

In the Privy Council.

No. 11 of 1935.

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

BETWEEN

THE BELL TELEPHONE COMPANY OF CANADA,
 Body politic and duly incorporated, having its
 principal place of business in the City and District
 of Montreal (*Defendant in the Circuit Court and
 Respondent in the Court of King's Bench*) ... APPELLANT,

AND

LA VILLE ST. LAURENT, Body politic and duly
 incorporated, having its principal place of business
 in the said town of St. Laurent, District of Montreal
 (*Plaintiff in the Circuit Court and Appellant in the
 Court of King's Bench*) RESPONDENT.

CASE FOR THE RESPONDENT.

1. This is an appeal from a unanimous judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) rendered on the 20th of June, 1934, which reversed the judgment of the Trial Court rendered on the 28th of June, 1933, and maintained the Respondent's action *in toto*. Record. p. 67. p. 50.

2. The Appellant is the owner of and operates in the Province of Quebec a telephone system, part of which is situate within the territorial limits of the Respondent. That part of the Appellant's property consists in poles, wire cables, etc., and in a switchboard placed in a building belonging to one Laurin and rented by the Appellant. p. 14, l. 30.

- Record.
pp. 9-11. **3.** By its action, the Respondent claims from the Appellant the sum of \$3,155.25 with interest at 6 per cent. on the sum of \$2,850.00 and at 5 per cent. on the sum of \$305.25, for municipal taxes, general and special, and school taxes for the years 1926, 1927 and 1928, imposed on every immoveable, including the Appellant's property, in its territorial limits.
- pp. 11-12. **4.** On the 7th of December, 1929, the Appellant contested the Respondent's action on the ground that the valuation and the assessment rolls of the Respondent for the years 1926, 1927 and 1928 were illegal, as far as the Appellant's property was concerned, because its property erected on public streets was not assessable, and specially because for the year 1928 ¹⁰ the Respondent has added to the said rolls a switchboard which was placed in a building belonging to a third party, said switchboard being valued at \$20,000.00.
- p. 13. **5.** After the issue was joined, that is on the 27th of May, 1932, the Appellant confessed judgment for the sum of \$2,516.81, being the full amount, in capital and interest, of the taxes claimed by the Respondent for the years 1926 and 1927, plus the taxes for the year 1928 on an assessment of \$25,000.00 only, while for that year 1928 the Appellant's property was assessed at \$45,000.00, the difference between \$25,000.00 and \$45,000.00 being the assessment of the switchboard at \$20,000.00. 20
- p. 14, l. 42. **6.** The confession of judgment made by the Appellant was refused by the Respondent and the parties went to trial.
- p. 14, l. 21. **7.** On the 10th of June, 1932, the following admission was made by the parties :—
- p. 14, l. 22. “ Les parties admettent :—
- “ 1. Que les taxes qui ne sont pas couvertes par la confession de jugement de la Défenderesse sont celles de 1928 imposées sur un tableau de central téléphonique ou ‘ switchboard ’ porté au rôle d'évaluation pour \$20,000 ;
- “ 2. Que le dit tableau se trouve dans un immeuble ou maison sis ³⁰ rue Decelles dans la Ville de St-Laurent, lequel immeuble n'appartient pas à la défenderesse mais est occupé par celle-ci à titre de locataire ;
- “ 3. Que le dit tableau est relié au réseau téléphonique de la défenderesse.”
- pp. 15-21.
pp. 47-49. **8.** What is a switchboard, how it is installed, what is its use and how it is connected with the telephone system has been fully described by one Edwin A. Bogert, one of the employees of the Appellant.
There is no other evidence in the case.
- p. 50. **9.** By judgment rendered on the 28th of June, 1933, the Trial Court, being of opinion that the switchboard was not immoveable, and therefore ⁴⁰ non-taxable, maintained the confession of judgment made by the Appellant.

That judgment was reversed by the Court of King's Bench on the 20th of June, 1934. Record.
p. 67.

10 **10.** The sole question at issue was whether a switchboard is an integral part of the telephone system of the Appellant.

11. The Respondent was incorporated as a town by the Act 8 Edward VII, Chapter 95 (amended by 3 George V, Chapter 71 ; 8 George V, Chapter 91 ; 13 George V, Chapter 97 ; and 20 George V, Chapter 114) and is governed by the Cities and Towns' Act, 1903, which is now Chapter 102 of the Revised Statutes of Quebec, 1925.

10 **12.** In virtue of section 546 of the Revised Statutes of Quebec, 1925, Chapter 102, which reads in part as follows :—

“ 546. The payment of municipal taxes may be claimed also 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
“ Recorder's Court, if there be one ”

the Circuit Court of the district of Montreal had jurisdiction to hear and decide the present case.

By section 547 which reads in part as follows :—

20 “ 547. An appeal shall lie to the Court of King's Bench from the
“ final decision in actions brought in virtue of section 546, if the sum
“ claimed exceeds five hundred dollars ”

there was an appeal to the Court of King's Bench because the amount involved exceeds \$500.00.

13. The relevant articles of the Quebec Civil Code are numbers 375 and 376 which provide as follows :—

“ 375. Property is immovable either by its nature, or by its
“ destination, or by reason of the object to which it is attached, or
“ lastly by determination of law.

“ 376. Lands and buildings are immovable by their nature.”

30 **14.** The relevant section of the Cities and Towns' Act is number 521 which provides in part as follows :—

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

15. The relevant sections of the Education Act (Revised Statutes of Quebec, 1925, Chapter 133) are numbers 249, 367, 371 and 2, paragraph 15, which provide as follows :—

40 “ 249. The school commissioners and trustees shall cause to be
“ levied by taxation the taxes necessary for the support of the schools
“ under their control.”

Record.

“ The rates of school assessments shall be uniform upon all taxable property in the school municipality. The assessment shall be based upon the valuation of such taxable property, and shall be payable by the owner, occupant, or possessor of such property . . . ”

“ 367. The valuation of property, which has been made by order of the municipal authorities, shall serve as the basis of the assessments to be imposed by school corporations.”

“ 371. If no valuation has been made by order of the municipal authorities, or if the valuation roll could not be obtained within the delay prescribed by section 368, the school board shall at once cause a valuation of the immoveable property of the municipality to be made by three competent persons who reside in the municipality.”

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

16. The Respondent submits that the term “ immoveable ” used in the sections above cited must be regarded as “ buildings ” (“ bâtiments ”) within the meaning of article 376 of the Quebec Civil Code. 20

17. It has been decided in the following cases :—

Belair vs. Ville de Ste-Rose, 63 Supreme Court Reports, p. 526 ;

Montreal Light Heat & Power Cons. vs. City of Westmount, 38 K.B., Quebec, p. 406, and Canada Law Reports (1926), p. 515 ;

Montreal Light Heat & Power Cons. vs. City of Outremont, 49 K.B., Quebec, p. 456, affirmed by the Privy Council L.R. (1932) A.C., p. 423 ;

that the term “ buildings ” used in article 376 C.C. includes not only a building proper, but also a bridge, gas mains, electric poles, wires, cables, etc.

p. 21,
ll. 43-44.

18. It is admitted by the Appellant’s witnesses, and rightly so, that a switchboard does not form part of the building where it is installed. The building is complete without a switchboard, but the system is not. The system can function without the building. 30

19. The Respondent submits that when a switchboard is installed in a building, whether that building belongs to the owner of the system or not, and is connected with the trunk cables, it becomes an integral part of the system and then ceases to be moveable.

p. 52, l. 46.
p. 53, l. 1.
p. 54, l. 22.

20. The Trial Judge was of opinion that the switchboard is not immoveable because it is not “ incorporé au sol ” and because it can be easily removed.

21. The Respondent submits that the switchboard forms an integral part of the system quite as much as the cables strung on the poles or placed in underground conduits. Cables and wires are not “ incorporés au sol ” 40

and can be easily removed. Their number can be increased or diminished, but they are nevertheless regarded as immoveables because they form an integral part of the system, part of which adheres to the soil.

Record.

22. Mr. Justice Bernier who delivered the judgment of the Court of King's Bench expresses his views as follows :—

“ On ne saurait contester qu'il (switchboard) est une partie du système de la défenderesse ; il en fait partie intégrante, tout comme en font partie les poteaux, les cables, etc. p. 70, l. 31.

10 “ Il (switchboard) ne fait pas partie de la bâtisse Laurin ; il n'est pas là pour la compléter ; il est là pour compléter le système du téléphone ; il est indépendant de la bâtisse. p. 70, l. 41.

“ Qu'un ' switchboard ' soit placé dans une bâtisse qui n'appartient pas à la défenderesse, ou qu'il le soit dans une bâtisse qui lui appartient, la chose n'a pas d'importance ; dans l'un ou l'autre cas, on pourrait l'enlever, mais le système de téléphone serait alors incomplet.” p. 70, l. 44.

23. Mr. Justice St-Jacques says :—

20 “ Je ne vois aucune raison juridique pour faire une distinction entre les fils qui font partie essentielle du réseau et qui sont immeubles uniquement parce qu'ils sont reliés aux poteaux, lesquels sont eux-mêmes plantés dans le sol, et l'assemblage particulier de fils qui constitue ce que l'on appelle : le tableau de central téléphonique (switchboard) qui sûrement fait, lui aussi, partie intégrante du réseau. p. 75, l. 22.

“ Je partage entièrement, sur ce point l'opinion de mon collègue, l'honorable Juge Bernier, et je n'ai rien à ajouter aux raisons qu'il donne à l'appui de cette opinion.”

24. Mr. Justice Bond agrees with Mr. Justice Bernier for the same reasons. p. 72, l. 42.

30 **25.** Mr. Justice Galipeault, who gave no reasons, was of the opinion to maintain the appeal of the Respondent. p. 73, l. 1.

26. Mr. Justice Walsh was also of the opinion that the switchboard is not part of the house, but is a part of the system. pp. 76, 77.

27. The reasons of the learned Judges of the Court of King's Bench were expressed in the formal judgment of the Court of King's Bench in the following manner :—

40 “ Considerant que tant en vertu de sa loi d'incorporation qu'en vertu de la Loi des Cités et Villes, la Ville St-Laurent a le droit de percevoir des taxes municipales et scolaires ; qu'en vertu de l'article 376 C.C., les mots ' les bâtiments ' signifient des ' constructions ' d'après la jurisprudence établie, tant par la Cour Suprême du Canada que par le Conseil Privé, et qu'il est indifférent quant au droit p. 68, l. 22.

Record.

“ d'imposition des taxes qui ces constructions soient érigées sur un terrain qui n'est pas la propriété de la personne à qui appartient la construction ;

p. 68, l. 32

“ Considerant que dans l'espèce, le tableau téléphonique susdit ne fait pas partie de la bâtisse dans laquelle il est érigé, et qu'il n'est pas placé là pour la compléter, mais qu'il y est pour compléter le système téléphonique, lequel est immeuble ; qu'il est nécessaire pour les opérations du système, étant relié aux cables placés dans le sol, lesquels cables sont la propriété de la compagnie de Téléphone ;

p. 68, l. 38.

“ Considerant que le dit tableau est une partie intégrante et ¹⁰ essentielle du système de la Compagnie défenderesse, que sans lui, il n'existerait que des poteaux et des cables sans utilité, et que pour constituer le système, il faut nécessairement et essentiellement le dit tableau, les poteaux et les cables.”

28. The Respondent submits that the judgment of the Court of King's Bench dated the twentieth of June, 1934, is right and ought to be affirmed for the following amongst other

REASONS

1. Because the Appellant is the owner of the telephone system, part of which is situate within the territorial ²⁰ limits of the Respondent.
2. Because the switchboard forms an integral part of the telephone system of the Appellant.
3. Because the telephone system of the Appellant is immovable and as such taxable.
4. For the reasons given by the Judges of the Court of King's Bench.

AIME GEOFFRION.

CHARLES LAURENDEAU.

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the Province of Quebec (Appeal Side) Canada.*

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CASE FOR THE RESPONDENT.

BLAKE & REDDEN,
17, Victoria Street,
S.W.1.