

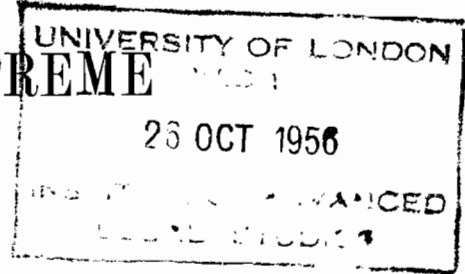
44, 1946

44911

In the Privy Council.

No. 104 of 1945.

ON APPEAL FROM THE SUPREME  
COURT OF CANADA



BETWEEN

THE CITY OF MONTREAL ... .. (Defendant) Appellant

AND

MONTREAL LOCOMOTIVE WORKS LIMITED (Plaintiff) Respondent

AND

THE ATTORNEY-GENERAL OF CANADA (Intervenant) Respondent.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17 Victoria Street, S.W. 1,

*For the Appellant.*

CHARLES RUSSELL & CO.,

37 Norfolk Street, W.C.2,

*For the Respondents.*

RECORD OF PROCEEDINGS

## INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
<i>In the Superior Court.</i>			
1	Joint Case submitted by the parties and affidavits in support of same ... ..	16th April 1943 ...	2
2	Judgment of the Superior Court... ..	21st October 1943 ...	118
3	Certificate of Registrar <i>re</i> Notes of Judgment ...	27th March 1945 ...	193
<i>In the Court of King's Bench.</i>			
4	Formal Judgment. (Case No. 2560) ... ..	29th December 1944...	138
5	Formal Judgment. (Case No. 2561) ... ..	29th December 1944...	139
6	Formal Judgment. (Case No. 2562) ... ..	29th December 1944...	140
7	Reasons for Judgment.— (a) Walsh, J. ... .. (b) St. Jacques, J. ... .. (c) Francoeur, J. ... .. (d) Marchand, J. ... .. (e) Bissonnette, J. ... ..	... .. ... .. ... .. ... .. ... ..	141 144 150 153 169
8	Inscription in Appeal to Supreme Court of Canada. (Case No. 2560) ... ..	22nd January 1945 ...	181
9	Notice of Appeal to Supreme Court of Canada and Motion to permit and secure security (Case No. 2561) ... ..	25th January 1945 ...	182
10	Notice of Appeal to Supreme Court of Canada and Motion to permit and secure security (Case No. 2562) ... ..	5th February 1945 ...	184
11	Bail Bond. (Case No. 2561) ... ..	1st February 1945 ...	186
12	Bail Bond. (Case No. 2562) ... ..	... ..	189
13	Consent of parties to have appeals to Supreme Court heard jointly and as to contents of Case ... ..	23rd February 1945 ...	192
14	Certificate of parties as to Case ... ..	31st March 1945 ...	194
15	Certificate of Clerk of Appeals ... ..	... ..	195
<i>In the Supreme Court of Canada.</i>			
16	Factum of The Attorney-General of Canada ...	... .. (Separate document)	
17	Factum of Montreal Locomotive Works Limited ...	... .. (Separate document)	
18	Factum of City of Montreal ... ..	... .. (Separate document)	
19	Formal Judgments ... ..	20th June 1945 ...	197
20	Reasons for Judgment delivered by Rinfret, C.J. ... ..	... ..	200
<i>In the Privy Council.</i>			
21	Order of His Majesty in Council granting Special Leave to Appeal ... ..	20th December 1945...	209

— II —

P - 8—Copy of a detailed statement prepared by the City of Montreal containing an analysis of the municipal valuations as well as the taxes on immoveables .....	85
P - 9—Copy of permit to build No. 205 of the City of Montreal approved .....19 Feb. 1941.....	76
P-10—Copy of permit to build No. 931 of the City of Montreal approved .. .... 5 May 1941 ..	80
P11—Copy of notice, given by the Assessors to the Chief Assessor of the City of Montreal. ....10 Nov. 1941.....	88
P-12—Copy of notice, addressed by the Board of Revision of Valuations of the City of Montreal to Montreal Locomotive Works Limited .....20 Nov. 1941 .....	89
P-13—Copy of letter addressed to the Board of Revision of Valuation of the City of Montreal by Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited .....28 Nov. 1941.....	90
P-14—Copy of letter, addressed to the Secretary of the Board of Revision of Valuations of the City of Montreal by Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada ..... 1 Déc. 1941.....	91
P-15—Copy of letter addressed by the Board of Revision of Valuations of the City of Montreal to Messrs. Kearney, Duquet & MacKaKy, Attorneys acting on behalf of Montreal Locomotive Works Limited ..... 3 Dec. 1941.....	93
P-16—Copy of letter addressed by the Board of Revision of Valuations of the City of Montreal to Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada ..... 4 Déc. 1941.....	94

— III —

P-17—Copy of letter addressed by the Secretary of the Board of Revision of Valuations of the City of Montreal to Mr. A. E. Hulse, the Chief Assessor of the City of Montreal. ....	4 Dec. 1941.....	95
P-18—Copy of letter addressed by the Chief Assessor of the City of Montreal to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Ltd. ...	4 Dec. 1941 ..	96
P-19—Copy of letter addressed to the Board of Revision of Valuations of the City of Montreal by Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada .....	8 Déc. 1941 .....	97
P-20—Copy of letter addressed to the Board of Revision of Valuations by Mr. J. E. L Duquet, Attorney acting on behalf of Montreal Locomotive Works Limited .....	9 Dec. 1941. ....	98
P-21—Copy of letter addressed to Mr. A. E. Hulse, Chief Assessor of the City of Montreal, by Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited. ....	9 Dec. 1941 ..	99
P-22—Copy of letter addressed to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited, by Mr. A. E. Hulse, Chief Assessor of the City of Montreal. ....	11 Dec. 1941 ..	100
P-23—Copy of Certificate by the Board of Revision of Valuations of the City of Montreal to the Chief Assessor of the City of Montreal. ....	12 Dec. 1941 ..	101

— IV —

- P-24—Copy of letter addressed to Mr. J. Pettigrew for the Deputy Minister of Munitions and Supply of Canada by the Secretary of the Board of Revision of Valuations of the City of Montreal. ....12 Dec. 1941..... 101
- P-25—Copy of letter addressed to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited, by the Secretary of the Board of Revision of Valuations of the City of Montreal.....12 Dec. 1941..... 102
- P-26—Copy of certificate issued by the Chief Assessor of the City of Montreal to the Director of Finance of the City of Montreal. ....18 Dec. 1941..... 103
- P-27—Extract from the Valuation Roll of immovable property for the fiscal year commencing May 1st, 1941. .... 1 May 1941..... 86
- P-28—Copy of bill of the City of Montreal showing the real estate assessment for the year commencing May 1st, 1941 but covering the period from November 1st, 1941 to April 30th, 1942. .... 1942. .... 87
- P-29—Copy of Certificate No. 692 issued by the Chief Assessor of the City of Montreal to the Director of Finance of the City of Montreal. .... 1942 .. 87
- P-30—Copy of bill of the City of Montreal for water and business taxes for the year commencing May 1st, 1941 but covering the period from November 1st, 1941 to April 30th, 1942. .... 1942 88
- P-31—Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st, 1942.... 1 May 1942 ..... 113

P-32—Copy of plan showing Cadastral Lot No. 21-2210 and the adjacent pro- perty. ....	30th Sept. 1942....	116
P-33—Extract from the Real Estate Assess- ment Roll of the City of Montreal for the year commencing May 1st, 1942. ....	1st May 1942....	114
P-34—Copy of bill of the City of Montreal for water and business taxes for the fiscal year commencing May 1st, 1942. ....	1st May 1942....	114

**JUDGMENTS, NOTES, &c.**

Judgment of the Superior Court .....	21st Dec. 1943....	118
Judgment of the Court of King's Bench in appeal, in Case No. 2560 .....	29th Dec. 1944 ...	138
Judgment of the Court of King's Bench in appeal, in Case No. 2561 .....	29th Dec. 1944....	139
Judgment of the Court of King's Bench in appeal, in Case No. 2562 .....	29th Dec. 1944 ...	140
<b>JUDGES' NOTES IN CASE No. 2560, 2561, 2562.</b>		
Notes of the Hon. Mr. Justice Walsh .....		141
Notes de l'Hon. Juge Francoeur .....		150
Notes de l'Hon. Juge Marchand .....		153
Notes de l'Hon. Juge Bissonnette .....		169



**DOMINION OF CANADA**

**In the Supreme Court of Canada**  
**(OTTAWA)**

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

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10 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 —

30 **MONTREAL LOCOMOTIVE WORKS LIMITED,**  
(Plaintiff 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,**

---

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

— vs —

40 **THE CITY OF MONTREAL,**  
(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.**

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**CONSOLIDATED JOINT CASE**

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**PART I — PLEADINGS**

10

**JOINT FACTUM OR CASE**

The parties hereto declare that they have full legal capacity and are at variance upon a question of law capable of being the subject of an action between them but that they are in agreement as to the facts and therefore desire to submit the said question of law for the decision of this Honourable Court under the provisions of Article 509 and following of the Code of Civil Procedure of the Province of Quebec.

20

The facts which give rise to the question of law, the question of law involved and the conclusions of the parties are as follows, that is to say:—

1. On the 23rd day of October, 1940, a contract (hereinafter called the “Construction Contract”) was made between the Intervenant, the Plaintiff and American Locomotive Company, wherein it was agreed, amongst other things, that the Plaintiff:

30

(a) would sell, transfer, make over and assign unto the Intervenant the premises therein described forming part of the premises of the Plaintiff located at Longue Pointe in the City of Montreal; and

40

(b) would construct thereon, for and on behalf of the Intervenant and as his Agent and at his expense and subject to the supervision, direction and control of the Intervenant through the Honourable the Minister of Munitions and Supply, a new plant (hereinafter sometimes called the “new plant”) to remain the property of the Intervenant and to be capable of producing gun carriages and tanks;

the whole as more completely and exactly appears from the terms of the said Construction Contract, a deleted copy of which, with the consent of the parties hereto, is filed herewith as Exhibit P-1.

2. On the 23rd day of October 1940, a contract (hereinafter called the “Production Contract”) was made between the Intervenant, the Plaintiff and American Locomotive Company,



wherein it was agreed amongst other things, that the Plaintiff, acting on behalf of the Intervenant and as his Agent and with the cooperation and assistance of American Locomotive Company, shall administer, manage and operate the new plant and shall produce therein for the account of the Intervenant, gun carriages and tanks, at a reasonable fee per gun carriage and  
10 per tank, respectively, the whole as more completely and exactly appears from the terms of the said Production Contract, a deleted copy of which, with the consent of the parties hereto, is filed herewith as Exhibit P-2.

3. 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 to in paragraph 18 hereof and filed herewith as Exhibit  
20 P-14.

4. 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.

5. On demand by the Plaintiff, the 7th day of November 1941, the land upon which the new plant was located and which formed part of original lot Number 21 of the Official Plan and Book of Reference of the Cadastre of the Parish of Longue  
30 Pointe in the County of Hochelaga was properly subdivided in accordance with the provisions of the Civil Code of the Province of Quebec to form Lot Number 2210 of Original Lot Number 21 of the Official Plan and Book of Reference of the Cadastre of the Parish of Longue Pointe in the County of Hochelaga, as appears by the said plan filed as Exhibit P-3.

6. On the 27th day of February 1942, the Plaintiff, by Deed of Sale in authentic form, confirmed the sale to the Intervenant of the said land known as Lot Number 21-2210 of the  
40 Official Plan and Book of Reference of the Parish of Longue Pointe in the County of Hochelaga, the whole as more completely and exactly appears from the terms of the said Deed of Sale made between the Plaintiff and the Intervenant on the 27th day of February 1942, before Mtre. Joseph C. B. Walsh under Number 13263 of his minutes, a duly certified copy of which, in notarial form, is filed herewith as Exhibit P-4.

7. On the 28th day of February 1942, the said Deed of Sale, a duly certified copy whereof in notarial form is filed here-

with as Exhibit P-4, was duly registered under Number 518606 of the Registration Division of Montreal.

8. On the valuation roll for the year beginning on the 1st of May 1941, the Plaintiff was entered as proprietor of civic number 5781 Notre Dame Street East and 5790-5910 Notre Dame Street East for cadastral Number P-21 and P-27 and the Valuation Roll was as follows: land \$368,400., building \$775,600., rails \$6,000., motive power \$50,000 and as neutral for school tax, at values as follows: land and building \$1,144,000., rails \$6,000., motive power \$50,000., as appears by a copy of the Valuation Roll filed as Exhibit P-5, and by the plan filed as Exhibit P-6.

9. On the real estate assessment roll for the municipal fiscal year beginning on the 1st of May 1941, the Plaintiff was billed to the amount of \$35,858.59 according to the valuations mentioned in the preceding paragraph as increased in accordance with the provisions of Section 84 of Chapter 73 of the Statutes of Quebec, 1941, the whole as appears by the bill filed as Exhibit P-7, and the details filed as Exhibit P-8.

10. On the 30th of September 1941, the bill mentioned in the preceding paragraph was paid by the Plaintiff.

11. On or about the 19th day of February 1941, a permit was issued by the Defendant upon the application of Sutherland Construction Company for work to be done in connection with the new plant, as appears by a copy of such permit filed herewith as Exhibit P-9.

12. On or about the 5th day of May 1941, a permit was issued by the Defendant upon the application of L. G. Ogilvie & Company Limited for work to be done in connection with the new plant, as appears by a copy of such permit filed herewith as Exhibit P-10.

13. On the 10th of November 1941, the Assessors gave notice to the Chief Assessor that they had assessed the new building and the motive power in the name of the Plaintiff on Notre Dame Street, Number 5781 on Cadastral Number P-21, at \$1,264,-200. for the new building and \$13,600. for the motive power, as appears by a copy of the said notice, Exhibit P-11.

14. The Chief Assessor referred the said valuation to the Board of Revision of Valuations according to Article 375a of the charter of the Defendant.

15. On the 20th of November 1941, the Secretary of the Board of Revision of Valuations advised the Plaintiff of the said valuation, and to appear within a delay of fifteen days, before the said Board, as appears by a copy of the said notice, Exhibit P-12.

10           16. On the 28th of November 1941, Mr. John E. L. Duquet of Counsel for the Plaintiff, attended before the Chairman and one of the members of the Board of Revision of Valuations and protested against the valuation of the new building and the motive power in the name of the Plaintiff, either as owner, occupant or otherwise, informing the said Chairman and member of the said Board of the situation with respect to the new building and motive power under the provisions of the Construction Contract P-1, and the Production Contract, P-2, whereupon the  
20 Duquet that the jurisdiction of the Board of Revision of Valuations extended only to the fixing of the amount of the valuations, that, if the amount of the valuation of the new building and motive power were not contested, they would be fixed at the amount set forth in the notice by the Assessors to the Chief Assessor, Exhibit P-11, and that any contestation of the right of the Defendant to tax the Plaintiff with respect to the new building and motive power would have to be discussed with the Chief Assessor.

30           17. On the 28th of November 1941, a letter was sent to the Board of Revision of Valuations on behalf of the Plaintiff by MM. Kearney, Duquet & MacKay, Attorneys, informing the Board that the new plant and motive power were the property of the Intervenant and were operated by the Plaintiff for and on behalf of the Intervenant as Manager under the said Production Contract, P-2, the whole as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-13. //

40           18. On the 1st of December 1941, the Deputy Minister of Munitions and Supply acting for and on behalf of the Intervenant advised the Secretary of the Board of Revision of Valuations of the terms under which the new plant was constructed and operated, drawing to the attention of the Secretary that the new plant was the property of the Intervenant that the Plaintiff had no rights therein either as owner, lessee, occupant or otherwise and that the Plaintiff was operating the new plant for the account of the Intervenant, the whole as more completely

and exactly appears by the terms of the said letter addressed by the Deputy Minister of Munitions and Supply to Albert Perusse, Secretary of the Board of Revision of Valuations, dated December 1st, 1941, a copy of which is filed herewith as Exhibit P-14. (p. 91)

10        19. On the 3rd of December 1941, the Secretary of the Board of Revision of Valuations acknowledged receipt of the letter of MM. Kearney, Duquet & MacKay dated November 28th, 1941, as appears by a copy of the letter of acknowledgment filed as Exhibit P-15.

20        20. On the 4th of December 1941, the Secretary of the Board of Revision of Valuations acknowledged receipt of the letter of the Deputy Minister of Munitions and Supply dated December 1st, 1941, as appears by a copy of the letter of acknowledgment filed as Exhibit P-16.

30        21. On the 4th of December 1941, the Secretary of the Board of Revision of Valuations referred to the Chief Assessor the letters received from MM. Kearney, Duquet & MacKay and from Mr. Pettigrew, Deputy Minister of Munitions and Supply, filed herewith as Exhibits P-13 and P-14 respectively, as appears by the letter addressed by Albert Perusse, Secretary of the Board of Revision of Valuations to A. E. Hulse, Chief Assessor, dated December 4th, 1941, a copy of which is filed herewith as Exhibit P-17.

40        22. On the 4th of December 1941, the Chief Assessor replied to the letter of MM. Kearney, Duquet & MacKay filed herewith as Exhibit P-13, as appears by the said reply, a copy of which is filed as Exhibit P-18, the Defendant, however, admitting that the said reply filed as Exhibit P-18 does not make proof of the facts therein alleged with respect to the explanations given to the Chief Assessor by Mr. Duquet in view of the contention of the Plaintiff that the explanations given to the Chief Assessor by Mr. Duquet were misunderstood or misinterpreted by the Chief Assessor, and that such explanations confirmed the facts set forth in this joint Factum or Case.

23. On the 8th of December 1941, the Deputy Minister acknowledged receipt of the letter of the Secretary of the Board of Revision of Valuations dated December 4th, 1941, as appears by the letter of acknowledgment, a copy of which is filed as Exhibit P-19.

24. On the 9th of December 1941, MM. Kearney, Duquet & MacKay sent a letter to the Board of Revision declaring that the Plaintiff does not contest the valuation, but contests the right to assess the said Company, as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-20.

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25. On the 9th of December 1941, MM. Kearney, Duquet & MacKay sent a letter to the Chief Assessor contesting the right to assess the Plaintiff as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-21.

20

26. On the 11th of December 1941, the Chief Assessor sent a letter to MM. Kearney, Duquet & MacKay giving his reasons for assessing the Plaintiff as appears by his letter filed as Exhibit P-22.

27. On the 12th of December 1941, the Board of Revision of Valuations issued a certificate for the fiscal year 1941-1942 fixing the valuation of the new building at \$1,264,200. and motive power \$13,600., and indicating that the new building and motive power were ready to be occupied on November 1st, 1941, as appears by the certificate filed as Exhibit P-23.

30

28. On the 12th of December 1941, the Secretary of the Board of Revision of Valuations advised Mr. Pettigrew, Deputy Minister of Munitions and Supply, of the decision of the said Board, as more completely and exactly appears by a copy of a letter filed as Exhibit P-24.

29. On the 12th of December 1941, the Secretary of the Board of Revision of Valuations advised MM. Kearney, Duquet & MacKay of the decision of the said Board, as more completely and exactly appears by copy of letter filed as Exhibit P-25.

40

30. On the 18th of December 1941, the Chief Assessor advised in writing the Director of Finance that the new building and motive power of the Plaintiff on lot cadastral P-21 have been assessed as follows: Building \$1,264,200., motive power \$13,600., as appears by the certificate of the Board of Revision of Valuation Number 364, Exhibit P-26, and the original roll was amended as appears by copy of the said roll filed as Exhibit P-27.

31. The new building and motive power were added by the Director of Finance on his real estate assessment roll in the name of the Plaintiff according to the certificate of the Chief Assessor for 181 days, from 1st of November 1941 to 30th of April 1942, at \$18,934.78, as appears by the bill produced as Exhibit P-28, and the details filed as Exhibit P-8.

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32. On the 10th of April 1942, the Chief Assessor, issued a certificate Number 692 to the Director of Finance for the business tax at Number 5781 Notre Dame Street East with respect to the new building and motive power from 1st of November 1941 to 30th of April 1942, as appears by the certificate of the Chief Assessor filed as Exhibit P-29.

20

33. The Director of Finance entered on his tax roll for business tax with respect to the new building and motive power, the name of the Plaintiff from the 1st of November 1941 to the 30th of April 1942, according to the certificate of the Chief Assessor for the amount of \$3,425.22 as appears by the bill filed as Exhibit P-30.

30

34. On the Valuation Roll for the fiscal year beginning the 1st of May 1942, the Plaintiff was entered as occupant of the new building, motive power and land, being lot cadastral Number 21, subdivision Number 2210, owned by the Intervenant and the said property was valued as follows: land \$99,100., building \$1,264,200., motive power \$13,600., and for school purpose as neutral at \$1,376,900., as appears by the copy of the roll filed as Exhibit P-31, and by the plan filed as Exhibit P-32.

40

35. On the real estate assessment roll the Plaintiff was billed at the sum of \$41,141.77 as occupant of the New Building, motive power and land, being lot cadastral Number 21, subdivision 2210, as appears by copy of the said roll filed as Exhibit P-33.

36. On the business tax roll the Plaintiff was billed at the sum of \$6,850.44 with respect to the new building, motive power and land, being lot cadastral Number 21, subdivision Number 2210, for the year 1942-1943, as appears by copy of the said bill filed as Exhibit P-34.

37. The Defendant is claiming from the Plaintiff the following taxes:

- (a) Property taxes on the new building and motive power from 1st of November 1941 to April 30th, 1942 .....\$18,934.78
- 10 (b) Business tax on the same property as here-  
inbefore mentioned in subparagraph (a)  
hereof, for the same period ..... 3,425.22
- (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
- 20 (d) Business tax on the same property as here-  
inbefore mentioned in subparagraph (c)  
hereof for the same year ..... 6,850.44

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

37A. The foregoing paragraphs are not intended to be interpretative of Exhibits P-1 to P-34 both inclusive which speak for themselves and must be interpreted according to their own terms.

30 38. The Defendant contends:—

(a) That for the period from the 1st of November 1941 to the 30th of April 1942, the new building and the said motive power were built on the property of the Plaintiff, Lot P-21, that the same were occupied by the Plaintiff for commercial and Industrial purposes, and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant in accordance with the provisions of the charter of the Defendant, and that 40 the Plaintiff doing business at the said new plant is also subject to the business tax for the same period in accordance with by-law 1642.

(b) That for the municipal fiscal year beginning the 1st of May 1942, the said new building, the said motive power and the said land known as lot number 21-2210, are the property of the Intervenant, but that the same are occupied by the Plaintiff for commercial and industrial purposes and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant, in accordance with the provisions of the charter of the Defendant and more particularly section 362a thereof and the

taxing by-laws of the Defendant passed in accordance therewith, being by-law number 1704 of the Defendant, and that the Plaintiff doing business at the new plant is also subject to the business tax for the same period in accordance with by-law number 1642:

10 and subsidiarily:

*Inc Co*  
( i ) That the Plaintiff should pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out with respect to the said new building and the said motive power for the period from November 1st, 1941 up to April 30th, 1942; and the business taxes on the said place of business for the same period;

20 (ii) *Inc Co*  
That the Plaintiff should pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out with respect to the said new building, the said motive power and the said land known as lot number 21-2210 for the period from May 1st, 1942 to April 30th, 1943, and the business taxes on the said place of business for the same period and thereafter so long as the Plaintiff is found to occupy the said new building, motive power and land for commercial or industrial purposes.

30

*Inc Co*  
39. The Plaintiff and the Intervenant deny the contentions of the Defendant and contend:

40 (a) That for the period from the 1st of November 1941 to the 30th of April 1942, the new building and the said motive power were the property of the Intervenant and were not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are therefore not subject to municipal taxation in the hands of the Plaintiff, either as owner, occupant or otherwise and that the Plaintiff was not doing business at the said new plant and is not subject to the business tax for the same period.

(b) That for the municipal fiscal year beginning the 1st of May 1942, the said new building, the said motive power and the said land known as lot number 21-2210 are the property of the Intervenant and that the same are not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are



therefore not subject to municipal taxation in the hands of the Plaintiff by the Defendant, either as owner, occupant or otherwise, and that the Plaintiff does not do business at the new plant and is not subject to the business tax for the same period ;  
and subsidiarily :

10           (i) That the Plaintiff is not bound to pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out in paragraph 38 hereof with respect to the said new plant and the said motive power for the period from November 1st, 1941 up to April 30th, 1942, nor the business tax on the said place of business for the same period ;

20           (ii) That the Plaintiff is not bound to pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out in paragraph 38 hereof with respect to the said new plant, the said motive power and the said land known as lot number 21-2210 for the period from May 1st, 1942, to April 30th, 1943, nor the business taxes on the said place of business for the same period nor for any period thereafter.

30           40. The question of law to be decided by this Honourable Court upon the facts as hereinbefore set out is whether the contention of the Plaintiff as hereinbefore stated in paragraph 39 hereof or the contention of the Defendant as hereinbefore stated in paragraph 38 hereof is well founded in law in whole or in part.

41. The Intervenant is interested herein and has become a party to these proceedings to hear judgment rendered and any recommendations which may be made by this Honourable Court.

40

42. The documents submitted herewith as Exhibits P-1 and P-2 are confidential by order of the Intervenant.

WHEREFORE the parties hereto conclude and ask that judgment be rendered upon the foregoing submission, and, in the event of a finding in whole or in part in favour of the Plaintiff, that order be given to the Defendant to amend its Valuation and Assessment Roll and its Tax Roll in such manner as may be appropriate, and in the event of a finding in favour of

the Defendant that judgment be rendered condemning the Plaintiff to pay to the Defendant such of the taxes hereinbefore mentioned as this Honourable Court may determine to be due by the Plaintiff to the Defendant with interest on each item at 5% from the time when such taxes respectively became due, and that order be given to the appropriate official of this Honourable  
10 Court to return Exhibit P-1 and Exhibit P-2 to the Plaintiff without giving access thereto to any party other than the parties to this submission, the whole upon such terms and conditions as to costs as this Honourable Court may see fit to determine.

Montreal, April 16th, 1943.

Kearney, Duquet & MacKay,  
Attorneys for Plaintiff,

Saint-Pierre, Choquette, Berthiaume,  
20 Emard, Martineau, McDonald & Séguin,  
Attorneys for Defendant,

Geoffrion & Prud'homme,  
Attorneys for Intervenant.

---

A F F I D A V I T

I, the undersigned, ALEXANDER M. HAMILTON, Executive, residing and domiciled at the Ritz Carlton Hotel in the City of Montreal, Province of Quebec, Canada, being duly  
30 sworn on the Holy Evangelists do depose and say:

1. THAT I am the Vice-President of Montreal Locomotive Works Limited.

2. THAT I have taken communication of the foregoing stated case and each and every one of the facts set forth therein is and are true.

3. THAT the controversy between the parties is real.

40 4. THAT none of the parties are merely seeking to obtain an opinion.

And I have signed:

A. M. HAMILTON,

SWORN to before me at  
the City of Montreal  
this 16th day of April 1943.

W. Howard West,  
A Commissioner of the Superior  
Court in and for the District  
of Montreal.

A F F I D A V I T

I, the undersigned, LACTANCE ROBERGE, Director of  
Finances, residing and domiciled at civic number 5582 Phillips  
10 Street in the City of Montreal, Province of Quebec, Canada, be-  
ing duly sworn on the Holy Evangelists, do depose and say:

1. THAT I am the Director of Finances of the City of  
Montreal.

2. THAT I have taken communication of the foregoing  
stated case and each and every one of the facts set forth therein  
is and are true.

20 3. THAT the controversy between the parties is real.

4. THAT none of the parties are merely seeking to  
obtain an opinion.

And I have signed:

LACTANCE ROBERGE,

30 SWORN to before me at  
the City of Montreal  
this 17th day of April 1943.

Jean B. Noël,  
A Commissioner of the Superior  
Court in and for the District  
of Montreal.

A F F I D A V I T

I, the undersigned, ROBERT T. DONALD, Barrister-at-Law, residing and domiciled at civic number 504 Kent Street in  
10 the City of Ottawa, in the the Province of Ontario, Canada, being duly sworn on the Holy Evangelists, do depose and say:

1. THAT I am the Secretary of the Department of Munitions and Supply.

2. THAT I have taken communication of the foregoing stated case and each and every one of the facts set forth therein is and are true.

20 3. THAT the controversy between the parties is real.

4. THAT none of the parties are merely seeking to  
obtain an opinion.

And I have signed:

ROBERT T. DONALD,

30 SWORN to before me at  
the City of Ottawa,  
this 5th day of May, 1943.

C. E. Jarvis,  
A Notary Public in and for  
the Province of Ontario.

## PART II — EXHIBITS

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10

### LIST OF EXHIBITS

- P - 1—Deleted copy of Construction Contract between His Majesty the King in Right in Canada, Montreal Locomotive Works Limited and American Locomotive Company dated October 23rd, 1940.
- P 2—Deleted copy of Production Contract between His Majesty the King in Right of Canada, Montreal Locomotive Works Limited and American Locomotive Company dated October 23rd, 1940.
- 20 P - 3—Copy of plan dated September 30th, 1942, showing Cadastral Lot No. 21-2210.
- P - 4—Certified Notarial copy of Deed of Sale by Montreal Locomotive Works Limited in favour of His Majesty the King in Right of Canada under date of February 27th, 1942, before Mtre Joseph C. B. Walsh under Number 13263 of his minutes.
- 30 P - 5—Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st, 1941.
- P - 6—Copy of plan dated October 5th, 1942, showing Cadastral Lot No. 21-2210 and the adjacent property.
- P - 7—Copy of Bill of the City of Montreal showing the real estate assessment for the year commencing May 1st, 1941.
- 40 P - 8—Copy of a detailed statement prepared by the City of Montreal containing an analysis of the municipal valuations as well as the taxes on immoveables.
- P - 9—Copy of permit to build No. 205 of the City of Montreal approved February 19th, 1941.
- P-10—Copy of permit to build No. 931 of the City of Montreal approved May 5th, 1941.

- P-11—Copy of notice dated November 10th, 1941, given by the Assessors to the Chief Assessor of the City of Montreal.
- P-12—Copy of notice dated November 20th, 1941, addressed by the Board of Revision of Valuations of the City of Montreal to Montreal Locomotive Works Limited.
- 10 P-13—Copy of letter dated November 28th, 1941 addressed to the Board of Revision of Valuation of the City of Montreal by Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited.
- P-14—Copy of letter, dated December 1st, 1941, addressed to the Secretary of the Board of Revision of Valuations of the City of Montreal by Mr. J. Pettogrew on behalf of the Deputy Minister of Munitions and Supply of Canada.
- 20 P-15—Copy of letter dated December 3rd, 1941, addressed by the Board of Revision of Valuations of the City of Montreal to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited.
- P-16—Copy of letter dated December 4th, 1941, addressed by the Board of Revision of Valuations of the City of Montreal to Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada.
- 30 P-17—Copy of letter dated December 4th, 1941, addressed by the Secretary of the Board of Revision of Valuations of the City of Montreal to Mr. A. E. Hulse, the Chief Assessor of the City of Montreal.
- P-18—Copy of letter dated December 4th, 1941, addressed by the Chief Assessor of the City of Montreal to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited.
- 40 P-19—Copy of letter dated December 8th, 1941, addressed to the Board of Revision of Valuations of the City of Montreal by Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada.
- P-20—Copy of letter dated December 9th, 1941, addressed to the Board of Revision of Valuations by Mr. J. E. L. Duquet, Attorney acting on behalf of Montreal Locomotive Works Limited.

- P-21—Copy of letter dated December 9th, 1941, addressed to Mr. A. E. Hulse, Chief Assessor of the City of Montreal, by Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited.
- 10 P-22—Copy of letter date December 11th, 1941, addressed to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited, by Mr. A. E. Hulse, Chief Assessor of the City of Montreal.
- P-23—Copy of certificate issued December 12th, 1941 by the Board of Revision of Valuations of the City of Montreal to the Chief Assessor of the City of Montreal.
- 20 P-24—Copy of letter dated December 12th, 1941, addressed to Mr. J. Pettigrew for the Deputy Minister of Munitions and Supply of Canada by the Secretary of the Board of Revision of Valuations of the City of Montreal.
- P-25—Copy of letter dated December 12th, 1941, addressed to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited, by the Secretary of the Board of Revision of Valuations of the City of Montreal.
- 30 P-26—Copy of certificate dated December 18th, 1941, issued by the Chief Assessor of the City of Montreal to the Director of Finance of the City of Montreal.
- P-27—Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st, 1941.
- P-28—Copy of bill of the City of Montreal showing the real estate assessment for the year commencing May 1st, 1941 but covering the period from November 1st, 1941 to April 30th, 1942.
- 40 P-29—Copy of Certificate No. 692 issued by the Chief Assessor of the City of Montreal to the Director of Finance of the City of Montreal.
- P-30—Copy of bill of the City of Montreal for water and business taxes for the year commencing May 1st, 1941 but covering the period from November 1st, 1941 to April 30th, 1942.

P-31—Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st, 1942.

P-32—Copy of plan dated September 30th, 1942, showing Cadastral Lot No. 21-2210 and the adjacent property.

10 P-33—Extract from the Real Estate Assessment Roll of the City of Montreal for the year commencing May 1st, 1942.

P-34—Copy of bill of the City of Montreal for water and business taxes for the fiscal year commencing May 1st, 1942.

Montreal, April 16th, 1943.

Kearney, Duquet & MacKay,  
Attorney for Plaintiff,

20

J. E. Saint-Pierre, Cie,  
Attorneys for Defendant,

Geoffrion & Prud'homme,  
Attorneys for Intervenant.

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EXHIBIT P-1

30

*Deleted copy of Construction Contract between His Majesty the King in Right of Canada, Montreal Locomotive Works Limited and American Locomotive Company.*

MEMORANDUM OF AGREEMENT entered into in quintuplicate on the 23rd day of October 1940.

BY AND BETWEEN:—

40

HIS MAJESTY the King in right of Canada (hereinafter called the "Government") herein represented by the Minister of Munitions and Supply of Canada (hereinafter called the "Minister") hereunto duly authorized,

Party of the First Part,

— and —

MONTREAL LOCOMOTIVE WORKS LIMITED, a body politic and corporate duly incorporated according to



the laws of the Dominion of Canada and having its head office and principal place of business in the City of Montreal in the Province of Quebec, Canada, herein acting and represented by DUNCAN W. FRASER, its President, and JOHN D. FINN, its Secretary hereunto duly authorized (hereinafter called the "Company"),

10

Party of the Second Part,  
— and —

AMERICAN LOCOMOTIVE COMPANY, a body politic and corporate duly incorporated according to the laws of the State of New York, one of the United States of America, having its head office and principal place of business in the City of New York, State of New York, one of the United States of America, herein acting and represented by WILLIAM C. DICKERMAN, its Chairman and JOHN D. FINN, its Secretary, hereunto duly authorized (hereinafter called the "Intervenant"),

20

Party of the Third Part.

WHEREAS the Government desires the Company with the co-operation and assistance of the Intervenant to design, construct and equip for and on behalf of the Government and as its agent, a new plant upon land to be sold by the Company to the Government upon the terms and conditions hereinafter set out, the whole suitable for the production of M.III tanks at the rate of two per working day when in full production and 5.5 gun carriages at a rate varying between three and five per week when in full production (hereinafter sometimes collectively referred to as the "new plant") and

30

WHEREAS the Company with the co-operation and assistance of the Intervenant, is agreeable to undertake the designing, construction and equipment of such new plant for and on behalf of the Government and as its agent; and

40

WHEREAS it is contemplated by the parties hereto that the new plant shall, when completed, be operated by the Company with the co-operation and assistance of the Intervenant for and on behalf of the Government and as its agent on the terms set forth in a Memorandum of Agreement executed and delivered between the parties hereto and bearing even date herewith.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

10 THAT, for and in consideration of these presents, the covenants herein contained and other good and valuable considerations, the parties hereto mutually covenant and agree each for itself and not one for the other as follows, that is to say:—

1.—SALE OF LAND

20 The Company, for and in consideration of the sum of paid to the Company by the Government, receipt whereof is hereby acknowledged by the Company and whereof quit, and upon the terms and conditions hereinafter set out, shall sell, transfer, make over and assign unto the Government the land hereinafter generally described as follows, that is to say:—

Part of the premises now occupied by the Company lying between Notre Dame Street and the Canadian National Railway right-of-way in the City of Montreal being a portion of the parcel more specifically described as follows:

30 “Commencing at a point in the westerly boundary line of Notre Dame Street about 40 feet from the intersection of the southerly line of a concrete roadway, the point of beginning, running about 900 feet in a westerly direction on a line parallel with the concrete roadway to a point; thence at right angle northerly a distance of about 400 feet to a point; thence at right angle in an easterly direction about 820 feet to a point in the westerly boundary of Notre Dame Street, thence along Notre Dame Street in an easterly direction about 405 feet to the place of beginning”.

40 together with all necessary rights, members and appurtenances pertaining thereto in the power of the Company to sell, transfer, make over and assign.

The part of the foregoing premises to be sold, transferred, made over and assigned shall be determined by the Company subject, however, to the approval of the Minister, and shall be suitable for the construction and operation of the new plant thereon.

A survey and sketch plan of such land shall be made upon completion of the building plan of the new plant and a fully detailed legal description thereof shall be inserted in a Notarial Deed of Sale to be made between the Government and the Company with respect thereto prior to the construction of the new plant.

10

2.—SITE OF NEW PLANT

The Company agrees that the new plant shall be located on the land hereinbefore generally described in paragraph 1 hereof, and to be sold, transferred, made over and assigned by the Company to the Government.

3.—CAPACITY OF NEW PLANT

20

The Company agrees that the new plant shall be so constructed as to be capable of producing 5.5 Gun carriages conforming basically to drawing M.M.4.G.A. of British standard specifications, Design Department C.2445 detail Number C.A.39 dated November 15th, 1939, at a rate varying between three to five gun carriages per week when in full production and M.III tanks conforming basically to the United States Ordnance Department medium tank type M.III at the rate of two tanks per working day when in full production.

30

4.—DESIGNING AND CONSTRUCTION OF NEW PLANT

40

(a) The Company with the co-operation and assistance of the Intervenant shall prepare the preliminary designs and sketch plans of the new plant, shall cause to be prepared by architects approved by the Minister all necessary drawings, plans and specifications thereof and shall proceed as diligently as possible with the construction and equipment thereof. The Company may employ sub-contractors for the construction of the buildings and foundations forming part of the new plant;

(b) The Intervenant will make available in the United States to the extent required to enable it to furnish to the Company the co-operation and assistance which the Intervenant is required to give to the Company in the performance of this Agreement, its engineers, designers, production men and others experienced in the manufacture of tanks and gun carriages and will furnish the layout of the ground, machine tools and power plant and will fur-

10 ther supply plans for the general type of buliding desirable, the construction of same, the selection of, location of and installation of the machine tools and other equipment necessary for the performance of the work. The Intervenant moreover, through the use of its engineering services in the United States, will supervise and direct construction and equipment of the new plant;

(c) The Company shall not prior to the completion of the construction and equipment of the new plant, without the consent of the Minister, undertake or commence the construction or the equipment of any other plant, work on which by the Company might in any way operate to delay completion of the construction or the equipment of the new plant for which provision is made in this Agreement.

20

#### 5.—APPROXIMATE DATE OF COMPLETION OF NEW PLANT.

The Company estimates that the new plant will be completed for occupancy and operation within six months from the date of the execution and delivery of this Agreement. Such estimate shall not in any way be construed as a guarantee of time on the part of the Company but the Company undertakes to make every effort to complete the construction and the equipment of the new plant as quickly as possible and within the time hereinbefore indicated.

30

#### 6.—CONTROL AND SUPERVISION.

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

40

(b) Without limiting the generality of the foregoing, the Company shall to such extent, if any, as may from time to time be requested by the Minister or his representative—

- ( i ) consult the Minister on any matters pertaining to the performance of this Agreement;
- ( i i ) permit the examination by the Minister of all drawings, plans and specifications prepared or under preparation by or for the Company;

10

and shall to such extent, if any, as may from time to time be requested by the Minister in writing—

(iii) furnish to the Minister:—

20

(aa) duplicates of all specifications, plans general arrangements and further detail drawings as may be necessary to complete the Minister's descriptive records of the new plant;

(bb) duplicates of all contracts and orders placed by the Company or by its sub-contractors;

(cc) progress reports in form satisfactory to the Minister regarding the construction and equipment of the new plant;

30

(dd) duplicates of flow sheets and technical information to illustrate the process throughout the new plant;

(iv) refrain from entering into any commitments or contracts with sub-contractors unless such sub-contractors shall have previously been approved by the Minister and the terms of contracts to be made with such sub-contractors shall have been approved by the Minister;

40

(v) refrain from adopting, entering into, giving or acting upon any plans, specifications, contracts, orders for materials, machinery, equipment, general arrangements or detail drawings unless and until the same shall have been previously approved in writing by the Minister.

(c) The principal sub-contract for the building and foundations shall not be entered into without the prior written approval of the Minister.

(d) The new plant under construction in accordance with the provisions hereof shall at all times be accessible to the Minister or his authorized representatives for purposes of inspection.

10 (e) The records and books of account relating to the cost of design, construction, equipment and full completion of the new plant shall at all times be available for inspection or audit purposes by the Minister or his authorized agent and by the Comptroller of the Treasury and by the Auditor General of Canada. All of the said records shall be the property of the Government subject to the right which is reserved to the Company to retain copies thereof for the purposes of its own records and subject to the further right which is reserved to the Company to have access to, examine, take extracts from and make copies of the originals at any reasonable time.

20 7.—COMPANY AUTHORIZED TO INCUR COSTS.

The Company shall be and it is hereby authorized to incur and pay, for and on behalf of the Government and as its agent, all costs and expenses necessary or incidental to the performance of this Agreement, including but without in any way limiting or restricting the generality of the foregoing, all costs and expenses applicable to the design, construction, equipment and full completion of the new plant.

30 . The Intervenant shall be and it is hereby authorized to incur and pay all costs and expenses necessary or incidental to the co-operation and assistance which it shall give to the Company in the performance of this Agreement.

40 The Company moreover shall be and it is hereby authorized, for and on behalf of the Government 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 subject to such supervision and control as the Minister may by written notice indicate that he desires to exercise with respect thereto.

The Company shall keep on behalf and to the satisfaction of the Minister proper records of all costs and expenses which shall be available at all reasonable times for inspection by the authorized representatives of the Minister.

8.—ESTIMATE OF TOTAL COST.

The Company, based on its experience in the case of similar buildings and equipment but subject to variation in current prices, estimates that the total cost to the Government of the new plant, including the payments to be made to the Intervenant and  
10 others under the provisions of paragraph 9 hereof, but excluding all duties and taxes, will amount to approximately

This estimate is not a tender and any excess or deficiency in such estimate shall be for the credit or the debit of the Government.

9.—FEES AND/OR OVERHEAD ALLOWANCES.

20 The Government shall pay to the Company all proper and reasonable costs and expenses incurred by the Company in the performance of this Agreement, including, but without limiting the generality of the foregoing, all its administrative and general overhead expenses which, in the opinion of the Minister, are properly apportionable to the performance of this Agreement, but the Government shall not pay to the Company any other fees and/or overhead allowances.

30 The Government shall pay to the Intervenant all proper and reasonable costs and expenses incurred by the Intervenant as being necessary or incidental to the co-operation and assistance which it shall give to the Company in the performance of this Agreement including, but without limiting the generality of the foregoing all its administrative and general overhead expenses which, in the opinion of the Minister, are properly apportionable to such co-operation and assistance in the performance of this Agreement by the Company, and the Government shall also pay  
40 to the Intervenant for its services to be rendered in the United States under this Agreement the sum of

in funds of the United States of America at the City of New York in equal monthly instalments, the first of which shall become due and payable on the 1st day of November, 1940.

In addition to the foregoing the following fees may be incurred by the Company and shall be approved and paid by the Government through the Company to architects and sub-contractors, that is to say:—

10 (a) to the architects for designing and supervising the construction of the building and for supervising the construction of special foundations for the equipment and machinery, the amount or amounts for which provision is made in the Contract to be made between the Company and such architects, which contract, however, shall not be executed without the prior approval of the Minister in writing.

Such amount or amounts shall be paid to such architects at such times and in such manner as may be set forth in such contract between the architects and the Company;

20 (b) to the principal sub-contractor who constructs the building — the amount or amounts for which provision is made in the contract to be made between the Company and such principal sub-contractor, which contract however shall not be executed without the prior approval of the Minister in writing.

#### 10.—BANKING ARRANGEMENTS AND PAYMEMNTS.

30 In order to enable the Company to meet all costs and expenses to be incurred hereunder including the fees and/or overhead allowances for which provision is hereinbefore made in paragraph 9 hereof without resorting to its own funds:—

(a) the Minister will establish at the Montreal Branch of The Royal Bank of Canada a Bank account to be known as Montreal Locomotive Construction Account and hereinafter called the “Special Account”;

40 (b) on or before the last day of each month the Minister will deposit in the Special Account the amount which, in accordance with the itemized estimate to be submitted by the Company to the Minister on or before the 20th day of each month, will be required to meet costs and expenses during the succeeding calendar month. If the Company should subsequently determine that the amount needed exceeds its previous estimate, the Minister will at the request of the Company deposit promptly in the Special Account the additional amount required;

(c) all monies from time to time at the credit of the Special Account, or in any sub-account which may be



established with the written consent of the Minister are to be the property of the Minister;

10 (d) the Company may at any time and from time to time by resolution of its Board of Directors designate the person or persons who are authorized by it to sign  
cheques or other orders for the payment of money in its name and on its behalf on the Special Account above referred to and in payment of costs and expenses incurred in the design, construction and equipment of the new plant to be designed, constructed and equipped in accordance with the terms of this Agreement. A certified copy of any such resolution shall be furnished to the Minister and to The Royal Bank of Canada and the same shall become effective upon approval by the Minister and shall remain  
20 in effect until replaced by a further resolution also approved by the Minister cancelling, amending and/or replacing any resolution previously furnished to the Minister and to the Bank or until revoked by the Minister as hereinafter provided. The Minister may at any time revoke any authority so given by written notice to the Company and to the Bank and may request the Company to make other and specific provision with respect to the signing of any such cheques or orders for the payment of money on such Special Account;

30 (e) the Special Account is not to be overdrawn in any circumstances;

(f) on or before the 20th day of each month the Company shall furnish to the Minister the following data covering the operation of the Special Account and sub-accounts, if any, during the preceding calendar month:—

40 (i) a report of all cheques and other negotiable instruments drawn together with the names of the payees and the description of the relevant materials purchased or services rendered;

(i i) certified bank statements showing the credits and debits during the month together with the balances;

(iii) a reconciliation of the bank statements with the Company's report;

(iv) a summary of all commitments entered into by the Company for the purchase of materials or equipment to be incorporated into the said plant, which commitments are not completely provided for by the current monthly estimate referred to in this paragraph 10;

10

(g) all bank charges or credits pertaining to the operation of the Special Account and sub-accounts, if any, will be debited or credited thereto;

(h) all fees and/or overhead allowances payable under the provisions of paragraph 9 hereof may be withdrawn by the Company from the Special Account in the same manner as all other costs and expenses to be paid out of such account and the Government shall from time to time make available in such account such amount in funds of the United States of America as may be required from time to time to permit the Company to satisfy all commitments payable in such funds of the United States of America and to pay the instalments due on account of the fee and/or overhead allowance payable to American Locomotive Company under the provisions of paragraph 9 hereof and the Government shall permit the export of such funds of the United States of America for such purposes.

20

30 11.—ADDITIONS OR CHANGES TO NEW PLANT.

Should the Government require any additions or alterations to be made to the new plant as originally designed or any parts of the new plant to be replaced (excluding normal repairs) such work shall, if so requested by the Government in writing, be performed by the Company with the co-operation and assistance of the Intervenant for the account and at the expense of the Government in a manner and upon terms and conditions similar to those herein, stipulated with respect to the new plant, subject however to the adjustment on a proportionate basis of the allowances for overhead expenses and of the fixed fee payable to the Intervenant for its services to be rendered in the United States of America in connection with such additions, alterations or replacements, all of which shall be settled by agreement between the parties hereto prior to the undertaking of any such work.

40

12.—COMPANY TO ACT AS AGENT OF GOVERNMENT.

The Government acknowledges and agrees that the Company is acting on behalf of the Government and as its agent in all matters pertaining to the performance of this Agreement and that the Government shall indemnify and hold the Company harmless from any and all expenditures, claims and liabilities of any nature whatsoever arising out of the performance of this Agreement in accordance with the terms hereof or of any act done or omitted to be done by the Company, and shall relieve the Company from responsibility for any failure or delay in carrying out this Agreement, except in cases of definite bad faith or wilful neglect on the part of the Company. The Company shall use its best endeavours to procure in so far as possible and practicable that all contracts entered into by the Company as agent of the Government in connection with the performance of this Agreement shall be completely performed on payment by or on behalf of the Government of the prices or money considerations stipulated in such contracts and shall not be accompanied by any liability continuing after such payment.

13.—DESIGNS, DRAWINGS, PLANS, SPECIFICATIONS AND ENGINEERING DATA TO BE MADE AVAILABLE TO GOVERNMENT.

The Company and the Intervenant shall make available to the Government all designs, drawings, plans, specifications, engineering data and other like information prepared in connection with the performance of this Agreement and shall furnish copies thereof to the Government and, at the request of the Government, to any third parties contracting with the Government for the construction and equipment of a plant similar to the new plant.

14.—TITLE TO PLANT, EQUIPMENT AND ACCESSORIES.

The title to the new plant and to the equipment and accessories thereof and inventories of all materials and supplies on hand shall at all times be vested in the Government which shall assume and bear all risks and liabilities incidental to such ownership.

15.—INSURANCE.

The Company will endeavour to obtain at the request and on behalf of the Minister such insurance as may be desired by

the Minister in connection with the new plant, the cost of which insurance shall be borne by the Government.

16.—DUTY AND TAXES ON PURCHASES.

10 With respect to purchases of materials or other articles to be incorporated in the construction and equipment of the new plant, the Company undertakes that it will keep a complete monthly record of payments by the Company and any of its sub-contractors and agents of all custom duties, exercise taxes and sales taxes; and that a report covering details of such payments will be sent to the Government on or before the 20th day of each following month.

20 If the Minister so requests in writing, the Company will undertake to exercise due diligence but at the expense of the Government in applying for remission, without payment, of all such duties or other taxes to which the Government for the purpose of this Agreement or in respect of its performance may from time to time be entitled; and also to apply for the refund of any such duties or taxes which may have been paid by it in good faith (although subject to refund and remission by the proper authority) with a view to expediting the completion of the construction and equipment of such new plant.

30 If any customs duties, excise taxes and sales taxes on any machinery, equipment or materials included in the construction or equipment of the new plant shall be remitted, the Government will indemnify the Company for any claim which may at any time be made for payment of customs duties, excise taxes and sales taxes on any such machinery, equipment or materials.

17.—CANCELLATION OF AGREEMENT.

40 (a) The Government may cancel this Agreement at any time by written notice to the Company and to the Intervenant subject, however, to the provisions of paragraphs 17 (a), 17 (b), and 18 hereof. In the event of cancellation of this Agreement by the Government before construction of the new plant shall be completed the Company will, if so requested by the Government, enter into an agreement for the maintenance of such new plant as may be then already erected on terms to be mutually agreed between the Company and the Government.

(b) It is agreed that the Company upon receiving from the Government such written notice of the cancellation of this

Agreement, shall abstain from entering into further commitments with suppliers for anything pertaining to the construction and equipment of the new plant, and shall, unless otherwise agreed upon with the Government, discontinue the construction and equipment of the new plant except such work as the Company may deem necessary, subject to the approval of the Minister and  
10 such other work, if any, as may be decided by the Minister to be desirable for the protection of the new plant.

18.—SETTLEMENT UPON COMPLETION OR  
CANCELLATION OF CONTRACT.

Upon completion of the new plant or the cancellation of this Agreement:—

20 (a) a prompt adjustment and settlement of all outstanding accounts hereunder shall be made between the parties hereto;

(b) the Government shall assume and discharge any and all obligations of the Company then outstanding and incurred by the Company in accordance with the terms of this Agreement to the extent that the same have not previously been paid out of monies furnished by the Government;

30 (c) if the new plant has been completed the Government shall forthwith pay in a lump amount any and all monthly instalments remaining to be paid in accordance with paragraph 9 hereof;

40 (d) if the new plant is still in course of construction, the Government shall pay to the Intervenant one-half of the monthly instalment payable to the Intervenant as a fee in accordance with the provisions of paragraph 9 hereof with respect to the month in which such notice of cancellation is received by the Company if the said notice is received on or before the 15th day of such month or the whole of such instalment if the said notice is received after the 15th day of such month (but shall not pay to the Intervenant any overhead allowance provided for under paragraph 9 hereof in respect of any period subsequent to the receipt of such notice of cancellation or the fee provided for under paragraph 9 hereof in respect of any period subsequent to that for which the fee payment hereinbefore in this sub-paragraph (d) mentioned is made);

(e) the Government shall also pay to the Company for its services the actual out-of-pocket costs (not including therein any charges for overhead) to the Company on winding up and terminating the work then in progress under this Agreement, provided that the same shall have been incurred with the approval of the Minister;

10

(f) the Government shall also pay to the Intervenant in funds of the United States of America at the City of New York for its services to be rendered in the United States, an allowance in respect of overhead during the period while the Company, with the co-operation and assistance of the Intervenant, is engaged in winding up and terminating the said work, beginning on the receipt of such notice of cancellation and ending on the date when the Company, with the co-operation and assistance of the Intervenant, has finished winding up and terminating the said work or on the date when written notice is received by the Company from the Government that the Company's services in winding up and terminating the said work are no longer required, whichever of the said two dates shall be the earlier. This allowance shall be calculated on the following basis:

20

(i) at the rate of \_\_\_\_\_ per working day in funds of the United States of America at the City of New York during the first thirty (30) days (not necessarily "working" days) following receipt of the notice of cancellation, provided, however, that in no event shall the Intervenant be entitled to receive an aggregate amount in excess of \_\_\_\_\_ during such first thirty (30) days;

30

(i i) at the rate of \_\_\_\_\_ per working day in funds of the United States of America at the City of New York during the next thirty (30) days (not necessarily "working" days), provided, however, that in no event shall the Intervenant be entitled to receive an aggregate amount in excess of \_\_\_\_\_ during such next thirty (30) days;

40

(iii) at the rate of \_\_\_\_\_ per working day thereafter in United States funds at the City of New York; and it is agreed that the Company, with the co-operation and assistance of the Intervenant, will make every endeavour to do all things necessary in order to wind up

10 and terminate the said work in the shortest possible time and at the lowest possible cost, and that the Company shall be and continue even after the said work has been wholly wound up and terminated or the Company's services have been dispensed with as aforesaid, under obligation but at the expense of the Government to furnish to or make available to the Government all information, records and data which may be requested by the Government whether to enable the Government to complete the said work or the winding up and terminating thereof, or for any other purpose.

19.—ECONOMICAL EXECUTION OF AGREEMENT.

20 The Company, with the co-operation and assistance of the Intervenant, hereby undertakes and agrees to carry out the terms of this Agreement with all reasonable economy having regard however to the special circumstances under which the same is to be performed and the desire of the Government for the expeditious completion thereof.

20.—SURPLUS MATERIAL AND SALVAGE.

30 No scrap surplus or salvage, materials or equipment shall be disposed of by the Company without the authorization of the Minister previously obtained and any monies realized from the disposal of such surplus scrap or salvage, materials or equipment shall be paid by the Company either to the credit of the Special Account or otherwise to the credit of the Minister as the Minister may in writing direct.

21.—MINISTER'S POWERS NOT TO BE RESTRICTED.

40 The provisions of this Agreement shall not in any way operate to restrict or deprive the Minister of any powers at any time conferred upon or vested in the Minister under any law or Order-in-Council or regulation of the Government of Canada for the time being in force.

22.—CORRUPT GIFTS TO PERSONS IN THE CROWN SERVICE.

The Company and the Intervenant shall not offer or give or agree to give knowingly permit to be offered or given by any employee or other person in its behalf to any person in His Majesty's service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having

done or forbore to do any act in relation to the obtaining or execution of this or any other contract for His Majesty's service, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other agreement for His Majesty's service. Any breach of this condition or the commission of any offence by the Company and the Intervenant in relation to  
10 this or any other agreement for His Majesty's service shall entitle the Government to cancel this Agreement and to recover from the Company the amount of any loss resulting from such cancellation. The Company and the Intervenant warrant that they have not employed any person to solicit or secure this Agreement upon any contract for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this Agreement.

20 23.—NO BENEFIT TO MEMBER OF  
HOUSE OF COMMONS.

No member of the House of Commons or Sénate of Canada shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, except that this provision shall not apply to acquisition in the ordinary course of securities or to dividends or other distributions or payments by the Company and/or the Intervenant in the ordinary course.

30 24.—RECOVERY OF SUMS DUE.

Whenever under this Agreement any sum of money shall be recoverable from or payable by the Company the same may be deducted from any sum then due or which at any time thereafter may become due to the Company and to the Intervenant under this or any other Agreement with the Government.

25.—DISPOSAL OF NEW PLANT AND LAND.

40 The Government agrees that it will not sell, lease or license the use of or accept any offer to purchase, lease or obtain the license to use the said land or plant or equipment in the new plant or any part thereof, without first offering to sell, lease or license the use of, as the case may be, to the Company, such of said property as the Government may desire to so deal with, for the same consideration and on the same terms as the Government would be willing to accept from anyone else subject to the provisions hereinafter contained with respect to the price at which the land may be repurchased by the Company. Such offer to the Company shall be in writing addressed to the Company and may be accepted by the Company sending written acceptance thereof



to the Minister at any time within sixty (60) days after receiving such offer. If the Company does not accept such offer within said period, the Government, subject to the provisions hereinafter contained with respect to the payment of the value of the land by the Government to the Company, shall then be free to deal with the property so offered to the Company in the same manner for the same consideration and on the same terms as set  
10 forth in the said offer to the Company; but if not so dealt with by the Government within a further period of sixty (60) days after the expiration of the sixty day period allowed to the Company for accepting said offer, then such property must be again offered to the Company in the manner aforesaid before the Government shall sell, lease or license it or any part thereof to anyone else and the same procedure shall reply on each and every occasion that the Government may desire to sell, lease or license the said property or any part thereof.

20 In the event of the Government failing to dispose of the new plant within a period of five years after the cessation of the present hostilities by armistice, treaty or otherwise (hereinafter called the "said period"), the Government, upon the expiration of the said period shall pay to the Company such amount as may be agreed upon between the Government and the company as the then fair value of the land hereinbefore generally described in paragraph 1 hereof, and in the event of the failure of the Government and the Company to agree upon the amount of such fair  
30 value, the same shall be determined by arbitration in accordance with the provisions hereof.

In the event of the Government disposing of the new plant to the Company within the said period the Company shall be entitled to repurchase the land hereinbefore generally described in paragraph 1 hereof at the price of One Dolar (\$1.00) being the price at which it was sold by the Company to the Government as set forth in the said paragraph 1 hereof.

40 In the event of the Government disposing of the new plant to any party other than the Company within the said period, the Government shall immediately prior to such disposal pay to the Company such amount as may be agreed upon between the Government and the Company as the then fair value of the land hereinbefore generally described in paragraph 1 hereof and in the event of the failure of the Government and the Company to agree upon the amount of such fair value the same shall be determined by arbitration in accordance with the provisions hereof.

In the event of the Government demolishing the new plant prior to the expiration of the said period the Government shall

forthwith clear the land hereinbefore generally described in paragraph 1 hereof of all foundations and replace the same substantially in the same condition as when purchased by the Government from the Company, and shall forthwith sell, transfer, make over and assign such land to the Company at the price of  
10    being the price at which it was sold by the Company to the Government as set forth in paragraph 1 hereof.

26.—ASSIGNMENT.

(a) This Agreement and all the rights and obligations of the Company and the Intervenant hereunder shall be unassignable by the Company and the Intervenant except with written consent of the Minister previously obtained.

20    (b) The rights of the Government under this Agreement or to the new plant or any part thereof may be assigned by it in whole but no such assignment shall in any way operate to relieve the Government from any of its obligations hereunder to the Company and the Intervenant except to such extent, if any, as may hereafter be agreed between the parties hereto.

27.—DELEGATION OF MINISTER'S POWERS.

30    The powers of the Minister in respect of the carrying out of this Agreement and his rights and privileges hereunder may be exercised by the Deputy Minister of Munitions and Supply of Canada or by any representative or representatives of the Minister duly authorized in writing by the Minister or by the Deputy Minister for that purpose.

28.—ARBITRATION.

40    In the event of any dispute between the parties hereto with respect to anything arising out of this Agreement or the interpretation thereof (save in respect of any matter with regard to which any other manner of determination or settlement is herein expressly provided) the matter in dispute shall be referred for decision to two arbitrators, one to be selected by the Government and the other by the Company. In case the two arbitrators so selected cannot agree they shall select a third arbitrator and the decision of any two of the three arbitrators shall be binding upon the parties hereto. In case the two arbitrators so selected cannot agree upon the selection of the third arbitrator, such third arbitrator shall be appointed by the Exchequer Court of the Dominion of Canada upon a request being made to such Court.

A party who has not appointed an arbitrator, if the other party has appointed one, shall do so within five days after being notified in writing by such other party to do so and in default of such appointment such other party's arbitrator may act as sole arbitrator and his decision shall be binding. If the arbitrator of either party shall fail to proceed with the consideration of the  
10 matters in dispute within five days after being required in writing by the other party's arbitrator to do so, such other party's arbitrator, if a third arbitrator has not been appointed, shall be at liberty to act as sole arbitrator and his decision shall be binding, or the other two arbitrators if a third has been appointed, may forthwith appoint an arbitrator in lieu of the one who has failed to proceed and the decision of two of such three arbitrators shall be binding upon all parties hereto. The Company and the Inter-  
20 venant shall not stop, suspend or delay work under this Agreement pending the outcome of any arbitration proceeding taken hereunder.

#### 29.—NOTICES.

Any notices to be given under this Agreement to the Government or the Minister shall be addressed to the Deputy Minister of the Department of Munitions and Supply, Ottawa, Ontario.

Any notices to be given under this Agreement to the Com-  
30 pany shall be addressed to Montreal Locomotive Works Limited, 215 St. James Street West, Montreal, Quebec.

Any notices to be given under this Agreement to the Inter-  
venant shall be addressed to American Locomotive Company, 30 Church Street, New York City, New York.

All such notices shall be in writing and shall be delivered or sent by mail prepaid and registered.

Any party may be notice to the other party change the  
40 name or address to which notices hereunder bay be sent.

#### 30.—SUPPLEMENTARY ACTS AND THINGS.

The parties hereto shall do and perform any and all such acts and things and shall sign, seal, execute and deliver any and all such deeds, documents, instruments and writings as may be necessary useful or desirable in order more fully to evidence and/or to render effective the provisions of this Agreement and/or to give effect thereto, including but without in any way

limiting or restricting the generality of the foregoing, such Deed of Sale in Notarial form as may be necessary between the Government and the Company in order more fully to evidence the sale of the land hereinbefore generally described in paragraph 1 hereof, together with all rights, members and appurtenances thereto, such Deed of Sale to be in such form and terms as may  
10 be satisfactory to the Minister and the Company.

31.—PRIOR NEGOTIATIONS SUPERSEDED.

This Agreement shall supersede and cancel all previous discussions, negotiations and instructions either verbal or written between the Company, the Intervenant and the Government or the Minister or any of their respective agents or representatives referring to the subject matter hereof, but shall not relieve the  
20 Government from any liability heretofore incurred towards the Company as a result of the “go-ahead” letter dated the 30th day of August, 1940, addressed to the Company and authorizing commitments to be made by the Company in connection with the construction of a plant and the production of gun carriages, provided, however, that no further commitments shall hereafter be made by the Company under such “go-ahead” letter and that all commitments heretofore made by the Company under such “go-ahead” letter and all costs and expenses heretofore incurred by the Company under such “go-ahead” letter shall be deemed to be  
30 commitments made and costs and expenses incurred in the performance of this Agreement and shall be taken into account accordingly.

32.—LAWS GOVERNING AGREEMENT.

This Agreement shall be in all respects subject to and interpreted in accordance with the laws of the Province of Quebec.

40 IN WITNESS WHEREOF this Agreement has been signed on behalf of His Majesty in right of Canada by the Deputy Minister of Munitions and Supply of Canada and by the Comptroller and Secretary or Acting Secretary of the Department of Munitions and Supply of Canada and has been executed by Montreal Locomotive Works Limited as the Company and American Locomotive Company as the Intervenant under their respective corporate seals duly affixed thereto by their respective officers duly authorized in that behalf.

Signed and delivered  
on behalf of His Majesty  
in right of Canada  
in the presence of:

G. K. SHIELDS,  
Deputy Minister.

10 R. L. McLEAN

Hugh H. TURNBULL,  
Acting Secretary.

Party of the First Part.

Signed, Sealed and  
delivered by the  
Company in the  
presence of

MONTREAL LOCOMOTIVE  
WORKS LIMITED,

Duncan W. FRASER,  
President.

20 John E. L. DUQUET

John D. FINN,  
Secretary.

Party of the Second Part.

Signed, Sealed and  
delivered by the  
Intervenant in the  
presence of  
John E. L. DUQUET

AMERICAN LOCOMOTIVE  
COMPANY,  
William C. DICKERMAN,  
Chairman.

30

John D. FINN,  
Secretary.

Party of the Third Part.

Department of Munitions and Supply  
Approved as to form by Legal  
Department

F. M. COVERT

Date 21/10/40

40

Approved as to drawings specifications,  
quantity, terms and price by  
Munitions Department.

E. P. TAYLOR

Date 19/10/40

Director General of Munitions Production.  
Authorized by P.C. 5914, October 22/40.

EXHIBIT P-2

10 *Deleted copy of Production Contract between His Majesty the  
King in Right of Canada, Montreal Locomotive Works  
Limited and American Locomotive Company.*

MEMORANDUM OF AGREEMENT made in quintuplicate on the 23rd day of October, 1940:—

BY AND BETWEEN:—

20 HIS MAJESTY the King in right of Canada (hereinafter called the “Government”) herein represented by the Minister of Munitions and Supply of Canada (hereinafter called the “Minister”) hereunto duly authorized,

Party of the First Part,

— and —

30 MONTREAL LOCOMOTIVE WORKS LIMITED, a body politic and corporate duly incorporated according to the laws of the Dominion of Canada and having its head office and principal place of business in the City of Montreal in the Province of Quebec, Canada, herein acting and represented by DUNCAN W. FRASER, its President, and JOHN D. FINN, its Secretary hereunto duly authorized (hereinafter called the “Company”),

Party of the Second Part,

— and —

40 AMERICAN LOCOMOTIVE COMPANY, a body politic and corporate duly incorporated according to the laws of the State of New York, one of the United States of America, having its head office and principal place of business in the City of New York, State of New York, one of the United States of America, herein acting and represented by WILLIAM C. DICKERMAN, its Chairman and JOHN D. FINN, its Secretary, hereunto duly authorized (hereinafter called the “Intervenant”),

Party of the Third Part.

WHEREAS by Memorandum of Agreement bearing even date herewith and made between the parties hereto the Company has undertaken to design, construct and equip with the co-operation and assistance of the Intervenant for and on behalf of the Government and as its Agent a new plant in the City of Montreal in the Province of Quebec adjacent to the existing plant  
10 of the Company, suitable for the production of 5.5 gun carriages and M.III tanks at a specified rate when in full production (such new plant being hereinafter called the “plant”); and

WHEREAS the Government is desirous that the Company with the co-operation and assistance of the Intervenant operate such new plant and produce therein 5.5 gun carriages and M.III tanks, and the Company is agreeable to undertake to do so with the co-operation and assistance of the Intervenant,  
20 the whole upon the terms and conditions hereinafter set out.

NOW THEREFORE THESE PRESENTS WITNESSETH that for and in consideration of these presents, the covenants herein contained and other good and valuable consideration the Parties hereby mutually covenant and agree each for itself and not one for the other as follows, that is to say:—

1.—COMPANY TO ACT AS AGENT FOR GOVERNMENT.

30 The Government hereby acknowledges and agrees that the Company is acting on behalf of the Government and as its Agent in all matters pertaining to the performance of this Agreement and that the Government shall indemnify and hold the Company harmless from any and all expenditures, claims and liabilities of any nature whatsoever arising out of the performance of this Agreement in accordance with the terms hereof or of any act done or omitted to be done by the Company, and shall relieve the Company from responsibility for any failure or delay in carrying out this Agreement except in cases of definite bad faith or  
40 wilful neglect on the part of the Company. The Company shall use its best endeavours to procure insofar as possible and practicable that all contracts entered into by the Company as agent for the Government in connection with the performance of this Agreement shall be completely performed on payment by or on behalf of the Government of the prices or money considerations stipulated in such contracts and shall not be accompanied by any liability continuing after such payment.

## 2.—COMPANY TO OPERATE PLANT.

The Company with the co-operation and assistance of the Intervenant shall administer, manage and operate the plant and shall produce therein for the account of the Government 5.5 gun  
10 per week when in full production, and M.III tanks at the rate of two per working day when in full production.

The Intervenant through the use of its facilities in the United States will furnish plans for and methods of manufacture, designs of jigs, tools, gauges, patterns, forms, the time studies for the control of the cost of the products, methods and flow of production, metallurgical and other technical data and general engineering advices to ensure the economical and expeditious performance of the work.  
20

## 3.—QUANTITY.

The number of 5.5 gun carriages to be produced in the plant by the Company with the co-operation and assistance of the Intervenant shall be Three Hundred (300).

The number of M.III tanks to be produced in the plant by the Company with the co-operation and assistance of the Intervenant shall be One thousand One hundred and Fifty seven  
30 (1157).

## 4.—DESCRIPTION AND SPECIFICATIONS OF TANKS AND GUN CARRIAGES.

The gun carriages to be produced at the plant by the Company with the co-operation and assistance of the Intervenant for the account of the Government are 5.5 gun carriages Mark 1 conforming in all respects with approved detailed plans and specifications to be furnished to the Company by the Govern-  
40 ment subject to modifications as hereinafter provided. The approved detailed plans and specifications of the gun carriages shall conform basically to drawing M.M.4.G.A. of British Standard Specification, Design Department C.2445, Detail No. C.A. 39, dated November 15th, 1939.

The tanks to be produced at the plant by the Company with the co-operation and assistance of the Intervenant for the account of the Government shall be medium tanks type M.III conforming in all respects with approved detailed plans and



specifications to be furnished to the Company by the Government subject to modifications as hereinafter provided. The approved detailed plans and specifications of the tank shall conform basically to the drawings and specifications for United States Ordnance Department medium tank type M.III.

- 10 Such approved detailed plans and specifications of the gun carriages and tanks shall be furnished by the Government to the Company as soon as reasonably possible but in any event within ninety (90) days from the date thereof, provided, however, that failure by the Government to so furnish such approved detailed plans and specifications within such period of ninety (90) days shall not render it liable to the Company or the Intervenant for damages hereunder.

20 5.—FREE ISSUE.

The Government shall furnish and deliver to the Company f.o.b. the plant free of cost and at such time as shall not delay completion and delivery of the tanks all necessary engines, transmissions, guns, gun mounts, gun sights, radio, pioneer equipment such as shovels and other separately demandable stores, and armour plate completely machined and ready for application, the whole together with accessories.

- 30 The Company shall instal all or such part of the foregoing free issue in the tanks before the completion thereof as the Government may direct.

Notwithstanding the provisions hereinbefore contained, the Company with the co-operation and assistance of the Intervenant shall, at the request of the Government and upon such terms and conditions as may be agreed upon by and between the parties hereto, manufacture the gun mounts and machine the armour plate hereinbefore mentioned.

40 6.—COMPANY AUTHORIZED TO INCUR COSTS.

The Company shall be and it is hereby authorized to incur and pay, for and on behalf of the Government and as its Agent, all proper and reasonable costs necessary or incidental to the performance of this Agreement including, but without in any way limiting or restricting the generality of the foregoing, the costs to which reference is made in Paragraph 8 hereof.

The Company moreover shall be, and it is hereby, authorized, for and on behalf of the Government 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 this Agreement including, but  
10 without in any way limiting or restricting the generality of the foregoing, contracts for the purchase of materias, supplies and supplementary tools, machinery and equipment and the employment of labour, manual, technical, clerical and professional.

7.—INTERVENANT AUTHORIZED TO INCUR COSTS.

The Intervenant shall be, and it is hereby, authorized, to incur all proper and reasonable costs necessary or incidental to the co-operation and assistance which it shall give to the Com-  
20 pany in the performance of this Agreement.

8.—REIMBURSEMENT OF COSTS.

The Government shall reimburse the Company and the Intervenant in the manner hereinafter provided for all proper and reasonable costs incurred in the performance of this Agreement, the total aggregate amount of which costs shall be determined in accordance with the following provisions:—

30 (1) Cost of performing this Agreement.

(a) General Rule. — The cost of performing this Agreement shall be the sum of the direct costs including therein expenditures for materials, direct labour and direct expenses incurred in performing this Agreement; and the proper proportion of any indirect costs (including therein a reasonable proportion of management expenses) incident to and necessary for the performance of this Agreement;

40 (b) Elements of cost — In general the elements of cost may be defined for purposes of this Agreement as follows:—

( i ) manufacturing cost which is the sum of factory cost and other manufacturing cost;

(i i) miscellaneous direct expenses;

(iii) general expenses which are the sum of indirect engineering expenses, usually termed “Engineering Overhead” and expenses of servicing and administration.

10 (c) Factory cost. — Factory cost is the sum of the following:—

( i ) Direct materials. — Materials, such as those purchased for stock and subsequently issued for contract operations and those acquired under sub-contracts, which become a component part of the finished product and which are used directly in fabricating, completing and processing such materials or parts.

20 (i i) Direct productive labor. — Productive labor, usually termed “Shop Labor”, which is performed on and is properly chargeable directly to the article manufactured or constructed pursuant to this Agreement, but which ordinarily does not include direct engineering labor;

30 (iii) Direct engineering labour. — The compensation of professional engineers and other technicians, and of draftsmen, properly chargeable directly to the cost of this Agreement;

(iv) Miscellaneous direct factory charges. — Items which are properly chargeable directly to the factory cost of performing this Agreement but which do not come within the classifications in sub-paragraphs (i), (ii) and (iii) of this sub-sub-paragraph (c), as for example, royalties paid to another party and which are properly chargeable to the cost of performing this Agreement;

40 ( v ) Indirect factory expenses. — Items usually termed “Factory Overhead” which are not directly chargeable to the factory cost of performing this Agreement but which are properly incident to and necessary for the performance of this Agreement and consist of the following:—

(aa) Labour. — Amounts expended for factory labour such as supervision and inspection,

clerical labour, time-keeping, packing and shipping, stores supply, services of tool crib attendants and services in the factory employment bureau, which are not chargeable directly to productive labour of this Agreement;

10            (bb) Materials and supplies. — Cost of materials and supplies for general use in the factory in current operations, such as shop fuel, lubricants, heat treating, plating, cleaning and anodizing supplies, non-durable tools and gauges, stationery (such as time tickets and other forms), and boxing and wrapping materials;

20            (cc) Service expenses. — Factory expenses of a general nature, such as those for power, heat and light (whether produced or purchased), ventilation and air-conditioning and operation and maintenance of general plant assets and facilities;

30            (dd) Miscellaneous indirect factory expenses. — Miscellaneous factory expenses not directly chargeable to the factory cost of performing this Agreement, such as purchasing expenses, employees' Welfare expenses, payments to any Governmental authority under any workmen's compensation legislation, employers' payments to Governmental unemployment insurance which shall not include payments deducted from or chargeable to employees or officers nor pensions and retirement payments.

40            (d) Other manufacturing cost. — Other manufacturing cost as used in sub-sub-paragraph (b) of this subparagraph (1) includes items of manufacturing cost which are not properly or satisfactorily chargeable to factory cost but which upon a complete showing of all pertinent facts are properly to be included as a cost of performing this Agreement, such as experimental and development charges;

(e) Miscellaneous direct expenses. — Miscellaneous direct expenses as used in sub-sub-paragraph (b) of this

10 sub-paragraph (1) include items of expense which are properly chargeable directly to the cost of performing this Agreement and which do not constitute direct costs classified as factory cost or other manufacturing cost such as premiums on performance or other bonds required under this Agreement; sales taxes, customs duties, and excise taxes imposed on the Company; demonstration and test expenses; travelling expenses. In order for any such item to be allowed as a charge directly to the cost of performing this Agreement:

- ( i ) A detailed record shall be kept of all items of similar character; and
- 20 (i i) No item of similar character which is properly a direct charge to other work shall be allowed as any part of any indirect expense in determining the proper proportion thereof chargeable to the cost of performing this Agreement.

30 (f) Indirect engineering expenses. — Indirect engineering expenses usually termed “Engineering Overhead”, which are treated in this section as a part of general expenses in determining the cost of performing this Agreement, comprise the general engineering expenses which are incident to and necessary for the performance of this Agreement, such as the following:

- ( i ) Labour. — Compensation of employees for personal services to the engineering department, such as supervision, which is properly chargeable to this Agreement, but which is not chargeable as direct engineering labour;
- 40 (i i) Material. — Supplies for the engineering department, such as paper and ink for drafting and similar supplies;
- (iii) Miscellaneous expenses. — Expenses of the engineering department such as (aa) maintenance and repair of engineering equipment, and (bb) services purchased outside of the engineering department for blueprinting, drawing, computing and like purposes.

10 (g) Expenses of servicing and administration. — Expenses of servicing and administration which are treated in this section as a part of general expenses in determining the cost of performing this Agreement comprehend the expenses incident to and necessary for the performance of this Agreement which are incurred in connection with the general servicing of the products hereunder and the general administration of the business of the plant, such as:—

20 ( i ) Compensation of personal service of the employees. — The salaries of the corporate and general executives, officers and the salaries and charges of administrative clerical employees of the office services employees, employees such as telephone operators, janitors, cleaners, watchmen and office equipment repairmen;

( i i ) General servicing expenses. — Expenses which by reference to all the pertinent facts and circumstances reasonably constitute a part of the cost of performing this Agreement and which are incident to delivered or installed articles and are due to ordinary adjustments or minor defects, but including no items which are treated as a part of direct costs such as direct material, direct labour and other direct expenses;

30 (iii) Other expenses. — Miscellaneous office and administrative expenses, such as stationery and office supplies; postage; repair and depreciation of office equipment, contributions to local charitable or community organizations to the extent constituting ordinary and necessary business expenses; employees' welfare expenses; payment to any Governmental authority under any workmen's compensation legislation; employers' payments to Governmental unemployment insurance which shall not include payments deducted from or chargeable to employees or officers nor pensions and retirement payments.

40 (h) Unreasonable compensation. — The salaries and compensation for services which are treated as a part of the cost of performing this Agreement include reasonable payments for salaries, bonuses, or other compensation for services. As a general rule bonuses paid to employees

10 (and not to officers) in pursuance of a regularly established incentive bonus system may be allowed as a part of the cost of performing this Agreement. The test of allow-ability is whether the aggregate compensation paid to each individual is for services actually rendered incident to, and necessary for, the performance of this Agreement and is reasonable. Excessive or unreasonable payments whether in cash, stock or other property ostensibly as compensation for services shall not be included in the cost of perform-  
ing this Agreement;

20 (i) Allocation of indirect costs. — No general rule applicable to all cases may be stated for ascertaining the proper proportion of the indirect costs to be allocated to the costs of performing this Agreement. Such proper proportion depends upon all the facts and circumstances relating to the performance of this Agreement. Subject to a requirement that all items which have no relation to the performance of this Agreement shall be eliminated from the amount to be allocated; the following methods of alloca-  
tion are outlined as acceptable:—

30 (i) Factory indirect expenses. — The allowable indirect factory expenses shall ordinarily be allocated or “distributed” to the cost of this contract on the basis of the proportion which the direct productive labour attributable to this Agreement bears to the total direct productive labour of the production depart-  
ment or particular section thereof during the period within which this Agreement is performed, except that if the indirect factory expenses are incurred in different amounts and in different proportions by the various producing departments consideration shall be given to such expenses to the extent neces-  
sary to make a fair and reasonable determination of  
40 the true cost;

(i i) Engineering indirect expenses. — The allowable in-  
direct engineering expenses shall ordinarily be allo-  
cated or “distributed” to the cost of this Agreement on the basis of the proportion which the direct engin-  
eering labour attributable to this Agreement bears to the total direct engineering labour of the engineer-  
ing department or particular section thereof during  
the period within which this Agreement is per-

10 formed. If the expenses of the engineering department are not sufficient in amount to require the maintenance of separate accounts, the engineering indirect costs may be included in the indirect factory expenses and allocated or distributed to the cost of performing this Agreement as a part of such expenses, provided the proportion as allocated, or distributed, is proper under the facts and circumstances relating to the performance of this Agreement;

20 (iii) Administrative expenses (or overhead). — The allowable expenses of administration or other general expenses and general servicing expenses shall ordinarily be allocated or distributed to the cost of performing this Agreement on the basis of the proportion which the manufacturing cost attributable to this Agreement bears to the total manufacturing cost of all products manufactured by the Company or the Intervenant, as the case may be, during the period within which this Agreement is performed;

(j) Among the items which shall not be included as a part of the cost of performing this agreement or considered in determining such cost are the following:—

- 30 ( 1 ) Allowances for interest on invested capital, bonds, debentures, bank or other loans.
- ( 2 ) Entertainment expenses.
- ( 3 ) Dues and other memberships other than regular trade associations.
- ( 4 ) Donations (except as stated hereunder).
- 40 ( 5 ) Losses on other contracts.
- ( 6 ) Losses from sale or exchange of capital assets.
- ( 7 ) Depreciation on buildings, machinery or equipment paid for by the Government.
- ( 8 ) Fines and penalties.
- ( 9 ) Amortization of unrealized appreciation of values of assets.



- (10) Expenses, maintenance and/or depreciation of excess facilities.
  - (11) Increases in reserves for contingencies, repairs, compensation insurance (as opposed to payments under any workmen's compensation legislation) and guaranteed work.
  - (12) Federal and Provincial income, excess profits or surtaxes.
  - (13) Unreasonable compensation for officers and employees.
  - (14) Bond discount or finance charges.
  - (15) Premiums for life insurance on the lives of officers.
  - (16) Legal and accounting fees in connection with re-organizations, security issues, or capital stock issues.
  - (17) Losses on investments, bad debts and expenses of collection.
  - (18) Advertising and selling expenses.
- 30 (2) The Government reserve the right to furnish any materials or supplementary tools, machinery and equipment necessary for the performance of the Agreement.
- (3) The Government reserves the right to pay private or common carriers any and all freight charges on equipment, materials and supplies.
- 40 (4) The Company shall to the extent of its ability take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications and when unable to take advantage of such benefits it shall promptly notify the Minister to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the performance of this Agreement there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications which have accrued to the benefit of the Company or would have so accrued except for the fault or neglect of the Company. Such benefits

lost through no fault or neglect on the part of the Company or lost through the fault of the Government shall not be deducted from gross costs.

10 (5) Sub-sub-sub-paragraph (iii) of sub-sub-paragraph (c) of sub-paragraph (1) of this paragraph 8 shall include the compensation of engineers whose services the Company may be specifically required by the Minister to engage in connection with the performance of this Agreement. Such engineers will be considered as employees of the Company subject to the supervision and discipline of the Company but their services may be controlled by the Minister and the Minister shall withdraw any such employees from the Company's organization for cause at the Company's request.

20 9.—FEES TO COMPANY AND TO INTERVENANT.

The Government in addition to reimbursing the Company and the Intervenant for all proper and reasonable costs incurred in the performance of this Agreement, shall pay to the Company and to the Intervenant respectively the fees hereinafter set forth, at the times and in the manner hereinafter indicated, that is to say:—

(a) To the Company:—

30 (i) on the tanks — a fee of \_\_\_\_\_ per tank in Canadian funds (the total aggregate amount of the fees to be paid to the Company for the total number of Eleven Hundred and Fifty Seven (1157) tanks to be produced hereunder being hereinafter called the "total tank fee" to be paid in the following manner:

40 (aa) \_\_\_\_\_ of the total tank fee shall be paid monthly on the first day of each calendar month beginning with the first day of the calendar month following the commencement of operations in the plant for the production of tanks, and to continue until Fifty (50) tanks have been produced and accepted by the inspector; and thereafter,

(bb) \_\_\_\_\_ of the total tank fee shall be paid monthly on the

first day of each calendar month thereafter, and to continue until payments under sub-sub-sub-paragraph (aa) and sub-sub-sub-paragraph (bb) hereof are equal in the aggregate to Eighty percent (80%) of the total tank fee; and thereafter,

10

(cc) Until such time as Eighty percent (80%) (hereinafter called the "first quantity") of the total number of tanks has been produced and accepted no further fee shall be paid to the Company but, when the first quantity has been produced and accepted, the remaining Twenty percent (20%) of the total tank fee shall be paid to the Company upon completion and acceptance of tanks forming part of the final Twenty percent (20%) of the total number of tanks to be produced hereunder (hereinafter called the "final quantity of tanks") but such Twenty percent (20%) of the total tank fee shall be paid in monthly instalments beginning on the first day of the calendar month following the month in which there is completed and accepted one or more of the final quantity of tanks, such monthly instalments to be equal to the product of the number of tanks forming part of the final quantity of tanks completed and accepted during the preceding month multiplied by the basic fee of

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per tank;

30

(i i) On the gun carriages — a fee of

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per gun carriage in Canadian funds (the total aggregate amount of the fees to be paid to the Company for the total number of Three Hundred (300) gun carriages to be produced hereunder being hereinafter called the "total gun carriage fee"), the total gun carriage fee to be paid to the Company in accordance with the formula hereinbefore set out in sub-sub-paragraph (i) hereof with respect to payment of the total tank fee to the Company on the tanks, mutatis mutandis, provided, however, that with respect to sub-sub-sub-paragraph (aa) thereof the percentage shall read

Four percent (4%) instead of Three percent (3%) and the number shall read Fifteen (15) instead of Fifty (50), and provided further, that with respect to sub-sub-sub-paragraph (bb) thereof the percentage shall read Six percent (6%) instead of Four and One-half percent (4½%).

10

(b) To the Intervenant:—

(i) on the tanks — a fee of

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in funds of the United States of America for each tank to be produced, for the services of the Intervenant to be rendered in the United States under the provisions of this Agreement, the total tank fee hereunder to be paid to the Intervenant in funds of the United States of America at New York in accordance with the formula hereinbefore set out in sub-sub-paragraph (i) of sub-paragraph (a) hereof with respect to payment of the total tank fee therein mentioned to the Company on the tanks;

(i i) on the gun carriages — a fee of

30

per gun carriage in funds of the United States of America for the services of the Intervenant to be rendered in the United States under the provisions of this Agreement, the total gun carriage fee hereunder to be paid to the Intervenant in funds of the United States of America at New York in accordance with the formula hereinabove set out in sub-sub-paragraph (i) of sub-paragraph (a) hereof as amended by sub-sub-paragraph (ii) of sub-paragraph (a) hereof with respect to the payment to the Company of the total gun carriage fee therein mentioned on the gun carriages.

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#### 10.—BANKING ARRANGEMENTS AND PAYMENT.

In order to enable the Company to meet all costs to be incurred hereunder, including the fees for which provision is hereinbefore made in paragraph 9 hereof without resorting to its own funds:—

(a) The Minister will establish at the Montreal Branch of The Royal Bank of Canada a bank account to be known as Montreal Locomotive Production Account and hereinafter called the “Special Account”;

10 (b) On or before the last day of each calendar month the Minister will deposit in the Special Account the amount which, in accordance with the itemized statement to be submitted by the Company to the Minister on or before the 20th day of each month, will be required to meet costs during the succeeding calendar month. If the Company should subsequently determine that the amount needed exceeds its previous estimate the Minister will, at the request of the Company, and subject to the approval of the Minister, deposit promptly in the Special Account the additional amount required;

20 (c) All monies from time to time at the credit of the Special Account or in any sub-account which may be established with the written consent of the Minister, are to be the property of the Minister;

30 (d) The Company may at any time and from time to time by resolution of its Board of Directors designate the person or persons who are authorized by it to sign cheques or other orders for the payment of money in its name and on its behalf on the Special Account above referred to and in payment of costs incurred in the performance of this Agreement. A certified copy of any such resolution shall be furnished to the Minister and to The Royal Bank of Canada and the same shall become effective upon approval by the Minister and shall remain in effect until replaced by a further resolution also approved by the Minister cancelling, amending and/or replacing any resolution previously furnished to the Minister and to the Bank or until revoked by the Minister as hereinafter provided. The Minister may at any time revoke any authority so given by written notice to the Company and to the Bank and may request the Company to make other and specific provision with respect to the signing of any such cheques or orders for the payment of money on such  
40 Special Account;

(e) the Special Account is not to be overdrawn in any circumstances;

(f) on or before the 20th day of each month the Company shall furnish to the Minister the following data covering the operation of the Special Account and sub-accounts, if any, during the preceding calendar month;

- ( i ) a report of all cheques and other negotiable instruments drawn together with the names of the payees and the description of the subject matter for which payment is so made;
- 10 (i i) certified bank statements showing the credits and debits during the month together with the balances;
- (iii) a reconciliation of the bank statements with the Company's report;
- (iv) a summary of all commitments entered into by the Company, which commitments are not completely provided for by the current monthly estimate referred to in this paragraph 10;
- 20 (g) all bank charges or credits pertaining to the operation of the Special Account and sub-accounts, if any, will be debited or credited thereto;
- (h) all fees payable under the provisions of paragraph 9 hereof may be withdrawn by the Company from the Special Account in the same manner as all other costs to be paid out of such account and the Minister shall from time to time make available in such account such amount
- 30 in funds of the United States of America as may be required from time to time to permit the Company to satisfy all commitments payable in such funds of the United States of America and to pay the instalments due on account of the fee payable to the Intervenant under the provisions of paragraph 9 hereof and the Government shall permit the export of such funds of the United States of America for such purpose.

40 11.—TITLE TO PLANT, EQUIPMENT  
AND ACCESSORIES.

*A.C.M.*  
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 and/or the Intervenant for the purposes of the performance of this Agreement (including any free issue) shall at all times be vested in the Government which shall assume and bear all risks and liabilities incidental to such ownership, and the Company or the Intervenant, as the case may be, shall not be held liable for or on account of any loss

or destruction of the foregoing except such as may result from its own actual fault or wilful misconduct.

11-A.—DESIGNS, DRAWINGS, PLANS, SPECIFICATIONS AND ENGINEERING DATA TO BE MADE AVAILABLE TO GOVERNMENT.

10

The Company and the Intervenant shall make available to the Government all designs, drawings, plans, specifications, engineering data and other like information prepared in connection with the performance of this Agreement and shall furnish copies thereof to the Government and, at the request of the Government, to any third parties contracting with the Government or the British Government for the production of tanks and gun carriages.

20

12.—CONTROL AND SUPERVISION.

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

30

(b) Without in any way limiting or restricting the generality of the foregoing provision with respect to the supervision, direction and control of the Minister, the Company shall to such extent, if any, as may from time to time be requested by the Minister or his representative:—

40

(i) consult the Minister on any matters pertaining to the performance of this Agreement;

(ii) permit the examination by the Minister of all contracts entered into or to be entered into by the Company and of all drawings, plans and specifications prepared or under preparation by or for the Company in connection with the performance of this Agreement;

*Ammon*  
*See P. 11*  
*The*  
*General*  
*will*  
*include*  
*See*  
*P. 22*  
*6A.*

and shall to such extent, if any, as may from time to time be requested by the Minister in writing:—

(iii) furnish to the Minister:—

- 10 (aa) duplicates of all contracts, drawings, plans and specifications as may be necessary to complete the Minister's records of the performance of this Agreement;
- (bb) duplicates of all orders placed or to be placed by the Company;
- (cc) progress reports in form satisfactory to the Minister;
- 20 (dd) duplicates of flow sheets and technical information to illustrate the progress of operations in the Plant;
- (iv) refrain from adopting, entering into, giving or acting upon any drawings, plans, specifications, contracts, orders for materials, machinery and equipment unless and until the same shall have been previously approved in writing by the Minister.

30 (c) The plant and all its operation shall at all times be accessible to the Minister or his authorized representatives for the purposes of inspection.

(d) The Company and the Intervenant shall keep (in such a manner as to clearly disclose the nature and amounts of the different items of cost pertaining to this Agreement) proper accounts and records of all costs to the Company and to the Intervenant, as the case may be, incurred in the performance of this Agreement and the invoices, receipts and vouchers relating thereto. Such proper accounts and records of original entry, invoices, receipts and vouchers shall at all times be available for inspection or audit purposes by the Minister or his authorized agent and by the Comptroller of the Treasury and by the Auditor General of Canada and the Company and the Intervenant shall afford all facilities for such audits and inspections and shall furnish the Minister and his authorized agent and the Comptroller and the Auditor General with all such information as he or they may from time to time require with reference to such proper accounts, records, invoices, receipts and vouchers.



13.—GOVERNMENT INSPECTOR.

10 The Minister shall at all times maintain an Inspector or Inspectors (hereinafter called the “Inspector”) at the plant who shall be entitled to exercise the powers herein stated to be exercisable by such Inspector and such other powers as may from time to time be delegated to such Inspector by the Minister. The salary and other remuneration of such Inspector shall be paid by the Government, or if so desired by the Minister, shall be paid by the Company out of the Special Account and shall in such an event form part of the costs of the performance of this Agreement.

14.—PRODUCTION ACCORDING TO PLANS AND SPECIFICATIONS.

20 The tanks and gun carriages shall be manufactured and assembled in accordance with the approved plans and specifications and the work as required by and in accordance with such plans and specifications shall be executed in a proper and workmanlike manner in conformity with accepted standard practices and, except as provided in such specifications or otherwise authorized by the Minister, all materials shall be of the best procurable quality of their respective kinds. If the Minister so requires and reasonably so notifies the Company that the Company submit for prior approval to the Minister or to the Inspector samples of materials to be purchased for use in the work covered by this Agreement, the Company shall make no commitments for such materials until the submitted sample has been approved by the Minister or the Inspector, as the case may be. In case such submission shall be required the approval or disapproval thereof shall in each case be notified to the Company in writing within five days after the submission of the sample.

15.—STORAGE OF TANKS AND GUN CARRIAGES.

40 The Company shall within the limits of the facilities available at the plant store all tanks and gun carriages manufactured by it and ready for delivery to the Government hereunder until such times as it shall receive shipping instructions with respect thereto from the Government, and when so required shall load the tanks and gun carriages on cars or other carriers at the plant suitably blocked and otherwise protected for shipment in accordance with the Minister’s shipping instructions.

16.—INSPECTION AND RELEASE FOR SHIPMENT.

10 The Inspector shall attend at the plant during the time when the tanks and gun carriages are being produced for the purpose of observing the production of such tanks and gun carriages and of making such tests thereof as the Inspector may deem necessary in order to determine the compliance of the tanks and gun carriages with the drawings and specifications for which provision is made hereunder. The Company will cooperate with the Government in arranging for and conducting such tests and will make available to the Government such facilities as the Company may have available therefor. The Company shall afford or cause to be afforded to the Inspector the fullest opportunity of observing the tanks and gun carriages during their production and of testing the same at any time before delivery. The Company shall furnish all facilities required by the Inspector for this purpose. In order to prevent delays during the process of production and to avoid undue spoilage of materials and corrective labour the Company shall also furnish an Inspector in all cases where, in the opinion of the Company, an Inspector is required to pass upon the interpretation of specifications.

30 The Government shall cause each tank and gun carriage to be inspected by the Inspector immediately upon completion thereof in such manner and under such conditions as the Government in its sole discretion shall determine. If the Inspector shall find that each such tank or gun carriage has been completed in full accordance with the specifications and that any equipment to be installed therein has been properly installed, the Inspector shall execute and deliver his formal certificate of inspection and acceptance for such tank or gun carriage, as the case may be. Upon the execution and delivery of such certificate of inspection and acceptance and not prior thereto the Government shall be deemed to have accepted such tank or gun carriage, as the case may be.

40 In the event that the Government shall refuse to accept any tank or gun carriage by reason of the fact that such tank or gun carriage shall not conform to the drawings and specifications, that the standards of workmanship or materials are not of the proper grade or quality or are not consistent with the generally accepted standards for workmanship or materials of this type, or that any equipment to be installed in such tank or gun carriage has not been properly installed, the Company shall satisfactorily correct all such rejected workmanship and shall satisfactorily

correct and/or replace all such rejected material. The Company will use its best efforts to avoid the spoilage of material but the cost of correction and/or replacement of rejected material and/or workmanship and/or any rectifications required in complete tanks and/or gun carriages and the cost of any repairs to the tanks and/or gun carriages occasioned by or in connection with the demonstration or test thereof, shall be part of the costs hereunder and the Company shall be reimbursed therefor under and in accordance with the provisions of paragraph 8 hereof, unless the character and total value of such spoiled materials shall clearly indicate gross mismanagement or lack of competence on the part of the Company.

The Government shall arrange as promptly as may be practicable for the issuing of shipping instructions in writing to the Company covering each such tank or gun carriage so accepted. The Company shall ship all such tanks and gun carriages promptly in accordance with such instructions and thereupon immediately furnish to the Government such number of invoices, packing lists, copies of straight inland bills of lading and certificates of inspection duly certified covering each such tank and gun carriage as the Government shall specify, and the Company shall, if so required, use the Government's form of invoice and distribute copies of such invoice, packing list and bills of lading in accordance with the Government's instructions.

17.—INDEMNITY AGAINST LOSS AND OTHER CLAIMS.

The Company shall, if so required by the Minister, establish to the satisfaction of the Minister that all supplies, materials, parts, machinery, equipment, jigs, tools, dies, work in progress and/or complete tanks and/or gun carriages in respect of which payment is being made are free and clear from all claims, liens, charges or encumbrances.

In the event of there being any such claims, liens, charges or encumbrances there may be retained from the amount otherwise payable to the Company and the Intervenant hereunder an amount sufficient to satisfy and discharge the same.

18.—DUTY AND TAXES ON PURCHASES.

With respect to purchases of materials or other articles to be used directly or indirectly in the performance of this Agreement, the Company shall keep a complete monthly record of payments by the Company of all custom duties, excise taxes and sales

taxes and a report covering details of such payments shall be sent to the Minister on or before the 20th day of each following month.

10 If the Minister so requests in writing the Company will undertake to exercise due diligence but at the cost of the Government in applying for remission without payment of all such duties and other taxes to which the Government, for the purpose of this Agreement or in respect of its performance, may from time to time be entitled and also to apply for the refund of any such duties or taxes which may have been paid by it in good faith (although subject to refund and remission by the proper authority) with a view to expediting the performance of this Agreement.

20 If any customs duties, excise taxes and sales taxes on any materials or other articles to be used directly or indirectly in the performance of this Agreement shall be remitted, the Government will indemnify the Company for any claim which may at any time be made for payment of customs duties, excise taxes and sales taxes on any such materials or other articles.

#### 19.—SURPLUS MATERIAL AND SALVAGE.

30 No scrap surplus or salvage materials or equipment shall be disposed of by the Company without the authorization of the Minister previously obtained and any monies realized from the disposal of such surplus, scrap or salvage materials or equipment shall be paid by the Company either to the credit of the Special Account or otherwise to the credit of the Minister as the Minister may in writing direct.

#### 20.—ECONOMICAL EXECUTION OF AGREEMENT.

40 The Company, with the co-operation and assistance of the Intervenant, shall carry out the terms of this Agreement with all reasonable economy having regard however, to the special circumstances under which the same is to be performed and the desire of the Government for the expeditious completion thereof.

#### 21.—GOVERNMENT TO FACILITATE PERFORMANCE AND COMPANY TO PROTECT INTERESTS OF GOVERNMENT.

The Government shall, insofar as it may be in its power to do so, facilitate the performance of this Agreement and the

Company and the Intervenant shall at all times use their best efforts to protect and serve the interests of the Government in the performance of this Agreement.

22.—COMPANY TO PROCURE LICENSES  
AND TO CONFORM TO ALL LAWS.

10

The Company shall procure at the cost of the Government all licenses necessary or useful in the performance of this Agreement and shall conform to all laws, Orders-in-Council, rules and regulations of the Dominion of Canada and of any other duly constituted public authority to which the Company may be subject in the performance of this Agreement.

23.—LABOUR AND BUILDING CONDITIONS. .

20

The Company shall comply with all labour conditions which have been or will be upon request furnished to the Company by the Minister in connection with the performance of this Agreement and with all further or supplemental or amending labour conditions which may be applicable or may be made applicable under any Dominion and/or Provincial legislation for the time being in force to the work to be done in the performance of this Agreement.

30

The Company shall also provide at the cost of the Government all necessary sanitary supervision and medical attendants and supplies for the employees engaged in the performance of this Agreement as well as sickness and accident records to the satisfaction of the Department of Pensions and National Health of the Dominion of Canada.

24.—CANADIAN LABOUR AND MATERIALS.

40 In so far as the Company is concerned unless otherwise agreed or directed by the Minister or provided in the specifications all work necessary to the performance of this Agreement shall be done in Canada and, to the full extent to which the same are procurable consistent with proper economy and the expeditious performance of this Agreement, only Canadian labour, parts and materials shall be used in connection with the performance of the Agreement. However, notwithstanding the foregoing provisions of this paragraph 24, it is understood and agreed that the services to be performed and the costs to be incurred by the Intervenant under this Agreement shall be so performed and incurred in the United States.

25.—INSURANCE.

The Company will endeavour to obtain at the request and on behalf of the Government such insurance as may be desired by the Government in connection with the performance of this Agreement, the cost of which insurance shall be borne by the  
10 Government, provided, however, that it is clearly understood that the Company shall be under no obligation to obtain or to endeavour to obtain any insurance whatsoever unless and until so requested in writing by the Government.

26.—MODIFICATIONS TO DRAWINGS  
AND SPECIFICATIONS.

The Minister may at any time and from time to time make  
20 modifications or changes in and/or additions to the drawings and specifications of the tanks and gun carriages. In case any such modifications, changes and/or additions are made and by reason and in consequence thereof the Company shall be required to provide new or additional machines, tools, dies, jigs or other facilities or to abandon or discard any materials on hand or for which commitments are outstanding or to abandon or rework materials in process, the Company shall be authorized to include the entire costs of all such work and of all such material in the costs of the performance of this Agreement and for which the Company shall  
30 be completely reimbursed by the Government.

In the event that any such modifications of, changes in and/or additions to such modifications and specifications materially increase or decrease the amount of work to be performed hereunder by the Company and/or the Intervenant, the fees payable to the Company and to the Intervenant in accordance with the provisions of paragraph 9 hereof shall be adjusted accordingly by Agreement between the parties hereto, and in the event of a dispute respecting such adjustment of the amount  
40 thereof, the same shall be settled by arbitration in accordance with the provisions of this Agreement.

27.—GOVERNMENT MAY TERMINATE AGREEMENT  
PRIOR TO COMPLETION.

(a) If the Minister should at any time during the continuance of this Agreement be of opinion that for any reason it has become unnecessary or undesirable in the public interest that all or any of the work contemplated by this Agreement shall be

completed, the Minister may be giving notice in writing to the Company and to the Intervenant terminate this Agreement (save and except the provisions of this paragraph) as regards all or any part or parts of the work not theretofore completed (hereinafter sometimes called the “work terminated”). Upon such notice being given the Company shall cease work (including the manufacturing and/or procuring of materials for the fulfilment of the Agreement) in accordance with and to the extent specified in such notice, but shall proceed with all reasonable speed to complete such part or parts (if any) of the work as are by the terms of such notice to be completed, and shall also proceed with all reasonable speed to complete up to such time and/or stage as may be specified in the notice any part or parts of the work as required by such notice. The Minister may at any time or from time to time give one or more additional notices with respect to any or all parts of the work which remains to be completed after the giving of any previous notice or notices.

(b) Upon termination of this Agreement in whole or in part as hereinbefore provided in this paragraph 27 full and complete settlement of all claims of the Company and/or the Intervenant arising out of this Agreement with respect to the work terminated shall be made, and more particularly but without in any way limiting or restricting the generality of the foregoing, such full and complete settlement shall be made substantially as follows:—

- ( i ) The Government shall reimburse the Company and the Intervenant for all costs theretofore incurred by the Company in the performance of this Agreement with respect to the work terminated;
- (i i) The Government shall indemnify and protect the Company with respect to all obligations, commitments and claims which the Company may theretofore in good faith have undertaken or incurred in connection with the work terminated, and the Company shall execute and deliver to and in favour of the Minister all such deeds, documents, instruments and writings and shall take all such steps and shall do all such acts and things as the Minister may reasonably require for the purpose of fully vesting in the Government the rights and benefits of the Company under such obligations and commitments, and for the purpose of evidencing more fully the title of the Government in and to all materials, parts, plant

equipment and/or work in process in respect of which the Government has reimbursed the Company;

- 10 (iii) If the work contemplated by this Agreement be terminated in whole or in part under the provisions of this paragraph 27 after the Government has paid to the Company and to the Intervenant six monthly instalments on account of the fees for which provision is hereinbefore made in paragraph 9 hereof, an adjustment with respect to the fees payable hereunder shall be made between the parties hereto on the following basis:—
- 20 (aa) the Company shall be entitled to be paid for each tank produced and accepted under the provisions of this Agreement the sum of \_\_\_\_\_ in Canadian funds, and for each gun carriage produced and accepted under the provisions of this Agreement the sum of Eight \_\_\_\_\_ in Canadian funds;
- 30 (bb) the Intervenant shall be entitled to be paid for each tank produced and accepted under the provisions of this Agreement the sum of \_\_\_\_\_ in funds of the United States of America at New York; and for each gun carriage produced and accepted under the provisions of this Agreement the sum of \_\_\_\_\_ in funds of the United States of America at New York;
- 40 (cc) the Company and the Intervenant shall be entitled to be paid in addition to the foregoing such further amount by way of fees hereunder as may be agreed upon between the Company and the Intervenant and the Minister with respect to work in process, but in no event shall this additional amount of fees be equal to less than Five percent (5%) of the cost of such work in process, including the cost of inventory, material, labour and overhead, and the portion of such additional amount of fees payable to the Company shall



be payable in Canadian funds and the portion of such additional amount of fees payable to the Intervenant shall be payable in funds of the United States of America.

10                   Notwithstanding the foregoing provisions of this sub-sub-paragraph (cc), in no event shall the total aggregate amount of fees payable to the Company and to the Intervenant under the provisions of this sub-paragraph (iii) exceed the total aggregate amount of the fees to which the Company and the Intervenant would be entitled under the provisions of paragraph 9 of this Agreement upon the completion of the performance of this Agreement;

20                   (dd) In the event that the fees already paid by the Government to the Company and to the Intervenant under the provisions of paragraph 9 hereof are in excess of the total aggregate amount of fees to which the Company and the Intervenant are entitled under the foregoing provisions of this sub-paragraph (iii) the excess thereof shall be repaid by the Company and the Intervenant to the Govern-

30                   ment, and in the event that the fees already paid by the Government to the Company and to the Intervenant under the provisions of paragraph 9 hereof are less than the total aggregate amount of fees to which the Company and the Intervenant are entitled under the foregoing provisions of this sub-paragraph (iii), the balance thereof remaining unpaid shall forthwith be paid by the Government

40                   to the Company and to the Intervenant according to their respective rights.

(iv) If the work contemplated by this Agreement be terminated before the Government has paid to the Company and to the Intervenant six monthly instalments on account of the fees for which provision is hereinbefore made in paragraph 9 hereof, the Government shall pay to the Company and to the Intervenant such reasonable portion of the fees for which provision is hereinbefore made in paragraph 9 here-

10 of as may be agreeable between the parties hereto, taking into consideration that all preparatory work, the major part of the engineering and the acquisition of materials, equipment and supplies will require to be effected during the first months of the performance of this Agreement, and in the event of any dispute arising with respect to the amount of the portion of such fees so to be paid to the Company and to the Intervenant the same shall be settled by arbitration in accordance with the provisions hereinafter contained;

20 (v) If the Minister requires the Company and/or the Intervenant to incur further expenditures and/or to perform additional services after the termination of this Agreement in accordance with the provisions of this paragraph 27, whether for protection of the plant, equipment, materials and supplies or for accounting services in connection with any settlement under the provisions of this paragraph 27, the Government shall reimburse the Company and/or the Intervenant for all such expenditures and shall pay to the Company and/or the Intervenant such fees in connection with such services as may be determined by agreement between the parties hereto, and in the event of any dispute with respect to the amount of such expenditures or of such fees so to be paid by the Government the same shall be settled by arbitration in accordance with the provisions hereinafter contained;

30 (vi) If it is established to the satisfaction of the Minister by the Company and/or the Intervenant that by reason of any action taken by the Minister under the provisions of this paragraph 27 exceptional hardship has resulted to the Company and/or to the Intervenant, then the Minister may in his absolute discretion grant in addition to the amount of fees for which provision is hereinbefore made, such additional amount to the Company and/or to the Intervenant as in the opinion of the Minister is warranted by the circumstances;

40 (vii) The Company and the Intervenant shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or

indirectly arising out of any action taken or notice given by the Minister under or pursuant to the provisions of this paragraph 27, except as and to the extent of this paragraph 27 expressly provided.

10 (c) The Company, whenever practicable shall procure such materials, supplies and/or supplementary equipment as may be required for the performance of this Agreement on terms that will enable it to terminate any contracts entered into by the Company upon conditions and terms similar in effect to those for which provision is hereinbefore made in this paragraph 27 in respect of the termination of this Agreement by the Minister and the giving of a notice or notices as aforesaid; and generally the Company shall co-operate with the Government and the Minister and do everything reasonably within its power and at  
20 all times to minimize and reduce the amount of the Government's obligations under the provisions of this paragraph 27.

#### 28.—SETTLEMENT UPON COMPLETION OF AGREEMENT.

Upon completion of the performance of this Agreement there shall be submitted to the Minister by the Company a fully detailed statement showing the amount of all costs incurred including the costs of the Intervenant, all commitments made and  
30 all fees payable in connection with the performance of this Agreement, whereupon the Government shall reimburse the Company and the Intervenant for all such costs so incurred and for which reimbursement has not already been made by the Government, shall in a manner satisfactory to the Company indemnify the Company and hold it harmless for and from any and all commitments made by the Company in connection with the performance of this Agreement and which have not theretofore been fully satisfied and shall pay to the Company and to the Intervenant the fees payable hereunder and which have not already been paid,  
40 whereupon the Company shall execute and deliver to and in favour of the Minister all such deeds, documents, instruments and writings and shall take all such steps and do all such acts and things as the Minister may reasonably require for the purpose of fully vesting in the Government the rights and benefits of the Company under any such commitments and for the purpose of evidencing more fully the title of the Government in and to all work in progress and all materials, equipment and supplies then on hand.

In the event that the Minister requires the Company and/or the Intervenant to perform further services in connection with the closing of the plant, the salvaging of materials and supplies, the settling of outstanding commitments or in connection with any other matter pertaining directly or indirectly to the performance of this Agreement, the Government shall reimburse the Company and/or the Intervenant, as the case may be, for all costs incurred in connection with such work, and will pay to the Company and/or to the Intervenant such fees as may be determined by agreement between the parties hereto and, in the event of any dispute with respect to the amount of such costs and/or fees, the same shall be settled by arbitration in accordance with the provisions hereof.

29.—TERM.

This Agreement shall remain effective until the Company, with the co-operation and assistance of the Intervenant, shall have completed production and delivery of the number of gun carriages and tanks herein specified, provided, however, that if any substantial delay (and for such purpose a delay of eight months or more shall be deemed to be a substantial delay) occurs in the performance of this Agreement through no direct fault of the Company or the Intervenant, the Company and the Intervenant reserve the right to terminate this Agreement at any time after the occurrence of such substantial delay or to request the Government to enter into a new Memorandum of Agreement with respect to the subject matter hereof on such terms and conditions as mutually agreeable, taking into consideration the circumstances existing at that time. In the event that the Company and the Intervenant optate to so terminate this Agreement they shall do so by notifying the Minister of their intention at least thirty days prior to the time when such termination shall become effective. In the event of such termination by the Company and the Intervenant, settlement shall be effected between the parties hereto in accordance with the provisions of paragraph 27 hereof.

30.—TIME NOT OF ESSENCE.

Time and rate of production shall not be of the essence of this Agreement but the Company, with the co-operation and assistance of the Intervenant, shall endeavour to perform the same as expeditiously as possible under the circumstances.

31.—INFORMATION CONFIDENTIAL.

All drawings, specifications and information furnished by the Government to the Company or the Intervenant shall be held confidential by the Company and the Intervenant and shall not be used for any purposes other than those for which they shall  
10 have been furnished. Upon completion or termination of this Agreement they shall be returned to the Government in the condition in which they were furnished to the Company or the Intervenant subject to reasonable wear and tear, together with all prints thereof made by the Company of the Intervenant and which have not already become mutilated or destroyed. The Company and the Intervenant agree that insofar as may be possible they will keep confidential the making of this Agreement and all of the terms thereof.

20 32.—WAIVER NEGATIVED.

No waiver express or implied by or on behalf of the Government or the Minister of any breach of or default under this Agreement on the part of the Company or the Intervenant shall operate as a waiver of or in any way affect any subsequent breach or default or any rights arising therefrom.

33.—MINISTER'S POWERS NOT TO BE RESTRICTED.

30 The provisions of this Agreement shall not in any way operate to restrict or deprive the Minister of any powers at any time conferred upon or vested in the Minister under any law or Order-in-Council or regulation of the Government of Canada for the time being in force.

34.—CORRUPT GIFTS TO PERSONS  
IN THE CROWN SERVICE.

40 The Company and the Intervenant shall not offer or give or agree to give or knowingly permit to be offered or given by any employee or other person on their behalf to any person in His Majesty's service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for His Majesty's service, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Agreement for His Majesty's service. Any breach of this condition or the commission

of any offence by the Company and the Intervenant in relation to this or any other Agreement for His Majesty's service shall entitle the Government to cancel this Agreement and to recover from the Company and the Intervenant the amount of any loss resulting from such cancellation. The Company and the Intervenant warrant that they have not employed any person to solicit  
10 or secure this Agreement upon any contract for a commission, percentage brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this Agreement.

35.—NO BENEFIT TO MEMBER  
OF HOUSE OF COMMONS.

No member of the House of Commons or Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, except that this provision, shall  
20 not apply to acquisition in the ordinary course of securities or to dividends or other distributions or payments by the Company and/or the Intervenant in the ordinary course.

36.—RECOVERY OF SUMS DUE.

Whenever under this Agreement any sum of money shall be recoverable from or payable by the Company and/or the Intervenant the same may be deducted from any sum then due or which  
30 at any time thereafter may become due to the Company and to the Intervenant under this or any other Agreement with the Government.

37.—ASSIGNMENT.

(a) This Agreement and all the rights and obligations of the Company and the Intervenant hereunder shall be unassignable by the Company and the Intervenant except with written consent of the Minister previously obtained.

40 (b) The rights of the Government under this Agreement may be assigned by it in whole but no such assignment shall in any way operate to relieve the Government from any of its obligations hereunder to the Company and the Intervenant except to such extent, if any, as may hereafter be agreed between the parties hereto.

38.—DELEGATION OF MINISTER'S POWERS.

The powers of the Minister in respect of the carrying out of this Agreement and his rights and privileges hereunder may

be exercised by the Deputy Minister of Munitions and Supply of Canada or by any representative or representatives of the Minister duly authorized in writing by the Minister or by the Deputy Minister for that purpose.

39.—ARBITRATION.

10

In the event of any dispute between the parties hereto with respect to anything arising out of this Agreement or the interpretation thereof (save in respect of any matter with regard to which any other manner of determination or settlement is herein expressly provided) the matter in dispute shall be referred for decision to two arbitrators, one to be selected by the Government and the other by the Company. In case the two arbitrators so selected cannot agree they shall select a third arbitrator and the decision of any two of the three arbitrators shall be binding upon the parties hereto. In case the two arbitrators so selected cannot agree upon the selection of the third arbitrator, such third arbitrator shall be appointed by the Exchequer Court of the Dominion of Canada upon a request being made to such Court. A party who has not appointed an arbitrator, if the other party has appointed one, shall do so within five days after being notified in writing by such other party to do so and in default of such appointment such other party's arbitrator may act as sole arbitrator and his decision shall be binding. If the arbitrator, of either party shall fail to proceed with the consideration of the matters in dispute within five days after being required in writing by the other party's arbitrator to do so, such other party's arbitrator, if a third arbitrator has not been appointed, shall be at liberty to act as sole arbitrator and his decision shall be binding, or the other two arbitrators if a third has been appointed, may forthwith appoint an arbitrator in lieu of the one who has failed to proceed and the decision of two of such three arbitrators shall be binding upon all the parties hereto. The Company and the Intervenant shall not stop, suspend or delay work under this Agreement pending the outcome of any arbitration proceeding taken hereunder.

20

30

40

40.—NOTICES.

Any notices to be given under this Agreement to the Government or the Minister shall be addressed to the Deputy Minister of Munitions and Supply, Ottawa, Ontario.

Any notices to be given under this Agreement to the Company shall be addressed to Montreal Locomotive Works Limited, 215 St. James Street West, Montreal, Quebec.

Any notices to be given under this Agreement to the Intervenant shall be addressed to American Locomotive Company, 30 Church Street, New York City, New York.

All such notices shall be in writing and shall be delivered or sent by mail prepaid and registered.

10 Any party may by notice to the other party change the name or address to which notices hereunder may be sent.

#### 41.—SUPPLEMENTARY ACTS AND THINGS.

The parties hereto shall do and perform any and all such acts and things and shall sign, seal, execute and deliver all such deeds, documents, instruments and writings as may be necessary, useful or desirable in order more fully to evidence and/or to  
20 render effective the provisions of this Agreement and/or to give effect thereto.

#### 42.—PRIOR NEGOTIATIONS SUPERSEDED.

This Agreement shall supersede and cancel all previous discussions, negotiations and instructions either verbal or written between the Company, the Intervenant and the Government or the Minister or any of their respective agents or representatives referring to the subject matter hereof, but shall not relieve the  
30 Government from any liability heretofore incurred towards the Company as a result of the "go-ahead" letter dated the 30th day of August, 1940, addressed to the Company and authorizing commitments to be made by the Company in connection with the construction of a plant and the production of gun carriages, provided, however, that no further commitments shall hereafter be made by the Company under such "go-ahead" letter and that all commitments heretofore made by the Company under such "go-ahead" letter and all costs and expenses heretofore incurred by  
40 the Company under such "go-ahead" letter shall be deemed to be commitments made and costs and expenses incurred in the performance of this Agreement and shall be taken into account accordingly.

#### 43.—LAWS GOVERNING AGREEMENT.

This Agreement shall be in all respects subject to and interpreted in accordance with the laws of the Province of Quebec.

IN WITNESS WHEREOF this Agreement has been signed on behalf of His Majesty in right of Canada by the De-



puty Minister of Munitions and Supply of Canada and by the Comptroller and Secretary or Acting Secretary of the Department of Munitions and Supply of Canada and has been executed by Montreal Locomotive Works Limited as the Company and American Locomotive Company as the Intervenant under their respective corporate seals duly affixed thereto by their respective officers duly authorized in that behalf.

10 Signed and delivered  
on behalf of His Majesty  
in right of Canada  
in the presence of:  
R. L. McLEAN

G. K. SHIELDS,  
Deputy Minister.

Hugh H. TURNBULL,  
Acting Secretary.

Party of the First Part.

20 Signed, Sealed and  
delivered by the  
Company in the  
presence of  
John E. DUQUET

MONTREAL LOCOMOTIVE  
WORKS LIMITED

Duncan W. FRASER,  
President.  
John D. FINN,  
Secretary.

Party of the Second Part.

30 Signed, Sealed and  
delivered by the  
Intervenant in the  
presence of:  
John E. L. DUQUET

AMERICAN LOCOMOTIVE  
COMPANY,  
William C. DICKERMAN,  
Chairman.

John D. FINN,  
Secretary.

Party of the Third Part.

40 Department of Munitions and Supply  
Approved as to form by Legal  
Department  
F. M. COVERT

Date 21/10/40

Approved as to drawings specification,  
quantity, terms and price by  
Munitions Department.

E. P. TAYLOR  
Date 19/10/40

Director General of Munitions Production.  
Authorized by P.C. 5913, October 22/40.

EXHIBIT P-9

*Copy of Permit to build No. 205 of the City of Montreal  
Approved May 5th 1941.*

10

SPECIFICATIONS AND APPLICATION FOR  
PERMIT TO BUILD  
(1st or 2nd Class Building)

Montreal, December 19, 1940

To The Superintendent of Buildings:—

20 The undersigned hereby applies for a permit to build,  
according to the following Specifications:—

1. Location, No. Dickson Street; 2. Between the following  
streets Notre Dame and Hochelaga; 3. Mercier Ward; 4. Name  
of Owner, Montreal Locomotive Works Ltd.; Address, 215 St.  
James W.; 5. Name of Architect, T. Pringle & Sons Ltd.; Address,  
485 McGill St.; 6. Name of Builder, Sutherland Construction  
Co.; Address, 1440 St-Catherine St. W.; 7. Purpose of building,  
Factory; 8. How near the line of the street 15'0; 9. Will the build-  
30 ing be erected on solid or filled land, Solid; 10. Size of lot, Very  
large; 11. Size of building, No. of feet front, 770-9; No. of feet  
rear, 770-9; No. of feet deep, 410; No. of stories in height 1; 12.  
No. of feet in height from level of sidewalk to highest part of  
front wall, Foundation only; 14. Will foundation be laid on earth,  
rock or piles, earth; Material of foundation, concrete; 33. Estim-  
ated cost, \$78,000.00.

Signature of owner, or authorized representative:

40 SUTHERLAND CONSTRUCTION COMPANY,  
James M. Davis.

COPY  
Permit No. 205

APPLICATION FOR PERMIT TO BUILD  
(2nd Class Building)

No., Dickson Street; Ward, Mercier; Owner, Montreal  
Locomotive Works Ltd.; Costs \$78,000. Approved February 18,

1941; A. Cousineau, Sanitary Engineer. Approved: February 19th 1941; J. Alex. Léonard, for Superintendent of Buildings. Plans submitted, Jan, 2nd. 1941. Lines and Levels, 41-41.

**QUANTITIES OF MATERIALS FOR WATER RATES**

10           . Give here the exact quantities of the following materials to be used in the building :

	.....	Cubic yards of Masonry at 3 cts	\$.....
	.....	Ready Mixed Concrete at 3 cts	\$.....
	.....	Thousand Bricks           at 6 cts	\$.....
	.....	Supl. yds. of Plastering at 30 cts	\$.....
		per 100 yds .....	\$.....
		Total .....	\$.....
20	1	Permit .....	\$ 40.00
		Total .....	\$ 40.00
		Surtax 8% .....	\$ 3.20
			\$ 43.20
		By-laws Nos. ....	

30

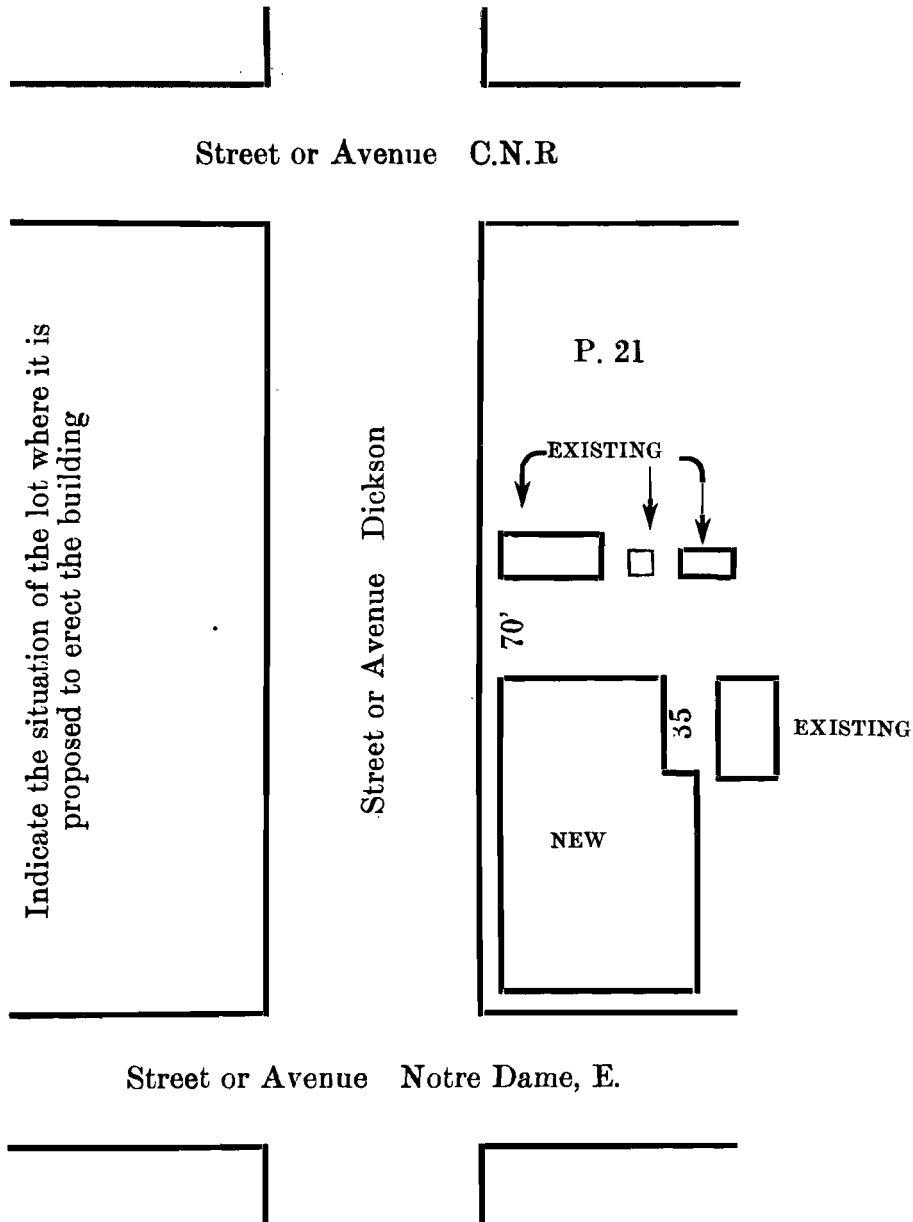
---

**IMPORTANT**

Plans and specifications must be submitted to the Sanitary Engineer, before permit be granted.

40           The Proprietor is liable for the water tax of its tenants, unless a separate and distinct supply pipe has been put in for each tenant etc., so that the City may at any time control the supply of water.

Vide: Articles 474-475 of the Charter.



COPY September 28th 1942

PUBLIC WORKS DEPARTMENT, TECHNICAL SERVICE

Montreal, February 18th 1941

PROCES-VERBAL of Lines and Levels

Ask for on the 13-2-41 — for Sutherland Construction. and given

on the 17-2-41 — by Mr. J. N. E. Bélanger, Ass. Eng., and Messrs. J. Trépanier P. L. Désaulniers, Chainmen.

The permanent sidewalk will be built at the following elevations on the street line. Permanent sidewalk.

10 The street line has been established as shown on the following sketch:—

J. COMEAU,  
Ass. Engineer.

This procès-verbal does not imply a permit to begin building operations, not even digging.

20 The original of this procès-verbal must be signed by the owner of the land, and returned to the City of Montreal, (room 408).

No building permit will be issued until this is done.

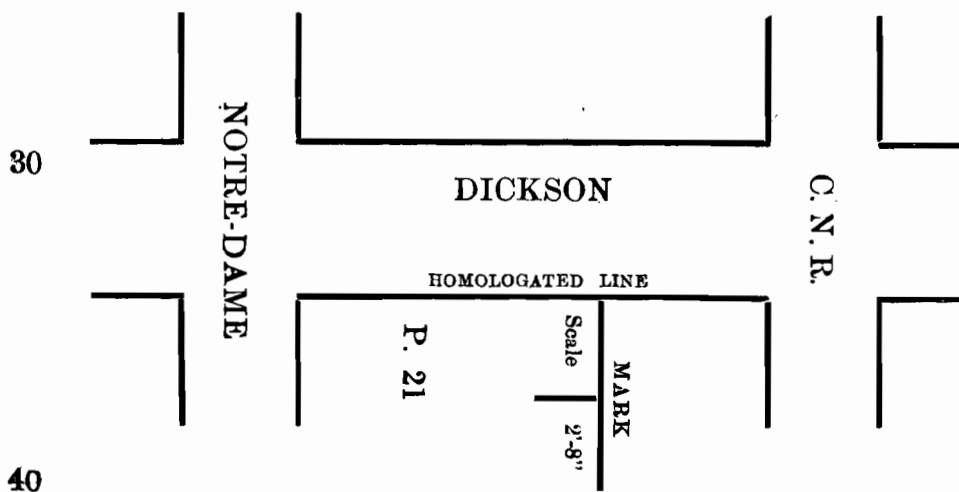


EXHIBIT P-10

*Copy of permit to build No 931 of the City of Montreal  
Approved May 5th 1941.*

10

SPECIFICATIONS AND APPLICATION  
FOR PERMIT TO BUILD  
(2nd. Class Building)

Montreal, 2/4/41

To the Superintendent of Buildings:—

20 The undersigned hereby applies for a permit to build,  
according to the following Specifications:—

1. Location, No. Notre Dame Est; 2. Between the following  
streets, Dickson and Lacoste; 3. Cadastral No., P-21, Mercier  
Ward; 4. Name of Owner, Montreal Locomotive, address. Lon-  
gue Pointe; 5. Name of Architect, T. Pringle & Son Ltd., ad-  
dress, 485 McGill St.; 6. Name of Builder, L. G. Ogilvie Co. Ltd.,  
address 1440 St. Catherine W.; 7., 1 factory; 8. How near the line  
of the street, 20; 9. Will the building be erected on solid or filled  
30 land, solid; 10. Size of lot: 500 feet front, deep, 800 feet; 11. Size  
of building, No. of feet front, 410; No. of feet rear, 360; No. of  
feet deep 770; 12. No. of feet in height from level of sidewalk to  
highest part of front wall 65; 14. Will foundation be laid on earth,  
rock or piles: earth, Material of foundation; concrete; 15. Thick-  
ness of external walls: 1st 12', 2d, 12'; C.G.B. 1st, 13'9", 12'2";  
17. What will be the material of front, Brick; sides, do; rear,  
do; 18. Will the roof be flat, pitch, mansard or hip: flat, Material  
of roofing, gravel; 20. What will be means of access to roof,  
Ladders; 29. Size of floor timbers or joints: concrete floor; 31.  
40 Size of floor rafters, steel; 33. Estimated cost \$1,020,000.00.

Signature of owner, or authorized representative:

L. G. Ogilvie & Company Limited,  
Per: G. C. Burgess,  
Address: 1440 St. Catherine St. W.

COPY  
Permit No. 931

APPLICATION FOR PERMIT TO BUILD  
(2nd Class Building)

No. Notre Dame E.; Ward, Mercier; Cad. No. P-21;  
10 Owner, Montreal Locomotive Works; Cost \$1,020,000.00; Ap-  
proved: April 2, 1941, A. Cousineau, C.E., Sanitary Engineer.  
Approved: May 5th, 1941, Jacques E. Laliberté, Superintendent  
of Buildings. Plan submitted April 2nd. 1941; Lines and Levels,  
41-41 & 41-180.

QUANTITIES OF MATERIALS FOR WATER RATES

20 Give here the exact quantities of the following materials  
to be used in the building:—

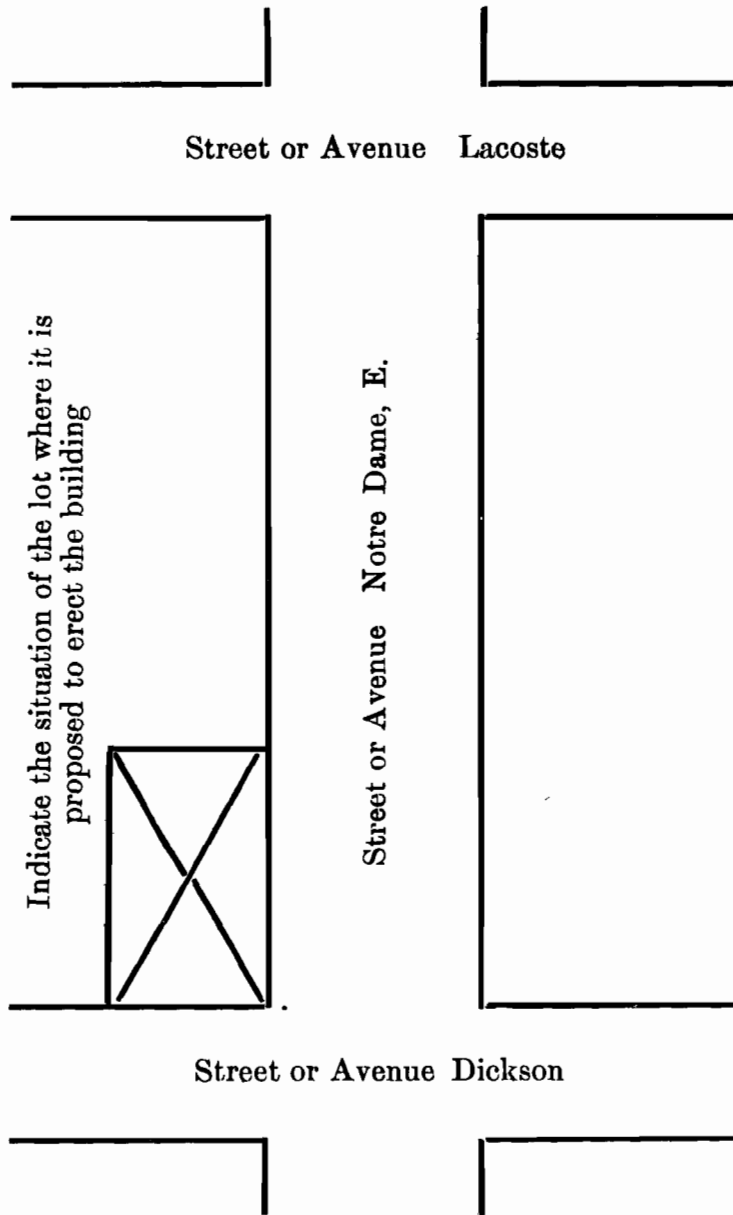
.....Cubic yards of Masonry at 3 cts \$.....	
.....Ready Mix Concrete at 3 cts \$.....	
70 Thousand Bricks at 6 cts \$	4.20
1500 Supl. yds. of Plastering at 30 cts \$.....	
per 100 yds. ....	\$ 4.50
	<hr/>
Total .....	\$ 8.70
1 Permit .....	at \$ 511.00
	<hr/>
30 Total .....	\$ 519.70
Surtax 8% .....	\$ 41.58
	<hr/>
By-laws No. 260 .....	\$ 561.28

IMPORTANT

40 Plans and specifications must be submitted to the Sanitary  
Engineer, before permit be granted.

The Proprietor is liable for the water tax of its tenants,  
unless a separate and distinct supply pipe has been put in for  
each tenant etc., so that the City may at any time control the  
supply of water.

Vide: Articles 474-475 of the Charter.



COPY September 28th 1942.

No. 41-180.

PUBLIC WORKS DEPARTMENT, TECHNICAL SERVICE

Montreal, April 23rd. 1941.

PROCES-VERBAL of Lines and Levels



Asked for on the 18-4-41 for Montreal Loco. Works, and given on the 22-4-41 by Mr. J. N. E. Bélanger, Ass. Eng. and Messrs. J. Trépanier - P. L. Désaulniers, Chainmen.

The permanent sidewalk will be built at the following elevations on the street line. Permanent sidewalk.

10

The street line has been established as shown on the following sketch:

Chas. A. Norris,  
Owner.

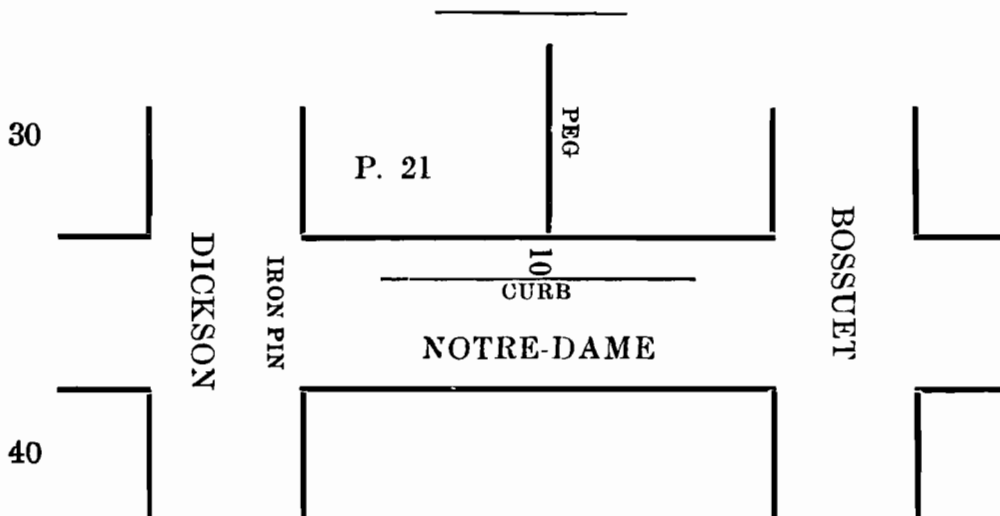
J. Comeau,  
Ass. Engineer.

This procès-verbal does not imply a permit to begin building operations, not even digging.

20

The original of this procès-verbal must be signed by the owner of the land, and returned to the City of Montreal, (room 408).

No building permit will be issued until this is done.



EXTRAIT du procès-verbal d'une séance spéciale ajournée du  
Conseil Municipal de Montréal, tenue le  
Mercredi, 31 janvier 1941.

L'ordre du jour étant lu pour prendre en délibération un  
rapport du Comité exécutif à l'effet d'approuver le plan soumis

par The Montreal Locomotive Works Limited pour la construction, à l'angle nord-est des rues Notre-Dame et Dickson, d'une usine devant servir aux industries de guerre, le rapport suivant est soumis et lu:—

LE COMITE EXECUTIF

10

a l'honneur de recommander, vu le rapport ci-joint du directeur des travaux publics et conformément à l'article 20 du règlement no 260, que soit approuvé le plan présentement soumis par The Montreal Locomotive Works Limited pour la construction à l'angle nord-est des rues Notre-Dame et Dickson, d'une usine de 832 pieds de longueur, de 408 pieds de largeur et d'une hauteur variable de 44 à 56 pieds, la charpente, les murs et le toit en devant être de matériaux incombustibles, et que permission soit accordée à ladite compagnie d'utiliser des panneaux d'amiante au lieu de maçonnerie dans la construction des murs extérieurs, cette usine devant servir aux industries de guerre.

20

Respectueusement soumis,

LE COMITE EXECUTIF,

(Signé) J.-O. Asselin,

Président,

30

(Signé) J.-Etienne Gauthier,

Greffier de la Cité.

Montréal, le 7 janvier 1941.

Sur la proposition du conseiller Asselin, appuyée par le conseiller Parent, il est

RESOLU:—Que ledit rapport soit adopté.

40

(approuvé)

La Commission Municipale de Québec,  
L'administrateur délégué,

(Signé) Honoré Parent.

(Certifié)

J. A. Mongeau,

Greffier de la Cité.

EXHIBIT P-5

*Extract from the Valuation Roll of immoveable property for  
the fiscal year commencing May 1st, 1941.*

10

CITY OF MONTREAL

Extract from the Valuation Roll of Immeoveable Property for the Fiscal Year Commencing May 1st, 1941 — Mercier Ward — Notre-Dame East Street — Electoral District 10 — Account No. 350540 — Location of Property. Name and address of owner: 5790-5910 Notre-Dame East, Montreal Locomotive Works Ltd., 275 St-Jacques Ouest — Cadastre, Occupation: P-21, P-27 — Sub-division. Denomination: N., Railway, Motive  
20 Power — Land: 368,400. — Buildings: 775,600., 6,000., 50,000. — Total Value. Neutral: 1,144,000. 6,000. 50,000. — Maintenance of Sidewalks. Front Feet: 1950.

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EXHIBIT P-7

*Copy of Bill of the City of Montreal showing the Real Estate  
Assessment for the year commencing May 1st, 1941.*

30

Real Estate Assessment for the year commencing 1st May — Account No. 350540 — Location of Property: 5790-5910 N.-Dame E. — Cadastre and Subdivision: P-21, P-27 — Owner: Montreal Locomotive Works Ltd, 215 St. Jacques St. W. — Denomination: N — Account No. 350540 — Valuation in \$: 1,293,600 — Composite Tax: 35,858.59 — Maintenance of Sidewalks: Land & Building — Total 35,858.59 — Payé 30-9-41.

40

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EXHIBIT P-8

*Copy of a detailed statement prepared by the City of Montreal  
containing an analysis of the Municipal valuations as  
well as the taxes on immoveables.*

Analyse des évaluations municipales ainsi que des taxes foncières sur propriétés appartenant à la Montreal Locomotive Works Ltd.

EVALUATIONS		1941
Lot P-21 P-27		350540
		(1)
	Terrain	\$368,400.00
	Bâtiment	775,600.00
	Chemin de fer	6,000.00
	Pouvoir moteur	50,000.00
		<hr/>
10		\$1,200,000.00
	Plus - Majoration	
	Loi 5, Geo. VI, chap. 73	
	7.8%	93,600.00
		<hr/>
	Evaluation totale	\$1,293,600.00
		<hr/>
TAXES FONCIERES		
	Municipale	\$ 14,876.40
	Surtaxe	1,190.11
20	Règlement 835	129.36
	Excédent de pavage	1,293.60
	Excédent divers	1,681.68
	Entretien des trottoirs	1,164.24
	Taxes scolaires	15,523.20
		<hr/>
		\$ 35,858.59
		<hr/>

30 (1) Nouveau bâtiment, taxes pour 181 jours.

#### EXHIBIT P-27

*Extract from the Valuation Roll of Immoveable property for the fiscal year commencing May 1st, 1941.*

#### CITY OF MONTREAL

40 Extract from the Valuation Roll of Immoveable Property for the Fiscal Year commencing May 1st, 1941 — Mercier Ward — Notre-Dame East Street — Electoral District 10 — Account No. 350540 — Location of Property. Name and Address of Owner: 5781 Notre-Dame Est; 5790-5910 Notre-Dame Est; Montreal Locomotive Works Ltd., 275 St-Jacques Ouest; Cadastre, Occupation: P-21, P-27 — Sub-division, Denomination: N.; Railway; Motive Power — Land: 368,400. — Buildings: 1,264,200.; M.P. 13,600.; 775,600.; 6,000.; 50,000. — Total Value, Neutral: 1,277,800.; 1,144,000.; 6,000.; 50,000. — Maintenance of Sidewalks, Front Feet: 1950 — B. de R. cert. no. 41/7452; (Nouv. Bât. complété 1/11/41).

EXHIBIT P-28

10 *Copy of Bill of the City of Montreal showing the Real Estate  
Assessment for the year commencing May 1st, 1941  
but covering the period from Nov. 1st, 1941  
to April 30th 1942.*

CITY OF MONTREAL

Year: 1941

20 Real Estate Assessment for the year commencing 1st May  
— Account No. 350540 — Location of Property: 5781 N.-Dame  
E. — Cadastre and Subdivision: P-21 etc. M. Power — Owner:  
Montreal Locomotive Works Ltd., 215 St. Jacques St. W. — de-  
nomination: N. — Account No. 350540 MP — Valuation in \$:  
1,362,808.; 14,660 — Composite Tax: 18,934.78 — Maintenance of  
Sidewalks: New Building only; Motive Power Cert. 364 — Total  
18,934.78 — Tax for 181 days — 1 nov. 41 to 30/4/42.

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EXHIBIT P-29 •

30 *Copy of Certificate No. 692 issued by the Chief Assessor of the  
City of Montreal to the Director of Finance  
of the City of Montreal.*

CITY OF MONTREAL  
ASSESSORS DEPARTMENT

No. 692

40 TO THE DIRECTOR OF FINANCE

Name and Address: Montreal Locomotive Works Ltd.,  
5781 Notre Dame East — Occupation: Ordnance Plant. —  
Water: 63430. — Business: 63430. — Period commencing: Nov.  
1st, 1941 — Account no. 350677-1 — 10/4/1942.

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EXHIBIT P-30

10 *Copy of Bill of the City of Montreal for Water and Business  
Taxes for the year commencing May 1st, 1941 but covering  
the period from November 1st 1941 to April 30th 1942.*

CITY OF MONTREAL

20 Account for Water and Business Taxes for the year com-  
mencing 1st May 1941 — Account No. 354988 — Occupant: Mont-  
real Locomotive Works Ltd., 5781 Notre-Dame Est — Occupa-  
tion: Ordnance Plant, 350677-1-692 — Payable on or before Apr.  
24-42 — Business Tax: 63430 — Taxe 6343.00 — Proportionate  
Charge: 3,171.50 — Surtax 8% : 253.72 — Total 3,425.22 — Period:  
1st Nov. 41 — 30 Avr. 42.

---

EXHIBIT P-11

30 *Copy of Notice given by the Assessors to the Chief Assessor  
of the City of Montreal.*

VILLE DE MONTREAL

Montréal, le 10 Nov. 1941

A  
M. A. E. Hulse, Chef Estimateur  
Département des Estimateurs.

40 Veuillez prendre avis que j'ai fait, aujourd'hui l'évalua-  
tion de la nouvelle bâtisse plus bas mentionnée, tel que détaillé  
sur la carte fiche annexée.

No. de compte: 350540 — No. de rue 5781 — Rue: Notre-  
Dame St. E. — Cad.: P-21, P-27 — Valeur des bâtisses: \$1,264,-  
200; N.P. 13,600. — Total: \$1,277,800 — Signé, W. A. Genest,  
J. Nadeau, Estimateurs. — From Nov. 1st 1941. — Old building  
still standing.

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EXHIBIT P-12

*Copy of Notice addressed by the Board of Revision of Valuations  
of the City of Montreal to Montreal Locomotive Works Ltd.*

10

CITY OF MONTREAL

Board of Revision of Valuations — City Hall.

Montreal, November 20th, 1941.

Montreal Locomotive Works Limited,  
215 St. James St. West,  
Montreal.

20

The building bearing civic number 5781 — Notre-Dame E. Street — Mercier Ward — Account No. 350540 — which was completed and ready to be occupied on the 1st day of November 1941 has been valued by the assessors of the City of Montreal at (\$1,264,200.) One Million Two Hundred and Sixty Four Thousand Two Hundred Dollars building; (\$13,600.) Thirteen Thousand Six Hundred Dollars, Motive Power.

30

It is proposed to enter this valuation on the roll for the fiscal year 1941-42.

Accordingly the Board of Revision of Valuations hereby notifies you that, if you wish to state reasons why the roll should not be so modified, you must appear before the said Board within a delay of fifteen days.

The Board of Revision of Valuations,

40

(Signed) A. Pérusse,  
Secretary.

---

EXHIBIT P-13

Copy of letter addressed to the Board of Revision of Valuations  
of the City of Montreal by Messrs. Kearney, Duquet & MacKay,  
10 Attorneys acting on behalf of Montreal Locomotive  
Works Limited.

C O P Y  
KEARNEY, DUQUET & MACKAY  
The Royal Bank Building

Montreal, November 28th, 1941.

Board of Revision of Valuations,  
City Hall,  
20 Montreal, Que.

Re: *Montreal Locomotive Works, Limited Building*  
*Bearing Civic Number 5781 Notre Dame Street*  
*East, Mercier Ward, Account No. 350540.*

Dear Sirs:—

We refer to your notice dated November 20th, 1941, address-  
30 ed to Montreal Locomotive Works, Limited, advising them that  
the building bearing civic number 5781 Notre Dame Street East,  
Mercier Ward, Account No. 350540, which was completed and  
read to be occupied on the 1st day of November, 1941, has been  
valued by the Assessors of the City of Montreal at (\$1,264,200.00)  
One million two hundred and sixty-four thousand two hundred  
Dollars, building and (\$13,600) Thirteen thousand six hundred  
Dollars, motive power.

In connection with this building and motive power, we have  
40 been instructed by Montreal Locomotive Works Limited to ad-  
vise you that they are the property of His majesty the King in  
Right of Canada and presumably therefore are not subject to  
assessment.

The building is occupied by His Majesty the King in Right  
of Canada and is operated by Montreal Locomotive Works Limi-  
ted for and on behalf of His Majesty the King in Right of Can-  
ada as Manager under an Agency Contract passed on October  
23rd, 1940.



The land upon which the building is constructed is registered in the name of Montreal Locomotive Works Limited but is under promise of sale to His Majesty the King in Right of Canada and will be conveyed to the latter by Notarial Deed within the next few days.

- 10 This letter therefore is for the purpose of drawing the foregoing facts to your attention and to serve as a protest against any action on the part of the City of Montreal pursuant to which the building, motive power and land may be made the subject of an assessment.

Yours very truly,

JELD:MB

(Signed) Kearney, Duquet & MacKay.

- 20 P.S.—I will not be in my office tonight to sign this letter after it is typed so I am asking my Secretary to sign it on my behalf and to send it along to you.

J.E.L.D.

---

EXHIBIT P-14

- 30 *Copy of letter addressed to the Secretary of the Board of Revision of Valuations of the City of Montreal by Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada.*

C O P Y

December 1, 1941.

- Albert PÉrusse, Esq.,  
Secretary,  
The Board of Revision of Valuations,  
40 City Hall,  
Montreal, P.Q.

Dear Sir:—

Montreal Locomotive Works Limited of 215 St. James Street West, Montreal, have forwarded to me a copy of your letter dated November 20, 1941, in which you state that building bearing civic number 5781 Notre Dame Street East, was completed and ready to be occupied on the 1st day of November 1941 has been valued by the assessors of the City of Montreal at \$1,264,-

200.00 and \$13,600.00 motive power. You also state that it is proposed to enter this valuation on the roll for the fiscal year 1941-42.

For your information I wish to set out below the nature of the agreements between His Majesty the King in right of Canada and Montreal Locomotive Works Limited (hereinafter called  
10 “the Company”).

FIRST:—By Agreement dated October 23, 1940, the Canadian Government entered into a contract with the Company under the provisions of which the Company agreed to design, construct and equip a plant suitable for the production of tanks and gun carriages, the plant to be erected on lands to be deeded to the Government. Under clause 12 of the agreement it is provided as follows: “The Government acknowledges and agrees  
20 that the Company is acting on behalf of the Government and as its agent in all matters pertaining to the performance of this Agreement and that the Government shall indemnify and hold the Company harmless from any and all expenditures, claims and liabilities of any nature whatsoever arising out of the performance of this Agreement in accordance with the terms hereof.” Under clause 14 it is provided as follows: “The title to the new plant and to the equipment and accessories thereof and inventories of all materials and supplies on hand shall at all times be vested in the Government which shall assume and bear all risks  
30 and liabilities incidental to such ownership”. The foregoing contract is known as the Construction Contract.

On the same date the same parties entered into another contract, known as the Production Contract. Under clause 1 of the production contract it is provided as follows: “The Government hereby acknowledges and agrees that the Company is acting on behalf of the Government and as its Agent in all matters pertaining to the performance of this Agreement and that the Government shall indemnify and hold the Company harmless  
40 from any and all expenditures, claims and liabilities of any nature whatsoever arising out of the performance of this Agreement in accordance with the terms hereof”. Under clause 2 of the production contract it is provided: “The Company shall administer, manage and operate the plant and shall produce therein *for the account of the Government*” gun carriages and tanks at certain rates, and in clause 11 of the production contract it is provided as follows: “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 this Agreement (including any free issue) shall at all times be vested in the Government.

I have pointed the foregoing out to you in detail so that you will understand, first, that the Government is the sole owner of the plant, machinery, equipment, land and all inventory and everything in connection therewith. Second, that the Company has no ownership whatever in any of the foregoing. Third, that the Company, in effect, has no interest either as lessee or occupant or otherwise of the premises or any part thereof. Fourth, that the Company does nothing but operate the plant for the account of the Government.

In view of the foregoing it is the contention of the Government that no assessment may be made with respect to the property or with respect to the operation of the plant, and for this reason I am asking you, on behalf of the Government, to withdraw the valuation by the assessor.

If there is any additional information that you may require with respect to this matter, will you please advise me at once.

Yours very truly,

(Signed) J. Pettigrew,  
Deputy Minister.

EXHIBIT P-15

*Copy of letter addressed by the Board of Revision of Valuations of the City of Montreal to Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works Limited.*

December 3rd, 1941.

Messrs. Kearney, Duquet & MacKay,  
Barristers & Solicitors  
The Royal Bank Building,  
Montreal.

*Re: Montreal Locomotive Works, Limited, Building bearing civic number 5781 Notre Dame St. East, Mercier Ward. Account No. 350540.*

Dear Sirs:—

We are in receipt of your letter dated the 28th of November in which you state that you have been instructed by the Montreal Locomotive Works Limited to advise us that the above

designated immoveables are the property of His Majesty the King and therefore not subject to assessment.

10 Our notice of the 20th of November was given to your client in virtue of article 375a of the Charter which refers to the valuation of new buildings. Following the interview we had with your Mr. Duquet, we understand that your client does not contest the amount of valuation fixed by the assessor; if it is so, this Board will simply issue a certificate ratifying the said valuation and your letter of November 28th addressed to this Board will be referred to the Chief Assessor for all legal purposes.

Yours truly,

Board Of Revision Of Valuations,  
Per: (Signé) Albert Pérusse,  
Secretary.

20 AP/AM.—Copy.

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EXHIBIT P-16

*Copy of letter addressed by the Board of Revision of Valuation of the City of Montreal to Mr. J. Pettigrew on behalf of the Deputy Minister of Munitions and Supply of Canada.*

30 J. Pettigrew, Esq.,  
for Deputy Minister of  
Munitions and Supply,  
Ottawa, Canada.

December 4th, 1941

*Re: Montreal Locomotive Works, Limited, Building  
bearing civic number 5781 Notre Dame St. East,  
Mercier Ward. Account No. 350540.*

Dear Sir:—

40 We are in receipt of your letter of the 1st inst., re above and note has been taken of its contents.

You will find herewith copy of our reply to Messrs. Kearney, Duquet & MacKay's letter on the same subject and your letter will also be referred to the Chief Assessor for all legal purposes.

Yours truly,

Board Of Revision Of Valuations,  
Per: (Signé) Albert Pérusse,  
Secretary.

AP/AM. Encl. — Copy.

EXHIBIT P-17

10 *Copy of letter addressed by the Secretary of the Board of Revision  
of Valuations of the City of Montreal to Mr. A. E. Hulse,  
the Chief Assessor of the City of Montreal.*

C O P Y

BOARD OF REVISION OF VALUATIONS  
CITY HALL

Montreal, December 4th, 1941.

20 Mr. A. E. Hulse,  
Chief Assessor,  
City Hall,  
Montreal.

*Re: Montreal Locomotive Works, Limited, Building  
bearing civic number 5781 Notre Dame St. East,  
Mercier Ward. Account No. 350540.*

Dear Sir:—

30 Please find enclosed letters re above received from Messrs.  
Kearney, Duquet & MacKay, Barristers & Solicitors, and from  
Mr. J. Pettigrew for Deputy Minister of Munitions and Supply,  
Ottawa, Canada.

40 We have replied that our notice of the 20th of November  
was given in virtue of Article 375a of the Charter and if the  
amount of valuation fixed by the Assessors was not contested the  
Board would simply issue a certificate ratifying the said valua-  
tion and also that their letter would be referred to the Chief  
Assessor for all legal purposes.

Yours truly,

(Signé) Albert Pérusse,  
Secretary.

AP/AM  
Encl. 2

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EXHIBIT P-18

10 *Copy of letter addressed by the Chief Assessor of the City of  
Montreal to Messrs. Kearney, Duquet & MacKay,  
Attorneys acting on behalf of Montreal  
Locomotive Works, Limited.*

C O P Y

December, 4, 1941.

20 Messrs. Kearny, Duquet & MacKay,  
Barristers & Solicitors,  
Royal Bank Building,  
Montreal.

*Re: Montreal Locomotive Works, Limited, Building  
bearing civic number 5781 Notre Dame St. East,  
Mercier Ward. Account No. 350540.*

Dear Sirs:—

30 The Secretary of the Board of Revision of Valuations has  
sent me your letter of November 28th last advising that the build-  
ing and motive power referred to in the notice you received from  
the Board is the property of His Majesty the King and there-  
fore not subject to assessment.

40 As explained to me by Mr. Duquet, the Montreal Loco-  
motive Works Ltd. is operating the plant under a management  
Fee for the benefit of the Company's Shareholders and, accord-  
ing to the provisions of the City Charter, it is The Montreal  
Locomotive Works Ltd. (with its employees) who is occupying  
the property and liable to be entered on the Valuation Roll as  
occupant of Government Property and responsible for payment  
of the taxes.

Yours truly,

(Signed) A. E. Hulse,  
Chief Assessor.

AEH:DB

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EXHIBIT P-19

10 *Copy of letter addressed to the Board of Revision of Valuations  
of the City of Montreal by Mr. J. Pettigrew on behalf  
of the Deputy Minister of Munitions  
and Supply of Canada.*

C O P Y

DEPUTY MINISTER OF MUNITIONS AND SUPPLY  
OTTAWA, CANADA.

December 8, 1941

20 Attention: The Secretary.

Re: *Montreal Locomotive Works, Limited.*

Dear Sirs:—

30 This will acknowledge receipt of your letter of the 4th  
instant with copy of your reply to Messrs. Kearny, Duquet &  
MacKay, which we have noted. We further note that the letter  
has been referred to the Chief Assessor and shall await further  
advice from you.

Yours very truly,

(Signed) J. Pettigrew,  
Deputy Minister.

40 Board of Revision of Valuations,  
City Hall,  
Montreal, Que.

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EXHIBIT P-20

*Copy of letter addressed to the Board of Revision of Valuations  
by Mr. J. E. L. Duquet, attorney acting on behalf of  
Montreal Locomotive Works, Limited.*

10

C O P Y

KEARNEY, DUQUET & MACKAY,  
Barristers & Solicitors  
The Royal Bank Building

Montreal, December 9th, 1941

Board of Revision of Valuations,  
City Hall,  
Montreal, Que.

20

Attention Mr. Albert Pérusse.

Re: *Montreal Locomotive Works, Limited, Building*  
*bearing civic number 5781 Notre Dame St. East,*  
*Mercier Ward. Account No. 350540.*

Dear Sirs:—

This will refer to your letter of December 3rd.

30

Montreal Locomotive Works, Limited *is not contesting*  
*the amount of valuation on the building and motive power as such*  
but is contesting the fact that such building and motive power  
are valued in the hands of Montreal Locomotive Works, Limited  
either as owner or as occupant.

40

As the Deputy Minister of Munitions and Supply pointed  
out in his letter to you dated December 1st, 1941, the building and  
motive power are the property of His Majesty the King in Right  
of Canada and, under the terms of the contract between His Ma-  
jesty and Montreal Locomotive Works, Limited, the building and  
motive power cannot be said to be occupied by Montreal Loco-  
motive Works Limited.

Under these circumstances the Company believes that the  
name of the owner and occupant on the Valuation Roll should  
be shown as His Majesty the King in Right of Canada and not  
as Montreal Locomotive Works Limited.

Yours very truly,

JELD:MB  
cc: Mr. Hulse.

(Signed) J. E. L. Duquet.



EXHIBIT P-21

*Copy of letter addressed to Mr. A. E. Hulse, Chief Assessor of the City of Montreal, by Messrs. Kearney, Duquet & MacKay, Attorneys acting on behalf of Montreal Locomotive Works, Limited.*

10

C O P Y

KEARNEY, DUQUET & MACKAY  
The Royal Bank Building

A. E. Hulse, Esq.  
Chief Assessor,  
City Hall,  
Montreal, Que.

December 9th, 1941

20

*Re: Montreal Locomotive Works, Limited, Building bearing civic number 5781 Notre Dame St. East, Mercier Ward. Account No. 350540.*

Dear Sir:—

This will acknowledge receipt of your letter of December 4th, 1941.

30

We have been directed by His Majesty the King in Right of Canada and Montreal Locomotive Works, Limited, to contest on their behalf against the valuation, assessment and tax rolls of the City of Montreal which purport to show the building which has been valued at \$1,264,200 and the motive power which has been valued at \$13,600 as being owned or occupied by Montreal Locomotive Works Limited and thus subject to taxation.

40

As we have already pointed out to you and as the Deputy Minister of Munitions and Supply has indicated in a letter dated December 1st, 1941, addressed to the Secretary of the Board of Revision of Valuations, the building and motive power in question are the property of and are occupied by His Majesty the King in Right of Canada.

It is proposed to appeal from any decision to the contrary either by yourself as Chief Assessor, or by the Board of Revision of Valuations and we would be pleased to receive formal notification of your judgment in the matter as soon as it has been determined.

Yours very truly,

(Signed) Kearney, Duquet & MacKay.

JELD:MB  
cc: Mr. Pérusse.

EXHIBIT P-22

10 *Copy of letter addressed to Messrs. Kearney, Duquet & MacKay,  
Attorneys acting on behalf of Montreal Locomotive  
Works, Limited, by Mr. A. E. Hulse, Chief Assessor  
of the City of Montreal.*

C O P Y

December 11th, 1941

20 Messrs. Kearney, Duquet & MacKay,  
Barristers & Solicitors,  
Royal Bank Building,  
Montreal.

*Re: Montreal Locomotive Works, Limited, Building  
bearing civic number 5781 Notre Dame St. East,  
Mercier Ward. Account No. 350540.*

Dear Sirs:—

30 I am in receipt of your letter of the 9th instant in which  
you state it is proposed to appeal from any decision assessing the  
new buildings and motive power to the Montreal Locomotive  
Works Limited.

When I receive the Certificate of the Board of Revision  
fixing the value of the new buildings and motive power, I am  
obliged by law to make the change on the Valuation Roll for the  
current year. On that Roll, which came into force on March 1st  
last, no other proprietor of the property in question is shown  
but The Montreal Locomotive Works Limited.

40

Yours truly,

AEH:DB

(Signed) A. E. Hulse,  
Chief Assessor.

---

EXHIBIT P-23

10 *Copy of Certificate issued December 12th 1941 by the Board of Revision of Valuations of the City of Montreal to the Chief Assessor of the City of Montreal.*

CITE DE MONTREAL

Compte No 350540 — Certificat d'estimation No 41/7452 — Délivré au Chef Estimateur par le Bureau de Revision — Le propriétaire ou locataire, en cette cause a été avisé de comparaître et a comparu ou n'a pas comparu, et la décision ci-dessous a été rendue par le bureau le 11 décembre 1941 — Situation de la propriété: 5781 Notre-Dame E. — Nom du propriétaire: 20 Montreal Locomotive Works Limited — Estimation: \$1,264,200. M.P. 13,600. — Bâtiment prêt à être occupé le 1er novembre 1941 — Certificat émis le 12 décembre 1941. Pour l'année budgétaire 1941-42. — Signé Camille Tessier, Président Bureau de Revision.

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EXHIBIT P-24

30 *Copy of letter addressed to Mr. J. Pettigrew for the Deputy Minister of Munitions and Supply of Canada by the Secretary of the Board of Revision of Valuations of the City of Montreal.*

C O P Y

December 12th, 1941

Mr. J. Pettigrew,  
for Deputy Minister of  
Munitions and Supply.  
40 Ottawa, Canada.

Re: *Montreal Locomotive Works, Limited, Building bearing civic number 5781 Notre Dame St. East, Mercier Ward. Account No. 350540.*

Dear Sir:—

Further to your letter of the 8th inst., I now wish to advise you that this Board, at its sitting of the 11th, seeing that the valuation of the building and motive power, as such, was not contested, authorized the changes on the Valuation Roll and issued its certificate to the Chief Assessor.

I wish to advise you also that the Board has no jurisdiction on the question of ownership and that the matter should be dealt with by the Chief Assessor.

Yours truly,

10

Board Of Revision Of Valuations,  
Per: (Signé) Albert Pérusse,  
Secretary.

AP/AM.

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EXHIBIT P-25

20 *Copy of letter addressed to Messrs. Kearney, Duquet & MacKay,  
Attorneys acting on behalf of Montreal Locomotive Works  
Limited, by the Secretary of the Board of Revision  
of Valuations of the City of Montreal.*

C O P Y

December 12th, 1941.

Messrs. Kearney, Duquet & MacKay,  
Barristers & Solicitors,  
The Royal Bank Building,  
Montreal.

30

*Re: Montreal Locomotive Works, Limited, Building  
bearing civic number 5781 Notre Dame St. East,  
Mercier Ward. Account No. 350540.*

Dear Sirs:—

I have submitted to the Board at its sitting of the 11th inst., your letter of the 9th re above.

40

The Board gave me instructions to inform you that it has no jurisdiction on the question of ownership and that it should be dealt with the Chief Assessor, also seeing that the valuation of the building and motive power, as such, was not contested it authorized the changes on the Valuation Roll and issued its certificate to the Chief Assessor.

Yours truly,

Board Of Revision Of Valuations,  
Per: (Signé) Albert Pérusse,  
Secretary.

AP/AM.

EXHIBIT P-26

*Copy of Certificate issued by the Chief Assessor of the City of  
Montreal to the Director of Finance of the City of Montreal.*

10

CITY OF MONTREAL  
Assessors Dept.

18 Dec. 1941.

Board of Rev. Cert. No. 41/7452 — 35 Mercier — No. 364  
— Certificate to the Director of Finance for Revision of the Real  
Estate Assessment for Year 1941/42 — Location of Property:  
5781 Notre-Dame E. — Cadastre and Subdivision: P-21 etc. —  
Account No. 350540 — Proprietor: Montreal Locomotive Works  
20 Limited — Valuation, Buildings: Nouveau bâtiment, \$1,264,200.;  
M.P. 13,600. — Denomination: N. — Building ready to be occu-  
pied 1er Novembre 1941 — (Signé) A. E. Hulse, Chief Assessor.

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EXHIBIT P-4

*Certified notarial copy of Deed of Sale by Montreal Locomotive  
30 Works Limited in favour of His Majesty the King in Right  
of Canada before Mtre Joseph C. B. Walsh  
under number 13263 of his minutes.*

ON THIS twenty-seventh day of February nineteen hundred  
and forty-two;

BEFORE Mtre JOSEPH C. B. WALSH, the undersigned Notary  
for the Province of Quebec, practising at the City of  
Montreal;

40 APPEARED:—

MONTREAL LOCOMOTIVE WORKS, LIMITED  
(Formerly the Locomotive and Machine Company of Montreal  
Limited), a body corporate, duly incorporated, having its Head  
Office and principal place of business at the said City of Mont-  
real, the name thereof having been changed by Supplementary  
Letters Patent dated the fifth day of February nineteen hundred  
and eight, and herein acting and represented by WILLIAM S.  
MORRIS, of the said City of Montreal, its Vice-President, and

for all purposes hereof duly authorized by virtue of a Resolution passed at a Meeting of the Directors on the 23rd October 1941, a duly certified copy whereof remains hereunto annexed and signed for identification by the said William S. Morris and the undersigned Notary;

PARTY OF THE FIRST PART;

10 AND

HIS MAJESTY THE KING, in Right of Canada, herein represented by the HONOURABLE CLARENCE DECATUR HOWE, His Majesty's Minister of Munitions and Supply of Canada, herein acting and represented by FREDERICK FIELDHOUSE CLARKE, Esquire, Chief Land Surveyor and Property Commissioner for the Canadian National Railways, at Montreal, his Attorney for all purposes hereof duly authorized under Power of Attorney executed on the twenty-fifth day of February nineteen hundred and forty-two, which said Power of Attorney remains hereunto annexed and signed for identification by the said Frederick Fieldhouse Clarke and the undersigned Notary;

PARTY OF THE SECOND PART:

Which said Parties declared unto me, the said Notary, as follows, to wit:—

30 Whereas by Memorandum of Agreement made between the Parties hereto under private signature and bearing date the twenty-third day of October nineteen hundred and forty, the Party of the First Part had undertaken to design, construct and equip for and on behalf of the Party of the Second Part, as his Agent, at his expense and as his property, a new plant (the said new plant as fully designed, constructed and equipped, being hereinafter called the "new plant"), on the premises hereinafter described, being the premises of the Party of the First Part, and to sell, transfer, make over and assign the said premises to the Party of the Second Part; and

40

Whereas in accordance with the said Memorandum of Agreement the said premises hereinafter described have been determined by the Party of the First Part, with the approval of the Minister of Munitions and Supply of Canada, as being the premises upon which the said new plant is located and as being the premises to be sold, transferred, made over and assigned to the Party of the Second Part;

NOW THEREFORE, THESE PRESENTS AND I, the said Notary Witness that the Parties hereto have made and entered into the following Agreement, namely:—

The said Party hereto of the First Part hereby sells, transfers, makes over and assigns with legal warranty and free and clear of encumbrances saving the servitudes and reserves hereinafter mentioned Unto the said Party hereto of the Second Part, present and accepting as Purchaser, the following immoveable property, namely:—

10

### DESCRIPTION

A certain area of land known and designated upon the Official Plan and Book of Reference of the Cadastre of the Parish of Longue-Pointe, County of Hochelaga, as being subdivision number two thousand two hundred and ten of original lot number twenty-one (21-2210).

20 It is bounded in front to the South-East by Notre Dame Street East; upon the South-West by the part of original lot number twenty (20 pt.) now known as Dickson Street; upon all other sides by another part of original lot number twenty-one (21 pt.).

It is more accurately described as being all that area which is included within the following operations:—

30 Beginning at a point formed by the intersection of the dividing line between lot subdivision number two thousand two hundred and ten of original lot number twenty-one and original lot number twenty (21-2210 & 20) with the North-Westerly side of Notre Dame Street East; thence:—

Following this said dividing line in a North-Westerly direction for a distance of eight hundred and ninety-three feet and one inch (893' 1"); thence:—

40 In a North-Easterly direction upon a bearing at right angles to the aforesaid dividing line for a distance of four hundred and five feet and six inches (405' 6"); thence:—

In a South-Easterly direction upon a bearing parallel to the direction of the aforesaid dividing line for a distance of two hundred and fifty-one feet and eleven inches (251' 11") thence:—

In a North-Easterly direction upon a bearing at right angles to the direction of this said dividing line for a distance of ninety-two feet and four inches (92' 4"); thence:—

NO - 893  
NE - 405  
SE - 257  
NW - 224



In a South-Easterly direction upon a bearing parallel to the direction of this said dividing line for a distance of five hundred and forty-one feet and three inches (541' 3") to an intersection with the North-Westerly side of Notre Dame Street East; thence:—

10 Following this North-Westerly side of Notre Dame Street East in a South-Westerly direction to the point of beginning.

The interior angle at the Southerly Corner of this property adjacent to Notre Dame Street East is seventy-eight degrees and thirty-nine minutes (78 deg. 39 min.).

20 These operations include an area of three hundred and ninety-six thousand four hundred and eighty-four square feet (396,484) English measure, and more or less.

30 The whole as shown outlined in yellow on a Plan prepared by C. C. Lindsay, C.E. & Q.L.S., numbered 17897 B and dated the eighth day of October nineteen hundred and forty-one, and which Plan remains hereunto annexed, marked B, and signed for identification by the Parties hereto and the undersigned Notary, and the whole together with all rights, members and appurtenances pertaining thereto without exception or reserve of any kind on the part of the Party of the First Part except as herein indicated; (the said immovable property being herein called the "sold premises").

#### SERVITUDES AND RESERVES

The sold premises are conveyed subject to the right of passage reserved in the Party of the First Part's Deed of Acquisition of the sold premises hereinafter mentioned as affecting the South-West twenty feet (20') thereof.

40 The sold premises shall carry with them and be subject to the right of way and passage as created under the terms of a Deed of Servitude made between the Party of the First Part and Montreal Industrial Land Company Limited before Joseph C. B. Walsh, Notary, on the 27th day of February nineteen hundred and forty-two and registered in the Registry Office for the Registration Division of Montreal under No. 518543, said right of way and passage to be exercised in common with others having rights therein, (including the said Party of the First Part which still remains proprietor of some of the lands in favor of which the said rights exist), in, over and upon that certain strip of land described as follows:—

A strip of land containing fifty feet in width by eleven hundred feet (1100') in depth in the North-East line and eleven hundred and ten feet (1110') in depth in its South-West line, and bounded to the South-West by part of lot number twenty (20) on the Official Plan and Book of Reference of the Parish of Longue Pointe, in the County of Hochelaga, to the North-East  
10 partly by part of lot subdivision number two thousand two hundred and ten of the subdivision of lot number twenty-one (21-2210) on the said Official Plan and Book of Reference, and partly by part of the unsubdivided part of the said lot number twenty-one (21), to the South-East by Notre Dame Street, and to the North-West by another portion of the unsubdivided part of the said lot number twenty-one (21) and by another part of the said lot number twenty (20), said strip being outlined in red upon the said Plan marked B which remains annexed hereto and being composed of:—  
20

1. The North-East part of the said lot number twenty (20) on the said Official Plan and Book of Reference measuring thirty feet in width by eleven hundred and four feet (1104') in depth in the North-East line and eleven hundred and ten feet (1110') in depth in the south-West line, bounded to the South East by Notre Dame Street, to the North-West and to the South-West by other parts of the said lot number twenty (20), and to the North-East partly by the portion hereinafter described of lot subdivision number two thousand two hundred and ten of the said Official lot number twenty-one (21-2210) and partly by the portion hereinafter described of the unsubdivided part of the said lot twenty-one (21);  
30

2. (i) A strip of land forming the South-Westerly part of lot subdivision number two thousand two hundred and ten of the Official subdivision of part of original lot number twenty-one (21-2210) on the said Official Plan and Book of Reference, measuring twenty feet in width, by the whole depth of the said subdivision lot, being a depth of approximately eight hundred and ninety-three feet (893'), and bounded to the South-East by Notre Dame Street, to the North-West by the strip of land hereinafter described forming part of the unsubdivided part of the said lot numbed twenty-one (21), to the North-East by the residue of the said lot subdivision number two thousand two hundred and ten of the said Official lot number twenty-one (21-2210) and to the South-West by part of the said lot number twenty (20);  
40

(ii) A strip of land taken from the South-Westerly part of the unsubdivided part of lot number twenty-one (21) on the said Official Plan and Book of Reference, measuring twenty feet in width in its South-East and North-West sides by two hundred and ten feet eleven inches (210' 11") in depth, and bounded to the South-East by the part of said lot subdivision number two  
10 thousand two hundred and ten of the said Official lot number twenty-one (21-2210) hereinbefore described, to the North-West and to the North-East by other parts of the said unsubdivided part of the said lot number twenty-one (21), belonging to the Party of the First Part, and to the South-West by the said lot number twenty (20) on the said Official Plan and Book of Reference.

The Party of the First Part hereby reserves, with the consent of the Party of the Second Part, the following rights and  
20 servitudes in favor of its property consisting of all the unsubdivided part of the said lot number twenty-one (21) located between Notre Dame Street and the abandoned right of way of the Canadian Pacific Railway Company paralleling and adjoining the tracks of Canadian National Railways, namely:—

(a) The right to use for itself, its assigns and its lands, in common with the Party of the Second Part and all others having rights therein, the right of way and passage on the above  
30 described strip of land of fifty feet in width by eleven hundred feet (1100') in depth in its North-East line and eleven hundred and ten feet (1110') in depth in its South-West line; the whole as shown edged in red on the said Plan marked B hereto annexed.

The Parties hereto agree that as between themselves and without conferring any rights on third parties the repair, maintenance and responsibility of and for said right of way and passage shall be borne by them respectively in equal proportions or in such other proportion as may be mutually agreed upon from  
40 time to time, provided however that the foregoing shall not affect any obligations on the part of any third parties to contribute towards the same;

(b) The right of use and passage, in common with the Party of the Second Part and any others to whom the latter may grant such right, in, over and upon the railway tracks located on the sold premises close to and parallel to Notre Dame Street, said railway tracks being shown coloured dark purple on the said planmarked B hereto annexed, and with the right to place and maintain tracks in the same site as said existing tracks in the event of the said Party of the Second Part failing to do so.

Said right of use and passage shall be subject to the prior rights and use of the Party of the Second Part of such tracks and the Party of the First Part shall not obstruct or otherwise interfere with the free use thereof by the Party of the Second Part. The repair and maintenance of said tracks shall be borne by the Parties hereto in proportion to their respective use of the  
10 same to be mutually agreed upon from time to time;

(c) The right to place and maintain, (and with the right of way and passage for such placing and maintenance), underground watermains in and under a portion of the sold premises measuring two feet (2') on each side of the center line of the existing ten inch (10'') watermain belonging to the Party of the First Part running from Notre Dame Street to the North-West boundary of the sold premises, said existing watermain being  
20 shown coloured blue on the said plan marked B hereto annexed; said mains to be placed not less than four feet (4') below the level of the ground;

(d) The right to place and maintain (and with the right of way and passage for such placing and maintenance), underground and overground electric transmission lines, telephone lines, telegraph lines, alarm system lines and signal system lines, in, under or upon a portion of the sold premises measuring three feet (3') on each side of the centre line of the existing transmission line belonging to the Party of the First Part running from  
30 Notre Dame Street to the North-West limit of the sold premises, said existing transmission line being shown as coloured green on the said plan marked B hereto annexed, none of which lines shall carry electric current exceeding twelve thousand (12,000) volts and, if erected below ground, shall be not less than four feet (4') below the level of the ground and, if erected above ground, shall be not less than twenty feet (20') above the level of the ground;

40 (e) The right to place and maintain (and with the right of way and passage for such placing and maintenance) a sewer for purposes of drainage of surface water in, under and upon a portion of the sold premises measuring two feet on each side of the centre line of the existing sewer running from Notre Dame Street along the South-East part of the sold premises to the property of the Party of the First Part, the whole as shown coloured orange on the said plan marked B hereto annexed;

The Party of the First Part hereby covenants and agrees with the Party of the Second Part that any and all works of

installation, repair and maintenance to be affected by or on behalf of the Party of the First Part pursuant to the provisions of the foregoing paragraphs (b), (c), (d) and (e) shall be carried out in a proper, efficient and workmanlike manner and in such a way as to cause as little inconvenience as possible to the sold premises and to the Party of the Second Part. The property  
10 affected by such works shall be restored as quickly as possible to at least as good a state and condition as that in which it was prior to the commencement of such works.

The Party of the First Part shall be responsible for and shall pay any and all taxes, assessments or rates which may be imposed on or in respect of the said water mains, transmission and other lines, sewers and other works hereinbefore referred to in paragraphs (c), (d) and (e) hereof or on or in respect of  
20 any tracks installed by it under the provisions of paragraph (b) hereof.

The Party of the Second Part and its assigns shall have the right at any time and from time to time at its expense to remove the said water mains, transmission and other lines, sewers or said tracks and other works, or any of them, to another site or sites chosen by it and as reasonably convenient for the exercise of the rights hereinbefore referred to in paragraphs (b), (c), (d) and (e) hereof.

30 Said rights hereinbefore granted in paragraphs (c), (d) and (e) hereof shall not restrict or prevent the use by the Party of the Second Part of the lands affected thereby, provided always that such use shall not interfere with the exercise of the aforesaid rights.

The Party of the First Part hereby covenants and agrees to indemnify and hold harmless the Party of the Second Part, its successors and assigns, of and from any and all past, present  
40 or future damages, loss, claims, demands and actions suffered, incurred or made against the Party of the Second Part, its successors and assigns, arising out of or in any way attributable to the installation, existence, operation repair and maintenance of the said watermains, transmission and other lines, sewers, and other works hereinbefore referred to in said paragraphs (c), (d) and (e) hereof, or of any tracks installed by the Party of the First Part under the provisions of paragraph (b) hereof, or which would not have arisen except for such works, and all costs and expenses in connection therewith.

The Party of the First Part hereby grants in favour of the Party of the Second Part and its assigns and of the sold premises and each and every part or parts thereof the right of way and passage in perpetuity on foot and with animals and vehicles of all kinds in common with the Party of the First Part, and its assigns, in, over and upon a piece of land forming part of the  
10 unsubdivided part of the said Official lot number twenty-one (21), measuring sixty feet in width in its South-West and North-East lines by a depth of seventy feet, and which said piece of land is bounded to the South-West by the fifty-foot right of way and passage hereinbefore described, to the North-West and to the North-East by other parts of the said lot number twenty-one (21) belonging to the Party of the First Part, and to the South-East by the sold premises, the whole as shown edged in black on the said plan marked B hereto annexed, said right of way and  
20 passage being hereby created a real and perpetual servitude upon the said piece of land as the servient land in favour of the sold premises as the dominant land.

The Parties hereto agree that the repair and maintenance of the right of way and passage referred to in the preceding paragraph shall be borne by them in proportion to their respective use of the same to be mutually agreed upon from time to time.

The Parties hereto declare that the obligations hereinbefore set forth under this heading of Servitudes and Reserves  
30 go with and form part of the servitudes, rights and reserves, to which they respectively relate and, in consequence, only the owner or owners for the time being of the dominant lands to which such servitudes, rights and/or reserves are respectively due shall be liable for the fulfillment of such obligations. Each such owner, however, shall, remain personally liable for any obligations that arose during the period of its ownership of the dominant lands, and were not discharged by such owner.

40 All measurements herein are English Measure and more or less.

TITLE:

The Party of the First Part acquired the said premises, with greater extent of land, from William R. Dickson under deed of Sale passed before W. de M. Marler, Notary, on the eighteenth day of November nineteen hundred and two, and registered in the Registry Office for the then Registration Division of the Counties of Hochelaga and Jacques Cartier under No. 98257, the description of the lands acquired by the Party of the First Part

having been corrected under a Deed of Declaration passed before H. M. Marler, Notary on the twenty-sixth day of April nineteen hundred and nine, and registered in the said Registry Office under No. 157499.

### POSSESSION

- 10 The Party of the Second Part is hereby declared to be the absolute owner of the said premises, effective as of the twenty-third day of October, 1940, having been in possession and occupation thereof since that date.

### VENDOR'S DECLARATION

The Party of the First Part declared and covenanted:—

- 20 1st. That the said premises are held under the tenure of franc aleu roturier having been duly commuted and the commutation price having been paid, as appears by two Deeds passed before P. Lacombe, Notary, on the twenty-third day of June eighteen hundred and forty-nine and on the twenty-seventh day of November eighteen hundred and fifty-two respectively.

2nd. That the said premises are free and clear of all assessments and rates, general and special, to the twenty-third day of October nineteen hundred and forty.

30 

### PRICE

This Sale is thus made for and in consideration of the price and sum of ONE DOLLAR (\$1.00) cash, which the Party of the First Part acknowledges to have received from the Party of the Second Part previous to the execution hereof, whereof quit.

### CONDITIONS AND STIPULATIONS

- 40 The present Sale is further made subject to the following conditions and stipulations:—

1st. The Party of the Second Part shall pay and assume payment of all assessments and rates, general and special, which may have validly become due or been imposed upon the said premises as and from the twenty-third day of October nineteen hundred and forty.

2nd. The Party of the Second Part shall pay the costs of this Deed, its registration and of an authentic copy hereof for the Party of the First Part.

WHEREOF ACTE:—

EXECUTED at the said City of Montreal on the date hereinabove firstly written and of record in the office of the undersigned Notary under number thirteen thousand two hundred and sixty-three of his original minutes.

10

And after due reading hereof the Parties hereto signed with and in presence of said Notary.

(Signed) W. S. MORRIS,  
Vice-President.  
“ F. F. CLARKE,  
“ J. C. B. WALSH, N.P.

A TRUE COPY, the original hereof remaining of record  
20 in my office.

J. C. B. WALSH, N.P.

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EXHIBIT P-31

30 *Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st 1942.*

CITY OF MONTREAL

40 Extract from the Valuation Roll of immoveable property for the fiscal year commencing May 1st, 1942 — Mercier Ward — Notre-Dame East Street — Electoral District 10 — Account No. 357404 — Name and Address of Owner: 5781 Notre-Dame Est, Montreal Locomotive Works Ltd., 275 St-Jacques O., occupant of property owned by His Majesty The King — Cadastre, Occupation: 21 — Sub-division 2210, Denomination N. — Land: 99,100. — Buildings 1,264,200., Motive Power: 13,600. — Neutral 1,376,900. — Maintenance of Sidewalks, Front Feet: 507.75 — B. de R. Cert. No. 41/7452.



EXHIBIT P-33

*Extract from the Real Estate Assessment Roll of the City of  
Montreal for the year commencing May 1st, 1942.*

10

CITY OF MONTREAL

Real Estate Assessment for the Year Commencing 1st  
May 1942 — Account No. 357404 — Location of Property: 5781  
Notre Dame St. Est — Cadastre 21 — Subdivision 2210 — Owner:  
Montreal Locomotive Works Ltd., 215 St. James St. Ouest —  
Denomination: N, Occ. Government Prop. — Payable 1st October  
1942 — Account No. 357505 — Valuation in \$: 1,376,900. — Com-  
posit Tax: 41,141.77 — Total: 41,141.77 — After 1st October 1942  
20 Interest must be paid at 6% per annum for the first 60 days and  
7% thereafter.

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EXHIBIT P-34

*Copy of Bill of the City of Montreal for water and business taxes  
for the fiscal year commencing May 1st 1942.*

30

CITY OF MONTREAL

Water and Business Taxes for the Fiscal Year Commencing  
1st May — Year: 1942 — Account No. 350677<sup>1</sup> — Occupant:  
Montreal Locomotive Works Ltd., 215 St. James West — Occu-  
pation: Ordnance Plant, 5781 Notre Dame East — Business tax:  
634.30 — Amount of tax: 6343.00 — Surtax 8%: 507.44 — Total:  
6850.44.

40 17/10/42.

EXHIBIT P-3

*Copy of Plan Showing Cadastral lot No. 21-2210.*

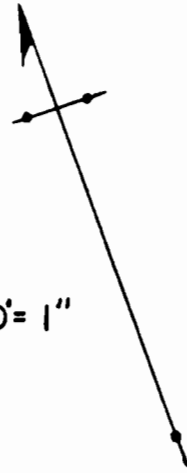
*Photostat.*

# MONT. LOCOMOTIVE WKS.

MONTREAL SEPT. 30 TH. 1942

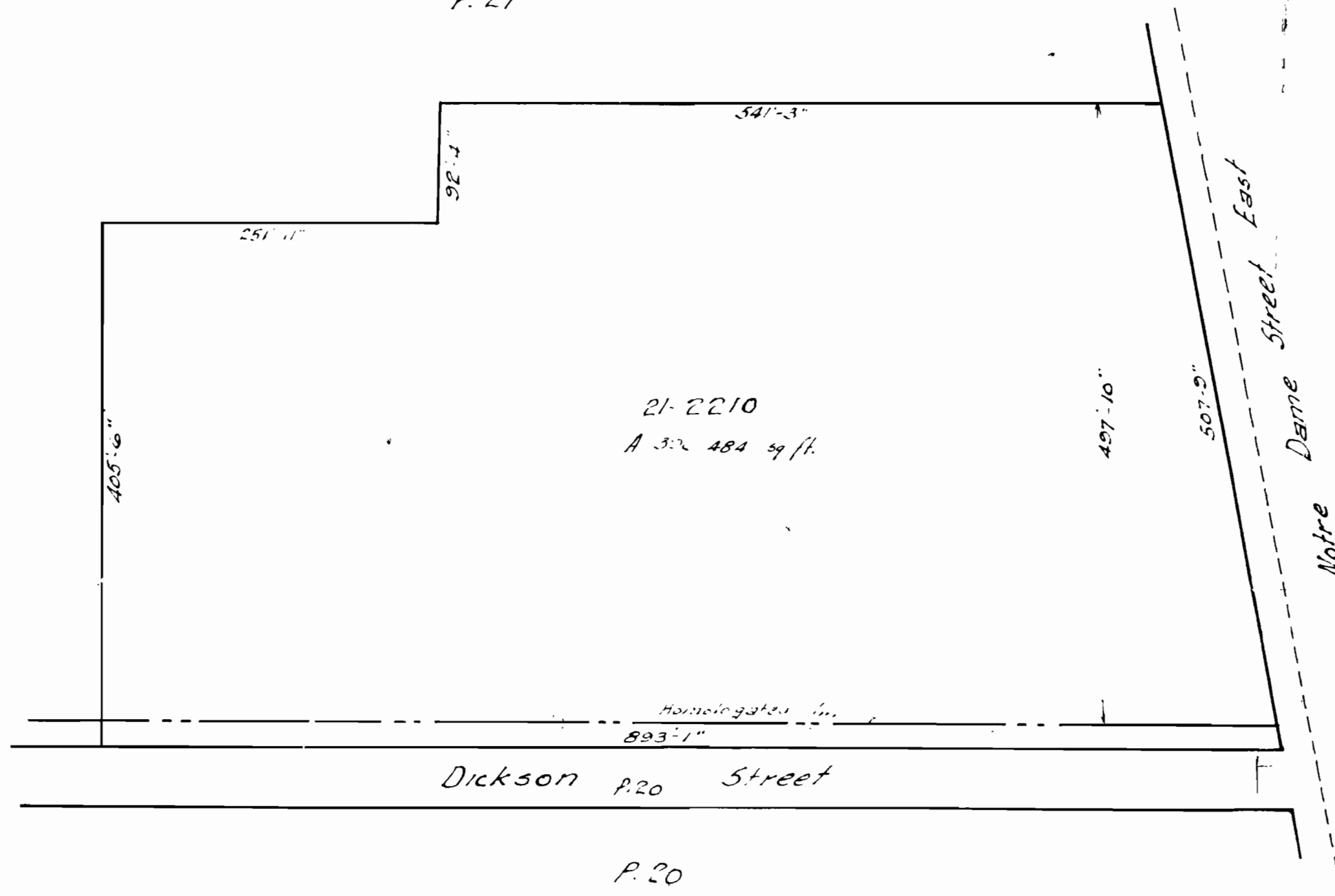
ASSESSORS OFFICE.

SCALE. 100' = 1"



P. 21

P. 21



— 116 —

EXHIBIT P-32

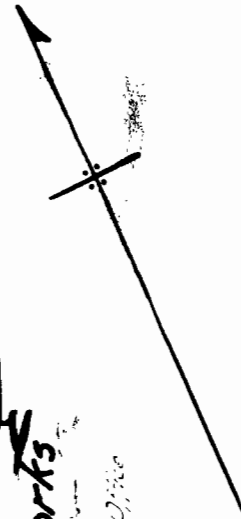
*Copy of Plan showing Cadastral lot No. 21-2210 and  
the adjacent property.*

*Photostat.*

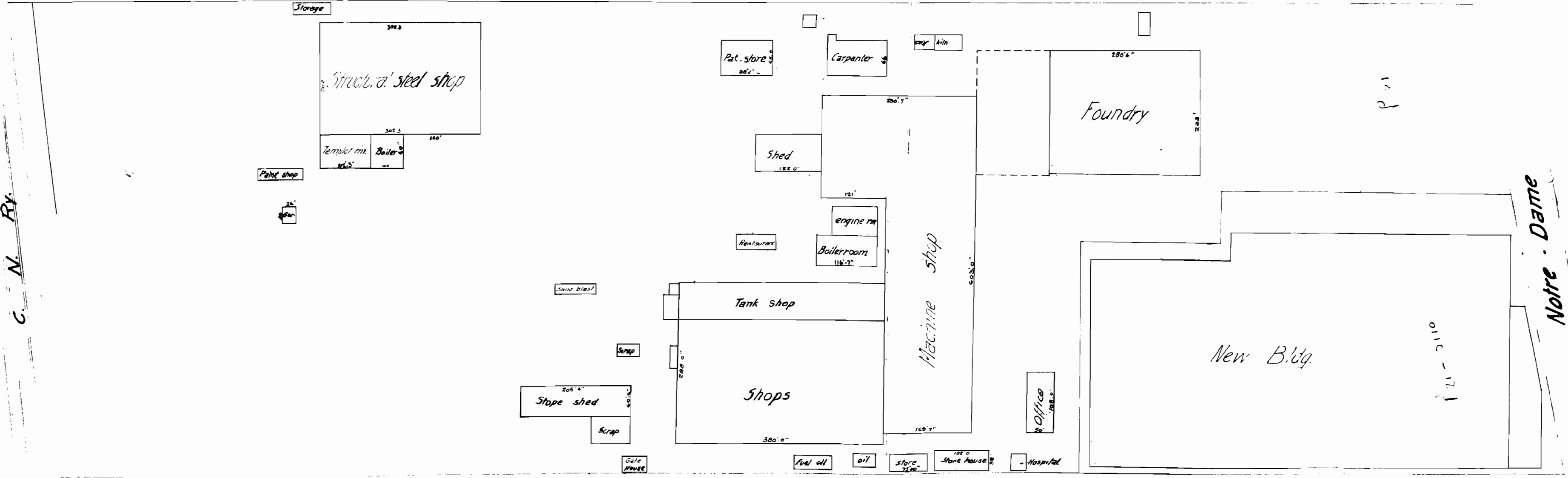
*Mont. Locomotive Works*

1100 West 1st St. 50th D&R Assessor's Office

SCALE 100'-1"



C. N. Ry.



Notre Dame

EXHIBIT P-6

*Copy of Plan showing Cadastral lot No. 21-2210 and  
the adjacent property.*

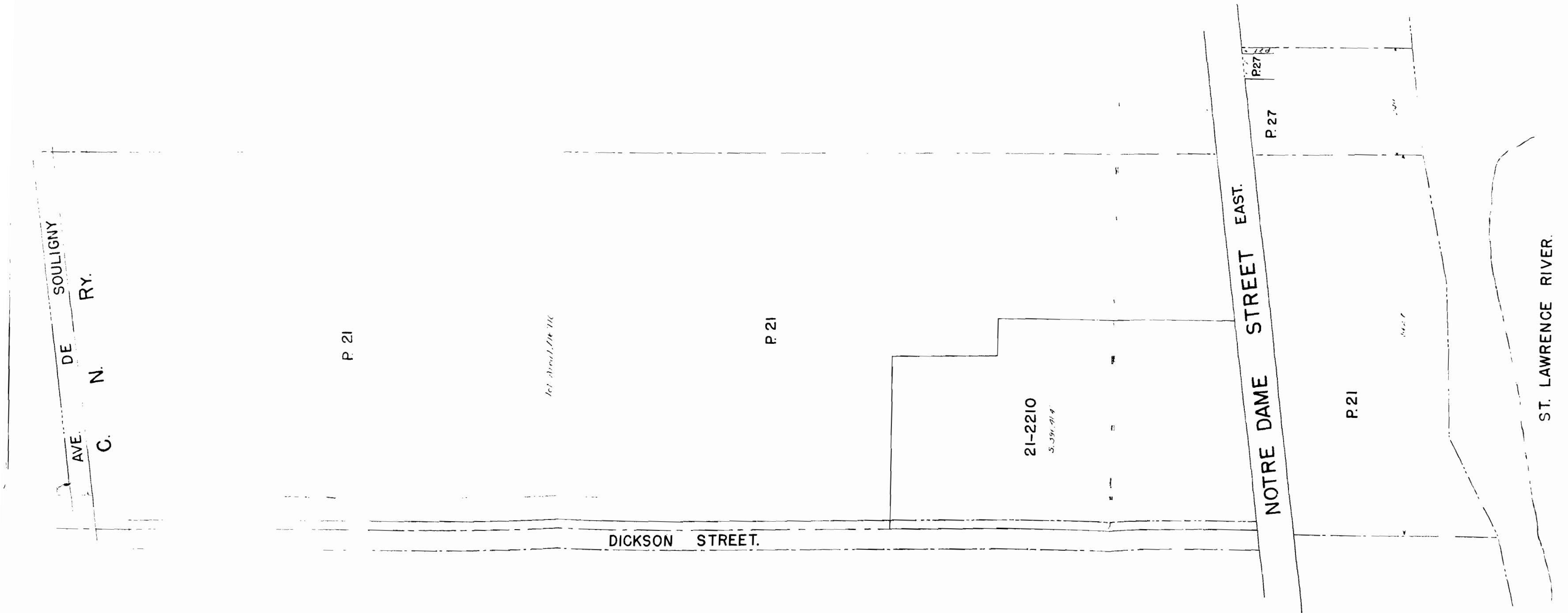
*Photostat.*

MONT. LOCOMOTIVE WORKS

MONTREAL OCT. 5 TH. 1942

SCALE: 100' = 1"

ASSESSORS OFFICE.



**PART III — JUDGMENT, INSCRIPTIONS IN APPEAL &c.**

10           **JUDGMENT OF THE SUPERIOR COURT**

On this Twenty-first day of October, 1943.

PRESENT: The Hon. Mr. Chief Justice Bond.

20           THE COURT having heard the parties by their respective Counsel upon the joint factum or case submitted for the decision of this Court under the provisions of Article 509 and following of the Code of Civil Procedure of the Province of Quebec; having examined the proceedings of record and the exhibits filed, and having deliberated;

For the sake of precision I set forth at length the joint factum or case as submitted:—

“The facts which give rise to the question of law, the question of law involved and the conclusions of the parties are as follows, that is to say:—

30           1.—On the 23rd day of October, 1940, a contract (hereinafter called the “Construction Contract”) was made between the Intervenant, the Plaintiff and American Locomotive Company, wherein it was agreed, amongst other things, that the Plaintiff:—

40           (a) would sell, transfer, make over and assign unto the Intervenant the premises therein described forming part of the premises of the Plaintiff located at Longue Pointe in the City of Montreal; and

(b) would construct thereon, for and on behalf of the Intervenant and as his Agent and at his expense and subject to the supervision, direction and control of the Intervenant through the Honourable the Minister of Munitions and Supply, a new plant (hereinafter sometimes called the “new plant”) to remain the property of the Intervenant and to be capable of producing gun carriages and tanks;



the whole as more completely and exactly appears from the terms of the said Construction Contract, and deleted copy of which, with the consent of the parties hereto, is filed herewith as Exhibit P-1.

10           2.—On the 23rd day of October, 1940, a contract (hereinafter called the “Production Contract”) was made between the Intervenant, the Plaintiff and American Locomotive Company, wherein was agreed amongst other things, that the Plaintiff, acting on behalf of the Intervenant and as his Agent and with the co-operation and assistance of American Locomotive Company, shall administer, manage and operate the new plant and shall produce therein for the account of the Intervenant, gun carriages and tanks, at a reasonable fee per gun carriage and per tank, respectively, the whole as more completely and exactly appears  
20           from the terms of the said Production Contract, a deleted copy of which, with the consent of the parties hereto, is filed herewith as Exhibit P-2.

3.—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 to in paragraph 18 hereof and filed herewith as Exhibit P-14.

30           4.—The said new plant is administered, managed and operated by the Plaintiff, with the co-operation and assistance of American Locomotive Company, in accordance with the provisions of said Production Contract Exhibit P-2.

40           5.—On demand by the Plaintiff, the 7th day of November, 1941, the land upon which the new plant was located and which formed part of original lot Number 21 of the Official Plan and Book of Reference of the Cadastre of the Parish of Longue Pointe in the County of Hochelaga was properly subdivided in accordance with the provisions of the Civil Code of the Province of Quebec to form Lot Number 2210 of Original Lot Number 21 of the Official Plan and Book of Reference of the Cadastre of the Parish of Longue Pointe in the County of Hochelaga, as appears by the said plan filed as Exhibit P-3.

6.—On the 27th day of February, 1942, the Plaintiff, by Deed of Sale in authentic form, confirmed the sale

10 to the intervenant of the said land known as Lot Number 21-2210 of the Official Plan and Book of Reference of the Parish of Longue Pointe in the County of Hochelaga, the whole as more completely and exactly appears from the terms of the said Deed of Sale made between the Plaintiff and the Intervenant on the 27th day of February, 1942, before Mtre Joseph C. B. Walsh under Number 13263 of his minutes, a duly certified copy of which, in notarial form, is filed herewith as Exhibit P-4.

7.—On the 28th day of February, 1942, the said Deed of Sale, a duly certified copy whereof in notarial form is filed herewith as Exhibit P-4, was duly registered under Number 518606 of the Registration Division of Montreal.

20 8.—On the valuation roll for the year beginning on the 1st of May, 1941, the Plaintiff was entered as proprietor of civic number 5781 Notre Dame Street East and 5790-5910 Notre Dame Street East for cadastral Number P-21 and P-27 and the Valuation Roll was as follows: land \$368,400., building \$775,600., rails \$6,000., motive power \$50,000 and as neutral for school tax, at values as follows: land and building \$1,144,000., rails \$6,000., motive power \$50,000., as appears by a copy of the Valuation Roll filed as Exhibit P-5, and by the plan filed as Exhibit P-6.

30 9.—On the real estate assessment roll for the municipal fiscal year beginning on the 1st of May, 1941, the Plaintiff was billed to the amount of \$35,858.59 according to the valuations mentioned in the preceding paragraph as increased in accordance with the provisions of Section 34 of Chapter 73 of the Statutes of Quebec, 1941, the whole as appears by the bill filed as Exhibit P-7, and the details filed as Exhibit P-6.

40 10.—On the 30th of September, 1941, the bill mentioned in the preceding paragraph was paid by the Plaintiff.

11.—On or about the 19th day of February, 1941, a permit was issued by the Defendant upon the application of Sutherland Construction Company for work to be done in connection with the new plant, as appears by a copy of such permit filed herewith as Exhibit P-9.

12.—On or about the 5th day of May, 1941, a permit was issued by the Defendant upon the application of L. G. Ogilvie & Company Limited for work to be done in connection with the new plant, as appears by a copy of such permit filed herewith as Exhibit P-10.

10           13.—On the 10th of November, 1941, the Assessors gave notice to the Chief Assessor that they had assessed the new building and the motive power in the name of the Plaintiff on Notre Dame Street, Number 5781 on Cadastral Number P-21, at \$1,264,200. for the new building and \$13,600. for the motive power, as appears by a copy of the said notice, Exhibit P-11.

20           14.—The Chief Assessor referred the said valuation to the Board of Revision of Valuations according to Article 375a of the charter of the Defendant.

15.—On the 20th of November, 1941, the Secretary of the Board of Revision of Valuations advised the Plaintiff of the said valuation, and to appear within a delay of fifteen days, before the said Board, as appears by a copy of the said notice, Exhibit P-12.

30           16.—On the 28th of November, 1941, Mr. John E. L. Duquet of Counsel for the Plaintiff, attended before the Chairman and one of the members of the Board of Revision of Valuations and protested against the valuation of the new building and the motive power in the name of the Plaintiff, either as owner, occupant or otherwise, informing the said Chairman and member of the said Board of the situation with respect to the new building and motive power under the provisions of the Construction Contract P-1, and the Production Contract, P-2, whereupon the Chairman and the said member of the said Board informed  
40           Mr. Duquet that the jurisdiction of the Board of Revision of Valuations extended only to the fixing of the amount of the valuations, that, if the amount of the valuation of the new building and motive power were not contested, they would be fixed at the amount set forth in the notice by the Assessors to the Chief Assessor, Exhibit P-11, and that any contestation of the right of the Defendant to tax the Plaintiff with respect to the new building and motive power would have to be discussed with the Chief Assessor.

10 17.—On the 26th of November, 1941, a letter was sent to the Board of Revision of Valuations on behalf of the Plaintiff by MM. Kearney, Duquet & MacKay, Attorneys, informing the Board that the new plant and motive power were the property of the Intervenant and were operated by the Plaintiff for and on behalf of the Intervenant as Manager under the said Production Contract, P-2, the whole as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-13.

20 18.—On the 1st of December, 1941, the Deputy Minister of Munitions and Supply acting for and on behalf of the Intervenant advised the Secretary of the Board of Revision of Valuations of the terms under which the new plant was constructed and operated, drawing to the attention of the Secretary that the new plant was the property of the Intervenant, that the Plaintiff had no rights therein either as owner, lessee, occupant or otherwise and that the Plaintiff was operating the new plant for the account of the Intervenant, the whole as more completely and exactly appears by the terms of the said letter addressed by the Deputy Minister of Munitions and Supply to Albert Pérusse, Secretary of the Board of Revision of Valuations, dated December 1st, 1941, a copy of which is filed herewith as Exhibit P-14.

30 19.—On the 3rd of December, 1941, the Secretary of the Board of Revision of Valuations acknowledged receipt of the letter of MM. Kearney, Duquet & MacKay dated November 28th, 1941, as appears by a copy of the letter of acknowledgement filed as Exhibit P-15.

40 20.—On the 4th of December, 1941, the Secretary of the Board of Revision of Valuations acknowledged receipt of the letter of the Deputy Minister of Munitions and Supply dated December 1st, 1941, as appears by a copy of the letter of acknowledgement filed as Exhibit P-16.

21.—On the 4th of December, 1941, the Secretary of the Board of Revision of Valuations referred to the Chief Assessor the letters received from MM. Kearney, Duquet & MacKay and from Mr. Pettigrew, Deputy Minister of Munitions and Supply, filed herewith as Exhibits P-13 and P-14 respectively, as appears by the letter addressed by Albert Pérusse, Secretary of the Board of

Revision of Valuations to A. E. Hulse, Chief Assessor, dated December 4th, 1941, a copy of which is filed herewith as Exhibit P-17.

10

22.—On the 4th of December, 1941, the Chief Assessor replied to the letter of MM. Kearney, Duquet & MacKay filed herewith as Exhibit P-13, as appears by the said reply, a copy of which is filed as Exhibit P-18, the Defendant, however, admitting that the said reply filed as Exhibit P-18 does not make proof of the facts therein alleged with respect to the explanations given to the Chief Assessor by Mr. Duquet in view of the contention of the Plaintiff that the explanations given to the Chief Assessor by Mr. Duquet were misunderstood or misinterpreted by the Chief Assessor, and that such explanations confirmed the facts set forth in this joint Factum or Case.

20

23.—On the 8th of December, 1941, the Deputy Minister acknowledged receipt of the letter of the Secretary of the Board of Revision of Valuations dated December 4th, 1941, as appears by the letter of acknowledgement, a copy of which is filed as Exhibit P-19.

30

24.—On the 9th of December, 1941, MM. Kearney, Duquet & MacKay, sent a letter to the Board of Revision declaring that the Plaintiff does not contest the valuation, but contests the right to assess the said Company, as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-20.

40

25.—On the 9th of December, 1941, MM. Kearney, Duquet & MacKay sent a letter to the Chief Assessor contesting the right to assess the Plaintiff as more completely and exactly appears by the terms of the said letter, a copy of which is filed herewith as Exhibit P-21.

26.—On the 11th of December, 1941, the Chief Assessor sent a letter to MM. Kearney, Duquet & MacKay giving his reasons for assessing the Plaintiff as appears by his letter filed as Exhibit P-22.

27.—On the 12th of December, 1941, the Board of Revision of Valuations issued a certificate for the fiscal year 1941-1942 fixing the valuation of the new building at \$1,264,200. and motive power \$13,600., and indicating

that the new building and motive power were ready to be occupied on November 1st, 1941, as appears by the certificate filed as Exhibit P-23.

10 28.—On the 12th of December, 1941, the Secretary of the Board of Revision of Valuations advised Mr. Pettigrew, Deputy Minister of Munitions and Supply, of the decision of the said Board, as more completely and exactly appears by a copy of a letter filed as Exhibit P-24.

29.—On the 12th of December, 1941, the Secretary of the Board of Revision of Valuations advised MM. Kearney, Duquet & MacKay, of the decision of the said Board, as more completely and exactly appears by copy of letter filed as Exhibit P-25.

20 30.—On the 18th of December, 1941, the Chief Assessor advised in writing the Director of Finance that the new building and motive power of the Plaintiff on lot cadastral P-21 have been assessed as follows: Building \$1,264,200., motive power \$13,600., as appears by the certificate of the Board of Revision of Valuations Number 364, Exhibit P-26, and the original roll was amended as appears by copy on the said roll filed as Exhibit P-27.

30 31.—The new building and motive power were added by the Director of Finance on his real estate assessment roll in the name of the Plaintiff according to the certificate of the Chief Assessor for 181 days, from 1st of November, 1941, to 30th of April, 1942, at \$18,934.78, as appears by the bill produced as Exhibit P-28, and the details filed as Exhibit P-8.

40 32.—On the 10th of April, 1942, the Chief Assessor, issued a certificate Number 692 to the Director of Finance for the business tax at Number 5781 Notre Dame Street East with respect to the new building and motive power from 1st of November, 1941, to 30th of April, 1942, as appears by the certificate of the Chief Assessor filed as Exhibit P-29.

33.—The Director of Finance entered on his tax roll for business tax with respect to the new building and motive power, the name of the Plaintiff from the 1st of November, 1941, to the 30th of April, 1942, according to

the certificate of the Chief Assessor for the amount of \$3,425.22 as appears by the bill filed as Exhibit P-30.

10 34.—On the Valuation Roll for the fiscal year beginning the 1st of May, 1942, the Plaintiff was entered as occupant of the new building, motive power and land, being lot cadastral Number 21, subdivision Number 2210, owned by the Intervenant and the said property was valued as follows: land \$99,100., building \$1,264,200., motive \$13,600., and for school purpose as neutral at \$1,376,900., as appears by the copy of the roll filed at Exhibit P-31, and by the plan filed as Exhibit P-32.

20 35.—On the real estate assessment roll the Plaintiff was billed at the sum of \$41,141.77 as occupant of the New Building, motive power and land, being lot cadastral Number 21, subdivision Number 2210, as appears by copy of the said roll filed as Exhibit P-33.

36.—On the business tax roll the Plaintiff was billed at the sum of \$6,850.44 with respect to the new building, motive power and land, being lot cadastral Number 21, subdivision Number 2210, for the year 1942-1943, as appears by copy of the said bill filed as Exhibit P-34.

30 37.—The Defendant is claiming from the Plaintiff the following taxes:—

- (a) Property taxes on the new building and motive power from 1st of November 1941 to April 30th, 1942 ..... \$18,934.78
- (b) Business tax on the same property as hereinbefore mentioned in subparagraph (a) hereof, for the same period ..... \$ 3,425.22
- 40 (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
- (d) Business tax on the same property as hereinbefore mentioned in subparagraph

(c) hereof for the same year ..... \$ 6,850.44  
with interest at the rate of 5% from the date when those taxes were due.

37a.—The foregoing paragraphs are not intended to be interpretative of Exhibits P-1 to P-34 both inclusive which speak for themselves and must be interpreted according to their own terms.

38.—The Defendant contends:—

10

(a) That for the period from the 1st of November, 1941, to the 30th of April, 1942, the new building and the said motive power were built on the property of the Plaintiff, Lot P-21, that the same were occupied by the Plaintiff for commercial and Industrial purposes, and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant in accordance with the provisions of the charter of the Defendant, and that the Plaintiff doing business at the said new plant is also subject to the business tax for the same period in accordance with by-law 1642.

20

(b) That for the municipal fiscal year beginning the 1st of May, 1942, the said new building, the said motive power and the said land known as lot number 21-2210, are the property of the Intervenant, but that the same are occupied by the Plaintiff for commercial and industrial purposes and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant, in accordance with the provisions of the charter of the Defendant and more particularly section 362a thereof and the taxing by-laws of the Defendant passed in accordance therewith, being by-law number 1704 of the Defendant, and that the Plaintiff doing business at the new plant is also subject to the business tax for the same period in accordance with by-law number 1642.

30

40

and subsidiarily:—

(i) That the Plaintiff should pay to the Defendant the municipal taxes on imoveable property claimed by the Defendant as hereinbmore set out with respect to the said new building and the said motive power for the period from November 1st, 1941, up to April 30th, 1942; and the business taxes on the said place of business for the same period;



- 10 (ii) That the Plaintiff should pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out with respect to the said new building, the said motive power and the said land known as lot number 21-2210 for the period from May 1st, 1942, to April 30th, 1943, and the business taxes on the said place of business for the same period and thereafter so long as the Plaintiff is found to occupy the said new building, motive power and land for commercial or industrial purposes.

39.—The Plaintiff and the Intervenant deny the contentions of the Defendant and contend:—

- 20 (a) That for the period from the 1st of November, 1941, to the 30th of April, 1942, the new building and the said motive power were the property of the Intervenant and were not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are therefore not subject to municipal taxation in the hands of the Plaintiff, either as owner, occupant or otherwise and that the Plaintiff was not doing business at the said new plant and is not subject to the business tax for the same period.

- 30 (b) That for the municipal fiscal year beginning the 1st of May, 1942, the said new building, the said motive power and the said land known as lot number 21-2210 are the property of the Intervenant and that the same are not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are therefore not subject to municipal taxation in the hands of the Plaintiff by the Defendant, either as owner, occupant or otherwise, and that the Plaintiff does not do business at the new plant and is not subject to the business tax for the same period;
- 40

and subsidiarily:—

- (i) That the Plaintiff is not bound to pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out in paragraph 38 hereof with respect to the said new plant and the said motive power for the period from

November 1st, 1941, up to April 30th, 1942, nor the business tax on the said place of business for the same period;

- 10 (ii) That the Plaintiff is not bound to pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as hereinbefore set out in paragraph 38 hereof with respect to the said new plant, the said motive power and the said land known as lot number 21-2210 for the period from May 1st, 1942, to April 30th, 1943, nor the business taxes on the said place of business for the same period nor for any period thereafter.

20 40.—The question of law to be decided by this Honourable Court upon the facts as hereinbefore set out is whether the contention of the Plaintiff as hereinbefore stated in paragraph 39 hereof or the contention of the Defendant as hereinbefore stated in paragraph 38 hereof is well founded in law in whole or in part.

41.—The Intervenant is interested herein and has become a party to these proceedings to hear judgment rendered and any recommendations which may be made by this Honourable Court.

30 42.—The documents submitted herewith as Exhibits P-1 and P-2 are confidential by order of the Intervenant.

40 WHEREFORE the parties hereto conclude and ask that judgment be rendered upon the foregoing submission, and, in the event of a finding in whole or in part in favour of the Plaintiff, that order be given to the Defendant to amend its Valuation and Assessment Roll and its Tax Roll in such manner as may be appropriate, and in the event of a finding in favour of the Defendant that judgment be rendered condemning the Plaintiff to pay to the Defendant such of the taxes hereinbefore mentioned as this Honourable Court may determine to be due by the Plaintiff to the Defendant with interest on each item at 5% from the time when such taxes respectively became due, and that order be given to the appropriate official of this Honourable Court to return Exhibit P-1 and Exhibit P-2 to the Plaintiff without giving access thereto to any party other than the parties to this submission, the whole upon such terms and conditions as to costs as this Honourable Court may see fit to determine.”

From the above submission it will be seen that (more briefly resumed) in October, 1940, the Plaintiff Company, a duly organized and continuing Company, agreed to sell to the Intervenant a certain block of land in the City of Montreal for an agreed nominal consideration, and the Plaintiff further undertook, with the co-operation and assistance of the Intervenant, to  
10 design, construct and equip thereon a new plant suitable for the production of certain war material. The Plaintiff was authorized to incur and pay on behalf of the Intervenant, and as its agent, all costs necessary or incidental to the performance of the agreement subject to such control of the Minister of Munitions and Supply of Canada "as he may desire to exercise with respect thereto".

The Intervenant agreed to pay to the Plaintiff all proper and reasonable costs and expenses incurred by the Company  
20 Plaintiff including "such administrative and general overhead expenses, as in the opinion of the Minister, might be properly apportionable to the performance of this agreement" — which would seem to indicate that this was not the exclusive occupation of the Plaintiff Company.

The Intervenant acknowledged and agreed that the Plaintiff Company was acting on behalf of the Government and as its agent, and it was stipulated that the title to the new plant and  
30 equipment, as well as material on hand, should be vested in the Government which has assumed all risks and liabilities incidental to such ownership.

Provision was also made in the agreement for the terms upon which the Plaintiff Company might re-acquire the land in question, for the same consideration, and also the new plant and equipment in preference to anyone else.

The Government undertook to pay to the Plaintiff (in  
40 addition to the costs provided for) a fee per each item produced, or in other words, the remuneration provided for by the Government to the Company Plaintiff was on a basis of costs, and in addition thereto an agreed fee per item on production and satisfactory inspection.

On the 7th of November, 1941, the land so to be conveyed under the Agreement for Sale was surveyed and entered upon the cadastral plan under a new and distinct number or subdivision number.

It was not until the 27th of February, 1942, that a formal Deed of Sale to the Intervenant was executed and registered on the following day.

10 The real estate taxes for the year beginning on the 1st of May, 1940, and ending on the 30th of April, 1941, have been paid, and no dispute arises under that head. On the Real Estate Assessment Roll of the City of Montreal of the 1st of May, 1941, for the ensuing civic year, the Plaintiff is entered as proprietor of civic No. 5781 Notre Dame Street East and 5790-5910 Notre Dame Street East for Cadastral No. P-21 and P-27. The cadastral number given to the land upon which the new plant was located and which formed part of the Original Lot No. 21 formed Lot Subdivision No. 2210 of Original Lot No. 21 (Exhibit P-3). The Plaintiff was billed in accordance with the valuations set out in the joint case, and the amount thereof was paid by the Plaintiff on the 30th of September, 1941 (joint case, paragraphs 8 and 10).

20 On the 19th of February, 1941, and the 5th of May, 1941, permits were issued by the Defendant for the work in connection with the new plant which appears to have proceeded apace, and on the 10th of November, 1941, the assessors reported that they had assessed the new building and the motive power in the name of the Plaintiff (joint case, paragraph 3). It will be remembered that the land in question at that time was still registered in the name of the Plaintiff Company.

30 On the valuation roll for the civic year beginning the 1st of May, 1942, the Plaintiff was entered as "occupant" of the new building, motive power and land (Subdivision No. 2210 of Lot Cadastral No. 21- case paragraph 34), and charged accordingly, that is, as occupant thereof (joint case, paragraph 35), and in addition thereto the Plaintiff Company was also charged the business tax with respect to the foregoing properties.

40 It should be observed that the valuation placed upon these properties is not contested but what is contested is the right to assess in respect thereto, and that is now the subject of the present controversy.

Two distinct periods have to be considered, namely:—

(1) That from November, 1941, to 30th April, 1942. When the assessment was imposed in November, 1941, upon the new

building and the motive power, the land on which the buildings were erected and the motive power housed was still registered in the name of the Plaintiff, and indeed, the sale was not formally completed until the end of February, 1942, although it is agreed that the Defendant had been advised of the foregoing transactions in November and December, 1941.

10

It is true that the registered owner is the reputed owner, but the maxim *aedificium solo cedit* is not always applicable, for there may be ownership of buildings as distinguished from ownership of the land on which the buildings are constructed (2 Mignault, pages 493 and 494; Lacombe vs. Brunet, 14 K.B. page 465).

136 20  
Whatever right the Defendant may have had, or may still have, to assess the Plaintiff as "occupant" (which I shall consider under the second period), I do not consider that in view of the full disclosure made it was open to the Defendant to assess the Plaintiff as "owner" of these buildings and motive power for the period presently under review, thus creating a real charge upon the property.

30 (2) The second period is that beginning on the 1st of May, 1942, when the Plaintiff was assessed in respect to its occupation of these buildings along with the motive power under Article 362a of the Charter. The word "occupant" as used in the Charter of the City of Montreal is defined in Section 1 (h) 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".

40 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 hereto 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).

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. Société 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.

10

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).

20

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.

30

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 re-conveyance of the whole to the Plaintiff on the execution of the contracts on terms set out.

40

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:—

10 “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 the design, construction and equipment of the new plant, the selection of contractors and subcontractors and the type of contract to be made with them, the selection and purchase of construction materials, machinery, tools and other equipment and over all other matters incidental to the full completion of the new plant”.

20 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 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 30 “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).

In this connection, MANNING “Assessment & Rating”, 2nd Edition, page 189, has this to say:—

40 “The test has been put upon this basis, ‘that a servant may occupy a tenement of his master’s, not by way of payment for his services, but for the purpose of performing them; it may be that he is not permitted to occupy, as a reward, in the performance of his Master’s contract to pay him, but required to occupy in the performance of his contract to serve his master’. In the former case he is, and in the latter he is not, ratable. The real test is who occupies the lands? Is it the master or the servant? And as to that the nature of the premises occupied and whether the apartments are really separated from the exempt lands of the master is material”.

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  
10 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.

In the case of the Attorney General for Canada et al. vs. The City of Vancouver, 1943, 1 D.L.R. page 510, it was held that a person may be subject to a tax *in personam* because he is an occupier of land not itself taxable. The Legislature may authorize the imposition of such a personal tax even if based upon the value of buildings or leaseholds owned by the Crown (per McDonald,  
20 C.J., K.B., at page 517; and see also Smith vs. Rural Municipality of Vermillion Hills, 30 D.L.R. page 83; and also The City of Montreal vs. The Attorney General of Canada and the Attorney General for Quebec intervening, 92 L.J., P.C. page 10; Fraser vs. City of Montreal, 23 K.B., page 242.

This is what has occurred in the present instance, for by Section 362a of the Charter of The City of Montreal, the Legislature has expressly authorized the imposition of just such a tax. It is not a tax upon Crown property which would be admittedly  
30 contrary to the B.N.A. Act as also the provisions of the Interpretation Act, R.S.Q., 1941, Ch. 1, section 42.

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,  
40 change their rights *inter se*, but those rights (or liabilities) remain unchanged as against a third party, e.g. the taxing authority. In the case of La Cité de Montréal vs. La Société d'Administration Générale, 38 K.B., page 521, Sir Mathias Tellier, C.J. (as he later became) said, at page 528:—

“On se retranche derrière la clause du bail que j'ai reproduite ci-haut, et on dit: ‘Si la Cour fait droit à l'action, c'est la Couronne qui, à cause de la dite clause, va se trouver tenue de payer les taxes’. A cela, je réponds: Il n'est rien demandé à la Couronne. La demanderesse ne



pourrait rien lui demander. S'il a plu à la Couronné d'assumer les obligations de la succession François Benoit, cela la regarde, et la demanderesse n'a rien à y voir. Pour la demanderesse, ce qui est stipulé dans le bail, au sujet des taxes, est *res inter alios acta*'.

10 This, it seems to me, is the view clearly expressed in the case *The City of Montreal vs. The Attorney General for Canada*, 1923 L.R. App. Cas., where it was held: "as the tenant was liable only so long as his occupancy continued, the taxation was in respect of his interest as lessee, and accordingly was not a tax on Crown lands so as to be *ultra vires* under Section 125 of the British North America Act 1867".

20 It has been contended that that case may be distinguished because Lord Parmoor said, at page 141, "no copy of the by-laws was attached to the case, but it was asumed throughout the argument that they had been made in due form". But in answer to this, it must be pointed 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, namely, the Charter of the City of Montreal, Section 362a, which is the crucial article reading as follows:—

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

40 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 bebinning on the 1st of May.

If the immovable 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

10 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*'.

20 The by-laws merely give effect to it by fixing the rate or amount of such assessment. It is true again that the by-law speaks of the imposition of an assessment "on taxable immovables", and it is contended on behalf of the Plaintiff that since the premises were the property of the Intervenant they were not "taxable immovables". The answer to that, however, I should say, was that the exemptions mentioned in the Charter do not apply to occupants of Crown property, and the present tax now disputed is a tax upon the occupancy of certain Crown lands, and the Charter expressly makes such occupancy taxable. (*Fraser vs. City of Montreal*, 23 K.B. page 242).

121 / 30 Within its proper sphere the Legislature is supreme, and there has been no attempt in the present instance by the Legislature to transcend that sphere by taxing Crown property as such. It is, I repeat, the occupation by the Plaintiff in the performance of a commercial undertaking that is taxed, and even if the incidence of such tax rests ultimately upon the Intervenant that results not from the original imposition of the tax but as a result of the assumption thereof under the contract by the Intervenant, if indeed that be the true result as to which I express no opinion.

40 I have carefully considered the case of *Canadian Locomotive Company and al.* and the *Corporation of the City of Kingston* (*Canadian Tax Cases*, 1942, page 280) decided in the County Court of the County of Frontenac, Ontario. The facts are strikingly similar, but the case appears to have been decided under the provisions of the Ontario Assessment Act.

I reach the conclusion that for the period now under review, that is from the 1st of May, 1942, the Plaintiff is subject to the tax imposed as "occupant".

There remains to be considered the Business Tax which is likewise a personal tax authorized by Article 363 of the Charter and given effect by By-law No. 1642. By this article of the Charter, the City is authorized “to impose and levy by by-law a tax to be called the ‘business tax’ on all trades, manufactures, financial or commercial institutions”.

10

As I have already reached the conclusion that the Plaintiff carries on an occupation falling within the terms of the article in question, and is not a servant of the Crown exempting it from liability, it follows that the Plaintiff is liable for such business tax.

CONSIDERING that as respects the claim of the Defendant for the sum of \$18,934.78 — “Property taxes on the new building and motive power from 1st of November 1941 to April 30th, 1942”, the said claim is directed against the Plaintiff as “proprietor” and not as “occupant”;

20  
#

DOTH REJECT the said item.

CONSIDERING that as respects the three following items, the Defendant has established its right thereto against the Plaintiff as “occupant”, namely: “(b) Business tax on the same property as hereinbefore mentioned in subparagraph (a) hereof, for the same period. . . \$3,425.22; (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; (d) Business tax on the same property as hereinbefore mentioned in subparagraph (c) hereof for the same year . . . \$6,850.44”;

30

DOTH CONDEMN the Plaintiff to pay to the Defendant the said sums: \$3,425.22, \$41,141.77 and \$6,850.44,—together with interest at the rate of 5% from the date when the said taxes respectively were due, add also the costs of the present action.

40

DOTH DISMISS the Intervention except as to the foregoing item of \$18,934.78, and doth recommend that the Intervenant pay to the Defendant the costs upon such Intervention.

AND DOTH ORDER the Prothonotary of this Court to return to the Plaintiff exhibits No’s. P-1 and P-2 without giving access thereto to any party other than the parties to the present submission.

S. Martel, D.P.C.S.

(Signed) W. L. BOND,  
C.J.S.C.M.

Canada  
Province de Québec,  
District de Montréal,

JUGEMENT DE LA COUR DU BANC DU ROI  
(EN APPEL)

10

(Dans la Cause No 2560)

Montréal, le 29 décembre 1944.

Présents:—

L'Honorable Juge WALSH  
" " ST. JACQUES  
" " FRANCOEUR  
" " MARCHAND  
" " BISSONNETTE

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SA MAJESTÉ LE ROI, AUX DROITS DU CANADA,  
Intervenant en Cour supérieure,  
APPELANT,

— et —

MONTREAL LOCOMOTIVE WORKS LIMITED

30

Demanderesse en Cour supérieure,  
INTIMÉE,

— et —

LA CITÉ DE MONTRÉAL,

Défenderesse en Cour supérieure,  
INTIMÉE.

J U G E M E N T

40

LA COUR, après avoir entendu les parties par leurs procureurs, sur le mérite du présent appel, examiné le dossier de la procédure en Cour de première instance, et sur le tout délibéré:

CONSIDERANT qu'il n'y a pas mal jugé dans le jugement rendu par la Cour supérieure, siégeant à Montréal dans le district de Montréal, le vingt-et-unième jour d'octobre, mil neuf cent quarante-trois, et dont est appel, renvoie le dit appel, CONFIRME le dit jugement, et recommande à l'appelant de payer les dépens à l'intimée, la cité de Montréal. MM. les juges Walsh et St.-Jacques dissidents.

J.C.B.R.

Canada  
Province de Québec  
District de Montréal

JUGEMENT DE LA COUR DU BANC DU ROI  
(EN APPEL)

10

(Dans la Cause No 2561)

Montréal le 29 décembre 1944.

Présents:—

L'Honorable Juge WALSH  
" " ST. JACQUES  
" " FRANCOEUR  
20 " " MARCHAND  
" " BISSONNETTE

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LA CITÉ DE MONTRÉAL,

Défenderesse en Cour supérieure,

APPELANTE,

— & —

30 MONTREAL LOCOMOTIVE WORKS LIMITED,

Demanderesse en Cour supérieure,

INTIMÉE,

— et —

SA MAJESTÉ LE ROI, AUX DROITS DU CANADA,

Intervenant en Cour supérieure,

INTERVENANT.

40

J U G E M E N T

LA COUR, après avoir entendu les parties par leurs procureures, sur le mérite du présent appel, examiné le dossier de la procédure en Cour de première instance, et sur le tout délibéré:

CONSIDERANT qu'il n'y a pas mal jugé dans le jugement rendu par la Cour Supérieure, siégeant à Montréal dans le district de Montréal, le vingt-et-unième jour d'octobre, mil neuf cent quarante-trois, et dont est appel, renvoie le dit appel, CONFIRME le dit jugement, avec dépens contre l'appelante en faveur de l'intimée.

J.C.B.R.

Canada  
Province de Québec  
District de Montréal

JUGEMENT DE LA COUR DU BANC DU ROI  
(EN APPEL)

10

(Dans la Cause No 2562)

Montréal le 29 décembre 1944.

Présents:—

L'Honorable Juge WALSH  
" " ST. JACQUES  
" " FRANCOEUR  
" " MARCHAND  
" " BISSONNETTE

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MONTREAL LOCOMOTIVE WORKS LIMITED,

Demanderesse en Cour supérieure,

APPELANTE,

— & —

LA CITÉ DE MONTRÉAL,

Défenderesse en Cour supérieure,

INTIMÉE,

— et —

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SA MAJESTÉ LE ROI, AUX DROITS DU CANADA,

Intervenant en Cour supérieure,

INTERVENANT.

J U G E M E N T

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LA COUR, après avoir entendu les parties par leurs procureurs, sur le mérite du présent appel, examiné le dossier de la procédure en Cour de première instance, et sur le tout délibéré :

CONSIDERANT qu'il n'y a pas mal jugé dans le jugement rendu par la Cour supérieure, siégeant à Montréal dans le district de Montréal, le vingt-et-unième jour d'octobre, mil neuf cent quarante-trois, et dont est appel, renvoie le dit appel, CONFIRME le dit jugement, avec dépens contre l'appelante en faveur de l'intimée. MM. les juges St-Jacques et Walsh dissidents.

J.C.B.R.

## JUDGES' NOTES IN CASE No 2560, 2561, 2562

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### NOTES OF THE HON. MR. JUSTICE WALSH

Two contracts intervened between the Dominion Government and American Locomotive Works Limited, (on October 23rd 1940). One contract was the "Construction" contract; the other was the "Production" contract.

20 The Construction contract provided for the sale of land by the company to His Majesty and for the construction thereon of a plant for war production work, as agent of the Government, with funds provided by the latter.

The Production contract provided for the management and operation of this plant, on account of His Majesty, and with his funds, subject to control of the Minister of Munition, materials and equipment to belong to the Government.

30 The plant was completed on November 7th 1941, and the land subdivided. On February 27th 1942 a formal deed of sale was made at that time. The land remained in the name of the company until the latter date; the taxes were paid by the company from May 1st 1941 to May 1st 1942.

40 The City of Montreal now claims from the company property taxes on new buildings and on motive power from Nov. 1941 to May 1942; business taxes on same; a property tax on land, buildings and motive power, as *occupant* from May 1st 1942; another business tax for the same period.

Two types of taxes and two periods are involved.

In respect to the property taxes from November 1941 to May 1st 1942, the company is not liable as owner of the buildings and of the motive power. The City was notified as to the action of the Government, which had taken over the property. A tax for ownership could not be imposed on the company under the circumstances. And the Government in any event cannot be taxed.

It is to be noted that the company was paid \$1.00 for the land. At the end of operations, the land is to be returned to the company shorn of buildings; or the company may buy the buildings, with a return of its sale price (\$1.00 for land); if a sale is made to a third party, the company will receive full value for the land.

10°

All buildings are presumed erected *by a proprietor* of the land, *unless the contrary be shown* (415 C.C.). Everything herein discloses that the buildings belonged to the Crown.

There always existed a promise of sale herein; the land was even ceded and construction started; so the promise herein amounted to sale long before the deed was signed. Its registration cannot be considered, because only a third person could avail himself of lack of registration, if he had acquired the same immovable from the same vendor (for value), whose title had been already registered (2096 C.C.). Such is not the City's case.

20

In respect to a property tax on land, buildings and power for the period May 1st 1942, it is to be noted that these were registered then in the name of His Majesty, though the *company* is taxed as *occupant*. Locomotive Works at that time managed and operated the works and plants, as agent of the Government, and cannot be taxed by municipalities. Moreover an occupant is

20 a person who occupies in his own name, otherwise than as proprietor, and who enjoys the revenues of the immovable (see Charter).

The contracts show the company was an agent of the Crown and did not *occupy* in its own name (P-1 and P-2); the Government had the right to manufacture munitions of war, and could engage the services of any person or corporation for that purpose, (ch. 3 R.S.C. 1939; ch. 31 R.S.C. 1940.).

40 The company was not created by the Crown, but it certainly was constituted the Crown's agent. The situation in the present case was not that of one to whom assistance was afforded by the Government, in order to facilitate the execution of wartime contracts; the management by the company of the Crown's affairs *for the account* of the Crown was committed to it.

The Minister had absolute control over operations; he could reject unsatisfactory and defective "parts", but it is noteworthy that such rejection and subsequent replacement were to be the Crown's expense.



It appears to me that the Crown, having committed its business to the company (accepting), a mandate was established (1701 C.C.). So the contract enacts; so the circumstances indicate.

10 Certainly the company received remuneration for its services, as would any agent. Its own business had ceased; it received no profits therefrom; it received from the Crown a fixed price or fee for every piece turned out by it; this is "piece-work", equivalent to what ordinary machinists turn out on lathes and shapers; the work and remuneration turn to the worker's profit; it is generally called wages. The remuneration was the same as that of government employees, occupying Crown offices and plants owned and operated by the Crown, under supervisors. The company only leased its services and that of its personnel for a stipend — in any event, if mandate is more acceptable, both come under  
20 the caption of agency.

The Crown owned and occupied the land and plants during both periods.

It cannot be said that the plant in question was occupied by the company, because the attention of the company was needed to operate them, and even to start them. This is the case in all plants. The Government could only act through individuals, it could have used a deputy minister or a superintendent or a fore-  
30 man to push a button, press a pedal and turn cylinders on a lathe. Would that make such individual something other than an agent for a being (the Government) which cannot of itself perform these acts? Would the foreman, superintendent and the workmen operating this lathe be occupants of the premises or only servants? All these latter hire their services for remuneration. Salary, wages remuneration are the quibuscum of existence; without them a personnel would not live long enough to operate anything.

40 The company did not act as an entrepreneur or contractor. If its products happened to be spoiled or injured, the Minister could reject them, but the Government nevertheless had to pay their cost. Moreover, the company was to be liable only for intentional negligence and bad faith — in other words, practically only for sabotage of the enterprise. Is this not unusual for the case of an entrepreneur?

Re Quinlan & Robertson, 1929 S.C.R. 385, Chief Justice Duff declared:—

10 “It should first be observed that when this contract is looked at as a whole, it has few of the badges of hire and lease of services. Paragraph 1, 3, 30, 37 and 48 may be mentioned specifically, as shewing that what the respondent company undertook under its contract was to execute a given work and supply materials of quantity and character ascertained or to be ascertained, and not to hire its servants to the department. The stipulations which the respondent company affirms have the effect of imparting to the contract the character of a contract of hire of services are precisely those usually found in contracts for the construction of extensive works.”

20 It is quite true that, if the company had an interest in the Crown's property, it could be taxed. No such interest has been established.

As Locomotive company, to my mind, did not carry on business for itself, but for His Majesty, it cannot be burdened with a business tax.

The Crown had the right to intervene herein, since its property was affected.

30 I would dismiss the appeal of the City, with costs.

I would allow the appeal of the company, with costs.

I would allow the appeal of the Crown, with costs.

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#### NOTES DE L'HON. JUGE ST-JACQUES

40 Le jugement de la Cour supérieure a donné lieu à trois appels, dont l'un de la part de la Couronne, l'autre de la Cité de Montréal, et l'appel principal est par la Montreal Locomotive Works Limited.

Les parties ont procédé en Cour supérieure, suivant les dispositions de l'article 509 du Code de procédure civile; elles ont admis toute une série de faits et elles ont pris, respectivement, les conclusions qui, suivant chacune d'elles, découlent de ces faits.

La Cité de Montréal soumet que la compagnie est tenue de lui payer des taxes foncières et d'affaires depuis le 1er novem-

bre 1941, ainsi que pour l'année 1942. La compagnie, de son côté, soutient qu'elle ne doit aucune taxe, vu qu'elle représente la Couronne qui est propriétaire et occupante de l'immeuble imposé. La Couronne est intervenue pour soutenir les conclusions de la compagnie.

10 En substance, les faits admis sont les suivants:—

Le 23 octobre 1940, deux contrats sont intervenus entre la compagnie et la Couronne, dont l'un appelé "contrat de construction", et l'autre "contrat de production".

20 La compagnie est propriétaire à Montréal, dans le quartier de la Longue-Pointe, d'une étendue de terrain assez considérable sur laquelle elle a sa propre usine. Par le contrat de construction, la compagnie s'est engagée à vendre à la Couronne une partie de son terrain, moyennant un prix nominal et y ériger une usine destinée à la fabrication d'armements pour les fins de guerre.

Par l'autre contrat, appelé "Production contract", la compagnie s'est engagée, dès que l'usine serait terminée, à y fabriquer des armements, consistant en affûts de canon et chars d'assaut moyennant une rémunération à l'unité et dont le montant n'est pas dévoilé.

30 Cette usine a été complétée pour être mise en opération le premier novembre 1941. Les taxes municipales imposées sur le terrain, pour l'année 1941, avaient alors été acquittées.

40 La Cité, usant des pouvoirs que lui donne la charte, a voulu ajouter au rôle d'évaluation la valeur de l'usine construite et de son outillage. Elle a été prévenue, tant par la compagnie que par la Couronne, que cette usine avait été construite pour la Couronne; qu'elle n'appartenait pas à la compagnie, et que l'exploitation qui y serait faite le serait pour la Couronne. La compagnie n'étant que son agent. La Cité a quand même modifié le rôle d'évaluation pour y ajouter la valeur de l'usine et elle a réclamé les taxes foncières sur cette valeur augmentée, pour la période commençant le premier novembre 1941, jusqu'au mois de mai 1942. Pendant cette période, le terrain et l'usine, qui y avait été construite, apparaissaient au rôle d'évaluation au nom de la compagnie, comme propriétaire.

Pour l'année 1942, l'usine et le terrain sur lequel elle était construite ont été portés au rôle d'évaluation comme propriété de la Couronne, mais dont la compagnie était l'occupante.

Le mémoire conjoint des admissions faites par les parties contient les paragraphes suivants:—

10           “3. The said now 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 to in paragraph 18 hereof and filed herewith as Exhibit P-14.

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

20           Les deux contrats ont été produits,

La Cour avait à considérer deux périodes pour déterminer quelles pouvaient être les obligations de la compagnie et les droits de la Cité:—

1. du premier novembre 1941 au 30 avril 1942;

2. toute l'année fiscale commençant le premier mai 1942.

30           Par le jugement de la Cour supérieure, la compagnie a été condamnée à payer le montant des taxes d'affaires réclamées pour la période commençant le premier novembre 1941 et se terminant le 30 avril 1942, de même que les taxes d'affaires pour toute l'année 1942 et les taxes foncières pour la même période. Les taxes foncières réclamées pour la première période, celle commençant le premier novembre 1941, n'ont pas été accordées.

40           La Cité demande, par son appel, que le jugement soit réformé sur ce point; et, de son côté, la compagnie voudrait être libérée de toutes les taxes qui lui ont été réclamées par la Cité et que la Cour supérieure l'a condamnée à payer.

Pour résoudre ce litige qui ne manque pas de difficultés, il faut s'employer à rechercher quelle est la nature ou le caractère dominant du contrat de production qui est intervenu entre la Couronne et la compagnie au mois d'octobre 1940.

A mon avis, le contrat de construction n'est qu'une entrée en matière et ne joue qu'un rôle secondaire.

La Cour supérieure en est venue à la conclusion suivante:—

“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).”

- 10 La compagnie soutient que c'est là une erreur et que ce contrat est bien “a contract of agency”, qu'on l'envisage, soit comme mandat, ou comme louage de service.

Si elle a raison dans l'interprétation qu'elle donne au contrat, et que la Couronne appuie, il en résulte que la Cité ne pouvait pas imposer de taxes foncières, ni percevoir de taxes d'affaires, parce que la véritable occupante de l'usine, pendant les deux périodes, était la Couronne.

- 20 Le contrat de production, qui est soigneusement et minutieusement fait, comporte que c'est bien comme agent de la Couronne que la compagnie s'engage à la fabrication des pièces d'armement qui y sont mentionnées. La première clause se lit comme suit:—

- 30 “The Government hereby acknowledges and agrees that the Company is acting on behalf of the Government and as its agent in all matters pertaining to the performance of this agreement. . . .”

Cette expression revient à diverses reprises au cours du contrat, par exemple au deuxième article. Il est stipulé que:—

“The Company, with the co-operation and assistance of said “Montreal Locomotive Works Limited”, shall administer, manage and operate the plant and shall produce therein for the account of the Government. . . .”

- 40 Or, il est admis au quatrième paragraphe du mémoire des faits, cité ci-dessus, que cette usine nouvelle “is administered, managed and operated by the plaintiff in accordance with the provisions of said Production Contract”.

Sans doute, comme le dit la Cour supérieure, que l'emploi répété au cours du contrat du mot “agent” n'est pas absolument décisif en soi. Mais si le contrat ne contient aucune disposition qui soit incompatible avec l'idée “d'agence” ou de mandat, il faut bien lui donner le sens et la portée que les parties ont eu en

vue, et ce sens s'impose, tant pour la Cité de Montréal que pour les parties elles-mêmes.

Avec le plus grand respect pour la Cour supérieure, je ne puis trouver dans ce contrat les éléments nécessaires pour en faire un louage d'ouvrage par devis et marché, suivant les dispositions  
10 des articles 1683 et suivants de notre Code.

C'est bien, à mon sens, le "contract of agency" du droit anglais et, puisqu'il est stipulé que ce sont les lois de notre province qui s'y appliqueront, j'y vois soit un véritable contrat de mandat, soit un contrat de louage de service personnel. Dans l'un comme dans l'autre cas, la compagnie n'occupe pas en son nom l'édifice qu'elle a construit pour la Couronne; mais elle y exécute  
• le travail pour lequel elle a loué à la Couronne les services de ses officiers et employés.  
20

De toutes les stipulations de ce contrat, il se dégage nettement que la compagnie n'est pas indépendante dans l'exécution de son travail; elle est constamment soumise au contrôle, à la direction et à l'initiative de la Couronne dont elle n'est que la représentante. Evidemment, elle ne fait pas ce travail gratuitement, mais la rémunération ne change pas le caractère dominant du contrat.

30 Le fait que la compagnie est une corporation commerciale ordinaire et qu'on lui paie une rémunération pour ses services, n'est pas incompatible avec l'idée de mandat ou d'agence à l'égard de la Couronne pour le compte de laquelle elle fabrique ces pièces d'armement. Sans doute que pendant toute la durée de ce contrat, la compagnie continue d'exister comme telle et sa régie interne reste la même; mais en quoi cela peut-il affecter la nature du contrat, si elle peut louer ses services moyennant rémunération? Quant à cette rémunération qui est fixée d'avance, je ne vois  
40 pas en quoi elle diffère du salaire ou des gages que la Couronne paie à n'importe lequel de ses employés ou serviteurs.

Si donc cette usine, construite par la compagnie, pour le compte de la Couronne, est en réalité opérée par un agent ou mandataire de la Couronne, l'imposition des taxes par la Cité n'est autorisée ni par sa charte, ni par les lois générales du pays. Il en résulte qu'elle n'en peut percevoir aucune.

Pour la première période, les taxes foncières grevant le terrain avaient été payées en entier. Les édifices érigés sur ce

terrain étaient la propriété de la Couronne, et les officiers de la Cité en avaient été informés dès les premiers jours de novembre 1941, c'est-à-dire à temps pour empêcher la modification du rôle d'évaluation qui n'a été faite et complétée qu'en décembre. L'acte de vente du terrain n'avait pas encore été signé; il ne l'a été qu'en février 1942. La présomption que ces édifices étaient  
10 construits par le propriétaire du terrain était absolument repoussée par les informations bien précises fournies aux officiers de la Cité à ce sujet.

Il en résulte donc que la valeur de ces édifices ne pouvait pas être ajoutée à celle du terrain pour en faire un tout au rôle d'évaluation. C'était la Couronne qui était propriétaire des édifices, tout comme elle devenait propriétaire du terrain par l'achat qu'elle en avait fait.

20 Le rôle d'évaluation, tel que modifié, n'a pu conférer aucun droit à la Cité pour cette première période.

Quant à la seconde période, je l'ai dit plus haut. la Couronne était l'occupante de l'immeuble taxé, comprenant terrain et bâtisse, et il n'était pas sujet à imposition.

Je conclus donc que l'appel de la Cité doit être rejeté avec dépens, et que l'appel de la compagnie doit être accueilli avec  
30 dépens; les conclusions qu'elle a prises en Cour supérieure auraient dû être accordées.

Quant à l'appel de l'intervenante, la Couronne, je suis aussi d'avis qu'il aurait dû être accueilli en Cour supérieure. La Couronne avait non seulement un intérêt, mais elle avait le droit d'intervenir dans ce litige, car c'est sa propriété que la Cité voulait imposer, et si cette imposition était maintenue, c'est l'immeuble lui-même qui en serait affecté. Ce n'est pas seulement un intérêt éventuel qu'a la Couronne, mais un intérêt particulier existant  
40 lors de l'intervention. Sans doute que l'intervenante soutient les prétentions légales formulées par la compagnie, mais elle ne le fait pas uniquement pour le bénéfice de la compagnie; c'est l'immeuble dont elle est l'occupante qu'elle veut faire déclarer libre de toute imposition.

Je ferais donc droit à l'appel; infirmerais le jugement de la Cour supérieure qui rejette l'intervention avec dépens; et déclarerais que l'intervention était bien fondée et condamnerais la Cité à en payer les dépens.

NOTES DE L'HON. JUGE FRANCOEUR

Le mémoire conjoint contient une admission de faits (paragraphe 3) qui est subordonnée à la proposition énoncée au  
10 paragraphe 37A formulé comme suit:—

“The foregoing paragraphs are not intended to be interpretation of Exhibits P-1 to P-34 inclusive which speak for themselves and must be interpreted according to their own terms.”

Le contrat important est le deuxième “Production Contract” (Exhibit P-2).

20 Il semblerait être *prima facie* un contrat de mandant. En réalité il n'en est pas un. La compagnie exécute un travail suivant plans et spécifications qui lui sont fournis par le gouvernement. Elle achète la matière première, engage les hommes et les paye à même un fonds mis à sa disposition par la Couronne. Elle reçoit tant de la pièce.

30 Quels que soient les termes du contrat, elle est rémunérée pour la valeur de l'ouvrage qu'elle fait. C'est cette rémunération à raison seule de la valeur de l'ouvrage qui détermine la nature du contrat. Il s'agit bien du contrat d'entreprise des articles 1683 et suivants c.c.

La Cour Supérieure l'a justement interprété dans ce sens. En effet, le premier juge observe:—

40 “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 hereto which necessarily defines its true character. That has to be ascertained otherwise. (Montreal Light Heat and Power Company vs. Quinlan et al., 1929, 3, D.L.R., p. 568).”

Le juge ajoute les remarques suivantes:—

“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 facili-



10-       tate 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 re-conveyance of the whole to the Plaintiff on the execution of the contracts on terms set out.

20       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:—

30       “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 the design, construction and equipment of the new plant, the selection of contractors and subcontractors and the type of contract to be made with them, the selection and purchase of construction materials, machinery, tools and other equipment and over all other matters incidental to the full completion of the new plant.”

40       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 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 & Ripert, Volume 11, No. 774).

10 “To my mind, (continue le juge), 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. In the case of La Cité de Montréal vs. La Société d’administration Générale, 38 K.B., page 521, Sir Mathias Tellier, C.J. (as he later became) said, at 20 page 528:—

30 “On se retranche derrière la clause du bail que j’ai reproduite ci-haut, et on dit: ‘Si la Cour fait droit à l’action, c’est la Couronne qui, à cause de la dite clause, va se trouver tenue de payer les taxes’. A cela, je répons: Il n’est rien demandé à la Couronne. La demanderesse ne pourrait rien lui demander. S’il a plu à la Couronne d’assumer les obligations de la succession François Benoit, cela la regarde, et la demanderesse n’a rien à y voir. Pour la demanderesse, ce qui est stipulé dans le bail, au sujet des taxes, est res inter alios acta”.

40 La compagnie réalise des bénéfices qui vont à ses actionnaires, non pas à la Couronne. Son intérêt est distinct de celui de la Couronne, et il est taxé; le gouvernement demeure propriétaire du terrain, de l’usine, mais c’est la compagnie qui occupe pendant l’exécution du contrat; la propriété comme appartenant à la Couronne n’est pas taxable, mais elle l’est comme occupée par la compagnie. Celle-ci en 1941 apparaît au rôle comme propriétaire et en 1942 comme occupante; la Couronne n’y apparaît pas, n’a pas été taxée.

La Couronne est intervenue, mais n’est pas en cause. Le débat n’est qu’entre la Cité et la compagnie. Si celle-ci paye les taxes, la Couronne est obligée de rembourser (Exhibit P-4, p. 112 “Conditions and Stipulations — Ist”). Cette responsabilité éventuelle justifierait son intervention.

En résumé, la compagnie exécute un contrat d'entreprise, et, comme entrepreneur indépendant, elle occupe l'immeuble du gouvernement. Cette occupation est imposable.

10 Pour ces motifs et ceux très élaborés donnés par notre collègue M. le juge Marchand dans ses notes, je suis d'avis que le jugement a quo est bien fondé et que les appels doivent être rejetés.

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### NOTES DE L'HON. JUGE MARCHAND

20 Chacune des parties au litige jugé dans la Cour Supérieure a formé un appel de la décision qui y a été donnée et en demande la réformation. Elles y apparaissaient, la *Montreal Locomotive Works Limited* comme demanderesse, la *Cité de Montréal* comme défenderesse, et *Sa Majesté le Roi, aux droits du Canada*, comme intervenant. Au cours de cette étude des appels de chacun, j'appellerai les deux premières, La Cité et la Compagnie, et pour l'Intervenant, j'emploierai le terme de "La Couronne", comme l'ont fait les savants procureurs à l'audition des appels.

30 Les parties ont adopté en première instance la procédure des articles 509 et suivants du Code de Procédure qui permettent de demander dans un mémoire conjoint où tous les faits qu'elles veulent mettre devant la Cour sont admis et où chacune prend ses conclusions, une adjudication sur les questions de droit qu'elles soumettent. Le mémoire conjoint qu'elles ont produit et qui est toute la contestation liée entre elles donne tous les détails des faits admis: il est transcrit au long dans le jugement que les appels ont évoqué devant nous; mais comme les parties s'y réfèrent à des contrats et à d'autres écrits dont le sens, la portée et les effets doivent être déterminés pour la décision des appels, je ne la reproduis pas ici, me réservant d'y faire les références nécessaires  
40 dans la relation des faits et l'exposition des prétentions des parties.

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En 1940, la Compagnie était propriétaire d'un terrain d'une certaine étendue sur la municipalité de la Cité formant partie des lots du cadastre 21 et 27, avec une usine construite sur ce terrain, et elle apparaissait comme telle propriétaire de ce terrain et de cette usine aux rôles d'évaluation, de cotisation et de perception pour l'imposition des taxes municipales.

Le 23 octobre elle a fait avec la Couronne deux contrats sous-seing-privé; le premier pour la vente d'une partie de son terrain nécessaire pour l'établissement, la construction, et l'installation complète d'une autre usine pour y fabriquer des chars d'assaut et des affuts de canon sur roues (gun carriages) et pour tels établissement, construction, et installation, comme agent de la Couronne et pour elle; le second pour l'opération de l'usine une fois construite et installée, toujours pour la Couronne et comme son agent. (A ces contrats est intervenue une autre corporation, l'*American Locomotive Company* qui s'y est chargée d'aider la Compagnie et dont les stipulations et obligations n'intéressent pas la présente cause).

Les travaux de construction de l'usine ont été commencés et poursuivis: je trouve au dossier, pages 76 et 80 des demandes pour permis de construire l'une signé par Sutherland construction Company, l'autre par L. G. Ogilvie & Company Limited, faites respectivement les 19 décembre 1940 et 2 mai 1941, pour \$78,000. dans le premier cas et \$1,020,000. dans le second. Dans l'une et l'autre la Compagnie y est dite propriétaire de l'immeuble. Il est admis (paragraphe 11 et 12) que les permis correspondant à ces demandes ont été octroyés par la Cité le 19 février et le 5 mai 1941.

Il n'apparaît nulle part quand ces travaux ont été terminés, mais il est en preuve par l'admission des parties (par. 5) que le 7 novembre 1941 la Compagnie a demandé et obtenu que partie de son immeuble soit inscrite au cadastre officiel comme la subdivision numéro 2210 du lot originaire numéro 21 de la paroisse de Longue-Pointe. Plus tard, le 27 février 1942, la Compagnie donnera un titre spécifique à la Couronne de la propriété de cette subdivision pour confirmer (paragraphe 6) la vente dans le contrat de construction du 23 octobre 1940 du terrain nécessaire à la construction de l'usine. Et je m'en crois autorisé à conclure pour les fins de la cause, qu'à cette date du 7 novembre 1941, la construction et l'établissement de l'usine étaient complétés.

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La Cité a fait son rôle d'évaluation municipale pour son année fiscale commençant le 1er mai 1941. Elle y a porté la Compagnie comme propriétaire de partie des lots 21 et 27 du cadastre et y a évalué le terrain lui-même, les bâtiments, un chemin de fer et le pouvoir moteur à un total de \$1,293,600. Dans son rôle

de cõtisation ou de perception, à raison de cette évaluation, elle l'a totisée pour les taxes municipales et scolaires à \$35,858.59. Le 30 septembre 1941 la Compagnie lui a payé ce montant (par. 8, 9, 10).

10 Les évaluateurs municipaux, une fois complétée la construction et l'établissement de la nouvelle usine ont procédé à en faire l'évaluation ainsi que du pouvoir moteur; pour l'usine elle-même, ils ont trouvé \$1,264,200. et pour les moteurs \$13,600. En conformité aux dispositions de la charte de la cité, ils ont le 10 novembre 1941 fait leur rapport à l'évaluateur-en-chef qui l'a lui-même référé au Bureau des Reviseurs (par. 13 et 14).

20 Le 20 novembre avis a été donné par le Bureau des Reviseurs à la Compagnie de cette évaluation de l'usine nouvelle avec une notification qu'elle pouvait comparaître dans les quinze jours et soumettre ses plaintes à son sujet. Et effectivement la compagnie a comparu par procureur devant le Bureau et tant verbalement que par une lettre produite a représenté que par l'effet des contrats du 23 octobre 1940 la Couronne était dès lors devenue propriétaire de l'usine évaluée et du terrain sur lequel elle était construite, qu'elle-même la Compagnie, avait dès lors cessé d'être propriétaire de ce terrain et n'avait jamais été propriétaire de l'usine. La Couronne, par une lettre du Sous-Ministre des Munitions et des approvisionnements a fait les mêmes représentations. (La comparution devant le Bureau des Reviseurs et la lettre de la Compagnie sont du 28 novembre, et la lettre du Ministère des munitions et des approvisionnements est du 1er décembre; par. 15, 16, 17, 18, 19, 20 et 21).

40 Le 4 décembre les plaintes faites par la Compagnie et la Couronne ont été transmises par le Bureau des Reviseurs de l'évaluation au cotiseur-en-chef et pour décision; le 12 décembre le même Bureau a émis un certificat à l'effet que l'évaluation de la nouvelle usine et de son pouvoir moteur était fixée à \$1,264,200. et \$13,600. respectivement et que l'usine était en état d'être occupée le 1er novembre précédent; et le 12 décembre la Compagnie et la Couronne ont reçu avis de l'émission de ce certificat (par. 27, 28 et 29).

Le 11 décembre le cotiseur-en-chef a décrit à la Compagnie qu'il était tenu par la loi sur réception d'un certificat d'évaluation du Bureau des Reviseurs d'amender en conséquence le rôle d'évaluation de l'année courante et que sur le rôle en vigueur il n'apparaissait aucun autre propriétaire de l'immeuble que la compagnie elle-même (par. 26).

Le 18 décembre enfin, le cotiseur en chef a avisé le directeur des finances de l'évaluation de la nouvelle usine et de son pouvoir moteur et de l'amendement fait en conséquence au rôle d'évaluation. Et le directeur des finances a porté au rôle de perception une imposition de la Compagnie à raison de cette évaluation et comme propriétaire de l'usine et du pouvoir moteur en la  
10 somme de \$18,934.78, pour les 181 jours du 1er novembre 1941 au 30 avril 1942 (par. 30 et 31).

Que cette imposition de la Compagnie ait été ainsi faite parcequ'elle était portée aux rôles d'évaluation et de cotisation ou de perception comme propriétaire de la nouvelle usine, et qu'elle soit de taxes foncières apparaît aux exhibits P-8, et P-27, auxquels se réfèrent les paragraphes 30 et 31 du mémoire des parties, et qui sont imprimés aux pages 85 et 86 du dossier.

20 (Une autre imposition d'une taxe personnelle dite "taxe d'affaires" a été faite à la Compagnie à raison toujours de la nouvelle usine et pour la même période de six mois du 1er novembre 1941 au 30 avril 1942, mais les droits des parties au sujet de cette taxe d'affaires seront étudiés plus loin).

Enfin, le 27 février 1942, par acte devant notaire, la Compagnie a déclaré avoir vendu à la Couronne, en exécution du contrat de construction du 23 octobre 1940, le terrain requis pour  
30 la nouvelle usine, la subdivision 2210 du lot originaire 21 du cadastre de Longue-Pointe, reconnaissant que la Couronne en était propriétaire et en avait la possession depuis la date du dit contrat. Cet acte de vente a été présenté pour enregistrement le lendemain.

Sur ces faits essentiels la Cité a pris les conclusions suivantes (par. 38 (a) ) :—

40 (a) "That for the period from the 1st of November 1941 to the 30th of April 1942, the new building and the said motive power were built on the property of the Plaintiff, Lot P-21, that the same were occupied by the Plaintiff for commercial and Industrial purposes, and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant in accordance with the provisions of the charter of the Defendant, . . . . "

en conséquence,

(i) “That the Plaintiff should pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as herein-before set out with respect to the said new building and the said motive power for the period from November 1st, 1941 up to April 30th, 1942; . . . . ”

10 D'autre part la Couronne et la Compagnie se sont jointes pour prendre les conclusions suivantes (par. 39 (a) :—

(a) “That for the period from the 1st of November 1941 to the 30th of April 1942, the new building and the said motive power were the property of the Intervenant and were not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are therefore not subject to municipal taxation in the hands of the Plaintiff, either as owner, occupant or otherwise. . . . ”

20

et qu'en conséquence,

(i) “That the Plaintiff is not bound to pay to the Defendant the municipal taxes on immoveable property claimed by the Defendant as herein before set out in paragraph 38 hereof with respect to the said new plant and the said motive power for the period from November 1st, 1941 up to April 30th, 1942, . . . . ”

30

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Le jugement de première instance a accordé à la Couronne et à la compagnie les conclusions qu'elles ont prises au sujet des contributions foncières réclamées de celle-ci comme propriétaire de la nouvelle usine, pour ces six mois, de novembre 1941 à mai 1942. Je cite du jugement le motif de la décision :—

40 “Whatever right the Defendant may have had, or may still have, to assess the Plaintiff as ‘occupant’ (which I shall consider under the second period), I do not consider that in view of the full disclosure made it was open to the Defendant to assess the Plaintiff as ‘owner’ of these buildings and motive power for the period presently under review, thus creating a real charge upon the property.”

C'est de cette décision que la Cité a formé son appel qui porte le numéro 2561 du dossier de cette Cour, et pour les motifs suivants que je transcris du mémoire soumis par ses procureurs :

10 “Sur ce premier point la Cité de Montréal soumet respectueusement que l’intervenant n’est devenu propriétaire que le 27 février 1942; qu’à la date du 1er novembre 1941, la compagnie était propriétaire; que l’usine qui a été construite fait corps avec le terrain; que la taxe a été imposée sur le terrain bâti et non sur l’usine séparément et que la compagnie en est responsable comme propriétaire; et subsidiairement, dans le cas où la Cour serait d’avis que l’intervenant était propriétaire le 1er novembre 1941, la compagnie doit quand même la taxe comme occupant en vertu de l’article 362 de la charte de la Cité.”

20 Sans changer le sens de ces moyens d’appel, mais groupant ensemble les quatre premiers qui sont des conséquences les uns des autres, je les formule ainsi pour l’étude que j’en veux faire:—

10. L’usine qui a été construite fait corps avec le terrain sur lequel elle a été assise; à la date du 1er novembre 1941 la Compagnie était propriétaire de ce terrain, la Couronne n’en était devenue propriétaire que le 27 février 1942; la taxe a été imposée sur le terrain bâti et non pas sur l’usine séparément; et la Compagnie s’en trouve responsable comme propriétaire;

30 20. Même si la Couronne était propriétaire le 1er novembre 1941, la Compagnie doit encore la taxe comme occupant en vertu de l’article 362a de la charte de la Cité.

40 La première proposition du premier groupe, que l’usine nouvelle fait corps avec le terrain ne peut être admise que comme vérité de fait et équivaldrait à dire que l’usine repose sur le sol. Comme affirmation du droit de propriété de l’usine par la Compagnie parcequ’elle reposerait sur son terrain, elle ne peut être admise que dans la mesure de la présomption que la loi y reconnaît.

L’article 415 de notre Code civil dit en effet que:—

“415. Toutes constructions, plantations et ouvrages sur un terrain ou dans l’intérieur sont présumés faits par le propriétaire à ses frais et lui appartenir, si le contraire n’est prouvé:” . . . .

Dans le cas présent, il me paraît évident que par le contrat de construction du 23 octobre 1940, même si la propriété du sol



a continué d'être à la Compagnie, par contre la propriété à chaque instant et à chaque progrès de l'usine qu'elle y construisait pour la Couronne a appartenu à cette dernière.

Ce contrat de construction, en effet, ne peut laisser aucun doute à ce sujet; je cite d'abord les premières lignes du préambule  
10 (p. 19 du dossier) :—

“WHEREAS the Government desires the Company with the co-operation and assistance of the Intervenant to design, construct and equip for and on behalf of the Government and as its agent, a new plant upon land to be sold by the Company to the Government upon the terms and conditions hereinafter set out. . . . ”

20 l'engagement de vendre le terrain nécessaire, pour un prix déjà payé (p. 20) :—

“The Company, for and in consideration of the sum of \_\_\_\_\_ paid to the Company by the Government, receipt whereof is hereby acknowledged by the Company and whereof quit, and upon the terms and conditions hereinafter set out, shall sell, transfèr, make over and assign unto the Government the land hereinafter generally described as follows, that is to say:—

30

Part of the premises now occupied by the Company . . . .

“The part of the foregoing premises to be sold, transferred, made over and assigned shall be determined by the Company subject, however, to the approval of the Minister, and shall be suitable for the construction and operation of the new plant thereon.”

40 le titre à la propriété de l'usine et de ses accessoires donné à la Couronne (p. 29) :—

“The title to the new plant and to the equipment and accessories thereof and inventories of all materials and supplies on hand shall at all times be vested in the Government which shall assume and bear all risks and liabilities incidental to such ownership.”

Il faudrait, d'ailleurs, citer toutes les clauses de ce contrat, car dans toutes, plus ou moins directement mais toujours, on peut voir la volonté manifestée des parties, la Compagnie et la Couronne, qu'à chaque instant, à chaque progrès de la construction de l'usine elle sera la propriété exclusive de cette dernière comme je l'ai dit plus haut. La présomption de l'article 415 est donc  
10 amplement écartée par cette preuve.

Et il en résulte ceci, c'est que pour le terrain occupé par l'usine on doit présumer et indépendamment de tout titre, par le seul fait de l'existence du bâtiment qui lui appartient, que la Couronne a acquis au moins un droit de superficie qui l'a rendue propriétaire de la surface et jusqu'à l'extrémité des fondations de l'usine, même si la compagnie a continué d'être propriétaire du tréfonds. On doit le présumer parce que c'est la Compagnie  
20 qui a bâti pour la Couronne cette usine et qu'il répugnerait de présumer la précarité du droit de propriété de la construction comme ce serait le cas si son propriétaire n'avait aucun droit dans le sol où sont ses assises. Dans le présent cas, à cause de ce fait de construction par le propriétaire pour un autre, on peut dire que *Solum aedificio cedit*.

Je cite sur ce droit de superficie *Baudry-Lacantinerie et Chauveau, Des Biens, Nos 341 et 343* :—

30 "341. Lorsqu'une personne est propriétaire du tréfonds, tandis qu'une autre a un droit exclusif sur les constructions et plantations adhérent à la surface du sol, on dit que cette dernière a un droit de *superficie*, et on la désigne parfois du nom de *superficiaire*. . . .  
.....Le superficiaire n'a pas un simple droit d'usufruit, *mais bien un droit de propriété*; par conséquent ce droit est 'perpétuel' de sa nature, et, à la différence des servitudes, il ne s'éteint pas par le non usage. C'est un  
40 droit immobilier, puisqu'il a toujours pour objet des constructions ou plantations adhérent au sol."

"343. Le droit de superficie met en contact deux droits réels qui semblent avoir pour objet le même immeuble; on trouve en effet, d'abord, la propriété du *tréfonds* puis celle des *édifices et superficies*. Les titulaires, de ces droits ne sont pas cependant dans un état d'indivision; l'étendue

10 de leurs droits respectifs est parfaitement limitée; chacun d'eux est propriétaire d'une part divisée de l'immeuble, mais la division ne s'opère plus, comme dans le cas du partage d'un fonds de terre entre deux héritiers, suivant un plan vertical dont la projection détermine sur le sol une ligne horizontale limitative des deux propriétés partagées; la division s'opère à l'aide d'un plan horizontal qui passe à l'extrémité des fondations de la maison ou des racines des plantes; le propriétaire du tréfonds possède la partie de l'immeuble située au-dessous de ce plan, et le superficière ce qui est au-dessus; chacun d'eux a, en principe, le droit d'exercer sur la fraction qui lui appartient toutes les facultés inhérentes à la propriété, sous la condition de respecter le droit de l'autre."

20 Mais il y a plus: le dossier nous montre la preuve d'une vente parfaite, au moins pour le terrain sur lequel l'usine a été bâtie. Même si l'on ne doit voir dans le contrat de construction qu'une promesse de vente d'un terrain qui devra être délimité et déterminé plus tard, cette promesse de vente a été acceptée, le prix convenu a été payé, et une délimitation et une détermination ont été faites par la construction elle-même d'au moins la partie occupée par l'usine.

30 S'il est vrai qu'une promesse de vente unilatérale n'équivaut pas à vente (C. c. 1476), la promesse de vente acceptée par une promesse d'acheter devient un contrat synallagmatique où les parties unissent leurs volontés d'une part de donner une chose, d'autre part de donner son prix; et c'est bien ce que nous trouvons ici, similitude des volontés sur la chose (au moins l'emplacement ou l'usine), sur le prix qui est payé, sur le transfert de la propriété.

40 Et une promesse de vente équivaut à vente s'il y a tradition et possession actuelle de la chose (C. c. 1478), tous éléments que nous trouvons ici.

Voir *Mignault*, vol. 7, pp. 24 et suivantes pour l'explication de l'article 1476 et pages 28 et suivantes pour l'explication de l'article 1478 où est sur ces deux questions donnée la doctrine acceptée par tous.

Et il n'importe qu'un contrat formel n'ait été passé que plus tard; dès le commencement de la construction de l'usine la Couronne est devenue propriétaire de la parcelle de sol où ont

été assises ses fondations, quelque plus grande étendue de terrain qu'un contrat ait pu lui donner plus tard. Le contrat lui-même, celui du 27 février 1942, où la Compagnie déclare vendre le lot de subdivision 2210 du lot originaire 21 à la Couronne en exécution de la convention de octobre 1940, constate qu'il est en la possession de l'acheteur et occupé par elle depuis cette convention.

10

Faut-il pour que les droits de propriété de la Couronne puissent être opposés aux droits que la Cité prétend avoir acquis par le titre qu'elle rapporte, ses rôles d'évaluation et de cotisation, que les conventions et les faits d'où résultent les droits de propriété aient été enregistrés ?

Je me laisse guider sur ce point par l'article 1027 du code qui lui dit que la règle d'acquisition de la propriété d'une chose par le seul consentement des parties au contrat de son aliénation s'applique aussi bien au tiers qu'aux parties contractantes. La réserve de cet article des dispositions quant à l'enregistrement des droits réels quand cette chose est un immeuble ne peut bénéficier (art. 2098) qu'*au tiers qui a acquis le même immeuble du même vendeur, pour valeur, et dont le titre a été enregistré*. La Cité n'est pas dans les conditions pour se prévaloir de cette réserve, et l'acquisition par la Couronne de la propriété de l'usine et du sol sous-jacent, faisant de ces choses des biens non-imposables, peut-être opposée aux droits de les imposer que la cité prétend avoir acquis par l'inscription dans ses rôles du nom de la Compagnie comme leur propriétaire.

30

La Cité, pour cette question de l'enregistrement des titres de propriété nous réfère à l'article 375 de sa charte, cité pour ses parties essentielles dans le mémoire de ses procureurs. A sa lecture cet article montre bien qu'il veut régler la manière de procéder des évaluateurs municipaux tout simplement, sans donner aux mentions qu'ils trouvent aux bureaux d'enregistrement et dont ils se servent pour la confection des rôles une authenticité et une force probante qui créeraient quant aux droits de propriété une présomption *Juris et de jure*.

40

De tout ceci je conclus que le 1er novembre 1941 c'est la Couronne et non la Compagnie qui était propriétaire de l'usine dont la Cité a porté la valeur à son rôle d'évaluation, cette usine était un bien non-imposable et c'est par erreur que la Compagnie a été portée aux rôles d'évaluation et de cotisation comme sa propriétaire et imposée ou cotisée en conséquence.

La Cité soumet que s'il est trouvé que la Compagnie ne peut être tenue responsable des taxes foncières comme propriétaire, encore les doit-elle comme occupant cet immeuble. Elle ne peut demander cela sans changer le titre qu'elle a soumis avoir, sans changer ses rôles: elle n'est plus à temps pour avoir le droit de le faire. Elle a été avertie de tous les faits par les plaintes de la  
10 Couronne et de la Compagnie et elle les a rejetées, se forclochant elle-même de prendre devant la Cour une position différente. Nous ne pouvons faire pour elle l'imposition qu'elle aurait pu ou qu'elle aurait dû faire.

Je soumetts que son appel de l'adjudication contre elle sur son imposition à la Compagnie des taxes foncières pour les six mois de novembre 1941 à mai 1942, n'est pas fondé.

20

Outre, ces taxes foncières refusées par le jugement à la Cité, elle a pour la même période de novembre 1941 à mai 1942 imposé à la Compagnie une taxe personnelle dite "taxe d'affaires" calculée sur la valeur annuelle de l'usine et de son pouvoir moteur, au montant de \$3,425.22 et on a inscrit l'imposition à son rôle de cotisation (par. 32 et 33).

Pour cette taxe personnelle elle a pris au sous-paragraphe  
30 (a) du paragraphe 38 la conclusion suivante:—

" . . . and that the plaintiff (La Compagnie), doing business at the said new plant, is also subject to the business tax for the same period in accordance with by-law 1642."

et au sous-paragraphe (i), qu'elle, la Compagnie doit lui payer:—

" . . . the business taxes on the said place of business for the same period."

40

Le règlement 1642 reçoit son autorité de l'article 363 de la charte de la Cité qui lui permet d'imposer et de prélever par règlement une taxe d'affaires sur tout commerce, manufacture, établissement financier ou commercial, les lieux occupés comme maison d'entrepôt ou d'emmagasinage, occupations, arts, profession ou moyens de profits ou d'existence, et exercés ou exploités par une personne ou des personnes dans la cité pourvu que cette taxe d'affaire n'excède pas 10% de la valeur annuelle des lieux dans lesquels ces commerces etc, sont respectivement exercés ou exploités.

Dans les rôles de cotisation pour l'année fiscale mai 1942 à mai 1943, basés sur le rôle d'évaluation ou l'usine a été inscrite à la même valeur et où il est mentionné que la Compagnie est

10                   “. . . . occupant of property owned by His Majesty the King”,  
une “taxe d'affaires” au montant de \$6,850.44 a été imposée à la Compagnie.

Enfin, des taxes foncières lui ont été imposées pour la même période dans le rôle de perception des contributions foncières au montant de \$41,141.77, à raison de son occupation de l'usine,

20                   “ . . . . occupant Government property”.

Ces trois impositions sont évidemment de taxes personnelles, quoique la dernière soit faite au rôle des contributions foncières, l'immeuble étant reconnu être la propriété de la Couronne et par suite ne pouvant porter l'incidence d'un impôt municipal.

Pour ces taxes de l'année 1942 et 1943, les parties ont pris des conclusions dans leur mémoire conjoint. La Cité, au sous-

30                   paragraphe (b) du paragraphe 38 a soumis:—  
40                   “(b) That for the municipal fiscal year beginning the 1st of May 1942, the said new building, the said motive power and the said land known as lot number 21-2210, are the property of the Intervenant, but that the same are occupied by the Plaintiff for commercial and industrial purposes and are therefore subject to municipal taxation in the hands of the Plaintiff by the Defendant, in accordance with the provisions of the charter of the Defendant and more particularly section 362a thereof and the taxing by-laws of the Defendant passed in accordance therewith being by-law number 1704 of the Defendant, and that the Plaintiff doing business at the new plant is also subject to the business tax for the same period in accordance with by-law number 1642:”

et a conclu au sous-paragraphe (ii) au paiement par la Compagnie du montant de ces taxes. La Couronne et la Compagnie, par contre, ont soumis au sous-paragraphe (b) du paragraphe 39,

10 “(b) That for the municipal fiscal year beginning the 1st of May 1942, the said new building, the said motive power and the said land known as lot number 21-2210 are the property of the Intervenant and that the same are not occupied by the Plaintiff for commercial or industrial purposes or otherwise and are therefore not subject to municipal taxation in the hands of the Plaintiff by the Defendant, either as owner, occupant or otherwise, and that the Plaintiff does not do business at the new plant and is not subject to the business tax for the same period;”

et a conclu au sous-paragraphe (ii) du même paragraphe que la Compagnie n'était pas tenue au paiement de ces taxes.

20 Le jugement dont est appel a accordé à la Cité les conclusions qu'elle a prises au sujet de ces trois chefs de taxes personnelles et a en conséquence condamné la Compagnie à lui en payer les montants.

La Couronne et la Compagnie ont formé de ce dispositif du jugement les appels portant les numéros 2560 et 2562 des dossiers de cette Cour.

30 J'ai donné plus haut le sens de l'article de la charte de la Cité qui lui permet l'imposition d'une taxe d'affaires. Les taxes personnelles imposées sur les occupants des bins non-imposables appartenant à la Couronne sont autorisées par l'article 362a de la charte:—

40 “362a. Les exemptions édictées par l'article 362 ne s'appliquent pas non plus aux personnes occupant pour des fins commerciales et industrielles des bâtiments ou terrains appartenant à Sa Majesté ou au gouvernement fédéral ou provincial, ou à la commission du port, lesquelles seront taxées comme si elles étaient les véritables propriétaires de ces immeubles et seront tenues au paiement de la contribution foncière annuelle et spéciale, des taxes et des autres redevances municipales.”

Il m'apparaît de ces deux articles de la charte de la Cité que la question à étudier pour ces taxes, taxes d'affaires et taxes d'occupation, si je puis les appeler ainsi, est si la Compagnie, pendant les périodes mentionnées, a occupé l'usine pour des fins commerciales et industrielles. La Cité soumet qu'elle a fait

telle occupation; la Couronne et la Compagnie elle-même soumettent le contraire.

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10 La preuve de la présence de la Compagnie dans l'usine, son occupation physique de l'usine, n'est pas des plus complète pour la première période de novembre 1941 à mai 1942. Voici ce que je trouve au dossier; la mention incidente dans un avis donné à la Compagnie par le Bureau des Reviseurs que la construction de l'usine a été complétée et qu'elle est prête à être occupée le 1er novembre 1941 (exhibit P-12, p. 89); la mention dans le préambule du contrat de construction qu'il est prévu par les parties que, une fois l'usine construite elle sera occupée par la Compagnie comme agent de la Couronne pour son opération (p. 19); la mention dans une lettre écrite par les procureurs de la Compagnie le 28 novembre 1941 que l'usine "is operated by Montreal Locomotive Works . . . on behalf of His Majesty the King" (exhibit P-13, p. 90); la mention enfin, dans une lettre écrite par le Sous-Ministre des Munitions et Approvisionnements le 1er décembre 1941 que "the Company does nothing but operate the plant for the account of the Government" (exhibit P-14, p. 99).

30 Je crois ceci suffisant pour que nous admettons la présence de la Compagnie dans l'usine dès le 1er novembre 1941 et depuis. C'est sur les caractères de cette présence sur la nature de son occupation de l'usine que les parties soumettent des vues différentes, la Cité soumettant qu'elle occupait pour ses fins propres et la Couronne et la Compagnie disant que c'est la première qui occupait l'usine par la seconde.

40 Comme le titre de la Compagnie à sa présence et son occupation de l'usine est le contrat entre elle-même et la Couronne passé le 23 octobre 1940 et appelé contrat de production, c'est dans ce contrat dans l'étude des droits et des obligations et responsabilités qu'il comporte pour les parties qu'il nous faut trouver la réponse aux questions soumises.

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Par ce contrat la Compagnie est chargée d'administrer et de faire fonctionner l'usine (p. 42):



“The Company . . . . shall administred, manage and operate the plant and shall produce therein for the account of the Government” . . .

et page 57:—

10                   “(a) The Company shall, subject to such supervision, direction and control as the Minister may from time to time in writing advise the Company that he desires to exercise, have full control over the administration, management and operations of the plant including . . . . the employment of labour . . . . and the purchase of all necessary materials, supplies, tools.” . . .

20                   Tout ce qui est nécessaire pour que soient fabriqués dans l'usine les chars d'assaut et les affûts de canon dont le contrat prévoit la production est fourni par la Couronne ou payé par elle, de l'usine elle-même avec ses machines et le pouvoir qui les actionnera, au travail des ouvriers et employés et à la matière qui y sera oeuvrée et usinée.

30                   Mais tout cela restera inerte ou s'agitiera sans ordre tant que par l'organisation du travail vers la fabrication, par l'application des forces où elles sont requises par l'utilisation des matériaux et des outils comme il est nécessaire, par la direction générale à la fois et détaillée de toute l'activité de l'usine, tout n'aura pas été coordonné et dirigé par la Compagnie vers la production de l'oeuvre complétée et finie qui est la raison d'être du contrat.

40                   C'est pour la Couronne la raison d'être de l'occupation par la Compagnie de l'usine, l'oeuvre que celle-ci y fait; d'autre part c'est pour la Compagnie la raison d'être de son occupation à la fois la production qu'elle a entreprise d'y faire et le profit qu'elle en retirera.

Nous avons vu ce que la Couronne fournit dans cette entreprise, et nous pouvons voir maintenant ce que la Compagnie fournit elle-même; elle fournit la direction, l'administration, la responsabilité d'oeuvrer utilement, son expérience, sa science, en un mot son travail et son industrie.

De ce qui est fourni par la Couronne, matières et moyens, et de ce qui est fourni par la Compagnie, appliqué par ces moyens à ces matières, résultera une oeuvre, l'oeuvre que

le contrat a voulu. Il y aura eu des matières et moyens la transformation qu'on appelle *spécification* et que *Pothier*, vol. 9, p. 162, no. 181 décrivait ainsi:—

10 “181. On appelle *spécification*, lorsque quelqu'un a formé et donné l'être à une nouvelle substance, avec une matière qui ne lui appartenait pas.”

Dans notre droit, la convention par laquelle une partie s'engage à appliquer son travail et son industrie à la matière fournie par une autre pour faire une oeuvre est le contrat d'ouvrage par devis et marché. Je cite l'article 1683 de notre Code:—

20 “1683. Lorsque quelqu'un entreprend la construction d'une bâtisse ou autre ouvrage par devis et marché, il peut être convenu ou qu'il fournira son travail ou son industrie seulement. . . .”

Je conclus que la Compagnie, par le contrat de production est un entrepreneur, un constructeur. Dans le produit fabriqué la Couronne peut être représentée par la matière et les moyens, mais la Compagnie est aussi représentée par son industrie et son travail. Cette industrie et ce travail ne lui vient pas de la Couronne, elle ne représentait pas celle-ci quand elle les a appliqués à la matière pour lui donner sa forme de nouvel être; cette industrie et ce travail viennent d'elle-même et elle les donne, moyennant un prix à la Couronne par un contrat de louage d'ouvrage.

30 Car c'est ce qu'elle reçoit: le travail de spécification est accompli, quand le nouvel être est livré, la Compagnie reçoit tant pour chaque char d'assaut, tant pour chaque affût où elle est ainsi représentée.

40 Je conclus que si pour la Couronne la raison de l'occupation de l'usine par la Compagnie est la production des oeuvres prévues au contrat, pour la Compagnie elle-même la raison, le but, et l'intérêt de son occupation c'est la vente de son industrie et de son travail à la Couronne; et cela suffit pour que son occupation ait le caractère de personnalité et d'égoïsme qui fait qu'elle y exerce un commerce ou une industrie d'entreprise de construction la rendant sujette aux taxes d'affaires et d'occupation.

Et les déclarations des parties que la Compagnie est l'agent ou le représentant de la Couronne ne font pas obstacle à cette conclusion, car nous avons vu qu'il est impossible qu'elle soit tel

agent ou tel représentant dans ce qu'elle fournit elle-même de travail et d'industrie. On peut voir dans le contrat de production un contrat de mandat accessoire, pour certains actes, mais on doit y voir un contrat principal de louage d'ouvrage par devis et marché où celui qui entreprend la construction d'un ouvrage ne représente pas le maître dans des actes juridiques comme dans  
10 le mandat, mais lui vend le travail et l'industrie nécessaires à la perfection et l'ouvrage entrepris.

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Je soumets que les appels formés par la Couronne et la Compagnie doivent être rejetés avec les adjudication et recommandation ordinaires quant aux dépens.

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#### NOTES DE L'HON. JUGE BISSONNETTE

Le gouvernement du Canada désirant faire construire pour fins de guerre des chars d'assaut et des affûts mobiles de canon, a, par une promesse de vente, acquis de la Montreal Locomotive Works Limited un immense terrain formant une superficie de quelque 400,000 pieds carrés et par deux contrats en date du 23 octobre 1940, le gouvernement canadien confiait à la compagnie  
30 la tâche de construire une usine sur ce terrain et de fabriquer ensuite pour le compte du gouvernement ces instruments de guerre.

La promesse de vente fut suivie d'un contrat de vente formel signé le 27 février 1942, mais à cette date, l'usine était déjà construite et en état de fabrication depuis le 1er novembre 1941.

La Cité de Montréal, s'autorisant de certaines dispositions particulières de sa charte, amenda, au cours de novembre de la même année, son rôle d'évaluation et de cotisation, aux fins de prélever des impôts sur la nouvelle usine et sur l'industrie à laquelle elle servait d'exploitation. A cette fin, un rôle supplémentaire fut préparé et la compagnie y fut portée comme propriétaire de l'édifice et comme la personne morale exploitant cette usine. Le rôle de cotisation, tel que modifié, exigeait de la compagnie un impôt pour la période du 1er novembre 1941 au 30 avril 1942 et une taxe d'affaires pour la même période. La Cité cherche à recouvrer de la compagnie la même taxe pour l'année 1942-43, mais pour cette seconde période, le rôle de cotisation indiquera  
40

la compagnie non pas comme propriétaire, mais comme occupante.

Le fonds de terre acheté par le gouvernement serait évalué par la Cité à \$99,100., l'usine à \$1,264,200 et la force motrice à la somme de \$13,600.

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Pour ces deux périodes, la Cité réclame quelque \$70,000., de la façon détaillée que M. le juge Marchand expose dans ses notes:

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S'appuyant sur le caractère des deux contrats intervenus entre eux et sur les stipulations précises qu'ils contiennent, la compagnie et le gouvernement résistèrent à la réclamation de la Cité et après lui avoir dénoncé ces deux contrats et avoir exposé leurs prétentions dans une correspondance soutenue et après plusieurs entrevues, il fut convenu de part et d'autre, de soumettre, sous l'autorité de l'art. 509 C.P., l'interprétation de ces contrats à la décision et à l'arbitrage de nos Tribunaux. Sa Majesté le Roi, aux droits du Canada, se porterait, du consentement des parties, intervenante aux fins de défendre le principe d'exemption des biens appartenant à la Couronne. Les prétentions des parties peuvent se synthétiser dans les propositions suivantes:—

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1.—La Cité de Montréal prétend: a) que du 1er novembre 1941 au 30 avril 1942 l'usine ayant été érigée sur un terrain appartenant à la compagnie et que cette nouvelle industrie ayant été exploitée par la compagnie elle-même, cette dernière est assujettie au paiement des taxes imposées sur la valeur de cette construction et au paiement des taxes d'affaires; b) que pour les périodes à venir et particulièrement du 1er mai 1942 au 30 avril 1943, la compagnie, quoiqu'elle ait cessé d'être propriétaire de l'usine, n'en est pas moins responsable du paiement des taxes, à titre d'occupante et qu'elle l'est également quant à la taxe d'affaires en raison de l'exploitation qu'elle fait pour elle-même de cette industrie;

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2.—La compagnie soutient: a) qu'elle n'a jamais été propriétaire, au moins depuis le 1er novembre 1941, du terrain et de l'usine y érigée et b) que l'exploitation qu'elle en fait n'est pas pour son profit, mais bien comme mandataire du gouvernement canadien et que dès lors elle ne

doit ni l'impôt sur l'usine, ni la taxe d'affaires; pour la seconde période commençant du 1er mai 1942, elle émettra les mêmes prétentions;

10 3.—Quant à l'intervenante, elle soutiendra en fait qu'elle est propriétaire et du terrain et de l'usine depuis au moins le 1er novembre 1941 et que c'est elle qui exploite et opère l'usine par le truchement de son mandataire, la Locomotive Works; en droit, elle demandera d'être admise dans ses conclusions que les biens de la Couronne sont exempts d'impôts.

20 La Cour supérieure a fait droit aux prétentions de la Cité, sauf quant à l'impôt prélevé sur la valeur de l'usine pour la période du 1er novembre 1941 au 30 avril 1942. Trois appels sont logés, la Cité cherchant à faire reconnaître sa seule prétention que le jugement a refusée et la compagnie et le gouvernement aux fins de faire triompher en totalité les leurs.

M. le juge Marchand a, d'une façon fort élaborée, pesé et analysé les diverses prétentions des parties et je suis en plein accord avec lui. Je suis persuadé qu'il a, d'une façon concluante, démontré que la Cité ne peut rechercher la compagnie en recouvrement de la taxe imposée sur la valeur de la construction pour la période du 1er novembre 1941 au 30 avril 1942.

30 Le seul argument qui pourrait faire triompher les prétentions de la Cité pour cette période reposerait sur l'interprétation de l'art. 362a de sa charte. Cet article déroge au principe général des exemptions dues aux biens de la Couronne en ce qu'il permet de prélever sur tout occupant un impôt comme s'il était le véritable propriétaire des immeubles où cet occupant exploite une industrie ou un commerce. A mon avis, cette prétention, comme le fait bien voir M. le juge Marchand, doit être écartée pour deux raisons principales.

40 La première se fonde sur le fait que la charte fait une distinction formelle et essentielle entre la qualité de propriétaire et celle d'occupant. Or, la Cité a, par l'amendement de son rôle d'évaluation et de perception, frappé la compagnie non pas comme occupante mais comme propriétaire. Elle n'a donc pas d'autorité et de justification pour recouvrer une taxe en contravention avec les énonciations substantielles portées à ses rôles. Dans le sens ordinaire de leurs mots, la qualité d'occupant pourrait être comprise dans celle de propriétaire. Mais, dans le sens de la

charte de la Cité, la définition du mot “occupant” ne laisse subsister aucun doute qu’une qualité exclut l’autre.

Comme seconde raison, il me paraît évident que le pouvoir donné à la Cité par la législature d’amender le rôle annuel par son rôle supplémentaire constitue non seulement un pouvoir particulier, mais dérogatoire aux lois générales municipales. Si la Cité entend imposer de nouvelles constructions et modifier pour certains propriétaires ou occupants l’étendue de l’échelle d’impôts pour l’année courante, j’estime qu’elle doit le faire selon les droits des propriétaires ou possesseurs de ces immeubles. Les dispositions de l’art. 375, art. 7, al. d, ne me paraissent s’appliquer qu’au rôle annuel. C’est donc une simple question de fait que celle qui se pose pour la Cité lors de la préparation d’un rôle supplémentaire. Si donc il lui est démontré que le propriétaire enregistré, lors de la confection du rôle annuel, n’est plus propriétaire, la Cité, quand elle entend prendre avantage du pouvoir exceptionnel de le modifier, soit à l’égard de ce propriétaire, soit à l’égard d’un acquéreur subséquent ou d’un possesseur ou d’un occupant, doit s’enquérir des faits ou encore retenir ceux qui lui sont soumis ou dénonçés. Or, dans la présente affaire, il est admis de tous que la compagnie et plus tard le gouvernement, par ses ministères intéressés, ont avisé la Cité de la situation juridique qui avait été créée par les deux contrats du 23 octobre 1940. Je n’hésite donc pas à conclure que cette prétention de la Cité a été judicieusement écartée par le Tribunal de la Cour supérieure et que cette Cour est amplement justifiée à rejeter l’appel de la Cité.

Quant aux appels de la compagnie et de l’intervenant, je les considérerai en même temps car, en définitive, les propositions soumises, tant par la compagnie que par la Couronne, se résument à l’affirmation suivante: la compagnie et la Couronne se sont liées par un contrat dit de Construction et par un contrat dit de Production et la situation juridique qui en découle démontre que c’est Sa Majesté qui possède le terrain et qui possède, occupe et opère l’usine. En d’autres termes, Sa Majesté exploite cette usine par l’entremise d’un mandataire, la Locomotive Works.

C’est donc sur la nature même les deux contrats que se fondent les prétentions des deux appelants et c’est de leur analyse qu’on pourra juger de l’exactitude et de la valeur légale de cette proposition.

Avant de résumer les caractères généraux de ces deux contrats, il y a lieu de faire deux remarques préliminaires. Il est

constant et l'art. 125 de notre Constitution ne laisse place à aucun doute, que les immeubles de la Couronne ne sont pas imposables. Il est aussi indubitable que l'exemption stipulée en faveur de la Couronne ne s'applique pas aux personnes occupant, pour des fins commerciales et industrielles, des immeubles appartenant à Sa Majesté. Le droit de la Cité d'imposer des biens de la Couronne occupés et exploités par des tiers se fonde sur l'art. 362a de sa charte. Le présent litige ne met pas en question la constitutionnalité de cet article dont la légalité a été reconnue, notamment dans deux arrêts: *Attorney General of Canada v. Cité de Montréal et Baile*, 70 D.L.R., 248 et *Fraser v. Cité de Montréal*, 23 B.R., 242.

L'autre observation se justifie sur une clause expresse des deux contrats. "This Agreement shall be in all respects subject to and interpreted in accordance with the laws of the Province of Quebec". C'est donc à la lumière et dans le cadre même de notre Code civil que ces deux contrats doivent être interprétés et parce que les parties y ont clairement exprimé cette intention, je me garderai d'appuyer mes considérations de certains arrêts cités par les parties parce que j'estime qu'ils n'ont pas été rendus sur les mêmes principes de droit privé. Le sens littéral des mots principaux employés aux contrats doit être retenu et apprécié en regard des divers caractères de contrats que nos lois civiles reconnaissent.

Le gouvernement soutient que la compagnie n'est que son mandataire et qu'en réalité c'est Sa Majesté qui exploite cette usine. S'il s'agit d'un mandat, ajoute la Couronne, l'art. 362a de la charte ne joue pas et les immeubles ne peuvent être frappés d'impôts pas plus que la compagnie ne peut être reconnue comme occupante. Telle est la délicate question à résoudre.

M. le juge Marchand a fait l'analyse du contrat et M. le juge St-Jacques, à son tour, comme M. le juge Walsh, en ont dégagé les caractères fondamentaux. Il serait oiseux pour moi d'en reprendre l'étude détaillée, mais, dans la recherche de la nature de ces contrats, je soulignerai au besoin certaines clauses qui m'aideront à justifier mes conclusions.

Retenant que le contrat de Construction et celui de Fabrication ne forment, en réalité, qu'un tout, j'y vois d'abord une manifeste intention de la part des parties contractantes d'en faire un contrat de mandat. L'expression littérale s'y retrouve dans le préambule du contrat, dans des clauses essentielles et dans

le rouage qu'on prévoit pour leur exécution respective. En second lieu, la compagnie ne possède ni le fonds de terre ni l'usine, le propriétaire c'est le gouvernement. La compagnie doit construire, mais pour le compte du gouvernement et sous sa surveillance. Le gouvernement fournit et avance tous les fonds nécessaires pour la réalisation de l'entreprise et pour l'exploitation de l'usine. La  
10 compagnie n'encourt aucune responsabilité, sauf celle résultant de mauvaise foi ou de négligence intentionnelle. Le gouvernement peut donner des ordres, exercer une surveillance constante et au besoin se faire représenter pour fins de surveillance, vérification du coût de la production, des dépenses et de l'emploi de ses deniers, etc.

Il est important de souligner qu'à la fin du contrat l'on a prévu de quelle façon il serait disposé et du terrain et de l'usine.  
20 Ces nombreuses clauses se résument, selon le savant avocat du gouvernement, aux éventualités suivantes:—

“En résumé la compagnie n'accepte \$1.00 pour le terrain que provisoirement, et à la fin ou bien le terrain lui sera remis nu comme il a été vendu ou la compagnie achètera l'usine en ne payant que \$1.00 pour le terrain ou elle recevra la valeur de ce terrain.”

Quant à la rémunération des services que rendra la com-  
30 pagnie, elle aurait comme mesure un pourcentage sur chaque engin de guerre usiné. Quant à la considération pour la construction de l'usine, aucune compensation n'a été prévue.

Telles sont, très sommairement, les clauses qui fondent les prétentions du gouvernement.

D'autre part, la Cité soutient que la compagnie n'a pas été créée par la Couronne pour administrer les affaires de la Couronne, et de fait elle ne les administre pas. C'est la compagnie  
40 qui opère et qui manufacture et non la Couronne. La Couronne n'a aucun intérêt dans la compagnie ni dans son capital social, ni dans ses revenus, et n'a aucun contrôle sur iceux. Les revenus que la compagnie reçoit comme profits en vertu des contrats sont la propriété exclusive de la compagnie et ne sont pas utilisés par ou pour la Couronne. Les employés de la compagnie ne sont pas les employés de la Couronne. Le contrôle, ajoute la Cité, que la Couronne exerce ou peut exercer en vertu des contrats n'a pour but que de vérifier et contrôler le montant des dépenses, “le prix coûtant”, et de s'assurer que les articles manufacturés le



seront conformément aux plans et dessins, et à la satisfaction du Ministre, de façon que la compagnie ne charge pas des dépenses non nécessaires et que le tout réponde à l'attente des experts de la Couronne.

10 Enfin, la Cité fait état de la clause se rapportant à "control and supervision" où il est dit que la compagnie aura toute liberté (full control) sur la construction et l'outillage de la nouvelle usine, le choix des sous-traitants, l'achat et l'emploi du matériel, de la machinerie, sur toutes matières ayant un rapport avec la construction et le parachèvement de l'usine.

20 Telle est, en résumé, la stipulation dont la Cité entend prendre avantage pour répudier l'idée de mandat. Elle soutiendra qu'il s'agit d'un contrat de louage de services, interprétation admise par la Cour supérieure.

Selon les divers modes de contrats que prévoit notre Code civil, celui sous étude peut avoir les caractères soit d'un contrat de mandat, de louage de services personnels, de louage d'ouvrage ou d'entreprise ou enfin de société. Une trop longue étude serait nécessaire pour exposer les caractères essentiels de ces divers contrats comme leurs caractères distinctifs. Cette analyse et cette comparaison sont élaborées dans Pandectes Françaises, Vo. Mandat. M'inspirant des principes qui y sont exposés, je me poserai  
30 sommairement quelques questions.

S'agit-il d'un mandat ? Les deux contrats qui lient les deux appelants ont, sans aucune doute, un caractère quelque peu suspect. Il tendent à nous conduire vers la conclusion qu'il s'agit bien là d'un contrat simulé, que les parties, pour les fins fort légitimes peut-être, pour le moins avantageuses, ont tenté de dissimuler la véritable convention qu'elles entendaient faire. Aussi, les expressions dont elles se sont servies, avec une minutie et une prudence exceptionnelle, doivent n'être admises que dans la mesure où elles permettent de situer leur stipulation dans les cadres du contrat qu'elles invoquent. C'est donc avec grande circonspection qu'il nous faut apprécier le mot "agent" dont on s'est servi en maintes occasions. Ce mot implique l'idée de mandat et c'est le seul contrat dont l'intervenante pouvait se servir pour éviter toute imposition fiscale à la compagnie et, par voie de conséquence, à elle-même.  
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Les diverses clauses que nous avons exposées fondent-elles des relations de mandant et de mandataire ?

L'élément essentiel au mandat c'est la représentation. Si donc le mandataire garde toute autorité, l'initiative de ses activités et s'il n'y a aucune maîtrise extérieure dans l'exécution de son oeuvre, il n'y a pas de caractère de représentation, car cette indépendance dans l'exercice d'une activité répugne à l'idée du mandat et elle lui est totalement incompatible. Ce serait alors un  
10 louage. "La différence juridique entre les deux contrats est que le mandataire rend des services, en représentant le mandant vis-à-vis les tiers, tandis que le locateur n'est pas le représentant de celui pour le compte duquel il travaille. . . Le mandat a pour objet des actes juridiques à accomplir pour le compte du mandant. C'est donc dans la nature de l'objet qu'il faut rechercher la différence des deux contrats . . . Dans le louage, on trouve deux éléments: des services, un prix; il n'y a pas l'élément du mandat, la représentation" (Pandectes Françaises, Vo. Mandat, no. 58).

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/ Je vois une grande analogie dans ce principe ci-haut exposé et les commentaires que faisait M. le juge Rinfret dans l'arrêt Quebec Asbestos Corporation et Couture, 1929, 3 D.L.R., 601. Le caractère de cette indépendance ou de cette absence de lien de subordination a été également analysé dans Lambert et Blanchette, 40 B.R., 370, et l'on peut résumer en disant "qu'est lié par un contrat de louage d'industrie et non de louage de service l'ouvrier qui a entrepris un travail qu'il exécute d'une façon indépendante, en dehors de la direction et du contrôle de l'entrepreneur principal, celui-ci devant seulement vérifier la bonne exécution du travail lors de son achèvement".  
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/ Ce caractère d'indépendance ou de non subordination, M. le juge Rinfret l'a reconnu dans Quebec Asbestos comme étant la doctrine de cette province sur la distinction à faire entre le contrat de mandat et de louage.

40 Y a-t-il, dans les contrats sous étude, l'inexistence de l'élément de représentation ou encore l'idée d'absence de subordination? En d'autres termes, y a-t-il incompatibilité avec l'idée de mandat?

Dans le mandat, le mandataire agit par lui-même mais non pas pour lui-même. Ici, la compagnie agit de par ses propres moyens, avec l'organisation qu'elle possède; son crédit, son prestige, son expérience et tout cela est rémunéré en raison directe de sa production, c'est-à-dire de la même façon, avec la même idée de profits ou de bénéfices que l'on rencontre dans un contrat ordinaire d'entreprise. Les facilités financières que la Couronne lui

procure ne modifient en rien l'initiative exclusive qu'elle a tant pour fins de constructions que pour fins de fabrication. Sa liberté d'action n'est pas entravée. Il est vrai qu'elle devra suivre fidèlement les devis sur lesquels les parties se sont entendues, mais elle ne sera en rien subordonnée à l'autorité du gouvernement dans l'exécution même de son oeuvre. Liberté d'organiser la production selon son expérience, liberté de s'engager avec des sous-traitants, de préciser elle-même, conditions et prix et termes, liberté d'employer la main-d'oeuvre qu'elle désire, liberté de rachat de l'outillage, de la machinerie et d'accomplir tous les actes ayant un rapport quelconque avec la construction et la production.

On fait grand état du droit de surveillance du gouvernement comme de son droit d'intervention au cours de la fabrication. Cette réserve dans le contrat non seulement n'est pas incompatible avec l'idée d'absence de subordination, mais elle se rencontre fréquemment dans tout contrat de louage d'ouvrage par devis et marché. Ce n'est pas parce que le maître se réservera le droit de vérifier, de temps à autre, la bonne exécution du travail qu'il se formera dès lors un lien de subordination tendant à donner au contrat le caractère juridique du mandat. Ce qui est le propre du contrat de louage, c'est l'indépendance de l'ouvrier, c'est son droit exclusif à ses initiatives, à ses modalités de travail et à la réalisation pratique du profit qu'il entend faire. Dans la présente affaire, il est évident que la compagnie doit encourir, de son chef, des dépenses de capital, des dépenses non remboursables. Ce seul fait repousse donc l'idée de mandat, car si la compagnie ne faisait que représenter la Couronne, on concevrait difficilement qu'elle soit appelée à contribuer à l'entreprise par une part substantielle de ses propres deniers. Que l'on s'arrête un instant à l'analyse des nombreuses dépenses éventuelles énumérées d.c. 50 et 51, et l'on réalisera aisément que la compagnie, si elle a d'une part cru trouver son profit dans le pourcentage prévu pour la fabrication de chaque article de guerre, elle a, d'autre part, également prévu que ce profit serait substantiellement affecté et réduit par sa propre contribution à sa production. Elle pouvait donc entrevoir que par une saine exploitation et par une rigoureuse économie dans la production, elle pouvait réduire la part du coût de revient qu'elle absorbait.

Peut-on dès lors la considérer comme un mandataire? Une telle situation qui lui est faite par le contrat ne répugne-t-elle pas à l'idée de mandat.

Les appelants soutiennent vigoureusement que la stipulation d'irresponsabilité dans l'exécution des contrats fonde aussi

l'idée de mandat. La compagnie, disent-ils, ne sera responsable que de ses actes de négligence volontaire ou intentionnelle. La compagnie reçoit par là une exonération de l'obligation contractuelle qu'elle a assumée.

10            Quel est l'effet de cette dérogation ?

Je n'en vois pas d'autre qu'une modalité particulière d'un contrat ordinaire. Il arrive constamment que de par leur propre volonté les parties dérogent aux art. 1065, 1071 et 1072 C.C. La Couronne n'a, par là, que rendu moins onéreuses les obligations de la compagnie et il est de saine logique de croire que dans une fabrication d'objets nouveaux et exceptionnels, le gouvernement se soit montré moins exigeant, d'abord parce que ceci était équitable et ensuite parce que de part et d'autre, on prévoyait bien des aléas et des imprévus. Je ne sais si je m'abuse, mais cette disposition du contrat me confirme davantage dans la conviction qu'il s'agit purement et simplement d'un contrat d'entreprise.

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30            Une autre clause m'entraîne à la même conclusion, c'est celle qui se rapporte à la précarité du titre au sujet du terrain. L'on sait que la compagnie peut racheter ce terrain, si le gouvernement n'a pu le vendre à un tiers, au prix factice de \$1.00. Si la compagnie a obtenu cette concession de la Couronne, l'on conçoit facilement qu'elle a transigé, non pas à titre de mandataire, mais pour son intérêt et profit et avec l'idée de gain. Or si la Couronne était véritablement propriétaire, elle se serait gardé liberté d'action et la faculté d'en disposer avec avantage.

40            On peut objecter qu'elle s'est faite cette réserve, je le concède, mais qui pourrait soutenir sérieusement qu'il puisse se présenter soit pour l'usine seule, soit pour le terrain seul, un autre acheteur que la Locomotive Works. Peut-on concevoir deux personnes achetant terrain et bâtiments séparément. Les dispositions expresses apparaissent au contrat font naître la pensée que la compagnie prévoit bien qu'à la fin du contrat tout ceci lui reviendra à bon compte. Enfin, s'il s'agit d'une transaction réelle, comme se fait-il que la Couronne se lie d'avance à vendre pour \$1.00 un terrain dont l'évaluation municipale est actuellement de \$99,100. C'est là l'un des caractères les plus probants de la simulation du contrat et plus il paraît simulé, plus il exclut l'idée de mandat et plus il se rapproche d'un contrat pur et simple d'entreprise. C'est ce qui explique

pourquoi dans le contrat de construction aucun profit n'a été stipulé. Or on ne peut logiquement concevoir que la compagnie a construit à titre gracieux, ce que l'on conçoit, c'est qu'elle pourra acheter le tout pour un prix pouvant défier tout enchérisseur. Elle a donc, à tous égards liberté d'action, faculté d'exploiter l'usine en tout état d'indépendance et la maîtrise éventuelle du gouvernement n'a que le caractère de l'oeil du maître dans toute entreprise dont il veut s'assurer la bonne, la rigoureuse et rapide réalisation.

En résumé, il ne peut y avoir un mandat découlant de ses contrats, parce qu'il n'y a pas de représentation véritable, parce qu'il y a indépendance et liberté d'action dans la personne du prétendu mandataire et enfin parce que, sous certains aspects que j'ai soulignés, il y a des stipulations incompatibles avec l'idée de mandat, mais fort compatibles avec les éléments constitutifs du louage.

D'autre part, je ne puis admettre qu'il s'agisse d'un contrat de louage de services personnels (art. 1667 C.C.). Ce contrat a comme caractère fondamental des services se rapportant à des faits d'ordre purement matériel. Ce sont les services rendus par les ouvriers, les serviteurs, les domestiques. L'envergure de l'entreprise de la compagnie dépasse de beaucoup les modestes cadres d'un contrat de louage de services et la rémunération qu'elle reçoit comme indépendance qui s'attaque à ses activités dominant les relations habituelles de ce simple contrat. Avec toute déférence, je ne puis adhérer à cette conclusion du savant juge de première instance. S'il s'agissait d'un contrat de cette nature, la proposition de l'appelante devrait être accueillie car le lien qui unirait la compagnie et le gouvernement serait plus étroit, plus intime et plus inter-dépendant que dans le cas du mandat. En effet, la compagnie serait purement et simplement l'employée du gouvernement et en une telle occurrence il est indubitable qu'elle ne saurait être atteinte pour les taxes de la cité, mais que ce serait son maître, son patron ou locateur de ses services qui serait le véritable débiteur.

Il ne s'agit pas non plus d'un contrat de société quoique plusieurs de ses dispositions se concillent parfaitement avec l'idée de société. Mais un élément essentiel ne s'y retrouve pas, c'est l'affectio societatis, c'est-à-dire la volonté de coopérer en acceptant délibérément certains risques ou encore l'intention de réaliser un bénéfice commun et de le partager. Dans la présente affaire, les risques reposent exclusivement, quant à la fabrication, sur le gouvernement, sauf sur les actes délictuels.

S'agit-il d'un contrat de louage d'ouvrage?

J'estime qu'il n'y a aucune clause dans ces contrats incompatibles avec les éléments qui fondent le contrat de louage d'ouvrage ou le contrat d'entreprise (art. 1683 C.C.). La compagnie construit et elle prend la qualité d'entrepreneur. Elle a toute liberté d'action pour le faire et elle se liera à l'égard des  
10 sous-entrepreneurs, des fournisseurs de matériaux, de la main-d'oeuvre et sur l'achat des matières premières. Elle aura une responsabilité légale à l'égard de ces diverses catégories de personnes, en un mot, à l'égard des tiers, Quelle puisse se faire indemniser éventuellement par le gouvernement, ceci ne change nullement le caractère de son activité, de ses fonctions et de sa  
20 qualité d'entrepreneur. En outre, elle sera rémunérée pour son travail. Si elle ne l'est pas d'une façon immédiate et expresse, elle a trouvé avantage dans d'autres dispositions du contrat et particulièrement sur celles qui lui permettent de racheter et le terrain et l'usine. Sur le contrat de production, elle agit aussi  
comme entrepreneur. M. le juge Marchand développe cette idée et je me rallie à ses conclusions.

On peut objecter que le gouvernement s'étant gardé le droit de surveillance et de regard sur la construction comme sur la fabrication et ayant aussi consenti à l'exonération des actes quasi-délictuels de la compagnie, il y a là des éléments qui répugnent à un contrat d'entreprise (art. 1688). Tel n'est pas  
30 mon avis. Le contrat d'entreprise comporte très fréquemment des stipulations de ce genre et si nombreuses soient-elles, elles n'enlèvent pas le caractère d'indépendance que possède l'entrepreneur. Le maître peut stipuler son droit à visiter les lieux, à modifier les plans, à avancer ou à retenir, selon le cas les paiements à faire, comme il peut prévoir les circonstances dans lesquelles il pourra annuler le contrat. La loi lui permet même de le faire sans stipulation expresse (art. 1691 et 1692 C.C.). Il peut aussi renoncer d'avance à certaines malfaçons ou exonérer l'entrepreneur des fautes résultants ou de son inexpérience  
40 ou de son inhabilité. Enfin, la compagnie y trouve gain et profits et ces derniers lui seront acquis de par ses qualités propres et intrinsèques de constructeur et de fabricant, indépendamment de la volonté, de la surveillance et des droits d'annulation que le gouvernement s'est réservés.

Sans adhérer à tous les motifs donnés par la Cour supérieure, je tiens pour fondé le dispositif du jugement.

PAR CES MOTIFS, je rejetterais les trois appels avec dépens et je confirmerais le jugement de la Cour supérieure.

Montréal, le 28 décembre 1944.

**INSCRIPTION IN APPEAL TO THE SUPREME COURT  
OF CANADA IN CASE No 2560**

Canada  
Province of Quebec  
10 District of Montreal,

**COURT OF KING'S BENCH  
(IN APPEAL)**

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

20

— vs —

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

— and —

30 **MONTREAL LOCOMOTIVE WORKS LIMITED,  
(Plaintiff in the Superior Court).**

**INSCRIPTION IN APPEAL TO THE SUPREME COURT  
OF CANADA**

The above named Appellant before the Supreme Court  
of Canada hereby inscribes the present case in appeal before  
said Court from a judgment of the Court of King's Bench  
(Appeal Side), sitting at Montreal, rendered the 29th day of  
December 1944, confirming a judgment rendered by the Superior  
40 Court of the District of Montreal (Honourable Chief Justice  
W. L. Bond) on the 21st day of October 1943 and gives notice of  
the present inscription in appeal to Messrs Saint-Pierre, Cho-  
quette, Berthiaume, Emard, Martineau, McDonald & Séguin, At-  
torneys for the Respondent The City of Montreal, and Messrs.  
Kearney, Duquet & Mackay, Attorney for Montreal Locomotive  
Works Limited,

Montreal, 22nd January 1945.

(Signed) Geoffrion & Prud'homme,  
Attorneys for Appellant.

AVIS D'APPEL A LA COUR SUPREME DU CANADA ET  
MOTION POUR RECEVOIR ET PERMETTRE  
CAUTIONNEMENT  
(Dans la Cause 2561)

Province de Québec  
10 District de Montréal,  
No 2561.

COUR DU BANC DU ROI  
(EN APPEL)

LA CITÉ DE MONTRÉAL,  
Défenderesse en Cour Supérieure et  
appelante devant la Cour du Banc  
du Roi,

20

APPELANTE,

— & —

MONTREAL LOCOMOTIVE WORKS LIMITED,  
Demanderesse en Cour Supérieure et  
intimée devant la Cour du Banc  
du Roi,

30

INTIMÉE,

— & —

SA MAJESTÉ LE ROI AUX DROITS DU CANADA,  
Intervenant en Cour Supérieure et  
intimée devant la Cour du Banc  
du Roi,

INTIMÉE.

A Messieurs Kearney, Duquet & MacKay,  
Avocats pour Montreal Locomotive Works Limited,  
40 Intimée en appel, en Cour Suprême.

— et —

A Messieurs Geoffrion & Prud'homme,  
Avocats pour Sa Majesté le Roi aux droits du Canada,  
Intimée en appel, en Cour Suprême.

Messieurs:—

Avis vous est par les présentes donné que la Cité de Mont-  
réal, défenderesse en Cour Supérieure et appelante devant la



Cour du Banc du Roi, en appelle à la Cour Suprême du Canada du jugement prononcé dans cette cause par la Cour d'Appel, rejetant, avec dépens, l'appel de la Cité de Montréal.

De plus, avis vous est par les présentes donné que la Cité de Montréal s'adressera, le jeudi 1 février 1943, à l'un des juges  
10 de la Cour du Banc du Roi, en appel en chambre, au Palais de Justice à Montréal, à 11 heures a.m., ou à telle heure que les Conseils pourront être entendus, pour un ordre approuvant le cautionnement offert par la Cité de Montréal, appelante devant la Cour Suprême, et que la Cité de Montréal va effectivement poursuivre son appel et paiera tels frais et dommages qui pourront être prononcés contre elle par la Cour Suprême du Canada.

De plus, prenez avis que, au soutien de telle demande, il  
20 sera lu un "bond" de la Fidelity Assurance Company of Canada, une corporation incorporée par un acte spéciale du Parlement du Canada, dûment autorisée à devenir caution devant les Cours de la Province de Québec, et qui là et alors justifiera de sa stabilité, si requise;

POURQUOI l'appelante, la Cité de Montréal, demande  
que son appel soit reçu et que le cautionnement fourni soit approuvé et qu'en conséquence un arrêt d'exécution dans la présente  
30 cause soit ordonné jusqu'à l'adjudication finale par la Cour Suprême, les frais à suivre ledit appel.

Montréal, le 25 janvier 1945.

(Signé) Saint-Pierre, Choquette, Berthiaume, Emard,  
Martineau, McDonald & Séguin,  
Avocats de l'Appelante.

NOTICE OF APPEAL TO THE SUPREME COURT AND  
MOTION TO PERMIT AND RECEIVE SECURITY  
IN CASE No. 2562

Canada  
Province of Quebec,  
10 District of Montreal,

COURT OF KING'S BENCH  
(APPEAL SIDE)

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

20 APPELLANT,  
— and —

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

RESPONDENT,  
— and —

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

RESPONDENT.

To:

Messrs. Saint-Pierre, Choquette,  
Berthiaume, Emard, Martineau, McDonald & Séguin,  
Attorneys for the City of Montreal,  
Respondent in Appeal before the Supreme Court.

40

— and —

Messrs. Geoffrion & Prud'homme,  
Attorneys for His Majesty's the King, in Right of Canada,  
Respondent in Appeal before the Supreme Court.

Sirs:—

NOTICE IS HEREBY GIVEN that Montreal Locomotive  
Works Limited, Plaintiff in the Superior Court and Appellant

before the Court of King's Bench in Appeal, appeals to the Supreme Court from the judgment rendered in this case by the Court of King's Bench rejecting with costs the appeal of Montreal Locomotive Works Limited.

Moreover, notice is hereby given to you that Montreal  
10 Locomotive Works Limited will apply on Tuesday, the 20th day of February, 1945, to one of the Judges of the Court of King's Bench sitting in chambers in appeal at the Court House at the City of Montreal at 11:00 o'clock in the forenoon, or at such other hour as counsel may be heard, for an order approving the security offered by Montreal Locomotive Works Limited, Appellant before the Supreme Court, that Montreal Locomotive Works Limited will effectually prosecute its appeal and will pay such costs and damages as may be awarded against it by the Supreme Court.

20 Moreover, notice is hereby given that in support of such application there shall be presented a Bond of Halifax Insurance Company, a recognized Bonding Company duly incorporated according to law and duly authorized to furnish security before the Courts of the Province of Quebec and which then and at that time, if required, will furnish satisfactory proof of its solvency.

WHEREFORE, the Appellant, Montreal Locomotive Works Limited, prays that its appeal be received and that the  
30 security furnished be approved and that in consequence execution in the present case be ordered to be stayed until final adjudication by the Supreme Court, the costs to follow the said appeal.

Montreal, February 5th, 1945.

Ralston, Kearney, Duquet & MacKay,  
Attorneys for Appellant.

BAIL BOND IN CASE No. 2561

FIDELITY INSURANCE COMPANY OF CANADA  
MONTREAL

Bond No. 432813-45 Amount: \$500.00  
10 Dominion of Canada  
Province of Quebec  
District of Montreal

COURT OF KING'S BENCH (APPEAL SIDE)  
No. 2561

20 WHEREAS, on the 29th day of December, one thousand  
nine hundred and forty-four, Judgment was rendered by Court  
of King's Bench (Appeal Side) for the Province of Quebec, sit-  
ting at Montreal in the District of Montreal, in a certain cause  
between:

THE CITY OF MONTREAL,

(Defendant in Superior Court)  
(Appellant before the Court of King's Bench)

— and —

30 MONTREAL LOCOMOTIVE WORKS LIMITED,

(Plaintiff in Superior Court)  
(Respondent before the Court of King's Bench)

— and —

HIS MAJESTY THE KING, IN RIGHT OF CANADA,

40 (Intervenant in the Superior Court)  
(Respondent before the Court of King's Bench)

WHEREAS, the said Judgment has been appealed from  
to the Supreme Court of Canada, by The City of Montreal, thus  
rendering necessary the security required by Section 70 of Chap-  
ter 35 of the Revised Statutes of Canada;

THEREFORE, THESE PRESENTS TESTIFY, That  
on the First day of February, one thousand nine hundred and  
forty-five, came and appeared before me, one of the Honourable  
Judges of the Court of King's Bench (Appeal Side), in and for

the District of Montreal the FIDELITY INSURANCE COMPANY OF CANADA, a body politic and corporate, duly incorporated under the laws of the Dominion of Canada, and having its Head Office in the City of Toronto, in the Province of Ontario, and duly authorized to become surety before the Courts of the Province of Quebec, under and by virtue of Order-in-Council, 10 dated at Quebec, the 3rd day of February, 1925, pursuant to Sections 7446 and following of the Revised Statutes of Quebec, 1909, notice whereof having been duly published in the Quebec Official Gazette of the 14th February, 1925.

20 THE said FIDELITY INSURANCE COMPANY OF CANADA, hereby represented by J. C. REDMOND, of the City of Montreal, duly authorized by Resolution of the Board of Directors of the said Company, duly certified copy of which is hereto annexed and which said Company hereby acknowledges itself to be the legal surety of the said Appellant in regard to the said Appeal; hereby promises, binds and obliges itself that in case the said Appellant does not effectually prosecute its appeal and pay such costs and damages as may be awarded against it by the Supreme Court of Canada, then the said Surety will pay such costs and damages but not exceeding in all the sum of FIVE HUNDRED DOLLARS (\$500.00).

30 AND the said FIDELITY INSURANCE COMPANY OF CANADA has signed these presents by its said duly authorized Representative.

FIDELITY INSURANCE COMPANY OF CANADA  
(Signed) J. C. REDMOND,  
Res. Asst. Agent & Attorney.

Taken and acknowledged before me  
at Montreal this 1st day of February  
A.D. 1945.

40 P. St-Germain,  
J.C.B.R.

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Extract from Minute Book of  
FIDELITY INSURANCE COMPANY OF CANADA

At a meeting of the Board of Directors of the FIDELITY INSURANCE COMPANY OF CANADA, held at the head

office of the Company, in the City of Toronto, on the 24th day of October, 1938, at which meeting a quorum was present, it was

10 Resolved, That F. D. Knowles be and he is hereby elected Resident Agent and Attorney of the Company, residing in the city of Montreal, Province of Quebec, and John C. Redmond and K. G. Christie and W. R. Craig be and they are hereby elected Resident Assistant Agents and Attorneys of said Company residing in the city and Province aforesaid, and that the said Resident Agent and Attorney and Resident Assistant Agents and Attorneys be and each of them is hereby authorized and empowered to execute and deliver and to attach the seal of the Company to any and all obligations of suretyship for or on behalf of the Company.

20 PROVINCE OF ONTARIO, }  
COUNTY OF YORK. }

I, Lorne M. Watson, Secretary-Treasurer of FIDELITY INSURANCE COMPANY OF CANADA, do hereby certify that I have compared the foregoing extracts and transcripts of resolution from the Minute Book of the Board of Directors of FIDELITY INSURANCE COMPANY OF CANADA with the original as recorded in the Minute Book of said Company, and  
30 that the same are true and correct extracts and transcripts therefrom, and that the same resolution has not been revoked or rescinded and is in accordance with the constitution and by-laws of the Company.

GIVEN under my hand and seal of the Company at the City of Toronto, in the Province of Ontario, this 25th day of October, 1938.

40 (Signed) L. M. WATSON,  
*Secretary-Treasurer.*

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BAIL BOND IN CASE No. 2562

THE HALIFAX INSURANCE COMPANY  
Head Office — 88 Hollis Street  
Halifax, Nova Scotia.

10

BOND No. Spl J. 15-51.

SECURITY IN APPEAL

Canada  
Province of Quebec  
District of Montreal  
No. 2562.

SUPREME COURT

20

WHEREAS, judgment was rendered by the Court of  
King's Bench sitting in Montreal in a certain case between:—

MONTREAL LOCOMOTIVE WORKS LIMITED,

(Plaintiff in the Superior Court and Appellant  
before the Court of King's Bench)

APPELLANT

30

— and —

THE CITY OF MONTREAL,

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

RESPONDENT

— and —

40

HIS MAJESTY THE KING, IN RIGHT OF CANADA,

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

RESPONDENT

WHEREAS, the Appellants are desirous of appealing to  
the Supreme Court of Canada from the judgment rendered by  
the Court of King's Bench thus rendering necessary a security as  
required by the Supreme Court Act.

THEREFORE, these presents testify that on the twentieth day of February, One Thousand Nine Hundred and Forty-five came and appeared before me, Chief Justice SévérinLétourneau.

10 THE HALIFAX INSURANCE COMPANY incorporated by an Act of the Legislature of the Province of Nova Scotia, having its Head Office in the City of Halifax, Province of Nova Scotia, and having its Chief Office for the Province of Quebec in the City of Montreal, in the said Province of Quebec, and duly authorized to become Surety before the Courts of this Province by Order-in-Council, dated the eighteenth day of August, One Thousand, nine hundred and thirty-nine, under the provisions of the Act respecting SURETY COMPANIES (S.R.Q. 1925, Ch. 249) said authorization having been published in the Quebec Official Gazette; and herein represented and acting by GABRIEL  
20 McDUFF, 350 Boulevard Bernard, Montreal, Province of Quebec, of the said Company, duly authorized by RESOLUTION of the BOARD of DIRECTORS of the said HALIFAX INSURANCE COMPANY, duly certified copy of the said resolution being hereunto annexed, and which said Company has acknowledged and hereby guarantees that the MONTREAL LOCOMOTIVE WORKS LIMITED will effectually prosecute the Appeal and pay such costs and damages as may be awarded against it by the Supreme Court of Canada.

30 AND the said HALIFAX INSURANCE COMPANY has signed these presents by its said authorized Representative.

THE HALIFAX INSURANCE COMPANY,  
(Signed) By G. McDUFF,  
Attorney.

Taken and Acknowledged  
before me at Montreal,  
40 P.Q., this 20th day of  
Feb. A.D. 1945.

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Extract from Minute Book of

THE HALIFAX INSURANCE COMPANY

At a Meeting of the Board of Directors of The HALIFAX  
INSURANCE Company, held at the Head Office of the Com-  
10 pany, in the City of Halifax, Nova Scotia, on the 27th day of  
February, 1940, at which Meeting a quorum was present, it was

*Resolved* that Nelson Chevrier and/or Edward P. Phelan  
be and they are hereby severally appointed Attorneys of  
The HALIFAX INSURANCE Company, with authority  
to sign on behalf of the Company such liability or other  
bonds or policies as may be necessary in the conduct of its  
business, and to appoint general, special or otherwise limited  
agent or agents and to confer such powers and rights  
20 as may be necessary for them to have in representing the  
Company, with power to authorize such agent or agents  
to sign such bonds or policies on behalf of the Company  
as may be necessary for the prosecution of its business.

PROVINCE OF NOVA SCOTIA, }  
COUNTY OF HALIFAX. }

I, A. G. Cross, Secretary-Treasurer of The HALIFAX  
30 INSURANCE Company, do hereby certify that I compared the  
foregoing transcript from the Minute Book of the Board of  
Directors of The HALIFAX INSURANCE Company with the  
original as recorded in the Minute Book of said Company, and  
that the same is a true transcript therefrom, and that the resolu-  
tion has not been revoked or rescinded and is in accordance with  
the constitution and by-laws of the Company.

Given under my hand and seal of the Company at the City  
40 of Halifax, Nova Scotia, this 29th day of February, 1940.

(Signed) A. G. CROSS,  
Secretary-Treasurer.

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CONSENT TO HAVE APPEALS TO SUPREME COURT  
HEARD JOINTLY AND TO CONTENTS OF CASE.

10 We, the undersigned, attorneys for the parties in the  
above three Appeals to the Supreme Court of Canada, and duly  
authorized for the purpose hereof, hereby consent to have the  
said three Appeals heard jointly as one and the same case.

We further hereby agree and consent that the joint Case  
for the purpose of these Appeals consist of the following:—

1. The Joint Factum or Case to the Superior Court of the  
Province of Quebec and Affidavits.
- 20 2. All exhibits to which the Joint Factum or Case refers  
(1 to 34 inclusive).
3. The Judgment of the said Superior Court rendered on  
the 21st day of October, 1943, by the Honourable Chief  
Justice Bond
4. The Judgment of the Court of King's Bench in Appeal  
rendered on the 29th day of December, 1944.
- 30 5. The notes of the Honourable Mr. Justice Walsh, Fran-  
coeur, St. Jacques, Marchand and Bissonnette, of the said  
Court of King's Bench.
6. Inscriptions and Notices in Appeal of the parties to the  
Supreme Court of Canada.
7. Copies of Bonds by which security has been given.

40 Montreal, February 23rd, 1945.

(Sgd) Geoffrion & Prud'homme.

(Sgd) Saint-Pierre, Choquette, Berthiaume,  
Emard, Martineau, McDonald, Séguin.

(Sgd) Ralston, Kearney, Duquet & MacKay.

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CERTIFICAT DE LA COUR SUPERIEURE

Re: Notes de Jugement.

Je, soussigné député-protonotaire de la Cour Supérieure  
10 de la Province de Québec, pour le district de Montréal, certifie  
par les présentes qu'il n'y a pas de notes additionnelles de l'Hon.  
Juge Bond en cette cause, suivant jugement du 24 octobre 1943.

Montréal, 27 mars 1945.

(Signed) C. E. Sauvé,  
Député-protonotaire.

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CERTIFICATE AS TO CASE

We, AIME GEOFFRION, Solicitor for His Majesty the King in Right of Canada; GUILLAUME SAINT-PIERRE,  
10 Solicitor for the City of Montreal; WILLIAM MITCHELL, one of the Solicitors for Montreal Locomotive Works Limited, hereby certify that we have personally compared the annexed print of the Case in Appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

Montreal, 31st March, 1945.

20 (Signed) Aimé Geoffrion,  
“ Guillaume Saint-Pierre,  
“ William Mitchell.

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CERTIFICATE OF CLERK OF APPEALS AS TO SETTLEMENT OF CASE AND AS TO SECURITY

10 I, the undersigned, Clerk of the Court of King's Bench (Appeal Side), do hereby certify that the foregoing printed documents from page one to page 195, are three Cases stated by the parties pursuant to Section 68 of the Supreme Court Act and the Rules of the Supreme Court of Canada in a certain cause lately pending in the said Court of King's Bench between His Majesty the King, in right of Canada, Appellant vs The City of Montreal and Montreal Locomotive Works Limited, Respondents; and The City of Montreal, Appellant vs Montreal Locomotive Works Limited, and His Majesty the King, in right of Canada, Respondents; and Montreal Locomotive Works Limited, Appellant vs The City of Montreal and His Majesty the King, in right of Canada, Respondents.

20 And I further certify that two Appellants The City of Montreal and Montreal Locomotive Works Limited have given proper security to the satisfaction of the Hon. Sévérin Létourneau, C.J.P.Q., and the Hon. Mr. Justice St-Germain as required by the 70th Section of the Supreme Court Act, being a Surety Bond, copies of which are to be found on pages 186 and 189, of the annexed Case. His Majesty the King, in the right of Canada is not obliged to give security.

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the said Court of King's Bench, at Montreal, this 1945.

(L.S.)

LAPORTE & FALARDEAU,  
Clerk of Appeals.

In the  
Supreme  
Court of  
Canada.

**No. 16.**

**Factum of The Attorney-General of Canada.**

**No. 16.**  
Factum of  
The  
Attorney-  
General of  
Canada.

*(Separate document.)*

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**No. 17.**  
Factum of  
Montreal  
Loco-  
motive  
Works  
Limited.

**No. 17.**

**Factum of Montreal Locomotive Works Limited.**

*(Separate document.)*

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**No. 18.**  
Factum of  
City of  
Montreal.

**No. 18.**

**Factum of City of Montreal.**

*(Separate document.)*

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No. 19.

Formal Judgments.

In the  
Supreme  
Court of  
Canada.

IN THE SUPREME COURT OF CANADA.

No. 19.  
Formal  
Judgment,  
20th June,  
1945.

Wednesday, the Twentieth day of June, 1945.

Present :

The Honourable The CHIEF JUSTICE OF CANADA.  
The Honourable Mr. Justice KERWIN.  
The Honourable Mr. Justice HUDSON.  
The Honourable Mr. Justice TASCHEREAU.  
The Honourable Mr. Justice ESTEY.

10

Between :—

HIS MAJESTY THE KING, IN RIGHT OF CANADA  
and (*Intervenant*) APPELLANT,  
THE CITY OF MONTREAL ... .. (*Defendant*) RESPONDENT,  
and  
MONTREAL LOCOMOTIVE WORKS LIMITED (*Plaintiff*) RESPONDENT.

The appeal of the above named Appellant from the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) pronounced in the above cause on the 29th day of December, 1944, affirming the judgment of the Superior Court of the Province of Quebec, sitting in and for the District of Montreal, rendered in the said cause on the 21st day of October, 1943, having come on to be heard before this Court on the 22nd day of May, 1945, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment,

This Court did Order and Adjudge that the said appeal should be and the same was allowed, and that the said judgments of the Court of King's Bench for the Province of Quebec (appeal side) and of the Superior Court for the Province of Quebec should be and the same were reversed and set aside, and that the intervention of the said Appellant should be and the same was allowed.

And this Court did Further Order and Adjudge that the said Respondent, the City of Montreal, should and do pay to the said Appellant the costs incurred by the said Appellant as well in the Superior Court for the Province of Quebec and in the Court of King's Bench (appeal side) as in this Court.

(Signed) PAUL LEDUC,  
Registrar. 40

In the  
Supreme  
Court of  
Canada.

IN THE SUPREME COURT OF CANADA.

Wednesday, the Twentieth day of June, 1945.

No. 19.  
Formal  
Judgment  
20th June,  
1945.

Present

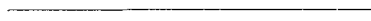
The Honourable THE CHIEF JUSTICE OF CANADA.  
The Honourable Mr. Justice KERWIN.  
The Honourable Mr. Justice HUDSON.  
The Honourable Mr. Justice TASCHEREAU.  
The Honourable Mr. Justice ESTEY.

Between

THE CITY OF MONTREAL ... .. (*Defendant*) APPELLANT, 10  
and  
MONTREAL LOCOMOTIVE WORKS LIMITED (*Plaintiff*) RESPONDENT,  
and  
HIS MAJESTY THE KING, IN RIGHT OF CANADA  
(*Intervenant*) RESPONDENT.

The appeal of the above named Appellant from the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) pronounced in the above cause on the 29th day of December, 1944, affirming the judgment of the Superior Court of the Province of Quebec, sitting in and for the District of Montreal, rendered in the said cause on the 21st day of October, 1943, having come on to be heard before this Court on the 22nd day of May, 1945, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment, 20  
This Court did Order and Adjudge that the said judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) whereby the said Court of King's Bench denied the claim of the said City of Montreal to the sum of \$18,934.78 should be and the same was affirmed and that the said appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents. 30

(Signed) PAUL LEDUC,  
*Registrar.*





In the  
Supreme  
Court of  
Canada.

IN THE SUPREME COURT OF CANADA.

Wednesday, the Twentieth day of June, 1945.

No. 19.  
Formal  
Judgment  
20th June,  
1945.

Present :--

The Honourable THE CHIEF JUSTICE OF CANADA.  
The Honourable Mr. Justice KERWIN.  
The Honourable Mr. Justice HUDSON.  
The Honourable Mr. Justice TASCHEREAU.  
The Honourable Mr. Justice ESTEY.

Between

MONTREAL LOCOMOTIVE WORKS LIMITED (*Plaintiff*) APPELLANT, 10  
and  
THE CITY OF MONTREAL ... .. (*Defendant*) RESPONDENT,  
and  
HIS MAJESTY THE KING, IN RIGHT OF CANADA  
(*Intervenant*) RESPONDENT.

The appeal of the above named Appellant from the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) pronounced in the above cause on the 29th day of December, 1944, affirming the judgment of the Superior Court of the Province of Quebec sitting in and for the District of Montreal, rendered in the said cause on the 21st day of October, 1943, having come on to be heard before this Court on the 22nd day of May, 1945, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment, 20

This Court did Order and Adjudge that the said appeal should be and the same was allowed ; that the said judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) should be and the same was reversed and set aside and that that part of the said judgment of the Superior Court of the Province of Quebec condemning the Appellant to pay to the Respondent City of Montreal the sums of \$3,425.22, \$41,141.77 and \$6,850.44 be and the same was reversed and set aside. 30

And this Court did Further Order and Adjudge that the Respondent City of Montreal should and do pay to the Appellant and to the Respondent His Majesty the King the costs incurred by the said Appellant and the said Respondent His Majesty the King as well in the said Superior Court for the Province of Quebec and the said Court of King's Bench (Appeal Side) as in this Court. 40

(Signed) PAUL LEDUC,  
*Registrar.*

In the  
Supreme  
Court of  
Canada.

No. 20.

Reasons for Judgment delivered by Rinfret, C.J.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.

RINFRET, C.J.C. : Montreal Locomotive Works, Ltd., His Majesty the King, in Right of Canada, and the City of Montreal have joined in submitting to the Courts questions of law upon facts admitted pursuant to art. 509 of the Code of Civil Procedure of the Province of Quebec. For the purpose of abbreviation I will call them, in the course of the present judgment, the Company, for the Locomotive Works, the City, for the City of Montreal, and the Crown, for His Majesty the King.

10

The questions to be decided are whether, upon the facts about to be recited, the City is entitled to charge and to collect certain taxes from the Company. The facts which give rise to the questions of law involved are as follows :

On October 23, 1940, a contract (hereinafter called the construction contract) was made between the Crown and the Company, wherein it was agreed, amongst other things that the Company would sell and transfer unto the Crown certain premises forming part of the land of the Company located at Longue Pointe in the City of Montreal, and would construct thereon for and on behalf of the Crown, and as its agent and at its expense and subject to the supervision, direction and control of the Crown, through the Honourable the Minister of Munitions and Supply, a new plant to remain the property of the Crown and to be capable of producing gun carriages and tanks.

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On the same day a contract (hereinafter called the production contract) was made between the Crown and the Company, wherein it was agreed, amongst other things, that the Company, acting on behalf of the Crown and as its agent, would administer, manage, and operate the new plant and produce therein, for the account of the Crown, gun carriages and tanks at a certain fee per gun carriage and per tank. It is specifically stated in the joint case that the new plant is, and has always been, the property of the Crown, and that the City was so informed by the Deputy of Minister of Munitions and Supply by the latter's letter, dated December 1, 1941. The sale of the land to the Crown by the Company was confirmed by a deed in authentic form on February 27, 1942, which was registered the next day.

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*Justice*

On the valuation roll of the City for the year beginning May 1, 1941, the Company was entered as proprietor of the land in question, including the building, rails and motive power. On the real estate assessment roll for the municipal fiscal year beginning on May 1, 1941, the Company was billed to the amount of \$35,858.59, which the Company paid on September 30, 1941.

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In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

After the new building, erected under the construction contract, was completed, the building and motive power were added to the City's real estate assessment roll in the name of the Company from November 1, 1941, to April 30, 1942, for the sum of \$18,934.78. Moreover, the Company was entered on the City's tax roll for business tax, with respect to the new building and motive power, for the amount of \$3,425.22 for the period extending from November 1, 1941 to April 30, 1942.

Then on the valuation roll for the fiscal year beginning May 1, 1942, the Company was entered as occupant of the new building, 10 motive power and land owned by the Crown, and, on the real estate assessment roll of the City, the Company, in respect to the building, motive power and land, was billed at the sum of \$41,141.77 as occupant thereof.

The Company was billed for the further sum of \$6,850.44 on the business tax roll with respect to the same property.

The City, therefore, is claiming from the Company the following taxes :

- (a) Property taxes on the new building and motive power from November 1, 1941 to April 30, 1942 \$18,934.78 20
- (b) Business tax on the same property as hereinbefore mentioned for the same period ... \$3,425.22
- (c) Property tax on the land, building and motive power on lot 21, subdivision 2210, as occupant of the property of the Crown for the municipal year commencing May 1, 1942... .. \$41,141.77
- (d) Business tax on the same property as hereinbefore mentioned for the same year ... \$6,850.44

The contention of the City is that, for the period from November 1, 1941 to April 30, 1942, the new building and motive 30 power were built on the property of the Company, that they were occupied by the Company for commercial and industrial purposes and the Company is, therefore, subject to municipal taxation in the hands of the Company by the City, in accordance with the provisions of the Charter of the City (1899 (Que), c. 58). Further, that the Company, doing business at the said new plant, is also subject to the business tax for the same period, in accordance with By-law No. 1642 of the City. The City also contends that, for the municipal fiscal year beginning May 1, 1942, the new building, the motive power and 40 the land are the property of the Crown, but that they are occupied by the Company for commercial and industrial purposes and are, therefore, subject to municipal taxation in the hands of the Company by the City, in accordance with the provisions of the Charter of the City, and more particularly s. 362a thereof and the taxation by-laws passed in accordance therewith, being By-law No. 1704 of the City, and that the Company, doing business at the new plant, is also

In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

subject to the business tax for the same period of time, in accordance with By-law No. 1642.

The Company and the Crown, which intervened in the proceedings, deny the contentions of the City on the following grounds :

- (a) That for the first period (November 1, 1941 to April 30, 1942) the new building and the motive power were the property of the Crown and were not occupied by the Company for commercial or industrial purposes, or otherwise and were not subject to municipal taxation either as owner, 10  
occupant, or otherwise, and that the Company was not doing business at the said new plant and is not subject to the business tax for the same period.
- (b) That for the municipal fiscal year beginning May 1, 1942, the new building, the motive power, and the land were the property of the Crown and were not occupied by the Company for commercial or industrial purposes, or otherwise and were not subject to municipal taxation in the hands of the Company by the City either as owner, occupant, or otherwise, and that the Company does not do business 20  
at the new building and is not subject to the business tax for the same period.

The Crown is interested and has become a party to the proceedings to hear judgment rendered and any recommendations which may be made by the Court.

The Superior Court (Bond C.J.) held that, as respects the claim of the City for the sum of \$18,934.78 for property taxes on the new building and motive power from November 1, 1941 to April 30, 1942, the claim was directed against the Company as proprietor and not as occupant, and it rejected that item. But, as respects the three 30  
following items, the learned trial Judge held that the City's right thereto against the Company as occupant had been established, both for business tax and for property tax, and accordingly condemned the Company to pay to the City the said sums, together with interest at the rate of 5 per cent. from the date when the taxes respectively were due, and also to the costs of the present proceedings. By the same judgment, the intervention of the Crown was dismissed, except as to the item of \$18,934.78, and it was recommended that the Crown should pay to the City the costs upon such intervention.

The Court of King's Bench (Appeal Side) in three different 40  
judgments, although supported by the same reasons, affirmed the judgment of the Superior Court, by a majority of the Judges, Walsh and St. Jacques JJ. dissenting.

To deal first with the item of taxation for the sum of \$18,934.78. It is admitted in the joint case that the new plant, that is to say, the new building and the motive power, are, and always have been, during the material dates, the property of the Crown and that the

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In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

City was duly informed of it. Nevertheless, on the valuation roll for the first period of the time, and also on the real assessment roll, the name of the Company appeared as being the proprietor thereof; or, in other words, the Company was assessed and taxed as proprietor and not as occupant.

“Occupant,” in the Charter of the City, has a special meaning. In s. 1 (h), it is defined as follows:

“1 (h) The word ‘occupant’ shall mean any person who occupies an immovable in his own name, otherwise than as proprietor, usufructuary or institute, and who enjoys the revenues derived from such immovable.” 10

Upon the very admission contained in the joint case, it was obviously erroneous to describe the Company as proprietor in the several rolls for the period extending from November 1, 1941 to April 30, 1942. The learned trial Judge so found and that part of his judgment was affirmed by the Court of King’s Bench (Appeal Side).

The title to the new building and equipment, as well as all material on hand, was undoubtedly vested in the Crown, which had assumed all risks and liabilities incidental to such ownership. It is true that at that time the land was still registered in the name of the Company, registration having taken place only on February 28, 1942; but the City was fully aware of the true circumstances and, moreover, the purpose of registration is merely to establish the priority of title as between two purchasers who derive their respective titles from the same person. (C.C.2089.) However that may be, for the purpose of the present submission, it is sufficient that the parties agree on the fact that the Crown is and has always been the owner of the new plant and motive power. 20

The ground of appeal of the City, in respect of the item we are now discussing, is based on s. 362a of the Charter: “The exemptions enacted by article 362 shall not apply either to persons occupying for commercial or industrial purposes buildings or lands belonging to his Majesty or to the Federal and Provincial Governments, or to the Board of Harbour Commissioners, who shall be taxed as if they were the actual owners of such immovables and shall be held to pay the annual and special assessments, the taxes and other municipal dues.” 30

Upon that fact and these admissions, it seems clear that the City cannot hold as valid the assessment and taxation of the Company as proprietor for the period in question. It was only, as we have seen, on the valuation roll for the fiscal year beginning May 1, 1942, that the Company was entered as occupant of the new building, motive power and land there described as being owned by the Crown; so that up to May 1, 1942, and, therefore, for the period extending from November 1, 1941 to April 30, 1942, in respect of which the claim of \$18,934.78 is made, the Company was improperly assessed and taxed as proprietor. The City cannot, on the basis of the 40

In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

valuation roll, and the real estate assessment roll, claim the tax against the Company otherwise than as a proprietor, which it was not at the time, and it cannot now come before the Courts to pretend that even if, with regard to the Company, the rolls were admittedly incorrect and the tax was erroneously claimed, it might yet have assessed and taxed the Company upon the ground that it was the occupant. A short answer to that contention is that the Company has neither been assessed nor taxed as occupant and that the rolls, as they existed, could and can be supported only if the quality of the owner or proprietor had been established in respect of the Company. 10  
So far as the item of \$18,934.78 is concerned, the unanimous judgments of the Superior Court and of the Court of King's Bench (Appeal Side) must, therefore, be affirmed.

I have only to add, with regard to that item, that I find sufficient reason to disallow the item, but it does not follow, as will be seen later, that I admit that at the material time the Company was the occupant, within the meaning of the definition in the Charter of the City.

Coming now to the other three items. They were allowed against the Company by the learned trial Judge and the majority 20 of the Court of King's Bench (Appeal Side) as to the property tax for the fiscal year commencing May 1, 1942, on the ground that the Company was then the occupant of the property in question and entered as such on the rolls; and, as to the business tax, both for the period extending from November 1, 1941 to April 30, 1942, and for the period commencing on May 1, 1942, on the ground that the Company was then subject to such municipal taxation because it occupied the premises for commercial and industrial purposes and was doing business at the new plant.

In order to test the validity of the ground upon which the 30 judgments *a quo* went against the Company for those three items, it is necessary to carefully examine the construction and production contracts between the Company and the Crown.

In my view, the learned trial Judge rightly held that the situation created by these contracts in no way resembled that which arose in *Halifax v. Halifax Harbour Com'rs* (1935), 1 D. L. R. 657, (1935) S. C. R. 215. In that case the Commissioners were held to be an instrumentality of the Government, or an emanation of the Crown, by virtue of the statute creating them and investing them with peculiar powers and attributes. 40

In the present case the Company is an ordinary commercial corporation and cannot, by any possible view of its status, be considered to come under one or the other of these designations. But, in order that the Company may be exempt from paying the taxes claimed by the City in the case now under consideration, it is not necessary that it should be either "an instrumentality of the Government, or an emanation of the Crown." It is sufficient if,

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In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

looking at the contracts as a whole, the Courts are satisfied that the Company, for the purpose of the present decision, is nothing but the agent, or the servant, of the Crown.

In the Superior Court, with due respect, there seems to have been some confusion on this point. The learned trial Judge says in his judgment that he finds it "necessary to find a name for such a contract," and that he would say "it was one of lease and hire of work rather than a contract of agency." He adds: "Looking at the contract as a whole, I am satisfied that the Company is not an 'agent' or 'servant' of the Crown."

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Then in the judgments of the majority of the Court of King's Bench (Appeal Side) the same confusion seems to have existed, although each of the Judges forming the majority, upon an analysis of the construction and production contracts, do state that they have come to the conclusion that these contracts were in effect contracts of work by estimate governed by arts. 1683 *et seq.* of the Code. On this aspect of the case, I must say I find myself in agreement with the reasons of Walsh and St. Jacques JJ.

The decision turns on the meaning of the two agreements. Throughout, the company is described as the agent of the Crown. Of course, it is not claimed that the use of this word is absolutely decisive, but it is at least an indication of the intention of the parties, and it is that intention, gathered from the words used, that determines the nature of the contracts. Now, as pointed out by St. Jacques J., in the Court of King's Bench (Appeal Side), there is absolutely nothing in the agreements inconsistent with the idea that the parties wanted the Company to be anything else than an agency. The duties of the Company are minutely defined and, for the design and construction of the plant, the fullest control is given to the Minister. The Company is authorized to incur costs and pay for on behalf of the Government, as its agent, all that may be necessary or incidental to the performance of the agreements. Any act or thing, performed by the Company, is to be performed by it as the Crown's agent. The Company is authorized to sign deeds or instruments necessary, useful or incidental to the performance of the agreements, but always subject to the Minister's control. The cost is estimated only and not guaranteed; and the contracts provide that the Crown shall pay to the Company all its proper and reasonable costs and expenses. Moreover, these expenses will be met without the Company having to resort to its own funds.

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The Company agreed to carry out any changes that the Crown may order on the same terms. It is stated in the contracts that the Company shall be fully indemnified and that it shall not be responsible except for definite bad faith or wilful neglect. They provide that the title to the plant and equipment, etc., shall at all times be vested in the Crown; that the Company will endeavour to obtain remission or refund of duties and taxes; that the Crown may at any time

In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—

*continued.*

cancel the agreements, subject to the provision that the Crown will not dispose of the land and plant or equipment without first offering it to the Company and that, if the Crown disposes of the plant in favour of someone else, on the Company's refusal to take it, it shall pay to the Company the value of the land, but if the plant is disposed of to the Company, the land will be paid for at \$1, the original purchase-price ; or, if the Crown demolishes the plant, the land will revert to the Company for \$1 and if, after 5 years, neither of these events has happened, the Crown must pay the Company for the land.

Under the agreements, the Company, for its work, receives absolutely no remuneration, except the administrative and overhead expenses which, in the opinion of the Minister, are properly apportionable to the performance of the contracts. 10

The only difference between the construction contract and the production contract is that, under the latter, the Company receives a fee for its work ; but, in each case and under each contract, banking arrangements are provided for so that the Company will not have to resort to its own funds. The Minister has full control throughout.

Therefore, the Company sells to the Crown for \$1 land which it will get back at the same price, or which it will be paid for at its value if the Crown keeps it. It is to build and equip a plant and manufacture in it, as agent for the Crown, certain war implements, at the cost of the Crown, without using any of its funds, under the Crown's control and without any responsibility, except for bad faith or wilful neglect. Everything remains the property of the Crown and the agreements are revocable at any time. In my view, these contracts clearly provide for a case of agency. 20

The Company is not the occupant of the building and land, at least within the meaning of the definition of that word contained in the City's Charter. *A fortiori* it does not occupy it for industrial purposes. It never carried on or exercised a manufacture, either under s. 362a or s. 363 of the City's Charter ; and these sections are inapplicable for the purpose of establishing the right of the City to property tax as occupant or to the business tax. 30

In such a case and under such agreements, we have not the occupation of the Company, but the occupation of the Crown ; and the business carried on, in the circumstances, is not carried on by the Company, but carried on by the Crown itself on its own property. There is nothing in the law of Quebec to prevent a Company from acting as the agent or servant of somebody else, and in this case, the Company is nothing else than the agent or servant of the Crown. 40  
It works on the Crown's property for the Crown and cannot be said to occupy the property, or to use it for its business. Therefore, it cannot be taxed under ss. 362a and 363 of the City's Charter ; and not only for the Crown being the owner and being to all intents and purposes the occupant carrying on the business, the taxing sections of the City's Charter are inapplicable to it ; but, as against the



In the  
Supreme  
Court of  
Canada.

No. 20.  
Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

applicability of the text of the Charter, there exists a constitutional limitation. Whether an agent or servant, under the Civil Code of the situation remains the same, so far as the present case is concerned, and if, as the learned trial Judge seems to have held, the contracts are contracts of lease of hire and work rather than contracts of agency, the difference does not matter for the purposes of the decision which we have to give; the Company must succeed equally whether it was an agent or a servant. If these contracts, instead of being with a Company had been made with an individual, it seems that they would clearly have been considered as contracts of agency or service, and the fact that we have here a Company instead of an individual makes no difference (C. C. 1701; *Quebec Asbestos Corp. v. Couture* (1929), 3 D. L. R. 601, S. C. R. 166; *Lambert v. Blanchette* (1926) 2 D. L. R. 844, (1925) 40 Que. K. B. 370; *Hill-Clark Francis, Ltd. v. Northland Grocers* (1941), 4 D. L. R. 314 at p. 318, S. C. R. 437 at p. 442). 10

We have already indicated that the case in this Court of *Halifax v. Halifax Harbour Com'rs* (1935), 1 D. L. R. 657; S. C. R. 215 has no analogy with the present case, nor is the judgment of the Court of King's Bench (Appeal Side) in *Recorder's Court v. C. B. C.* (1941), 2 D. L. R. 551, 70 Que. K. B. 65; and we must say the same of the case decided by the Saskatchewan Court of Appeal in *Regina Industries, Ltd. v. Regina* (1945), 1 D. L. R. 220. I have carefully compared the analysis made of the contract in the latter case by Martin C.J.S., with the contracts in the present case, and I have come to the conclusion that there is no analogy between them. It stands to reason that, in order to treat a judgment construing another contract between other parties, it can be looked upon as an authority only if the terms of both contracts are identical. Moreover, with due respect, the *Regina* judgment, although entitled to great weight, cannot be considered as an authority in this Court. 20 30

But, in addition to that the section of the City Act, R. S. S. 1940, C. 126, which the Saskatchewan Court of Appeal was called upon to apply, is not similar to that of the City's Charter under which the present case stands to be decided, nor was the definition of the word "occupant." So that from no point of view can the *Regina* case be held identical to the present one. You do not find in it the same subordination of the Company, or the same authority to bind the Crown.

A further argument was made that, assuming the City could tax the Company in respect of this property under the provisions of s. 362a of the City's Charter, the general by-laws providing for the tax only contemplate a tax on taxable immoveables. Now there can be no question of taxing this immovable. All that can be taxed under s. 362a would be persons occupying for industrial purposes buildings or lands belonging to the Crown. 40

It may be said that the wording of s. 362a is very unusual.

In the  
Supreme  
Court of  
Canada.

—  
No. 20.

Reasons for  
Judgment  
delivered by  
Rinfret,  
C.J.—  
*continued.*

Section 361 provides that all immoveable property shall be liable to taxation ; s. 362 provides that certain immoveable property is exempt from the ordinary and annual assessment (no reference being made to Crown properties). Then comes s. 362a which is very unusually worded in view of the provisions of ss. 361 and 362. It is certainly to be doubted that such wording is apt to include in it persons occupying Crown property for commercial or industrial purposes and to say that they can be taxed by force of the said section. But, at all events, even if they could be taxed under the section, they are not taxed in the premises. The by-law levies a tax on the immoveable properties in the City and that is all. 10

We do not consider that the case of *Vancouver v. A.-G. Can.* (1944) 1 D. L. R. 497, S. C. R. 23, has any application to the present case.

On the whole, I am of the opinion that the City's appeal as against the judgment denying its claim to the sum of \$18,934.78 should be dismissed, and that the Company's appeal as against the judgment condemning it to pay to the City the sums of \$3,425.25, \$41,141.77 and \$6,850.44 should be allowed, the whole with costs throughout against the City. The intervention of the Crown should also be allowed with costs throughout against the City. 20

In the  
Privy  
Council.

No. 21.

**Order of His Majesty in Council granting Special Leave to  
Appeal, 20th December, 1945:**

No. 21.  
Order of  
His Majesty  
in Council  
granting  
Special  
Leave to  
Appeal,  
20th  
December,  
1945.

AT THE COURT AT BUCKINGHAM PALACE.

The 20th day of December, 1945.

Present :—

THE KING'S MOST EXCELLENT MAJESTY.  
LORD PRESIDENT                      MR. GRIFFITHS  
SIR STAFFORD CRIPPS                SIR ALFRED BUCKNILL  
MISS WILKINSON

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of December 1945 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The City of Montreal in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and (1) Montreal Locomotive Works Limited (2) the Attorney-General of Canada Respondents setting forth (amongst other matters) : that this is a Petition for special leave to appeal from a Judgment of the Supreme Court dated the 12th July 1945 given upon three Appeals from a Judgment of the Court of King's Bench for the Province of Quebec dated the 28th December 1944 given upon three Appeals from a Judgment of the Superior Court for the Province of Quebec dated the 21st October 1943 : that the Petitioner claimed from the first Respondent (thereinafter called ' the Respondent Company ' ) the following taxes :—(a) property taxes in respect of a factory at No. 5781 Notre Dame Street East in the City of Montreal from the 1st November 1941 to the 30th April 1942 \$18,934.78 (b) business tax in respect of manufacture carried on by the Respondent Company at that factory for the same period \$3,425.22 (c) property taxes in respect of the same factory from the 1st May 1942 to the 30th April 1943 \$41,141.77 (d) business tax in respect of manufacture carried on by the Respondent Company at that factory for the same period \$6,850.44 together with interest at 5 per cent. from the dates when the said taxes were due : that the question whether the Respondent Company was liable to pay these taxes was submitted to the Superior Court upon an agreed statement of facts in an action brought by the Respondent Company as Plaintiff against the Petitioner as Defendant Your Majesty in right of Canada intervening : that the Superior Court held that the Petitioner was entitled to be paid the taxes specified in paragraph 2 (b) (c) and (d) of the

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In the  
Privy  
Council.

No. 21.  
Order of  
His Majesty  
in Council  
granting  
Special  
Leave to  
Appeal,  
20th  
December,  
1945—  
*continued.*

Petition but not the tax specified in paragraph 2 (a) and ordered the Respondent Company to pay to the Petitioner the costs of the action and the Intervenant to pay to the Petitioner the costs upon the intervention : that three Appeals were brought from this Judgment to the Court of King's Bench which Court by a majority dismissed the Appeals of Your Majesty and of the Respondent Company and was unanimous in dismissing the Petitioner's Appeal : that the three parties appealed to the Supreme Court which Court allowed the Appeals of Your Majesty and of the Respondent Company dismissed the 10  
Petitioner's Appeal and ordered the Petitioner to pay the costs throughout of Your Majesty and of the Respondent Company : that the principal question in the litigation is whether the Respondent Company by reason of its relation to Your Majesty under two contracts is entitled to immunity from the Property Tax and the Business Tax imposed by the Petitioner under the powers conferred by its charter : that the question is one of general importance as immunity from these taxes has been claimed by other companies because of their relations with Your Majesty under similar contracts : And humbly praying Your Majesty 20  
in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court dated the 12th July 1945 or for such other order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its 30  
Appeal against the Judgment of the Supreme Court of Canada dated the 12th day of July 1945 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

# In the Privy Council.

No. 104 of 1945.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

THE CITY OF MONTREAL  
(*Defendant*) *Appellant*

AND

MONTREAL LOCOMOTIVE  
WORKS LIMITED (*Plaintiff*) *Respondent*

AND

THE ATTORNEY-GENERAL  
OF CANADA (*Intervenant*) *Respondent.*

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## RECORD OF PROCEEDINGS.

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BLAKE & REDDEN,  
17 Victoria Street, S.W.1,  
*For the Appellant.*

CHARLES RUSSELL & CO.,  
37 Norfolk Street, W.C.2,  
*For the Respondents.*