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LEGAL STUDIES

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## PART I

There are three appeals from a judgment of the Court of King's Bench, Province of Quebec, which have been joined by  
10 agreement.

A submission was agreed to by the three parties to these appeals under the provisions of Article 509 of the Code of Civil Procedure.

This submission appears at page 2 of the record.

The City of Montreal claims from the Montreal Locomotive  
20 Works Limited the taxes mentioned under paragraphs (a), (b), (c) and (d) at page 9 of the record.

The trial judge Bond C.J. rejected the claim mentioned in paragraph (a) and allowed the three other items.

All parties appealed and the Court of Appeals unanimously affirmed the judgment as to paragraph (a). Hence the present appeal by the City of Montreal.

30 The same Court, Francoeur, Marchand, Bissonnette JJ., Walsh and St-Jacques JJ. dissenting, confirmed the judgment on the three other items. Hence the appeals of His Majesty and of the Company.

His Majesty is a party because, under the terms of the agreements to which reference will be made and on which these appeals must be decided, any taxes to which the Company may be condemned must be borne by His Majesty. Hence His Majesty's  
40 interest.

On the 23rd of October 1940, pages 18 and 40 of the record, two agreements were entered into between His Majesty and the Company.

Subject to these agreements being later discussed much more fully they can be briefly summarized as providing that the Company would sell to the Government for \$1. certain land, would build on that land a factory for war implements, would supervise the manufacture of these implements, the Company acting in

every respect as the agent of the Government, incurring no responsibility and being paid a fee for its services.

The claim is in respect of property taxes and business taxes. They are claimed under the provisions of the charter of the City of Montreal, Section 362-a as to property taxes and  
10 Section 363 as to the business taxes.

The first paragraph of Section 362-a which alone is material reads as follows:—

20 “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.”

The first paragraph of Section 363 which alone is material reads as follows:—

30 “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  
40 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.”

The main question therefore is, as to the property tax, whether or not the Company during the material periods occupied for commercial or industrial purposes this building and this land within the meaning of Section 362-a.

As to the business tax, the question is whether or not the Company during those periods carried on or exercised “a manufacture” in this building within the meaning of Section 363.

10 The City lost as to paragraph (a) of its claim because it had taxed the Company as a proprietor of the building when, as a matter of fact, the building was the property of the Government.

The Company and the Government lost, as to paragraphs (b), (c) and (d) because though in the agreements the Company is expressly and repeatedly stated to be only the agent of the Government, nevertheless the Courts thought that it was in reality a contractor for the Government and not its agent.

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## PART II

His Majesty suggests that the judgments as to paragraphs (b), (c) and (d) are erroneous because the contract is clearly one of agency and not of lease or hire of work; because, even were it a lease and hire of work the consequences would be the same from the point of view of this litigation; because the City charter does not authorize the taxing of an agent of the Government nor even of a contractor for the Government, working in the premises of the Government, at government work, in either of these 30 capacities on the basis of the value of such premises; because such a tax if authorized by the City charter would be ultra vires of the provincial legislature; because alternatively as to paragraph (c) Section 362-a and the by-law imposing the property tax does not authorize this particular tax.

His Majesty further suggests as to paragraph (a) that the unanimous judgment below should be affirmed for the reasons therein given and also for the reasons above mentioned.

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## PART III

The Principal question turns on the meaning of the two agreements.

The Company is described as an agent several times.

Dealing with the first contract the first time these words appear is in the preamble, page 19, where it appears twice.

His Majesty does not claim that these words are absolutely decisive but they create a very strong presumption of what was the intent of the parties and it is the intent of the parties, as gathered from the words used, that determines the nature of the contract.

10 Unless covenants are found in this agreement which are absolutely inconsistent with the idea that this is an agency, the parties having repeatedly stated that they wanted it to be an agency, it is an agency.

At page 20 there is the covenant respecting the sale of the land by the Company to His Majesty. The price was left in blank but at page 35, line 30, the price is mentioned as being \$1.

20 The actual sale took place only on the 27th of February 1942. Page 103.

At page 21, line 30, the duty of the Company is defined. It is to design and construct the plant.

At page 22, line 25, the Company estimates, without any guarantee, the time that will be required to build the plant.

30 On the same page and the following pages, the fullest control is given to the Minister.

At page 24, line 20, the Company is authorized to incur costs and pay for on behalf of the Government as its agent all that may necessary or incidental to the performance of the agreement.

40 Line 35, it can also, as the Government's agent, perform any act and thing, sign any deeds or instruments necessary, useful or incidental to the performance of the agreement, subject to the Minister's control.

At page 25, the cost is estimated, not guaranteed.

On the same page, line 20, it is provided that the Government shall pay to the Company all its proper and reasonable costs and expenses.

At page 26, line 27, and the following pages, an arrangement is provided for whereby all expenses will be met without the Company having to resort to its own funds.

At page 28, the Company agrees to carry out any changes that the Government may order, on the same terms.

At page 29, it is again stated that the Company is only an agent, that it shall be fully indemnified and that it shall not be responsible except for definite bad faith or wilful neglect.

10

At line 40, it is provided that the title to the plant and equipment, etc., shall at all times be vested in the Government.

At page 30 it is provided that the Company will endeavour to obtain remission or refund of duties and taxes.

At pages 30 and following it is provided that the Government may at any time cancel the agreement.

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At pages 34 and following it is provided that the Government will not dispose of the land and plant or equipment without first offering it to the Company.

If the Government disposes of the plant in favour of some one else, on the Company's refusal to take it, it shall pay to the Company the value of the land.

If the plant is disposed of to the Company the land will be paid for at \$1., the original purchase price.

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If the Government demolishes the plant, the land will return to the Company for \$1.

After five years if neither of these events has happened the Government must pay the Company for the land.

One more point requires to be noted. It is that for this work the Company receives absolutely no remuneration except, if that can be called a remuneration, the administrative and overdue expenses which, in the opinion of the Minister, are properly apportionable to the performance of the agreement. Page 25, line 20.

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While the first agreement dealt with the purchase of the land and the building of the plant, the second agreement made on the same day, record, page 40, deals with the manufacture in the plant of tanks and gun carriages.



The clauses of this agreement from the point of view of this case are practically the same.

10 The Company is the agent, it is responsible only for bad faith and wilful neglect. Page 41. It will operate the plant and manufacture a certain quantity of gun carriages and tanks of a certain kind. Page 42. It can incur costs and sign deeds as the Government's agent. Pages 43 and 44. It is to be fully reimbursed. Pages 44 and following. In this case, however, it receives a fee for its work. Page 52.

Similar banking arrangements are provided for so that the Company shall not have to resort to its own funds. Page 54. The title to the plant, equipment and accessories, is vested in the Government. Page 56.

20 The Minister has full control. Pages 57 and following.

62. Similar provisos exist as to duties and taxes. Pages 61 and

Similar provisos exist as to changes, pages 64, and also as to the termination of the agreement at any time by the Government.

30 The Company therefore sells to the Government for \$1. land which it will get back at the same price, or be paid for at its value later.

It is to build and equip a plant and manufacture in it, as agent for the Government, certain war implements, at the cost of the Government, without at all using its funds, under Government control, without any responsibility except for bad faith or wilful neglect.

40 Everything is the property of the Government. The agreement is revocable at any time.

It is submitted that this is clearly a case of agency.

It is submitted that the Company never occupied for industrial purposes this building and this land.

Article 362-a therefore does not permit of this property tax.

It is further submitted that this Company never carried on or exercised a manufacture and therefore Section 363 of the City charter is inapplicable and the business tax is not recoverable.

10 It is submitted as a constitutional proposition that an agent of the Government working for the Government, in Government property, cannot be taxed on account of that property.

It is also submitted that even if this was a lease and hire of work and the Company was a contractor, the same answer would apply.

A contractor who works on some one else's property for that other person, cannot be said to occupy that property, or use it for his business.

20 He therefore cannot be taxed under the above mentioned provisions of the Montreal charter. If the owner is the Crown in addition to the inapplicability of the text of the charter, there is a constitutional limitation.

30 If an owner causes some one to build a factory for him and afterwards to direct manufacturing in that building for him it cannot be said that this builder and manufacturer can be taxed either on the basis of the capital value or of the annual value of the factory and land on which it is built.

It is submitted that this is what the City attempts to do.

40 All that the Company had to do was, without responsibility except for its fraud or wilful neglect, and with moneys *previously* advanced by the Government, to design, build and equip the factory, buy raw materials, hire, pay, dismiss and replace servants and supervise the manufacturing. The contract could be terminated at any time by the Minister, the supreme control in every respect was with the Minister and the Company's only interest was in its fee.

Bond C.J. quotes, at page 133, an extract from Manning, Assessment & Rating, which, it is submitted, is clearly favourable to Appellant.

He also quotes the judgment of this Court in re: Montreal Light, Heat and Power Company vs Quinlan, 1929, 3 D.L.R., page 568. That case raised a different question and raised it under an entirely different contract.

Planiol & Ripert, quoted by the trial judge on page 133, indicates a difference between an agent and a servant.

The trial judge seems here to overlook the fact that there are two kinds of lease and hire of work, that of a servant and that of a contractor. Appellant claims to be entitled to succeed even  
10 if the Company was an independent contractor; but it is suggested that he must succeed equally whether the Company was an agent or a servant.

This quotation therefore only shows that the trial judge misapprehended the question.

However, it is submitted that the Company here, just as a director or the manager of any company, was an agent or servant.

20 If this contract instead of being with a company had been with an individual, it seems that this would clearly have been considered as a contract of agency or service.

It is submitted that the fact that there is here a company instead of an individual makes no difference.

In addition to the above His Majesty adopts the argument of the Company to the effect that, assuming that the City could  
30 tax the Company in respect of this property under the provisions of Section 362-a of the City charter, the general by-law providing for the tax only provides for a tax on taxable immoveables.

There can be no question of taxing this immoveable. All that can be taxed under Section 362-a would be the persons occupying for industrial purposes buildings or lands belonging to the Government.

40 Even the wording of Section 362-a is very unusual.

Section 361 provides that all immoveable property shall be liable to taxation.

Section 362 provides that certain immoveable property is exempt from the ordinary and annual assessment.

This is an ordinary and annual assessment.

There is no reference to Government properties.

Then we have Section 362-a very curiously worded in view of the provisions of Sections 361 and 362.

It is only by rewriting the section that it can be said that persons occupying Government property for commercial or industrial purposes can be taxed.

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At all events, even if they can, they are not taxed here. A tax is levied by the by-law on the immoveable properties in the City, that is all.

On the appeal of the City His Majesty suggests that all that has been said above applies.

In addition it is suggested that the tax for 1941 being imposed on the real estate and its proprietor when the building was clearly not the property of the Company, the tax is not valid and the judgment in that respect should be confirmed for the reasons given in the Court below.

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On the whole it is submitted that the appeal of His Majesty should be maintained and the appeal of the City dismissed, with costs.

Montreal, April 6th, 1945.

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His Majesty the King, in Right of Canada.

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