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LEGAL STUDIES

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FACTUM OF MONTREAL
LOCOMOTIVE WORKS

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DOMINION OF CANADA

In the Supreme Court of Canada

(OTTAWA)

On Appeal from Judgments of the Court of King's Bench, sitting in Montreal, (in Appeal).

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BETWEEN:—

HIS MAJESTY THE KING, IN RIGHT OF CANADA,
(Intervenant in the Superior Court and Appellant before the Court of King's Bench)
APPELLANT

— vs —

THE CITY OF MONTREAL,
(Defendant in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

— and —

20

MONTREAL LOCOMOTIVE WORKS LIMITED,
(Plaintiff in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

THE CITY OF MONTREAL,
(Defendant in the Superior Court and Appellant before the Court of King's Bench)
APPELLANT

— vs —

MONTREAL LOCOMOTIVE WORKS LIMITED,
(Plaintiff in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

30

— and —

HIS MAJESTY THE KING, IN RIGHT OF CANADA,
(Intervenant in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

MONTREAL LOCOMOTIVE WORKS LIMITED,
(Plaintiff in the Superior Court and Appellant before the Court of King's Bench)
APPELLANT

— vs —

THE CITY OF MONTREAL,

40

(Defendant in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

— and —

HIS MAJESTY THE KING, IN RIGHT OF CANADA,
(Intervenant in the Superior Court and Respondent before the Court of King's Bench)
RESPONDENT

FACTUM

of MONTREAL LOCOMOTIVE WORKS LIMITED as Appellant in Case No. 2562 and Respondent in Cases Nos. 2560 and 2561 of the Court of King's Bench (Appeal Side)

FACTUM

of

MONTREAL LOCOMOTIVE WORKS, LIMITED as Appellant in Case No. 2562, and Respondent in Cases Nos. 2560 and 2561, in the Court of King's Bench, (Appeal Side) sitting in the District of Montreal.

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PART 1.

FACTS

These are appeals from a final judgment of the Court of King's Bench (Appeal Side) sitting in the District of Montreal, rendered on the 29th day of December, 1944, confirming a judgment rendered by the Superior Court in the District of Montreal (the Honourable Chief Justice Bond) on the 21st day of October, 1943.

20

In the Court of King's Bench (Appeal Side) the judgment from which Montreal Locomotive Works, Limited appeals was concurred in by Honourable Mr. Justice Francœur, Honourable Mr. Justice Marchand, and Honourable Mr. Justice Bissonnette constituting a majority of the Court. The Honourable Mr. Justice Walsh and Honourable Mr. Justice St. Jacques dissented.

30

The reasons for judgment in the Court of King's Bench (Appeal Side) appear in the Consolidated Joint Case at the following pages:

Honourable Mr. Justice Walsh (Dissenting)	pp. 141-144
Honourable Mr. Justice St. Jacques (Dissenting)	pp. 144-149
Honourable Mr. Justice Francœur	pp. 150-153
Honourable Mr. Justice Marchand	pp. 153-169
Honourable Mr. Justice Bissonnette	pp. 169-180

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The reasons for judgment of the Honourable Chief Justice Bond, of the Superior Court, will be found at pages 118-137 of the Consolidated Joint Case.

The judgment appealed from adjudicates on a Stated Case submitted by the Parties under Articles 509 et seq. of the Code of Civil Procedure, wherein Montreal Locomotive Works, Limited (hereinafter called " the Company ") appeared as Plaintiff, the City of Montreal (hereinafter called " the City ") appeared as Defendant; and His Majesty the King in Right of Canada (hereinafter called " the Crown ") appeared as Intervenant.

10

The Stated Case appears at pages 2-14 of the Consolidated Joint Case, and the exhibits which form part of the Stated Case appear at pages 15-115 of the Consolidated Joint Case. The Stated Case, together with the exhibits, contains a full disclosure of all the relevant facts.

The City claims from the Company the following taxes (Consolidated Joint Case p. 9):

20

Item (a)	Property taxes on the new building and motive power from 1st of November 1941 to April 30th, 1942	$18,934.78
Item (b)	Business tax on the same property as hereinbefore mentioned in Item (a) hereof, for the same period	3,425.22
Item (c)	Property tax on the land, building and motive power on lot 21, subdivision 2210, as occupant of the property of the Intervenant for the municipal fiscal year commencing May 1st, 1942	41,141.77
Item (d)	Business tax on the same property as hereinbefore mentioned in Item (c) hereof for the same year	6,850.44

30

with interest at the rate of 5% from the date when those taxes were due.

40

In the Superior Court, the Honourable Chief Justice Bond rejected the claim of the City on Item (a), and allowed the claim of the City on Items (b), (c) and (d).

The Court of King's Bench (Appeal Side), by judgment of a majority of the Court (Honourable Mr. Justice Walsh and Honourable Mr. Justice St. Jacques dissenting) rejected the appeal of the

Company (Consolidated Joint Case p. 140) and of the Crown (Consolidated Joint Case p. 138) respecting Items (b), (c) and (d) and by unanimous judgment rejected the appeal of the City respecting Item (a) (Consolidated Joint Case p. 139).

Both the Company and the Crown have appealed from the judgment with respect to Items (b), (c) and (d). The City has appealed from the judgment with respect to Item (a). The Company is Respondent in and contests the City's appeal. The Company is nominal Respondent in and supports the Crown's appeal.

Briefly, the important facts may be summarized as follows:

On October 23rd, 1940, two contracts were made between the Crown and the Company and American Locomotive Company, — one known as the "Construction Contract" (Exhibit P-1 Consolidated Joint Case p. 18, l. 30) and the other known as the "Production Contract" (Exhibit P-2 Consolidated Joint Case p. 40).

In the Construction Contract the Company agreed in substance to sell a parcel of land to the Crown and, for and on behalf of the Crown, as its Agent, with its funds, subject to its supervision, direction and control and as its property, to design, construct and equip thereon a new plant suitable for the production of tanks and gun carriages. Title to the new plant remained at all times vested in the Crown and the Construction Contract contains provisions respecting the final disposal of such new plant.

In the Production Contract the Company agreed with the Crown to administer, manage and operate the new plant and to produce therein tanks and gun carriages for the account of the Crown at a fixed fee per article, the whole for and on behalf of the Crown, as its Agent, with its funds and subject to its supervision, direction and control to be exercised through the Minister of Munitions and Supply. Title to the new plant, equipment, accessories and inventories of supplies and materials on hand remained at all times vested in the Crown.

More specific reference to the relevant provisions of the Construction Contract and of the Production Contract are contained in the appropriate portions of Part 3 (Argument) of this Factum, which deal with the contentions made regarding the respective items of taxes claimed.

The new plant was found to be completed on November 1st, 1941 (Consolidated Joint Case p. 7, l. 25).

On November 7th, 1941, the land upon which the new plant was located and which formed part of original lot No. 21 on the Official Plan and Book of Reference of the Cadastre of the Parish of Longue Pointe was subdivided and cadastred under separate lot
10 No. 21-2210 (Consolidated Joint Case p. 3, l. 26).

The new plant is administered, managed and operated by the Company with the co-operation and assistance of American Locomotive Company in accordance with the provisions of the Production Contract (Consolidated Joint Case p. 3, l. 20).

On February 27th, 1942, a formal Deed of Sale was made between the Company and the Crown conveying the land upon which the new plant was constructed, being lot No. 21-2210, to the
20 Crown (Consolidated Joint Case p. 3, l. 37) and such Deed of Sale was duly registered on February 28th, 1942 (Consolidated Joint Case p. 3, l. 48).

The taxes on the land constituting lot No. 21-2210 which remained registered in the name of the Company until February 28th, 1942, were paid by the Company to the City for the full municipal fiscal year May 1st, 1941 to April 30th, 1942, (Consolidated Joint Case p. 4, l. 25), and such taxes are not at issue in this case.

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PART 2

ERRORS ALLEGED IN THE JUDGMENTS A QUO

It is respectfully submitted that the judgment of the Court of King's Bench (Appeal Side) and the judgment of the Superior Court are erroneous in the following respects:—

(a) In holding that the Company during the period from
40 May 1st, 1942, to April 30th, 1943, was the person occupying the property in question within the meaning of Section 362a of the Charter of the City of Montreal.

(b) In holding that Section 362a and the relevant By-law No. 1704 effectively imposed a tax on or with respect to the property in question for which the Company was liable.

(c) In holding that the Company was liable under the

relevant or any Statute or By-laws for the taxes or any of them sought to be recovered herein, to wit:—

(i) Business Tax for the period November 1st, 1941, to April 30th, 1942, and from May 1st, 1942, to April 30th, 1943;

10 (ii) Property Tax on the land, building and motive power for the period from May 1st, 1942, to April 30th, 1943.

(d) In rejecting the contention of the Company that it was administering, managing and operating the property in question for and on behalf of the Crown and as its agent, and in such manner as to render the Company immune from the taxes claimed.

20 (e) In rejecting the contention of the Company that the Charter of the City of Montreal and the relevant By-law No. 1704 were not effective to impose the taxes claimed or any of them with respect to such property in question so as to render the Company liable.

Further references to the judgments a quo appear in Part 3 (Argument) where they are more conveniently considered in their bearing on the specific points which are there dealt with.

30

PART 3

ARGUMENT

There are two types of taxes and two different periods involved. We will deal first with the property taxes for each of the two periods separately and then with the business taxes for both periods together.

A — Property Taxes for the Period From November 1st, 1941, to April 30th, 1942 — $18,934.78.

40

The claim of the City for these taxes was dismissed by both Courts below.

The Company has not appealed from this portion of the judgment but in connection therewith appears as Respondent in the appeal taken by the City in case No. 2561 of the Court of King's Bench (Appeal Side) and for this reason finds it necessary to deal

with this portion of the judgment here.

During this period the Company was taxed as the " owner " of the new building and motive power (Consolidated Joint Case p. 8, l. 1 and Exhibit P-26, p. 103), although the City was fully aware that the building and motive power were the property of the Crown and were not the property of the Company. The City was so advised
10 by the Attorneys for the Company on November 28th, 1941 (Consolidated Joint Case p. 5, ll. 10 and 30 and Exhibit P-13, p. 90) and by the Crown on December 1st,1941 (Consolidated Joint Case p. 5, l. 40 and Exhibit P-14, p. 91), and this advice to the City was given prior to December 12th, 1941, when the Board of Revision of Valuations issued its certificate fixing the valuation of the new building and motive power (Consolidated Joint Case p. 7, l. 22) and prior to December 18th, 1941, when the Chief Assessor of the City advised the Director of Finance of the assessment of the new
20 building and motive power (Consolidated Joint Case p. 7, l. 41).

In any event, the ownership of the new building and motive power by the Crown during this period is admitted by the City (Consolidated Joint Case p. 3, l. 14) where paragraph 3 of the Stated Case reads as follows:

> " The said new plant is and has always been the property of the Intervenant and the Defendant was so informed by the Deputy Minister of Munitions and Supply by his letter referred
> 30 to in paragraph 18 hereof and filed herewith as Exhibit P-14 ".

It is therefore respectfully submitted that the City could not impose a tax on the new building and motive power in the hands of the Company as the " owner ", because such new building and motive power were the property of the Crown and were not in any respect the property of the Company.

Moreover, Section 361, paragraph 6, of the Charter of the City of Montreal (Appendix hereto p. 42) provides as follows:

> 40 " 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 assesment 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 ".

and By-law No. 1677, Article 1 of the City (Appendix hereto p. 51) provides in part as follows:

> "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:
>
> " (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 said immoveable property, and the owners thereof shall be personally liable therefor."

10

It is therefore submitted that since the new building and motive power, being the property of the Crown, were not " taxable " immoveables in view of the provisions of Section 125 of The British North America Act, 1867 (Appendix hereto p. 40) and of Section 42 of The Interpretation Act, being Chapter 1 of the Revised Statutes of Quebec, 1941 (Appendix hereto p. 40), and since they could not be made the subject of a charge and since the Crown as the owner could not be made personally liable for an assessment and in any event was not assessed as such, then no tax has been imposed on the new building and motive power under By-law No. 1677 (Appendix hereto p. 51) for which the Company could be held liable.

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30

It is important to note that during this period the Company was not taxed as the " occupant " of the new building and motive power.

It may be argued for the City that, since the land at the time of the assessment for this period was registered in the name of the Company, the latter was also liable for the taxes on the new building and motive power on the basis that the two are inseparable.

It is respectfully submitted that such a position is untenable in view of the decision rendered by the Court of King's Bench (Appeal Side) of the Province of Quebec in the case of Lacombe and Brunet (14 K.B. at page 465) to which the learned trial judge refers (Consolidated Joint Case p. 131, l. 15) and in view of of the provisions of Section 361, paragraph 5, of the Charter of the City of Montreal (Appendix hereto p. 43) which specifically contemplates separate and distinct taxation in the names of different owners of immoveable property located on the same land.

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By-law No. 1677 (Appendix hereto p. 51) either imposed a tax on the new building and motive power or it did not. If it attempted to impose such a tax, then it did so illegally because it purported to render the Company responsible for the tax as the owner and the Company was not the owner and because it would have had for effect to create a charge on the new building and motive power contrary to the provisions of The British North America Act, 1867 and The
10 Interpretation Act of Quebec already cited. If it did not impose such a tax, then no tax is due and cannot be claimed from the Company by the City.

This case may be clearly distinguished from the case of Vancouver vs. Attorney-General of Canada et al (1944, 1 D.L.R. at page 497) because in that instance what was found to be taxed was the " land ", as stated by the Honourable Mr. Justice Kerwin at page 512, although it included, by definition under the Vancouver Incorporation Act, all improvements, whereas in this case the City
20 has specifically attempted to tax the new building and motive power as " taxable " immoveables and to impose a charge thereon for which the owners would be personally liable in accordance with Section 361 of the Charter of the City of Montreal (Appendix hereto p. 42) and By-law No. 1677 (Appendix hereto p. 51).

Further regarding this claim for property taxes from 1st November 1941 to 30th April 1942, the Company refers to and relies on the reasons for judgment by the Honourable the Justices of the
30 Court of the King's Bench, who unanimously concur in the rejection of this claim. In the same connection, the Company also refers to and relies on the reasons for judgment of the Honourable the Chief Justice of the Superior Court, who also rejected this claim.

The references to their respective reasons for rejecting this claim appear on the following pages of the Consolidated Joint Case:

Honourable Mr. Justice Walsh, p. 141, l. 4 to p. 142, l. 22.
Honourable Mr. Justice St. Jacques, p. 148, l. 47- p. 149,
40 l. 1-21.

Honourable Mr. Justice Francoeur, p. 153 l. 8-11.

Honourable Mr. Justice Marchand, p. 157, l. 30- p. 163, l. 18.

Honourable Mr. Justice Bissonnette, p. 171, l. 23 to p. 172, l. 33.

Honourable Chief Justice Bond, p. 130, l. 47 to p. 131, l. 35.

B — Property Tax on Land, Building and Motive Power for the Municipal Fiscal Year Commencing May 1st, 1942, to the Amount of $41,141.77.

This is the second period. The land, building and motive power were registered in the name of the Crown as the owner and for which the Company is assessed as the "occupant". (Consolidated Joint Case p. 8, ll. 25 to 40 and p. 9).

It is respectfully submitted on behalf of the Company that it is not liable for these taxes —

1. because it did not occupy the premises since it was administering, managing and operating the same for and on behalf of the Crown and as its agent or servant; and

2. because the Charter of the City and By-law No. 1704 (Appendix hereto p. 53) do not have for effect to impose the taxes claimed.

DEALING WITH THE FIRST POINT:

These taxes are claimed by the City under the provisions of Section 362a of the Charter of the City (Appendix hereto p. 45) on the ground that the Company allegedly "occupies" the property of the Crown for commercial or industrial purposes.

It is a clearly established principle of law that servants or agents of the Crown are not "occupiers" and are not assessable for municipal taxes with respect to the Crown property which they must use in the performance of their duties (Halifax vs. Halifax Harbour Commissioners, 1935, 1 D.L.R. at page 657).

In this case, the Halifax Harbour Commissioners carried on their operations on property of the Crown. The City of Halifax sought to make them liable for taxes as occupiers of real property within the meaning of Section 351 (1) of the Halifax City Charter.

The unanimous judgment of the Court was delivered by the Honourable Sir Lyman P. Duff, Chief Justice of the Supreme Court of Canada.

Here follows extracts from the judgment, beginning with a

quotation from the judgment of Lord Blackburn (then Blackburn, J.) in The Queen vs. McCann (1868) L.R. 3 Q.B. 141, at pp. 145-6.

The pertinent extract is as follows:

> " . . . . and further, where property is occupied for the Crown it is not to be rated. It is on this principle that a servant of the Crown, who has taken a lease of premises to be used as barracks as in Lord Amherst v. Lord Sommers, 2 T.R. 372 (100 E.R. 200), was held not liable to be rated; and this principle extends to the case of a person in occupation of premises, whether as servant or trustee for the Crown: "

10

The learned Chief Justice examines the powers and rights of the Halifax Harbour Commissioners under the Statute and comes to the conclusion that the occupation on the Crown property was not occupation by the Commissioners but occupation for the Crown. He says:

20

> " I agree with the view unanimously accepted by the Supreme Court of Nova Scotia that the relation of the respondents to the Crown, in respect of the occupation for which they have been assessed, is of such a character as to constitute that occupation an occupation ' for the Crown ' in the sense of the principle as stated above, in the language of Lord Blackburn, and as elucidated in its application by the Courts in England and by the Judicial Committee of the Privy Council."

30

In the case at Bar the contention is made by the City of Montreal that the above decision is not applicable on the ground that the Harbour Commission was an emanation of the Crown and this view was adopted by the learned trial Judge (Consolidated Joint Case, page 131, l. 45- p. 132, l. 26).

This point will be dealt with in discussing the judgments later.

40

Briefly, the Company submits that " paternity " of the agent or servant is not a decisive factor. The question is whether, having regard to the terms of the arrangement between the Crown and the party sought to be taxed, the activities of the party on the Crown's property are as agent or servant, of, or for or on behalf of, the Crown. In other words, whether the occupation is the occupation of the Crown through the party sought to be taxed rather than the occupation of that party himself. The Company submits that the terms of the Production Contract between the Crown and the Com-

pany, relating to the Company's activities on the property in question, show clearly that the occupation of the Company was for and on behalf of the Crown and as its agent; and that the principle of the Halifax Harbour Commissioners case applies to render the Company immune from tax as occupier.

Moreover, the word " occupant " is defined in Section 1, sub-
10 paragraph (h), of the Charter of the City as follows:

> " 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 ".

It is submitted that the phrase " in his own name " in the foregoing definition connotes independence and that where, as in this
20 case, the Company uses the premises not independently but for and on behalf and as agent or servant of the Crown under the Production Contract the definition itself operates to exclude the Company from taxation as an " occupant " within Section 362a of the City Charter.

That the Company administered, managed and operated the premises in accordance with the provisions of the Production Contract is definitely admitted by the City at page 3, line 21, of the Consolidated Joint Case where the following admission of the parties is to be found:

30

> " The said new plant is administered, managed and operated by the Plaintiff, with the cooperation and assistance of American Locomotive Company, in accordance with the provisions of said Production Contract Exhibit P-2 ".

The City, having recognized that the status of the Company with respect to the premises is established by the Production Contract, and even irrespective of such recognition, must be governed by the Production Contract which in its entirety clearly and
40 unequivocably establishes that the Company was acting for and on behalf of the Crown and as its agent or servant and more particularly under the following provisions:

(a) Paragraph 1, where the Crown acknowledges and agrees that the Company is acting on behalf of the Crown and as his Agent in all matters pertaining to the performance of the Production Contract, and where the Crown agrees to indemnify the Company and to hold it harmless from any

and all expenditures, claims and liabilities of any nature whatsoever arising out of the performance of the Production Contract (Consolidated Joint Case p. 41, l. 29).

(b) Paragraph 2, where the Company agrees to administer, manage and operate the plant and to produce thereon " for the account of " the Crown gun carriages and tanks (Consolidated Joint Case p.42, l. 1).

10

(c) Paragraph 4, where it is stated that the gun carriages and tanks are to be produced in all respects in conformity with plans and specifications to be furnished to the Company by the Crown (Consolidated Joint Case p. 42, l. 36, and p. 43, l. 10.

(d) Paragraph 5, where the Crown undertakes to supply certain components and materials as Free Issue and the Company agrees to install the same as the Crown may direct (Consolidated Joint Case p. 43, l. 21).

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(e) Paragraph 6, where the Company is authorized to incur and pay, for and on behalf of the Crown and as its Agent, all proper and reasonable costs necessary or incidental to to the performance of the Production Contract (Consolidated Joint Case p. 43, l. 43).

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(f) Paragraph 6, where the Company is authorized for and on behalf of the Crown and as its Agent to do all acts and things necessary, useful or incidental to the performance of the Production Contract, including the purchase of materials and equipment and the employment of personnel (Consolidated Joint Case, p. 44, l. 1).

(g) Paragraph 8, where the Crown agrees to reimburse the Company for all proper and reasonable costs incurred in the performance of the Production Contract (Consolidated Joint Case p. 44, l. 24).

40

(h) Paragraph 8, sub-paragraphs (2) and (3), where the Crown reserves the right to furnish any materials or supplementary tools, machinery and equipment necessary for the performance of the Production Contract and to pay private or common carriers any and all freight charges on equipment, materials and supplies (Consolidated Joint Case p. 51, l. 30).

(i) Paragraph 10, where the Crown agrees to establish a special bank account and supply all necessary funds thereto for the use of the Company so that the latter may perform the Production Contract without resorting to its own funds (Consolidated Joint Case p. 54, l. 41).

10

(j) Paragraph 11, where it is stipulated that the title to the plant, equipment and accessories thereof and to all inventories of materials and supplies on hand which may be acquired or possessed by the Company for the purposes of the performance of the Production Contract shall at all times be vested in the Crown and remain at his risk (Consolidated Joint Case, p. 56, l. 40).

(k) Paragraph 12, where full supervision, direction and control of the administration, management and operation of the plant is reserved to the Crown through the Minister of Munitions and Supply (Consolidated Joint Case p. 57, l. 20).

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(l) Paragraph 13, where the right is reserved to the Minister to appoint an Inspector and to delegate to him all of the powers of the Minister with respect to the administration, management and operation of the new plant (Consolidated Joint Case p. 59, l. 1).

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(m) Paragraph 14, where the Company is bound to manufacture and assemble according to the plans and specifications supplied by the Crown and where right is reserved to the Minister to cause the Company to refrain from making commitments for materials until samples have been approved by the Minister (Consolidated Joint Case, p. 59, l. 20).

(n) Paragraph 15, where the Company is bound to comply with the instructions of the Minister with respect to loading and shipping of the tanks and gun carriages (Consolidated Joint Case p. 59, l. 40).

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(o) Paragraph 16, where the cost of correcting rejected workmanship or materials shall be borne by the Crown (Consolidated Joint Case, p. 61, l. 1).

(p) Paragraph 18, where the Company may be bound to apply for remission of duties and taxes but at the cost of the

Crown (Consolidated Joint Case p. 62, l. 8).

(q) Paragraph 19, where it is indicated that all scrap surplus or salvage materials or equipment remain the property of the Crown and that the proceeds of any disposal thereof also remain the property of the Crown (Consolidated Joint Case, p. 62, l. 28).

10

(r) Paragraph 23, where the Company is bound to comply with all Labour Conditions from time to time specified by the Minister (Consolidated Joint Case, p. 63, l. 20.)

(s) Paragraph 25, where the company is bound to obtain such insurance in connection with the performance of the Production Contract as may be required by the Crown but at the cost of the Crown (Consolidated Joint Case, p. 64, l. 6).

20

(t) Paragraph 26, where the right is reserved to the Minister to modify the drawings and specifications (Consolidated Joint Case, p. 64, l. 18).

(u) Paragraph 27, where the right is reserved to the Crown to terminate the Production Contract (Consolidated Joint Case p. 64, l. 46).

(v) Paragraph 28, where the Crown undertakes to indemnify the Company against any and all commitments in connection with the performance of the Production Contract, and where the Company is bound to execute all such deeds and to do all such acts and things as the Crown may reasonably require for the purpose of fully vesting in the Crown the rights and benefits of the Company under any such commitments and for the purpose of evidencing more fully the title of the Crown in and to all work in process and all materials, equipment and supplies on hand (Consolidated Joint Case p. 69, l. 25).

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40

(w) Paragraph 33, where all of the Minister's Powers are reserved to him (Consolidated Joint Case p. 71, l. 30).

Comments re the discussion in the judgments a quo relating more particularly to the point that the Company's status was for the Crown and therefore that it was not an occupant within Section 362a of the City charter.

Kings's Bench

1. Honourable Mr. Justice Walsh and
Honourable Mr. Justice St. Jacques.

The Company adopts, in support of its contentions, the reasons for judgment of the Honourable Mr. Justice Walsh as evidenced by 10 his notes (Consolidated Joint Case p. 141 et seq.) and those of the Honourable Mr. Justice St. Jacques (Consolidated Joint Case p. 144 et seq.).

It will be noted that both the Honourable Mr. Justice Walsh and the Honourable Mr. Justice St. Jacques accept the Production Contract at its face value and, giving to the terms used therein their ordinary and usual meaning as the intention of the parties, came to the conclusion that the Production Contract constituted either a mandate or a lease and hire of services and that in either case the 20 Crown was in fact the occupant of the property in question through the Company as its agent or servant, and therefore that the latter was neither liable to the taxes on immoveable property nor to the business taxes claimed by the City.

Both of these judges likewise rejected the theory that the Company acted as an entrepreneur or contractor (Consolidated Joint Case p. 143 l. 40 and p. 148 l. 7).

30 2. Honourable Mr. Justice Francœur.

The Honourable Mr. Justice Francœur in his notes (Consolidated Joint Case p. 150 et seq.), adopts the reasoning of the trial judge and of the Honourable Mr. Justice Marchand. He states that the Production Contract prima facie appears to be a contract of mandate or agency (Consolidated Joint Case p. 150, l. 21). However, he goes on to say, that in reality it is not a contract of mandate because, he states, the Company performs work according to plans and specifications which are furnished to it by the Crown, it purchases the raw materials, engages the men and pays them out of a 40 fund made available to it by the Crown. It receives so much per piece (Consolidated Joint Case p. 150, l. 21-26). He also adds that whatever may be the terms of the contract, the Company is remunerated for the value of the work which it does and it is this remuneration, by reason only of the value of the work, which determines the nature of the contract. He concludes that the contract in question is one of " enterprise " under Article 1683 and following of the Civil Code. (Appendix hereto p. 67).

It is respectfully submitted that none of the elements to which the learned judge refers can be said to negative the prima facie status of mandate or agency which he finds and that these elements are entirely consistent with such a relationship when the Production Contract is read in its entirety giving affect to its express terms which define the Company's position vis-à-vis the Crown.

10 It is true that the Company manufactured the tanks and gun carriages under plans and specifications furnished to it by the Crown but this fact cannot serve to determine the nature of the relations which existed between the Crown and the Company.

Where the Honourable Mr. Justice Francœur states that the Company purchases the raw materials, engages the men and pays them out of funds made available to it by the Crown, he should add, it is respectfully submitted, that all of these acts are performed by the Company for and on behalf of the Crown and as its agent (Con-
20 solidated Joint Case p. 44, l. 1-13) and that the raw materials at all times remain the property of the Crown (Consolidated Joint Case p. 56, l. 41-48).

The fact that the raw materials are purchased and that the men are engaged by the Company and paid out of funds made available to the Company by the Crown can only serve to emphasize the fact that the Company was acting on behalf of the Crown. Whether or not the Company receives so much per piece does not appear to be important. Certainly the Company was entitled to remuneration
30 for its services and the basis for remuneration does not affect the nature of the contract any more than would the fact that an individual manager were paid on the basis of piece work, percentage of volume or percentage of profits.

At page 152, line 34 of the Consolidated Joint Case, the distinct interests between the Company and the Crown do not, it is respectfully submitted, negative in any way the contention of the Company that its interest is that of agent or servant acting on behalf of the
40 Crown.

The learned judge's conclusion on page 153 of the Consolidated Joint Case that the contract is a contract d'entreprise is, it is submitted, contrary to the express terms of the document, and his conclusion that the Company occupied the immoveable as an "entrepreneur indépendant" is, it is submitted, contrary to the express terms of the production Contract itself.

3. Honourable Mr. Justice Marchand.

At page 164, line 21, of the Consolidated Joint Case the Honourable Mr. Justice Marchand states that the business tax for the two periods and the property taxes for the period from May 1st, 1942 to April 30th, 1943, are evidently personal taxes, notwithstanding that the impostion of the property tax is made on the property assessment roll, the immovable being recognized as the property of the Crown and therefore not susceptible of bearing a municipal tax. Whether or not these taxes are personal taxes does not appear to be relevant and cannot create a tax liability on the part of the Company as an agent or servant of the Crown. Moreover, it is difficult to follow the learned judge's conclusion that the property taxes on the land, building and motive power for the period from May 1st, 1942 to April 30th, 1943 are personal taxes, in view of the terms of Section 361 (Appendix hereto p. 42) and Section 362a (Appendix hereto p. 45) of the City Charter as well as of By-law 1704 (Appendix hereto p. 53) already discussed and which refer to taxes on " taxable immovable property " or " immovable property ".

At page 168, line 23 et seq. of the Consolidated Joint Case the learned judge sees a distinction between the material and the means furnished by the Crown as against the industry and work furnished by the Company. He goes on to say that this industry and this work do not come to the Company from the Crown and that the Company did not represent the Crown when it applied them to the material to give it its new form. It is submitted that this distinction does not advance the argument that the Company is the occupant. Any mechanic in a plant contributes labour as applied to materials and means supplied by the employer, and these activities do not constitute the mechanic the occupant of the premises and render him liable to taxation as such. It is respectfully submitted that the learned judge, in saying that the Company did not represent the Crown when it applied its industry and labour to the material, disregards and contradicts the express terms of the Production Contract.

In all of his reasons for judgment the learned judge appears to give no weight whatsoever to the fact that whatever work was performed by the Company in the plant was so performed for and on behalf of His Majesty and as his Agent and servant under the Production Contract.

4. Honourable Mr. Justice Bissonnette.

At page 173, line 45 of the Consolidated Joint Case, the learned judge looks upon the Construction Contract and the Production Contract as forming a single document and sees in them a " manifest intention " on the part of the contracting parties to constitute a contract of mandate.

It is submitted that the Joint Case shows clearly, as is recognized
10 by the Honourable Mr. Justice Walsh, the Honourable Mr. Justice St. Jacques and the Honourable Mr. Justice Marchand, that the Construction Contract was deemed to be completed on November 1st, 1941, and that the status of the Company in the plant was wholly determined for the period from and after November 1st, 1941, by the Production Contract.

Insofar as the learned judge recognizes the manifest intention of the contracting parties to create a contract of mandate he weakens all reasons for construing the Production Contract otherwise, yet
20 he proceeds to examine certain terms of the Contract and reaches the conclusion that, notwithstanding the manifest intention, it is a contract d'entreprise, stating that he finds therein nothing incompatible with the elements which found a contract of hire of work or a contract d'entreprise. (Consolidated Joint Case p. 180, l. 2-4).

At page 175, line 32, of the Consolidated Joint Case, the learned judge indicates some suspicion that the parties in drawing the contract have dissimulated as to the true agreement which they in-
30 tended to make and have used the idea of mandate as the only form of contract which would serve to avoid a tax on the Company and in consequence a tax on the Crown.

It is evident that it is with this in mind that the learned judge has approached the examination of the Production Contract. With great respect it seems sufficient to say that the contract speaks for itself and considering particularly that one of the parties is the Crown, it is not, it is submitted, to be presumed that the heavy obligations which it has undertaken towards third parties by making
40 the Company its agent or servant have been assumed for motives other than the public interest.

In his further examination of the Production Contract, the learned judge finds the contract lacking in two elements which he considers essential to mandate, namely, the element of representation and the element of subordination. (Consolidated Joint Case pp. 176 and 177). Without going into a detailed examination of the Production Contract, it is respectfully pointed out that the element

of " representation " is amply demonstrated in a number of clauses in the contract and, without being exhaustive, reference is made to Paragraph 1 (Consolidated Joint Case p. 1, l. 30), in which the Crown acknowledges and agrees that the Company is acting on behalf of the Crown and as its agent in all matters pertaining to the performance of the Agreement and that the Crown will indemnify and hold the Company harmless from any and all expenditures,
10 claims and liabilities of any nature whatsoever arising out of the performance of the Agreement in accordance with the terms thereof; also to Paragraph 6 (Consolidated Joint Case p. 43, l. 40) where the Company is authoried to incur and pay, for and on behalf of the Crown and as its agent, all proper and reasonable costs necessary or incidental to the performance of the Agreement, including but without restricting the generality of the foregoing, the costs to which reference is made in Paragraph 8. These costs in Paragraph 8 consist of every conceivable kind of expenditure which could be made in connection with the manufacture of the items of equipment
20 covered by the Production Contract. Again, this Paragraph continues (Consolidated Joint Case p. 44, l. 1-15) with an authorization to the Company, for and on behalf of the Crown and as its agent, to do and perform any and all such acts and things and to sign, seal, execute and deliver any and all such deeds, documents, instruments and writings as may be necessary, useful or incidental to the performance of the Agreement including, but without limitation, contracts for the purchase of materials, supplies and supplementary tools, machinery and equipment and the employment of
30 labour, manual, technical, clerical and professional.

With regard to the element of " subordination," reference is made to the fact that the Company accepts the Production Contract as agent and for and on behalf of the Crown, but, in addition to that and to the many other provisions of the contract reiterating that relationship with its attendant relationship of subordination of the Company to the Crown, we find Paragraph 12 (Consolidated Joint Case p. 57, l. 20) in which it is provided that the Company shall have full control over the administration, management and oper-
40 ations of the plant 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, and, without limitation of that general power, the Company shall, to the extent, if any, as may from time to time be requested by the Minister, consult the Minister on matters pertaining to the performance of the Agreement and submit documents, records and reports in connection therewith. This Paragraph also requires the Company, to the extent that the Minister requests from time to time, to refrain from adopting, entering into,

giving or acting upon any drawings, plans, specifications, contracts, orders for materials, machinery and equipment without the previous approval in writing by the Minister.

It is true that the learned judge does make reference to this Paragraph 12 but he minimizes its effect on what is respectfully submitted to be an untenable ground which will be dealt with
10 hereafter.

It is submitted that these provisions are pertinent evidence of the very concrete existence of the factors of representation and subordination in the relations between the Crown and the Company and that the learned judge's conclusions, based on his findings, are not warranted by the facts.

The learned judge at page 176, line 20, of the Consolidated Joint Case, cites the decision of the Honourable Mr. Justice Rinfret (now
20 the Honourable Chief Justice Rinfret) who delivered the judgment of the Supreme Court of Canada in the case of Quebec Asbestos Corporation vs. Couture (1929), 3 D.L.R., 601). This was an action for damages brought by Couture against the Quebec Asbestos Corporation for injuries received while Couture was performing work for the Company. Couture claimed that he was an employee. The Court rejected this claim and held that he was an independent contractor. The ground was that there was no " lien de subordination " between Couture and the Company. The evidence showed that
30 he had contracted with the Company to mine and supply mineral rock of the required size and sufficient quantity to keep the plant in operation. For this purpose he employed many men, he engaged them and fixed their salaries (subject to not exceeding the maximum salaries established by the plant). He paid them, managed them and dismissed them. In order to carry out his contract he was allowed to adopt any method which he chose. The only instructions that the foreman of the Quebec Asbestos Corporation would give him were to point out the places where he could mine. He did his work independently of the direction and control of the company. All the latter had
40 to do was to accept the work after it had been performed. The learned judge, in delivering the judgment of the Court, stated:

> " We are of opinion that he was an independent contractor. We find in this case all the distinctive characteristics of the 'contrat d'entreprise: ' the method adopted for his remuneration; the right of choosing the men whom he employed, of fixing their salary, of directing and dismising them; the responsibility in damages for failure to supply the factory; above all:

the absence of a 'lien de subordination' between Couture and the company and his independence in the management of the enterprise.

"The contract of lease and hire of work may be distinguished from the 'contrat d'enterprise' principally by the subordinate character of the employee in the former contract. Even when paid by the job, workmen may be 'des locateurs de services, s'ils sont subordonnés à un patron; mais, au contraire, les ouvriers son des entrepreneurs, s'ils ne sont pas soumis à cette subordination:' (2 Baudry-Lacantinerie & Wahl, Droit Civil 3rd ed., on Louage, 1st part, nos. 1638 & 1641)."

It is submitted that on the vital point as to subordination the case is not applicable to the present circumstances. In this case, contrary to the Quebec Asbestos case, the factor of subordination runs through the whole Production Contract.

The learned judge (Consolidated Joint Case p. 177, 1. 17-45) refers to the right of supervision which has been mentioned above, but he says this reservation is not incompatible with the absence of subordination. He says it occurs frequently in all contracts of hire of work. In this connection the element of subordination set out in the Production Contract goes far beyond the provisions of any contrat "par devis et marché".

He goes on to say that it is not because the principal reserves the right to verify from time to time the proper execution of the work that there will be constituted a "lien de subordination", giving to the contract the legal character of mandate. It is submitted that the Production Contract goes far beyond the right of verifying the proper execution of the work. It places and keeps the Company under the direct control of the Crown at all times as the Crown's agent or servant acting on its behalf. The Company is, instead of being independent, wholly dependent on the orders of the Crown at any time the Crown desires to exercise that right.

In asserting the independence of the Company the learned judge states that the Company must itself incur non-reimbursable expenses and that this repulses the idea of a mandate. It is respectfully submitted that the learned judge has quite erroneously interpreted the Production Contract with regard to expenses and that a reading of the provisions of Paragraph 6 of the Production Contract (Consolidated Joint Case p. 43, l. 20) shows that every conceivable cost which is necessary or incidental to the performance of the

contract is defrayed by the Crown and, as indicated in Paragraph 10 (Consolidated Joint Case p. 54, l. 40), out of a special bank account established by the Minister and in which deposits are made from time to time by the Crown. The items to which the learned judge refers which are not to be included as part of the costs are set out on pages 50 and 51 of the Consolidated Joint Case. A mere reading of them will show that they are not items which could possibly be included as part of the costs, since they are obviously such as could not be said to be proper and reasonable costs of the performance of the Production Contract, and whether the expenditure was made by an agent or by an independent contractor. It is respectfully submitted that this point as to non-reimbursable expenditures, therefore, adds nothing in support of the suggestion that the Company is an independent contractor.

A point is made by the learned judge (Consolidated Joint Case p. 178, l. 25 to p. 179, l. 21) that in certain circumstances the Company will be entitled to re-acquire the land for $1.00, which is the consideration for which it was transferred to the Crown.

The only provisions with regard to the disposal of the land and the plant, if the Crown so desires, appear in Paragraph 25 of the Construction Contract (Consolidated Joint Case p. 34, l. 40 to p. 36, l. 10). Reference is made to that provision for a statement of the alternatives which are open to the Crown to adopt. It will be seen that the disposal of the land is entirely at the will of the Crown. It is submitted that a reading of Paragraph 25 will show that there is nothing therein which is incompatible with the relationship contended for by the Crown and the Company in this appeal.

The learned judge (Consolidated Joint Case p. 179, l. 48-51) states that in this matter, i.e., the arrangement under the Production Contract, the risks of manufacture rest exclusively on the Crown except for wrongful acts. It is submitted that this is strong evidence to negative the conclusion which he reaches that the Company is in the quality of an "entrepreneur".

Superior Court

5. Honourable Chief Justice Bond.

It is submitted that the trial judge erred in failing to recognize the agency which characterized the relationship between the Crown and the Company. It is therefore necessary to consider and discuss the terms of his judgment in this respect.

At page 131 line 38 of the Consolidated Joint Case the trial judge states:

> " It is true that by the contracts the Plaintiff is designated as the ' agent ' of the Intervenant, but it is almost trite to say that it is not the name given to a contract by the parties thereto which necessarily defines its true character. That has to be ascertained otherwise (Montreal Light,Heat and Power Company vs. Quinlan & al., 1929, 3 D.L.R., page 568)."

10

This principle is undoubtedly applicable in some instances where some inconsistency arises. However, with all due deference, it is respectfully submitted that it cannot be applied in this case where the fact that the Company is administering, managing and operating the new plant in accordance with the Production Contract is specifically admitted by all parties to the controversy (Consolidated Joint Case p. 3, l. 21), where the character of the Company as an agent or servant of the Crown arises out of the whole nature of the Production Contract and is specifically stipulated therein (Consolidated Joint Case p. 41, l. 29), and where one of the parties to the Production Contract is the Crown acting through the Minister of Munitions and Supply of Canada duly authorized for the purpose Consolidated Joint Case p. 40, l. 15) by the Department of Munitions and Supply Act, being Chapter 3 of the Statutes of Canada, 1939, Second Session, as amended by Chapter 31 of the Statutes of Canada, 1940, where in Section 6 (Appendix hereto p. 40) paragraph (1) subparagraph (a) and paragraph (2) it provides that the Minister may:

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> " (a) Buy or otherwise acquire, manufacture or otherwise produce, finish, assemble, store and transport, and sell, exchange or otherwise dispose of, munitions of war and supplies. ."

> " (2) The Minister may engage or make use of the services of any person, firm, corporation, board, association or agency in the carrying out of any of the purposes or provisions of this Act."

40

The case of Montreal Light, Heat and Power Company vs. Quinlan et al., cited by the trial judge, may be clearly distinguished from the case under review, because in that case no agency was stipulated nor did the Crown authorize the contractor to make commitments on its behalf nor undertake to indemnify the contractor against any such commitments, and all materials and labour were furnished by the contractor on its own behalf and at its own risk.

At page 131 line 46 and following of the Consolidated Joint Case, the trial judge states as follows:

" In the present instance, the situation, created by contract between the Defendant and Intervenant, in no way resembles that which arose in the case of the City of Halifax vs. The Halifax Harbour Commissioners, 1935, 1 D.L.R., page 657 nor in the case of The City of Montreal vs. Societe Radio Canada, 1941, 70 K.B., page 65. In both of those cases, the corporations were expressly incorporated for the purpose of exercising certain powers as an instrumentality of government. They were said to be ' emenations of the Crown ', and by virtue of the very statutes creating them they were constituted agents of the Crown and invested with peculiar powers and attributes.

" The Commissioners are a public body appointed by the Crown and hold office during pleasure; their occupation is for the purpose of managing and administering a public harbour, the property of the Crown, their powers are derived from a statute of the Parliament of Canada, the surplus of revenue after providing for costs of services and the interest on the debenture debt goes into a sinking fund under the direction of the Minister. The services contemplated are not only public services in the broad sense but also in the strictest sense, Government services. The occupation of the Government property with which they are concerned is an occupation by persons ' using ' that property exclusively in and for the service of the Crown (see the observations to that effect by Sir Lyman Duff, C.J.C. in the City of Halifax vs. Halifax Harbour Commissioners (1935, S.C.R. 215 at pages 226 and 227).

" In the case of the Radio Broadcasting Corporation, the Governors are likewise appointed by the Governor in Council and are removable by him for cause; their salaries are fixed by the statute, and the powers they exercise are subject to the control of the Minister. All monies derived belong to the Government ".

It is respectfully submitted that the trial judge erred in considering the real position of the Company under the Production Contract. The only difference between the Company and the Halifax Harbour Commissioners or the Radio Broadcasting Corporation is that these two bodies were expressly created by statute to perform services for the Crown, whereas the Company was created by Letters Patent and derived its position as an agent or servant through the

Minister of Munitions and Supply acting in accordance with his authority under the Department of Munitions and Supply Act.

The determining factor is not whether the Company was specifically created by the Crown but whether an " agent or servant " relationship was in fact established between the Crown and the Company.

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In this respect the Company may be compared with the Halifax Harbour Commissioners using the same points of comparison as those cited by the learned trial judge—

(a) The Company holds office during pleasure (Consolidated Joint Case p. 64, l. 48).

(b) The Company is managing and administering Crown property. (Consolidated Joint Case p. 29, l. 40 and p. 56, l. 41).

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(c) The powers of the Company are derived from a statute of the Parliament of Canada, i.e., through the Minister of Munitions and Supply under the Department of Munitions and Supply Act.

(d) The Company has no surplus of revenue in administering, managing and operating the new plant similar to any surplus of revenue which the Halifax Harbour Commissioners might have, because the Company produces the tanks and gun carriages for the account of the Crown and delivers them to the Crown but does not sell them. It is to be noted here that the term " surplus of revenue " means profit from operations and does not include fees, which, under the Production Contract, may be properly compared with the salaries paid to the Halifax Harbour Commissioners themselves.

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(e) The services rendered by the Company are Government services since it is producing tanks and gun carriages " for the account of the Government " (Consolidated Joint Case p. 42, l. 8).

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(f) The Company is using the new plant exclusively in and for the service of the Crown (Consolidated Joint Case p. 42, l. 8).

(g) The powers exercised by the Company under the Produc-

tion Contract are subject to the supervision, direction and control of the Minister (Consolidated Joint Case p. 57, l. 20).

At page 132 line 34 of the Consolidated Joint Case the trial judge states:

10 " In the case now under consideration, all that has occurred is that an ordinary commercial corporation has received assistance from the Government in order to facilitate and expedite the execution of certain wartime contracts. Similar examples of such governmental assistance can be found in subsidies, grants, exemptions, special depreciation and other instances of like nature. Here, the Government provided the funds for the new buildings and motive power, taking the precaution of first acquiring the land but making provision for the reconveyance of the whole to the Plaintiff on the execution of the contracts on terms set out ".

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It is respectfully submitted, with all due deference, that the comparisons made by the trial judge when he classifies the provisions of the Production Contract with subsidies, grants, exemptions, special depreciation and other instances of like nature are inapplicable, such measures of assistance being entirely dissimilar in character to the arrangements made under the Production Contract whereby the management of a Crown enterprise is confided to an agent with authority to bind its principal. Likewise, it is respectfully submitted 30 that whether or not a provision was made in the Construction Contract for the reconveyance (and this word can only apply to the land and not to the building and equipment which were never owned by the Company, of the new plant to the Company, is irrelevant in determining whether or not the Company occupies the new plant " in its own name " or as for and on behalf of the Crown and as its agent or servant, if only for the reason that the status of the Company in making use of the new plant is determined by the Production Contract and not by the Construction Contract.

40 At page 132 line 45 of the Consolidated Joint Case the trial judge states:

" It is true that the Plaintiff is designated as ' agent ', but, as I have pointed out, that is not conclusive. The Plaintiff Company, then engaged in manufacturing undertook to manufacture certain objects for the Intervenant according to specifications, and certain control was vested in the Minister enabling him to supervise the work, control the expenses, and to reject

where necessary. But the Construction Contract, by Article 6, expressly provides as regards 'control' as follows:—

> "CONTROL AND SUPERVISION. 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
> 10 the design, construction and equipment of the new plant, the selection of contractors and subcontractors and the type of contact 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".

It is respectfully submitted that the foregoing reference by the trial judge to the Construction Contract is irrelevant, since the Construction Contract provides only for the construction and equipment
20 of the new plant. Whether or not the Company occupies the new plant "in its own name" or uses it for and on behalf of the Crown and as its agent or servant must be determined under the provisions of the Production Contract which, as already stated, specifically stipulates that the Company is acting for and on behalf of the Crown and as its agent in administering, managing and operating the new plant and producing therein tanks and gun carriages for the account of the Crown.

30 It is respectfully submitted that where the trial judge says that the Company undertook to manufacture certain objects for the Crown, he should have said "for the account of" the Crown (Consolidated Joint Case p. 42, l. 8); where the trial judge says that certain control was vested in the Minister, he should have said that the administration, management and operation of the new plant by the Company was "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" (Consolidated Joint Case p. 57, l. 23); where the trial judge says that the Minister had power
40 to reject, he should have added that the cost of correcting and/or replacing rejected materials and/or workmanship would be borne by the Crown under the Production Contract except in clear cases of gross mismanagement or lack of competence (Consolidated Joint Case p. 61, l. 1).

At page 133 line 19 of the Consolidated Joint Case the trial judge states:

"If it is necessary to find a name for such a contract, I should say it was one of lease and hire of work rather than a contract of agency (C.C. 1667, 1683, 1684). As pointed out in Mignault, Volume 7, pages 238 and following, the distinction is sometimes very difficult to make between these two forms of contract, but in any event the Plaintiff is an ordinary commercial corporation carrying on business in its own interests
10 and that of its shareholders for a fixed remuneration, and in the execution of such contract it occupies these new buildings and uses the motive power provided for it by the Intervenant. Looking at the contract as a whole, I am satisfied the Plaintiff is not an 'agent' or 'servant' of the Crown, (Montreal Light, Heat and Power Company vs. Quinlan, 1929, 3 D.L.R., page 568; Planiol & Reipert, Volume 11, No. 774)".

It is respectfully submitted that instead of referring to Articles 1667, 1683 and 1684 of the Civil Code (Appendix hereto p. 67), the
20 learned trial judge should have referred more appropriately to Articles 1701 (Appendix hereto p. 68) and following, wherein mandate is defined as "a contract by which a person, called the mandator, commits a lawful business to the management of another, called the mandatory, who by his acceptance obliges himself to perform it."

A contract involving a simple lease and hire of work would not include a specific provision for agency (Consolidated Joint Case p. 43, l. 29) nor would it empower the employee or contractor to bind
30 his principal towards third parties (Consolidated Joint Case p. 43, l. 43 and p. 44, l. 1).

In any event it is unimportant whether Article 1667 and following or Article 1701 and following of the Civil Code apply, so long as the Company, under the Production Contract, is constituted the agent or servant of the Crown. It is respectfully submitted that Articles 1683 and 1684 of the Civil Code are not involved because the status of the Company with respect to the new plant cannot be determined under the Construction Contract which was deemed to
40 be completed on November 1st, 1941, but must be determined under the Production Contract which is not a contract whereby the Company has undertaken "the construction of a building or other work by estimate and contract".

The fact that the Company is an ordinary commercial corporation and that it receives a remuneration for its services does not in any respect detract from its character as an agent or servant of the Crown, the remuneration which it receives in this instance being

comparable to the salary or wages paid to any other servant of the Crown.

At page 134 line 1 of the Consolidated Joint Case the trial judge states:

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> "See also RYDE on Rating, 7th Edition, No. 122, page 127, where it is pointed out that the tax is not exigible where the property is in the occupation of the Crown by itself or by its servants whose occupation amounts to the occupation of the Crown. The Plaintiff Company elects its own directors, appoints its own personnel, receives and applies to its own uses any profits or surplus realized as would an independent contractor (see Construction Contract paragraph 23). The control reserved to the Minister relates only to the satisfactory execution of the contract according to its terms."

20

It is respectfully submitted that whether or not the Company elects its own directors is irrelevant, this being simply the corporate machinery of an organization such as the Company.

It is respectfully submitted the trial judge errs in stating that the Company appoints its own personnel insofar as the new plant is concerned because the Production Contract contemplates that all personnel required in the performance of the Production Contract shall be employed by the Company for and on behalf of the Crown

30 and as its Agent (Consolidated Joint Case p. 44, l. 1 and particularly l. 13).

It is respectfully submitted the trial judge likewise errs in stating that the Company applies to its own uses any profits or surplus realized as would an independent contractor. The Company cannot make any profits or surplus in the administration, management and operation of the new plant of the nature of those usually made by an independent contractor because its operations therein are entirely for the account of the Crown (Consolidated Joint Case

40 p. 42, l. 8) and its remuneration consists of a fixed fee per article, which may be likened to the salary or wages paid to any other servant of the Crown.

Finally, the control of the Company reserved to the Minister in the Production Contract is absolute, the Minister remaining free to exercise it to such extent as he may see fit, (Consolidated Joint Case p. 57, l. 20).

At page 134 line 33 of the Consolidated Joint Case the trial judge states:

> "To my mind it is quite irrelevant to say that the tax will fall upon the Crown, which is prohibited. It may well be that under the terms of the contract between the Plaintiff and the Intervenant the incidence of the tax may be upon the Intervenant. But that is not the result of the imposition of the tax but rather the result of a contract to that effect. Parties may, by contract, change their rights inter se, but those rights (or liabilities) remain unchanged as against a third party, e.g. the taxing authority."

It is respectfully submitted that the Company has never argued that it was not liable to the City for the taxes in question for the sole reason that the Crown has agreed to indemnify the Company against any claim for such taxes.

The point at issue is whether or not the Company was constituted an agent or servant of the Crown under the Production Contract in such manner that the taxes which the City assumes to impose constitute direct taxes against His Majesty.

In closing this phase of the argument it is also important to draw to the attention of this Honourable Court that the Company cannot be said to " occupy " the new plant " in its own name " unless it has some specific right to the use of the new plant for its own account, either by lease, agreement or otherwise, or unless it actually occupies the new plant for its own purposes with its own machinery or personnel or materials and supplies.

There are none of these elements present in this case, since nowhere does the Company derive any right to the use of the new plant for its own account, and since the new plant and all of its contents are the property of the Crown, and since the personnel in the new plant has been employed by the Company acting for and on behalf of the Crown and as its Agent.

The Company submits with great respect that the judgments a quo have erroneously proceeded on the theory that the arrangement between the Company and the Crown was not to be taken at its face value. The impression gained is that, notwithstanding the fact that the Crown itself and the Company, as a responsible organization,

have expressly agreed that the relations between them should be as literally set out in the Production Contract and the obligations undertaken and the rights conferred therein should have effect according to its terms, the contract should be construed, for the purpose of this proceeding, as something other than that to which the parties had expressly agreed. This has apparently led to an unconscious misapprehension of what, it is submitted, are the plain
10 provisions of the contract.

It is submitted that, as between the Crown and third parties dealing with the Company under the authority conferred upon the latter by the Production Contract, no question could successfully be raised by the Crown that the Company was not its agent and was not acting for and on its behalf in respect of such activities.

It is further respectfully submitted that there are no circumstances in this case which would warrant the invoking of any prin-
20 ciple of law under which a rewriting or reforming of the contract would be sanctioned.

Dealing now with the second point:

We now come to the second fundamental argument submitted by the Company with respect to the property taxes for this period.

It is that, even if it were found that the Company occupied the
30 new plant in its own name and was not using it for and on behalf of the Crown and as its agent or servant, the Charter of the City and By-law No. 1704 (Appendix hereto p. 53) do not have to effect to impose the taxes claimed.

The validity of Section 362a of the Charter of the City (Appendix hereto p. 45) has been settled in principle by the Privy Council in the case of Montreal vs. Attorney-General for Canada and Attorney-General for Quebec (92 L.J., P.C. page 10) and this decision is not challenged.

40

What is challenged is the right of the City to claim the taxes in question under Section 362a in view of the terms of By-law No. 1704 as enacted pursuant to the provisions of Section 361 of the Charter of the City (Appendix hereto p. 42).

By-law No. 1704 of the City which imposed the property taxes for the municipal fiscal year beginning May 1st, 1942, and ending April 30th, 1943, reads as follows:

" It was ordained and enacted as follows:

" ARTICLE 1. — A general assessment is imposed and shall be levied for the year beginning on the 1st May, 1942, and ending on the 30th April, 1943, on taxable immoveables within the City, namely:

10

" a) On lands, buildings erected thereon, and on everything so fixed or attached to any building or land as to form part thereof, exclusive of machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power;

" b) On all poles, pipes, wires, rails, tunnels, conduits and other construction and apparatus of every nature used for producing or distributing, for public use, motive power, light, heat,
20 water, electricity, or for traction purposes, constructed or placed on, over or under property, streets, highways or elsewhere within the limits of the City, or for conveying or receiving telegraph, telephone or pneumatic messages;

" c) The various things declared to be immoveables within the meaning of this by-law, owned by companies or persons supplying power, light, heat, water or electricity, or used for traction purposes, or for conveying or receiving telegraph, telephone or pneumatic messages, are hereby assessed in the ward
30 which the assessors shall select, but according to the value of these things in the ward or wards in which they are situated;

" d) The things mentioned in the foregoing paragraphs shall be taxed in the name of the tenant of the buildings and lands, when he is the owner of such things;

"e) Such assessment shall be one dollar and thirty-five cents ($1.35) per each hundred dollars ($100.00) of the value of such immoveable property, as entered on the valuation roll,
40 and shall constitute a charge upon said immoveable property, and the owners thereof shall be personally liable therefor.

" ARTICLE 2. — A school tax is, in addition, imposed and shall be levied at the following rates: for Catholics and Protestants, one dollar ($1.00) and, for neutrals, one dollar and twenty cents ($1.20) for each hundred dollars ($100.00) of the value of the said immoveables, as entered on the valuation roll,

and this tax shall constitute a charge upon the said immoveables and the owners thereof shall be personally liable therefor.

"ARTICLE 3. — The assessment and taxes imposed in virtue of this by-law, the time of payment of which is not already determined, shall be due and payable at the expiration of the delays fixed by law, after the completion and delivery of
10 the assessment or tax collection rolls for each ward of the City.

"ARTICLE 4.—The provisions of any by-law inconsistent with this by-law are repealed and annulled, but such repeal and annulment shall not be construed as affecting anything done or to be done in virtue of the provisions so repealed and annulled.

"ARTICLE 5.—This by-law shall come into force within the delays fixed by law and provided that paragraph 6 of article 361 of the City Charter be amended accordingly ".
20

Section 361, Paragraph 6, of the Charter of the City reads as follows:

" 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
30 of the imposition. Such assessment shall be a charge upon such immoveables and the owners thereof shall be personally liable therefor. (6 Geo. VI, c. 72, s. 6.)"

What has occurred then is that the City, pursuant to the authority given to it under Section 361, Paragraph 6, of the Charter of the City, has enacted By-law No. 1704 imposing and levying a tax on " taxable immoveables ".

It is a recognized principle of law that a taxing statute or a
40 taxing by-law must be clear and unambiguous in its language, and it follows that, whilst a tax liability may be created with respect to any " interest " which a third party may have in Crown property, no such tax liability is created unless such " interest " exists and is in fact effectively and positively taxed. (See Halsbury's Laws of England, Second Edition, Volume 31 at page 540 and cases to which he refers).

It is respectfully submitted then that the imposition of a tax

on " taxable immoveables ", which is all that is authorized by Section 361 of the Charter and all that is covered by By-law No. 1704, does not in any respect constitute the imposition of a tax on any " interest " which the Company may be said to have in the new plant as the property of the Crown, with the result that there are no taxes " imposed " which could be due by the Company to the City under Section 362a of the Charter (Appendix hereto p. 45).

10

That is was not the intention to tax any interest held by an individual in Crown property is also clearly shown by the provisions of Article 1, paragraph (e) of By-law No. 1704 (Appendix hereto p. 54), where it is stated that the assessment shall constitute a charge upon the immoveable property and the owners thereof shall be personally liable therefor. This provision is absolutely inconsistent with the theory that an alleged interest of the Company in the new plant has been taxed.

20

In this connection it is important to note that in the case of Montreal (City) vs. Attorney-General for Canada and Attorney-General for Quebec (92 L.J., P.C., page 10):

(a) the only question discussed before the Privy Council was whether or not Article 362a of the Charter of the City (Appendix hereto p. 45) was ultra vires, as stated by Lord Parmoor at page 13 as follows:

30

> " The sole question involved in the present appeal is whether Article 362a of the Charter, one of the Articles included under the heading 'Assessments and Taxation ', is ultra vires the Legislature of the Province of Quebec; "

(b) the By-laws of the City were not considered, as stated by Lord Parmoor at page 14 as follows:

40

> " No copy of the by-laws was attached to the case, but it was assumed throughout the argument that they had been made in due form ";

(c) the original party to the suit, being one " Baile ", was not a party to the case before the Privy Council;

so that this judgment of the Privy Council did not effectively overrule certain principles laid down in the judgment rendered by the Court of King's Bench in the same case, then known as Attorney-

General of Canada vs. Baile and City of Montreal (57 D.L.R., page 553), where the Honourable Mr. Justice Cross at page 557 states:

> "I consider that the proper adjudication to make is to declare that Article 362a is without effect to tax the property of His Majesty in the land in question and to dismiss the action. We need not go the length of saying that anything is ultra vires.
> 10 The City may quite validly hereafter impose a tax upon the 'beneficial interest' of Baile or another occupant."

It is suggested that if Baile had been a party to the case before the Privy Council and if the By-laws had been submitted and were in the form of By-law No. 1704 (Appendix hereto p. 53), and if the Privy Council had been requested to decide, not whether Section 362a of the Charter (Appendix hereto p. 45) of the City was ultra vires, but whether the beneficial interest of Baile in the Crown property in
20 question had been effectively taxed, their Lordships would have reached a different decision in that case.

There is also a clear distinction to be made between the case under review and the following:

> Smith vs. Vermillion Hills Municipality, (Attorney-General for Saskatchewan and Attorney-General for Canada intervening) (86 L.J., P.C., page 36).

> 30 Southern Alberta Land Company vs. Rural Municipality of McLean (53 S.C.R. page 151).

> Calgary and Edmonton Land Company vs. Attorney-General of Alberta (45 S.C.R. page 170).

in all of which the decisions were based on certain definitions, and particularly a definition of the word "land", which in the statutes then under consideration was defined as including "any estate or interest therein", whereas in Section 361, Paragraph 2, of the
40 Charter of the City, "immoveable property" is defined as follows:

> "Immoveable property shall comprise lands, buildings, erected thereon and everything so fixed or attached to any building or land as to form part thereof, but shall not include machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power."

That definition certainly does not include " any interest " in immoveable property, so, since By-law No. 1704 only purports to impose a tax on "taxable immoveables " it does not create any tax liability with respect to any "interest " which the Company may be said to have in the new plant, aside entirely from the fact that the Company has no such interest and certainly no " immoveable " interest.

10

It may be argued on behalf of the City that Section 362a of the Charter of the City of Montreal (Appendix hereto p. 45) has for effect to transfer the liability for taxes and charge the occupant of Crown property with such liability as a personal tax.

It is respectfully submitted that this argument is rendered ineffective when it is considered that the occupant can in any event only be liable for taxes imposed under the By-law, and since, as already demonstrated, By-law No. 1704 does not impose any tax,

20 either on the new plant which is the property of the Crown or on any interest of any occupatn thereof, there is no tax for which the Company, even if it were regarded as the occupant, could be held to be liable.

It is respectfully submitted with due deference that the trial judge erred in pointing out " that the tax in question is not imposed by By-law but it is imposed by an Act of the Legislature of the Province of Quebec " (Consolidated Joint Case p. 135, l. 22), and it is argued on behalf of the Company that the effect of Section 362a

30 of the Charter of the City of Montreal was not to impose a tax but simply to state who would be liable to pay the tax if and when it were imposed. Certainly there could be no tax if there were no By-law and, without a By-law, Section 362a of the Charter would be inoperative.

This appears to be clear when one considers the language used in Sections 361 and 362a of the Charter (Appendix hereto p. 42, 45). Section 361 in Paragraph 1 simply states that " all immoveable

40 property . . . . shall be liable to taxation and assessment . . . . " and in Paragraph 6 authorizes the City to " make By-laws to impose and levy annually, on taxable immoveable property. . . .". Section 362a, in the fourth clause, which is the only one that can be applicable, states that the occupant of Crown property " shall pay the taxes imposed for the current fiscal year ".

It is interesting here to note that the fourth clause of Section 362a of the Charter was only enacted in 1938 (see Statutes of Quebec,

2 Geo. VI, 1938, Chapter 105, Section 7) and did not exist in 1922 when judgment was rendered by the Privy Council in the case of Montreal (City) vs. Attorney-General for Canada; Attorney-General for Quebec (92 L.J. P.C., Page 10) and when their Lordships, in commenting on the first clause of Section 362a, which was then before them, stated, through Lord Parmoor, at page 13:

10

> "The language of Article 362a is not clear. It has been construed in the courts below to include properties other than those exempted in Article 362. This construction was not questioned in the argument before their Lordships, and it is on this construction that the question of ultra vires directly arises".

What seems obvious and should have been argued at the time is that the first clause of Section 362a refers only to the exemptions and properties mentioned in Section 362, and the latter does not contain any reference to Crown property of the type then or now under discussion.

20

It is respectfully submitted that this is also another reason why that judgment by the Privy Council cannot be used to defeat the argument of the Company on this question of the effectiveness of the taxing machinery of the City.

C—Business Taxes

30

Business taxes are claimed by the City from the Company for the period from November 1st, 1941 to April 30th, 1942, in the amount of $3,425.22 and for the municipal fiscal year commencing May 1st, 1942 in the amount of $6,850.44 (Consolidated Joint Case p. 9, Il, 8 and 17).

These taxes are claimed under Section 363 of the Charter of the City (Appendix hereto p. 46) and By-law No. 1642 (Appendix hereto p. 55), and are based on the annual rental value of the premises in which the trades, etc., are exercised or carried on.

40

The liability of the Company for these business taxes must depend entirely upon the decision reached with respect to the relationship which existed between the Crown and the Company under the Production Contract.

If it be found that the Company occupied the premises during the whole period "in its own name" and not "for and on behalf of the Crown and as its agent or servant", then presumably it is

liable for the business taxes, subject to such recourse as it may have against the Crown.

If, on the other hand, it be found that the Company did in fact act for and on behalf of the Crown and as its agent or servant simply in a managerial capacity in the administration, management and operation of the new plant under the Production Contract, then it
10 cannot be held liable for such business taxes any more than could a Minister, a Postmaster, or a Harbour Commissioner be made liable for business taxes with respect to their duties as agents or servants of the Crown.

WHEREFORE the Company concludes and asks that its appeal be maintained and that the appeal of the City be dismissed with costs.

20 MONTREAL, APRIL 4TH, 1945.

RALSTON, KEARNEY, DUQUET & MACKAY

Attorneys for Appellant

MONTREAL LOCOMOTIVE WORKS LIMITED

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APPENDIX

BRITISH NORTH AMERICA ACT

Section 125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

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INTERPRETATION ACT OF THE PROVINCE OF QUEBEC (1941, R.S.Q. Ch. 1)

Section 42. No statute shall affect the rights of the Crown, unless they are specially included.

Similarly, no statute of a local and private nature shall affect the rights of third parties, unless specially mentioned therein.

20

DEPARTMENT OF MUNITIONS AND SUPPLY ACT (Statutes of Canada 1939 2nd Session Chapter 3, as amended by 1940, 4 Geo. VI Ch. 31.)

" Section 6. (1) The Minister may,

(a) buy or otherwise acquire, manufacture or otherwise produce, finish, assemble, store and transport, and sell, exchange or otherwise dispose of, munitions of war and supplies;

30

(b) repair, maintain and service munitions of war and supplies;

(c) construct or carry out defence projects and sell, exchange or otherwise dispose of the same;

(d) purchase or otherwise acquire and sell, exchange or otherwise dispose of, any real or personal property or any interest therein which in the opinion of the Minister is or is likely to be necessary or desirable for the carrying out of any of the powers conferred upon the Minister by this Act, or by the Governor-in-Council;

40

(e) mobilize, control, restrict or regulate to such extent as the Minister may, in his absolute discretion, deem necessary, any branch of trade or industry in Canada or any munitions of war or supplies;

(f) with the specific or general authorization of the Governor in Council, from time to time, make, issue, amend and repeal all such orders, rules, regulations, permits and licences, as the Minister, in his discretion, may consider necessary or expedient for the exercise of any of the powers conferred upon him by this Act or by the Governor in Council and any such order, rule, regulation, permit or licence may be of general or particular application and failure to comply therewith shall constitute an offence under this Act;

(g) if authorized by the Governor in Council, exercise any of the powers contained in paragraphs (a) to (f), both inclusive, of this subsection for or on behalf of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, whether at the instance of or through the medium of the British Supply Board or otherwise and for or on behalf of any other of His Majesty's Governments or for or on behalf of the Government of the Republic of France or for or on behalf of the Government of any allied or associated power;

(h) do all such things as appear to the Minister to be incidental to or necessary or expedient for the exercise of any of the powers conferred upon him by this Act or by the Governor in Council.

(2) The Minister may engage or make use of the services of any person, firm, corporation, board, association or agency in the carrying out of any of the purposes or provisions of this Act.

(3) (a) The Minister may, if he considers that the carrying out of any of the purposes or provisions of this Act is likely to be facilitated thereby, procure the incorporation of any one or more companies or corporations under the provisions of The Companies Act, 1934, or under the provisions of any Act of any province of Canada relating to the incorporation of companies, for the purpose of exercising and performing in Canada or elsewhere any of the powers conferred or the duties imposed on the Minister by this Act or by the Governor in Council and may delegate to any such company or corporation any of the powers and duties conferred or imposed upon the Minister under this Act or any Order in Council.

(b) For the purposes of this section, the Secretary of State may, if the Minister so requests, by letters patent under his seal of office, grant a charter constituting such persons as are

named by the Minister and any others who may thereafter be appointed by the Minister in their stead or in addition thereto, a body corporate and politic without share capital, for the purpose of exercising and performing in Canada or elsewhere, without pecuniary gain to such corporation, such of the powers and duties conferred or imposed upon the Minister under this Act or any Order in Council as the Minister desires to delegate
10 to such corporation. The charter and by-laws of any such corporation shall be in such terms as may be approved by the Minister and by the Secretary of State. The Minister may remove any members, directors or officers of any such corporation at any time and appoint others in their stead. The provisions of Part II of The Companies Act, 1934, shall apply to every such corporation, except in so far as they may be declared inapplicable, varied or added to by its charter or by the Governor in Council.

20

(c) The accounts of any such company or corporation shall be audited by the Auditor General of Canada.

(4) The powers conferred upon the Minister by this Act or by the Governor in Council may be exercised by the him notwithstanding, and without restriction or limitation by, the provisions of any other Act or Order in Council enacted before this subsection came into force.

30

CHARTER OF THE CITY OF MONTREAL

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
40 revenues derived from such immoveable;

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.

2. Immoveable property shall comprise lands, buildings erected thereon and everything so fixed or attached to any building or land

as to form part thereof, but shall not include machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power.

3. Immoveable property shall also comprise all pipes, poles, wires, rails, tunnels, conduits and other constructions and apparatus of every nature used to produce or distribute, for public use, motive
10 power, light, heat, water, electricity or for traction purposes, constructed or placed on, over or under property, streets, highways or elsewhere within the limits of the city, or for conveying or receiving telegraph, telephone or pneumatic messages.

4. The various things declared to be immoveable within the meaning of this article, owned by companies or persons supplying power, light, heat, water, electricity, or for traction purposes, or for conveying or receiving telegraph, telephone or pneumatic messages, shall be assessed in the ward which the assessors shall select, but
20 according to the value of these things in the awards in which they are situated.

5. The things mentioned in the foregoing paragraphs 2, 3 and 4 may be taxed in the name of the tenant of the buildings and lands, when he is the owner of such things. (7 Ed. VII, c. 63, s. 18.)

6. The city may make by-laws to impose and levy annually, on taxable immoveable property in the city, taking into account
30 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. (6 Geo. VI, c. 72, s. 6).

Article 362. The following immoveable property is exempt from the ordinary and annual assessment: (3 Ed. VII, c. 62, s. 36).

40 (a) Every building or part of a building used for the purpose of religious worship, including the land on which it is built, fabriques, bishops' palaces, and parsonages when occupied as residences by the priest or the minister in charge of any church in the city, provided but one parsonage for each church shall have the benefit of the exemption; and when there is no parsonage occupied by a priest or minister in charge of a church, the residence of the priest or minister in charge of any church in the city, provided that if such residence be valued at more than $15,000.00, it shall be exempt from the

assessment on real estate imposed on an assessed value of $15,000.00 only and that only one residence for each church shall have the benefit of such exemption. (8 Ed. VII, c. 5, s. 18.)

The immoveables, other than passonages, occupied as residence by the priest or by the minister in charge of any church whatever in the city, shall be entered on the valuation roll and on the real estate
10 assessment roll, the same as if such immoveables were not exempt from taxation. (2 Geo. VI, c. 105, s. 6.)

Upon application by the proprietors of such immoveables to the chief assessor, it shall devolve upon him to give to the said proprietors a notification of the amount of the reduction in valuation to be used as a basis for the exemption which will be granted to them, with right of complaint to be lodged with the chief assessor within a delay of eight days from the date of the notification of his decision, provided that it be established to his satisfaction that the
20 said immoveables are actually occupied as residence by the priest or by the minister in charge of a church within the limits of the city. All such complaints shall be transmitted by the chief assessor to the board of revision of valuations which shall hear the parties and render its decision in the same manner as is provided for complaints regarding real estate valuations. The application above mentioned shall be considered only if it is made in the course of the year for which the tax is imposed. The chief assessor shall accordingly notify the director of finance and the latter shall determine the credit to
30 be allowed to the proprietor, based on such reduction in valuation (3 Geo. VI, c. 104, s. 8.)

(b) The lands and buildings recognized as educational establishments by the Council of Education, and occupied gratuitously as such or subsidized by the Catholic or Protestant school commissioners of the city, and occupied gratuitously as such; (18 Geo. V, c. 97, s. 8.)

(c) Land and buildings actually occupied and used as public
40 hospitals or asylums;

(d) Lands and buildings exclusively occupied and used as public libraries, reading-rooms, art galleries, or museums, provided the same are opened gratuitously to the public and shall not be kept for lottery purposes;

(e) The lands and buildings owned and exclusively occupied as establishments of higher education or scientific teaching duly incor-

porated or recognized by the Government;

(f) The lands and buildings belonging to charitable institutions and occupied by such institutions for the purposes for which they have been established and not owned and occupied by them for the sole purpose of deriving a revenue therefrom. (15 Geo. V, c. 92, s. 24.)

The charitable institutions above mentioned include likewise institutions which receive the blind, the deaf and dumb and foundlings, and those recognized as public charitable institutions by the Lieutenant-Governor in Council and which accept the conditions imposed by the Bureau of Public Charities. This definition does not affect, however, the exemptions granted in the past by the city, under this paragraph. (24 Geo. V, c. 88, s. 8.)

The above exemption shall not apply to special taxes or assessments, nor to the water-rate or price of water; it shall not apply either to the said lands or buildings, or portions thereof, occupied or used for industries or works, the profit whereof is not entirely applied to the support of said institutions; and the assessors shall make, in such case, a special and separate estimation of the value of such land and building, or portions thereof.

The lands and buldings belonging to charitable institutions, but occupied gratuitously by other charitable institutions, shall also be exempt from municipal and school taxes, but not from special real estate taxes nor from the water tax. (1 Geo. VI, c. 103, s. 40.)

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 harbor 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. (7 Ed. VII, c. 63, s. 10.)

If the occupant, whose name appears on the valuation roll, quits before the 1st of May the premises leased, he shall not be held to pay the taxes imposed for the year beginning on the 1st of May.

If the immoveable becomes occupied for the purposes mentioned in this article by another person, either on the 1st of May or on another date during the fiscal year, the name of such person shall be entered on the roll.

In the case of any other property belonging to the Federal or Provincial Governments or to the National Harbour Board, and becoming occupied on or after the 1st of May by any other persons for commercial or industrial purposes, the director of finance, on receipt of a certificate to that effect from the board of revision, shall enter on the real estate assessment roll the name of such new occupant, who shall pay the taxes imposed for the current fiscal year, according to the valuation shown on the said certificate.

In all such cases, the provisions of article 375a shall apply to this article, mutatis mutandis. (2 Geo. VI, c. 105, s. 7.)

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. (25-26 Geo. V, c. 112, s. 4.) (See 4 Geo. VI, c. 75, s. 43, p. 295.)

The amount of such business tax in the case of all keepers of clubs, inns, hotels, saloons or restaurants wherein wine, beer or spirituous liquors are sold shall be the following:

When the annual assessed value of the premises occupied for the above purpose shall not exceed $160 .... $ 27.00

From	160	to	240	36.00
"	240	to	320	45.00
"	320	to	400	56.25
"	400	to	500	67.50
"	500	to	600	78.75
"	600	to	700	90.00
"	700	to	800	101.25
"	800	to	1,000	112.50
"	1,000	to	1,200	123.75
"	1,200	to	1,600	135.00
"	1,600	to	2,000	157.00

" 2,000 to 2,400 . . . . . . 175.00
when an increase of $17.50 for each $400 or fraction of the same above $2,400.

Nothing in this clause contained shall affect the act 54 Victoria, chapter 13, section 30, as amended by the act 55-56 Victoria, chapter 11, section 26.

10

An additional special tax, not exceeding five per cent of the yearly value, according to the valuation of the entire premises in which departmental stores are established and carried on, may also be imposed and levied by by-law on such persons, companies or corporations, for each and every separate branch of trade or business established or carried on in such departmental stores. (1 Ed. VII, c. 43, s. 1.)

20

The council may by by-law classify and define the various kinds of trade and business carried on in such departmental stores for the purpose of imposing such tax. (1 Ed. VII, c .43, s. 1.)

If, after the homologation of the tax roll, it is found that the name of a person has been omitted therefrom who was in occupation, at the time of homologation, of any premises as a place of business in the city, such person shall, as also shall any person becoming occupant of any premises after the homologation of the tax roll, pay, from the date of such occupancy, the business tax for the proportion of the fiscal year still to run, at the amount fixed by the certificate of the chief assessor which certificate shall be considered as forming part of the said roll. (1 Geo. VI, c. 103, s. 41.)

30

Whenever, in the course of a fiscal year, a person, subject to the payment of a business tax in accordance with the roll, leaves premises to occupy another, such person cannot be held to pay another business tax on account of the occupation of such new premises, unless the annual rental value of the new premises be higher than that of the former premises; in this case, such person shall, from the date of occupation of the new premises until the end of the fiscal year, as per a certificate of the chief assessor which shall be considered as forming part of the said roll, pay the tax on the difference between the assessed value of the former premises and that of the new. (1 Geo. VI, c. 103, s. 41.)

40

Any tax so paid in the past is declared valid and legal and the city is authorized to retain the sums so collected. (1 Geo. VI, c. 103, s. 41.)

This article shall never be interpreted as giving or having given to the city the power to compel persons, companies or corporations to pay a busniess tax for occupying as lessees from the harbour commissioners part of wharves or warehouses thereon erected, for depositing thereon temporarily their merchandise shipped to or from Montreal. (6 Geo. V, c. 44, s. 15.)

The city is authorized to claim from all persons occupying premises only during a period between the beginning of the current fiscal year and the date of completion of the revision of the tax roll, the proportion of the business tax due for the period of occupancy, based on the roll in force during the preceding fiscal year and established by the certificate of the chief assessor, provided that such certificate be issued before the tax roll of the current fiscal year comes into force. (5 Geo. VI, c. 73, s. 28.)

Article 375. ***a*** Every three years the assessors shall draw up in duplicate for each ward of the city a new valuation roll for all the immoveables in such ward. Such roll shall be completed and deposited on or before the first of December, after having been signed by the chief assessor.

This roll and each of the supplementary rolls mentioned in paragraph ***b*** shall contain:

1. The street names and numbers where such immoveables are located as well as the cadastral numbers, making a distinction between the immoveables subject to the real estate tax and those which are exempt therefrom, and also between the land and buildings, and valuing each lot separately, excepting, however, when a building is built upon several lots or when several lots owned by the same proprietor are used for one and the same purpose; in such cases the whole may be valued as a single lot;

2. The surnames, Christian names and occupations of the last proprietors entered in the registry office and their then present residence as far as can be ascertained; the surnames, Christian names and the then present residence of usufructuaries, in the case of usufruct created by will, donation or by the law; the surnames, Christian names and the then present residence of the institutes named in the document registered and creating the substitution; in cases where there is neither substitution nor usufruct the surnames, Chrisian names and the then present residence of the legatees or heirs appearing on the document registered or the name of the deceased with the word: " estate " (a) when the deceased has appointed trustees or executors having, without the concurrent action

of the heirs, the seizing of the immovables of his estate, or (b) when the names of the heirs or legatees are unknown;

3. The actual value of the immoveables;

4. The designation of every immoveable in front, alongside or in the rear of which a part or the whole of the sidewalks have been maintained during the whole of the year or part of the year;

4a. The designation of every immoveable in front, alongside or in the rear of which a part or the whole of private or public lanes have been maintained during the whole year or part of the year;

5. The necessary information for the preparation of the rolls for the school-tax;

6. Any other information required by law, by the council or by the chief assessor;

7. Notwithtsanding the foregoing provisions, the valuations entered on the valuation roll completed and deposited on the 1st December, 1937, with the changes which may have been made thereto, shall be entered by the assessors on the valuation rolls which must be completed and deposited on the 1st December of the years 1938, 1939 and 1940, provided that;

(a) Whenever buildings or constructions erected upon an immoveable entered in the previous roll have been changed or altered, or whenever a lot has been subdivided or resubdivided, a new valuation of such property be made according to law and entered on the evaluation roll by the assessors;

(b) Notwithstanding the first paragraph of article 379a, as enacted by the act 1 George VI, chapter 103, section 54, and notwithstanding article 380, as replaced by the act 1 George VI, chapter 103, section 55, no complaint shall be received respecting any entry in the valuation rolls deposited on the 1st of December of the years 1938, 1939 and 1940, except as to the valuation made in virtue of paragraph (a) above, and the chief assessor shall, in such case, give notice to all the interested owners, by registered letter to their address as entered on the roll, of such new valuation and of the delay to bring complaint;

(c) No public notice that the rolls mentioned in this paragraph 7 are completed and deposited shall be required;

(d) Subject to the restrictions of modifications enacted by this act, the powers conferred upon the board of revision of valuations are not otherwise altered.

When an immoveable is transferred, by way of sale or otherwise, by deed registered in the registry office between the deposit of the valuation roll and the first of March following, the chief 10 assessor shall strike from the valuation roll which has just been deposited the name of the proprietor entered thereon and shall enter therein the name of the new proprietor, and make, if necessary, the changes required for school purposes.

If a part of an immoveable is transferred, by way of sale or otherwise, by deed registered in the registry office between the deposit of the valuation roll and the first of March following, or if an immoveable is subdivided or resubdivided and the plan is deposited in the registry office between the deposit of the valuation roll and 20 the first of March following, the assessors shall determine the real value of each part of such immoveable and shall report these valuations to the chief assessor who shall transmit them to the board of revision. The latter, after the notice to the proprietors prescribed by paragraph 16 of article 382, shall issue a valuation certificate authorizing the required changes.

On delivery of this certificate, the necessary changes shall be made in the valuation roll and in the real estate assessment roll by the chief assessor or the director of finance, as the case may be.
30

b In each of the two years following the deposit of the valuation roll, the assessors shall draw up in duplicate, for each ward of the city, a supplementary roll for the immoveables including the buildings which have been altered or changed; the immoveables which since the preceding first of March have been subdivided or re-subdivided; and the immoveables which have changed ownership in whole or in part since the preceding first of March. Such supplementary roll shall be completed and deposited on or before the first of December, after having been signed by the chief assessor.
40

When an immoveable is transferred, by way of sale or otherwise, by deed registered in the registry office between the deposit of a supplementary roll and the first of March following, the chief assessor shall enter such immoveable on the supplementary roll in the same manner as if such immoveable had been transferred by deep registered prior to the deposit of such roll.

If a part of an immoveable is transferred, by way of sale or

otherwise, by deed registered in the registry office between the deposit of a supplementary roll and the first of March following, or if an immoveable is subdivided or resubdivided and the plan is deposited in the registry office between the deposit of a supplementary roll and the first of March following, the assessors shall determine the real value of each part of such immoveable and shall report these valuations to the chief assessor who shall transmit them to
10 the board of revision. The latter, after the notice to the proprietors prescribed in paragraph 16 of article 382, shall issue a valuation certificate authorizing the required changes. On delivery of such certificate, the necessary changes shall be made in the supplementary roll and in the real estate assessment roll by the chief assessor or the director of finance, as the case may be.

The entries in the supplementary roll shall replace in the valuation roll or in the previous supplementary roll the entires in connection with the same immoveables and the supplementary roll shall
20 form part, for all legal purposes, of the valuation roll.

c The chief assessor shall divide the work in such a manner that at least two assessors shall act together in drawing up the valuation roll or the supplementary rolls.

d A mere change of ownership shall not necessitate a new valuation of an immoveable entered on a supplementary roll.

30 *e* The roll which shall be prepared and deposited on the 1st of December, 1941, shall be made according to the provisions of this article. (5 Geo. VI, c. 73, s. 33.)

BY-LAWS OF THE CITY OF MONTREAL
BY-LAW 1677

BY-LAW TO LEVY CERTAIN TAXES AND ASSESSMENTS ON REAL ESTATE FOR THE FISCAL YEAR 1941-1942.

40

(Adopted by the Executive Committee on the 6th May 1941, and, by the Council, on the 8th May 1941.)

At a meeting of the Executive Committee of the City of Montreal, held at the City Hall, on the 6th day of May 1941, in the manner and after the observance of the formalities prescribed by law, at which meeting were present: Councillors Asselin, chairman, Filion, Quinn, Guévremont and Parent, members of said Committee.

It was ordained and enacted as follows:

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, exclusive of machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power;

b) On all poles, pipes, wires, rails, tunnels, conduits and other construction and apparatus of every nature used for producing or distributing, for public use, motive power, light, heat, water, electricity, or for traction purposes, constructed or placed on, over or under property, streets, highways or elsewhere within the limits of the City, or for conveying or receiving telegraph, telephone or pneumatic messages;

c) The various things declared to be immovables within the meaning of this by-law, owned by companies or persons supplying power, light, heat, water or electricity, or used for traction purposes, or for conveying or receiving telegraph, telephone or pneumatic messages, are hereby assessed in the ward which the assessors shall select, but according to the value of these things in the ward or wards in which they are situated;

d) The things mentioned in the foregoing paragraphs shall be taxed in the name of the tenant of the buildings and lands, when he is the owner of such things;

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

ARTICLE 2. — A school tax is, in addition, imposed and shall be levied at the following rates: for Catholics and Protestants, one dollar ($1.00) and, for neutrals, one dollar and twenty cents ($1.20) for each hundred dollars ($100.00) of the value of the said immovables, as entered on the valuation roll, and this tax shall constitute a charge upon the said immovables and the owners thereof shall be personally liable therefor.

ARTICLE 3. — The assessments and taxes imposed in virtue of this by-law, the time of payment of which is not already determined, shall be due and payable at the expiration of the delays fixed by law, after the completion and delivery of the assessment or tax collection rolls for each ward of the City.

ARTICLE 4. — The provisions of any by-law inconsistent with 10 this by-law are repealed and annulled, but such repeal and annulment shall not be construed as affecting anything done or to be done in virtue of the provisions so repealed and annulled.

ARTICLE 5. — This by-law shall come into force within the delays fixed by law.

At an adjourned special meeting of the City Council of Montreal, held at the City Hall, on the 8th May 1941, in the manner and after the observance of the formalities prescribed in and by the Act 20 of incorporation of the said City, at which meeting were present: His Worship the Mayor, Mr. Adhemar Raynault, in the Chair, Councillors Hogan, Zénon-Hardy Lesage, Seigler, Filion, Savignac, Goyette, Dubeau, McKenna, Quinn, Lévesque, Joseph-Hormisdas Delisle, Ratelle, Landry, Jeannotte, Marcotte, Tremblay, Morin, Macklaier, McEvoy, Fréchette, O'Flaherty, Hanley, Parent, Antoine Desmarais, Asselin, Mills, Quintin, Allen, Francis, Long, Nobbs, Fisher, Birks, Circé, Albert Lesage, Bass, Eaton, Jean-Baptiste Delisle, Foucault, Carrière, Taillefer, Simard, Armstrong, Crombie, Corbeil, Deslauriers, Duclos, Gince, Jetté, Trudeau, Gaudry, Pierre 30 DesMarais, Corrigan, Gariépy, Jodoin, Farly, Gaudin, Guévremont, Mathieu, Leblanc, Côte, Gauthier, Adams, Henderson, Monk, Constantin, Rodrigue, Benoit, Hervé, Brien, Marchand, Dupuis, Flanagan, Gagné, Bruneau and Naud,

The above by-law was adopted without any amendment.
(Approved)

The Quebec Municipal Commission,
(Signed) HONORÉ PARENT,
40 *Administrator Delegate.*

BY-LAW 1704

BY-LAW TO LEVY CERTAIN TAXES AND ASSESSMENTS ON REAL ESTATE FOR THE FISCAL YEAR 1942-1943.

(Adopted by the Executive Committee on the 13th February

1942 and, in virtue of the provisions of the Act 6 George VI (Bill 179), on the 1st June 1942).

At a meeting of the Executive Committee of the City of Montreal, held at the City Hall, on the 13th day of February 1942, in the manner and after the observance of the formalities prescribed by law, at which meeting were present: Councillors Asselin, chairman,
10 Marler, Filion, Quinn, Guévremont and Parent, members of said Committee,

It was ordained and enacted as follows:

ARTICLE 1. — A general assessment is imposed and shall be levied, for the year beginning on the 1st May, 1942, and ending on the, 30th April, 1943, on taxable immoveables within the City namely:

20

a) On lands, buildings erected thereon, and on everything so fixed or attached to any building or land as to form part thereof, exclusive of machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power;

b) On all poles, pipes, wires, rails, tunnels, conduits and other construction and apparatus of every nature used for producing or distributing, for public use, motive power, light, heat, water, elec-
30 tricity, or for traction purposes, constructed or placed on, over or under property, streets, highways or elsewhere within the limits of the City, or for conveying or receiving telegraph, telephone or pneumatic messages;

c) The various things declared to be immoveables within the meaning of this by-law, owned by companies or persons supplying power, light, heat, water or electricity, or used for traction purposes, or for conveying or receiving telegraph, telephone or pneumatic messages, are hereby assessed in the ward which the assessors shall
40 select, but according to the value of these things in the ward or wards in which they are situated;

d) The things mentioned in the foregoing paragraphs shall be taxed in the name of the tenant of the buildings and lands, when he is the owner of such things;

e) Such assessment shall be one dollar and thirty-five cents ($1.35) per each hundred dollars ($100.00) of the value of such im-

moveable property, as entered on the valuation roll, and shall constitute a charge upon said immoveable property, and the owners thereof shall be personally liable therefor.

ARTICLE 2. — A school tax is, in addition, imposed and shall be levied at the following rates: for Catholics and Protestants, one dollar ($1.00) and, for neutrals, one dollar and twenty cents ($1.20)
10 for each hundred dollars ($100.00) of the value of the said immoveables, as entered on the valuation roll, and this tax shall constitute a charge upon the said immoveables and the owners thereof shall be personally liable therefor.

ARTICLE 3. — The assessment and taxes imposed in virtue of this by-law, the time of payment of which is not already determined, shall be due and payable at the expiration of the delays fixed by law, after the completion and delivery of the assessment or tax
20 collection rolls for each ward of the City.

ARTICLE 4. — The provisions of any by-law inconsistent with this by-law are repealed and annulled, but such repeal and annulment shall not be construed as affecting anything done or to be done in virtue of the provisions so repealed and annulled.

ARTICLE 5. — This by-law shall come into force within the delays fixed by law and provided that paragraph 6 of article 361 of the City Charter be amended accordingly.

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BY-LAW 1642

By-law Concerning the Business Tax, Water Rate, Tax on Capital and Personal Taxes and Repealing Certain Provisions of By-law No. 432.

(Adopted by the Executive Committee on the 19th July 1940
40 and, by Ordinance of the Quebec Municipal Commission, on the 11th September 1940).

At a meeting of the Executive Committee of the City of Montreal, held at the City Hall, on the 19th day of July 1940, in the manner and after the observance of the formalities prescribed by law, at which meeting were present: Aldermen Savignac, Chairman, Coupal and Delisle, members of said Committee,

It was ordained and enacted by the said Committee as follows:

BUSINESS TAX

ARTICLE 1. — An annual tax, called "the business tax", is hereby imposed and shall be levied upon all trades, manufactures, financial or commercial institutions, premises, occupied as warehouses, or storehouses, occupations, arts, professions or means of profit or livelihood carried on, exercised or operated by any person or persons in the City, and such business tax shall be ten per cent. of the annual rental value, as established by the tax collection roll, of the premises in which such trades, manufactures, financial or commercial institutions, occupations, arts, professions or means of profit or livelihood are respectively carried on, exercised or operated; and all persons, companies or 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.

ARTICLE 2. — The rate of the business tax to be paid by all persons keeping establishments which are recognized by the Quebec Liquor Commission as restaurants, clubs, hotels, dining rooms, taverns or saloons where wine, beer or spirituous liquors are sold, is as follows:

When the annual rental value of the premises occupied for the above purposes does not exceed	$160	$27.00
When such annual rental value is:	$ 161 to $ 240	$36.00
" " " " " "	241 to 320	45.00
" " " " " "	321 to 400	56.25
" " " " " "	401 to 500	67.50
" " " " " "	501 to 600	78.75
" " " " " "	601 to 700	90.00
" " " " " "	701 to 800	101.25
" " " " " "	801 to 1,000	112.50
" " " " " "	1,001 to 1,200	123.75
" " " " " "	1,201 to 1,600	135.00
" " " " " "	1,601 to 2,000	157.00
" " " " " "	2,001 to 2,400	175.00

with an increase of $17.50 for each $400.00 or fraction of $400.00 above $2,400.

ARTICLE 3. — An annual special tax is imposed and shall be levied upon every person doing business in the City as distiller, at the rate of $80.00 for every $400.00 or fraction of the annual rental

value, according to the tax roll, of the premises occupied and used for the purposes aforesaid.

ARTICLE 4. — An annual special tax is imposed and shall be levied upon every person doing business in the city as brewer, at the rate of $60.00 for every $400.00 or fraction of $400.00 of the annual rental value, according to the tax roll, of the premises occupied and used for the purposes aforesaid.

WATER RATE

ARTICLE 5. — A uniform water rate of seven and one-half per cent. per annum on the annual rental value entered on the tax roll is hereby imposed on all tenants, occupants or proprietors-occupants of a dwellinghouse, or part thereof, situated within the city.

ARTICLE 6. — A uniform water rate of seven and one-half per cent. per annum on the annual rental value entered on the tax roll, is hereby imposed on all tenants, occupants or proprietors-occupants of a house, part of a house or tenements occupied as a store, shop, office, warehouse, stable, manufacture or other place of business.

However, such rate shall be twelve per cent in the case of hotels, taverns, or restaurants.

But, as regards hotels and restaurants the rental whereof is valued at $1,000 or more or which are provided with at least twenty rooms for the accommodation of travelers, water shall be supplied by meter, at the same rate as distilleries, breweries etc.

ARTICLE 7. — Every building used as a church is charged at store and shop rates on a rental to be based and determined upon the interest, at four per cent, of the actual value of the property as entered on the assessment roll in force.

ARTICLE 8. — Every building used as an educational institution, hospice, orphanage, asylum and other charitable institution of the same kind be charged at dwelling-house rates on a rental to be based and determined upon the interest at four per cent. of the actual value of the property as entered on the assessment roll in force.

ARTICLE 9. — The tax based on the rental value for water supplied in virtue of the foregoing articles 5, 6, 7 and 8, apply only to water used or required for domestic purposes, that is to say, for

alimentary, culinary, cleaning and washing purposes, as well as water for bath-room, lavatory and water closet requirements.

ARTICLE 10. — Public hospitals having a minimum of fifty permanent beds, kept gratuitously for patients, shall pay each annually, for their water supply, a uniform water rate of twenty-five dollars ($25.00) which is hereby imposed on the tenants, occupants
10 or proprietors-occupants thereof, notwithstanding any law to the contrary.

TARIFF OF WATER RATES FOR CERTAIN PARTICULAR CASES

ARTICLE 11. — In addition to the water rate based on the annual rental value, the several rates enumerated and specified in the following taiff are hereby imposed for water supplied by the City:
20

Horses and cows

A rate shall be levied for horses and cows as follows:

	Per annum
For each horse	$2.00
For each cow	1.00

The proprietors, tenants or occupants of livery stables, horse
30 dealers, proprietors, tenants or occupants of stables intended for their business, shall pay, for each stall, whether occupied or not, $1.50 per year. The water may be supplied by meter, if the City deems it advisable.

Fountains

Fountains shall only be supplied with water meter at the rate of $2.00 for every 1,000 cubic feet.

Abattoirs, breweries, etc.

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ARTICLE 12. — Abattoirs, bakeries, breweries, cold storage plants, dairies, distilleries, dye-houses, fire service pipes where premises are supplied entirely by meter, laundries, meat packing establishments, printing and photographic establishments, hotels, taverns, certain manufacturing establishments, public garages, stables, railways, academies, asylums, boarding schools, convents, colleges, seminaries, monasteries, refuges, reformatories, hospitals and houses of industry shall be supplied with water by meter, and said water shall

be charged for at a uniform rate of $1.15 per thousand cubic feet; but if, for any reason whatsoever, in the opinion of the Superintendent of the Water-works, water should not be supplied by meter, a water rate shall be levied, in such case, as provided in section **6** of this by-law.

But, in all cases, the amount payable for water supplied by
10 meter, for each period of three months, shall not be less than 1.875% of the annual rental value of the premises supplitd with water, as established by the tax roll in force.

ARTICLE 13. — In the case of water having been used through a meter for legitimate fire extinguishing purposes in premises supplied by meter exclusively, an allowance shall be made for the quantity of water so used, based on the previous average daily consumption of the premises, and a reduction in the subsequent metered water bill shall be made, provided the office of the Water Depart-
20 ment, City Hall, be notified in writing, within a reasonable time of the fire having occurred.

Miscellaneous

ARTICLE 14. — In premises where water is not supplied entirely by meter, all water used for other than the usual domestic requirements, as herein below mentioned, shall be supplied by meter and charged for at the meter tariff rate in force, namely: bottle washing by hand or machine, cuspidor throughs, portable steam boilers,
30 engines of all kinds operated by steam, water used for any cooling purpose or in the operation of ventilating or air purifying machines or sprays, water used for the operation of ejector pumps, refrigerating machines, ice making machines, water motors, as well as machinery of any description using water, places where water is allowed to flow continuously for any purpose, water used for the plating or tempering of metal, water used for photographic purposes in other than solely photographic establishments, water obtained from hydrants or any city water servile for the requirements of a circus, show, fair, amusement park or exhibition of any description, skating
40 rinks where an admission fee is charged, gardening purposes of all kinds, water used for the spraying of coal piles to prevent fire or for any other purpose whatsoever, whether such water is obtained from the City water works through a metered or unmetered source.

When no great quantity of water is required or likely to be used during the year or portion of the year for any of the above purposes, the quantity which will presumably be consumed shall be estimated by the Superintendent of the Waterworks and charged for at the

meter tariff rate in force, and such rate shall be payable in advance.

When water is required for any purpose not specified in the present article, but not for domestic purposes, the same shall be supplied by meter at the tariff rate in force .

The price of the water supplied for any of the purposes mentioned in this article shall be exigible, in addition to the tax imposed 10 in Article 6 of this by-law.

Meters

ARTICLE 15. — The meters shall, in all cases, be furnished by the City and placed in a position designated by the said City. Wherever the building to be supplied with water is built in proximity to the street line, the meter shall be installed in a suitable place inside the said building. A cleared and unobstructed passage-way to the meter must, at all times, be maintained for the City inspectors. 20 The consumer shall be held responsible for such protection of the meter against injury or theft.

(a) Whenever the premises to be supplied with water are situated at a distance from the street line, the Superintendent of the Water-works may require that a suitable meter chamber, with drain connection, be provided by the consumer. The consumer shall be held to protect the said chamber and its contents against injury or theft and to see the meter is, at all times, accessible and that the chamber is kept clean.

30

(b) Services for fire protection purposes when laid to premises whose water supply is entirely metered, as well as the meter chamber in connection therewith, shall be paid for by the party applying for same, and the dimensions and location of such chamber shall be determined by the Superintendent of the Water-works.

(c) Meters shall not be installed on fire services when laid to premises whose water supply is not entirely metered.

40 (d) Whenever meter chambers are set up on city property, they shall be constructed by and at the cost of the said City, if the water supplied is to be used only for domestic or manufacturing purposes.

ARTICLE 16. — Every person using a meter shall comply with all the rules and regulations which may be established by by-law or resolution of the City.

ARTICLE 17. — Any person who, prior to the coming into

force of this by-law, has obtained permission to use a meter belonging to him, may continue to use said meter until the same requires to be changed. Then the permission shall lapse " ipso factor ".

ARTICLE 18. — An annual rental shall be paid by the consumers for the cost and care of meters as folows:

For	a	½	inch	meter	$ 2.00
"	"	⅝	"	"	2.00
"	"	¾	"	"	3.00
"	"	1	"	"	4.00
"	"	1½	"	"	8.00
"	"	2	"	"	12.00
"	"	3	"	"	25.00
"	"	4	"	"	40.00
"	"	6	"	"	75.00
"	"	8	"	"	100.00

ARTICLE 19. — The price of the water consumed and the rent of the meters furnished by the City shall be paid quarterly, namely: for the quarter ending on the 31st January, the amount due shall be payable on the first of March; for the quarter ending on the 30th April, the amount due shall be payable on the first of June; for the quarter ending on the 31st July, the amount due shall be payable on the first of September, and, for the quarter ending on the 31st October, the amount due shall be payable on the first of December.

A deposit of money may be exacted, on the recommendation of the Superintendent of the Water-works, sufficient to cover the value of the meters as well as any damage liable to be caused thereto, and sufficient also to guarantee the City against the possible non-payment of the price of the water supplied.

ARTICLE 20. — It is forbidden, under the penalty enacted by this by-law for any person, company or corporation to sell or to supply water in the City.

The provisions of this article shall not prevent the sale by anyone whatsoever of water which is to be used for drinking or domestic purposes.

ARTICLE 21. — A deposit shall be made with the Director of Finance of the City by every consumer by whom the correctness or registration of a meter is questioned. Such deposit will be returned in full to the said consumer, if the meter, when tested, is

found to have been out of order and not to have registered correctly during the period of time for which the accuracy of the meter registration is questioned, and, in such cases, an equitable adjustment shall be made, by the City, of the amount at issue, but such adjustment shall not apply for any period longer than two quarters of the year and all allowances shall be made in accordance with the result of the meter tests and deducted or credited on the subsequent water bills.

If the tests show that the meter is in good order and registered correctly, the expenses incurred in connection with such tests shall be charged against the deposit.

ARTICLE 22. — Whenever water consumed for any purpose other than the usual domestic needs and a charge is made for such water, in addition to the tax based on the rental value, it shall be optional with the consumer to require that the premises occupied by him be entirely supplied with water by meter and, in such case, he shall be held:—

1. — To pay, for the whole of his water supply, the rate fixed in the regular tariff for water supplied by meter;

2. — To make the necessary alterations to his piping, so that the City may install the meter or meters;

3. — To install a controlling valve on each of the services, in front of the meters; and

4. — To install a check valve on each service, in order to prevent any return of hot or cold water pressure in the meters.

ARTICLE 23. — It shall be unlawful for any person obtaining water from the City to supply water to others, or to use it for other than his own requirements, or to use it in connection with the operation of any apparatus or machinery whatsoever, unless permission to do so be previously obtained by him from the City and provided that he complies with the conditions that may be stipulated by the said City.

ARTICLE 24. — All water pipes laid on private ground and connected with the City water pipe system shall be of sufficient depth to protect them against posible injury from frost.

ARTICLE 25. — Whenever an application is made for the in-

stallation of water services for lots not built upon and situated on a street which is to be immediately paved and where sewer connections are to be laid, the City may, at the discretion of the Superintendent of the Water-works have such services laid at the expense of the applicant, who shall previously deposit with the Director of Finance of the City an amount equal to the cost of said services, as estimated by the Superintendent of the Water-works. In the event of the owner of the lot erecting a building upon the same within one year from the date of the laying of the services, thereby enabling the City to derive revenue in the form of a tax for water supplied the amount of the deposit shall be refunded.

Directive provisions

ARTICLE 26.—The water rates shall be payable in advance annually, by the occupant, lessee or prorietor-occupant, or occupants, lessees or proprietor-occupants of all buildings, part of buildings, or tenements in the City, supplied with water from the said Water-works, both by those who shall consent and by those who shall refuse to receive the water pipe to supply the said water or to use the same. The said rates shall be due and payable within a delay of ten days from the date of the notice given, according to law, to the ratepayers, by the Director of Finance of the City, of the deposit of the roll at his office until the expiry of which delay a discount of 3 per cent shall be allowed. But payment may be made in two instalments, without discount, provided not les than one half is paid on or before the 8th of September and the balance on or before the 8th of November of each year. In default of payment of the first instalment within the time specified the whole of the rate shall be due and exigible.

ARTICLE 27.—All charges for specific supplies or for a fractional part of the year shall be payable in advance and before the water is turned on; when necessary the Director of Finance shall have the right to base the charges on the account for the preceding year or on annual rental value as entered on the last tax roll in force.

ARTICLE 28.—In all cases of non-payment of the rates imposed by this by-law after the same are due, the said Council or any duly authorized officer charged with the management of the said Water-works may cut off the supply of water from the building upon which the said rates shall be due, or from any one in default of paying the said rates; which shall not prevent the said rates from running on as before, and the water shall not be turned on for the use of such defaulter except upon payment of all arrears due.

ARTICLE 29.—All the preceding articles concerning water rates shall not apply to the parts of wards the residents and ratepayers of which are not supplied with water by the City.

TAXES ON CAPITAL

Tax on banks

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ARTICLE 30.—An annual special tax is hereby imposed and shall be levied upon every bank doing business in the City, at the following rates:

1. When the paid-up capital of such bank is $1,000,000 or less $400.00

2. When the paid-up capital of the bank is more than $1,000,000 but does not exceed $2,000,000. 500.00

20

3. When the paid-up capital of such bank is above $2,000,000 600.00

Every such bank shall furthermore pay a tax of one hundred dollars ($100.00) for every branch it has within the City limits.

PERSONAL TAXES

Tax on Insurance Companies

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ARTICLE 31.—An annual special tax of $200.00 is imposed and shall be levied on every company engaged in the business of life insurance, insurance against accidents and sickness, health insurance, cattle insurance, plate-glass and boiler insurance, insurance against burglary, guarantee insurance, employers' liability insurance, insurance in connection with automobiles, and carrying on such business and taking risks in the City, and a special tax of $100.00 on every marine insurance company doing business and taking risks in the City.

40

1. When any insurance company combines two or more branches of any kind of insurance above mentioned, one tax only shall be levied upon such company, that is to say, the tax the rate of which is the higher on any of the said branches of insurance respectively.
2. The said special tax shall be entered on the tax roll and shall be due and payable in the manner and at the times provided for all other municipal taxes.

Tax for the occupation of public property.

ARTICLE 32.—Every person, firm, company or corporation to whom a permit has been granted for the construction of any cellar, vault, coal chute or opening with permanent covering, tunnel, viaduct or conveyer, either above or under ground, on any street, thoroughfare, or public place of the City, and generally for the occupation of
10 the public domain for private purposes, shall pay an annual tax of 2½% per cent of the superficial value of the land occupied for any such purpose, taking as a basis the municipal valuation, per foot, of the bordering property situated oposite, irespective of the value of the building; but this provision shall not affect companies that have obtained the power in virtue of their charter.

(a) Such person, firm, company or corporation shall be responsible for the damages or claims resulting from the construction,
20 existence or maintenance of such work on the City property.

(b) The place where and the manner in which such works shall be done and the quality of the materials to be used in connection therewith shall be subject to the aproval of the City inspector, and any such permit, after a notice in writing of at least one month given to the proper party, may be revoked by the said City inspector with the sanction of the Executive Committee.

(c) The said tax shall be entered on the assessment and tax
30 rolls and shall be due and payable in the manner and at the times provided for all other municipal taxes.

(d) All charges and all privileges for the use of public property established in the course of a fiscal year shall, on a certificate from the chief assessor, be entered on the real estate assessment roll for the proportion of the year still to run. The Director of Finance is authorized to annul or reduce any tax imposed for any such privilege, as soon as the same has ceased to exist, such annulment or such reduction to date from the day on which, as ascertained by the
40 said director, such privilege shall have ceased to exist.

Directive provisions

ARTICLE 33.—The taxes imposed in virtue of this by-law, the time of payment of which is not already determined, shall be due and payable at the expiration of the delays fixed by law, after the completion and delivery of the assessment or tax rolls for each ward of the City.

ARTICLE 34. — The business tax of ten per cent upon the annual rental value of the assessed premises and the other personal taxes which are entered on the tax roll completed on the 1st August but subject to revision up to the 20th of August of each year, shall be due and payable within ten days from the day of the notice given, according to law, to the ratepayers by the Director of Finance of the deposit of the roll at his office, up to the expiry of which delay
10 a discount of three per cent be allowed. In default of payment within the delays fixed by the City charter, the interest fixed by the City charter shall be paid on said taxes.

The said business tax shall be payable for each establishment of such trade, business or occupation, when it shall be carried on by the same person, firm or company in two or more distinct and separate buildings or places of business.

ARTICLE 35.—Every person, company or corporation paying
20 taxes to the City in virtue of Section XVI of the Act 62 Victoria, Chapter 58, and its amendments, shall be held to declare, even under oath, in order to facilitate the collection of said taxes, the actual value of the immoveable property subject to taxation as well as the "bona fide" rental of the same and in default by such person, company or corporation of making the declaration required by this article, the assessors shall estimate the matters subject to the said taxes under Article 364 of the said Act, and such valuation shall be valid for all lawful purposes.

30 ARTICLE 36.—Section 2 to 6 inclusively, 7 to 21 inclusively, 23 to 28 inclusively and 50 of said By-law No. 432, as amended, replaced or added by subsequent by-laws, are hereby repealed, but such repeal will not have the effect of annulling anything done or to be done in virtue of the provisions thus repealed.

ARTICLE 37.—Whosoever contravenes any of the provisions of this by-law is liable to a fine, with or without costs, and in default of immediate payment of said fine or of said fine and costs, as the case may be, to an imprisonment, the amount of said fine and the
40 term of said imprisonment to be fixed by the Recorder's Court of the City of Montreal, at its discretion; but said fine shall not exceed forty dollars ($40.00) and the term of imprisonment shall not be longer than sixty (60) days, said imprisonment to cease however at any time before the expiry of the term fixed by the said Recorder's Court on payment of the said fine or of the said fine and costs, as the case may be, and, if the infraction is continued the contravening party is liable to the fine and to the penalty above enacted for every

day during which the infraction is continued.

The above by-law was adopted without any amendment by Ordinance of the Quebec Municipal Commission, under date of the 11th September 1940, in virtue of paragraph d of Article 39 of the Act 22 George V, chapter 56, as amended.

10 The Administrator Delegate of the Quebec Municipal Commission.

(Signed) HONORÉ PARENT,

CIVIL CODE OF THE PROVINCE OF QUEBEC

ARTICLE 1065. Every obligation renders the debtor liable in damages in case of a breach of it on his part. The creditor may, in 20 cases which admit of it, demand also a specific performance of tht obligation, and that he be authorized to execute it at the debtor's expense, or that the contract from which the obligation arises be set aside; subject to the special provisions contained in this code, and without prejudice, in either case, to his claim for damages.

ARTICLE 1071. The debtor is liable to pay damages in all cases in which he fails to establish that the inexecution of the obligation proceeds from a cause which cannot be imputed to him, although there be no bad faith on his part.

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ARTICLE 1072. The debtor is not liable to pay damages when the inexecution of the obligation is caused by a fortuitous event, or by irresistible force, without any fault on his part, unless he has obliged himself thereunto by the special terms of the contract.

ARTICLE 1667. The contract of lease or hire of personal service can only be for a limited term, or for a determinate undertaking.

40 It may be prolonged by tacit renewal.

ARTICLE 1683. When a party undertakes the construction of a building or other work by estimate and contract, it may be agreed, either that he shall furnish labor and skill only, or that he shall also furnish materials.

ARTICLE 1684. If the workman furnish the materials, and the work is to be perfected and delivered, as a whole, at a fixed price,

the loss of the thing, in any manner whatsoever, before delivery, falls upon himself, unless the loss is caused by the fault of the owner or he is in default of receiving the thing.

ARTICLE 1688. If a building perish in whole or in part within five years, from a defect in construction, or even from the unfavorable nature of the ground, the architect superintending the work,
10 and the builder are jointly and severally liable for the loss.

ARTICLE 1691. The owner may cancel the contract for construction of a building or other works at a fixed price, although the work have been begun, on indemnifying the workman for all his actual expenses and labor, and paying damages according to the circumstances of the case.

ARTICLE 1692. The contract of lease or hire of work by estimate and contract is not terminated by the death of the workman;
20 his legal representatives are bound to perform it.

But in cases wherein the skill and ability of the workman were an inducement for making the contract, it may be cancelled at his death by the party hiring him.

OF MANDATE

30

CHAPTER FIRST

GENERAL PROVISIONS

ARTICLE 1701. Mandate is a contract by which a person, called the mandator, commits a lawful business to the management of another, called the mandatary, who by his acceptance obliges himself to perform it.

40 The acceptance may be implied from the acts of the mandatary and in some cases from his silence.

ARTICLE 1702. Mandate is gratuitous unless there is an agreement or an established usage to the contrary.

ARTICLE 1703. The mandate may be either special for a particular business, or general, for all the affairs of the mandator.

When general it includes only acts of administration.

For the purposes of alienation and hypothecation, and for all acts of ownership other than acts of administration, the mandate must be express.

ARITCLE 1704. The mandatary can do nothing beyond the authority given or implied by the mandate. He may do all acts which are incidental to such authority and necessary for the execution of
10 the mandate.

ARTICLE 1705. Powers granted to persons of a certain profession or calling to do any thing in the ordinary course of the business which they follow, need not be specified; they are inferred from the nature of such profession or calling.

ARTICLE 1706. An agent employed to buy or sell a thing cannot be the buyer or seller of it on his own account.

20 ARTICLE 1707. Emancipated minors may be mandataries, but in such cases the action of the mandator against the minor is subject to the general rules relating to the obligations of minors.

ARTICLE 1708. A married woman, who executes a mandate given to her, binds the mandator, but no action can be brought against her otherwise than as provided in the title *Of Marriage*.

CHAPTER SECOND

30 ## Of the Obligations of the Mandatary

Section 1.

Of the Obligations of the Mandatary Towards the Mandator.

ARTICLE 1709. The mandatary is obliged to execute the mandate which he has accepted, and he is liable for damages resulting from his non-execution of it while his authority continues.

40 He is obliged, after the extinction of the mandate, to do whatever is a necessary consequence of acts done before, and if the extinction be by the death of the mandator, he is obliged to complete business which is urgent and cannot be delayed without risk of loss or injury.

ARTICLE 1710. The mandatary is bound to exercise, in the execution of the mandate, reasonable skill and all the care of a prudent administrator.

Nevertheless, if the mandate be gratuitous, the court may moderate the rigor of the liability arising from his negligence or fault, according to the circumstances.

ARTICLE 1711. The mandatary is answerable for the person whom he substitutes in the execution of the mandate, when he is not empowered to do so; and if the mandator be injured by reason of
10 the substitution he may repudiate the acts of the substitute.

The mandatary is answerable in like manner when he is empowered to substitute, without designation of the person to be substituted, and he appoints one who is notoriously unfit.

In all these cases the mandator has a direct action against the person substituted by the mandatary.

ARTICLE 1712. When several mandataries are appointed together for the same business, they are jointly and severally liable
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for each other's acts of administration, unless it is otherwise stipulated.

ARTICLE 1713. The mandtary is bound to render an account of his administration, and to deliver and pay over all that he has received under the authority of the mandate, even if it were not due; subject nevertheless to his right to deduct therefrom the amount of his disbursements and charges in the execution of the
30 mandate.

If he have received a determinate thing he is entitled to retain it until such disbursements and charges are paid.

ARTICLE 1714. He is bound to pay interest upon the money of the mandator which he employs for his own use, from the day of so employing it, and upon any remainder due to the mandator, from the time of being put in default.

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SECTION II

OF THE OBLIGATIONS OF THE MANDATARY TOWARDS THIRD PERSONS.

ARTICLE 1715. The mandatary acting in the name of the mandator and within the bounds of the mandate is not personally liable to third persons with whom he contracts, except in the case of

factors hereinafter specified in article 1738 and in the cases of contracts made by the master of a ship for her use.

ARTICLE 1716. A mandatary who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the mandator also.

ARTICLE 1717. He is liable in like manner when he exceeds his powers under the mandate, unless he has given the party with whom he contracts, sufficient communication of such powers.

ARTICLE 1718. He is not held to have exceeded his powers when he executes the mandate in a manner more advantageous to the mandator than that specified by the latter.

ARTICLE 1719. He is held to have exceeded his powers, when he does alone anything which, by the mandate, he is charged with doing conjointly with another.

CHAPTER THIRD

Of the Obligations of the Mandator.

SECTION I

Of the Obligations of the Mandator Towards the Mandatory

ARTICLE 1720. The mandator is bound to indemnify the mandatary for all obligations contracted by him toward third persons within the limit of his powers; and for acts exceeding such powers, whenever they have been expressly or tacitly ratified.

ARTICLE 1721. The mandator or his legal representative is bound to indemnify the mandatary for all acts done by him within the limit of his powers, after the extinction of the mandate by death or other cause, when he is ignorant of such extinction.

ARTICLE 1722. The mandator is bound to reimburse the expenses and charges which the mandatary has incurred in the execution of the mandate, and to pay him the salary or other compensation to which he may be entitled.

When there is no fault imputable to the mandatary, the mandator is not released from such reimbursement and payment, although the business has not been successfully accomplished; nor

can he reduce the amount of the reimbursement on the ground that the expenses and charges might have been made less by himself.

ARTICLE 1723. The mandatary has a privilege and right of preference for the payment of the expenses and charges mentioned in the last preceding article, upon the things placed in his hands and upon the proceeds of the sale or disposal thereof.

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ARTICLE 1724. The mandator is obliged to pay interest upon money advanced by the mandatary in the execution of the mandate. The interest is computed from the day on which the money is advanced.

ARTICLE 1725. The mandator is obliged to indemnify the mandatary who is not in fault, for losses caused to him by the execution of the mandate.

20 ARTICLE 1726. If a mandate be given by several persons, their obligations toward the mandatary are joint and several.

SECTION II

Of the Obligations of the Mandator Towards Third Persons

ARTICLE 1727. The mandator is bound in favor of third persons for all the acts of his mandatary, done in execution and within the powers of the mandate, except in the case provided for in article 30 1738 of this title, and the case wherein by agreement or the usage of trade the latter alone is bound.

The mandator is also answerable for acts which exceed such power, if he have ratified them either expressly or tacitly.

ARTICLE 1728. The mandator or his legal representative is bound toward third persons for all acts of the mandatary, done in execution and within the powers of the mandate after it has been extinguished, if its extinction be not known to such third persons.

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ARTICLE 1729. The mandator or his legal representative is bound for acts of the mandatary done in execution and within the powers of the mandate after its extinction, when such acts are a necessary consequence of a business already begun.

He is bound for acts of the mandatary done, after the extinction of the mandate by death or cessation of authority in the mandator, for the completion of a business, where loss or injury might have

been caused by delay.

ARTICLE 1730. The mandator is liable to third parties who in good faith contract with a person not his mandatary, under the belief that he is so, when the mandator has given reasonable cause for such belief.

ARTICLE 1731. He is liable for damages caused by the fault of the mandatary, according to the rules declared in article 1054.