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UNIVERSITY OF LONDON
7 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER of an Assessment Appeal,

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).

Factum of the Respondent

FORD MOTOR COMPANY OF CANADA LIMITED

NORMAN L. SPENCER
Solicitor for the Appellant.

GEORGE F. MACDONNELL, K.C.
Ottawa Agent for the Appellant.

BARTLET, AYLESWORTH & BRAID
Solicitors for the Respondent, Ford Motor Company of Canada Limited.

McNULTY, CHARLESON and ANGLIN
Ottawa Agents for the Respondent, Ford Motor Company of Canada
Limited.

ARMAND RACINE, K.C.
Solicitor for the Respondent, The Board of Trustees of the Roman Catholic
Separate Schools for the City of Windsor.

McNULTY, CHARLESON and ANGLIN
Ottawa Agents for the Respondent, The Board of Trustees of the Roman
Catholic Separate Schools for the City of Windsor.

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TORONTO:
ATWELL FLEMING PRINTING COMPANY LIMITED
1939

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In the Supreme Court of Canada

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(Respondents). 10

FACTUM OF THE RESPONDENT

FORD MOTOR COMPANY OF CANADA LIMITED

PART I.

This is an appeal by The Board of Education for the City of Windsor from the judgment of the Court of Appeal for Ontario, dated 12th May, 1938, allowing appeals by Ford Motor Company of Canada Limited and The Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor respectively upon a case stated in each of said appeals pursuant to Section 85 of The Assessment Act, Revised Statutes of Ontario (1937) Chapter 272 by His Honour G. F. Mahon, a judge of the County Court of the County of Essex, and dated 19th March, 1938. The said stated case addressed to the said Court of Appeal three questions on points of law and the construction of

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Statutes, which questions appear in full in the judgment of the Court of Appeal (case p. 32). The Court of Appeal answered all three questions in the negative, directing The Board of Education for the City of Windsor, the present Appellant, to pay the costs of the said appeals. In the result it was declared that effect must be given to the Notice given by Ford Motor Company of Canada Limited to the Clerk of the City of Windsor pursuant to Section 65 of The Separate Schools Act, Revised Statutes of Ontario (1927) Chapter 328 (now Revised Statutes of Ontario 1937, Chapter 362, Section 66), requiring 18% of the land, business and other assessments of the said corporation made under The Assessment Act to be entered, rated and assessed for the purpose of separate schools in the City of Windsor. 10

On 27th July, 1937, the Directors of Ford Motor Company of Canada Limited adopted a resolution instructing its secretary to forward to the Clerk of the City of Windsor a Notice, Form B, pursuant to Section 65 of The Separate Schools Act, Revised Statutes of Ontario (1927) Chapter 328 (now Revised Statutes of Ontario 1937 Chapter 362, Section 66) requesting that 18% of its land, business and other assessments in the municipality be entered, rated and assessed for separate schools purposes. Under date of 29th July, 1937, the Secretary of the Corporation did forward the said notice to the Clerk of the City of Windsor, attached to which was a certified copy of the said resolution of the Corporation's Board of Directors. (Exhibit 3, case p. 17). The Assessor made his assessment and apportioned the above mentioned percentage of the Corporation's assessment in support of the Separate Schools, entering the Corporation upon the assessment roll both as a separate school supporter and a public school supporter accordingly. 20

The present Appellant appealed to the Court of Revision for the City of Windsor against the assessment. The Notice of Appeal is dated 30th September, 1937, and appears as Exhibit 4 (case p. 18). The Court of Revision allowed the appeal and both the present Respondents, by separate notices of appeal, appealed therefrom to the County Court Judge. (Exhibits 1 and 2— case pp. 21 and 22). 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 present Respondents, by notice of appeal dated 19th March, 1938 (case p. 11) appealed accordingly, and their appeals were allowed. (See judgment of Court of Appeal, case p. 32). 30

The salient facts brought out in the evidence and as found in the stated case are as follows: (see case pp. 4 and 5).

The Company was incorporated under the Dominion Companies Act; has 1,658,960 shares of common stock and no preferred shares; that there were shares held by companies; that as of November 28th, 1936, the shares were held in 32 countries; that as of November 27th, 1937, the shares were held in 34 countries; that in Canada and the United States 1,500,000 shares 40

are held; that the company cannot get the shareholders to reply to communications as to religion and school taxes; that the company has difficulty in getting many of its dividend cheques into the hands of those entitled; that they lately had about 100 letters containing dividend cheques returned to them; that there is, on the average, about 20,000 different shareholders; that all the company's shares of stock are not voting shares; that voting shares are not as widely distributed; that, on the average, about 19% of proxies are returned; that voting shares are held in 16 different countries; that a number of outstanding shares are held in names of brokers; that between September, 1936, and November, 1937, the company's records indicate that the average number of shares held by brokers was 195,000; that the company has transfer agencies in Montreal, Toronto, Detroit and New York; that the number of shares changing ownership, according to records of stock exchanges, exceeds by 9,500 monthly the number of shares presented for transfer on the books of the company; that in the year 1937 there were 665,874 shares of stock transferred on the books of the company; that the directors knew that all the stock of the company was not held by shareholders of the Roman Catholic faith and that shares were held by both Roman Catholics and others but did not know and could not ascertain what total percentage of the stock was held by Roman Catholics; that it was a practical impossibility to ascertain definitely what percentage of the shares was held by Roman Catholics and in fact the directors did not inquire from the shareholders as to their religious faith; that the Board consisted of five directors of whom one was a Roman Catholic which director was absent from the meeting adopting the resolution. The directors, in making the apportionment they did, acted in good faith and with every desire to be fair, and in adopting the resolution believed from such information as was available to them that the apportionment made to separate schools by the resolution they adopted was a percentage of the corporation's local assessment no greater than the percentage of its shares held by Roman Catholics.

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PART II.

The points in issue as raised by the present Appellant before all the Courts below are:

1. The corporation (Ford Motor Company of Canada Limited) did not comply with or conform to the provisions of Section 65 of The Separate Schools Act, R.S.O. 1927, Chapter 328. (See Appellant's Notice of Appeal to the Court of Revision, Exhibit 4, case p. 18).
2. The onus of proving the alleged non-compliance and non-conformity was not on the party appealing against the assessment (The Board of Educa-

20000 diff. shldrs.
facts 1700000 sh (approx).
 held in 34 countries.
 1500000 in U.S. & Can.
 can't get reply on div. request
 " " even 20% return of proxies the voting sh. only held in 16 countries
 * Brokers hold 195000 sh. (11%)
 9500 monthly unrecorded ownership changes
 * 665000 sh (approx) transfers recorded 1937. (39%).
 Jord et al hold 28.77% (Remainder 71.23%); 18% = 1/4 approx of total.

18% of sh = 298,613 sh.
 Jord et 28.77 = 477,283 "
 Brokers 11 = 195,000 "

tion for the City of Windsor) 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.

The Respondent submits that the resolution adopted by its directors was adopted bona fide with due care, and affords adequate prima facie evidence of the correctness and validity of the notice it gave to the Assessor pursuant thereto.

The Respondent further submits that the onus of proving its complaint against the assessment rested upon the Appellant. Pursuant to the Statute, the Assessor entered Ford Motor Company of Canada Limited as a separate school supporter on the assessment roll; the roll was returned by him; the apportionment of 18% of the assessment for school purposes to the separate schools was complete, and successfully to challenge the roll as returned the Appellant was required to establish that the percentage was erroneous.

The issue was one of fact, and to amend the roll and displace the taxpayer's prima facie right of apportionment of part of its assessment in support of separate schools, the Appellant was required to prove the fact it alleged, namely that the proportion mentioned in the Statute, in fact, had been exceeded.

The Respondent, Ford Motor Company of Canada Limited, accepts the conclusions of law of the Court of Appeal, both as to the interpretation of the statutes and as to the question of onus or burden of proof, and adopts the reasoning of the said Court in support of these conclusions.

PART III.

The history and very wording of the section of The Separate Schools Act under review amply demonstrates the intention impelling its enactment. Previous to Confederation, legislation had existed in the Canadas affording machinery and protection for the separate education of religious minorities, both Protestant and Roman Catholic. By 1886, the increasingly popular form of business control known as Joint Stock Corporations had become an important tax source, and by 49 Victoria, Chapter 46, Section 53 of that year there was enacted in Ontario the antecedent of the present Section 66 of The Separate Schools Act. This enactment of 1886 for the first time provided, in substance, for the apportionment of the assessments of corporations for school purposes between public and separate schools. Its provisions differed from

✓ bona fide

✓ Roll returned

✓ factum
to prove
when assessed

✓ basic law

the present section in one important particular, namely, that the portion of assessments in support of separate schools should bear "the same ratio and proportion" to the whole of the corporation's assessments as the shares held by Roman Catholics bore to the whole of the shares of the corporation. By 4 Edward VII (1904) Chapter 24, Section 6, the section was changed so as to include the new assessment then introduced with respect to corporations, namely—business assessment. In 1913 (3-4 George V, Chapter 71, Section 66) the section was given its modern form whereby the portion of assessments of a corporation, which by it might be allocated in support of separate schools, was stipulated as being "no greater than" (instead of the same as) the proportion which the shares of the corporation held by Roman Catholics bore to the whole of the corporation's shares. The Statute in this regard is identical with the present Statute. 10

Respondent submits that the purpose intended in this legislation throughout has been to provide for an equitable apportionment of the school taxes payable by corporations, where some of the shareholders are members of the Roman Catholic faith, each successive amendment clearly supporting that intention by bringing the legislation into conformity with changing conditions as they pertained to corporations. The interpretation to be given to the Statute ought, therefore, if possible, to be such as to render it effective to accomplish the purpose intended. To interpret the section as sought by the Appellant is effectively to prevent such accomplishment. 20

Regina v. Gratton (1915, 50 Supreme Court Reports p. 589) is not in conflict with but on the facts is distinguishable from the case at bar. In that case the Saskatchewan statute may have been modelled on the Ontario statute as it then was (prior to Ontario 3-4 George V, Chapter 71, Section 66). In any event, the Saskatchewan statute (Section 93) provided that the portion of school taxes to be rated in support of separate schools should be the identical proportion which the shares held by Roman Catholics bore to the total shares of the corporation. This is in contrast with the Ontario statute as amended in 1913 and as applicable to the case at bar. There was no proof before the Court in the Saskatchewan case that there were any Roman Catholic shareholders in the companies involved, nor was any question raised as to which party bore the onus or burden of proof. 30

On the facts in the case at bar a presumption is raised in favour of the regularity and propriety of the proceedings taken by the Respondent (Ford Motor Company of Canada Limited) and the Appellant has failed to show the course taken by the corporation to be unwarranted. *Re: Goderich Roman Catholic School Trustees and the Town of Goderich* (1922) 53, O.L.R. 79. 40

The Appellant in attacking the assessment of the Respondent corporation was and is in no different position from any other appellant in an assessment

Not questioning that valid
until attacked.

cf. no effort whatever.

560
1700

32 1/2

32
29
61

39 1/2

(a) ~~Suppose~~ The percentage is a conservative one
upon its face. ~~it does not show~~ Suppose an
unreasonable wife over a for say
70% then we know 200 28.77
Remainder 71.23

and proof by Sch. P. d. easy

But here we take an approx 75% over of the
Bal. after 200 Co.

Windsor R.C.s 36.44%
Canada 41.3%

Their interpretation:

add. "The onus of proving that the 90% ^{of assets} so allocated
is no greater than the ∞ wh. sh. held by R.C.s bears the
the sh. shall rest upon the Corp."

or "And the Corp with the notice shall file an affidavit of one of its officers
either showing the ∞ or that the portion of the assets is more gr than
the ∞ ."

appeal. By statute, Appellant is subject to the identical procedure applying in other assessment appeals, and is subject to the general rule of evidence that "he who avers must prove." See Assessment Act, R.S.O. (1927) Chapter 238, Sections 32 and 77 (2) (now R.S.O. 1937, Chapter 272, Sections 31 and 78 (2)).

The only complaint with respect to the assessment attacked by the Appellant was that the assessment of the Respondent corporation in support of separate schools was greater than the proportion its shares held by Roman Catholics bore to the whole of its shares. This was a question of fact, and without proof of the fact, Appellant was not entitled to succeed. The onus rested upon it and was not discharged. See *Anderson Logging Company v. The King*, 1925, Canada Law Reports, p. 45 at p. 50 (discussion of "onus" in assessment appeals). 10

Reference has been made to the following statutory provisions, all of which may be found in the Appendix hereto:

The Separate Schools Act—1886—Section 53 (49 Victoria, Chapter 46).

An Act respecting amendments to the Law in connection with the Revision of The Assessment Act—1904—4 Edward VII—Chapter 24, Section 6.

The Separate Schools Act—1913—3 George V, Chapter 71, Section 66.

The Assessment Act—Revised Statutes of Ontario 1937, Chapter 272, Sections 31 and 78 (2). 20

The Separate Schools Act—Revised Statutes of Ontario 1937, Chapter 362, Section 66.

The Respondent submits that the appeal should be dismissed with costs.

All of which is respectfully submitted.

DATED at Windsor, this 16th day of January, 1939.

JOHN B. AYLESWORTH,
Counsel for the Respondent,
Ford Motor Company of Canada Limited.

(For appendix of Statutes, see next page.)

APPENDIX

The Separate Schools Act, 1886, Section 53, (49 Victoria, Chapter 46).

"53.—(1) A company may, by notice in that behalf to be given to the clerk of any municipality wherein a separate school exists, require any part of the real property of which such company is either the owner and occupant, or, not being such owner, is the tenant, occupant or actual possessor, and any part of the personal property (if any) of such company, liable to assessment, to be entered, rated and assessed for the purposes of said separate school, and the proper assessor shall thereupon enter said company as a separate school supporter in the assessment roll in respect of the property specially designated in that behalf in or by said notice, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and so much of said property as shall be so designated shall be assessed accordingly in the name of said company for the purposes of said separate school and not for public school purposes, but all other property of said company shall be separately entered and assessed in the name of the company as for public school purposes: provided always that the share or portion of the property of any company entered, rated or assessed, in any municipality for separate school purposes under the provisions of this section, shall bear the same ratio and proportion to the whole property of the company assessable within the said municipality, as the amount or proportion of the shares or stock of such company, so far as the same are paid, or partly paid up, and are held and possessed by persons who are Roman Catholics, bears to the whole amount of such paid or partly paid up shares or stock of the company. 10 20

(2) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or the effect following:

To the clerk of (describing the municipality) 30

Take notice that (here insert the name of the company so as to sufficiently and reasonably designate it) pursuant to a resolution in that behalf of the directors of said company requires that hereafter and until this notice is either withdrawn or varied so much of the property of the company assessable within (giving the name of the municipality) and hereinafter specially designated shall be entered, rated, and assessed for separate school purposes, namely one-fifth (or as the case may be) of all real property, and one-fifth (or as the case may

1. Judge of Law
2. Authority on Law (65)
3. Interpretation authorities.

4. Superior court limit

- Not Subordinate or subording
In carrying on job has power of staff or. Co. - while being to
being tied when it must be with its laws which directed ~~to~~ as
the court of a sounder judgment to the high Ct.

be) of all personal property of said company, liable to assessment in said municipality.

Given on behalf of the said company this (here insert date).

R.S. Secretary of said company.

(3) Any such notice given in pursuance of a resolution in that behalf of the directors of the company shall for all purposes be deemed to be sufficient, and every such notice so given shall be taken as continuing and in force and to be acted upon unless and until the same is withdrawn, varied or cancelled by any notice subsequently given, pursuant to any resolution of the company or of its directors.

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(4) Every such notice so given to any such clerk shall remain with and be kept by him on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect any assessment roll, and the assessor shall in each year, before the completion and return of the assessment roll, search for and examine all notices as may be so on file in the clerk's office, and shall thereupon in respect of said notices (if any) follow and conform thereto and to the provisions of this Act in that behalf.

(5) The word "company" in this section shall mean and include any body corporate."

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An Act respecting amendments to the Law in connection with the Revision of The Assessment Act—1904—4 Edward VII, Chapter 24, Section 6.

“6. Section 54 of The Separate Schools Act is repealed and the following section substituted therefor:

54.—(1) A company may, by notice in that behalf to be given to the clerk of any municipality wherein a separate school exists, require any part of the real property of which such company is either the owner and occupant, or, not being such owner, is the tenant, occupant or actual possessor, and any part of the business assessment or other assessments of such company made under The Assessment Act, to be entered, rated and assessed for the purposes of the said separate school, and the proper assessor shall thereupon enter the said company as a separate school supporter in the assessment roll in respect of the real property and business or other assessments, if any, specially designated in that behalf in or by the said notice, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and so much of the real property and business or other assessments, if any, as shall be so designated shall be assessed accordingly in the name of the company for the purposes of the separate school and not for public school purposes, but all other real property and the remainder of the business or other assessments of the company shall be separately entered and assessed in the name of the company as for public school purposes; provided always that the share or portion of the real property and business or other assessments of any company, entered, rated or assessed, in any municipality for separate school purposes under the provisions of this section, shall bear the same ratio and proportion to the whole of the assessment for real property, business or other assessments of any company within the municipality, as the amount or proportion of the shares or stock of the company, so far as the same are paid, or partly paid-up, and are held and possessed by persons who are Roman Catholics, bears to the whole amount of such paid or partly paid-up shares or stock of the company.

(2) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or to the effect following:

To the Clerk of (describing the municipality).

Take notice that (here insert the name of the company so as to sufficiently and reasonably designate it) pursuant to a resolution in that behalf of the directors of the said company requires that hereafter and until this notice is either withdrawn or varied so much of the whole of the

assessment for real property, and business or other assessments of the company within (giving the name of the municipality) and hereinafter specially designated shall be entered, rated, and assessed for separate school purposes, namely, one-fifth (or as the case may be) of all real property of the said company liable to assessment in the said municipality and one-fifth (or as the case may be) of the business or other assessments of the said company in the said municipality.

Given on behalf of the said company this (here insert date).

R.S. Secretary of the said company." 10

The Separate Schools Act—1913—3 George V, Chapter 71, Section 66.

“66.—(1) A corporation by notice, Form B, to the clerk of any municipality wherein a separate school exists, may require the whole or any part of the land of which such corporation is either the owner and occupant, or, not being the owner, is the tenant, occupant or actual possessor, and the whole or any proportion of the business assessment or other assessments of such corporation made under The Assessment Act, to be entered, rated and assessed for the purposes of such separate school.

(2) The assessor shall thereupon enter the corporation as a separate school supporter in the assessment roll in respect of the land and business or other assessments, designated in the notice, and the proper entries shall be made in the prescribed column for separate school rates, and so much of the land and business or other assessments so designated shall be assessed accordingly for the purposes of the separate school and not for public school purposes, but all other land and the remainder, if any, of the business or other assessments of the corporation shall be separately entered and assessed for public school purposes. 10

(3) Unless all the stock or shares are held by Roman Catholics the share or portion of such land and business or other assessments to be so rated and assessed shall not bear a greater proportion to the whole of such assessments than the amount of the stock or shares so held bears to the whole amount of the stock or shares. 4 Edw. VII, c. 24, s. 6, amended, and see 5 Edw. VII, c. 13, s. 26 (5). 20

(4) A notice given in pursuance of a resolution of the directors shall be sufficient, and shall continue in force and be acted upon until it is withdrawn, varied or cancelled by a notice subsequently given pursuant to any resolution of the corporation or of its directors.

* (5) Every notice so given shall be kept by the clerk on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect an assessment roll. 30

(6) The assessor shall in each year before the return of the assessment roll search for and examine all notices which may be so on file and shall follow and conform thereto and to the provisions of this Act. 5 Edw. VII, c. 13, s. 26.

Sec 30 = Gna individual
separately.

The Assessment Act, Revised Statutes of Ontario 1937, Chapter 272, Sections 31 and 78 (2).

"31. The court of revision shall hear and determine all complaints with regard to persons alleged to be wrongfully placed upon or omitted from the roll as Roman Catholic separate school supporters, and any person so complaining or any ratepayer may give notice in writing to the clerk of the municipality of such complaint, and the provisions of this Act as to giving notice of complaints against the assessment roll and proceedings for the trial thereof shall apply to complaints under this section. R.S.O. 1927, c. 238, s. 32."

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"78—(2) The hearing of the said appeal by the county judge shall, where questions of fact are involved, be in the nature of a new trial, and either party may adduce further evidence in addition to that heard before the court of revision subject to any order as to costs or adjournment which the judge may consider just. R.S.O. 1927, c. 238, s. 77."

The Separate Schools Act, Revised Statutes of Ontario 1937, Chapter 362, Section 66.

“66.—(1) A corporation by notice (Form B) to the clerk of any municipality wherein a separate school exists may require the whole or any part of the land of which such corporation is either the owner and occupant, or not being the owner is the tenant, occupant or actual possessor, and the whole or any proportion of the business assessment or other assessments of such corporation made under The Assessment Act, to be entered, rated and assessed for the purposes of such separate school.

(2) The assessor shall thereupon enter the corporation as a separate school supporter in the assessment roll in respect of the land and business or other assessments designated in the notice, and the proper entries shall be made in the prescribed column for separate school rates, and so much of the land and business or other assessments so designated shall be assessed accordingly for the purposes of the separate school and not for public school purposes, but all other land and the remainder, if any, of the business or other assessments of the corporation shall be separately entered and assessed for public school purposes. 10

(3) Unless all the stock or shares are held by Roman Catholics the share or portion of such land and business or other assessments to be so rated and assessed shall not bear a greater proportion to the whole of such assessments than the amount of the stock or shares so held bears to the whole amount of the stock or shares. 20

(4) A notice given in pursuance of a resolution of the directors shall be sufficient and shall continue in force and be acted upon until it is withdrawn, varied or cancelled by a notice subsequently given pursuant to any resolution of the corporation or of its directors. ?

(5) Every notice so given shall be kept by the clerk on file in his office and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect an assessment roll. 30

(6) The assessor shall in each year, before the return of the assessment roll, search for and examine all notices which may be so on file and shall follow and conform thereto and to the provisions of this Act. 1937, c. 72, s. 57 (1), part.”

Harling - Mayville 21 UCCP499 Protestant Sep. S. Supporters. Replevin.

James Arthur v Arthur 21 OR 60 no ✓

See Sep. School Act re individuals, 30731 + proof ✓

see provisions for school Taxes. (C).