29, 1941

In the Privy Council.

No. 28 of 1940.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR

Appellant,

AND

FORD MOTOR COMPANY OF CANADA LIMITED, AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR

Respondents.

RESPONDENT'S CASE
Ford Motor Co.

CASE FOR THE RESPONDENT FORD MOTOR COMPANY OF CANADA LIMITED.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 30th October, 1939, dismissing by a majority of three judges to two an appeal by the Appellant from a judgment of the Court of Appeal for Ontario dated the 12th May, 1938, allowing appeals by the Respondents upon a case stated by His Honour G. F. Mahon, a Judge of the County Court of the County of Essex, on the 19th March, 1938. Record. p. 50. p. 26. pp. 9-17.

2. The questions for decision arise from the purported exercise by the respondent company of a statutory power whereby a company in Ontario with Roman Catholic and other shareholders which is assessed for school taxes in any municipality in which Roman Catholic separate schools exist, may require a proportion of its school taxes to be applied to the support of such separate schools, but the proportion which it may require thus to be p. 73, l. 14-p. 74, l. 19.

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Record. applied is not to exceed the proportion of its issued shares held by Roman Catholics. The legislation material to the determination of the questions is
pp. 64-75. summarised in the Case of the respondent Board and is set out in the Record and in an appendix to the Respondent Board's Case.

p. 12, ll. 1-31. p. 12, ll. 32-41. p. 58, l. 4. p. 58, l. 19. p. 12, ll. 35-38. p. 12, l. 42.

3. The directors of the respondent company, being unable to ascertain the precise number of its Roman Catholic shareholders, endeavoured in good faith and with such information as they had to fix a proportion no greater than the proportion of its shares held by Roman Catholics. They considered that 18 per cent. was such a proportion and they accordingly on the 27th July, 1937, passed a resolution and instructed the respondent company's secretary to give notice in the prescribed form (which he duly did on the 29th July, 1937) requiring 18 per cent. of the respondent company's assessments to be entered rated and assessed for separate school purposes. The directors' view was confirmed by assessment comparisons and population comparisons subsequently made, but the learned County Court Judge held that the division they made was not based on actual knowledge and was only a guess or an estimate.

p. 10, l. 40.

4. On receipt of the notice the assessor duly made his assessment and apportioned the above-mentioned percentage of the respondent company's assessment in support of the separate schools, entering the respondent company upon the assessment roll both as a separate school supporter and a public school supporter accordingly.

p. 58, l. 38. p. 60. p. 61, p. 62. pp. 9-17. p. 17, l. 39. p. 26, l. 27. p. 28, l. 28. p. 50, l. 23.

5. The Appellant appealed to the Court of Revision for the City of Windsor against the assessment. The Court of Revision allowed the appeal and the Respondents, by separate notices of appeal, appealed therefrom to the County Court Judge. The County Court Judge dismissed these appeals but stated the above mentioned case in each of the appeals for the Court of Appeal for Ontario upon which the Respondents, by notice of appeal dated the 19th March, 1938, appealed accordingly, and their appeals were allowed. The Appellant then appealed to the Supreme Court of Canada, which dismissed the appeal, the Chief Justice and Mr. Justice Davis dissenting.

6. The submissions successively raised in all courts by the Appellant are :—

(i) That the respondent company did not comply with or conform to the provisions of Section 65 of The Separate Schools Act.

(ii) That the onus of proving the alleged non-compliance was not on the party appealing against the assessment (the Appellant) but, on the contrary, if the assessment were to stand, the party assessed must prove affirmatively that the portion of its assessment assessed in support of separate schools did not bear a greater proportion to the whole of its assessments than the amount of its shares held by Roman Catholics bore to the whole amount of its shares.

p. 13, ll. 16-25. p. 12, l. 45. p. 13, ll. 4-16.

7. The learned County Court Judge held that the onus was on the party assessed, not on the party attacking the assessment, that none of the parties proved the actual percentage of stock in the respondent company held by Roman Catholics, that since the respondent company had failed to prove

affirmatively that such percentage was not 18 per cent. or more the assessment could not stand and that all the respondent company's assessments for school purposes must be assessed in support of the public schools. Record. p. 13, ll. 8-10.

8. The Respondents appealed to the Court of Appeal for Ontario which unanimously allowed their appeals with costs. An appeal of the Appellants to the Supreme Court of Canada was dismissed with costs, the Chief Justice and Mr. Justice Davis dissenting. The reasons for judgment of the learned judges in the Court of Appeal and the Supreme Court are summarised in the Case of the respondent Board. p. 17, l. 40. pp. 18-26. p. 50, l. 23.

9. The present dispute arises entirely from the fact that by reason of the repeal of previous legislation it became necessary for the respondent company in order to secure that a portion of its school taxes should be applied to the support of separate schools, to give a new notice. Under the repealed legislation as well as under the present legislation a notice once given continued in force until withdrawn, notwithstanding changes in the shareholding of the company giving the notice. Many other companies found themselves in the same position of having to give new notices and the Appellant appealed to the Court of Revision in respect of the assessments of the respondent company and 22 other companies in the City of Windsor. The respondent company respectfully submits that it cannot have been the intention of the legislature that if any ratepayer or other interested party appeals against the assessment of a company for separate school purposes (even though such ratepayer has no grounds and there are in fact no grounds for doubting the percentage specified in the company's notice) the assessment shall be set aside unless the company goes to the trouble and expense of attending the Court of Revision and there proving that of the company's shares a greater proportion than the percentage specified is held by Roman Catholics. p. 59, ll. 18-42.

10. In the present case the fact was established that the directors of the respondent company in good faith and having regard to the statutory requirement that the specified percentage might be below but not above the proportion of shares held by Roman Catholics fixed 18 per cent. Although the learned County Court Judge found that this percentage was not based on actual knowledge and " was only a guess or an estimate " there is no finding that the guess or estimate was not an accurate one, or that the margin allowed was not sufficient to ensure that while the percentage might be below it could not be above the proportion of shares held by Roman Catholic supporters of separate schools. p. 12, ll. 32-44.

11. In the case of *re Goderich Roman Catholic Separate School Trustees and the Town of Goderich* in 1922, reported in 53 Ontario Law Reports, page 79, Mr. Justice Middleton held, in the case of a company where the exact number of shares held by Roman Catholics was not known and could not be readily ascertained but the directors in good faith allocated a small portion to separate schools, that the notice given by the company could not be disregarded unless it were shown affirmatively to be unwarranted. He therefore granted a mandamus requiring the assessor to act upon the notice. On appeal the order was set aside on the ground that a mandamus should not be granted

where there was another remedy available, and the company could have appealed against its assessment to the Court of Revision ; but the interpretation put upon the statute then in force by Mr. Justice Middleton was not impugned. The respondent company respectfully submits that by enacting the same provisions in 1937 the legislature adopted Mr. Justice Middleton's view and that his reasoning governs the present case.

12. The respondent company accordingly respectfully submits that the decision of the Court of Appeal for Ontario and of the Supreme Court of Canada was right and should be affirmed for the following amongst other

REASONS.

1. Because the resolution adopted by the directors of the respondent company was adopted bona fide with due care, and affords adequate prima facie evidence of the correctness and validity of the notice given to the assessor. Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium.

2. Because the assessor entered the respondent company as a separate school supporter to the extent of 18 per cent. of its assessments for school purposes and the Appellant on appeal from the assessment failed to show that the assessment was wrong in any respect.

3. Because the facts set out in the case stated by the learned County Court Judge establish the validity of the notice and assessment.

4. Because the judges in the Court of Appeal and the majority of the judges in the Supreme Court of Canada rightly interpreted the Separate Schools Act and rightly applied its provisions to the said facts.

J. B. AYLESWORTH.
FRANK GAHAN.

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CASE FOR THE RESPONDENT FORD MOTOR COMPANY OF CANADA LIMITED.

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