Privy Council Appeal No. 119 *of* 1913.

Edward Augustus Glen Campbell - - *Appellant*,

v.

The West India Electric Company, Limited - *Respondents.*

FROM

THE SUPREME COURT OF JUDICATURE OF JAMAICA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1914.

Present at the Hearing:

LORD DUNEDIN. LORD SUMNER.
LORD ATKINSON. SIR JOSHUA WILLIAMS.

[*Delivered by* LORD SUMNER.]

This action was brought to recover sixpence paid under protest. The respondents work electric tramways in and near the city of Kingston, Jamaica, and there has long been a dispute about the fares to be charged. To bring matters to a head and raise a test case the plaintiff, now appellant, made three separate journeys on 3rd June 1912 by the respondents' tramcars, on each of which, besides twopence admittedly payable and duly paid, a further fare of twopence was charged and paid by him under protest to raise the question of the lawfulness of the charge.

The tramways are worked under powers conferred by the "Kingston and St. Andrew Tramways License, 1897." They form one under-

[75] J. 369. 100.—8/1914. E. & S. A

taking, and are worked as one concern. Clause 9 provided that "the routes to be followed . . . " and the nature of the lines to be constructed are " severally defined and described in Schedule A "hereto," and that schedule defined and described seven " tramways " They varied much in length, from upwards of six miles to as little as 1,050 feet. Two were abandoned, including the last named, and two others have been added under particular powers not now material. Though they were thus described and authorised as separate "tramways," they are all physically connected together and form one network of running rails, with ramifications. For the purpose of charging fares and tolls the area for which the license was granted was divided into three districts by the terms of Section 26 of the License. One district contains the city of Kingston and is the main part of the system. Here most of the tramlines are so linked together that cars can start in one direction and return to the starting point in another without retracing their course, but two of the lines run out to terminal points, from which cars have to return over the same track for a considerable distance. In District No. 2 there is one line only; it branches off from the city system, and runs to a point which is the end of that line. District No. 3 contains two such terminal points, from which lines converge towards the city, and, having met and joined, then run as a united line till they join the city system at the boundary between District No. 3 and District No. 1.

For their own purposes the defendants plan their services of cars in routes or lines. These "lines" do not coincide with the " tramways " named in Schedule A. Sometimes the route is a through one, and cars run out of one district into another. Sometimes the cars run wholly within one district. Often they run to or past

a junction, at which one line of rails connects with another, and the bifurcation is treated as the beginning and the end of the journey of a service of cars connecting with the service on the first line. Sometimes, though the line of rails runs on continuously without junction or division, a point upon it is selected as the terminus of one arranged route and the commencement of another, and here sometimes the same car may run past that point, ending one journey at it and forthwith beginning another, sometimes two cars are employed.

The plaintiff's claim was, that so long as a passenger made a journey of his own laying out and for his own purposes within the limits of one district, payment of one fare of twopence entitled him to travel in the cars over the whole of it, in any combination of cars he chose to devise, and whether he changed from one car to another, or was carried in the same car past the point at which one route was arranged to end and another to begin. The company claimed a fresh fare for every change, either from car to car or from route to route in the same car within any one district.

The plaintiff laid out his journeys on the day in question, so as to test the matter in three different forms. In District No. 3 he travelled along one line part way towards the city and, changing at the junction, continued on the other line for some distance away from the city. In District No. 1 he selected two journeys. In the first he quitted one car before it had reached the end of its route, entered another, and was carried in it to his destination. In the second he travelled in the same car past the point fixed by the Company as the division between two routes, so that his journey began on one car-journey of the same car and ended on another. In the first two cases when he changed cars he was made to pay

another twopence, and in the third, when the car passed from one of its routes to the other. His action failed in both Courts below, although in the Supreme Court of Judicature of Jamaica, from which this appeal comes, the Chief Justice delivered a dissentient opinion in his favour.

The defendants' power to charge depends on Section 26 of the license, which, so far as is material, runs as follows :—

" The licensees may demand, levy, receive, and take, in " respect of the said tramways and the operation thereof, " for every passenger travelling, and for any freight carried " upon any of the cars and carriages of the tramways " authorised by this license or any part thereof, the " maximum tolls, fares, rates or charges mentioned and " prescribed in Schedule B hereto, subject to the alteration " of the same as herein provided."

The material part of Schedule B is :—

" The tolls, fares, and charges shall be as follows :— " Passengers. For one journey between any two points " in one district, 2*d*. For extra accommodation such sum " as may be prescribed by rules made as aforesaid. If and " whenever the several districts described in Schedule C " shall, at the request of the licensees, be abolished with the " sanction of the Governor in Privy Council, the charge for " a ride as aforesaid shall be a sum not exceeding 3*d*. " throughout the whole area. Provided that a passenger " shall in respect of each fare be entitled, without further " charge, but subject to such restrictions and conditions as " shall from time to time be prescribed by the licensees and " approved by the Governor in Privy Council, to one " transfer from the line in which he may be riding to " another line crossing the same for the purpose of " completing his journey."

Their Lordships are of opinion that, upon the true construction of the above paragraph, the proviso applies only in the event of the abolition of the several districts, an event which has not occurred. The sequence and form of the sentences as well as the logical connection of the proviso with what precedes it lead clearly to this conclusion. Accordingly, as applied to this case, the charging words, combining Section 26

and Schedule B, together, are " the licensees may " . . take . . for every passenger travelling " . . upon any of the cars . . for one " journey between any two points in one " district, 2*d.*"

Evidently, if the meaning of " journey " in this sentence be once ascertained, all the rest follows. At the trial a transcript of the shorthand notes of the evidence and proceedings before the Privy Council, antecedent to the granting of the license, was tendered in evidence, and after objection was admitted by the Chief Justice " not for the purpose of contradicting the terms of the license " to quote the language of his judgment in the Court of Appeal, " but with " the object of showing what was in the minds " of the parties when the application for the " license was under consideration." Their Lordships think that this evidence was inadmissible. There is no ambiguity about the word " journey " in the Schedule, though the construction of the sentence in which it occurs is very arguable. There is no evidence or contention that the word had any technical or acquired meaning different from that which it bears in common speech. The question is how it should be understood in connection with the other words among which it stands. This is purely a matter of construction. What was in the minds of the parties is not now *ad rem.* What was put into the license, which the Governor granted and the Company accepted, has taken its place.

Their Lordships think that the language of that part of Schedule B, which deals with fares to be charged and transfers to be given when the separate districts shall have been abolished, may and indeed must be looked at for the purpose of collecting what is meant by " one " journey between any two points in one dis-

" trict." The words treat the Company's undertaking over the entire area as capable of being divided into several "lines," and contemplate that each "line" may be served by a separate series of cars. They provide for a charge of one fare for one "ride as aforesaid," which, in spite of the use of two different words for one and the same thing, evidently means "one "journey between any two points" in the entire area; and they provide further, in relief of the passenger, that whereas that one fare would entitle him to conveyance over one line but not over another without payment of a further fare, the first fare shall suffice for his carriage in two cars by means of one transfer, which he is to have from the one line (that is the one car on one line) in which he may be riding to a car on another line crossing the first, the transfer being personal to himself and not available to any other person.

In this view the meaning of the words in question, which by themselves are fairly clear, is put beyond doubt. The journey is not the passenger's journey simply, which might include a transit on foot or by another conveyance at each end of the journey by car. It is both the journey of the passenger in relation to the car and the journey of the car in relation to the passenger; it is one journey of the passenger in one car. If he transfers himself to another car and so continues his journey by a second car or a third, he passes beyond the expressed limits of the right which he obtains for his 2*d*. His own particular journey or ride has then ceased to be one journey, in the sense of one journey of the passenger in one car, and has become another journey of the passenger in another car, and he must pay again. Furthermore, the identity of the car does not involve the unity of the journey any more than the identity of the passenger

does. If the same car ends one journey and begins another, the passenger, though he continues to sit inside it, is no longer making one journey in one car but is making another journey in the same car. Were it otherwise he might go to and fro, or round and round all day on the same car for the same 2*d.* if such was the journey he fixed for himself.

The appellant strongly urged two points. First, it was said, what is the division into districts for unless it is to secure transit all over the district, between any two points, wherever situate within it, for one flat rate of 2*d.*? Next, it was said, "the schedule of maximum fares may "be evaded and the public may be victimized at "will, if the Company is to fix its own car "routes and make each the subject of a separate "fare of 2*d.* If it can select for itself any point "on one line of rails, though not a junction or "a terminus, and call it the end of one route "and the beginning of another for the same car, "why cannot it subdivide its lines, street by "street and corner by corner, and so multiply "the collection of fares without changing or "even stopping the car?" In any case, if the division of the system effected by Schedule A. into several tramways is enough to justify a division into corresponding routes for the running of cars, the short line of 1,050 feet, had it not been abandoned, would have justified a charge of 2*d.* by itself, though on other lines many times that distance might have been travelled for the same money.

The answer to the first point is that, on either view of the question in dispute, for the district a flat rate prevails, as distinguished from a mileage or distance rate. The difference is that riding over the system in the district is not so cheap on the one view as on the other.

Further, while the flat rate is for the benefit of both parties, the division into districts appears to be for the Company's benefit, for it is at the Company's request and not at the instance of the public that it may be abolished. Hence in so far as the fare is made to depend on the district, this is a matter separate from the system of charging by flat rate, and is not involved in it.

To the second point the answer is, that this license does not seem to have been drafted to provide for extreme cases, and very naturally so. The restraints of good sense and self-interest are as efficacious in such matters as the letter of a schedule. The plaintiff's construction, pushed to extremity, would give him for one twopence an extensive series of rides and changes, so long as his own will included them all in one journey, even though at each change he paused for such time as he might please for purposes of business or for rest, recreation or refreshment. Any such construction was disclaimed by counsel, but this was not because it transgressed the logic of the argument, but because it would pass the bounds of good sense. The like consideration applies to the attempt to reduce the Company's contention *ad absurdum*.

His Excellency the Governor in Privy Council possesses under the license extensive though defined powers in relation to the Tramway Company. Their Lordships are not now concerned to examine how far they would avail to prevent any preposterous action on the part of the Company, nor is any such event to be apprehended. It is sufficient to say that those powers appear to be ample to prevent the necessity, such as sometimes arises, of giving a non-natural meaning to ordinary language in construing the provisions of Schedule B. and of

the license, in order to avoid some consequences of absurdity or injustice to which a natural construction would lead.

Their Lordships are of opinion that, in the circumstances of this case, the three two-penny fares in question were rightly charged, and that the decision of the majority in the Court below was right, and they will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

EDWARD AUGUSTUS GLEN CAMPBELL

v.

THE WEST INDIA ELECTRIC COMPANY, LIMITED.

DELIVERED BY LORD SUMNER.

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