

---

THE PROTESTANT SCHOOL BOARD }  
OF GREATER MONTREAL ..... } APPELLANT;

AND

JENKINS BROS. LIMITED ..... RESPONDENT;

AND

LA COMMISSION DES ÉCOLES CA- }  
THOLIQUES DE MONTRÉAL .... } INTERVENANT.

1967  
\*Feb. 17,  
20, 21  
Oct. 3

---



---

LES COMMISSAIRES D'ÉCOLES }  
POUR LA MUNICIPALITÉ DE LA } APPELLANT;  
CITÉ DE LACHINE ..... }

AND

JENKINS BROS. LIMITED ..... RESPONDENT;

AND

LA COMMISSION DES ÉCOLES CA- }  
THOLIQUES DE MONTRÉAL .... } INTERVENANT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,  
APPEAL SIDE, PROVINCE OF QUEBEC

*Schools—Valuation for purposes of school taxes—Valuation of immovable property on protestant and neutral panels in Montreal suburbs—Whether machinery should be included—Act respecting valuation for school purposes, 1961-62 (Que.), 10-11 Eliz. II, c. 17, s. 7—Cities and Towns Act, R.S.Q. 1941, c. 233, s. 488—Charter of the City of Montreal, 1959-60 (Que.), 8-9 Eliz. II, c. 102, s. 781.*

---

\*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott and Spence JJ.

1967  
 {  
 PROTESTANT  
 SCHOOL  
 BOARD OF  
 GREATER  
 MONTREAL  
 v.  
 JENKINS  
 BROS. LTD.  
 —  
 COMMIS-  
 SAIRES  
 D'ÉCOLES  
 POUR LA CITÉ  
 DE LACHINE  
 v.  
 JENKINS  
 BROS. LTD.  
 —

The respondent company owns and operates an industrial establishment in the city of Lachine which is within the territorial jurisdiction of the appellant Protestant Board. Its immovable property comprises lands and buildings together with machinery and equipment located thereon. The valuation of its property, for purposes of municipal taxes in the year 1963, properly included an amount as to the value of the machinery and equipment. By virtue of s. 7 of an Act respecting valuation for school purposes, 1961-62 (Qué.), c. 17, the appellant Board is required to revise the valuation rolls of the municipalities within its jurisdiction if they were "not established on a basis equal to the basis of the valuation made in the city of Montreal". The respondent contends that, in determining whether the valuation of its property was made on a basis equal to the valuations made in Montreal, account must be taken of the fact that, in Montreal, machinery is not valued for municipal tax purposes. The contention of the appellants is that the obligation imposed on the Board relates only to the method of valuation and not to the property constituting the tax base. The appellant Board refused to strike out the valuation of the machinery from the valuation roll of the respondent's property. An appeal to the Magistrate's Court was dismissed. On a further appeal to the Court of Appeal, this judgment was reversed. The School Board appealed to this Court.

*Held:* The appeal should be dismissed.

The machinery and equipment, owned by the respondent and located on its immovable property in Lachine, are not subject to tax for school purposes. Where a tax is imposed with respect to property of a like kind and character, in the absence of a clearly expressed intention to the contrary, there is a presumption that the taxing statute is intended to operate uniformly, equally and without discrimination. There is no valid reason why the owners of immovable property in the suburbs of Montreal should be discriminated against by being assessed for school tax purposes on a less favourable basis than that applied to the owners of similar property in the city itself. It was the intention of the legislature that, so far as possible, equality should be established among the owners of properties on the Protestant and neutral panels in all territories subject to the Board's jurisdiction.

---

*Écoles—Évaluation pour fins de taxes scolaires—Évaluation d'immeubles inscrits sur les listes protestantes et neutres dans les banlieues de Montréal—Valeur de la machinerie doit-elle être incluse—Loi concernant l'évaluation pour fins scolaires, 1961-62 (Qué.), 10-11 Eliz. II, c. 17, art. 7—Loi des Cités et Villes, S.R.Q. 1941, c. 233, art. 488—Charte de la Ville de Montréal, 1959-60 (Qué.), 8-9 Eliz. II, c. 102, art. 781.*

La compagnie intimée possédait dans la ville de Lachine un établissement industriel qui était compris dans le territoire soumis à la juridiction du Bureau appellant. Ses immeubles comprenaient des terrains et des édifices ainsi que de la machinerie située dans ces édifices. L'évaluation de ses immeubles, pour fins de taxes municipales pour l'année 1963, incluait avec raison un montant se rapportant à la valeur de cette machinerie. En vertu de l'art. 7 de la *Loi concernant l'évaluation pour fins scolaires, 1961-62* (Qué.), c. 17, le bureau appellant doit ordonner la modification des rôles d'évaluation pour les

municipalités soumises à sa juridiction s'ils n'étaient pas «établis sur une base égale à la base des évaluations faites dans la cité de Montréal». L'intimée soutient que, pour déterminer si l'évaluation de sa propriété a été faite sur une base égale à la base des évaluations faites dans Montréal, on doit tenir compte du fait que, dans Montréal, la machinerie n'est pas évaluée pour fins de taxes municipales. La prétention de l'appellant est que l'obligation imposée au Bureau se rapporte seulement à la méthode d'évaluation et non pas à la propriété constituant la base de la taxe. Le Bureau a refusé de radier l'évaluation de la machinerie du rôle d'évaluation de la propriété de l'intimée. Un appel à la Cour de Magistrat a été rejeté. Sur appel à la Cour d'Appel, ce jugement a été renversé. Le Bureau des Écoles en appela devant cette Cour.

*Arrêt:* L'appel doit être rejeté.

La machinerie, appartenant à l'intimée et située sur sa propriété à Lachine, n'est pas sujette à la taxe scolaire. Lorsqu'une taxe est imposée relativement à des propriétés d'une espèce et d'un caractère semblables, il y a une présomption, en l'absence d'une intention clairement exprimée au contraire, que le statut imposant la taxe est censé opérer uniformément, également et sans discrimination. Il n'y a aucune raison valide pour que l'on se serve d'un procédé discriminatoire contre les propriétaires d'immeubles dans les banlieues de Montréal en établissant un impôt sur une base moins favorable que celle qui est établie pour les propriétaires d'immeubles semblables dans la cité elle-même. C'était l'intention de la législature que, en autant que possible, une égalité soit établie entre les propriétaires d'immeubles inscrits sur les listes protestantes et neutres dans tous les territoires soumis à la juridiction du Bureau.

APPELS de deux jugements de la Cour du banc de la reine, province de Québec<sup>1</sup>, renversant un jugement de la Cour de Magistrat. Appels rejetés.

APPEALS from two judgments of the Court of Queen's Bench, Appeal Side, province of Quebec<sup>1</sup>, reversing a judgment of the Magistrate's Court. Appeals dismissed.

*Alexander McT. Stalker, Q.C., and P. Graham, for the appellant, The Protestant School Board of Greater Montreal.*

*Jean Martineau, Q.C., C. A. Phelan and C. Goulet, for the appellant, Les Commissaires d'Écoles pour la Municipalité de Lachine.*

*Pierre Cimon, Q.C., and T. H. Montgomery, Q.C., for the respondent.*

<sup>1</sup> [1967] Que. Q.B. 19.

1967

PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL

v.  
JENKINS  
BROS. LTD.

COMMIS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE

v.  
JENKINS  
BROS. LTD.

1967

*G. E. Ledain, Q.C., and Clermont Vermette, for the*  
*invervenant.*

PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL

The judgment of the Court was delivered by

*v.*  
JENKINS  
BROS. LTD.  
  
COMMISS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE  
*v.*  
JENKINS  
BROS. LTD.

ABBOTT J.:—These two appeals are from a majority judgment of the Court of Queen's Bench<sup>1</sup>, dated February 7, 1966, which reversed a judgment of the Magistrate's Court rendered February 27, 1964. This latter judgment had dismissed an appeal whereby the respondent company sought to have set aside a resolution of the appellant Board (hereinafter referred to as the "Central Board"), regarding the valuation of its properties in the City of Lachine for school tax purposes, and to have it declared that the valuation of the said properties for such purposes was \$2,146,509.

In the Courts below, the appellant in the second appeal—Les Commissaires d'Écoles pour la Municipalité de la Cité de Lachine—had intervened to support the position taken by the Central Board. Before this court, the Commissaires have taken a separate appeal, and the Commission des Écoles Catholiques de Montréal has intervened to support both appeals.

The facts are admitted. The respondent company owns and operates an industrial establishment in the City of Lachine, which is within the territorial jurisdiction of both appellants. Its immovable property in that city comprises land and buildings together with machinery and equipment located thereon. The valuation of its property, for purposes of municipal taxes in the year 1963, included an amount of \$1,564,160 as the value of the said machinery and equipment.

The sole question in issue on this appeal is one of law. That question is whether the machinery and equipment referred to are subject to tax for school purposes. The answer to that question depends upon the interpretation and effect of certain statutes applicable to the Central Board, and in particular to the provisions of s. 3 of the Act 11 Geo. VI, c. 81, as amended.

The relevant statutory provisions have been carefully reviewed in the judgments below and I need not refer to them in detail.

<sup>1</sup> [1967] Que. Q.B. 19.

The Central Board was incorporated in 1925 under the provisions of the Act 15 Geo. V, c. 45. Generally speaking, its jurisdiction extends to all the protestant school municipalities in the Montreal metropolitan area, including the City of Lachine. The 1925 statute was enacted, following a report made by a Royal Commission, appointed to study and report on what measures were required to improve the financial system governing the protestant school municipalities in and around the City of Montreal. As stated in the preamble, the Central Board was established, among other purposes, "to distribute evenly the cost of Protestant education among the various Protestant school municipalities in the territory affected." The major portion of the revenues of the Central Board is derived from school taxes imposed at a uniform mill rate upon (1) immoveable property owned by protestant taxpayers in the territory affected and (2) from the protestant share of taxes imposed at a uniform mill rate upon immoveable property in the said territory listed on what is known as the neutral panel and which includes the immoveable property of incorporated companies such as the respondent.

Assessment for school tax purposes is made upon the basis of the valuation rolls prepared in each local municipality for municipal tax purposes. Under the general laws applicable to the City of Lachine, and in particular under the provisions of s. 488 of the *Cities and Towns Act*, R.S.Q. 1941, c. 233, as amended, immoveable property subject to tax for municipal purposes includes land and buildings, together with machinery and equipment located thereon unless such machinery and equipment have been expressly excluded by by-law of the municipal council. No such by-law was passed by the City of Lachine. It follows, therefore, that the value of the machinery and equipment, located on the respondent company's immoveable property in Lachine, was properly included in the valuation of that property for municipal tax purposes.

The situation is different in the City of Montreal. In that municipality, under s. 781 of the City Charter, the value of machinery and equipment is not to be taken into account in establishing the real value of immoveable property for municipal tax purposes.

1967  
PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL  
v.  
JENKINS  
BROS. LTD.  
—  
COMMIS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE  
v.  
JENKINS  
BROS. LTD.  
—  
Abbott J.  
—

1967

PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL

v.

JENKINS  
BROS. LTD.

COMMIS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE

v.

JENKINS  
BROS. LTD.

Abbott J.

In 1947, the Act 11 Geo. VI, c. 81, to which I have referred, was enacted. Sections 2 and 3 of that Act, as amended by 4-5 Eliz. II, c. 124 and 10-11 Eliz. II, c. 17, read as follows:

2. The Central Board shall examine the immoveable properties entered on the Protestant and Neutral Panels, and the valuation rolls thereof, in any municipality the territory of which is subject to the jurisdiction of the Central Board for Protestant school purposes, in order to ascertain whether the valuations in such municipality are established on a basis equal to the basis of the valuations made in the city of Montreal, and the Central Board may employ valuers and experts to make the necessary examinations and to submit reports to the Central Board; such valuers and experts shall have the powers described in section 374 of the Education Act (Revised Statutes 1941, chapter 59).

3. If the valuations, or any of them, appearing on the valuation roll of any such municipality are not established on a basis equal to the basis of the valuations made in the city of Montreal, the Protestant School Board of Greater Montreal shall, by resolution, direct amendments to the valuation roll of all or any immoveable properties entered on the protestant and neutral panels in such municipality other than the city of Montreal, and that such amended valuation roll shall replace for all purposes of assessment and collection of school taxes in respect of immoveable properties entered on the protestant and neutral panels, the valuation roll theretofore in use by such municipality.

Under the statute as originally enacted, the Central Board had only a discretionary power to revise the valuation rolls of the municipalities within its jurisdiction other than the City of Montreal. After December 1, 1962, the date on which the amendments to ss. 2 and 3, made by the Act 10-11 Eliz. II, c. 17, came into force, the Central Board was obliged to revise such rolls if they were "not established on a basis equal to the basis of the valuations made in the city of Montreal".

Respondent's position is, of course, that in determining whether the valuation of its immoveable property in Lachine was made on a basis equal to the valuations made in Montreal, account must be taken of the fact that, in Montreal, machinery and equipment are not valued for municipal tax purposes. The contention of appellants and the intervenant on the other hand is that the obligation imposed on the Central Board under s. 3 of 11 Geo. VI, c. 81, to revise the valuation rolls of municipalities other than Montreal, relates only to the method of valuation and not to the property constituting the tax base. The majority in the Court below refused to accept that interpretation and I am in respectful agreement with that finding.

As I have said, the sole question at issue in these appeals is whether machinery and equipment, owned by respondent and located on its immovable property in Lachine, are subject to tax for school purposes. I share the view of the majority in the Court below that the answer to this question depends upon the effect to be given to s. 3 of 11 Geo. VI, c. 81, as amended, and in particular to the interpretation of the phrase "a basis equal to the basis of the valuations made in the city of Montreal". That being so I do not need to consider Mr. Cimon's argument based upon s. 16 of the Act 15 Geo. V, c. 45.

All owners of immovable property on the protestant and neutral panels in the area, subject to the jurisdiction of the Central Board, are obliged to contribute to the cost of maintaining the protestant schools in that area. A uniform mill rate and the standard of valuation (the real value of the property) are prescribed by law.

Where a tax is imposed with respect to property of a like kind and character, in the absence of a clearly expressed intention to the contrary, there is a presumption that the taxing statute is intended to operate uniformly, equally and without discrimination. I can see no valid reason why the owners of immovable property in the suburbs of Montreal should be discriminated against by being assessed for school tax purposes on a less favourable basis than that applied to the owners of similar property in the city itself.

I am therefore in agreement with Montgomery J. in the Court below when he said:

It may be that the primary purpose of the Legislature, in enacting 11 Geo. VI, c. 81, was to provide additional revenues for Respondent, but it seems also to have been the intention of the Legislature to spread the burden of taxation for school purposes more evenly among the owners of properties on the Protestant and neutral panels in the various municipalities subject to Respondent's jurisdiction. This intent is particularly clear from the recent amendments to the above act made by 10-11 Eliz. II, c. 17, which in its title and preamble makes no reference to Appellant but is entitled merely "An Act Respecting Valuation for School Purposes". Before this act, Respondent had a discretionary power to revise the valuation rolls of the municipalities other than the City of Montreal. After Section 7 came into force on 1st December, 1962 (a few months before the date of the resolution in question), Respondent no longer had this discretion. It was obliged to revise these valuation rolls if they were not established on a basis equal to the basis of valuations made in Montreal, even if such revision were to its disadvantage.

1967

PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL  
v.  
JENKINS  
BROS. LTD.  
—  
COMMIS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE  
v.  
JENKINS  
BROS. LTD.  
—  
Abbott J.  
—

1967

PROTESTANT  
SCHOOL  
BOARD OF  
GREATER  
MONTREAL  
v.  
JENKINS  
BROS. LTD.

I am satisfied that it was the intention of the Legislature that, so far as possible, equality should be established among the owners of properties on the Protestant and neutral panels in all territories subject to Respondent's jurisdiction. This intention is partly defeated by giving a restricted meaning to the term "basis of the valuation", limiting it to the rules followed in determining values per square foot of land and per cubic foot of building space and ignoring the various legal provisions as to the accessories to be included in the value of the immoveable.

COMMIS-  
SAIRES  
D'ÉCOLES  
POUR LA CITÉ  
DE LACHINE  
v.  
JENKINS  
BROS. LTD.  
Abbott J.

Both appeals and the intervention should be dismissed with costs.

*Appeals dismissed with costs.*

*Attorneys for the appellant, The Protestant School Board of Greater Montreal: Howard, Stalker, McDougall, Graham & Stocks, Montreal.*

*Attorneys for the appellant, Les Commissaires d'Écoles pour la Municipalité de Lachine: Martineau, Walker, Allison, Beaulieu, Tetley & Phelan, Montreal.*

*Attorneys for the respondent, Jenkins Bros. Ltd.: Howard, Cate, Ogilvy, Bishop, Cope, Porteous & Hansard, Montreal.*

*Attorneys for the intervenant, La Commission des Écoles Catholiques de Montréal: Riel, Bissonnette, Vermette & Ryan, Montreal.*

---