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GARIBALDI LIFTS LIMITED

v.

VANCOUVER ASSESSMENT DISTRICT

Supreme Court of British Columbia (No. X795/66)

Before: MR. JUSTICE THOMAS A. DOHM

Vancouver, September 2, 1966

M.G. King for the Appellant company
J.G. Taggart Q.C. for the Respondent

Reasons for Judgment

The series of photographs and two maps filed by counsel by consent on the hearing of this stated case clearly show that the appellant company operates a type of overhead transportation which consists of the use of gondola cars running on cable or cables. The principal object of these cars is to convey passengers and freight up to a recreational area. The tow-bar operations operated by the appellant are separate and apart and are excluded from my consideration herein as it is agreed that they should be taxed on the ordinary basis. The main operation, however, comes clearly under the definition of an "aerial tramway" as described in the *Railway Act*, chapter 329, R.S.B.C. 1960, "any type of overhead transportation effected by the use of a cable or cables."

The two questions addressed to the Court by Mr. K.M. Beckett, Chairman of the Assessment Appeal Board, for opinion are:

" 1. Did the respondent err in assessing the lands and improvements of the appellant in accordance with section 37 (1) and (3) of the *Assessment Equalization Act*?

"2. If so, should the lands and improvements of the appellant be assessed in accordance with special statutory provisions relating to the assessment of railway companies, particularly all or any of the following: Section 37 (6) (c) of the *Assessment Equalization Act*, sections 67, 68, 69, and 72 of the *Taxation Act*, and section 205 of the *Public Schools Act*."

Section 37 (1) and (3) of the *Assessment Equalization Act* read as follows:

37. (1) The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

(3) The assessed value of land and improvements for the purposes of real property taxation under the *Public Schools Act* shall be fifty per centum of the actual value of land and fifty per centum of the actual value of improvements as determined under subsection (1). (Taxation for school purposes in respect of land and improvements under the *Public Schools Act* is, in effect, on fifty per centum of the actual value of land and thirty-seven and one-half per centum of the actual value of improvements.)

Section 37 (6) (c) of the *Assessment Equalization Act* reads as follows:

(c) the assessed value of land and improvements of a telegraph, tramway, or railway company shall be determined in accordance with the *Municipal Act* or the *Vancouver Charter* in a municipal corporation and in accordance with the *Taxation Act* and *Public Schools Act* in a rural area. [Emphasis underlining added.]

The only issue is whether the land and improvements of the appellant should be assessed as a railway under the *Provincial Railway Act* or under the provisions of the *Taxation Act* and the *Public Schools Act* or under section 37 (1) and (3) hereinbefore referred to.

The Order in Council filed herein establishes that the appellant company comes within the provisions of the *Railway Act* for certain purposes and that certain sections of the *Railway Act* are binding upon the operation. The certificate issued under the *Railway Act* describes the operation as a "gondola lift." The only rails used in the operation appear from the photographs to be an overhead type of rail located in the storage area wherein are stored some 64 gondola cars. Each of these cars incidentally holds four persons. Once the gondola car is propelled and manoeuvred onto the cable, it then travels its entire distance by way of cable and not by rail.

In my view the appellant company is only a "railway" for the purposes of section 4 of the *Railway Act* and the sections dealing with the taxation of railways under the *Taxation Act*, chapter 376, R.S.B.C. 1960, do not apply to a tramway of any type in the absence of any express provision. Counsel have not referred me to any definitions or decided cases. I should state that I have applied *Tottenham v. Metropolitan Electric Tramways* (1913) A.C. 702 as being authority for a tramway not being classified as a railway within the meaning of the *Public Health Act* (an *Assessment Act*) therein discussed.

As Lord Sankey, L.C., stated in the *Aeronautics Reference under the British North America Act* (1932) A.C. 54 at page 70: "Useful as decided cases are, it is always advisable to get back to the words of the Act itself and to remember the object with which it was passed."

In applying this principle to the *Assessment Equalization Act*, it is apparent that the Legislature of British Columbia intended that the assessed value of land and improvements of a telegraph company, a tramway or a railway company should be determined in the manner as set forth in section 37 (6) (c). The two terms "tramway" and "railway" are used in juxtaposition and thereby is made a distinction between the two terms. As learned counsel Mr. Taggart pointed out, the appellant, in order to get out of section 37 (1) and (3), must qualify under section 37 (6) (c). By this I take it that the appellant must qualify either as a railway or as tramway.

A "tramway" is a broad term which (at the date of the Statute) has a figurative use and which, in my opinion, would include the aerial tramway of the appellant. In British Columbia for many years we have had tramways both consisting of trams or cars running on rails on the ground and also aerial tramways used in connection with mines, such as the gypsum mines at Falkland. The Shorter Oxford Dictionary, Volume 2, at page 2229, sets forth a figurative use of tramway as "a cable or system of cables on which suspended cars can travel" (U.S. 1872).

I am of the opinion that the aerial tramway of the appellant does qualify as a tramway under section 37 (6) (c) of the *Assessment Equalization Act*.

Apart from the foregoing, if it is more beneficial for the appellant to be taxed under section 7 (6) (c), then I would favour the construction of the Statute namely, the word "tramway" to include aerial tramway on the basis of that principle.

Therefore, I am of the opinion that although this operation is not a railway, it is a tramway under section 37 (6) (c) and should be assessed in accordance with the provisions contained in section 37 (6) (c) of the *Assessment Equalization Act*.