

The action was tried on March 2, 1902, before Ferguson, J. The plaintiffs' counsel admitted that he could not distinguish the previous decisions and the action was thereupon dismissed. The plaintiffs then appealed to the Court of Appeal and on the admission of counsel that the previous decisions could not be distinguished, the appeal was dismissed.

The appellants then appealed to His Majesty in Council, and the appeal was heard on July 14, 1904, before Lord Davey, Lord Robertson, Sir Arthur Wilson and Sir Henri Taschereau, but the latter took no part in the judgment.

*Haldane*, K.C., and *Bicknell*, K.C., (of the Canadian bar) for the appellants. There are two points:—(1) Whether the cars are chattels; (2) Whether the matter is *res judicata*. The statutes necessary to be referred to are:—R.S.O. (1897) c. 224, s. 2 (9), 6, 7 (20), 13, 39, 68, 71, 84 (6); R.S.O. (1897) c. 223, ss. 402, 403, 405. The jurisdiction of the Court of Revision is confined, under s. 68 of the Assessment Act, to complaints in regard to "persons wrongfully placed upon or omitted from the roll or assessed at too high or too low a sum." If the cars were not assessable as real estate there was no jurisdiction to tax them, and the decisions upon the appeals from the assessment do not conclude the matter: *Great Western Railway Co. v. Rouse*, 15 U.C.R. 168; *Nickle v. Douglas*, 37 U.C.R. 51; *Toronto Street Railway Co. v. Fleming*, 37 U.C.R. 116; *City of London v. Watt*, 22 S.C.R. 300; *Milward v. Caffin*, 2 W. Bl. 1329. The decision that the cars were fixtures followed the reasoning of the Court of Appeal in *Bank of Montreal v. Kirpatrick*, 2 O.L.R. 113, 119. That case is distinguishable. There the mortgage included the rolling stock and assumed to transfer the assets of the Company as a going concern to the trustees for debenture holders. The cars are not fixtures. There was no land to which they were affixed: *Wake v. Hall*, 8 A.C. 195; *Leigh v. Taylor*, (1902) A.C. 157; *Helliwell v. Eastwood*, 6 Ex. 295; *Holland v. Hodgson*, L.R. 7 C.P. 388.

*C. Robinson*, K.C., and *Fullerton*, K.C., (both of the Canadian bar) for the respondents. The appellants are concluded by the judgment of the Court of Appeal on the appeal from the Court of Revision. That decision was final. The appellants might have asked for leave to appeal to the Privy Council, but such leave would have been refused: *Theberge v. Laundry*, 2 A.C. 102; *Cushing v. Dupuy*, 5 A.C. 409. The question before the Court of Revision was whether the cars were realty or personalty. The Court had jurisdiction to determine this question, and its decision is final: *Niagara Falls Bridge Company v. Gardner*, 29 U.C.R. 194; *London Insurance Co. v. London*, 15 A.R. 629, 634; *Confederation Life Assurance Co. v. Toronto*, 22 A.R. 166. If the assessment deals with a company liable to be assessed and it has property liable to be assessed, the jurisdiction attaches. The appellants having taken the opinion of the Courts and obtained a decision which was final, cannot now bring an action in the same Courts and come here without leave.