29, 1941

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN:

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Appellant,

—AND—

FORD MOTOR COMPANY OF CANADA LIMITED, THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR,
Respondents.

RECORD OF PROCEEDINGS

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(*Respondent*)

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(*Respondent*)

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London, England.
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HAMILTON TYPESETTING COMPANY, LIMITED
HAMILTON
1940

RECORD OF PROCEEDINGS

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IN THE MATTER OF AN APPEAL FROM THE COURT OF REVISION OF THE CITY OF WINDSOR

BETWEEN:

FORD MOTOR COMPANY OF CANADA, LIMITED,
Appellant,

—AND—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Respondent,

—AND—

10 IN THE MATTER OF AN APPEAL FROM THE COURT OF REVISION OF THE CITY OF WINDSOR

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR,
Appellant,

—AND—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Respondent.

No. 1

20
Reasons for Judgment of His Honour G. F. Mahon, Judge County Court, County of Essex

FINDINGS AND REASONS FOR DECISION

Both of these appeals are from the decision of the Court of Revision of the City of Windsor, delivered on the 25th day of November last, whereby the appeal to the said Court of Revision of the Board of Education for the City of Windsor against the apportionment of assessment and the assessment of the Ford Motor Company of Canada, Limited, in support of Separate Schools was allowed. Both appeals were heard together.

30 The appeals were based on the following grounds, as set forth in both notices of appeal, viz:—

1. The decision appealed from is not supported by the evidence.
2. The decision appealed from is wrong in law.
3. The decision is based upon an erroneous construction of section 65 of The Separate Schools Act.

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In the County Court, County of Essex.

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—continued

4. That the Court of Revision erred in assuming that in law the onus is upon the said Ford Motor Company of Canada, Limited, to prove affirmatively that the percentage of its assessment for school purposes apportioned to the support of Separate Schools was not greater than the percentage of its total issued shares of its capital stock held by Roman Catholics.

5. That the Board of Education for the City of Windsor failed to prove that the apportionment exceeded the percentage or proportion permitted by section 65 of the Separate Schools Act.

6. Such further or other grounds as counsel may advise. 10

In my references herein to the Separate Schools Act, I shall refer to the Revised Statutes of Ontario, 1937, Chapter 362, which came into force on the 24th day of January last. The statute law applicable to this appeal was that as it stood at the time the Ford Company gave the clerk of the City of Windsor the notice, Form B, set forth in the Revised Statutes, Chapter 362, Section 66. The section was formerly section 65. In the revision, the statutes applicable have been incorporated without change and for convenience I refer to them.

I find that on the 27th day of July, 1937, the directors of the Ford Motor Company of Canada, Limited, passed a resolution instructing its 20 secretary to forward to the clerk of the City of Windsor a notice, Form B, requesting that 18 per cent. of its land, business and other assessments in the municipality be entered, rated and assessed for Separate School purposes; that under date of July 29th, 1937, the secretary of the said appellant company did forward notice, Form B, to the clerk of the City of Windsor directing that 18 per cent. of its assessment be rated for Separate School purposes, attached to which was a certified copy of the aforesaid resolution of the Board of Directors. These have been marked as exhibit 3.

The assessor made his assessment and apportioned 18 per cent. for the purposes of Separate Schools. 30

Then followed the appeal of the Board of Education for the City of Windsor to the Court of Revision against the assessment, notice of which was duly served, and a certified copy thereof is produced and marked as exhibit 4. The notice bears date the 30th day of September, 1937.

No question was raised or objection taken to the form of notice, or resolution, or as to time.

The appeal was heard by the Court of Revision and on the 25th day of November, 1937, the decision of that Court, along with its reasons, was handed down in writing and a certified copy was produced and filed as exhibit 6. That Court allowed the appeal with the effect that the whole 40 of the assessment of the Ford Company goes to the support of the Public Schools.

The decision of that Court was not unanimous. The minority member, who would have disallowed the appeal, stated: "that in his opinion the basis of the appeal should have been established by subsection 4 of Section 65 of the Separate School Act"; the section 65 mentioned being now section 66 of the Revised Statutes of Ontario, 1937, Chapter 362.

It was the opinion of the majority members of the Court, according to the certificate filed (exhibit 6): "That subsection 4 does not invalidate subsection 3 and providing that the letter of the law and spirit therein is adhered to in accordance with subsection 3, then subsection 4 would have been grounds for confirmation of the assessment. Such was not established by evidence under oath as previously recorded, not only was no effort made by the corporation to ascertain the number of shares held by Roman Catholics but the corporation had no knowledge of the proportion of shares held by Roman Catholics".

10 Against this decision the Ford Motor Company of Canada, Limited, and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor appealed.

In addition to the aforementioned exhibits filed was exhibit 5, being a certified copy of notice, Form 15, under section 33b of the then Assessment Act, Revised Statutes 1927, Chapter 238, of the Ford Motor Company filed in 1936 attached to which was the statutory declaration of the secretary stating that the Ford Company is unable to ascertain which of its shareholders are Roman Catholic and Separate School supporters or the ratio which the number of shares or memberships held by Roman

20 Catholics who are Separate School supporters bore to all the shares issued by the corporation.

At the commencement of the hearing of the appeal, after the production of the exhibits and their identification by Mrs. Helen Weller of the City Clerk's Department of the City of Windsor, Mr. Aylesworth, counsel for the Ford Motor Company, pointed out that one of the main questions between the parties was as to where the burden rests as to the compliance or non-compliance of the company with the provisions of the then section 65 (now 66) of the Separate Schools Act and that without waiving his position that that onus was on the respondent here to prove

30 affirmatively that less than 18 per cent. of the shareholders were Roman Catholics and that that onus was not on the appellant company to prove that there were as many as 18 per cent. of its shareholders Roman Catholic, he was willing to bring out the facts on the point. To this Mr. Spencer assented.

Mr. Douglas B. Greig, secretary of the Ford Motor Company of Canada, Limited, was then called and gave his evidence, some of the material parts of which were:

The Company was incorporated under the Dominion Companies Act; has 1,658,960 shares of common stock and no preferred shares; that there

40 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 are held; that the company cannot get the shareholders to comply with requests as to 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

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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 per cent. 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, exceed by 9500 to 10,000 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 know what percentage of the stock was held by Roman Catholics.

There were other facts brought out from Mr. Greig's evidence, but, I think the material facts are above recited. His evidence did show the directors, in making the apportionment they did, acted in good faith and with every desire to be fair. They reasoned from a number of angles and made assessment comparisons and population comparisons, it is true many, if not most of them, after the notice, Form B, had been filed with the city clerk. However, I must find and do find that the division they made was not based on actual knowledge and was only a guess or an estimate.

Now, the main issue in this appeal is, as it was before the Court of Revision, namely: where lies the onus of proof.

Is it the obligation of the party attacking the division of assessments, between Public Schools and Roman Catholic Separate Schools as made by the resolution of the directors of the company and notice of which, Notice Form B, was filed with the city clerk, to prove affirmatively that the share or portion of the land and business or other assessments (here 18 per cent.) to be rated and assessed does 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; or

Is the onus upon the corporation or its directors, upon the appeal of any ratepayer with the right of appeal, to affirmatively prove that the percentage it seeks to assign to Separate Schools (here 18 per cent.) does not bear a greater proportion to the whole of such assessments than the amount of stock or shares so held bears to the whole amount of the stock or shares?

In this appeal, neither of the parties has proved what proportion of the stock or shares is held by Roman Catholics. It has been proved that the directors of the Ford Motor Company do not know and, therefore, are unable to state whether 18 per cent. does not bear a greater proportion to the whole assessments than the amount of the stock or shares so held bears to the whole amount of the stock or shares. This fact was

established from the evidence of the secretary of the company on the appeal.

If the onus is on the corporation, it follows that its appeal must fail and its whole assessment must be entered, rated and assessed for public school purposes.

If, however, the onus is on the appellant here, the Board of Education of the City of Windsor, then it must remain according to the division specified in the corporations notice and according to the division made by the assessor, viz, 18 per cent. to the Separate Schools and 82 per cent. to the Public Schools.

Were it not for some expressions of The Honourable Mr. Justice Middleton, reported in Re Goderich Roman Catholic Separate School Trustees and the Town of Goderich, 53 O.L.R., p. 79, at pages 80 and 81, I would have had little difficulty in deciding the onus referred to was on the corporation upon an appeal by a ratepayer who feels himself aggrieved or adversely affected by the division made by the corporation.

On a close study of this case as reported, it is manifest that his remarks apply to a situation where the assessor calls upon the corporation to establish affirmatively that its allocation to Separate School taxes is not of greater proportion than that provided for in the Statute and where the assessor, by reason of the corporation or its directors not establishing its proof, ignored notice Form B entirely. Manifestly, the assessor is bound to follow the notice and divide the assessment if the notice has been duly filed with the clerk. But, I cannot read into the observations of Mr. Justice Middleton in that case, when he speaks of the presumption in favour of regularity and propriety of proceedings, that such applied to any one other than the assessor, or, that it had any application to a ratepayer who has the right to appeal and does appeal.

The weight of authorities cited and all others I have read seems to point conclusively that the onus of proving, when challenged in appeal, that the designated percentage is "*not greater*" is on the corporation, which directs that a part of its assessments and ratings go to the support of Separate Schools.

If such were not the rule, it would leave matters entirely in the hands of the corporation to make such decision as it deems fit, even not in accord with the facts, and thereby seriously wronging some classes of ratepayers. Obviously, a ratepayer feeling aggrieved would have no means of acquiring, with any degree of certainty, the proportion of shares or stock held by Roman Catholics and his appeal would be doomed to failure and the corporation left to act at its own sweet will. I cannot think it was ever the intention of the draftsman of the Act or the Legislature to put a school ratepayer in such a helpless position.

Mr. Aylesworth, counsel for the Ford Motor Company, in a clever argument contends that generally speaking the onus is on the appellant and that assessment appeals are no exception; the appellant must prove his case and refers to Manning on Assessments, 1st Ed. (1928) page 258, where it says:

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"Onus on appellant seeking to show he is not assessable. He "must show that impeached assessment ought not to have been made, "etc."

He refers to Anderson Logging Company vs. His Majesty the King, 1925, C.L.R., p. 45.

In addition to onus of proof he contends that there is a presumption of law that applies and he cites Broom's Legal Maxims, 9th Ed. at page 611. Such, apparently, was the maxim that Mr. Justice Middleton refers to in Goderich vs. Goderich, above referred to, which is a presumption in favour of regularity and propriety of proceedings. 10

In my view, these cases with respect to the onus on assessment appeals are not applicable to the situation here. There is here no attack on the assessments of the properties. Neither the right to assess the Ford Motor Company nor the quantum of the assessment is attacked. It is in such cases that the onus that is alleged to be on the appellant applies, if it applies at all. The appeal here is of an entirely different class and those cases are not in point here.

What constitutes the duty of a company desirous of exercising the permission given it by section 65 is clearly set out in the judgment of Mr. Justice Davies reported in Regina vs. Gratton, 50 S.C.R., page 606: 20

"Now it is manifest that a company desirous of exercising the "permission given by section 93 must before exercising it have ascer-"tained with certainty the religious persuasions or beliefs or connec-"tions of its various shareholders. In no other way could the statu-"tory division the company was authorized to require of its assessable "taxes be made and the grossest injustice might be done to one or "other of the respective schools, public or separate, if in the absence "of such knowledge any company should attempt to exercise its "privilege."

Mr. Aylesworth contends that Regina vs. Gratton is not in point 30 here for the reason that the Saskatchewan Statute, which was being considered in the Regina vs. Gratton case, uses the words "shall bear the same ratio and proportion" while the Ontario Statute uses the words "shall not bear a greater proportion". Now it seems to me that there is no difference in principle in the two statutes of what is incumbent upon a company and that the course a company must pursue in order to exercise the permission given it by section 65 (now section 66) is that the company must have ascertained with certainty the religious persuasions or beliefs insofar as the Roman Catholic faith is concerned, of its various shareholders. If it is unable to do that, then it cannot exercise the 40 permission.

There is a principle of law I think applicable to the question of the placing of the onus in this case and that has been stated to be that when the subject of the averment is pecularly within the knowledge of the accused or defendant, the Crown or plaintiff does not have to prove the negative. The same principle is enunciated in another way, viz: "That where a party affirms the existence of a state of facts which is alleged to

take his case out of the general rule, then, generally speaking, the onus is on him to establish that state of facts". Bell vs. Grand Trunk Railway Company (1913) 48 S.C.R., 561; Pleet vs. Canadian Northern Quebec Railway Company (1921) 50 O.L.R. 223, at page 227; Taylor on Evidence, 12th Ed. paras. 376 and 377.

Now the basic or general law is that school taxes are to be applied for the maintenance of Public Schools.

However, there are exceptions to this general law provided by the Separate Schools Act:

10 First: with respect to the assessment of the properties of individuals, whereby certain individuals under defined circumstances and subject to certain conditions and prerequisite formalities may require that assessment of the whole or part of his properties be enrolled, assessed and rated for Separate School purposes;

Second: that of a corporation, where likewise it, upon compliance with statutory provisions, may have its assessments for school purposes either wholly or in part enrolled, rated and assessed for Separate School purposes.

Now both of these cases are exceptions to the general or basic law 20 pertaining to assessments for school purposes. Dealing with class Number two, that of a corporation with which we are herein concerned, I must find, upon the grounds I have hereinbefore set forth, that, upon an appeal by a ratepayer affected by the Notice "B" given by the corporation and the assessment, rating and enrollment made thereunder, the onus is upon the corporation to establish the fact that the share or proportion of its land, business or other assessments as set out in its requisition (Form B) does not bear a greater proportion to the whole of its assessments than the amount of the stock or shares so held bears to the whole amount of the stock or shares.

30 Applying the principle enunciated by the late Right Honourable Sir Louis Henry Davies, late Chief Justice of the Supreme Court of Canada, set forth in Regina vs. Gratton, above quoted, to this case; I find that the Ford Motor Company of Canada, Limited, desirous of exercising the permission given by the Statute of directing part of its assessment be entered, rated and assessed for the purposes of Separate Schools, should have first ascertained with certainty the extent of the shares or stock in its company held by Roman Catholics; and then must limit its proportion of its assessments for Separate School purposes so that such shall not bear a greater proportion of the whole of such assessments than the amount of 40 stock or shares so held bears to the whole amount of stock or shares.

Whether this principle enunciated by the late Honourable Mr. Justice Davies, above referred to, can be taken as a principle in point here—and in my view it can—it appeals to my reason and I adopt it not only as binding by reason of it being a decision of a Court superior to this, but, in addition, on my own judgment as a principle applicable to this case. It was adopted by the Ontario Railway and Municipal Board in the Fort Frances case hereinafter cited.

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—continued

The difficulty that presented itself before the Court of Revision in this case, and which has arisen in other cases as to whether subsection 4 of section 65, now section 66, over-rides subsection 3, has been dealt with in Re J. Simpson and Sons, Limited, by the late Judge Denton, Senior Judge of the County Court of the County of York, reported in 40 O.W.N., p. 595, and in a judgment of the Ontario Railway and Municipal Board in an appeal to it by the Roman Catholic Separate School Board of the Town of Fort Frances and the Municipality of Fort Frances, reported in 10th Annual Report of that Board in 1916, p. 174. I am in accord with the decisions in both of these cases, which are to the effect that where the notice given under subsection 1 of section 65 (now section 66) offends against subsection 3, it is invalid and inoperative to effect its purpose. Subsection 4 is premised on the notice being regular and is also imperative to the assessor and municipal authorities in cases only where no appeal has disturbed it.

There remains but the one point and that is the question of what statutory provisions should be considered as imperative and what merely directory. In Maxwell on Statutes, 4th Ed. p. 557, that learned author says:

> "When a statute confers a right, privilege, or immunity, the "regulations, forms, or conditions which it prescribes for its acquisi- "tion, are imperative, in the sense that non-observance of any of them "is fatal."

That seems to be a correct statement of the law and applicable here with the result that non-observance by the Ford Motor Company in acquiring with certainty the information as to the amount of stock or shares held by its shareholders of the Roman Catholic faith renders it unable to give the notice, Form B, and is fatal. See Goodison Thresher Company vs. Tp. of McNab (1909) O.W.R., 25 p. 29.

The result is that the appeal of the Ford Motor Company of Canada, Limited, and that of The Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor is dismissed; the decision of the Court of Revision sustained and the notice, Form B, of the Ford Company is hereby set aside, vacated and declared null and void and of no effect and that all the assessments of the Ford Motor Company of Canada, Limited, in the City of Windsor be assessed, enrolled and rated for Public School purposes.

There will be no Order as to costs.

Dated this 19th day of March, 1938.

(sgd) G. F. Mahon,

A Judge of the County Court of the County of Essex.

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No. 2

Special Case stated for Court of Appeal By His Honour G. F. Mahon

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IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF THE ASSESSMENT ACT, formerly Revised Statutes of Ontario, 1927, Chapter 238, now Revised Statutes of Ontario 1937, Chapter 272, and IN THE MATTER OF THE SEPARATE SCHOOLS ACT, formerly Revised Statutes of Ontario, 1927, Chapter 328, now Revised Statutes of Ontario 1937, Chapter 362, and IN THE
10 MATTER OF APPEALS from the Court of Revision of the City of Windsor.

BETWEEN:

FORD MOTOR COMPANY OF CANADA LIMITED,
Appellant,

—AND—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Respondent;

AND BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC
20 SEPARATE SCHOOLS FOR THE CITY OF WINDSOR,
Appellant,

—AND—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Respondent.

Pursuant to the request made on the hearing before me on the above Appeals from the Court of Revision of the City of Windsor, for the purpose of an Appeal from my Judgment, to the Court of Appeal on the questions of law and the construction of the Statutes arising from the said Appeal, I hereby state the same in the form of a special case, pursu-
30 ant to Section 85 of The Assessment Act, Revised Statutes of Ontario, 1937, Chapter 272, formerly Section 84 of the Revised Statutes of Ontario, 1927, Chapter 238.

FACTS

Both of the Appellants appeal from the decision of the Court of Revision of the City of Windsor delivered on the 25th day of November

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Court of Appeal.

No. 2.
Special Case stated for Court of Appeal by His Honour G. F. Mahon. March 19, 1938.

—continued

1937, whereby the Appeal to the said Court of Revision of The Board of Education for the City of Windsor against the apportionment of assessment and the assessment of Ford Motor Company of Canada Limited in support of Separate Schools was allowed. The Appeals were heard together.

The Appeals were based on the following grounds, as set forth in both Notices of Appeal, viz;

1. The decision appealed from is not supported by the evidence.
2. The decision appealed from is wrong in law.
3. The decision is based upon an erroneous construction of Section 65 of the Separate Schools Act. 10
4. That the Court of Revision erred in assuming that in law the onus is upon the said Ford Motor Company of Canada, Limited to prove affirmatively that the percentage of its assessment for school purposes apportioned to the support of Separate Schools was not greater than the percentage of its total issued shares of its capital stock held by Roman Catholics.
5. That the Board of Education for the City of Windsor failed to prove that the apportionment exceeded the percentage or porportion permitted by Section 65 of the Separate Schools Act. 20
6. Such further or other grounds as counsel may advise.

In my references herein to the Separate Schools Act I shall refer to the Revised Statutes of Ontario 1937, Chapter 362, which came into force on the 24th day of January 1938. The statute law applicable to this Appeal was that as it stood at the time Ford Motor Company of Canada Limited gave the Clerk of the City of Windsor the Notice, Form B, set forth in the Revised Statutes, Chapter 362, Section 66. The Section was formerly Section 65. In the revision the Statutes applicable have been incorporated without change and for convenience I refer to them.

I found that on the 27th day of July 1937, the Directors of the 30 Appellant Company passed a Resolution instructing its Secretary to forward to the Clerk of the City of Windsor a Notice, Form B, requesting that 18% of its land, business and other assessments in the Municipality be entered, rated and assessed for Separate School purposes; that under date of July 29th, 1937, the Secretary of the said Appellant Company did forward Notice, Form B, to the Clerk of the City of Windsor directing that 18% of its assessment be rated for Separate School purposes, attached to which was a certified copy of the aforesaid Resolution of the Board of Directors. These were marked as Exhibit 3.

The Assessor made his assessment and apportioned 18% for the 40 purpose of Separate Schools.

Then followed the Appeal of the Board of Education for the City of Windsor to the Court of Revision against the assessment, Notice of which was duly served, and a certified copy thereof was produced and marked as Exhibit 4. The notice bears date the 30th day of September, 1937.

No question was raised or objection taken to the form of Notice, or Resolution, or as to time.

RECORD

Court of Appeal.

No. 2. Special Case stated for Court of Appeal by His Honour G. F. Mahon. March 19, 1938.

—continued

The appeal was heard by the Court of Revision and on the 25th day of November 1937, the decision of that Court, along with its reasons, was handed down in writing and a certified copy was produced and filed as Exhibit 6. That Court allowed the Appeal with the effect that the whole of the assessment of the Ford Company goes to the support of the Public Schools.

The decision of that Court was not unanimous. The minority member, who would have disallowed the Appeal, stated: "that in his opinion the basis of the Appeal should have been established by Subsection 4 of Section 65 of the Separate Schools Act"; the Section 65 mentioned being now Section 66 of the Revised Statutes of Ontario, 1937, Chapter 362.

It was the opinion of the majority members of the Court, according to the certificate filed (Exhibit 6); "That Subsection 4 does not invalidate Subsection 3 and providing that the letter of the law and spirit therein is adhered to in accordance with Subsection 3, then Subsection 4 would have been grounds for confirmation of the assessment. Such was not established by evidence under oath as previously recorded, not only was no effort made by the Corporation to ascertain the number of shares held by Roman Catholics but the Corporation had no knowledge of the proportion of shares held by Roman Catholics."

Against this decision Ford Motor Company of Canada Limited and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor appealed.

In addition to the aforementioned Exhibits filed was Exhibit 5, being a certified copy of Notice, Form 15, under Section 33b of the then Assessment Act, Revised Statutes 1927, Chapter 238, of the Ford Motor Company, filed in 1936 attached to which was the statutory declaration of the Secretary stating that the Ford Company was unable to ascertain which of its shareholders are Roman Catholic and Separate School supporters or the ratio which the number of shares or memberships held by Roman Catholics who are Separate School supporters bore to all the shares issued by the Corporation.

At the commencement of the hearing of the Appeal, after the production of the Exhibits and their identification by Mrs. Helen Weller of the City Clerk's Department of the City of Windsor, Mr. Aylesworth, counsel for the Ford Motor Company, pointed out that one of the main questions between the parties was as to where the burden rests as to the compliance or non-compliance of the Company with the provisions of the then Section 65 (now 66) of the Separate Schools Act and that without waiving his position that that onus was on the Respondent here to prove affirmatively that less than 18% of the shares were held by Roman Catholics and that that onus was not on the Appellant Company to prove that there were as many as 18% of its shares held by Roman Catholics, he was willing to bring out the facts on the point. To this Mr. Spencer assented.

Mr. Douglas B. Greig, Secretary of Ford Motor Company of Canada Limited, was then called and gave his evidence, some of the material parts of which were;

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—continued

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 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, exceed 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 were 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.

There were other facts brought out from Mr. Greig's evidence, but, I think the material facts are above recited. His evidence did show that directors in making the apportionment they did, acted in good faith and with every desire to be fair; they reasoned from a number of angles and made assessment comparisons and population comparisons, it is true many, if not most of them, after the Notice, Form B, had been filed with the City Clerk; and that the directors, in adopting the Resolution believed, from such information as was available to them, that the apportionment made to Separate Schools by the Resolution was a percentage of the Company's local assessment no greater than the percentage of its shares held by Roman Catholics. However, I found that the division they made was not based on actual knowledge and was only a guess or an estimate.

None of the parties proved what proportion of the stock or shares of the Company was held by Roman Catholics.

DECISIONS

I found that the apportionment made by the directors as per the above Resolution, was not based on actual knowledge and was only a guess or an estimate.

I further found that the Appeals of the Appellants should be dismissed, the decision of the Court of Revision sustained and the Notice, Form B, given by the Appellant Company, set aside, vacated and declared null and void and of no effect and that all the assessments of the Company in the City of Windsor should be assessed, enrolled and rated for
10 Public School purposes on the grounds that the Appellants had failed to prove before me affirmatively that the portion of the Company's local assessment rated and assessed in support of Separate Schools, pursuant to the Resolution adopted by the Directors of the Company, was no greater proportion of the whole of such assessments than the amount of the shares held by Roman Catholics bore to the whole amount of the shares and that the onus of proving this affirmatively was on those parties defending the assessment made pursuant to the company's resolution and on the further ground that conversely, the onus was not upon the party attacking the assessment, that is the Board of Education for the
20 City of Windsor to prove affirmatively that the portion of the Company's local assessment rated and assessed in support of Separate Schools pursuant to the Resolution adopted by the Directors of the Company was a greater proportion of the whole of such assessments than the amount of the shares held by Roman Catholics bore to the whole amount of the shares.

Were it not for some expressions of the Honourable Mr. Justice Middleton, reported in Re Goderich Roman Catholic Separate School Trustees and the Town of Goderich, 53 O.L.R. p. 79, at pages 80 and 81, I would have had little difficulty in deciding the onus referred to was on
30 the Corporation upon an Appeal by a ratepayer who feels himself aggrieved or adversely affected by the division made by the Corporation.

On a close study of this case as reported, it is manifest that his remarks apply to a situation where the assessor calls upon the Corporation to establish affirmatively that its allocation to Separate School taxes is not of greater proportion than that provided for in the Statue and where the Assessor, by reason of the Corporation or its directors not establishing its proof, ignored notice Form B entirely. Manifestly, the assessor is bound to follow the notice and divide the assessment if the notice has been duly filed with the Clerk. But, I cannot read into the
40 observations of Mr. Justice Middleton in that case, when he speaks of the presumption in favor of regularity and propriety of proceedings, that such applied to any one other than the Assessor, or, that it had any application to a ratepayer who has the right to appeal and does appeal.

The weight of authorities cited and all others I have read seems to point conclusively that the onus of proving, when challenged in appeal, that the designated percentage is *"not greater"* is on the corporation,

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which directs that a part of its assessments and ratings go to the support of Separate Schools.

If such were not the rule, it would leave matters entirely in the hands of the Corporation to make such decision as it deems fit, even not in accord with the facts, and thereby seriously wronging some classes of ratepayers. Obviously, a ratepayer feeling aggrieved would have no means of acquiring, with any degree of certainty, the proportion of shares or stock held by Roman Catholics and his appeal would be doomed to failure and the Corporation left to act at its own sweet will. I cannot think it was ever the intention of the draftsman of the Act or the Legislature to put a school ratepayer in such a helpless position. 10

Mr. Aylesworth, counsel for the Ford Motor Company, in a clever argument contends that generally speaking the onus is on the appellant and that assessment appeals are no exception; the appellant must prove his case and refers to Manning on Assessments, 1st Ed. (1928) page 258, where it says;

"Onus on appellant seeking to show he is not assessable. He must show that impeached assessment ought not to have been made, etc."

He refers to Anderson Logging Company vs His Majesty the King, 1925, C.L.R. p. 45. 20

In addition to onus of proof, he contends that there is a presumption of law that applies, and he cites Broom's Legal Maxims, 9th Ed. at page 611. Such, apparently, was the maximum that Mr. Justice Middleton refers to in Goderich vs. Goderich, above referref to, which is a presumption in favor of regularity and propriety of proceedings.

In my view, these cases with respect to the onus on assessment appeals are not applicable to the situation here. There is here no attack on the assessments of the properties. Neither the right to assess the Ford Motor Company nor the quantum of the assessment is attacked. It is in such cases that the onus that is alleged to be on the Appellant applies, if it applies at all. The appeal here is of an entirely different class and those cases are not in point here. 30

What constitutes the duty of a company desirous of exercising the permission given it by Section 65 is clearly set out in the Judgment of Mr. Justice Davies reported in Regina vs. Gratton, 50 S.C.R., page 606;

> "Now it is manifest that a company desirous of exercising the permission given by Section 93 must before exercising it have ascertained with certainty the religious persuasions or beliefs or connections of its various shareholders. In no other way could the statutory division the company was authorized to require of its assessable taxes be made and the grossest injustice might be done to one or other of the respective schools, public or separate, if in the absence of such knowledge any company should attempt to exercise its privilege." 40

Mr. Aylesworth contends that Regina vs. Gratton is not in point here for the reason that the Saskatchewan Statute, which was being considered in the Regina vs. Gratton case, uses the words "shall bear the same ratio

and proportion" while the Ontario Statute uses the words "shall not bear a greater proportion". Now it seems to me that there is no difference in principle in the two statutes of what is incumbent upon a company and that the course a company must pursue in order to exercise the permission given it by section 65 (now section 66) is that the Company must have ascertained with certainty the religious persuasions or beliefs, insofar as the Roman Catholic faith is concerned, of its various shareholders. If it is unable to do that, then it cannot exercise the permission.

10 There is a principle of law I think applicable to the question of the placing of the onus in this case and that has been stated to be that when the subject of the averment is peculiarly within the knowledge of the accused or defendant, the Crown or plaintiff does not have to prove the negative. The same principle is enunciated in another way, viz; "That where a party affirms the existence of a state of facts which is alleged to take his case out of the general rule, then generally speaking, the onus is on him to establish that state of facts." Bell vs. Grand Trunk Railway Company (1913) 48 S.C.R., 561; Pleet vs. Canadian Northern Quebec Railway Company (1921) 50 O.L.R., 223, at page 227; Taylor on Evi-
20 dence, 12th Ed. paras. 376 and 377.

Now the basic or general law is that school taxes are to be applied for the maintenance of Public Schools.

However, there are exceptions to this general law provided by the Separate Schools Act;

First: with respect to the assessment of the properties of individuals, whereby certain individuals under defined circumstances and subject to certain conditions and prerequisite formalities may require that assessment of the whole or part of his properties be enrolled, assessed and rated for Separate School purposes;

30 Second: that of a corporation, where likewise it, upon compliance with statutory provisions, may have its assessments for school purposes either wholly or in part enrolled, rated and assessed for Separate School purposes.

Now both of these cases are exceptions to the general or basic law pertaining to assessments for school purposes. Dealing with class number two, that of a corporation, with which we are herein concerned, I found, upon the grounds I have hereinbefore set forth, that, upon an appeal by a ratepayer affected by the Notice "B" given by the Corporation and the assessment, rating and enrollment made thereunder, the onus
40 is upon the Corporation to establish the fact that the share or proportion of its land, business or other assessments as set out in its requisition (Form B) does not bear a greater proportion to the whole of its assessments than the amount of the stock or shares so held bears to the whole amount of the stock or shares.

Applying the principle enunciated by the late Right Honourable Sir Louis Henry Davies, late Chief Justice of the Supreme Court of Canada, set forth in Regina vs. Gratton, above quoted, to this case; I found that

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Ford Motor Company of Canada Limited, desirous of exercising the permission given by the Statute of directing part of its assessment be entered, rated and assessed for the purpose of Separate Schools, should have first ascertained with certainty the extent of the shares or stock in its company held by Roman Catholics; and then must limit its proportion of its assessments for Separate School purposes so that such shall not bear a greater proportion of the whole of such assessments than the amount of stock or shares so held bears to the whole amount of stock or shares.

Whether this principle enunciated by the late Honourable Mr. Justice 10 Davies, above referred to, can be taken as a principle in point here—and in my view it can—it appealed to my reason and I adopted it not only as binding by reason of it being a decision of a Court superior to this, but, in addition, on my own judgment as a principle applicable to this case. It was adopted by the Ontario Railway and Municipal Board in the Fort Frances case hereinafter cited.

The difficulty that presented itself before the Court of Revision in this case, and which has arisen in other cases as to whether subsection 4 Section 65 (now Section 66), over-rides Subsection 3, has been dealt with in Re J. Simpson and Sons, Limited by the late Judge Denton, Senior 20 Judge of the County Court of the County of York, reported in 40 O.W.N., page 595, and in a Judgment of the Ontario Railway and Municipal Board in an appeal to it by the Roman Catholic Separate School Board of the Town of Fort Frances and the Municipality of Fort Frances, reported in 10th Annual Report of that Board in 1916, p. 174, I am in accord with the decisions in both these cases, which are to the effect that where the notice given under subsection 1 of section 65 (now section 66) offends against subsection 3, it is invalid and inoperative to effect its purpose. Subsection 4 is premised on the notice being regular and is also imperative to the assessor and municipal authorities in cases only where no appeal has 30 disturbed it.

There remains but the one point and that is the question of what statutory provisions should be considered as imperative and what merely directory. In Maxwell on Statutes, 4th Ed. p. 557, that learned author says:

"When a statute confers a right, privilege, or immunity, the regulations, forms or conditions which it prescribes for its acquisition, are imperative, in the sense that non-observance of any of them is fatal."

That seems to be a correct statement of the law and applicable here with the result that non-observance by the Ford Motor Company in ac- 40 quiring with certainty the information as to the amount of stock or shares held by its shareholders of the Roman Catholic faith renders it unable to give the notice, Form B, and is fatal. See Goodison Thresher Company v. Tp. of McNab (1909) O.W.R. 25, p. 29.

STATEMENT OF QUESTIONS

1. Upon the facts above set out and upon the true construction of

the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice 'B', given by the Corporation and the assessment, rating and enrollment made thereunder, the onus is upon the Corporation to establish the fact that the share or proportion of its land, business or other assessments as set out in its requisition (Form B) does not bear a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

RECORD — *Court of Appeal.* — No. 2. Special Case stated for Court of Appeal by His Honour G. F. Mahon. March 19, 1938. *—continued*

2. Upon the facts above set out and upon the true construction of
10 the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice 'B' given by the Corporation and the assessment, rating and enrollment made thereunder, the onus is not upon the ratepayer attacking the assessment to establish affirmatively the fact that the share or proportion of the Corporation's land, business or other assessments as set out in its requisition (Form B) bears a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

3. Upon the facts above set out and upon the true construction of
20 the statutes as applied to the facts so stated, was I right in holding that the Appeals of Ford Motor Company of Canada Limited and of the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, should be dismissed, the decision of the Court of Revision sustained and the Notice, Form B, delivered by Ford Motor Company of Canada Limited set aside, vacated and declared null and void and of no effect and that all the assessments of the Company in the City of Windsor be assessed, enrolled and rated for Public School purposes, unless it was affirmatively proved before me that the share or proportion of the Corporation's land, business or other assessment as set out in its requisition
30 (Form B) did not bear a greater proportion to the whole of its assessment than the amount of the stock or shares held by Roman Catholics bore to the whole amount of the stock or shares.

DATED at Windsor, Ontario, this 19th day of March, 1938.

(sgd) G. F. MAHON,
A Judge of the County Court of the County of Essex.

No. 3

Notice of Appeal to Court of Appeal for Ontario by Respondents

RECORD — *Court of Appeal.* — No. 3. Notice of Appeal. March 19, 1938.

NOTICE OF APPEAL

TAKE NOTICE that each of the above named appellants appeal by
40 way of stated case, pursuant to Section 85 of The Assessment Act, Revised Statutes of Ontario 1937, Chapter 272, formerly Section 84, Revised Statutes of Ontario 1927, Chapter 238, to the Court of Appeal from the Judgment of His Honour Judge G. F. Mahon, a Judge of the County

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Court of Appeal.

No. 3. Notice of Appeal. March 19, 1938.

—continued

Court of the County of Essex, delivered on the 19th day of March 1938, on the ground that the Learned County Court Judge erred in law and in the construction of the Statutes in deciding the question or questions stated by the Learned County Court Judge in the form of the special case hereto annexed.

DATED this 19th day of March, A.D. 1938.

BARTLETT, AYLESWORTH & BRAID,
1002 Canada Building, Windsor, Ontario,
Solicitors for the Appellant, Ford Motor Company of Canada Limited,

10

ARMAND RACINE, K.C.,
407 Canada Building, Windsor, Ontario,
Solicitor for The Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor.

TO: The Board of Education for the City of Windsor, Respondent, and to Norman L. Spencer, Solicitor for the Respondent.

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Court of Appeal.

No. 4. Reasons for Judgment of Court of Appeal. May 12, 1938.

No. 4

Reasons for Judgment of Court of Appeal for Ontario

20

C.A.

FORD MOTOR COMPANY OF CANADA LIMITED and THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR

vs.

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR.

Copy of Reasons for Judgment of Court of Appeal (Middleton, Masten and Fisher J.J.A.) delivered May 12th, 1938.

J. B. AYLESWORTH, K.C., and A. RACINE, K.C., for the appellants.

N. L. SPENCER, for the respondent, Windsor Public School Board.

30

MASTEN J.A.: These are separate appeals by the Ford Motor Company of Canada, Limited, and by the Board of Trustees of the Roman Catholic Schools for the City of Windsor, from the decision of His Honour Mahon J., a Judge of the County Court of the County of Essex, brought on a special case stated by him pursuant to section 85 of The Assessment Act, R.S.O. 1937, chapter 272. The respondent is the Public School Board of Education for the City of Windsor. The two appeals were heard together in the Court below and were argued together in this Court.

40

The assessment of the Ford Company, as it appears on the roll when returned by the assessor, allocated such assessment, for school purposes, 18% to the Roman Catholic Separate Schools and the balance to the Public Schools. The present respondents appealed to the Court of Revision against that allocation. Its appeal was allowed and the Public School Board was held entitled to 100% instead of 82%. From the decision of the Court of Revision both of the present appellants appealed to the County Judge and their appeal was dismissed. From that decision the present appeal is brought.

10 Owing to the fact that the reasons for the decision below are inextricably commingled with the statement of facts and questions of law submitted for the decision of this Court it is necessary to quote at length the whole statement which reads as follows:

(Here was quoted verbatim the special case stated by His Honour G. F. Mahon which for convenience is printed ante commencing on Page 9).

The statutory provisions governing the question in issue are found in Section 65 of the Separate Schools Act R.S.O. (1927) chapter 328, and read as follows:—

20 "(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 30 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.

(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 40 whole amount of the stock or shares."

The reasons submitted by the appellant may be summarized as follows:

1—Subsection (2) of section 65 directs that on receipt of the notice prescribed by s.s. 1 "The assessor shall thereupon enter the corporation as a separate school supporter on the assessment roll." Pursuant to the statute this was done by the assessor. The roll was returned by him; the apportionment of 18% to the Separate Schools was complete and the onus

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Court of Appeal.

No. 4.
Reasons for Judgment of Court of Appeal.
May 12, 1938.
—continued

of establishing that it was erroneous rested on the person who challenged the assessment roll as returned. The respondent failed to satisfy the onus which thus rested on it.

2—The special case, as stated, shews that the estimate of 18% made by the directors of the Ford Company concerning the proportion which their Roman Catholic shareholders bear to the total body of shareholders was made bona fide with due care and affords adequate prima facie evidence of the correctness and validity of the notice given by the Directors of the Ford Company.

3—The appeals to the Board of Revision and subsequently to the County Judge were by way of re-hearing on evidence then adduced before these respective tribunals, and the onus of adducing evidence to vary the roll as returned by the assessor rested on the respondent. "He who avers must prove."

4—The issue was one of fact, namely, did the apportionment of the total Ford Assessment in favour of separate schools (18 per cent.) bear a greater proportion to the whole of the company's assessment than the proportion which the shares of the company's stock held by Roman Catholics bore to the total issued shares of the company's stock, and the appellants submit that the onus of amending the roll and displacing the appellant's prima facie right by proving that the apportionment ought to be less than the 18 per cent. shown by the assessment roll as returned rested on the Public School Board, the respondent.

The respondent submits that the appellants have failed to bring this apportionment within the provisions of section 65 of the Separate Schools Act, R.S.O. 1927, cap. 328, in that they have failed to comply with an essential requirement of that section and they state this contention in the following terms:

"The directors of the Ford Motor Company had no actual knowledge of the proportion of stock held by Roman Catholics but only guessed or estimated the same, and having no knowledge are unable to state that 18 per cent. does not bear a greater proportion to the whole assessment than the amount of stock held by Roman Catholics bears to the whole amount of stock of the Corporation, and being unable to so state the notice is wholly ineffective." No question arises respecting the giving of the notice by the Ford Company as required by the statute nor respecting the regularity of the several proceedings taken by the assessor or on the appeals. Further, the appellants admit that prima facie every corporation shall be rated and assessed for the support of public schools and that this is the general or basic rule subject, however, to the provisions of section 65 of the Separate Schools Act.

Both the appellants and the respondent submit that the question here in issue has been determined in its favour by reported decisions of the Court. I am unable to accede to this contention and am of the opinion that this Court is not bound under the doctrine of *stare decisis* by any earlier legal decisions and that the question is fully open for consideration by us, but as the subject is one involving wide interests I shall at a

later stage discuss the cases referred to on the argument so far as they appear to have a bearing on the issue now before us.

However before doing so I desire to pause for a moment to make a general observation with respect to the question now before us. It is entirely obvious that the purpose of the Legislature in enacting section 65 of the Separate Schools Act was to provide for an equitable apportionment of the taxes payable by companies where some of their shareholders are supporters of public schools and others of their shareholders are supporters of separate schools. It is also obvious from the facts
10 appearing in the special case that it is impossible in most cases for the executive of public companies to state positively and absolutely the exact percentage of their shareholders who are Roman Catholics. It is also obvious that if under the provisions of the Act, as it now stands, it is a sine qua non that they should so state, then the present legislation is wholly ineffective to accomplish the purpose intended by the Legislature. It is therefore the duty of this Court, as it seems to me, to act on the maxim *ut res magis valeat quam pereat,* and if we can properly do so to give such an interpretation to this statute as will render it effective to accomplish the purpose intended. As to the application of this maxim to
20 the interpretation of statutes see Brooms Legal Maxims, 9th Ed. at page 362.

The judicial pronouncement principally relied on in the reasons of judgment of the learned County Court Judge and by the respondent in this appeal is Regina v. Gratton (1915) 50 S.C.R. 589. In that case the question related to the right of the trustees of the Separate School Board of Regina to avail themselves of the provision of section 93a of the Separate School Act of Saskatchewan and thereby to secure a certain proportion of the taxes of companies for the support of separate schools. The question was brought before the Court by an originating notice where-
30 upon it was directed that a special case should be agreed and settled stating the facts and submitting the questions to be answered by the Court. This was done.

Without detailing the particulars of the special case submitted I quote paragraphs 8 and 9 and the questions submitted to the Court.

"8. None of the companies mentioned in the said schedule "A" has been entered as a separate school supporter in the assessment roll of the said City in respect of any property, and no property of any of the said companies has been assessed in the name of the company for the purposes of the said separate school.

40 "9. The defendant school district claims that the school taxes payable by the said companies for the year 1913 should be divided between it and the plaintiff school district, as provided in section 93a of the 'School Assessment Act'; the plaintiff school district claims the whole of the taxes payable by said companies."

The questions for the opinion of the Court were:—

"(a) Had the Saskatchewan Legislature jurisdiction to enact section

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No. 4. Reasons for Judgment of Court of Appeal. May 12, 1938.

—continued

93a of the 'School Assessment Act', being section 3, chapter 36 of the statutes of Saskatchewan, 1912-1913?

(b) If question (a) be answered in the negative, has the defendant the right it claims to a portion of said taxes?

(c) If question (a) be answered in the affirmative, has the defendant the right it claims to a portion of the said taxes?

"The special case was tried before His Lordship Mr. Justice Brown who, in his judgment, on 16th May, 1914, held that public school supporters were prejudicially affected by section 93a, but that, nevertheless, the enactment was intra vires and that the respondent was entitled to the portion of the taxes which it claimed. The plaintiff (now appellant) appealed to the Supreme Court in banco which, by the judgment now appealed from, affirmed the decision of Brown J."

Section 93 of the Act there in question, after providing for notice to be given by the company to the municipality and for the assessment for school purposes in accordance with the notice, contains the following clause:—

"Provided always that the share or portion of the porperty of any company entered, rated or assessed in any municipality or in any school district 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 municipality or school district as the amount or proportion of the shares or stock of the company so far as the same are paid or partly paid up, held and possessed by persons who are Protestants or Roman Catholics, as the case may be bears to the whole amount of such paid or partly paid up shares or stock of the company." And section 93a of the Saskatchewan Act provided in part as follows:—

"93a. In the event of any company failing to give a notice as porvided in section 93 hereof the Board of Trustees of the separate school district may give to the company a notice in writing in the following form, or to the like effect, that is to say:—

The board of trustees of, separate school district No. of Saskatchewan hereby give notice that unless and until 'School Assessment Act', the school taxes payable by your company in respect of assessable property lying within the limits of the school district No. of Saskatchewan (naming the public school district in relation to which the separate school is established) will be divided between the said public school district and the said separate school district in shares corresponding with the total assessed value of assessable property assessed to persons other than corporations for public school purposes and the total assessed value of the assessable property assessed to persons other than corporations for separate school purposes respectively.

This notice is given in pursuance of section 93a of the 'School Assessment Act' as amended.

(2) Unless and until any company to which notice has been given as aforesaid gives a notice as provided in section 93 hereof the whole of

the assessable porperty of such company lying within the limits of the public school district shall be entered, rated and assessed upon the assessment roll for the public school district and all taxes so assessed shall be collected as taxes payable for the said public school district and when so collected such taxes shall be divided between the said public school district and the said separate school district in the proportions and manner and according to the provisions set out in the notice in the next preceding subsection mentioned."

The observation of Mr. Justice Davies relied on by the respondent 10 appears on page 606 of the report and reads as follows:

"Section 93a may have been drafted with the intention in the draftsman's mind of compelling all companies to give such notice. It provided that in the event of any company failing to do so an arbitrary division should be made of assessable school taxes payable by the company between the separate and the public schools, which division did not have any reference to the proportion of shares held in the company by Protestants or Roman Catholics.

"Now it is manifest that a company desirous of exercising the permission given by section 93 must before exercising it have ascertained 20 with certainty the religious persuasions or beliefs or connections of its various shareholders. In no other way could the statutory division the company was authorized to require of its assessable taxes be made and the grossest injustice might be done to one or other of the respective schools, public or separate, if in the absence of such knowledge any company should attempt to exercise its privilege."

The observation of the learned Justice is to be read in connection with and in relation to the facts of that case and the statute there under consideration.

It is necessary in considering the Gratton case to bear in mind the 30 foregoing statutory provisions and the questions which were asked the Court, as well as the following points: Was every company bound to give the notice mentioned in section 93? If it failed to do so did section 93a apply? Was section 93a within the constitutional powers of the Saskatchewan Legislature? If so did it apply and become effective in the existing circumstances? There had been no apportionment of the school assessment on any assessment roll and the question of onus which arises in the present case did not there arise. The Saskatchewan statute required as a condition precedent that the company should ascertain and state with positive certainty the precise proportion which the shares of 40 its Roman Catholic shareholders bore to the total number of shareholders. Further, there was nothing before the Court in the Gratton case to show that there was a single Roman Catholic shareholder in any of the companies who were before the Court.

The Supreme Court held that upon the proper construction of the Saskatchewan statute it was required that the exact and precise proportions of the shareholding interests should be ascertained by the company

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—continued

before any effective notice could be given, and that in the circumstances there appearing this was a sine qua non to the relief sought.

The Ontario Act is different and requires merely that the Company shall state in its notice that the proportion of its Roman Catholic shareholders *is not less* than the percentage named by it in the notice. The means by which it is to acquire this information are not prescribed by the statute. Under the Ontario statute it would seem to be entirely feasible that a majority of the directors of the company, having personal knowledge of the religious persuasion of a certain number of their Roman Catholic shareholders and that they were supporters of the separate 10 schools, should be able to state positively that the percentage is not less than that mentioned in the notice, and there seems to be nothing in the statute such as existed in the Saskatchewan case to prevent them from making use of such knowledge and certifying accordingly. It would have been entirely feasible for the respondent, the Public School Board, on the hearing before the Court of Revision or before the County Judge, to have subpoenaed the directors or officers of the Ford Company and to have cross-examined them as to the steps taken and the means of knowledge which they possessed enabling them to claim in their notice that 18 per cent. of the shares were held by Roman Catholic shareholders, supporters 20 of separate schools. These circumstances suffice to distinguish the Gratton case from the present appeal and lead me to the opinion that the observation of Mr. Justice Davies in the Gratton case does not constitute an authority binding on this Court.

The only legal decision directly involving the question here presented is in the judgment of my brother Middleton in the case of re Goderich Roman Catholic School Trustees and the Town of Goderich, (1922) 53 O.L.R. 79. That was a motion for a mandamus which the applicants made after allowing the time and opportunity for appealing to the Court of Revision and to the County Judge to elapse. It is true that that judgment 30 was reversed by the Court of Appeal on the ground that a mandamus ought not to be granted where there is or has been another adequate remedy, but the reasoning of my brother Middleton is not impugned by the Court of Appeal which proceeded solely on the rule of procedure above mentioned. In that case at page 81 he deals as follows with the exact question which arises on the present appeal.

"Upon this motion it appears that there is a stockholding by Roman Catholics, but the exact number of shares held by those who are Roman Catholics is not known, and cannot be readily ascertained. The company takes the position that the right to allocate is vested by the statute in the 40 directors, and that the provision of the statute cannot be invoked unless it is shewn affirmatively that what has been done is in contravention of the statutory limitation.

"In this case the majority evidently favour public schools, and the allocation of a small portion, amounting to about $200. to the separate schools is a concession by a majority to a minority, and I think it may well be determined that that which is done by the directors, unquestion-

ably in good faith, should not be disregarded unless it is shown affirmatively to be unwarranted. This cannot be shewn. There is not, in the material, anything to suggest that there has been any transgression of the statutory limit, and I think the presumption in favour of regularity and propriety of proceedings justifies the conclusion at which I have arrived, that the order should be granted.

"There is no hint in the statute of any intention that the notice to be given should be supplemented by any proof. Much less is there any suggestion of the right of the assessor or the council to enter upon any
10 inquiry. The notice once given, it becomes the duty of the assessor to act upon it."

The views so expressed by him are in accordance with and supplement the grounds of appeal urged by the present appellants, both of which commend themselves to me and lead to the conclusion that this appeal should be allowed.

Counsel for the respondent also presented by leave of the Court a decision of the Ontario Railway and Municipal Board pronounced in 1915 in an appeal to it by the Roman Catholic Separate School Board of Fort Frances. The decision of the Board is, of course, entitled to the
20 greatest respect as an argument, but is not binding upon this Court, and as in that case there had been no entry upon the assessment roll in favour of the supporters of the Separate Schools and as it appears from the report that no evidence had been adduced and as the decision was based upon the observation of Mr. Justice Davies in the Gratton case, further discussion by way of distinguishing it seems to be unnecessary.

The views above indicated are supported by the decision of the late Judge Denton reported in 40 O.W.N. at page 595, under the name of Re J. Simpson and Sons, Limited. In that case the Board of Directors of the company had served a notice requiring that 100 per cent. of the
30 assessment should go in support of separate schools. An appeal was made by the Public School Board claiming that as Mrs. Simpson, who was an Anglican and a supporter of public schools owning in her own right 1160 shares of a total of 10,548 shares of the stock of the company the assessment should be proportioned so that the proper proportion having regard to the foregoing fact might go for the benefit of public schools. The appeal was accordingly allowed. The case appears to assume that the notice given by the Board of Directors of the company was valid and effective (even though mistaken and incorrect) save in so far as it was modified or varied to accord with the *actual facts shown by the appellant,*
40 *the Public School Board*, and it would indicate that the onus was upon the Public School Board to attack the assessment roll and vary the proportion as settled in it.

I have examined the cases of Harling v. Mayville (1871) 21 C.P. (Ont. 499), and Re Ridesdale & Amherstburgh (1862) 22 U.C.Q.B. 122, cited by the respondent, but I am unable to perceive that they have any bearing on the proper interpretation of our existing legislation.

My conclusions may be summarized as follows:—

RECORD

Court of Appeal.

No. 4. Reasons for Judgment of Court of Appeal. May 12, 1938. —continued

(1) The statute ought, if possible, to be interpreted and applied so as to effectuate its manifest intention, viz., to provide for an equitable apportionment of public and separate school taxes payable by companies having Roman Catholic shareholders who are supporters of separate schools.

(2) The assessor is bound by the statute to assess and return his roll apportioning the company's assessment on receiving a proper notice from the company requiring him so to do.

(3) If there is no appeal against the apportioned assessment as returned by the assessor it stands good, and taxes are to be collected accordingly. The statute makes the assessor's roll as returned prima facie valid. 10

(4) The onus of displacing the prima facie situation rests on the attacking party as is illustrated by the Simpson case in 40 O.W.N. 595, but this onus was not discharged in the present case.

(5) Practical means of displacing such prima facie case existed by summoning and cross-examining the directors or officers of the Ford Company on the hearing before the Court of Revision or before the Court Judge.

(6) For these reasons the appeal should be allowed with costs, and the questions submitted by the learned County Court Judge answered in accordance with these reasons. 20

MIDDLETON, J.A.
FISHER J.A. } I agree.

RECORD

Court of Appeal.

No. 5. Judgment. May 12, 1938.

No. 5

Formal Judgment of Court of Appeal for Ontario

IN THE SUPREME COURT OF ONTARIO

The Honourable Mr. Justice Middleton The Honourable Mr. Justice Masten The Honourable Mr. Justice Fisher	Thursday, the 12th day of May, 1938.

30

THIS IS TO CERTIFY that upon motions made unto this court on the 22nd day of April, 1938, by counsel on behalf of the above-named Appellants upon a case stated in each of the above-mentioned appeals to this Court by His Honour G. F. Mahon, a Judge of the County Court of the County of Essex, dated the 19th day of March, 1938, wherein the questions asked were as follows:

1. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice "B" given by the Corpora- 40

tion and the assessment, rating and enrollment made thereunder, the onus is upon the Corporation to establish the fact that the share or proportion of its land, business or other assessments as set out in its requisition (Form B) does not bear a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

2. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice "B" given by the Corporation and the assessment, rating an enrollment made thereunder, the onus is not upon the ratepayer attacking the assessment to establish affirmatively the fact that the share or proportion of the Corporation's land, business or other assessments as set out in its requisition (Form B) bears a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

3. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts so stated, was I right in holding that the appeals of Ford Motor Company of Canada, Limited, and of the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, should be dismissed, the decision of the Court of Revision sustained and the Notice, Form B, delivered by Ford Motor Company of Canada, Limited, set aside, vacated and declared null and void and of no effect and that all the assessments of the Company in the City of Windsor be assessed, enrolled and rated for Public School purposes, unless it was affirmatively proved before me that the share or proportion of the Corporation's land, business or other assessment as set out in its requisition (Form B) did not bear a greater proportion to the whole of its assessment than the amount of stock or shares held by Roman Catholics bore to the whole amount of the stock or shares;

in the presence of Counsel for the Respondent, upon hearing read the said case and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said motions do stand over for judgement, and the same having this day come on for judgment,

1. THIS COURT DID ORDER that the answer to question (1) stated in the said case should be in the negative.

2. AND THIS COURT DID FURTHER ORDER that the answer to question (2) stated in the said case should be in the negative.

3. AND THIS COURT DID FURTHER ORDER that the answer to question (3) stated in the said case should be in the negative.

4. AND THIS COURT DID FURTHER ORDER that the Respondent do pay to the Appellants their costs of and incidental to these appeals forthwith after taxation thereof.

(sgd) D'Arcy Hinds,
Registrar, S.C.O.

RECORD
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Court of Appeal.
—
No. 6.
Order Enlarging Time for Appealing.
June 28, 1938.

No. 6

Order Enlarging Time for Appealing to Supreme Court of Canada

Stamps
$1.30
SEAL.

IN THE SUPREME COURT OF ONTARIO

The Honourable Mr. Justice Fisher,
In Chambers Tuesday, the 28th day of June, 1938.

UPON the application of the Board of Education for the City of Windsor, and upon reading the notice of motion herein, the Order of the Court of Appeal for Ontario dated the 12th day of May, 1938, the Reasons therefor, the affidavit of Norman L. Spencer filed and the exhibit therein referred to, in the presence of Counsel for Ford Motor Company of Canada Limited and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, and upon hearing what was alleged by Counsel aforesaid. 10

1. IT IS ORDERED that the time for serving Notice of Appeal to the Supreme Court of Canada be and the same is hereby extended until the 5th day of July, 1938.

2. AND IT IS FURTHER ORDERED that the costs of this application be costs to the ultimately successful party. 20

(sgd) D'Arcy Hinds,
Reg. S.C.O.

Entered O.B. 168 Page 258-259
June 28th, 1938.

RECORD
—
Court of Appeal.
—
No. 7.
Notice of Appeal to Supreme Court of Canada.
June 29, 1938.

No. 7

Notice of Appeal to Supreme Court of Canada

TAKE NOTICE that by virtue of the Order of the Honourable Mr. Justice Fisher made on Tuesday the 28th day of June, 1938, the Board of Education for the City of Windsor, the above named Respondent, hereby appeals to the Supreme Court of Canada from the Order pronounced in this matter by this Court on the 12th day of May 1938 upon a case stated in each of the above mentioned appeals to this Court by His Honour G. F. Mahon, a Judge of the County of Essex dated the 19th day of March 1938 whereby the questions submitted for the opinion of this Court and in the said Order more particularly set forth were answered in the negative. 30

DATED at Windsor, Ontario, this 29th day of June, A.D. 1938.

Norman L. Spencer,
704 Guaranty Trust Bldg., Windsor, Ont.
Solicitor for the above named Respondent.

TO Messrs. Bartlet, Aylesworth & Braid,
Canada Bldg., Windsor, Ont.
Solicitors for the above named Appellant,
Ford Motor Company of Canada, Limited.
Armand Racine, Esq., K.C.,
Canada Bldg., Windsor, Ont.
Solicitor for the above named Appellant,
The Board of Trustees of the Roman Catholic
Separate Schools for the City of Windsor.

RECORD — *Court of Appeal.* — No. 7. Notice of Appeal to Supreme Court of Canada. June 29, 1938. —*continued*

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No. 8

Order Allowing Security

RECORD — *Court of Appeal.* — No. 8. Order Allowing Security. September 10, 1938.

Law Stamps
$1.30

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MIDDLETON, IN CHAMBERS — Saturday, the 10th day of September, 1938.

20

UPON THE APPLICATION of the above named Respondent and upon reading the affidavit of Norman L. Spencer filed, and upon hearing what was alleged by Counsel for Ford Motor Company Limited, no one appearing for The Board of Trustees of The Roman Catholic Separate Schools for the City of Windsor, although duly served as appears from the Notice of Motion filed.

1. IT IS ORDERED that the sum of ($500.00) Five Hundred Dollars paid into the Canadian Bank of Commerce, as appears by deposit certificate No. 29501, duly filed, as security that the Respondent will effectually prosecute its appeal from the order of the Court of Appeal for Ontario dated the 12th day of May 1938 and will pay such costs and damages as may be awarded against it by the Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

30

2. AND IT IS FURTHER ORDERED that the costs of this application be costs to the ultimately successful party.

Approved
Aylesworth & Co.
for Bartlet & Co.

(sgd) W. E. Middleton J.A.,
(sgd) Chas. H. Smyth,
Assistant Registrar, S.C.O.

40

Entered O.B. 168 page 477-8
September 13, 1938.
H.F.

RECORD

Supreme Court of Canada.

No. 9. Reasons for Judgment, Chief Justice. October 30, 1939.

No. 9

Reasons for Judgment of the Right Honourable, the Chief Justice of Canada

BEFORE:

THE CHIEF JUSTICE AND RINFRET, CROCKET, DAVIS AND KERWIN J.J.

THE CHIEF JUSTICE: Mr. Justice Masten states in his judgment: The appellants admit that prima facie every corporation shall be rated and assessed for the support of public schools and that this is the general or basic rule subject, however, to the provisions of section 65 of the Separate Schools Act. 10

Section 65 (now s. 66) is in these words:

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. 20

(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. 30

(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) 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. 40

(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. The appeal came before the Ontario Court of Appeal by way of a stated case and it is convenient to set forth the material facts in the words of the case:

"The appeal was heard by the Court of Revision and on the 25th day of November, 1937, the decision of that Court, along with its reasons, was handed down in writing and a certified copy was produced and filed as Exhibit 6. That Court allowed the appeal with the effect that the whole of the assessment of the Ford Company goes 10 to the support of the public schools.

The decision of that Court was not unanimous. The minority member, who would have disallowed the appeal, stated "that in his opinion the basis of the appeal should have been established by subsection 4 of section 65 of the Separate Schools Act;" the section 65 mentioned being now section 66 of the Revised Statutes of Ontario, 1937, chapter 362.

It was the opinion of the majority members of the Court, according to the certificate filed (Exhibit 6): "That subsection 4 does not invalidate subsection 3 and providing that the letter of the law and 20 the spirit therein is adhered to in accordance with subsection 3, then subsection 4 would have been grounds for confirmation of the assessment. Such was not established by evidence under oath as previously recorded, not only was no effort made by the corporation to ascertain the number of shares held by Roman Catholics but the corporation had no knowledge of the proportion of shares held by Roman Catholics.

Against this decision Ford Motor Company of Canada Limited and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor appealed.

30 In addition to the aforementioned exhibits filed was exhibit 5, being a certified copy of notice, form 15, under section 33b of the then Assessment Act, Revised Statutes 1927, chapter 238, of the Ford Motor Company, filed in 1936, attached to which was the statutory declaration of the Secretary stating that the Ford Company was unable to ascertain which of its shareholders are Roman Catholic and Separate School supporters or the ratio which the number of shares or memberships held by Roman Catholics who are Separate School supporters bore to all the shares issued by the Corporation.

At the commencement of the hearing of the appeal, after the produc- 40 tion of the exhibits and their identification by Mrs. Helen Weller of the City Clerk's Department of the City of Windsor, Mr. Aylesworth, counsel for the Ford Motor Company, pointed out that one of the main questions between the parties was as to where the burden rests as to the compliance or non-compliance of the Company with the provisions of the then section 65 (now 66) of the Separate Schools Act and that without waiving his position that that onus was on the respondent here to prove affirmatively that less than 18% of the shares were held by Roman Catholics and that

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Supreme Court of Canada.

No. 9. Reasons for Judgment, Chief Justice. October 30, 1939.

—continued

that onus was not on the appellant company to prove that there were as many as 18% of its shares held by Roman Catholics, he was willing to bring out the facts on the point. To this Mr. Spencer assented.

Mr. Douglas B. Greig, Secretary of Ford Motor Company of Canada Limited, was then called and gave his evidence, some of the material parts of which were:

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 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 the 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, exceed 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 were 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.

There were other facts brought out from Mr. Greig's evidence, but, I think the material facts are above recited. His evidence did show that directors in making the apportionment they did, acted in good faith and with every desire to be fair; they reasoned from a number of angles and made assessment comparisons and population comparisons, it is true many, if not most of them, after the notice, Form B, had been filed with the City Clerk, and that the directors, in adopting the Resolution believed, from such information as was available to them, that the apportionment made to Separate Schools by the Resolution was a percentage of the Company's local assessment no greater than the percentage of its shares

held by Roman Catholics. However, I found that the division they made was not based on actual knowledge and was only a guess or an estimate.

None of the parties proved what proportion of the stock or shares of the Company was held by Roman Catholics."

With greatest respect, I find myself unable to concur in the application that has been made of this statute by the Court of Appeal for Ontario. My views can be stated very briefly.

I am unable to escape the conclusion that section 66 imposes a strict limit upon the proportion of its land and business or other assessments which can be designated by the rate-payer corporation in its notice for assessment for the purposes of the Separate School in the municipality. Subsection 3 appears to me to impose a prohibition directed to the corporation against designating for such purposes a proportion of its land, business or other assessments greater than the proportion which the stock or shares held by Roman Catholics bears to the whole amount of its stock or shares.

The ratepayer corporation is not a public body, but in giving the notice authorized by section 66, it is exercising a statutory authority bestowed upon it in the public interest and for a public purpose. In exercising such authority it is affected by certain obligations which govern a public body invested with powers the execution of which may prejudicially affect the rights and interests of others. It is bound to act within the limits of the power conferred, and conformably to the procedure laid down by the statute. It is bound to exercise the power in good faith for the purposes for which the power is given, that is to say, for the purposes contemplated by the statute; and, in putting the power into effect (following the procedure laid down) it is bound to act reasonably. (Westminster v. London & N.W. Rly. Co., 1905 A.C. at p. 430)).

With great respect, I think this statute contemplates a notice given, and only given, after the ratepayer corporation has ascertained as a fact that the proportion of its assessment directed to be applied for separate school purposes is not greater than the proportion defined by subsection 3. Unless that condition be fulfilled, the corporation cannot, in my opinion, be said to be exercising the statutory power in conformity with the directions of the statute.

Now, nobody suggests that in this case there has been on the part of those acting for the ratepayer corporation any conscious dereliction from duty, or any motive but an honest desire to conform to the directions of the statute; but, having considered with the greatest care the material before them as disclosed by the findings of the learned judge, I am constrained to the view that they had not before them any substantial foundation for the conclusion of fact which was the essential condition of a valid notice—in the absence of which, that is to say, the notice could not be given conformably to the tenor of the statute.

It follows, I think, that in giving the notice the corporation was not acting reasonably in exercise of the power conferred; and that the notice was, therefore, not a valid exercise of their power. The learned judge

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Supreme Court of Canada.
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No. 9.
Reasons for Judgment, Chief Justice.
October 30, 1939.
—*continued*

considered that the persons acting for the Ford Company proceeded upon a guess or an estimate. There is much elasticity in the employment of the word "estimate", but it is very clear to me that, as I have already implied, they had not before them anything that could lead them beyond the region of supposition.

No abstract criterion can be laid down for weighing the probative force of facts. It is sufficient that in this case there was no solid basis for a conclusion that the statutory condition of a valid notice was, in fact, fulfilled.

The view I have expressed would not preclude the Corporation ratepayer, or, I think, the Separate School Board, from establishing before the Court of Revision that the conditions under which the notice could validly be given did in fact exist; but there was no such evidence in this case. 10

Question No. 3 ought, therefore, to be answered in the affirmative and that answer disposes of the controversy.

The appeal should be allowed and the judgment of Judge Mahon restored.

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Supreme Court of Canada.
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No. 10.
Reasons for Judgment, Mr. Justice Crocket.
October 30, 1939.

No. 10

Reasons for Judgment of the Honourable Mr. Justice Crocket 20

CROCKET, J.: As I fully concur in the reasons for the unanimous judgment of the Ontario Court of Appeal (Masten, Middleton and Fisher, J.J.A.), as given by Masten, J.A., as well as in those of my brother Kerwin here, I would dismiss this appeal with costs.

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Supreme Court of Canada.
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No. 11.
Reasons for Judgment, Mr. Justice Davis.
October 30, 1939.

No. 11

Reasons for Judgment of the Honourable Mr. Justice Davis

PRESENT:

THE CHIEF JUSTICE AND RINFRET, CROCKET, DAVIS AND KERWIN, JJ.

DAVIS, J.: I am of the same opinion as my Lord, the Chief Justice. The fact that the case is one of general importance leads me to state fully the reasons which move me to the same conclusion. 30

The appeal raises nothing but a question of law. The facts found by the County Judge are not subject to any right of appeal; we are entirely bound by those facts. The only question open for determination upon the stated case under the Assessment Act is the question of pure

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Supreme Court of Canada.

No. 11.
Reasons for Judgment,
Mr. Justice Davis.
October 30, 1939.

—continued

law: whether the County Judge as a matter of law upon the facts as he found them, reached a proper conclusion.

The point in issue in the case is a very simple one, turning on the interpretation and application of the words of sec. 66 of The Separate Schools Act, R.S.O. 1937, ch. 362. For convenience I shall refer throughout to the provisions in the present revised statutes of Ontario (1937) because there has been no change in the relevant provisions in force at the dates material in this case. Under said sec. 66 a corporation may require the whole or any part of its land, business or other assessments
10 in any municipality in which a separate school exists, to be rated and assessed for the purposes of separate schools rather than for the purposes of public schools, but "unless all the stock or shares" in the corporation "are held by Roman Catholics", the share or portion of said land, 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 held by Roman Catholics bears to the whole amount of the stock or shares of the corporation.

The respondent Ford Motor Company of Canada Limited in July, 1937, sought to have 18 per cent. of its land, business and other assess-
20 ments in the City of Windsor rated and assessed for separate school purposes under and by virtue of the statutory provision above mentioned, by delivering to the clerk of the municipality a notice (Form B) as provided by subsection (1); the assessor thereupon, in accordance with subsection (2), entered the company as a separate school supporter in the assessment roll in respect of 18 per cent. of its land, business and other assessments designated in the notice. The Board of Education for the City of Windsor complained of this assessment (by virtue of sec. 31 of The Assessment Act, R.S.O. 1937, ch. 272) and raised the question by way of appeal to the Court of Revision, of the right of the company to divert
30 this portion of its school rates from the public schools to the separate schools. The Court of Revision by a majority agreed with the Board of Education's contention that the Company had not brought itself within the statute, and accordingly set aside the assessment in respect of separate schools. On an appeal being taken by the Company and by the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor (by separate notices of appeal, to which I shall later refer) to the County Judge, he, by force of subsec. (2) of sec. 78 of The Assessment Act, was entitled to deal and did deal with the appeals as "in the nature of a new trial" and all parties were entitled to adduce further
40 evidence in addition to that heard before the Court of Revision. Sec. 83 of The Assessment Act provides that the decision and judgment of the County Judge "shall be final and conclusive in every case adjudicated upon", except that in the case of the assessment of a telephone company an appeal shall lie from such decision and judgment to the Ontario Municipal Board. Sec. 85, however, gives a right of appeal to the Court of Appeal from the judgment of the County Judge "on a question of law or the construction of a statute". Subsection (2) of sec. 85 provides that

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No. 11.
Reasons for Judgment, Mr. Justice Davis.
October 30, 1939.

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any party desiring so to appeal to the Court of Appeal shall, on the hearing of the appeal by the Judge, request the Judge to make a note of any such question of law or construction and to state the same in the form of a special case for the Court of Appeal. That was the procedure adopted in this case.

The County Judge found, as was in fact admitted, that all the shares of the company were not held by Roman Catholics. That being so, the question of fact then was whether or not 18 per cent. was a greater proportion of the whole of the company's assessments than the amount of the shares of the company held by Roman Catholics bore to the whole amount of the shares of the Company. The right of a company under the statute to divert a portion of its school rates from public schools to separate schools (where all the shares are not held by Roman Catholics) is limited, as I have said, to a proportion "not greater than" the amount of the shares of the company held by Roman Catholics bears to the whole amount of the shares of the company. Prior to the amendment made in 1913 (3-4 Geo. V, 1913, Ch. 71,sec. 66 (3))the words were "shall bear the same ratio and proportion" (See 4 Edw. VII, 1904, ch. 24, sec. 6). The amendment permitted any part of a company's taxes to be diverted to separate schools so long as it "shall not bear a greater proportion". It is a simple mathematical calculation to determine the maximum statutory percentage once two amounts are ascertained—the amount of the shares in the company held by Roman Catholics and the total amount of the shares of the company. It became unnecessary, however, under the amendment that the exact ratio and proportion be ascertained, or if ascertained be diverted. To whatever extent the company ascertained the amount of shares held by Roman Catholics, to that extent the amendment gave the power to divert. The taxes that may be diverted must not bear "a greater proportion"; they may be less, but they cannot be greater. But one cannot determine any proportion at all until he ascertains, first, the total amount of the shares of the company, and second, some amount of those shares that is held by Roman Catholics.

In this case the parties gave all the evidence they could to the County Judge and he found as a fact that no one knew what amount of shares was held by Roman Catholics. The evidence of the Secretary of the Company, accepted by the County Judge, was that the directors "did not enquire from the shareholders as to their religious faith". The County Judge expressly found as a fact "that the division they (i.e., the directors) made was not based on actual knowledge and was only a guess or an estimate", and he sustained the decision of the Court of Revision.

The Company and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, by way of a stated case on a question of law or construction of statute, appealed to the Court of Appeal. The two appeals are said to have been heard together in the Court of Appeal as they had been before the County Judge. I cannot see any reason for both the company and the Separate School Board appealing separately, but that only goes to the question of costs. The Court of

Appeal took a different view of the matter from that taken by the Court of Revision and by the County Judge, and allowed the appeals. From that Judgment, to which I shall presently refer, the Board of Education appealed to this Court.

Upon the facts as found by the County Judge (and there was not a suggestion that if an appeal had lain on matters of fact as well as on matters of law the findings of fact could have been in any way impeached) I confess that I cannot see any really arguable point of law. If the company does not ascertain any number of shares held by Roman Catholics, 10 how can the Court say that 18% is "not greater than" the maximum proportion allowed by the statute?

Much of the argument was directed to the question of onus and the first two questions in the case stated by the County Judge at the request of the respondents are directed to the question of onus. But all the available facts were frankly given to the tribunal of fact (i.e., the County Judge), and the facts have been found and there is no right of appeal thereon. If no evidence had been tendered to the County Judge on the hearing before him, or if the evidence had been so evenly balanced that the County Judge could come to no conclusion on the facts, the onus or 20 burden of proof might have operated as a determining factor of the whole case; Robins v. National Trust Co., 1927 A.C., 515, 520. But that was not the case here. The learned County Judge was not upon the whole evidence judicially satisfied that 18 per cent. was not a greater proportion than that permitted by the statute. It is quite unnecessary for the Court to answer the first two questions submitted in the stated case. The third question is the substance of the matter, i.e., was the County Judge right in holding that the appeals of the company and of the Roman Catholic Separate Schools Trustees should be dismissed, the decision of the Court of Revision sustained and the notice, Form B, delivered by the company, 30 set aside, unless it was affirmatively proved that the percentage of the company's assessments (i.e., 18 per cent.) set out in the requisition (Form B) did not bear a greater proportion to the whole of its assessments than the amount of the shares held by Roman Catholics bears to the whole amount of the shares of the company? Agreeing as I do with the conclusion of the learned County Judge upon the facts as he found them, I would answer the third question in the affirmative.

But there was so much said during the argument on the question of onus that it may be desirable to say that in any case where onus becomes of importance the problem of deciding upon whom the onus rests depends 40 upon the nature and circumstances of the particular question involved. There is no single principle or rule which will afford a test in all cases for ascertaining the incidence of the burden. A statement of general application appears to be that the burden of proof lies upon the party who substantially asserts the affirmative; but even this statement as a working rule presents its own difficulties in particular cases because when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment may be taken as true unless dis-

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proved by that party. And yet this statement again cannot be said to furnish a satisfactory general working rule. The article on Evidence in the Hailsham edition of Halsbury's Laws of England (Vol. XIII) which was under the editorship of Lord Roche, has left untouched the carefully guarded statement in the article on Evidence, in the first edition, which was under the joint editorship of Mr. Hume-Williams and Mr. Phipson. The law was there stated as at October, 1910, and the unchanged statement to which I have reference, in the edition of 1934, is paragraph 615 (2) at page 545, as follows:

(2) "Where the truth of a party's allegation lies peculiarly within the knowledge of his opponent, the burden of disproving it lies upon the latter. 10

The principle of this exception has frequently been recognized, both by the Legislature and in decided cases. On the other hand, its validity has been several times challenged by high authorities, and having regard to this conflict of opinion, the following statement of the point is, perhaps, the one which is the least open to objection:— "In considering the amount of evidence necessary to shift the burden of proof, the Court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the parties 20 respectively."

I cannot appreciate the argument that when a company has been given a statutory right to divert taxes from one purpose to another provided the division "shall not bear a greater proportion" than that stipulated in the statute, and the company puts in an arbitrary figure without any actual knowledge of the facts, it falls upon those adversely affected to establish the two essential facts that are necessary in order that the simple mathematical calculation can be made to determine the maximum stipulated statutory proportion beyond which the taxes are not to be diverted, i.e., first, the total amount of the stock or shares of the company, 30 and secondly, the amount of the stock or shares held by Roman Catholics. If that is so, it would only be necessary for any company to put in any arbitrary figure it liked and then to say to any person prejudicially affected and complaining that the division of taxes occasioned by such arbitrary figure must stand until the person who complains is able to prove affirmatively against the company (which itself has the information in its own keeping, if any one has) that the arbitrary percentage is in fact greater than the proportion fixed and permitted by the statute.

While in my opinion, as already expressed, the question of onus does not arise in this case, if you had a case where onus became of importance 40 it would, in my view, rest upon the party seeking the benefit of the special statutory provision. Even before the days of Confederation, the same sort of problem with which we have to deal here arose in Upper Canada with respect to school assessments of individuals. The principal school legislation of the province of Ontario may be traced from the form in which it appared in the Consolidated Statutes of Upper Canada, 1859, ch. 64, through various consolidations. In 1862, in the case of Ridsdale

and Brush, 22 U.C. Q.B., 122, the Court of Queen's Bench, composed of McLean, C.J., Burns and Hagarty, JJ., delivered judgment in which Burns, J., speaking for the Court, at p. 124, said:

> "We take it to be perfectly plain, from reading the Common School Act, Chapter 64 of the Consol. Stats. of U.C., chapter 65, providing for separate schools, and chapter 55, the Assessment Act, that the Legislature intended the provisions creating the common school system, and for working and carrying that out, were to be the rule, and that all the provisions for the separate schools were only exceptions to the rule, and carved out of it for the convenience of such separatists as availed themselves of the provisions in their favour."

Gwynne, J., in Harling v. Mayville (1871) 21 U.C. C.P., 499, approved the language of Burns, J., in the Ridsdale case and said, at p. 511:

> "I think that the party claiming exemption from the general rule of prima facie liability to common school rates should show that the trustees of his separate school have taken the steps pointed out by the law to procure for the separatists the desired exemption."

The language of Burns, J., in the Ridsdale case was again referred to by Chief Justice Hagarty (he had been a member of the Court in that case) in Free v. M'Hugh (1874) 24 U.C. C.P., 13, at p. 21. The effect of the judgments in those cases is that it lies on the person claiming exemption as a separatist from the general liability for the support of public schools to prove those exceptional matters that take him out of the general rule. I can see nothing inconsistent with that long established view of exemption from public school rates in the statement of Lord Haldane in the Tiny case, 1928 A.C., at p. 387, that "the separate school was only a special form of common school".

School legislation in Ontario has from earliest times, and continues so down to this date, provided under certain circumstances for Protestant as well as for Roman Catholic separate schools. Part I, being the first fifteen sections of the Separate Schools Act, R.S.O. 1937, ch. 362, provides the conditions on which one or more separate schools for Protestants and one or more separate schools for coloured people may be established in any township, city, town or village in the province. Part II provides for separate schools for Roman Catholics. The public schools are governed by the Public Schools Act, R.S.O., 1937, ch. 357. By sec. 5,

> "All schools established under this Act shall be free public schools, and every person between the ages of five and twenty-one years, except persons whose parents or guardians are separate school supporters, and except persons who, by reason of mental or physical defect, are unable to profit by instruction in the public schools, shall have the right to attend some such school in the urban municipality or rural school section in which he resides."

Counsel for the respondents pressed upon us another argument, quite independent of the question of onus. They said that the proportion or percentage in this case was "a reasonable probability" made in good faith by the directors as a fair estimate, and that the statute should be so

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interpreted by the Court, as in fact it was by the Court of Appeal, to allow any such reasonable probability to stand as a satisfactory compliance with the statute, upon the ground that the manifest intention of the statute was to provide for an equitable apportionment of public and separate school taxes payable by companies having Roman Catholic shareholders. But the language of the statute itself is perfectly plain and the Court cannot relieve itself of its duty to apply it. There is nothing in the language that suggests a place for either an estimate or a guess. Sir Louis Davies (then Davies, J.) in this Court in Regina Public School District v. Gratton, 50 S.C.R., 589, in discussing a Saskatchewan statute allowing an apportionment between public and separate schools somewhat similar to the statute before us (except that the share to be assessed for separate school purposes should bear "the same ratio and proportion" to the whole property of the company as the proportion of the shares of the company held by the Protestants and Roman Catholics respectively bore to the whole of the shares of the company) said, at p. 606:

> "Now it is manifest that a company desirous of exercising the permission given by section 93 must before exercising it have ascertained with certainty the religious persuasions or beliefs or connections of its various shareholders. In no other way could the statutory division the company was authorized to require of its assessable taxes be made and the grossest injustice might be done to one or other of the respective schools, public or separate, if in the absence of such knowledge any company should attempt to exercise its privilege."

The statutory provision with which we have to deal was first enacted in its present language in 1913 (3-4 Geo. V., ch. 71, sec. 66), when the words "not greater than" were substituted for the words "the same ratio and proportion", which had appeared in the enactment as first introduced in Ontario in 1886 by 49 Vict., ch. 46, sec. 53. It is not without significance, I think, that in 1936, then sec. 65 of The Separate Schools Act, R.S.O. 1927, ch. 328 (the same as present sec. 66), was repealed by the Ontario Legislature by the School Law Amendment Act, 1936, being 1 Edw. VIII, ch. 55, sec. 42, and there was passed by the Legislature the Assessment Amendment Act, 1936, being 1 Edw. VIII, ch. 4, which added to The Assessment Act entirely new sections, 33a, 33b, 33c, 33d, 33e and 33f, relating to the distribution of assessments of corporations for public and separate school purposes. These statutory changes—that is, the repeal of old sec. 65 of The Separate Schools Act and the enactment of the new provisions—were both assented to on April 9th, 1936. The new provision expressly dealt with the case, such as the one before us in this appeal, of

> ". . . a corporation, which, by reason of the large number of its shareholders or members and the wide distribution in point of residence of such shareholders or members, is unable to ascertain which of its shareholders or members are Roman Catholics and separate school supporters or the ratio which the number of the shares

or memberships held by Roman Catholics who are separate school supporters bears to all the shares issued by or memberships of the corporation . . . (sec. 33b (1))."

Provision was made for the division of school taxes between the public schools and separate schools "in the same ratio as the total assessments of all the rateable property in such municipality or school section assessed according to the last revised assessment roll to persons who being individuals are public school supporters bear to the total assessments of all the rateable property in such municipality or school section assessed according to the said assessment roll to persons who being individuals are Roman Catholics and separate school supporters; and taxation for public school purposes and separate school purposes against the said lands, business and income of the corporation shall be imposed and levied accordingly; . . . (sec. 33b (3))."

These new provisions were obviously intended to meet just such a case as that now before us where, by reason of the large number of shareholders and the wide distribution in point of residence, a company is unable to ascertain, or cannot conveniently ascertain, which of its shareholders are Roman Catholics. But all these new statutory provisions were entirely repealed, on March 25th, 1937, at the next session of the Legislature by The Assessment Amendment Repeal Act, 1937, being 1 Geo. VI, ch. 9, and on the same day there was re-enacted, by The Statute Law Amendment Act, 1937, 1 Geo. VI, ch. 72, sec 57, old sec 65 of The Separate Schools Act (the same as sec. 66 in the Revised Statutes of 1937) which had been repealed the year before and which section specifically provides that

> "65 (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."

The fact that the Legislature obviously dealt with just such a difficulty as has occurred in this case, and then immediately repealed the new provisions and restored the old, leaves no room in my opinion for the construction put upon the section by the Court of Appeal that we will best effectuate the intention of the Legislature by construing the words so as to imply that in the absence of actual knowledge of any amount of shares held by Roman Catholics in the company, a fair estimate is sufficient.

The general rule undoubtedly is that where an Act of Parliament has been repealed it is, as to all matters completed and ended at the time of its repeal, as though it had never existed as a governing law with respect to these subject-matters (per Bramwell, L.J., in Atty. Gen. v. Lamplough (1878) 3 Ex. D., 214, at p. 228). But if a present statute is doubtful or ambiguous, it is to be interpreted so as to fulfill the intention of the Legislature and to attain the object for which it was passed, and

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in that connection Lord Blackburn in Bradlaugh v. Clarke, 8 App. Cas., (H.L.) p. 354, at p. 373, said:

"It is upon this principle that it is held, as I think it has always been held, that where a statute was passed for the purpose of repealing and, in part, re-enacting former statutes, all the statutes in pari materia are to be considered, in order to see what it was that the Legislature intended to enact in lieu of the repealed enactments. It may appear from the language used that the Legislature intended to enact something quite different from the previous law, and where that is the case effect must be given to the intention. But when the words used are such as may either mean that former enactments shall be re-enacted, or that they shall be altered, it is a question for the Court which was the intention."

In the Lamplough case, Bramwell, L.J., said at p. 227:

"Then it is argued that you cannot look at the repealed portion of the Act of Parliament to see what is the meaning of what remains of the Act. I know that is not the argument of the Solicitor-General, but that opinion has been expressed. I, however, dissent from it."

Brett, L.J., in the same case, said at p. 231:

"The judgments of the majority in the Exchequer Division lay down that the moment an Act of Parliament is partly repealed we cannot look at the repealed part for any purpose, but that the repealed part must be regarded as if it had never been enacted. I cannot help thinking that that part of the judgments is not sustainable, for what we have to consider is not what was the construction of the first statute, but what *is the effect of the repealing statute*? We cannot tell what is the effect of the latter without looking at the meaning of the statute which it has repealed. We must treat it as we treat all statutes for the purpose of construing them; we must look at the facts which were existing at the time the Act passed to see what was its meaning."

Lord Justice Knight Bruce said in Ex Parte Copeland, 2 De G.M. & G., 920:

"Although it has been repealed, still, upon a question of construction arising upon a subsequent statute on the same branch of the law, it may be legitimate to refer to the former Act. Lord Mansfield, in the case of The King v. Loxdale thus lays down the rules. "Where there are different statutes in pari materia, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other." 1 Burr. 44.

Fletcher Moulton, L.J., in Macmillan & Co. v. Dent (1907) 1 Ch., 107, at 120, said:

"In interpreting an Act of Parliament you are entitled, and in many cases bound, to look at the state of the law at the date of the passing of the Act—not only the common law, but the law as it then stood under previous statutes—in order properly to interpret the

statute in question. These may be considered to form part of the surrounding circumstances under which the Legislature passed it, and in the case of a statute just as in the case of every other document, you are entitled to look at the surrounding circumstances at the date of its coming into existence, though the extent to which you are allowed to use them in the construction of the document is a wholly different question."

While regard may be had to a repealed statute in pari materia where difficulties of construction arise, I do not think it is necessary to invoke 10 this rule or to rely on the repealed statute to construe the present section which is neither doubtful nor ambiguous. The conditions which the Legislature has thought fit to impose are plainly set forth and it is not within the province of any tribunal to relax these conditions. It is not for those seeking to take advantage of the special privilege of a statute to say that they have given something just as satisfactory and reasonable as the exact conditions imposed by the statute; they must clearly satisfy the conditions.

Although the case was argued before us by the respondents as if an estimate had been carefully arrived at by the directors before the statutory notice (Form B) was given to the clerk of the municipality, it is to 20 be noted that the County Judge does not put it that way in his findings. He says:

"They (i.e., the directors) reasoned from a number of angles and made assessment comparisons and population comparisons," but "it is true many, if not most of them, after the notice (Form B) had been filed with the City Clerk."

The Court of Appeal took the view that it is impossible in most cases for companies to state the exact percentage of their shareholders who are Roman Catholics and that if it is a sine qua non under the provisions of 30 the statute that they should so state, then the present legislation is wholly ineffective to accomplish the purpose intended by the legislation, which purpose that Court took to be to provide for an equitable apportionment of the taxes payable by companies where some of their shareholders are supporters of public schools and others of their shareholders are supporters of separate schools. The Court of Appeal therefore thought it was its duty to give such an interpretation of the statute as would render it effective to accomplish that purpose. But Mr. Hellmuth pointed out that there was not the injustice that had been suggested in an adherence to the language of the statute because any company that wished to could 40 ascertain, so far as it was convenient to do so, who, if any, were Roman Catholic shareholders in the company and the amount of shares held by them. The company might not be able to exhaust the entire list of its shareholders if the company had a very large number of shareholders scattered all over the world, but supposing it ascertained that 20 per cent. or 30 per cent. of the amount of the shares of the company was held by Roman Catholics, the company could divert its school taxes to separate schools up to the ascertained percentage and it could not then be denied

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that that proportion was "not greater than" the percentage stipulated by the statute. As the statute had stood since 1913 (except for the one year it was repealed) the percentage is not required to bear "the same ratio and proportion" as in the earlier statutory provisions; the result is that a company, though it may not know all its Roman Catholic shareholders, can, to the extent that it ascertains them, take full advantage of the present statutory provision.

In my opinion, the County Judge was right in his conclusion and I would therefore answer the third question submitted in the stated case in the affirmative, and would allow the appeal, with costs against the respondents in this Court and in the Court of Appeal. 10

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CORAM:

THE CHIEF JUSTICE, RINFRET, CROCKET, DAVIS AND KERWIN, J.J.

KERWIN, J.: On July 27th, 1937, the directors of the respondent company, Ford Motor Company of Canada, Limited, passed a resolution instructing its secretary to forward to the Clerk of the City of 20 Windsor a notice requiring that eighteen per centum of the Company's land and business or other assessments in Windsor be entered, rated and assessed for Roman Catholic Separate School purposes. A notice to that effect, in the prescribed form, was sent to and received by the City Clerk, and the assessor entered the Company as a Separate School supporter in the municipal assessment roll with respect to the designated percentage of the Company's assessments and as a Public School supporter with respect to eighty-two per centum of its assessments.

It is common ground that in the absence of such notice the Company would have been properly entered as a Public School supporter only. The 30 notice was given and the entries made in accordance with section 65 of The Separate Schools Act, R.S.O. 1927, chapter 328, as enacted by section 57 of The Statute Law Amendment Act of 1937. As the determination of this appeal depends primarily upon the construction of section 65, its provisions are reproduced forthwith:—

> "65.—(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 40 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.

(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) 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.

(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.

FORM B.
(Section 65)

NOTICE BY CORPORATION AS TO APPLICATION OF SCHOOL TAX.

To the Clerk of (describing the municipality).

Take notice that (here insert the name of the corporation so as to sufficiently and reasonably designate it) pursuant to a resolution in that behalf of the directors requires that hereafter and until this notice is either withdrawn or varied the whole or so much of the assessment for land and business or other assessments of the corporation within (giving the name of the municipality) as is hereinafter designated shall be entered, rated and assessed for separate school purposes, namely one-fifth (or as the case may be) of the land and business or other assessments.

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

R.S., Secretary of the Company."

In accordance with section 32 of The Assessment Act then in force (R.S.O. 1927, chapter 238), the Board of Education for the City of

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Windsor complained to the Court of Revision that the Company was wrongfully placed upon the roll as a Roman Catholic School supporter. By a majority, the Court of Revision considered that it was not established by evidence under oath that eighteen per centum was not a greater proportion of the whole of the Company's assessments than the proportion of stock or shares in the Company held by Roman Catholics bore to the whole amount of such stock or shares; and "not only was no effort made by the corporation to ascertain the number of shares held by Roman Catholics but the corporation has no knowledge of the proportion of shares held by Roman Catholics". They therefore held that the whole of 10 the Company's assessments should be entered and assessed for Public School purposes.

The Company and the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor appealed to the County Judge and upon the latter's affirmance of the decision of the Court of Revision took a further appeal to the Court of Appeal for Ontario on a stated case. The Court of Appeal reversed the order of the County Judge and the Board of Education now appeals to this Court.

The County Judge reported and found as follows:—

"At the commencement of the hearing of the appeal, after the pro- 20 duction of the exhibits and their identification by Mrs. Helen Weller of the City Clerk's Department of the City of Windsor, Mr. Aylesworth, counsel for the Ford Motor Company, pointed out that one of the main questions between the parties was as to where the burden rests as to the compliance or non-compliance of the company with the provisions of the then section 65 (now 66) of the Separate Schools Act and that without waiving his position that that onus was on the respondent here to prove affirmatively that less than 18 per cent. of the shareholders were Roman Catholics and that that onus was not on the appellant company to prove that there were as many as 18 per cent. of its shareholders Roman 30 Catholic, he was willing to bring out the facts on the point. To this Mr. Spencer assented.

Mr. Douglas B. Greig, secretary of the Ford Motor Company of Canada, Limited, was then called and gave his evidence, some of the material parts of which were:

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 40 United States, 1,500,000 shares are held; that the company cannot get the shareholders to comply with requests as to 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 per cent. 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, exceed by 9500 to 10,000 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 know what percentage of the stock was held by Roman Catholics.

There were other facts brought out from Mr. Greig's evidence, but, I think the material facts are above recited. His evidence did show the directors, in making the apportionment they did, acted in good faith and with every desire to be fair. They reasoned from a number of angles and made assessment comparisons and population comparisons, it is true many, if not most of them, after the notice, Form B, had been filed with the city clerk. However, I must find and do find that the division they made was not based on actual knowledge and was only a guess or an estimate."

The questions asked in the stated case are as follows:—

"1. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice "B" given by the Corporation and the assessment, rating and enrollment made thereunder, the onus is upon the Corporation to establish the fact that the share or proportion of its land, business or other assessments as set out in its requisition (Form B) does not bear a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

2. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts, was I right in holding that upon an appeal by a ratepayer affected by the Notice "B" given by the Corporation and the assessment, rating and enrollment made thereunder, the onus is not upon the ratepayer attacking the assessment to establish affirmatively the fact that the share or proportion of the Corporation's land, business or other assessments as set out in its requisition (Form B) bears a greater proportion to the whole of its assessments than the amount of the stock or shares held by Roman Catholics bears to the whole amount of the stock or shares.

3. Upon the facts above set out and upon the true construction of the Statutes as applied to the facts so stated, was I right in hold-

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—continued

ing that the appeals of Ford Motor Company of Canada, Limited, and of the Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, should be dismissed, the decision of the Court of Revision sustained and the Notice, Form B, delivered by Ford Motor Company of Canada, Limited, set aside, vacated and declared null and void and of no effect and that all the assessments of the Company in the City of Windsor be assessed, enrolled and rated for Public School purposes, unless it was affirmatively proved before me that the share or proportion of the Corporation's land, business or other assessment as set out in its requisition (Form B) did not bear a greater proportion to the whole of its assessment than the amount of the stock or shares held by Roman Catholics bore to the whole amount of the stock or shares;"

Two points should, I think, be here emphasized. The first is that, while in the present instance the assessor fulfilled the obligation cast upon him by subsection 2 of section 65 of The Separate Schools Act, the problem would be the same if he had disregarded his plain duty and had failed to assess in accordance with the notice sent by the Company. In either case the question of substance must be whether a party objecting to the notice is obliged to show affirmatively that the proportion of the holdings of Roman Catholics in shares or stock of the Company was less than eighteen per centum. The second point is that the hearing of the appeal from the Court of Revision by the County Judge is in the nature of a new trial as subsection 2 of section 78 of the present Assessment Act, R.S.O. 1937, chapter 272, provides:—

"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."

The proper construction of section 65 of The Separate Schools Act cannot be reached without an investigation of its history. For many years the Separate Schools Act in force from time to time in Ontario contained a section empowering a company to give notice to the clerk of the municipality wherein a separate school existed, requiring any part of its assessable property to be rated and assessed for the purposes of the separate school. In this section was included a proviso (as, for instance, in section 54 of The Separate Schools Act as enacted by 4 Edward VII, chapter 24, section 6) that the share so rated "shall bear the same ratio and proportion to the whole of the assessment" as the amount or proportion of the shares or stock of the Company as are held and possessed by persons who are Roman Catholics bears to the whole amount of such shares or stock. In 1913, however, by 3 George V, chapter 71, section 66, the statutory provision was recast. What was formerly the proviso appeared (as it now does), as subsection 3,—but with this important difference:— Instead of the requirement that the share of the assessment should bear the *same* ratio and proportion to the whole of the assessment

as the amount or proportion of the shares held by Roman Catholics bore to the whole amount of such shares, it was provided that it*shall not bear a greater proportion.*

Mr. Hellmuth, for the appellant, argued that prior to 1913 it would have been incumbent upon the Company to ascertain the exact proportion, and that as soon as it was shown before the Court of Revision or County Judge that that had not been done, the Company would be assessed for Public School purposes; the new Act, he submitted, merely authorized the Company to find the limits of the ratio but gave it no further or greater power. That is, he contended, the Company must be able to show that, in selecting the proportion to be assessed for Separate School purposes, it has not adopted a greater proportion than the holdings of Roman Catholics bear to the whole amount of the Company's stock or shares. As an aid towards the establishment of these propositions he relied upon Regina v. Gratton (1915) 50 S.C.R., 589.

In connection with that case, it should be noted at the outset that two members of this Court were in favour of allowing the appeal because of their views as to the proper construction of sections 93 and 93 (a) of The Saskatchewan School Assessment Act, while two others adopted a directly contrary construction.

In the result, the appeal was allowed but that was because the fifth member, Mr. Justice Idington, without expressing any opinion upon the question of construction, concluded that the legislation was ultra vires the Saskatchewan legislature. In any event, the statutory provisions and the facts before the Court in that case were so different from what we have to consider on this appeal that no assistance may be gained from a review of the opinions expressed as to the construction of the statute. There, a number of companies had not given, under the permissive section 93 of The Saskatchewan School Assessment Act, notices requiring a portion of their school taxes to be applied for separate school purposes. Section 93 contained a proviso that the share to be assessed for separate school purposes should bear the same proportion to the whole property of the company assessable within the school district as the proportion of the shares of the company held by Protestants or Roman Catholics respectively bore to the whole amount of the shares of the company,—in effect the same as the proviso in the earlier Ontario statutes. Under section 93 (a), which had been enacted later than section 93, the separate school trustees notified these companies that unless and until they gave notice under section 93 the school taxes payable by them would be divided according to a set formula. The mooted question was as to the efficacy of the separate school trustees' notices upon the proper construction of the two sections.

In the case at bar, although no obligation was imposed upon the respondent company, it did give a notice. As found by the County Judge, the directors acted in good faith, knowing "that shares were held by both Roman Catholics and others" although "not what percentage of the stock was held by Roman Catholics". Under these circumstances, if the question had arisen under the statute as it stood prior to the 1913 amendment,

RECORD
—
Supreme Court of Canada.
—
No. 12.
Reasons for Judgment, Mr. Justice Kerwin. October 30, 1939.

—continued

no effect could have been given to the notice because it was shown that the share of the Company's assessments to be rated for Separate School purposes, did not bear the same ratio to the whole of the assessments as the proportion of the shares held by Roman Catholics bore to the whole amount of such shares. I attach no importance to the fact that the new legislation appears, not as a proviso, but as a separate subsection, but the enactment was altered and it is only from a consideration of the language used that we are justified in gauging the intention of the legislature. That intention was to free a company desirous of having part of its assessment apportioned to Separate School purposes from the difficulty of ascertaining the precise ratio of the holdings of Roman Catholics in its capital stock. To adopt the construction of the statute suggested on behalf of the appellant would be to require the Company to do the very same thing, although, it is true, it might then direct that a less proportion of its assessments be rated for such purposes. To give effect to the legislative intention, the proper construction of the statute requires us to hold that the Company's notice stands and is to be followed unless displaced by evidence that the prohibition in subsection 3 has been violated. As pointed out by Masten, J.A., if the fact be as the appellant contends, the means existed whereby it might be proved.

The appeal should be dismissed with costs.

RECORD
—
Supreme Court of Canada.
—
No. 13.
Judgment. October 30, 1939.

No. 13

Judgment of the Supreme Court of Canada

IN THE SUPREME COURT OF CANADA

PRESENT:

THE RIGHT HONOURABLE THE CHIEF JUSTICE OF CANADA,
THE HONOURABLE MR. JUSTICE RINFRET
THE HONOURABLE MR. JUSTICE CROCKET
THE HONOURABLE MR. JUSTICE DAVIS
THE HONOURABLE MR. JUSTICE KERWIN

Monday, the 30th day of October, 1939.

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.

The appeal of the above named Appellant from the Judgment of the

RECORD

Supreme Court of Canada.

No. 13.
Judgment.
October 30, 1939.

—*continued*

Court of Appeal for Ontario pronounced in the above cause on the 12th day of May, A.D., 1938, reversing the Judgment of His Honour G. F. Mahon, a Judge of the County Court of the County of Essex, dated the 19th day of March, 1938, having come on to be heard before this Court on the 22nd and 23rd days of March, A.D., 1939, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment,

10 THIS COURT DID ORDER AND ADJUDGE that the said Judgment of the Court of Appeal for Ontario should be and the same was affirmed and that the appeal of the above named Appellant should be and the same was dismissed, with costs to be paid by the said Appellant to the said Respondents.

(Sgd.) J. F. SMELLIE,
Registrar.

RECORD

Supreme Court of Canada

No. 14.
Order Staying Proceedings.
January 12, 1940.

No. 14

Order Mr. Justice Kerwin Staying Proceedings

IN THE SUPREME COURT OF CANADA

20 BEFORE
THE HONOURABLE MR. JUSTICE KERWIN,
IN CHAMBERS

Friday, the 12th day of January, 1940.

UPON application of the Appellant for an Order staying proceedings pending an application for leave to appeal to the Judicial Committee of the Privy Council and upon hearing read the affidavit of Roy Noble and upon hearing what was alleged by Counsel as well for the Appellant as the Respondents,

IT IS ORDERED that all proceedings herein be stayed, except the 30 settlement of the Minutes of Judgment, for a period of sixty days, to afford the Appellant an opportunity of applying to the Judicial Committee of the Privy Council for leave to appeal, with liberty to apply for a further extension if necessary,

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the projected appeal if leave be given, and, if leave be refused, be paid by the Appellant to the Respondents.

(sgd) J. F. Smellie,
Registrar.

Law Stamps
40 $2.00

RECORD
—
Supreme Court of Canada
—
No. 15.
Order Staying Proceedings.
March 12, 1940.

No. 15

Order Mr. Justice Kerwin Staying Proceedings

IN THE SUPREME COURT OF CANADA

BEFORE
THE HONOURABLE MR. JUSTICE KERWIN,
IN CHAMBERS

Tuesday, the 12th day of March, 1940.

Upon the application of the Appellant for an Order granting a further stay of proceedings, pending an application for leave to appeal to the Judicial Committee of the Privy Council, and upon hearing read the Notice of Motion, the Order of The Honourable Mr. Justice Kerwin, dated the 12th day of January, 1940, and the affidavit of Norman Leonard Spencer, filed, and upon hearing what was alleged by Counsel for the Appellant, no one appearing for the Respondents though duly served with the Notice of Motion, as appears from the admission of service endorsed thereon,

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IT IS ORDERED that proceedings herein be stayed for a further period of thirty days to date from today to afford the Appellant an opportunity of applying to the Privy Council for special leave to appeal, with liberty to apply for a further extension,

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AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the projected appeal, if leave be granted.

(sgd) P. Kerwin,
Judge, Supreme Court of Canada.

Law Stamps
$2.00

RECORD
—
Supreme Court of Canada
—
No. 16.
Order Staying Proceedings.
April 11, 1940.

No. 16

Order Mr. Justice Kerwin Staying Proceedings

IN THE SUPREME COURT OF CANADA

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BEFORE
THE HONOURABLE MR. JUSTICE KERWIN,
IN CHAMBERS

Thursday, the 11th day of April, 1940.

UPON THE APPLICATION of the Appellant for an Order granting a further stay of proceedings, pending an application for leave to appeal to the Judicial Committee of the Privy Council, and upon hearing read the Notice of Motion, the Orders of The Honourable Mr. Justice Kerwin, dated the 12th day of January, 1940, and the 12th day of March, 1940, and the affidavit of Norman L. Spencer, filed, and upon hearing

RECORD

Supreme Court of Canada

No. 16. Order Staying Proceedings. April 11, 1940.

—*continued*

what was alleged by Counsel for the Appellant, no one appearing for the Respondents though duly served with the Notice of Motion, as appears from the admission of service endorsed thereon,

IT IS ORDERED that proceedings herein be stayed for a further period of thirty days, to date from today, to afford the Appellant an opportunity of applying to the Judicial Committee of the Privy Council for special leave to appeal, with liberty to apply for a further extension,

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the projected appeal, if leave be granted.

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(sgd) P. Kerwin,
Judge, Supreme Court of Canada.

Law Stamps
$2.00

No. 17

RECORD

At the Court at Buckingham Palace.

No. 17. Order granting leave to Appeal. May 9, 1940.

Order-in-Council of His Majesty Granting Leave to Appeal

(L. S.)

AT THE COURT AT BUCKINGHAM PALACE

The 9th day of May, 1940

PRESENT

20

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. ERNEST BROWN
LORD HUTCHISON OF MONTROSE	MR. R. A. BUTLER

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of May 1940 in the words following, viz.:—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Board of Education for the City of Windsor in the matter of an Appeal

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from the Supreme Court of Canada between the Petitioner 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 setting forth (amongst other matters) that the Petitioner is desirous of appealing from a Judgment of the Supreme Court which raises questions relating to the assessment to school taxes of corporations carrying on business in the Province of Ontario: that the basic or general law of the Province in the matter is that school taxes are to be applied to the maintenance of the Public Schools but provision is made by the relevant legislation

RECORD

At the Court at Buckingham Palace.

No. 17. Order granting leave to Appeal. May 9, 1940.

—continued

in respect both of individuals and of corporations liable to assessment for the payment of these taxes whereby all or part of the school taxes payable by them may under certain conditions and to a defined extent be devoted to the maintenance of 'Separate Schools' instead of that of the public schools: that the question which arises here is whether the Respondent Corporation could validly procure that 18 per cent. of its assessment should be devoted to the benefit of the Separate Schools administered by the Respondent Roman Catholic Separate School Board: that on the 27th July 1937 the Directors of the Respondent Corporation passed a resolution instructing its Secretary to forward to the Clerk of the City of Windsor a notice requiring that eighteen per cent. of the Respondent Corporation's land business and other assessments within the City of Windsor be entered rated and assessed for Separate School purposes: that under date of the 29th July 1937 the Secretary forwarded a notice to the Clerk of the City of Windsor requiring that eighteen per cent. of the land business and other assessments of the Respondent Corporation within the City of Windsor be entered rated and assessed for Separate School purposes: that the assessor made his assessment and apportioned eighteen per cent. for Separate School purposes: that the aggregate of the land business and other assessments of the Respondent Corporation within the City of Windsor for the year 1938 was $5,973,360 and the proportion thereof purported to be diverted from the support of Public Schools to the support of Separate Schools namely eighteen per cent. amounted to 1,075,200: that the tax rate being more than ten mills the taxes purported to be diverted thus amounted to more than $10,000: that the Petitioner pursuant to Section 32 of the Assessment Act then in force complained to the Court of Revision for the City of Windsor against this apportionment: that on the 25th November 1937 the decision of the Court was delivered by a majority allowing the Appeal on the ground that the evidence before the Court established that no effort had been made by the Respondent Corporation to ascertain the number of shares held by Roman Catholics and that it had no knowledge of the proportion of the shares so held: that the Respondent Corporation and the Respondent Roman Catholic Separate School Board both appealed against this decision to a Judge of the County Court of the County of Essex: that on the 19th March 1938 the Appeals were dismissed: that pursuant to the request of the Respondents the County Court Judge stated certain questions of law and of construction of statutes in the form of a Special Case for the Court of Appeal: that the Court of Appeal by Judgment delivered on the 12th May 1938 allowed the Appeals: that the Petitioner appealed to the Supreme Court: that on the 30th October 1939 Judgment was delivered dismissing the Appeal by a majority of three to two: that the questions of law and of construction of the Statute which arise are of general public importance

affecting not only hundreds of Corporations within the City of Windsor but thousands of Corporations within the Province of Ontario and perhaps every urban School Board in the Province of Ontario: that in the City of Windsor several corporate assessment appeals were compromised pending determination of these questions in this case and other assessment appeals are still pending awaiting the final outcome of this case: that scores of Public School Boards throughout the Province of Ontario have become apprehensive of the effect of the majority Judgment of the Supreme Court and have actively manifested their interests and concern by urging the presentation of this Petition and it is submitted that it is in the public interest that the questions be finally settled before Your Majesty's Privy Council: And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court of the 30th October 1939 or for such further or other Order as to Your Majesty in Council may appear fit:

"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the Supreme Court of Canada dated the 30th day of October 1939 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and (2) that one set of the Respondents' costs of the Appeal to Your Majesty in Council ought to be paid by the Petitioner in any event:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

RECORD

In the County Court, County of Essex.

Appellant's Exhibit No. 5. Copy of Resolution of Directors of Ford Motor Company of Canada, Ltd. June 9, 1936.

Copy of Notice from Corporation. July 7, 1936.

Copy of Statutory Declaration of Secretary. July 9, 1936.

PART II.

EXHIBITS.

EXHIBIT 5

Copy of Resolution of Directors of Ford Motor Company of Canada, Limited; Notice from Corporation and Statutory Declaration of Secretary

BE AND IT IS HEREBY RESOLVED that the Secretary be and he is hereby instructed to file, on or before the first day of August, 1936, with the Clerk of the Municipality of the City of Windsor and with the clerks of such other Municipalities in the Province of Ontario as may be necessary, the requisite notice as to the entering, assessing and rating of this Company's assessments for school purposes, pursuant to the Assessment Act as amended in 1936 and in relation to the Company's register of shareholders as of the thirtieth day of June 1936. 10

CERTIFIED to be a true copy of a resolution of the Directors of the above named Corporation duly adopted on the 9th day of June, 1936.
"W.R.C."

(sgd) D. B. Greig,
Secretary.

Certified a true copy. 20
(sgd) C. V. Water, (SEAL)
City Clerk.

FORM 15

NOTICE FROM CORPORATION
(Section 33b)

To the Clerk of Windsor, Ontario.

1. Take notice that Ford Motor Company of Canada, Limited pursuant to a resolution in that behalf of the directors requires that hereafter and until this notice is either withdrawn, varied or cancelled, the whole of the assessment for land, business and income of the corporation within the above named municipality or in any school section therein in or for which a separate School exists shall be entered, assessed and rated for public and separate schools purposes and taxation for schools purposes imposed and levied thereon in accordance with the provisions of section 33b of The Assessment Act. 30

2. And take notice that the said requirement arises from the fact that by reason of the large number of its shareholders or members and their wide distribution in point of residence both within and without Ontario the corporation is unable to ascertain which of its shareholders or members are Roman Catholics and separate school supporters, or the proportion which the shares or memberships held by Roman Catholics 40

Appellant's Exhibit No. 5. Copy of Resolution of Directors of Ford Motor Company of Canada, Ltd. June 9, 1936.

Copy of Notice from Corporation. July 7, 1936.

Copy of Statutory Declaration of Secretary. July 9, 1936.

—continued

who are separate school supporters bear to the whole amount of the shares issued by or memberships of the corporation, as is set forth in the attached statutory declaration of D. B. Greig of the City of Windsor, Ontario, who is the Secretary of the said Corporation.

3. And further take notice that attached hereto is a certified copy of the said resolution of the directors.

Given on behalf of the said corporation this 7th day of July, 1936.

"W.R.C.".

10 "D.B.G.". (sgd) W. R. Campbell
President (Seal)

Certified a true copy.
(sgd) C. V. Waters (Seal)
City Clerk.

FORM OF STATUTORY DECLARATION

IN THE MATTER OF THE ASSESSMENT ACT: and IN THE MATTER OF SECTION 33b THEREOF AND IN THE MATTER OF FORD MOTOR COMPANY OF CANADA, LIMITED

20 I, D. B. Greig of the City of Windsor, in the County of Essex, DO SOLEMNLY DECLARE:—

1. That I am Secretary of the above named Corporation and as such have knowledge of the facts herein set out.

2. By reason of the large number of its shareholders or members and the wide distribution in point of residence of such shareholders or members, the above named Corporation is unable to ascertain which of its shareholders or members are Roman Catholics and Separate School supporters or the ratio which the number of shares or memberships held by Roman Catholics who are Separate School sup-
30 porters bears to all the shares issued by the Corporation.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act."

"W.R.C."

DECLARED before me, at the City of Windsor, in the County of Essex, this 9th day of July, 1936. (sgd) D. B. Greig

(Sgd) C. E. Wadge,
Magistrate, Justice of the Peace, Notary
40 Public, or Commissioner for taking affidavits.

(SEAL)

Certified a true copy. (SEAL)
(sgd) C. V. Waters
City Clerk.

RECORD

In the County Court, County of Essex.

Respondents' Exhibit No. 3. Copy of Resolution of Directors of Ford Motor Company of Canada, Ltd. July 27, 1937.

Copy of Notice from Corporation. July 29, 1937.

EXHIBIT 3

Copy of Resolution of Directors of Ford Motor Company of Canada, Limited, Windsor, Ontario, and Notice from Corporation

RESOLVED that pursuant to the provisions of Section 65 of the Separate Schools Act, the Secretary be and he is hereby instructed, by notice in Form B of the said Statute, to inform the Clerk of the City of Windsor, Ontario, that this corporation requires that eighteen per centum of its land and business or other assessments in said municipality, be entered, rated and assessed for separate school purposes.

I certify that the foregoing is a true and correct copy of a resolution passed by the Directors of Ford Motor Company of Canada, Limited on the 27th day of July, 1937. 10

Windsor, Ontario, July 29, 1937.

(Signed) D. B. Greig,
Secretary.

Certified a true copy. (SEAL)
(sgd) C. V. Waters,
City Clerk.

FORM B

(Statutes of Ontario 1937, Chapter 72, Sec. 57) 20

NOTICE by Corporation as to Application of School Tax.

To the Clerk of the City of Windsor:

TAKE NOTICE that Ford Motor Company of Canada, Limited pursuant to a resolution in that behalf of the Directors requires that hereafter and until this notice is either withdrawn or varied the whole or so much of the assessment for land and business or other assessments of the Corporation within the City of Windsor as is hereinafter designed, shall be entered, rated and assessed for separate school purposes, namely 18 per centum of the land and business or other assessments.

Given on behalf of the said company this 29th day of July, 1937. 30

Ford Motor Company of Canada, Limited,
(signed) D. B. Greig, Secretary.

Certified a true copy.
(sgd) C. V. Waters, (SEAL).
City Clerk.

RECORD

In the County Court, County of Essex.

Appellant's Exhibit No. 4. Notice of Appeal by Board of Education. September 30, 1937.

EXHIBIT 4

Copy of Notice of Appeal to Windsor Court of Revision

TAKE NOTICE that the Board of Education for the City of Windsor hereby appeals to the Court of Revision for the said City of Windsor against the assessments for Separate School purposes of the 40

Corporations respectively named in the attached list, on the ground that the said Corporations respectively have not complied with, nor conformed to the provisions of Section 65 of the Separate Schools Act as re-enacted by Section 57 of the Statute Law Amendment Act (1937), and upon such further and other grounds as may be urged upon the hearing of the appeal.

DATED at Windsor, Ontario, this 30th day of September, A.D. 1937.

Board of Education for the City of Windsor,
By—Norman L. Spencer, its solicitor.

10 TO H. A. Webster, Esq.,
Assessment Commissioner,
C. V. Waters, Esq.,
City Clerk.
Certified a true copy.
(sgd) C. V. Waters, (SEAL)
Clerk.

CORPORATIONS BEING APPEALED

Bendix-Eclipse of Canada Limited,
Bowman-Anthony Limited,
20 British American Brewing Company Limited,
Bryant Pattern & Mfg. Company Limited,
Consumers Wall Paper Company Limited,
Dominion Forge & Stamping Company Limited,
Essex Coal Company Limited,
Ford Motor Company of Canada Limited,
The Good Housekeeping Shop of Canada Limited,
Gotfredson Trucks Limited,
Granite Insurance Agencies Limited,
Guaranty Trust Company of Canada,
30 Howitt Battery & Electric Service Company Limited,
Laura Secord Candy Shops, Limited,
Mutual Finance Corporation Limited,
Norton Palmer Hotel Limited,
Prince Edward Hotel (Windsor) Limited,
The Provincial Bank of Canada,
Silverwoods Dairies, Limited,
Truscon Steel Co. of Canada Limited,
Walkerville Brewery Limited,
Webster Brothers-Labadie Limited,
40 The Windsor Company Limited.

Certified a true copy of the list attached to the Appeal of the Board of Education dated September 30, 1937.

(sgd) C. V. Waters, (SEAL)
Clerk.

RECORD

In the County Court County of Essex.

Appellant's Exhibit No. 5 Reasons for Judgment, Court of Revision, City of Windsor. November 25, 1937.

EXHIBIT 6

Reasons for Judgment of the Court of Revision of the City of Windsor

Abstract from Minutes of Adjourned Session of the Court of Revision of the City of Windsor held at City Hall, Windsor, on November 25, 1937.

The Appeal is against the assignment of 18% of the assessment of the Ford Motor Company of Canada Limited to Separate Schools and is made by the Board of Education.

N. L. Spencer, Solicitor for the Board of Education, says in effect, we have reason to believe that Public School Assessment has been diverted to Separate Schools. He quotes various cases in substantiation of his claim. 10

J. B. Aylesworth, Solicitor for the Ford Motor Company of Canada Limited, says in argument, they have acted in good faith and quotes an additional case known as the Goderich case in which Justice Middleton found for the Corporation, which finding was reversed on a point the Court feels has no bearing on this question. Witness D. B. Greig states he does not know the amount of Roman Catholic holdings in the Company and that there has been no attempt made to ascertain these holdings.

It is the prime duty under the law of every tax payer to support Public Schools except that a priviledge is granted to Roman Catholics 20 who evidence their wish to support Separate Schools. The basis of corporation taxes is the same. The Goderich case was caused by the refusal of the Assessor to comply with the notice of a corporation. Justice Middleton's remark that the notice should not be questioned is taken by the Court to mean that it should not have been questioned by the Assessor and he did not mean that the notice could not be questioned by interested parties.

It is clear that the only one having access to the distribution of shares as between Roman Catholics and others in the Ford Motor Company of Canada, Limited is the corporation itself and consequently, when properly challenged, the onus of proof is on the corporation. Under the evidence, 30 the corporation did not establish any knowledge or any facts as to the holdings of Roman Catholics nor did it establish that any effort has been made to ascertain the number of shares held by Roman Catholics in accordance with Subsection 3 of Section 65 of the Separate Schools Act.

65 (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."

J. A. Tourangeau wishes to place on record that in his opinion the 40 basis of the appeal should have been established by Sub-section 4 of Section 65 of the Separate Schools Act and so registers his vote.

65 (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."

It is the opinion of J. D. Branch and M. Sheppard that Sub-Section 4 does not invalidate Sub-Section 3 and providing that the letter of the law and spirit therein is adhered to in accordance with Sub-section 3, then Sub-section 4 would have been grounds for confirmation of the assessment. Such was not established by evidence under oath as previously recorded, not only was no effort made by the corporation to ascertain the number of shares held by Roman Catholics but the corporation has no 10 knowledge of the proportion of shares held by Roman Catholics.

The Court rules that the appeal is allowed.

Certified a true copy.

(Sgd) C. V. Waters.
Clerk.

SEAL

RECORD — *In the County Court County of Essex.* — Appellant's Exhibit No. 6. Reasons for Judgment, Court of Revision, City of Windsor. November 25, 1937. —*continued*

EXHIBIT 1

RECORD — *In the County Court. County of Essex.* — Respondents' Exhibit No. 1. Notice of Appeal by Ford Motor Company of Canada Limited. November 27, 1937.

Notice of Appeal to County Court Judge by Ford Motor Company of Canada, Limited

IN THE MATTER OF AN APPEAL FROM THE COURT
20 OF REVISION OF THE CITY OF WINDSOR

FORD MOTOR COMPANY OF CANADA LIMITED,
Appellant,

—and—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR
Respondent.

TAKE NOTICE that the above named Appellant hereby appeals to the Senior Judge of the County Court of the County of Essex from the decision of the Court of Revision of the City of Windsor delivered on Thursday, 25th November 1937, whereby the appeal to the said Court of 30 Revision of the Board of Education for the City of Windsor against the apportionment of assessment and the assessment of the Appellant in support of Separate Schools was allowed, on the following among other grounds;

1. The said decision appealed from is not supported by the evidence.
2. The said decision appealed from is wrong in law.
3. The said decision appealed from is based upon an erroneous construction of Section 65 of the Separate Schools Act.
4. The said Court erred in assuming that in law the onus is upon the said Ford Motor Company of Canada Limited to prove affirmatively 40 that the percentage of its assessment for school purposes apportioned to the support of Separate Schools was not greater than the percentage of its total issued shares of its capital stock held by Roman Catholics.

RECORD

In the County Court, County of Essex.

Respondents' Exhibit No. 1. Notice of Appeal by Ford Motor Company of Canada Limited. November 27, 1937.

—continued

5. The appellant to the Court of Revision, namely, The Board of Education for the City of Windsor, failed to prove that the said apportionment exceeded the percentage or proportion permitted by Section 65 of the Separate Schools Act.

6. Such further and other grounds as counsel may advise.

DATED this 27th day of November, 1937.

BARTLET AYLESWORTH & BRAID
1002 Canada Building, Windsor, Ontario,
Solicitors for Ford Motor Company of Canada Limited, the above-named Appellant. 10

TO: The Assessment Commissioner for the City of Windsor, and to N. L. Spencer, Solicitor for the Board of Education for the City of Windsor.

RECORD

In the County Court, County of Essex.

Respondents' Exhibit No. 2. Notice of Appeal by Roman Catholic School Trustees. December 4, 1937.

EXHIBIT 2

Notice of Appeal to County Court Judge by Roman Catholic School Trustees

IN THE MATTER OF AN APPEAL FROM THE COURT OF REVISION OF THE CITY OF WINDSOR

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR, 20
Appellant,

—and—

THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR,
Respondent.

TAKE NOTICE that the above named Appellant hereby appeals to the Senior Judge of the County Court of the County of Essex from the decision of the Court of Revision of the City of Windsor delivered on Thursday, 25th November, 1937, whereby the appeal to the said Court of Revision of the Board of Education for the City of Windsor against the 30 apportionment of assessment and the assessment of the Ford Motor Company of Canada Limited in support of Separate Schools was allowed, on the following among other grounds:

1. The said decision appealed from is not supported by the evidence.
2. The said decision appealed from is wrong in law.
3. The said decision appealed from is based upon an erroneous construction of Section 65 of The Separate Schools Act.
4. The said Court erred in assuming that in law the onus is upon the said Ford Motor Company of Canada Limited to prove affirmatively that the percentage of its assessment for school purposes apportioned to 40 the support of Separate Schools was not greater than the percentage of its total issued shares of its capital stock held by Roman Catholics.

5. The Appellant to the Court of Revision, namely, The Board of Education for the City of Windsor, failed to prove that the said apportionment exceeded the percentage of proportion permitted by Section 65 of the Separate Schools Act.

6. Such further and other grounds as counsel may advise.

DATED this 4th day of December, 1937.

ARMAND RACINE, K.C.,
407 Canada Building, Windsor, Ontario
Solicitor for The Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor, the above named Appellant.

TO: The Assessment Commissioner for the City of Windsor, and to N. L. Spencer, Solicitor for the Board of Education for the City of Windsor.

RECORD — *In the County Court, County of Essex.* — Respondents' Exhibit No. 2. Notice of Appeal by Roman Catholic School Trustees. December 4, 1937.

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EXHIBIT 7

Summary of Total Assessment of Ford Motor Company of Canada, Limited on which Taxes were paid for years shown

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	1938 WINDSOR	1937 WINDSOR	1936 WINDSOR	1935 EAST WINDSOR	1934 EAST WINDSOR	1933 EAST WINDSOR	1932 EAST WINDSOR
Land	$ 595,220.	$ 704,340.	$ 837,770.	$1,006,140.	$1,042,440.	$1,357,015.	$1,358,155.
Buildings	2,655,870.	2,655,870.	2,471,250.	2,554,100.	2,823,100.	2,829,530.	2,829,530.
Business	2,582,270.	1,867,310.	1,802,990.	1,894,350.	2,069,900.	2,118,000.	2,150,060.
Income	140,000. (Est.)	232,140.	308,270.	....	....	....	....
Total	$5,973,360.	$5,459,660.	$5,420,280.	$5,454,590.	$5,935,440.	$6,304,545.	$6,337,745.
DIVISION:							
Public Schools	$4,898,160.	$4,128,895.	$4,420,280.	$4,454,590.	$4,935,440.	$5,304,545.	$5,337,745.
Separate Schools	$1,075,200.	$1,330,765.	$1,000,000.	$1,000,000.	$1,000,000.	$1,000,000.	$1,000,000.
Separate Schools Percentage	18%	24.3745%	18.45%	18.33%	16.85%	15.86%	15.78%

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RECORD — *In the County Court, County of Essex.* — Respondents' Exhibit No. 7. Summary of Assessments of Ford Motor Company of Canada Limited.

EXHIBIT 8

Statement of Shareholdings of Ford and Family

Shareholdings of the Messrs. Ford and family (including Ford Motor Company) are 28.77% of the total shares outstanding.

(sgd) D. B. Greig,
2. 25. 38.

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RECORD — *In the County Court, County of Essex.* — Appellant's Exhibit No. 8. Statement of Shareholdings of Ford and family. February 25, 1938.

RECORD
No. 1.

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

APPENDIX OF STATUTES.

No. 1

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

"**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.

(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 municiplity),

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 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 be-

half 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.

RECORD No. 1. — The Separate Schools Act, 1886, 49 Victoria, Chapter 46, Section 53. —*continued*

(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 10 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."

No. 2

RECORD No. 2. — The Separate Schools Act, R.S.O. 1897, Chapter 294, Section 54.

The Separate Schools Act, R.S.O. 1897 Chapter 294, Section 54.

"**54**—(1) A company may, by notice in that behalf to be given to the 20 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 the property as is so desig- 30 nated 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 property 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 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 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 40 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:

RECORD No. 2.

The Separate Schools Act, R.S.O. 1897, Chapter 294, Section 54.

—continued

NOTICE

To the Clerk (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 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 name of 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 be) of all personal property of said company, liable to assessment in the said municipality. 10

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.

(4) Every such notice so given to 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 which 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. 20

(5) The word "company" in this section shall mean and include any body corporate, R.S.O. 1887, ch. 227, sec. 52, see also Ch. 224, sec. 25."

RECORD No. 3.

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

No. 3 30

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 40

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 designanted shall be assessed accordingly in the name of the company for the
10 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 com-
20 pany, 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.

RECORD No. 3.

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

—continued

(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
30 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."

RECORD
No. 4.

The Statute Law Amendment Act, 1905, 5 Edward VII, Chapter 13, Section 26.

No. 4

The Statute Law Amendment Act, 1905, 5 Edward VII, Chapter 13, Section 26.

"**26** - Section 54 of The Separate Schools Act, as enacted by section 6 of chapter 24 of the Acts passed in the fourth year of the reign of His Majesty, King Edward VII, is amended by adding thereto the following sub-sections:

(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 10 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.

(4) Every such notice so given to 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 which 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 20 to the provisions of this Act in that behalf.

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

RECORD
No. 5.

The Separate Schools Act (1913), 3-4 George V, Chapter 71, Section 66.

No. 5

The Separate Schools Act (1913), 3-4 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, 30 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, 40 of the business or other assessments of the corporation shall be separately entered and assessed for public school purposes.

(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 Edward VII. c. 24, s. 6, amended, and see 5 Edw. VII. c. 13, s. 26 (5).

RECORD No. 5. — The Separate Schools Act (1913), 3-4 George V, Chapter 71, Section 66. —*continued*

(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.

10 (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.

(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."

No. 6

RECORD No. 6. — The School Law Amendment Act, 1936, 1 Edward VIII, Chapter 55, Section 42.

The School Law Amendment Act, 1936, 1 Edward VIII, Chapter 55, Section 42.

20 "**42** - Section 65 of the Separate Schools Act is repealed."

No. 7

RECORD No. 7. — An Act to amend The Assessment Act (1936), 1 Edward VIII, Chapter 4, Sections 1 and 2.

An Act to amend The Assessment Act (1936), 1 Edward VIII, Chapter 4, Sections 1 and 2

"**1**—The Assessment Act is amended by adding thereto the following sections:

33a.—(1) Every corporation, except those to which section 33b applies, shall require, by notice, Form 13, to the clerk of the municipality in or for which a separate school exists, that the whole or part of the assessments for land, business and income liable to taxa-

30 tion for school purposes in respect to which such corporation is assessed within the municipality or school section in or for which the separate school exists, be entered, assessed and rated for separate school purposes; and the assessor shall thereupon enter the corporation as a separate school supporter in the assessment roll in respect of such assessments as are designated in the notice, and so much of the said assessments as are so designated shall be assessed accordingly for separate school purposes, and not for public school purposes, but all the remainder of the said assessments of the corporation shall be entered for public school purposes.

RECORD
No. 7.

An Act to amend The Assessment Act (1936), 1 Edward VIII, Chapter 4, Sections 1 and 2.

—*continued*

(2) In the case of such a corporation having share capital, the assessments, which may be required by the said notice to be entered, assessed and rated for separate school purposes, shall bear the same ratio to the whole of the said assessments as the number of the shares of the corporation held by individuals, who are Roman Catholics and separate school supporters and who have filed a notice, Form 14, with the corporation as required by subsection 4 of section 33c, bears to the number of all the shares issued by the corporation.

(3) In the case of such a corporation having no share capital, the assessments which may be required by the said notice to be entered, assessed and rated for separate school purposes shall bear the same ratio to the whole of the said assessments as the number of members who are Roman Catholics and separate school supporters and who have filed a notice, Form 14, with the corporation as required by subsection 4 of section 33c, bears to the total number of members of the corporation. 10

33b.—(1) A corporation having share capital of which more than one-half of the shares issued is owned by any other corporation or corporations the head office of which is not in Ontario, and also a corporation, which, by reason of the large number of its shareholders or members, and the wide distribution in point of residence of such shareholders or members, is unable to ascertain which of its shareholders or members are Roman Catholics and separate school supporters or the ratio which the number of the shares or memberships held by Roman Catholics who are separate school supporters bears to all the shares issued by or memberships of the corporation, shall require by notice, Form 15, to the clerk of the municipality in or for which a separate school exists that the assessments for land, business and income liable to taxation for school purposes in respect to which such corporation is assessed within the municipality or school section in or for which the separate school exists, be entered, assessed and rated for school purposes as provided in this section. 20 30

(2) The said notice shall be accompanied by a statutory declaration of the president, vice-president or secretary of the corporation, or other person in charge of its affairs in Ontario having knowledge of the facts, testifying as to the facts mentioned in subsection 1 by virtue of which the corporation is subject to the provisions of this section and not of section 33a.

(3) Section 33a shall not apply to a corporation which may file a notice under this section; and the whole of the assessments of a corporation governed by this section, in a municipality or school section in or for which a separate school exists, shall be divided for purposes of taxation between the public schools and separate schools in the same ratio as the total assessments of all the rateable property in such municipality or school section assessed according to the last revised assessment roll to persons who being individuals are public school supporters bear to the total assessments of all the rateable property 40

An Act to amend The Assessment Act (1936), 1 Edward VIII, Chapter 4, Sections 1 and 2.

—*continued*

in such municipality or school section assessed according to the said assessment roll to persons who being individuals are Roman Catholics and separate school supporters; and taxation for public school purposes and separate school purposes against the said lands, business and income of the corporation shall be imposed and levied accordingly; provided that the rates to be levied in any year upon the assessments of such land, business and income shall in all such cases be the rate for such year imposed and levied for public school purposes.

(4) This section shall not apply to a corporation in which the
10 whole of the shares or memberships are held by persons having their residences or places of business within Ontario, and the provisions of section 33a shall apply to such corporations.

33c.—(1) A notice given under section 33a or 33b in pursuance of a resolution of the directors of a corporation shall for all purposes be deemed to be sufficient and such notice shall be taken as continuing and in force and to be acted upon unless and until the same is withdrawn by a notice subsequently given pursuant to a resolution of the directors of such corporation.

(2) Every notice so given to the clerk of a municipality shall be
20 kept on file in his office and shall be open to inspection by any person entitled to inspect the assessment roll, and the assessor shall in each year before the return of the assessment roll search for and examine all such notices on file in the office of the clerk, and shall conform thereto and to the provisions of section 33a or 33b as the case may be.

(3) A notice to be given by a corporation under section 33a or 33b in any year shall be given not later than the 1st day of March in such year and shall be in relation to the shareholders or members of the corporation of record in its registers as of the 1st day of
30 January in such year, and such notice shall govern in respect to the assessment roll of a municipality made in such year, whether the assessments contained therein be for the purposes of taxation in such year or in the succeeding year.

(4) Any shareholder or member of a corporation to which section 33a applies and who is a Roman Catholic and a separate school supporter may require by notice, Form 14, to the secretary of the corporation given on or before the 1st day of January in any year that the shares of or membership in the corporation which he may hold on the 1st day of January in such year and in any succeeding
40 years shall be deemed to be held by a Roman Catholic and separate school supporter for the purposes of the said section, provided it shall not be necessary for such person to renew the said notice annually while he remains a shareholder or member and further that any person who has given such notice may at any time withdraw the same by notice in writing to the secretary of the corporation.

33d.—False statements made in any notice given pursuant to section 33a and 33b shall not relieve a corporation from assessment

RECORD
No. 7.

An Act to amend The Assessment Act (1936), 1 Edward VIII, Chapter 4, Sections 1 and 2.

—continued

or taxation, and any corporation failing to give such notice or making any false statement in any notice given pursuant to the said sections and every person giving for such corporation such a notice, and any shareholder or member of a corporation giving a notice pursuant to section 33c, fraudulently or wilfully inserting any false statements in any such notice shall be guilty of an offence and liable on summary conviction to a penalty of not less than $100 and not exceeding $1,000, recoverable under The Summary Convictions Act.

33e.—Any person entitled under this Act to appeal in respect of any matter of assessment may appeal from the assessment of a corporation, on the ground that the said assessment is not in accordance with the notice given by the corporation under section 33a or 33b or, whether or not notice has been given by the corporation, on the ground that the said assessment is contrary to section 33a or 33b, whichever may be applicable, or that the notice is not in accordance with the facts. 10

33f.—Notwithstanding the provisions of subsection 3 of section 33c in any municipality in which the assessment is made in the year 1936 for the purposes of taxation in the year 1937 the notice to be given by a corporation to the clerk of such municipality under the provisions of section 33a or 33b shall be given not later than the 1st day of August, 1936, and shall be in relation to the shareholders or members of the corporation of record in its registers as of the 30th day of June, 1936, and the assessment roll of such municipality or of any ward thereof shall not be completed or revised prior to the 1st day of August, 1936, to an extent that will prevent the said notice being given effect to in the assessment roll for the purposes of taxation in 1937 in accordance with such notice, subject to any appeal which may be had therefrom; and in such case the notice which may be given by a shareholder or member of a corporation as provided in subsection 4 of section 33c may be given to the secretary of the corporation not later than the 30th day of June, 1936, and for the purposes of this section, Form 14, shall be varied to relate to the 30th day of June, 1936. 20 30

2.—The Assessment Act is amended by adding thereto Forms 13, 14 and 15."

No. 8

RECORD
No. 8.

The Assessment Amendment Repeal Act, 1937, 1 George VI, Chapter 9, Sections 2 and 3.

The Assessment Amendment Repeal Act, 1937, 1 George VI, Chapter 9, Sections 2 and 3.

2.—(1) Chapter 4 of the Statutes of Ontario, 1936, being an Act to amend The Assessment Act is repealed. 40

(2) Subsection 1 and the repeal of the said chapter 4 thereby enacted shall not apply to taxation for school purposes heretofore or hereafter

in the year 1937 levied in any municipality on the rateable properties of corporations according to the assessment roll thereof whether or not the assessment roll upon which taxation in the year 1937 has been or may be levied has been made and revised at the time when this Act comes into force.

RECORD No. 8. — The Assessment Amendment Repeal Act, 1937, 1 George VI, Chapter 9, Sections 2 and 3. —*continued*

3.—This Act shall come into force on the day upon which it received the Royal Assent.

Assented to March 25th, 1937.

No. 9

RECORD No. 9. — Statute Law Amendment Act (1937), 1 George VI, Chapter 72, Section 57.

10

Statute Law Amendment Act (1937), 1 George VI, Chapter 72, Section 57.

57.—(1) The Separate Schools Act is amended by adding thereto the following section and Form:

65.—(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.

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(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.

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(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) 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.

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(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.

RECORD
No. 9.
—
Statute Law Amendment Act (1937), 1 George VI, Chapter 72, Section 57.

(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.

FORM B

(Section 65).

Notice by Corporation as to application of School Tax.

To the Clerk of (describing the municipality).

TAKE NOTICE that (here insert the name of the corporation so as to sufficiently and reasonably designate it) pursuant to a resolution in that behalf of the directors requires that hereafter and until this notice is either withdrawn or varied the whole or so much of the assessment for land and business or other assessments of the corporation within (giving the name of the municipality) as is hereinafter designated, shall be entered, rated and assessed for separate school purposes, namely one-fifth (or as the case may be) of the land and business or other assessments. 10

GIVEN on behalf of the said Company this (here insert date).

R.S., Secretary of the Company.

(2) In any municipality in which the assessment is made in the year 1937 for the year 1938 the assessment roll of such municipality or of any ward thereof shall not be completed or revised prior to the 1st day of August, 1937, to an extent that will prevent a notice under section 65 of The Separate Schools Act being given effect to for the purposes of taxation in 1938 in accordance with such notice, subject to any appeal that may be had therefrom and for the purpose of 1938 taxation such notice may be given not later than the 31st day of July, 1937, provided that any notice given under section 65 of The Separate Schools Act prior to the repeal of the said section (by section 42 of chapter 55 of the Statutes of 1936), shall for the purposes of section 65 of The Separate Schools Act (as re-enacted by this Act) continue to be in force and to 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. 20 30

(3) This section shall come into force on the day upon which this Act received the Royal Assent, but shall not affect taxation for school purposes levied or to be levied in the year 1937.

Assented to March 25th, 1937.

RECORD
No. 10.

The Separate Schools Act, R.S.O., 1937, Chapter 362, Section 66.

No. 10

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
10 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.

20 (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) 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
30 office and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect an assessment roll.

(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."