

Otherwise the declaration of finality is simply waste paper. The cars are fixtures of the power house, and the rails, engines and rolling stock of railways are fixtures: *Redfield on Railways*, vol. 2, p. 546; *Farmers' L. & T. Co. v. Henderson*, 25 Barb. 494. In *Lushington v. Seward*, 1 Sim. 480, cattle and slaves on a plantation were declared to be real estate. The appellants have acquiesced in the decisions of the Court of Appeal and therefore cannot succeed by the device of bringing a subsequent action; *Jones v. City of St. John*, 31 S.C.R. 320. Sec. 85 of the Assessment Act, giving power to the Lieutenant-Governor to submit a stated case, shows that the jurisdiction of the Court of Revision is not limited, as contended by the appellants. The legislature certainly did not constitute the Board of County Judges with an appeal from them to the Court of Appeal for the purpose merely of valuing property.

Bicknell, K.C., in reply.

The judgment of their Lordships was delivered by

LORD DAVEY:—The principal question on this appeal is whether the cars used by the appellants on their system of electric tramways in the City of Toronto and adjoining municipalities are liable to be taxed as real estate. There is another question, whether the matter is res judicata between the parties.

The cars are the ordinary electric cars used on electric railways and receive their motive power from an electric current passing through an overhead trolley wire. The power is transmitted to the motors below the trucks by means of a wheel at the end of a trolley pole on the top of the car body, which wheel is pressed up against the trolley wire by a spring. No part of the car is of course fixed in any sense either to the tram rails below or the trolley wires above.

The Assessment Act which was in force in the Province of Ontario was c. 224 of the Revised Statutes of Ontario, 1897. By s. 39 (2) of that Act the personal property of the appellant company is exempt from assessment. And by s. 2 (9) of the same Act "land," "real property," and "real estate" respectively include all buildings or other things erected upon or affixed to the land and all machinery or other things so fixed to any building as to form in law part of the realty.

By the assessment made in 1901 for 1902 the real property of the appellants consisting of rails, poles, tires, wires, cars, and other plant and material being part of its railway system in and upon the streets, roads, and other public places and elsewhere in the City of Toronto was assessed at \$1,247,281. It is admitted that the cars in question are included in this assessment.

The council of the respondents in June, 1902, taxed the appellants the sum of \$8,775 in respect of the agreed value of the cars.

The appellants refused to pay this tax, and commenced the present action in which they claimed a declaration that the cars were personal estate, and that the plaintiffs were not liable for the above sum of \$8,775.