the argument to describe the appellants' system of electric traction as a great machine, or by any other metaphorical expression. The subject of assessment is not the appellants' system or undertaking, but only that part of it which can properly be described as real estate. The cars are no doubt adapted for use in connection with the railway and trolley wires, but they are not part of the railway, and are not fixed in any sense whatever to anything which is real estate. Their Lordships cannot attach any legal meaning to the expressions "in the nature of fixtures," or "constructively affixed," except as an admission that the articles in question are not in fact fixtures or actually affixed. They are, therefore, of opinion that the cars remain and are personal estate only and are unassessable.

The decision of the Court of Appeal, which is said to be res judicata, arose out of a proceeding under the sections in the Assessment Act relating to the Court of Revision. By section 62 a Revision Court of three persons is constituted, the jurisdiction of which is defined by section 68, as follows:—

"At the time or times appointed, the Court shall meet and try all "complaints in regard to persons wrongfully placed upon or omitted from "the roll, or assessed at too high or too low a sum." By sections 75 and 84, there is an appeal from the Court of Revision to the County Court Judge, or where a person has been assessed to an amount aggregating $20,000, to a Board consisting of the Judges of the counties which constitute the County Court district, and from that Board to the Court of Appeal. The Act provides that the appeal shall be heard by three or more Judges of the Court of Appeal, and the decision of such Judges, or a majority of them, shall be final.

The appellants appealed to the Court of Revision against the assessment of 1901 on the ground amongst others that the property enumerated was not liable to assessment as real property. The Court of Revision dismissed the Appeal and their decision was affirmed by the County Court Judges and subsequently by the Court of Appeal.

It appears to their Lordships that the jurisdiction of the Court of Revision and of the courts exercising the statutory jurisdiction of appeal from the Court of Revision is confined to the question whether the assessment was too high or too low, and those courts had no jurisdiction to determine the question whether the Assessment Commissioner had exceeded his powers in assessing property which was not by law assessable In other words, where the assessment was ab initio a nullity they had no jurisdiction to confirm it or give it validity. The order of the Court of Appeal of the 28th June, 1902, was not, therefore, the decision of a court having competent jurisdiction to decide the question in issue in this action and it cannot be pleaded as an estoppel.

This point was not argued in the Court of Appeal in the present case as that court only followed its own decision in the appeal from the Revision Court in the previous year. It is, therefore, a satisfaction to their