respective Companies a secretary or secretaries for the conduct of their business.

17.—The Company in consideration of the foregoing and to secure to the Contractor the full benefit and advantage of this contract undertakes and covenants that no shares of the capital stock of any of its subsidiary companies it may now own or which may be held in trust for it will be mortgaged, alienated or disposed of.

40

18.—To secure to the Contractor the benefit of the obligations in the foregoing paragraphs contained the Company undertakes and covenants to transfer to the ROYAL TRUST COMPANY, in trust, to secure the fulfilment hereof all shares of the capital stock of any of its subsidiary companies which it may now own, or which may be held in trust for it, saving only such shares as maybe used for the purpose of qualifying Directors. In respect of such qualifying shares, however, transferable certificates representing the same endorsed by the respective holders shall be deposited with the Trustees.

Plaintiff's
Exhibit
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and the
Mis-en-cause
and
resolutions
annexed.
7 June 1916
(Continued)

19.—And to these presents came and intervened The Montreal Gas Company, The Royal Electric Company, The Montreal & St. Lawrence Light & Power Company, The Lachine Rapids Hydraulic & Land Company, The Standard Light & Power Company, The Citizens Light & Power Company and The Provincial Light, Heat & Power Company who declare that they approve and ratify the foregoing and agree to be bound by the terms hertin in so far as their respective interests may be concerned.

10

20.—The said The Standard Light & Power Company further covenants that it will not assign or transfer to any person or corporation any of the statutory powers vested in it, except in so far as such disposal thereof may be authorized in writing by the Contractor and by the Trustees.

In testimony whereof the Parties have executed these presents at the place and on tht date first hereinabove mentioned.

20

The Civic Investment & Industrial Company

Signed in the presence of (Sgn'd.) H. S. Holt, President.
(Sgn'd.) G. R. Whatley. (Sgn'd.) C. S. Bagg, Secretary.
(Sgn'd.) D. Whibley. Party of the First Part.

The Montreal Light, Heat & Power Company

(Sgn'd.) J. S. Norris, Vice-President.
(Sgn'd.) C. S. Bagg, Secretary.

30

Party of the Second Part.

(Sgn'd.) E. J. Everett.

(Sgn'd.) W. Jarvis.

40

The Montreal Gas Company

(Sgn'd.) J. S. Norris, Vice-President.
(Sgn'd.) C. S. Bagg, Secretary.

Standard Light & Power Company

(Sgn'd.) J. S. Norris, Vice-Pres.
(Sgn'd.) C. S. Bagg, Secretary.

The Royal Electric Company

(Sgn'd.) J. S. Norris, Vice-President.

(Sgn'd.) C. S. Bagg, Secretary.

Citizens Light & Power Company, Ltd.

(Sgn'd.) J. S. Norris, Vice-Pres.

10 (Sgn'd.) C. S. Bagg, Secretary.

The Montreal & St. Lawrence Light & Power Co.

(Sgn'd.) J. S. Norris, Vice-President.

(Sgn'd.) C. S. Bagg, Secretary.

Provincial Light, Heat & Power Co.

(Sgn'd.) J. S. Norris, Vice-Pres.

20 (Sgn'd.) C. S. Bagg, Secretary.

The Lachine Rapids Hydraulic and Land Company Limited

(Sgn'd.) J. S. Norris, Vice-President.

(Sgn'd.) C. S. Bagg, Secretary.

30 Extract from Minutes of Meeting of Directors of The Montreal Light, Heat & Power Company held, pursuant to notice, at the office of the Company on Monday, the 22nd day of May, 1916, at 11 o'clock a.m.
"Re Civic Investment & Industrial Company:

The President laid before the meeting a draft operating agreement between this Company and the Civic Investment & Industrial Company providing for the operation by the Civic Investment & Industrial Company of the entire undertaking of this Company, including its properties rights, franchises and agreements, and also including a transfer by this Company to the Civic Investment & Industrial Company of all its
40 rights under the terms of its operating agreements with its subsidiary companies the whole in consideration of the assumption by and undertaking of the Civic Investment & Industrial Company to carry out all the obligations of this Company including the payment of its fixed charges and its further undertaking to pay to the Shareholders of this Company a guaranteed dividend on its present capital stock at the rate of 8% per annum.

After discussion it was upon motion duly proposed and seconded, unanimously

Plaintiff's
Exhibit
on discovery.

No. P-3
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Memorandum
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ment between
The Civic
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and the
Mis-en-cause
and
resolutions
annexed.
7 June 1916
(Continued)

Plaintiff's
Exhibit
on discovery.

Resolved :

No. P-3
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Industrial Co.
and the
Mise-en-cause
and
resolutions
annexed.
7 June 1916
(Continued)

That the said agreement be approved and adopted subject to the approval of the shareholders, and that the Secretary-Treasurer be and he is hereby instructed to call a Special General Meeting of the Shareholders of this Company for the purpose of submitting this resolution and the draft agreement to them for approval, and if so approved, that the President or Vice-President and Secretary-Treasurer be and they are hereby authorized to execute the same on behalf of this Company.”

10

Certified true copy.

(Sgn'd.) J. S. Norris,
Secretary.

Extract from Minutes of a Meeting of the Directors of The Civic Investment & Industrial Company, held at the office of the Company in the City of Montreal on Wednesday, the 31st day of May, 1916, at the hour of 12 o'clock noon.

20

“The President then laid before the meeting a draft agreement with The Montreal Light, Heat & Power Company subject to the approval of its Shareholders providing for the operation by this Company of the entire undertaking of The Montreal Light, Heat & Power Company as a going concern with all its franchises and Charter rights held and exercised by it either under the terms of its own Charter or those of its subsidiary Companies, including an assignment to this Company for the period of the said agreement of the leases and operating agreements entered into by it with the Montreal Gas Company, The Royal Electric Company (including the Montreal & St. Lawrence Light & Power Company), the Lachine Rapids Hydraulic & Land Company, The Provincial Light, Heat & Power Company, the whole for a period of ninety-eight (98) years in consideration of the following, to wit:—

30

The fulfilment by this Company of all the contracts of The Montreal Light, Heat & Power Company and its subsidiary Companies, and the undertaking to discharge their liabilities as the same may mature, as well as the undertaking of this Company to pay to the Shareholders of The Montreal Light, Heat & Power Company a dividend at the rate of eight per cent (8%) per annum on its present outstanding capital stock.

40

Upon motion duly proposed and seconded, it was unanimously Resolved:

That said draft agreement be and the same is hereby approved and that upon the same being sanctioned by the Shareholders of The Montreal Light, Heat & Power Company, the President and Secretary

be and they are hereby authorized to sign and execute on behalf of this Company an agreement providing for the operation of the works and undertaking of The Montreal Light, Heat & Power Company aforesaid."

Plaintiff's
Exhibit
on discovery.

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Memorandum
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ment between
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Investment &
Industrial Co.
and the
Mis-en-cause
and
resolutions
annexed.
7 June 1916
(Continued)

Certified true copy,

(Sgn'd.) C. S. Bagg

Secretary.

10

Extract from Minutes of a Special General Meeting of Shareholders, of the Montreal Light, Heat & Power Company held, pursuant to notice at the office of the Company immediately after the Annual General Meeting of Shareholders, on Wednesday, the 7th day of June, 1916. "Re The Civic Investment & Industrial Company:

20

The President submitted to the Meeting the minutes of a meeting of the Board of Directors recommending the adoption of a draft agreement between this Company and The Civic Investment & Industrial Company providing for the operation by the latter Company of the works and undertaking of this Company upon the terms and conditions set forth in the draft agreement which was laid before the Meeting.

It was moved by Mr. Haig Sims, seconded by Mr. Howard Murray, and unanimously

30

Resolved:

That the action of the Directors be approved and confirmed, and the draft agreement adopted, and that the Directors of the Company be and they are hereby authorized to take all such steps as may be necessary to carry into effect the intent of the said agreement, and to enter into all such further supplementary covenants and agreements as may from time to time be deemed necessary or advisable to accomplish the objects and purposes hereby authorized and provided for."

40

Certified true copy,

(Sgn'd.) J. S. Norris,

Secretary.

Plaintiff's
Exhibit.
at Enquete.
—
P-3
—A—
By-Law
No. 158
of Plaintiff.
27th March
1918

Plaintiff's Exhibit P-3 at Enquete.

A—By-Law No. 158 of Plaintiff with copies of notice and certificate annexed.

B—By-Law No. 161 of Plaintiff with copies of notice and certificate annexed.

C—By-Law No. 177 of Plaintiff with copies of notice and certificate annexed.

Province of Quebec
District of Montreal
County of Westmount

— A —

10

CITY OF OUTREMONT

At an adjourned General Session of the Council of the City of Outremont, held at the City Hall, on the twenty seventh day of March, One thousand nine hundred and eighteen (1918) at which were present, Aldermen: Cooke, Gauthier, Munro, Gladston, Messier, Rolland and Picher forming a quorum of the said Council under the presidency of Pro-Mayor Joseph Ethier.

20

It is ordained and enacted by By-law, number one hundred and fifty-eight (158) for the purpose of repealing and replacing By-law number 147 imposing a *special annual tax for Fire and police protection* as follows, to wit:

Section first:—To meet the expenditure occasioned by the organization and maintenance of systems for fire and police protection, a special annual tax of one mill in the dollar is hereby imposed on the real value, as shown on the valuation roll, then in force, of all immoveable property situate within the City, except however the property exempt from taxation in virtue of sections "A" and "B" of article number 5729 of the Revised Statutes of the Province of Quebec of 1909;

30

However from and after the present fiscal year 1917-1918, the aforesaid special annual tax shall be increased to one and one half mill in the dollar.

40

Section Second:—The said special tax shall yearly become payable at the same time and shall be levied and collected in the same manner as the general tax;

Section Third:—For the current fiscal year 1917-1918, a supplementary special tax of one half of one mill in the dollar, to defray additional expenses incurred during such year for said systems of fire and

police protection, is hereby imposed on the property described in the first section of the present by-law. The said supplementary tax shall be privileged and shall bear interest in the manner hereinafter set forth and shall be levied in the same manner as a general tax but shall become payable on the first day of May 1918;

Plaintiff's Exhibit at Enquete.

P-3

—A—

By-Law

No. 158

of Plaintiff.

27th March

1918

(Continued)

Section Fourth:—The said special tax shall be a privileged debt exempt from the formality of registration and shall bear interest at six per centum (6%) per annum, from the date on which it becomes due and discounts for prepayments may be allowed in the manner that the Council may, by resolution, order hereafter;

Section Fifth:—The present by-law shall be adopted by a vote of at least the two-thirds of the whole Council.

(Signed J. Beaubien,
Mayor.

(Signed) E. T. Sampson,
City Clerk

20 Certified true copy,
E. T. Sampson,
City Clerk.

— A —

Province of Quebec
District of Montreal
County of Westmount

P-3

—A—

Notice.

28th March

1918

CITY OF OUTREMONT

30 PUBLIC NOTICE.

To the inhabitants of the City of Outremont and to all whom it may concern:

Public Notice is hereby given by the undersigned that at an adjourned general session of the Council of the City of Outremont held at the City Hall, on the twenty-seventh (27th) day of March, One thousand nine hundred and eighteen (1918), by-law number one hundred and fifty-eight (158), for the purpose of repealing and replacing by-law number 40 147, imposing a special annual tax for fire and police protection was duly passed and adopted in conformity to law:

That the object of this by-law is to repeal and replace the said by-law number 147 in order to increase the special annual tax for fire and police protection to one and a half mill in the dollar, and to impose a supplementary special tax of one half mill in the dollar for the current year to defray additional expenses incurred during said year for said services; the whole as will more fully and at large appear to the said by-law number one hundred and fifty-eight (158), of record in the office of the City Clerk open to the communication of all interested.

Plaintiff's
Exhibit
at Enquete.

Given at the City of Outremont, this twenty-eight day of March
One thousand nine hundred and eighteen (1918).

(Signed) J. Beaubien,
Mayor.

(Signed) E. T. Sampson,
City Clerk.

P-3
—A—
Notice.
28th March
1918
(Continued)

Certified true copy,
E. T. Sampson,
City Clerk.

10.

— A —

P-3
—A—
Certificate.
2 April 1918

Province of Quebec
District of Montreal

CITY OF OUTREMONT

Constable's Certificate

re

Posting of Public Notice

re

20

By-Law No. 158 repealing and
replacing By-Law No. 147 concerning
Police & Fire Protection Tax.

I, the undersigned Constable of the City of Outremont hereby cer-
tify and declare:—

That on the 2nd day of the month of April, One thousand nine
hundred and eighteen (1918), I did publish the within Public Notice by
posting duly certified copies thereof in duplicate in the French and En- 30
glish languages between the hours of 10 and 11 of the clock in the forenoon
at the City Hall and at the doors of the Roman Catholic Churches situate
within the limits of the City of Outremont, being the places appointed
and designated by the Council for posting such notices.

In testimony whereof, I give this certificate this 2nd day of the
month of April, One thousand nine hundred and eighteen (1918).

(Signed) Geo. B. Baker
Constable.

40

Sworn and acknowledged before me
at the City of Outremont this 2nd
day of the month of April, one thou-
sand nine hundred and eighteen
(1918).

(Signed) E. T. Sampson,
City Clerk.

Certified true copy,
E. T. Sampson,
City Clerk.

Province of Quebec
District of Montreal
County of Westmount

Plaintiff's
Exhibit.
at Enquete.
P-3
—B—
By-Law
No. 161
3rd Sept.
1919

CITY OF OUTREMONT

At a general session of the Council of the City of Outremont, held at the City Hall, on the third (3rd) day of September, One thousand nine Hundred and nineteen (1919) at which were present: Aldermen Messier, Rolland, Gauthier, Pariseau, Sayer, Hudson, Cooke and Ethier forming a quorum of the said Council under the presidency of Mayor Joseph Beau-
10 bien.

It is ordained and enacted by by-law number one hundred and sixty-one (161) for the purpose of amending by-law No. 158 imposing a special annual tax for fire and police protection in the following manner, to wit:

Section first:—Section first of said by-law No. 158 is hereby re-
20 pealed and replaced by the following:

“Section First:—To meet the expenditure occasioned by the organization and maintenance of systems for fire and police protection, a special annual tax of two and one-quarter (.02¼) mill in the dollar is hereby imposed on the real value, as shown on the valuation roll, then in force, of all immoveable property situate within the City, except however the property exempt from taxation in virtue of sections “A” and “B” of article 5729 of the Revised Statutes of the Province of Quebec of 1909.”

Section Second:—The present by-law shall be adopted by a vote of
30 at least the two-thirds of the whole Council.

(Signed) J. Beaubien,
Mayor.

(Signed) E. T. Sampson,
City Clerk.

Certified true copy,
E. T. Sampson,
City Clerk.

40 Province of Quebec
District of Montreal
County of Westmount

P-3
—B—
Notice.
4 sept. 1919

CITY OF OUTREMONT

PUBLIC NOTICE.

To the inhabitants of the City of Outremont and to all whom it may concern:

Public Notice is hereby given by the undersigned that at a general session of the Council of the City of Outremont, held at the City Hall, on

Plaintiff's
Exhibit
at Enquete.
—
P-3
—B—
Notice.
4 sept. 1919
(Continued)

the third (3rd) day of September, One thousand nine hundred and nine-
teen (1919) by-law number one hundred and sixty-one (161) for the pur-
pose of amending by-law No. 158, concerning the annual special tax for
fire and police protection(was duly passed and adopted in conformity
to law:

That the object of this by-law is to increase the amount of the an-
nual tax for fire and police protection from one (1) mill in the dollar to
two and one-quarter (.02¼) mill in the dollar; the whole as will more 10
fully and at large appear to the said by-law number one hundred and six-
ty-one of record in the office of the City Clerk open to the communication
of all interested.

Given at the City of Outremont, this fourth day of September, One
thousand nine hundred and nineteen (1919).

(Signed) J. Beaubien,
Mayor.

(Signed) E. T. Sampson, 20
City Clerk.

Certified true copy,
E. T. Sampson,
City Clerk.

— B —

P-3
—B—
Certificate.
4 sept. 1919

Province of Quebec
District of Montreal

30

CITY OF OUTREMONT

Constable's Certificate

re

Posting of Public Notice

re

By-Law No. 161 Re: Annual Tax
for Fire & Police Protection
amending By-Law No. 147.

40

I, the undersigned Constable of the City of Outremont hereby cer-
tify and declare:—

posting duly certified copies thereofnth of September, Nineteen hundred
and Ninetetn (1919), I did publish the within Public Notice re above by
That on the 4th day of the mo in duplicate in the French and En-
glish languages between the hours of 2 and 4 of the clock in the afternoon

at the City Hall and at the doors of the Roman Catholic Churches situated within the limits of the City of Outremont being the places appointed by the Council for posting such notices.

Plaintiff's Exhibit at Enquete.
—P-3—
—B—
Certificate. 4 sept. 1919 (Continued)

In testimony whereof I give this certificate this 4th day of the month of September Nineteen hundred and Nineteen (1919).

(Signed) Arthur Lefebvre,
Constable.

10 Sworn and acknowledged before me at the City of Outremont this 4th day of the month of September, Nineteen hundred and Nineteen (1919).

(Signed) E. T. Sampson,
City Clerk.

Certified true copy,

20 E. T. Sampson,
City Clerk.

Province of Quebec
District of Montreal
County of Westmount

— C —

CITY OF OUTREMONT

30

At a General session of the Council of the City of Outremont, held at the City Hall, on the Fourth (4th) day of June, One thousand nine hundred and twenty-four (1924), at which were present, Aldermen: Dansereau, Ethier, Grothé, Hudson, Messier, Pitt, Rolland and Sayer, forming a quorum of the said Council under the presidency of Mayor Joseph Beaubien:

P-3
—C—
By-Law No. 177
4 June 1924

40 It is ordained and enacted by by-law number One hundred and seventy-seven (177) for the purpose of amending by-law No. 161 imposing a special annual tax for fire and police protection in the following manner, to wit:—

Section First:—Section first of said by-law No. 161 is hereby repealed and replaced by the following:

“Section First:—To meet the expenditure occasioned by the organization and maintenance of systems for fire and police protection, a special annual tax of two and three-quarters (0.23¼) mill in the dollar is hereby imposed on the real value, as shown on the

Plaintiff's
Exhibit
at Enquete.

P-3

By-Law
No. 177
4 June 1924
(Continued)

valuation roll, then in force, of all immoveable property situate within the City, except however the property exempt from taxation in virtue of sections "A" and "B" of article 5729 of the Revised Statutes of the Province of Quebec of 1909."

Section Second:—The present By-Law shall be adopted by a vote of at least the two-thirds of the whole Council.

(Signed) J. Beaubien,
Mayor. 10

(Signed) E. T. Sampson,
City Clerk.

Certified true copy,
E. T. Sampson,
City Clerk.

Province of Quebec
District of Montreal
County of Westmount

— C —

P-3
Notice.
5 June 1924

CITY OF OUTREMONT
PUBLIC NOTICE.

20

To the inhabitants of the City of Outremont and to all whom it may concern:

Public Notice is hereby given by the undersigned that at a general session of the Council of the City of Outremont, held at the City Hall, on the fourth day of June, One thousand nine hundred and twenty-four (1924) by-law number one hundred and seventy-seven (177) for the purpose of amending by-law No. 161, concerning the annual special tax for fire and police protection, was duly passed and adopted in conformity to law. 30

That the object of this by-law is to increase the amount of the annual tax for fire and police protection from two and one quarter (0.2¼) mills in the dollar to two and three quarters (0.2¾) mills in the dollar; the whole as will more fully and at large appear to the said by-law number one hundred and seventy-seven (177) of record in the office of the City Clerk open to the communication of all interested. 40

Given at the City of Outremont, this fifth (5th) day of June, One thousand nine hundred and twenty-four (1924).

(Signed) J. Beaubien,
Mayor.

(Signed) E. T. Sampson,
City Clerk.

Certified true Copy,
E. T. Sampson,
City Clerk.

Province of Quebec
District of Montreal

— C —

Plaintiff's
Exhibit
at Enquete.

— P-3 —
— C —
Certificate.
10 June 1924

CITY OF OUTREMONT

Constable's Certificate

re

10

Posting of Public Notice

re

Police & Fire Protection Tax

(to increase the amount of the annual
tax from 2¼ mills in the dollar
to 2¾ mills in the dollar.)

20 I, the undersigned Constable of the City of Outremont here by cer-
tify and declare:—

30 That on the tenth day of the month of June 1924, I did publish the
within Public Notice, re above, by posting duly certified copies thereof
in duplicate in the French and English languages between the hours of 4
and 5 of the clock in the afternoon, and at the City Hall and at the doors
of the Roman Catholic Churches situated within the limits of the City
of Outremont, being the places appointed by the Council for posting such
notices.

In testimony whereof, I give this certificate this tenth day of the
month of June 1924.

(Sgd.) G. B. Baker,
Constable.

40 Sworn and acknowledged before me
at the City of Outremont this tenth
day of the month of June 1924.

(Sgd.) E. T. Sampson,
City Clerk.

Certified true Copy,

E. T. Sampson,
City Clerk.

Plaintiff's
Exhibit.
on discovery

Plaintiff's Exhibit No. 3 with Declaration.

No. 3
Extract from
the minutes
of a meeting
of the Board
of School
Trustees of
the City of
Outremont.
7th March
1919.

**Extract from the minutes of a meeting of the Board of School Trustees of the City of
Outremont.**

Outremont Board of Protestant School Trustees

Outremont, Que., March 11th, 1919 10

Extract from the Minutes of a Meeting of the Board of Trustees held on the 7th. of March 1919.

Considering that the City of Outremont has at its service, permanent employees and also a complete organization which enables the said City to collect the taxes surely and rapidly.

Considering that the position of Secretary-Treasurer of the Outremont Board of Protestant School Trustees is secondary regarding the salary paid for said position. 20

Considering it should be in the interest of all the tax payers of this Municipality that the school taxes be collected by the City of Outremont.

Considering that the collection of School taxes by the City of Outremont would be also a great advantage to all tax payers of said City because they are the same interested persons. 30

Considering that the collection of Municipal and School Taxes being made by the same person and at the same office would be a great advantage to all the tax payers of the City and to the School Commissioners and Trustees of Outremont.

It was proposed by Trustee Allen, and unanimously Resolved:

40

10.—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.

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

30.—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.

Plaintiff's Exhibit
No. 3
Extract from the minutes of a meeting of the Board of School Trustees of the City of Outremont.
7th March 1919.
(Continued)

40.—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.

True copy.

W. A. Rowell,
Secretary-Treasurer.

20

Plaintiff's Exhibit No. 2 with Declaration.

Extract from the minutes of a meeting of the Board of School Commissioners of the City of Outremont.

No. 2
Extract from the minutes of a meeting of the Board of School Commissioners of the City of Outremont.
10th March 1919.

Commission Scolaire
d'Outremont

Outremont, 10 mars 1919.

30

Extrait du Livre des Délibérations, Séance du 10 mars 1919.

Il est Proposé par Mr. H. Milette et résolu unanimement que la résolution passée, par cette Commission en date du 3 février 1919 relativement à la perception des taxes scolaires par la Cité d'Outremont soit rescindée et que la résolution suivante lui soit substituée:

40 Considérant que la Cité d'Outremont a à son service les employés permanents et une organisation complète qui lui permettent de faire rapidement et sûrement la perception des taxes;

Considérant que la position de Secrétaire-Trésorier de la Commission Scolaire de St. Viateur d'Outremont ne peut être que secondaire vu le salaire attachée à cette position;

Considérant qu'il serait dans l'intérêt de tous les contribuables de cette municipalité que les taxes scolaires soient perçues par la Cité d'Outremont;

Plaintiff's
Exhibit.

No. 2
Extract from
the minutes
of a meeting
of the Board
Commissioners of the
City of
Outremont.
10th March
1919.
(Continued)

Considérant que la perception des taxes scolaires par la Cité d'Outremont serait également un avantage pour tous les contribuables de la dite Cité, puisque en réalité se sont les mêmes personnes intéressées;

Considérant que la perception des taxes municipales et scolaires étant faites par la même personne et au même endroit serait à l'avantage de tous les contribuables de la Cité et de la Commission Scolaire d'Outremont;

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

10

1o.—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. — (62V., c. 28, s. 373;)

20

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

3o.—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 prorata des élèves de chacune des dites Municipalités, conformément à l'article de la loi scolaire relativement à cet effet;

30

4o.—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.

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

Vraie copie,

L. A. Joubert,

Sec.-Trésorier.

40

Plaintiff's Exhibit No. 4 with Declaration.

Extract from the minutes of a meeting of the Council of the City of Outremont.

Plaintiff's
Exhibit.

No. 4
Extract from
the minutes
of a meeting
of the Council
of the City
of Outremont.
2nd April
1919.

Extract from minutes of a meeting of the Council of the City of Outremont, held on the second day of April, 1919.

It was resolved:—

10

“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 be—
20 “come 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.”

Certified true Extract,

E. T. Sampson,

City Clerk.

40

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.

Exhibit D-2 of Defendant and Mis-en-cause at Enquete.

Letter from Plaintiff to Defendant.

Outremont, Que., 5 November, 1920.

(Attention of Mr. E. S. Stanton)

D-2
Letter from
Plaintiff to
Defendant.
5th Nov.
1920.

The Montreal Light, Heat & Power Consolidated,
Power Bldg.
Montreal, Q.

10

Gentlemen:—

Re: Gas Main Extension on Peronne and Robert Avs.

Your letter of the 21st October 1920 was submitted to the Council
at its meeting held on the 3rd November instant.

20

I must inform you that I have been authorized to order the instal-
lation by your Company of Gas Main on Peronne and Robert Avenues, in
accordance with the conditions mentioned in your letter of the 21 October
1920 signed by your Mr. E. S. Stanton, Sup'd't. Gas Distribution.

I enclose herewith deposit cheque for \$639.00.

Yours faithfully,

E. T. Sampson,
City Clerk.

Enclosure—Cheque.

30

Plaintiff's Exhibit P-2 at Enquete.

P-2
—A—
Copy of
Resolution
approving
Valuation
Roll of
Plaintiff for
1924-25.
10 Sept. 1924

**A—Copy of Resolution approving Valuation Roll of Plaintiff for 1924-25 with certifi-
cates annexed. B—Copy of Resolution approving Valuation Roll of Plaintiff
for 1925-26 with certificates annexed. C—Copy of Resolution approving
Valuation Roll of Plaintiff for 1926-27 with certificates annexed.**

40

— A —

Extract from minutes of a General meeting of the Council of the
City of Outremont, held on the 10th day of September 1924.

It was resolved:—

“That the Valuation Roll of the City of Outremont for the ensuing
year, viz: from the first of November 1924 to the first of November 1925,

duly prepared and deposited by the City Assessors and now submitted and revised by this Council, be and is hereby approved and homologated." It was resolved:—

Plaintiff's
Exhibit
at Enquête.

P-2

—A—

10 "That a General Municipal Tax at the Rate of One Cent (1c) on the dollar and a Police and Fire Protection Tax at the Rate of Two and three quarter mills ($2\frac{3}{4}$) in the dollar be now imposed upon all property assessable thereto according to the Valuation Roll of the City of Outremont for the fiscal year ending 31st October 1925.

Copy of
Resolution
approving
Valuation
Roll of
Plaintiff for
1924-25.
10 Sept. 1924
(Continued)

Certified true Copy.

E. T. Sampson,
City Clerk.

— A —

20 Province of Quebec
District of Montreal

CITY OF OUTREMONT
NOTICE TO PROPRIETORS.

P-2

—A—

30 Public Notice is hereby given that at a meeting of the Council of the City of Outremont, held on the Tenth (10th) of September, 1924, a Tax at the Rate of One Cent (1c) on the dollar upon the valuation of the several properties assessable thereto was imposed for the purpose providing for the estimated financial requirements of the City for General Municipal purposes for the fiscal year Ending 31st of October, nineteen hundred and twenty-five (1925).

Notice
15 Oct. 1924

And also a Special Tax at the Rate of Two and Three Quarter Mills in the dollar upon the valuation of the several properties assessable thereto was imposed for the purpose of providing for the estimated financial requirements of the City for Police and Fire Protection purposes for the said fiscal year.

40 Public Notice is hereby further given that the Collection Roll for the said General Municipal and Police and Fire Protection Taxes and also for the School Taxes of the St. Viateur Catholic School Commission (for that part of St. Viateur Parish situated in the City of Outremont and Also for the School Taxes of the Protestant School Trustees of the said City (in accordance with the Public Notices already given by the said School Authorities) has been duly prepared and is deposited in my office, and all persons bound to pay the several sums mentioned therein are hereby requested to pay the sum at my office on or before the first day of November, nineteen hundred and twenty-four (1924).

Plaintiff's
Exhibit
at Enquête.

P-2

—A—
Notice
15 Oct. 1924
(Continued)

Public Notice is hereby further given that the said Taxes will become due and payable on the First day of November, 1924, and that interest at the rate of Six per centum per annum will accrue and become chargeable from that date in respect of all amounts of the said Taxes not then paid.

Given at the City of Outremont, this 15th day of October, 1924.

(Signed) E. T. Sampson, 10

Certified true Copy,

City Clerk.

E. T. Sampson,
City Clerk.

— A —

20

P-2
—A—
Certificate
15 Oct. 1924

Province of Quebec
District of Montreal

CITY OF OUTREMONT

Constable's Certificate

30

re

Posting of Public Notice

re

General, Police & Fire and

School Taxes for year ending

40

31st October, 1925.

I, the undersigned, Constable of the City of Outremont, hereby certify and declare:—

That on the 15th day of Month of October, Nineteen hundred and twenty-four (1924), I did publish the within Public Notice re above by posting duly certified copies thereof in duplicate in the French and En-

glish languages between the hours of 10 and 11 of the clock in the fore-noon at the City Hall and at the doors of the Roman Catholic Churches situated within the limits of the City of Outremont, being the places appointed by the Council for posting such notices.

Plaintiff's
Exhibit
at Enquête.
—
P-2
—A—
Certificate
15 Oct. 1924
(Continued)

In testimony whereof, I give this certificate this 15th day of the month of October, Nineteen hundred and twenty-four (1924).

10

(Signed) Geo. B. Baker,
Constable.

Sworn and acknowledged before me at the City of Outremont, this 15th day of the month of October, Nineteen hundred and twenty-four (1924).

(Signed) E. T. Sampson,
City Clerk.

20

Certified true Copy,
E. T. Sampson,
City Clerk.

— A —

Province of Quebec
District of Montreal

CITY OF OUTREMONT

30

I, the undersigned, City Clerk of the City of Outremont, hereby certify and declare:—

P-2
—A—
Certificate
18 Oct. 1924
(Continued)

That I did publish the attached Public Notice in:

“The Star” on the 16th and 17th October 1924,

and in

“Le Canada” on the 16th and 17th October 1924.

40

(Signed) E. T. Sampson,
City Clerk.

Given at the City of Outremont, this 18th day of October, 1924.

Certified true copy
E. T. Sampson,
City Clerk.

City of Outremont.

Plaintiff's
Exhibit
at Enquête.

P-2
—B—

Copy of
Resolutions
approving
Roll of
Plaintiff for
1925-26
9th Sept. 1925

Extract from minutes of an adjourned General meeting of the Council of the City of Outremont, held on the 9th day of September 1925.

It was resolved:—

“That the Valuation Roll of the City of Outremont for the ensuing fiscal year, viz: from 1st November 1925, to 31st October 1926, duly prepared, deposited and now submitted by the City Assessors and revised by this Council be and is hereby approved and homologated.” 10

It was resolved:—

“That a General Municipal Tax at the Rate of One Cent (1c) on the dollar be imposed upon all property assessable thereto according to the Valuation Roll of the City of Outremont for the fiscal year ending 31st October 1926.” 20

Certified true Copy.

E. T. Sampson,
City Clerk.

(Copy)

P-2
—B—
Notice
10 Oct. 1925

Province of Quebec
District of Montreal

30

CITY OF OUTREMONT
NOTICE TO PROPRIETORS

Public Notice is hereby given that at a meeting of the Council of the City of Outremont, held on the Ninth (9th) day of September 1925, a Tax at the Rate of One Cent (1c) on the dollar upon the valuation of the several properties assessable thereto was imposed for the purpose providing for the estimated financial requirements of the City for *General Municipal* purposes for the fiscal year ending 31st of October, Nineteen hundred and twenty-six (1926). 40

And also a Special Tax at the Rate of Two and Three Quarter Mills in the dollar upon the valuation of the several properties assessable thereto was imposed for the purpose of providing for the estimated financial requirements of the City for *Police & Fire Protection Purposes* for the said fiscal year.

Public Notice is hereby further given that the Collection Roll for the said General Municipal, Public Lighting, Local Improvement and Police & Fire Protection Taxes, and for School Taxes for the several School Authorities having jurisdiction in the City of Outremont (except School Taxes collectible by the Ste. Madeleine School Commissioners) has been duly prepared and is deposited in my office, and all persons bound to pay the several sums mentioned therein are hereby requested to pay the same at my office *on or before* the First Day of November, Nineteen Hundred and Twenty-Five (1925).

Plaintiff's
Exhibit
at Enquête.
—
P-2
—B—
Notice
10 Oct. 1925.
(Continued)

Public Notice is hereby further given that the said Taxes will become due and payable on the First day of November 1925, and that Interest at the Rate of Six per centum per annum will accrue and become chargeable from that date in respect of all amounts of the said taxes not then paid.

Given at the City of Outremont, this 10th day of October 1925.

E. T. Sampson,
City Clerk.

Certified true Copy,

E. T. Sampson,
City Clerk.

30

— B —

(Copy)

Province of Quebec
District of Montreal

CITY OF OUTREMONT

Constable's Certificate

re

Posting of Public Notice

re

General, Police & Fire Taxes,
School Taxes, etc., for year
ending 31st October, 1926.

40

P-2
—B—
Certificate
24 Oct. 1925

I, the undersigned, Constable of the City of Outremont, hereby certify and declare:—

Plaintiff's
Exhibit
at Enquête.

P-2

—B—
Certificate
28 Oct. 1925
(Continued)

That on the 24th day of the month of October, Nineteen hundred and twenty-five (1925), I did publish the within Public Notice, re above, by posting duly certified copies thereof in duplicate in the French and English languages between the hours of 5 and 6 of the clock in the afternoon, at the City Hall and at the doors of the Roman Catholic Churches situated within the limits of the City of Outremont, being the places appointed by the Council for posting such notices.

In testimony whereof, I give this certificate, this 24th day of the month of October, Nineteen hundred and twenty-five (1925). 10

(Signed) Geo. B. Baker,
Constable.

Sworn and acknowledged before me at the City of Outremont, this 24th day of the month of October, Nineteen hundred and twenty-five, (1925).

(Signed) E. T. Sampson,
City Clerk. 20

Cerified true Copy

E. T. Sampson,
City Clerk.

— B —

(Copy) 30

Province of Quebec
District of Montreal

P-2
—B—
Copy
28 Oct. 1925.

CITY OF OUTREMONT

I, the undersigned, City Clerk of the City of Outremont, hereby certify and declare:—

That I did publish the attached Public Notice in:

“The Montreal Herald” on the 26th and 27th October, 1925,
and in 40

“Le Devoir” on the 26th and 27th October, 1925.

(Signed) E. T. Sampson,
City Clerk.

Given at the City of Outremont, this 28th day of October, 1925.

Certified true Copy,

E. T. Sampson,
City Clerk.

City of Outremont.

Plaintiff's
Exhibit
at Enquête.

Extract from minutes of an adjourned General meeting of the Council of the City of Outremont, held on the 22nd day of September, 1926.

P-2
—C—

It was resolved:—

Copy of
Resolution
approving
Valuation
Roll of
Plaintiff for
1926-27.
22 Sept. 1926

10 "That the Valuation Roll of the City of Outremont for the ensuing fiscal year, viz: from 1st November 1926 to 31st October, 1927, duly prepared, deposited and now submitted by the City Assessors, and revised by this Council, be and is hereby approved and homologated."

It was resolved:—

"That a General Municipal Tax at the rate of One Cent (1c) on the dollar be imposed upon all property assessable thereto according to the Valuation Roll of the City of Outremont for the fiscal year ending 31st October, 1927."

20 The City Clerk and Treasurer reported that in virtue of By-Law No. 177 of the City of Outremont, a Police and Fire Tax at the rate of Two and Three Quarter Mills (2¾) in the Dollar, is imposed upon all property assessable thereto and appearing in the Valuation Roll of the City for the fiscal year ending 31st October, 1927.

Certified true Copy,

E. T. Sampson,
City Clerk.

30

(Copy)

— C —

Province of Quebec
District of Montreal

P-2
—C—
Notice
11 Oct. 1926

CITY OF OUTREMONT
PUBLIC NOTICE.

40 Public Notice is hereby given that the following collection rolls for the fiscal year ending on the 31st of October, 1927, have been completed and deposited at the office of the undersigned and that all persons bound to pay the sums therein mentioned, are required to do so at the said office of the undersigned, within twenty (20) days to be computed from the publication of the present notice.

- 1.—General collection roll.
- 2.—Special collection roll for police and fire protection.
- 3.—Special collection roll for public lighting.
- 4.—Special collection roll for local improvements.

Plaintiff's
Exhibit
at Enquete.

5.—Special collection roll for all school taxes, except the school tax
.collectible by the Ste. Madeleine School Commissioners.

P-2
—C—
Notice
11 Oct. 1926.
(Continued)

Given at the City of Outremont, this eleventh (11th) day of Octo-
ber, One thousand nine hundred and twenty-six (1926).

E. T. Sampson,
City Clerk.

Certified true Copy,
E. T. Sampson,
City Clerk.
City of Outremont.

10

Province of Quebec
District of Montreal

CITY OF OUTREMONT

Constable's Certificate
re

20

Posting of Public Notice
re

Collection Rolls for year
ending 31st October 1927.

P-2
—C—
Certificate
19 Oct. 1926

I, the undersigned, Constable of the City of Outremont, hereby
certify and declare:—

That on the 19th day of the month of October, Nineteen hundred
and twenty-six (1926), I did publish the within public Notice, re above,
by posting duly certified copies thereof in duplicate in the French and
English languages between the hours of 4 and 5 of the clock in the after-
noon, at the City Hall and at the doors of the Roman Catholic Churches
situated within the limits of the City of Outremont, being the places ap-
pointed by the Council for posting such notices.

In testimony whereof, I give this certificate this 19th day of the
month of October, Nineteen hundred and twenty-six (1926).

(Sgd.) G. B. Baker,
Constable. 40

Sworn and acknowledged before me
at the City of Outremont, this 19th
day of the month of October, 1926.

(Signed) E. T. Sampson,
City Clerk.

Certified true copy,
E. T. Sampson,
City Clerk.

Plaintiff's Exhibit P-4 at Enquete.

Copy of Resolution of Outremont School Commissioners.

Commission Scolaire
d'Outremont.

Plaintiff's
Exhibit
at Enquête.

P.4
Copy of
Resolution of
Outremont
School Com-
missioners.
15 Sept. 1924

10 Extrait du Procès-verbal de l'assemblée de la Commission Scolaire
d'Outremont, tenue à l'Académie Querbes, lundi le 15 septembre 1924.

Il est proposé par Monsieur H. A. Robert, et adopté unanimement
que le taux de la taxe pour l'année 1924/1925 soit ainsi établi:—

20 Soixante sous par cent piastres sur les biens immeubles des catho-
liques, et quatre-vingt-dix sous par cent piastres sur les biens immeubles
des corporations et compagnies légalement constituées. La part payée
aux syndics protestants conformément à la loi sera comme suit:—La moi-
tié du produit de la taxe dite neutre, si cette taxe était à un taux de \$1.20
par cent piastres, c-à-d, la moitié de l'évaluation calculée à un taux de
\$1.20 par cent piastres.

Copie certifiée.

Roland Belleau,
Sec.-Trésorier.

30

40

Plaintiff's Exhibit

Plaintiff's Exhibit No. 1 with Declaration.

No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1924-25.
1st Nov. 1924

Extracts for Collection Roll of Plaintiff for years 1924-25, 1925-26 and 1926-27.

Outremont, 1st November 1924.

Montreal Light, Heat & Power Company.

10

Dr. to THE CITY OF OUTREMONT

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1925 for School Assessments for year ending 30th June, 1925 (Ste. Madeleine School Taxes not included) on the following properties:

20

6% Interest will be charged after 1st November, 1924.

NORTH WARD

Valuation		General Rate—10 mills	Police and Fire Protection 2¾ mills	School *	Total Taxes	
Gas	Mains					
10586		105.86	29.12	49.44	184.42	30

*9 mills on Valuation of 5,493.00 per part in St. Viateur Parish

Certified true Copy,

E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

40

Outremont, 1st November 1924.

Plaintiff's
Exhibit

No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1924-25.
1st Nov. 1924
(Continued)

Montreal Light, Heat & Power Company.

10

Dr. to THE CITY OF OUTREMONT

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1925 for School Assessments for year ending 30th June, 1925 (Ste. Madeleine School Taxes not included) on the following properties:

6% Interest will be charged after 1st November, 1924.

20 WEST

Valuation	General	Police and Fire	School	Total
Gas Mains	Rate—10 mills	Protection 2¾ mills	*	Taxes
19297	192.97	53.06	72.99	319.02

*9 mills on Valuation of 840 per part in St. Viateur Parish.

30

Certified true Copy,

E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

40

Plaintiff's
Exhibit

Outremont, 1st November 1924.

No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1924-25.
1st Nov. 1924
(Continued)

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

10

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1925 for School Assessments for year ending 30th June, 1925 (Ste. Madeleine School Taxes not included) on the following properties:

6% Interest will be charged after 1st November, 1924.

SOUTH 2.

20

Valuation		General Rate—10 mills	Police and Fire Protection 2¾ mills	School *	Total Taxes
Gas	Mains				
	7282	72.82	20.02	65.54	158.38

*9 mills on Val. of 7282.

Certified true Copy,

30

E. T. Sampson.
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

40

Outremont, 1st November 1925.

Plaintiff's
Exhibit
—
No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1925-26.
1st Nov. 1925

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

10

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1926 for School Assessments for year ending 30th June, 1926, (Ste. Madeleine School Taxes not included) on the following properties:

6% Interest will be charged after 1st November, 1925.

NORTH 2

20

Valuation Gas Mains	General Rate—10 mills	Police and Fire Protection Rate—2¾ mills	School 12 mills	Total Taxes
12394	123.94	34.08	148.72	306.74

Certified true Copy,

30

E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

Rate-Payers are requested to examine their bills and should there be any errors thereon or properties missing therefrom, to immediately notify the City Treasurer.

40



Plaintiff's
Exhibit
No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1925-26.
1st Nov. 1925
(Continued)

Outremont, 1st November 1925.

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

For General, Public Lighting, Police and Fire and Local Improve-¹⁰
ment Assessments for the year ending 31st October, 1926 for School Ass-
essments for year ending 30th June, 1926, (Ste. Madeleine School Taxes
not included) on the following properties:

6% Interest will be charged after 1st November, 1925,

WEST 2

Valuation		General	Police and Fire	School	Total
Gas	Mains	Rate—10 mills	Protection	12 mills	Taxes
			Rate—2¾ mills		
23914		239.14	65.76	286.96	591.86

Certified true Copy,

E. T. Sampson,
City Clerk and Treasurer. 30

This Account to be produced when making payment. (Certified
cheques only accepted.)

Rate-Payers are requested to examine their bills and should there
be any errors thereon or properties missing therefrom, to immediately
notify the City Treasurer.

Outremont, 1st November 1925.

Plaintiff's
Exhibit
—
No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1925-26.
1st Nov. 1925
(Continued)

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

10 For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1926 for School Assessments for year ending 30th June, 1926, (Ste. Madeleine School Taxes not included) on the following properties:

6% Interest will be charged after 1st November, 1925.

SOUTH 2.

(COTE DES NEIGES.)

20	Valuation	General	Police and Fire	School	Total
	Gas Mains	Rate—10 mills	Protection	12 mills	Taxes
			Rate—2¾ mills		
	8320	83.20	22.88	99.84	205.92

Certified true Copy,

30 E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

Rate-Payers are requested to examine their bills and should there be any errors thereon or properties missing therefrom, to immediately notify the City Treasurer.

40



Plaintiff's
Exhibit
—
No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1926-27.
1st Nov. 1926

Outremont, 1st November 1926.

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

10

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1927 for School Assessments for year ending 30th June, 1927, (Ste. Madeleine School Taxes) (Catholic Panel not included) on the following properties:

6% Interest will be charged after 1st November, 1926.

NORTH 2
No. 1419

20

Valuation		General	Police and Fire	School	Total
Gas	Mains	Rate—10 mills	Protection	12 mills	Taxes
			Rate—2¾ mills		
146795		146.79	40.37	176.14	363.30

Certified true Copy,

30

E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

Rate-Payers are requested to examine their bills and should there be any errors thereon or properties missing therefrom, to immediately notify the City Treasurer.

40

Outremont, 1st November 1926.

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

10 For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1927 for School Assessments for year ending 30th June, 1927, (Ste. Madeleine School Taxes not included) on the following properties:

6% Interest will be charged after 1st November, 1926.

WEST
No. 3420

20

Valuation Gas Mains	General Rate—10 mills	Police and Fire Protection Rate—2¾ mills	School 12 mills	Total Taxes
37395	373.95	102.84	448.74	925.53

Certified true Copy,

30

E. T. Sampson,
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

Rate-Payers are requested to examine their bills and should there be any errors thereon or properties missing therefrom, to immediately notify the City Treasurer.

40

Plaintiff's Exhibit

No. 1
Extracts for
Collection
Roll of
Plaintiff for
years 1926-27
1st Nov. 1926
(Continued)

Outremont, 1st November 1926.

Montreal Light, Heat & Power Company.

Dr. to THE CITY OF OUTREMONT

For General, Public Lighting, Police and Fire and Local Improvement Assessments for the year ending 31st October, 1927 for School Assessments for year ending 30th June, 1927, (Ste. Madeleine School Taxes) (Catholic Panel not included) on the following properties: 10

6% Interest will be charged after 1st November, 1926.

SOUTH 2.
No. 4528

20

Valuation		General Rate—10 mills	Police and Fire Protection Rate—2¾ mills	School 12 mills	Total Taxes
Gas	Mains				
8320		83.20	22.88	99.84	205.92

Certified true Copy,

E. T. Sampson, 30
City Clerk and Treasurer.

This Account to be produced when making payment. (Certified cheques only accepted.)

Rate-Payers are requested to examine their bills and should there be any errors thereon or properties missing therefrom, to immediately notify the City Treasurer.

40

Plaintiff's Exhibit P-1 at Enquete.
Extracts from Valuation Roll of Plaintiff for years 1924-25, 1925-26 and 1926-27.

VALUATION ROLL OF THE CITY OF OUTREMONT

STREET	ASSESSED VALUE			TOTAL	TAXES COLLECTABLE			TOTAL Taxes Due
	Non-Taxable Land	Building	Taxable Building		General Assessments Amount Due	SPECIAL ASSESSMENTS Police & Fire	School	
1924-1925								
North Ward	Gas Mains	10586	10586	105.86	29.12	49.44	184.42	
West Ward	" "	19297	19297	192.97	53.06	72.99	319.02	
South Ward	" "	7282	7282	72.82	20.02	65.54	158.38	
				371.65	102.20	187.97	661.82	

Certified true extract of the Valuation and Collection Roll of Municipal taxes and assessments of the City of Outremont for the year ending October 31st 1925, and of the Collection Roll of School taxes (neutral panel) of the School Commissioners for the Municipality of the City of Outremont in the County of Westmount for the year ending June 30th 1925.

E. T. Sampson,
City Clerk.

CITY OF OUTREMONT SCHOOL TAXES

Parish of St. Viateur		Parish of Ste. Madeleine
Assessed Value of Real Estate Neutral	Tax rate at...mills Neutral	Assessed Value of Real Estate Neutral
For year ending 31st October 1925		
5493	49.44	5093
8110	72.99	11187
7282	65.54	
20885	187.97	16280

FOR THE YEAR ENDING 31st OCTOBER 1925

PROPRIETOR
Name Address

Montreal Light, Heat & Power Co.
 Montreal Light, Heat & Power Co. 83 Craig St.
 Montreal Light, Heat & Power Co. "

Plaintiff's Exhibit P-1
 Extract from Valuation
 Roll of Plaintiff for
 years 1924-25,
 31st October 1925.

Exhibit D-1 of Defendant and Mis-en-cause at Enquete.

Exhibit of
Defendant
and
Mis-en-cause.
at Enquete.

Statement of rebate on School taxes.

D-1
Statement
of rebate on
School taxes.
27th Sept.
1929.

Treasurer's Office

City Hall, September 27th, 1929.

10

Montreal Light, Heat & Power Co.,
107 Craig Street West, Montreal, Que.

To the CITY OF OUTREMONT, Dr.

Amended Account

1926

20	Nov. 25 Account rendered for Municipal and School Taxes on Gas Mains for Years 1924/25, 1925/26, 1926/27.....	\$3,349.60
	Less rebate on account of St. Viateur Neutral School Taxes for Year 1926/27 reduced per Statute 16 Geo. V, Chapter 47, Sec. 1, Pgh. B	86.78
		3,262.82

30 (Memo) Rebate of part of St. Viateur Neutral School Tax for Year 1925/26 already allowed in account rendered of 3,349.60.

Certified Correct,
E. T. Sampson,
City Clerk & Treasurer.

Record approved:

40

BROWN, MONTGOMERY & McMICHAEL,
Attorneys for Plaintiff

BEAUBIEN & MICHAUD,
Attorneys for Defendant & Mis-en-Cause

Court of
King's Bench.

Certificate of Clerk of Appeals.

Certificate
of Clerk of
Appeals.

We, the undersigned Alphonse Pouliot and Clovis Laporte, K.C., Clerk of Appeals of His Majesty's Court of King's Bench for the Province of Quebec, do hereby certify that the present transcript, from page one to page 216 contains

True and faithful copies of all the original papers, documents, proceedings and of judgments of His Majesty's Superior Court for the Province of Quebec, sitting in the City of Montreal. 10

Transmitted to the Appeal Office, in the said City of Montreal, as the Record of the said Superior Court in the cause therein lately pending and determined between The City of Outremont Plaintiff and The Montreal Light Heat and Power Consolidated and The Montreal Light Heat and Power Company, Defendants and Mis-en-cause. 20

And also true copies of all the proceedings of the said Court of King's Bench (Appeal Side) and the final judgment therein rendered on the said Appeal instituted by the said Defendant and Mis-en-Cause. 20

In faith and testimony whereof, we have, to these presents, set and subscribed our signature and affixed the seal of the said Court of King's Bench, (Appeal Side).

Given at the City of Montreal, in that part of the Dominion of Canada, called the Province of Quebec, this day of in the year of Our Lord one thousand nine hundred and thirty one. 30

L. S.

POULIOT & LAPORTE,

Clerk of Appeals. 40

Certificate of Chief Justice.

I, the undersigned Honorable Eugène Lafontaine, Chief Justice of ^{Court of King's Bench} the Province of Quebec, do hereby certify that the said Alphonse Pouliot and Clovis Laporte, K.C., are Clerk of the Court of King's Bench, on the Appeal Side thereof, and that the initials "P and L" subscribed at every eight pages and the signature "Pouliot & Laporte" of the certificate above written, is their proper signature and hand writing. ^{Certificate of Chief Justice.}

10

I do further certify that the said Pouliot & Laporte as such Clerk, are the Keeper of the Records of the said Court, and the proper Officer to certify the proceedings of the same, and that the seal above set is the seal of the said Court, and was so affixed under the sanction of the Court.

In testimony whereof, I have hereunto set my hand and seal, at the City of Montreal, in the Province of Quebec, this _____ day of _____ in the year of Our Lord one thousand nine hundred and thirty one and of His Majesty's Reign, the twenty first.

20

EUGENE LAFONTAINE,
Chief Justice
of the Province of Quebec.

L.S.

30

40


