

In the Privy Council.

No. 104 of 1945.

ON APPEAL FROM THE SUPREME COURT  
OF CANADA.

BETWEEN  
THE CITY OF MONTREAL (Defendants)  
AND  
MONTREAL LOCOMOTIVE WORKS LIMITED  
(Plaintiff) and the ATTORNEY-GENERAL  
OF CANADA (Intervenant)

UNIVERSITY OF LONDON  
W.C.1  
- Appellants  
26 OCT 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

Respondents.

CASE OF THE APPELLANT

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CASE FOR THE APPELLANTS.

Record.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada, given on the 20th June, 1945, upon three appeals from a judgment of the Court of King's Bench for the Province of Quebec given on the 29th December, 1944, upon three appeals from a judgment of the Superior Court of Montreal given on the 21st October, 1943. pp. 197-199. p. 138 et seq. p. 118.

2. The Appellants claimed from the Respondents Montreal Locomotive Works Limited (hereinafter called "the Respondent Company") the following taxes :—

20	(A) Property Tax in respect of a factory at No. 5781 Notre Dame Street East, in the City of Montreal, from the 1st November, 1941, to the 30th April, 1942 .. .. .	\$18,934.78	<i>Yes</i>
	(B) Business Tax in respect of manufacture carried on by the Respondent Company at that factory for the same period .. .. .	\$3,425.22	<i>Yes</i>
	(C) Property Tax in respect of the same factory from the 1st May, 1942, to the 30th April, 1943 .. .. .	\$41,141.77	<i>Yes</i>
30	(D) Business Tax in respect of manufacture carried on by the Respondent Company at that factory for the same period .. .. .	\$6,850.44	<i>Yes</i>

together with interest at 5 per cent. from the dates when the said taxes were due.

3. The question whether the Respondent Company were liable to pay these taxes was submitted to the Superior Court for its decision upon an agreed statement of facts in an action brought by the Respondent p. 2, l. 7.

Record.  
p. 137.

Company as Plaintiffs against the Appellants as Defendants, His Majesty the King in right of Canada (hereinafter referred to as "the Crown") intervening. The action was tried by Chief Justice Bond, who held that the Appellants were entitled to be paid the taxes specified in paragraph 2 (B), (C) and (D) of this Case, but not the tax specified in paragraph 2 (A). He ordered the Respondent Company to pay to the Appellants the costs of the action, and the Crown to pay to the Appellants the costs upon the intervention.

4. Three appeals were brought from the judgment of Bond C.J. to the Court of King's Bench for the Province of Quebec. The Crown 10 appealed against that part of the judgment which held that the Respondent Company were liable to pay the taxes specified in paragraph 2 (B), (C) and (D). The Respondent Company appealed against the same part of the judgment. The Appellants appealed against that part of the judgment which held that the Respondent Company were not liable to pay the tax specified in paragraph 2 (A).

pp. 138-180.

5. By a majority of three to two the Court of King's Bench dismissed the appeals of the Crown and of the Respondent Company. The Court was unanimous in dismissing the Appellants' appeal.

6. The three parties appealed to the Supreme Court of Canada. 20 That Court allowed the appeals of the Crown and of the Respondent Company, dismissed the Appellants' appeal, and ordered the Appellants to pay the costs throughout of the Crown and of the Respondent Company.

7. The effect of the litigation in Canada is that two Courts have upheld and one Court has denied, the Appellants' right to recover the taxes specified in paragraph 2 (B), (C) and (D), while the three Courts have denied the Appellants' right to recover the taxes specified in paragraph 2 (A).

X 8. Section 125 of the British North America Act provides that no lands or property belonging to Canada or any Province shall be liable to taxation. The principal question raised by the Appeal is whether the 30 Respondent Company, by reason of their relation to the Crown under two contracts, are entitled to immunity from the Property Tax and the Business Tax imposed by the Appellants under the powers conferred by their Charter.

9. The answer to the question stated in the last paragraph depends in the main upon the application to the agreed facts of Articles 1, 361, 362A, and 363 of the Appellants' Charter:—

"Article 1. Whenever the following words occur in this Act, they shall unless the context otherwise requires, be understood as follows:—

(h) The word 'occupant' shall mean any person who occupies an immovable in his own name otherwise than as proprietor, usufructuary, or institute, and who enjoys the revenues derived from such immovable; . . .

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“ *Article 361.* 1. All immoveable property situate within the limits of the city shall be liable to taxation and assessment, except such as may be hereinafter declared exempt therefrom.

\* \* \* \* \*

6. The city may make by-laws to impose and levy annually, on taxable immoveable property in the city, taking into account any special and general real estate tax, an assessment not exceeding two per cent. of the value of the said immoveables as entered on the valuation roll in force at the time of the imposition. Such assessment shall be a charge upon such immoveables and the owners thereof shall be personally liable therefor.

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“ *Article 362A.* The exemptions enacted by article 362 shall not apply either to persons occupying for commercial or industrial purposes buildings or lands belonging to His Majesty or to the Federal and Provincial Governments, or to the board of harbour commissioners, who shall be taxed as if they were the actual owners of such immoveables and shall be held to pay the annual and special assessments, the taxes and other municipal dues.

\* \* \* \* \*

“ *Article 363.* The city may also impose and levy by by-law, a tax to be called the ‘ business tax ’ on all trades, manufactures, financial or commercial institutions, premises occupied as warehouses, or storehouses, occupations, arts, professions or means of profit or livelihood, carried on or exercised by any person or persons, in the city ; provided that such business tax does not exceed ten per cent. of the annual value of the premises in which such trades, manufactures, financial and commercial institutions, occupations, arts, professions or means of profit or livelihood are respectively exercised or carried on ; and all persons, companies and corporations engaged in or carrying on such trades, manufactures, financial or commercial institutions, occupations, arts, professions or means of profit or livelihood, shall be directly responsible for the payment of such tax . . . .”

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The Appellants contend that the Respondent Company occupied the factory in question and carried on manufacture there, and so were liable to pay the property and business taxes. The Respondent Company and the Crown deny that the Respondent Company occupied the factory or carried on manufacture there, and contend that the Crown occupied it carrying on manufacture there, and that the Respondent Company were present in the factory merely as the agents or servants of the Crown managing the Crown’s manufacture.

40 10. The facts can be stated as follows :—

(A) In 1940 the Respondent Company owned a large plot of land at No. 5781 and 5790–5910 Notre Dame Street East, in the Parish of Longue Pointe, in the City of Montreal. The cadastral numbers of this land in the Official Plan and Book of Reference of the Cadastre of the Parish were P-21 and P-27. The Respondent Company carried on manufacture on part of this land.

p. 4, ll. 3-18.

Record.  
p. 2, ll. 23-45.

(B) On the 23rd October, 1940, the Respondent Company entered into a contract with the Crown (hereinafter called the "Construction Contract"). By this contract the Respondent Company, in consideration of the sum of \$1, agreed that they would sell part of this land to the Crown, that part to be determined by the Respondent Company subject to the approval of the Minister of Munitions (hereinafter called "the Minister"). The Respondent Company agreed to erect upon that part of the land a factory suitable for manufacturing gun carriages and tanks. Clause 6 (a) of the construction contract was in the following terms :— 10

p. 22, ll. 33-44.

"(a) The Company shall, subject to such supervision, direction and control as the Minister may from time to time in writing advise the Company that he desires to exercise, have full control over the design, construction and equipment of the new plant, the selection of contractors and sub-contractors and the type of contract to be made with them, the selection and purchase of construction materials, machinery, tools and other equipment and over all other matters incidental to the full completion of the new plant."

p. 24, ll. 20-30.

p. 28, l. 47, to  
p. 29, l. 21.

The Contract authorized the Respondent Company to incur and pay, 20  
"for and on behalf of the Government and as its agent" all costs and expenses necessary or incidental to the performance of the contract, and the Crown agreed to pay to the Respondent Company all proper and reasonable costs and expenses incurred by them in the performance of the contract. By Clause 12 the Crown acknowledged and agreed that the Respondent Company were "acting on behalf of the Government and as its agent in all matters pertaining to the performance" of the Contract. It was also agreed that "the title to the new plant and to the equipment and accessories thereof" should at all times be vested in the Crown. 30

p. 29, ll. 35-44.

p. 34, l. 38, to  
p. 36, l. 10.

The contract provided that the Crown should not dispose of the land or the factory without giving the Respondent Company the first refusal, that if the Crown failed to dispose of the factory within five years after the end of the war it would pay to the Respondent Company the fair value of the land, that if within that period the Crown disposed of the factory to any person other than the Respondent Company it would pay to the Respondent Company the fair value of the land, and that if within that period the Crown demolished the factory it would sell the land to the Respondent Company for the price of \$1. It was finally agreed that the contract 40  
should be in all respects subject to and interpreted in accordance with the laws of the Province of Quebec.

p. 38, ll. 33-37.

p. 2, l. 46, to  
p. 3, l. 13.

p. 41, ll. 28-47.

(c) On the 23rd October, 1940, the Respondent Company entered into a contract with the Crown (hereinafter called the "Production Contract"). By Clause 1 of this contract the Crown acknowledged and agreed that the Respondent Company were acting on behalf of the Government and as its agents in all matters pertaining to the performance of the contract, and that it would indemnify the Respondent Company from all expenditure, claims and liabilities arising out of the performance of the contract, and 50  
would relieve the Respondent Company from responsibility for any

failure or delay in carrying out the contract "except in cases of definite bad faith or wilful neglect on the part of the Company." It was agreed that the Respondent Company would administer, manage and operate the factory and produce therein for the account of the Crown gun carriages and tanks. Record.  
p. 42, ll. 1-20.

Clause 12 (a) provided as follows:— p. 57, ll. 21-32.

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"(a) The Company shall (subject to such supervision, direction and control as the Minister may from time to time in writing advise the Company that he desires to exercise) have full control over the administration, management and operations of the plant including, but without in any way limiting or restricting the generality of the foregoing, the employment of labour, manual, technical, clerical and professional and the purchase of all necessary materials, supplies, tools and supplementary equipment and all other matters necessary or incidental to the performance of this Agreement."

Clause 12 (c) provided that the plant and all its operation should at all times be accessible to the Minister or his authorised representatives for the purpose of inspection. p. 58, ll. 30-32.

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Clause 13 provided that the Minister should at all times maintain an inspector or inspectors at the plant who should be entitled to exercise the powers stated in the contract to be exercisable by the inspector and such other powers as might from time to time be delegated to the inspector by the Minister. Clause 16 provided that the inspector should attend at the plant during the time when the tanks and gun carriages were being produced for the purpose of observing the production and of making such tests as he deemed necessary, and that he should be empowered to reject any tank or gun carriage if it were not in accordance with specification or if the standards of workmanship were not consistent with generally accepted standards. p. 59, ll. 1-15.  
p. 60, l. 1, to  
p. 61, l. 29.

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By Clause 26 the Government was given the right to modify the specifications and to terminate the contract before completion. p. 64, ll. 16-40.

The contract contained elaborate provisions for fixing the amount of the costs to be re-imbursed by the Crown. The Respondent Company were not to be re-imbursed the cost of correcting defective workmanship if the defects were due to "gross mismanagement or lack of competence" on the part of the Respondent Company. It was not to be re-imbursed— p. 44, l. 22, to  
p. 52, l. 19.  
p. 61, ll. 1-16.

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"(1) Allowances for interest on invested capital, bonds, debentures, bank or other loans. p. 50, l. 27, to  
p. 57, l. 30.

(2) Entertainment expenses.

(3) Dues and other memberships other than regular trade associations.

(4) Donations (except as stated hereunder).

(5) Losses on other contracts.

(6) Losses from sale or exchange of capital assets.

(7) Depreciation on buildings, machinery or equipment paid for by the Government.

Record.

(8) Fines and penalties.

(9) Amortisation of unrealised appreciation of values of assets.

(10) Expenses, maintenance and/or depreciation of excess facilities.

(11) Increases in reserves for contingencies, repairs, compensation insurance (as opposed to payments under any workmen's compensation legislation) and guaranteed work.

(12) Federal and Provincial income, excess profits or surtaxes.

(13) Unreasonable compensation for officers and employees.

(14) Bond discount or finance charges.

(15) Premiums for life insurance on the lives of officers.

(16) Legal and accounting fees in connection with reorganisations, security issues, or capital stock issues.

(17) Losses on investments, bad debts and expenses of collection.

(18) Advertising and selling expenses."

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p. 52, l. 19, to  
p. 54, l. 39.p. 56, l. 39, to  
p. 57, l. 2.

p. 29, ll. 19-40.

p. 74, ll. 43-45.

The contract provided for the payment of a "fee" to the Respondent Company for each tank and gun carriage produced by it. It was provided that the title to all plant, equipment and accessories acquired by the Respondent Company for the purposes of performing the contract should belong to the Crown. The Contract was to continue in force until the Respondent Company had completed production and delivery of a specified number of gun carriages and tanks. Finally the contract provided that it should be in all respects subject to and interpreted by the laws of the Province of Quebec.

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(D) From the agreed statement of facts it does not appear that the Minister ever advised the Respondent Company in writing or otherwise that he desired to exercise any supervision, direction or control under the provisions of Clause 6 (A) of the Construction Contract or of Clause 12 (a) of the Production Contract.

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p. 85, ll. 1-22.

(E) On the Appellants' Valuation Roll for the year beginning on the 1st May, 1941, the Respondent Company were entered as proprietors of numbers 5781 and 5790-5910 Notre Dame Street East. The values shown in the Roll were as follows: land \$368,400, buildings \$775,600, rails \$6,000, motive power \$50,000.

p. 85, ll. 30-40.

(F) On the basis of the values stated in (D) above, the Respondent Company were assessed to pay property taxes of \$35,858.59 for the year 1941-1942. On the 30th September, 1941, the Respondent Company paid these taxes.

p. 4, ll. 24-25.

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p. 3, ll. 26-35.  
p. 89, ll. 20-24.

(G) The erection of the factory was completed on or about the 1st November, 1941. It was erected on No. 5781 Notre Dame Street East, upon part of the land which bore the cadastral number P-21. On the 7th November, 1941, the Respondent Company applied to have P-21 sub-divided and that part of the land upon which the factory was erected given a separate number. This was done, and the site of the factory was given the Number 2210 of P-21.

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(H) On the 20th November, 1941, the Board of Revision of Valuations gave the Respondent Company notice that the Appellants' assessors had valued the land and the completed factory at \$1,264,200 and the motive power at \$13,600. The Respondent Company replied stating that the building and the motive power were the property of the Crown and "presumably not subject to assessment," that the building was occupied by the Crown and operated by the Respondent Company for and on behalf of the Crown "as Manager under an Agency Contract passed on October 23rd, 1940," and that the land upon which the building was constructed was registered in the name of the Respondent Company but was under promise of sale to the Crown and would be conveyed to the Crown by notarial deed within the next few days. On the 1st December, 1941, the Minister wrote to the Board of Revision of Valuations, referring to certain provisions of the Construction Contract and of the Production Contract and contending that the Crown was the owner of the plant, machinery, equipment and land, that the Respondent Company were not the owners, that the Respondent Company had no interest either as lessees or occupants or otherwise of the premises, and that the Respondent Company did nothing "but operate the plant for the account of the Government."

Record.  
p. 89.  
p. 90, l. 1, to  
p. 91, l. 23.

p. 91, l. 30, to  
p. 93, l. 25.

(I) On the 12th December, 1941, the Board of Revision of Valuations issued a certificate to the Appellants' Chief Assessor, certifying that the Respondent Company were the owners of the property 5781 Notre Dame E., that the valuation was \$1,264,200 plus motive power \$13,600, and that the building was ready for occupation on the 1st November, 1941. Thereafter, until the 1st May, 1942, the Respondent Company were described on the Valuation and the Assessment Rolls as the owners of the land, including the building.

p. 101, ll. 1-24.

(J) Upon the basis of this valuation the Respondent Company were called upon to pay additional Property Tax in respect of the completed factory for the period from the 1st November, 1941, to the 30th April, 1942, and the Business Tax in respect of the manufacture carried on by it at the factory for the same period. These are the taxes specified in paragraph 2 (A) and (B) of this Case.

(K) On the 27th February, 1942, the Respondent Company, by a deed of sale in authentic form, confirmed the sale to the Crown of the land on which the factory was erected, and on the 28th February, 1942, this Deed was registered under Number 518606 of the Registration Division of Montreal.

p. 3, ll. 37-46.

p. 3, l. 47, to  
p. 4, l. 2.

(L) On the Appellants' Valuation Roll for the fiscal year beginning the 1st May, 1942, the Respondent Company were entered as occupants of the new building, motive power and land comprised in Lot Number 2210 of Original Lot Number 21. The values shown on the Roll were as follows : land \$99,100, building \$1,264,200, motive power \$13,600.

p. 113, ll. 30-44.

(M) On the basis of the values stated in (1) above, the Respondent Company were assessed to pay Property Tax of \$41,141.77 for the year 1942-1943, and Business Tax for the same year of \$6,850.44. These are the taxes specified in paragraph 2 (c) and (d) of this Case.

11. It will be convenient to consider first the Appellants' right to recover the Property Tax in respect of the period from the 1st November, 1941, to the 30th April, 1942. In respect of this period three points were taken against the Appellants :—

(i) that the Respondent Company were not persons occupying the factory within the meaning of Article 362a of the Appellants' Charter, 10

(ii) that even if the Respondent Company were persons occupying the factory within the meaning of Article 362a, the by-law imposing the Property Tax for this period omitted to impose it upon persons occupying lands or buildings, and

(iii) that in any event the Appellants could not recover the Property Tax from the Respondent Company, as the Respondent Company during this period were described on the Appellants' Valuation roll as the proprietors of the factory and not as the occupiers. 20

*Production*

12. (i) The Appellants submit that a Company carrying on business in a factory must be regarded as persons occupying the factory unless they carry on that business as the servants of some other person, and that under the Construction Contract the Respondent Company were not the servants of the Crown. It is true that under the terms of that Contract the Crown had certain powers of control, but these powers were not such as to establish the relationship of master and servant between the Crown and the Respondent Company. Equally wide powers are often conferred upon the Building Owner under a building contract, where it could not be contended that the Builder was the servant of the Building Owner or indeed anything but an independent contractor. The express provisions of Clause 12 (A) of the Production Contract are, it is submitted, conclusive against the view that the Respondent Company were the servants of the Crown. That Clause provided that the Company were to have full control over the administration, management and operations of the plant. It is true that the Clause provided that the Company should have this control "subject to such supervision, direction and control as the Minister may from time to time in writing advise the Company that he desires to exercise," but the exercise of these rights would not have made the Respondent Company the servants of the Crown, and in fact it does not appear that they were ever exercised. 30 40

13. (ii) The second point turns upon the wording of By-law 1677, by which the Appellants imposed the property tax for the year 1941-1942, and upon the effect of Articles 361 and 362a. The operative part of the By-law was in these terms :—

"Article 1.—A general assessment is imposed and shall be levied for the year beginning on the 1st May 1941 and ending on the 30th April 1942, on taxable immoveables within the City, namely :



(a) on lands, buildings erected thereon, and on everything so fixed or attached to any building or land as to form part thereof . . .

(e) Such assessment shall be one dollar and fifteen cents (\$1.15) per each one hundred dollars (\$100.00) of the value of such immoveable property, as entered on the valuation roll, and shall constitute a charge upon the said immoveable property, and the owners thereof shall be personally liable therefor."

10 It was argued for the Respondent Company and the Crown that the  
by-law imposed the tax only upon immoveables and that it did not impose  
the tax upon persons occupying for industrial purposes buildings or lands  
belonging to the Crown within the meaning of Article 362A. It is  
submitted that this argument is based on a misconception of the effect  
of Articles 361 and 362A of the Appellants' Charter. Article 361 provides  
that all immoveable property situate within the limits of the city shall  
be liable to taxation and assessment, and that the assessment shall  
constitute a charge upon the immoveable property and that the owner  
shall be personally liable therefor. Article 362A provides in effect that  
20 persons occupying for commercial or industrial purposes buildings or land  
belonging to His Majesty shall not be exempt from a tax imposed under  
361 but "shall be taxed as if they were the actual owners of such  
immoveables and shall be held to pay the annual and special assessments,  
the taxes and other municipal dues." When a tax is imposed on  
immoveables under Article 361, a person occupying for commercial or  
industrial purposes buildings or lands belonging to His Majesty is ipso  
facto liable to pay that tax as if he were the actual owner of such  
immoveables. His liability exists by virtue of Article 362A, and it is  
unnecessary that the by-law should expressly refer to him. No tax can  
be imposed under Article 361 which is not payable by the class of persons  
30 described in Article 362A.

14. (iii) The third point turns on the description of the Respondent Company as "proprietors" of the land and building in the Appellants' valuation roll during the period from the 1st November, 1941, to the 30th April, 1942. It was argued that the Respondent Company were not in fact the Proprietors and therefore could not be assessed as such, and that they could not be assessed as occupiers because they were described as proprietors. The facts upon which this argument was based are stated in paragraph 10 (E) to (K) of this Case. Upon this argument the Appellants make the following submissions :—

40 (A) Article 375 of the Appellants' Charter provides that the valuation roll shall contain the name of the last proprietor entered in the Registry Office, and that when an immoveable is transferred by way of sale or otherwise, by deed registered in the Registry Office, the chief assessor shall strike from the valuation roll the name of the proprietor entered thereon and shall enter therein the name of the new proprietor. In December, 1941, when the supplemental assessment was made in respect of the period from the 1st November, 1941, to the 30th April, 1942, the name of the Respondent Company was entered in the Registry Office as that

Record.

of the proprietors of the buildings and land, and no change of proprietorship was registered at that office until February, 1942. The Appellants were therefore entitled to describe the Respondent Company in their valuation roll as proprietors and to assess them as such. If this contention is right, it follows (i) that the Respondent Company cannot complain that they were described as proprietors, and (ii) that the Respondent Company were liable to pay the tax as proprietors without regard to the provisions of Article 362A or to whether they were the persons occupying the factory.

(B) Article 362A provides that persons occupying buildings or lands belonging to His Majesty "shall be taxed as if they were the actual owners of such immovables." To describe the occupant as the proprietor for the purpose of recovering taxes under this Article cannot therefore be regarded as a misdescription. 10

(C) As the measure of the Respondent Company's liability was the same, whether they were regarded as the proprietors of, or the persons occupying the factory, the misdescription was immaterial.

15. The Respondent Company's liability to pay the business tax during the period from the 1st November, 1941, to the 30th April, 1942, depends upon the application of Article 363 of the Appellants' Charter to the admitted facts of the case. Article 363 is reproduced in paragraph 9 of this Case. 20

16. The Respondent Company and the Crown contended that the Respondent Company were not liable to pay the business tax in respect of this period on the ground that the Respondent Company did not occupy the factory in its own name but occupied it for and on behalf of the Crown as its agent or servant. The Appellants submit that on the admitted facts the Respondent Company during this period carried on a manufacture in the factory and exercised there a means of profit or livelihood, and that they are therefore liable to pay this tax. 30

17. The Appellants claim to recover the property tax from the Respondent Company in respect of the period from the 1st May, 1942, to the 30th April, 1943, raises two of the three points outlined in paragraph 11 of this Case, viz., (i) whether the Respondent Company were persons occupying the factory during this period, and (ii) whether the Appellants' by-law for this period (which was in the same form as the by-law for the earlier period) imposed the property tax upon persons occupying lands or buildings. It does not raise the third point because the Respondent Company had registered a change of proprietorship at the Registry Office in February, 1942, and because during this period they were registered as occupiers in the Appellants' valuation roll. 40

18. The Appellants claim to recover the business tax from the Respondent Company in respect of the period from the 1st May, 1942, to the 30th April, 1943, raises the points outlined in paragraph 19 of this Case. In respect of this tax there is no material difference between the facts in the first period and those in the second period.

19. Chief Justice Bond rejected the Appellants' claim to recover the property tax in respect of the period from the 1st November 1942 to the 30th April 1942 :—

Record.

10 “ Whatever right the Defendant (i.e. the Appellants) may have had, or may still have, to assess the Plaintiff (i.e. the Respondent Company) as ‘ occupant ’ . . . I do not consider that in view of the full disclosure made it was open to the Defendant to assess the Plaintiff as ‘ owner ’ of these buildings and motive power for the period presently under review, thus creating a real charge upon the property.” p. 131, ll. 18-25.

The full disclosure referred to by the Chief Justice was the disclosure by the Respondent Company and the Minister that the factory was owned by the Crown (see paragraph 10 (H) of this Case).

20 The Chief Justice held that the Appellants were entitled to recover the property tax in respect of the period from the 1st May 1942 to the 30th May 1943. He said that, looking at the contract as a whole, he was satisfied that the Respondent Company was not an agent or servant of the Crown. He rejected the argument based by the Respondent Company on the form of the by-law. He held that the by-law read with Section 362A of the Appellants' Charter was effective to impose the tax on persons occupying buildings or lands belonging to His Majesty. p. 133 ll. 28-32.  
p. 136, ll. 13-25.

30 20. The majority of the Court of King's Bench upheld the judgment of Chief Justice Bond upon all points. Mr. Justice Marchand was of opinion that the Production Contract was a contract for the performance of work by estimate (*par devis et marché*) and that the Respondent Company were independent contractors (*entrepreneurs*) and not agents (*mandataires*). He concluded that the Respondent Company were during both periods in occupation of the factory. He, with all the other Judges of the Court of King's Bench, agreed with Chief Justice Bond that the description of the Respondent Company in the valuation roll as proprietors during the first period was erroneous, and that the Appellants were thereby precluded from recovering the property tax in respect of this period. p. 169, ll. 1-11.  
p. 163, ll. 1-13.

Mr. Justice Francoeur adopted the reasoning of Chief Justice Bond and of Mr. Justice Marchand. pp. 150-153, l. 11.

40 Mr. Justice Bissonnette was of opinion that the contracts between the Respondent Company and the Crown was one of work and labour (*le contrat de louage d'ouvrage ou le contrat d'entreprise*), and that the status of the Respondent Company was that of independent contractors. He pointed out that the Respondent Company had full freedom of action in relation to sub-contractors, to workmen, and to the supplies of raw materials. He held that their capacity as independent contractors was not affected by the fact that the Crown was liable to indemnify them or that the Crown had reserved the right of supervision. p. 175, l. 10.  
p. 178, ll. 20-22.  
p. 177, ll. 2-14.  
p. 177, ll. 17-44.

Mr. Justice Walsh (dissenting) held that the contract between the Respondent Company and the Crown was one of mandate and that the Respondent Company were agents of the Crown. He observed that the p. 143, ll. 1-3.  
p. 142, ll. 47-50.

Record.

Minister had absolute control over operations and could reject unsatisfactory and defective parts. He made no reference to Clause 12 (a) of the Contract (set out in paragraph 10 (c) of this Case) which provided that the Respondent Company, subject to such supervision, directions and control as the Minister might from time to time in writing advise the Company that he desired to exercise, have full control over the administration, management and operations of the plant.

p. 148, ll. 11-20.

Mr. Justice St. Jacques (dissenting) held that the contract was one of mandate or for the lease of personal services, that the Respondent Company did not occupy the factory in its own name, and that it performed there the work for which it had hired to the Crown the services of its officers and workmen. 10

p. 200

p. 205, l. 17.

21. The unanimous judgment of the Supreme Court of Canada (The Chief Justice, Kerwin, Hudson, Taschereau and Estey, JJ.) was delivered by the Chief Justice. He agreed with the reasons given by Walsh and St. Jacques, JJ. He reviewed the provisions of the Construction Contract and of the Production Contract (without, however, referring to the provisions of Clause 6 (A) of the Construction Contract, set out in paragraph 10 (B) of this Case, or to the provisions of Clause 12 (A) of the Production Contract set out in paragraph 10 (c) of this Case), and concluded his review as follows :— 20

p. 206, l. 18.

“ The Minister has full control throughout.”

He held that the contracts were of agency or service, and that for this reason the Respondent Company were not liable to pay any of the taxes in respect of either period. He also held that the by-law imposing the property tax in respect of each period imposed that tax only upon immovable properties in the city and not upon persons occupying such properties.

It is respectfully submitted that this appeal should be allowed for the following (among other)

## REASONS.

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1. Because during each of the two periods the Respondent Company were persons occupying for commercial or industrial purposes buildings or lands belonging to His Majesty and as such were, under the provisions of Article 362A of the Appellants' Charter, liable to pay the property tax in respect of each of the said periods.
2. Because during each of the said periods the Respondent Company carried on a manufacture in the said factory and exercised there a means of profit or livelihood, and, under the provisions of Articles 362A and 363 of the Appellants' Charter, were accordingly liable to pay the business tax in respect of each of the said periods. 40
3. Because the by-laws passed by the Appellants in respect of each of the said periods read with Article 362A imposed the property tax on the Respondent Company.

4. Because the Respondent Company remained registered at the Registry Office as proprietors of the said factory until the 28th February 1942, and accordingly, under the provisions of Article 375 of the Appellants' Charter, were liable to be assessed to the property tax as proprietors of the said factory during the first of the said periods, irrespective of whether they were persons occupying the said factory during that period.
- 10 5. Because even if the Respondent Company were not liable to pay the property tax during the first of the said periods unless they were proved to be persons occupying the said factory, the Appellants under the provisions of Article 362A were entitled to describe them in their valuation and assessment rolls either as proprietors or as occupiers.
6. Because as the Respondent Company's liability was the same, whether they were proprietors or occupiers, a misdescription of the Respondent Company as proprietors was immaterial.
- 20 7. Because the Respondent Company during each of the said periods were not the servants of the Crown.
8. Because the Respondent Company during each of the said periods were not the agents of the Crown.
9. Because the Respondent Company during each of the said periods were independent contractors.
10. For the reasons given by Chief Justice Bond and the majority of the judges of the Court of King's Bench, so far as they favoured the Appellants.
- 30 11. Because the judgment of the Supreme Court was wrong and ought to be reversed.

GUILLAUME SAINT PIERRE.

B. MACKENNA.

In the Privy Council.

No. 104 of 1945.

ON APPEAL FROM THE SUPREME  
COURT OF CANADA.

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BETWEEN

THE CITY OF MONTREAL

(Defendants) - - *Appellants*

AND

MONTREAL LOCOMOTIVE  
WORKS LIMITED (Plaintiff)

AND THE ATTORNEY-  
GENERAL OF CANADA

(Intervenant) - *Respondents.*

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CASE FOR THE APPELLANTS.

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