28/1951

(12)

IN THE PRIVY COUNCIL.

Council Chamber,
Whitehall, S. W. 1.

Tuesday, 10th July, 1951.

Present:

LORD PORTER
LORD NORMAND
LORD OAKSEY
LORD REID
LORD ASQUITH.

ON APPEAL FROM THE SUPREME COURT OF CANADA

Between:

THE CITY OF MONTREAL

and

SUN LIFE ASSURANCE COMPANY OF CANADA

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Between:

THE CITY OF MONTREAL (Appellant)

and

SUN LIFE ASSURANCE COMPANY OF CANADA. (Respondent)

(Transcript of the Shorthand Notes of Marten, Meredith & Co., 11 New Court, Carey Street, London, W.C.2).

MR. L. E. BEAULIEU, K.C., MR. HONORE PARENT, K.C., MR. R. N. SEGUIN, K.C. (of the Canadian Bar) and MR. FRANK GAHAN, instructed by Messrs. Blake & Redden, appeared for the Appellant.

MR. F. P. BRAIS, K.C., MR. HAZEN HANSARD, K.C., MR. R. D. TAYLOR, K.C. (of the Canadian Bar) and MR. G. D. SQUIBB, instructed by Messrs. Lawrence Jones & Co., appeared for the Respondent.

MR. A. M. WEST, K.C. (of the Canadian Bar) held a watching brief on behalf of an interested party.

T W E L F T H D A Y.

MR. BRAIS: My Lords, may I again first apply myself to secondary matters which arose our of the hearing yesterday as to what was the law of the City of Montreal as regards the right of appeal. Before it was amended in 1937 to instruct the judge of the Superior Court to proceed with the revision of the valuation the law was found in 62 Victoria, chapter 58, 1899. That was a statute of Quebec. It is section 384.

This was a revision of the Charter and I have only the French text available: "A final appeal shall lie from the decision rendered by the Recorder's court with reference to an entry on the assessment roll of the immovable taxed or on the roll of perception to a judge of the Superior Court by summary petition either in term or in vacation within a

delay of ten days to date from its decision, and in this event any judge of the Superior Court may order that the record of proceedings in the Recorder's court as well as the complaint itself be transmitted to him, and after having heard the parties, either personally or by their attorneys, he is to render judgment as to law and justice may appertain and such judgment is final".

The only difference there is there between the law as it then stood and the law as we now find it in section 384, which is the 1937 proceeding, that there is added there that he must proceed with the revision of the valuation submitted to him and with the rendering of such judgment as to law and justice may appertain. I do not attach the very greatest importance except that in the present law there is no doubt that he is definitely instructed to proceed with the revision of the valuation, and so far as this case is concerned, I think we are far apart in our views and contentions as to what was done or not done.

LORD PORTER: For this purpose the change does not really make any difference.

MR. BRAIS: For this purpose, no, my Lord. If we are right both the amount and the principles are so far astray that we come within any formula and any statute granting appeal. If we are wrong then moderate differences and so forth remain in the discretion of the court.

The other point I would wish to make is this. We were looking yesterday at the rather startling difference between the figures which Vernot had before him when he considered the two small buildings in order to depreciate them, and the figures which are shown in the City's own exhibit D.11. which has been reproduced in example 8. The proof of that, if any is needed, that that is not accidental, although it is the City's own figure, is found when one looks at volume 4, page 737. These are the sheets of Mr. Cartier again.

LORD PORTER: That isP.36.

MR. BRAIS: That is P.36. If your Lordship will look at sheet 2.A. of that exhibit where Mr. Paquet, Mr. Houle and Mr. Cartier of the City finalise their appraisal after adding all the things we have listened to and then make a distribution, we will see that these other four City employees do the same thing. At the bottom of page 2.A. you have the 1917 building 1,300,000 dollars, and the 1925 building 1,600,000 dollars. If you apply the cost of building index of 1941, you will find that you arrive there, putting those two figures together, at 3,300,000 dollars.

LORD PORTER: That is the 1,478,000 dollars.

MR. BRAIS: And the 1,839,000 dollars. So that when we look at Mr. Vernot who has, at the top of page 983-A-10, found the assessed value of the first two buildings, he has found only 2,176,000 dollars and he is to the extent of 1,200,000 dollars at variance with the City's own figures in applying the City of Montreal cost.

LORD PORTER: The assessed value of the first two buildings.

MR. BRAIS: That is 2,176,000 dollars.

LORD PORTER: How does he get that?

MR. BRAIS: I do not know.

LORD REID: Perhaps you never asked.

MR. BRAIS: No.

LORD REID: It is a bit awkward to speculate now for the first time about what Mr. Vernot did if nobody has ever raised it before.

MR. BRAIS: Mr. Vernot's figures were set aside. He says he took it from the valuation roll. That is correct, I have the answer for your Lordship. What he did was this. He took the figure which appeared on the valuation roll when the whole building was assessed at 8 million dollars, that is where he took that figure from and that would be improper unless he raised it in conformity with the total addition that he is putting on all the buildings.

LORD PORTER: I do not follow why he did it at all. The 1930 valuation roll or the 1936 one?

MR. BRAIS: It would be the 1931 valuation roll.

LORD PORTER: If that is taken from the 8 million, which in fact was a reduced figure, as I understand it, I cannot see how that has any relationship to a calculation based upon what it actually cost to build.

MR. BRAIS: That is where your Lordship and I are in agreement because not only does he take a reduced value on account of lesser replacement of the building in 1931, but he puts in the rest of the building as though it was built subsequently, whereas the building was built in 1913 to 1925.

LORD PORTER: He ultimately arrives, in some way or other, at 19 millions reported cost of head office building without land, 19,108,000 dollars. That is page 983-A-9, line 29. That means the cost less the power house, the land, the sidewalk, the temporary partitions and the parts demolished.

MR. BRAIS: That is the dollar and cent cost, the amount spent for the building.

LORD PORTER: How much of those figures were expended up to 1931?

MR. BRAIS: Up to 1931?

LORD PORTER: Yes. What he may have done was this. If you add the 3,269,393 dollars to the 2,176,000 dollars you get a figure of 5 millions odd.

LORD REID: I see there is some cross-examination about this on page 22 of volume 1, at line 39. It seems to have been left that a detailed statement would be filed. Was that ever done?

MR. BRAIS: Yes. While we are looking for that I would explain this, that the error made by Vernot is that he took the historical building <u>in toto</u> to arrive at his 19 million less those portions which had nothing to do with the building, that is the sidewalks which belonged to the City. We tore up the sidewalks and put in new sidewalks. That did not add to the building, then there were the demolitions and so forth. Having done that he applied depreciation. He looked at the small buildings, the value they bore when the building was assessed at 8 million dollars or 9 million dollars odd as they bore in 1940, which resulted in him putting the value of those buildings at just approximately half of what they should

bear when the assessment is doubled.

LORD PORTER: I follow what your argument is but I do not follow at the moment its explanation.

MR. BRAIS: It is a mistake on his part. There is no explanation I can offer. He should have increased the value of the buildings not only commensurate with the 1936 index, but he should have brought them to the index cost of 1941. He should have given a proportion to value commensurate with the total increase.

LORD REID: What he should have done is he ought to have attributed more to that share of the total cost which takes 25 per cent and that would have resulted in less being attributed to the 18 per cent depreciation, so that you would have got an additional 7 per cent depreciation on another million dollars or something of that kind.

MR. BRAIS: He made two mistakes. First of all, he did not give us the value of the building as it should appear with a total valuation of 19 million dollars. He gives us a proportion of the building as it appeared on a total valuation of 8 million dollars. That is the first mistake.

The second mistake is he should have gone back to those years, applied the cost of building index and given us our depreciation on that because that is the building as up today, and to take the depreciation you must take the depreciation of the actual value of the building.

LORD NORMAND: When the Board of Revision dealt with the figures, did it correct that mistake?

MR. BRAIS: No. They applied a rule of thumb figure of 14 per cent, and there obviously we were seriously handicapped, because the 14 per cent on the total amount is entirely different than applying a larger amount of 25 years and the other amount of 13 or 14 of 12 years, because the initial building would have been multiplied and some of it should have been multiplied on a larger figure than that. Those are the figures which I gave yesterday in example No. 8, and all I am doing now is testing them in the light of this final matter on sheet 2.A. of the exhibit. I am testing what has been found by our own figures.

LORD OAKSEY: I thought you said yesterday that you were not applying depreciation to each year as it occurred.

MR. BRAIS: No, I am not asking for that.

LORD OAKSEY: You are doing the same thing in a sense that the Board of Revision did; you take a notional figure and they said 14 per cent is a fair percentage to take as depreciation and we will apply it to the whole sum arrived at by applying the proper index to the actual cost in each year. You are doing a modified thing of the same sort.

MR. BRAIS: No, my Lord, I am not doing a modified thing of the same sort. I am taking it in principle year by year as it should be , but to simplify the computation I take the first two buildings and make them as of one average period; then I take the big building which came afterwards, and I am prepared to take that on an average basis so that we do not have to compute year by year by year. I do say that I am entitled to separate the two old buildings as being one unit and to apply the depreciation to them. I could, my Lord, if I extended the argument furtner, say that everything that

went in in any given year should be depreciated as of that year, but that, again, would be stressing the matter because the building by itself is no younger or older than its oldest part. That is the reason why they apply the rule of thumb. They apply it with some semblance of order, I would say, to the old building, and then to the new building separately or to the various buildings as they come along. We see that was done by Vernot, it was done by Perrault, it was done by Archambault, it was done by Paquet and it was done by Cartier and by Houle and these gentlemen of the City Appraisal Department on the 2nd November, 1942, came to a final figure after the 10 per cent loss at the bottom of page 2.A. It is exactly what they do. They take the 1917 building, which is the first, they take the 1925 building, which is the second, and if we add those two on the 1941 value we come to 3,300,000 dollars instead of 2 million something.

LORD OAKSEY: It involves this Board in a mass of calculations. It is a point of principle and it has never been raised until this moment.

MR. BRAIS: It was raised.

LORD OAKSEY: It is not raised in your case.

MR. BRAIS: No, not in my case.

LORD OAKSEY: It is not raised in any of the judgments.

MR. BRAIS: I am using this figure to test the appropriateness of the final result found by some of the judges who say: the evidence justifies us in arriving at a figure of so much, and all this evidence was before them.

LORD REID: Is this fair: you are asking us to adopt Mr. Vernot's method of taking two different averages for depreciation, the first and second building on the one hand and the third on the other, and then you are asking us to vary Mr. Vernot's methods by transferring more to the original building without being able to introduce and show us the reconciling statement which Mr. Vernot was to produce and which apparently has been completely lost sight of ever since.

MR. BRAIS: I have an exhibit in volume 4, page 714.

LORD PORTER: I do not think you are asking us to transfer something to the second period from the first. You are saying that Mr. Vernot put a wrong figure on the earlier part and I do not know how far he makes ~~the building~~ use of that figure in making up his 19 millions.

MR. BRAIS: I am entitled to say, when Mr. Vernot did that, my Lords, that he balanced in his mind's eye as an appraiser the 7.7 which he was applying at the other end and where the Sun was losing a lesser amount than it would have lost if he had followed the figure used by Paquet and the other City employees in the distribution of the cost of the building.

LORD PORTER: You are saying although the 7.7 was an inexact figure, on the whole it is not worse than the 1.2 if you made the whole calculation accurately. Is that right?

MR. BRAIS: Yes. I was going to page 714 of volume 4.

LORD REID: Page 714 is part of the valuation sheet.

MR. BRAIS: It is the valuation sheet which he had not produced at that time. These are the assessors' working notes.

LORD ASQUITH: We have seen this document repeatedly, have we not?

LORD PORTER: I have this and I want to know what deduction you draw from this.

MR. BRAIS: It was because I was asked if Mr. Vernot produced his assessment working notes which had been asked of him at page 37 of the evidence, volume 1. At that time he had not produced what he calls his assessment notes.

LORD PORTER: That is exhibit D.2?

MR. BRAIS: Yes.

LORD PORTER: He produced that. What do we get out of it? He got to the 19 millions all right and he got his index figure but I cannot see anything at all with regard to depreciation.

MR. BRAIS: It is page 39, line 25.

LORD ASQUITH: Page 715 is the depreciation page, it is the same document.

MR. BRAIS: That is the way that document came in. It was asked for in cross-examined and that is the document which was picked up by the Board in its statement.

LORD PORTER: Where is the depreciation up to 1925?

MR. BRAIS: At line 34, page 39.

LORD PORTER: At the moment I am looking at pages 714 and 715 and I am trying to find where he puts in his depreciation 2,840,000 dollars.

MR. BRAIS: That is on the following page, page 715.

LORD PORTER: I get depreciation there of 2,840,000 dollars and 240,000 dollars, 25 per cent depreciation. It is 16,755,000 dollars less 961,000 dollars and that gives him 15 years depreciation. That does not seem to have any bearing upon the 2,176,000 dollars.

LORD ASQUITH: The 2,176,000 dollars is not depreciation but the assessed value of the depreciated buildings, is it not? It is the first two buildings, that is to say, their value, but not the extent to which they have been depreciated.

MR. BRAIS: That is the assessed value of the first two buildings.

LORD ASQUITH: Then you subtract the portion pulled down and you get to a net 961,000 dollars and the depreciation is 240,000 dollars.

LORD PORTER: I was trying to get at what was the assessed value.

LORD NORMAND: Page 22 is the furthest you ever get about it in the evidence. That gives you 2,176,000 dollars for the cost, the assessed value, of the two buildings which must mean the assessed value represented by the total of some 8 millions.

MR. BRAIS: It is the assessed value, the assessment which was then in force.

LORD NORMAND: Which was about 8 millions in total.

MR. BRAIS: Plus the additions which had only gone into the third building. Those buildings were complete when the 1931 assessment was made.

LORD NORMAND: But there is no challenge in the cross-examination, on page 40, for example, of what he did. If you look at page 40: "You gave it 16 years for the smaller sum of 2,176,000 dollars less 1,215,000 dollars, and 15 years on the balance? (A). Yes. That is an extra depreciation of 25 per cent. (Q). What is the part of the building the 2,176,000 dollars represents". That is all that we have ever got about it.

MR. BRAIS: Except this by Mr. Seguin: "After the index figures which were supplied to you, these are the technical staff figures, I presume? (A). Yes, sir. (Q). And the better man to answer this question would be Mr. Cartier".

LORD NORMAND: Was Mr. Cartier asked?

MR. BRAIS: He was asked and he is the one who gives us these figures which we find on page 2.A. May I suggest to your Lordships that at that time Mr. Vernot had been called by the Sun Life, first of all, to establish the figures and we were not in a position to cross-examine, as we would have been if he had been called by the other side on that point.

LORD NORMAND: Was Mr. Cartier asked?

MR. BRAIS: He was called; he was the better man to give those figures.

LORD PORTER: Did he give them?

MR. BRAIS: He gave them on page 737 in these working figures, page 2.A.

LORD PORTER: I have that.

MR. BRAIS: He produced it in evidence.

LORD ASQUITH: That is the figure I am not quite clear about.

LORD PORTER: The figure which Mr. Cartier gives when altered by the index of the first two buildings is the second column and the first added together which makes 3,300,000 dollars.

MR. BRAIS: It is a little over that.

LORD REID: I do not see where you get that.

MR. BRAIS: It is at the bottom of page 2.A. 1927 prices are so much, 1936 prices are so much and the 1941 prices, that is applying the index. Adding the 1917 building to the 1925 you arrive at a little over 3,300,000 dollars.

LORD REID: He does not give the same depreciation as Mr. Vernot gives you.

MR. BRAIS: He gives us 28 and 19. He is not so far off; he gives us 28 and 19.

LORD PORTER: The total that he gives you roughly is two and a half millions.

MR. BRAIS: The total that he gives us there is two and a half million dollars.

LORD NORMAND: On these two buildings he gives you approximately 770,000 dollars.

LORD PORTER: 1,400,000 dollars is what he gets there.

LORD NORMAND: That is 1,800,000 dollars that he allows.

LORD PORTER: What does the other man do?

MR. BRAIS: Vernot on the older building leaves us with 961,000 dollars. I am just showing this to the Board by way of test, because all these figures went before all the judges.

LORD NORMAND: What is the conclusion of it?

MR. BRAIS: The conclusion is that Vernot when he applied the 7.7 to part of the building and did not apply an index to the earlier parts of the building, was just simply going roughly through a formula which was a rule of thumb and in so doing came to the conclusion that one balanced the other. Going through all the mathematics and figures that we have had to go through he felt with his experience as an assessor and applying mental arithmetic that he came out about even. As a matter of fact he did not come out even.

LORD PORTER: That is your deduction, he never says it.

MR. BRAIS: He never says that.

LORD REID: Mr. Justice MacKinnon did not think he said that, because he treated the two quite differently. He made an allowance for the 7.7 but he said the depreciation item was not worth bothering about.

MR. BRAIS: And he gave 14 per cent applying it to the building which was the formula used by everybody.

LORD PORTER: If you take the assessed value of the first two corner buildings and deduct that, as I suppose you do, from the 19 millions, whatever it is, that leaves you 16,755,180. Is that right?

MR. BRAIS: Your Lordship is looking at what page?

LORD PORTER: The total figure after he has taken off the unnecessary parts is 19 millions odd. That is page 983-A-9.

MR. BRAIS: Yes.

LORD PORTER: That you have to split up into earlier building and later building.

MR. BRAIS: Yes.

LORD PORTER: If you split that up into 16 millions and 2 millions that comes to 18 millions. I do not know how he gets to it.

MR. BRAIS: 16 millions is the whole building, that is everything, that is the three buildings together.

LORD PORTER: Is it?

MR. BRAIS: Yes, my Lord, that is the whole Sun Life structure. It comes to 16 millions. When he picks out the small structure to give it a value, he takes it in proportion to an 8 million dollar structure and that is why he is more than half off on that item. That is the whole structure at the bottom of page 893-A-9.

LORD PORTER: If that is right, he first gives you 25 per cent on part of the structure and then 18 per cent on behalf of the whole.

MR. BRAIS: Which he puts at 18 millions. If he had taken 18 per cent and had taken it on the assessed value as of that

time and then doubled it for both, he would have arrived at the same result.

LORD PORTER: I do not follow what he has done. I dare say it is my fault, but I do not. Your argument, as I understand it, is they should divide this into two portions; on the first portion you give so much and on the second portion so much. According to you Vernot took the assessed value, not the replacement value, on one portion, and having done that he then takes the whole of the replacement value after the necessary deductions and gives 18 per cent on that.

MR. BRAIS: After taking off what he has already used for the first two small buildings, which is the 961,000 dollars.

LORD PORTER: After taking that off what?

MR. BRAIS: Off the 16,750,000 dollars. I am looking at line 12 on page A-10. He has taken that off but he has arrived at such a small figure by then that what he takes off gives him an entirely distorted value for the new building.

LORD OAKSEY: He had previously deducted 1,471,000 dollars which was a calculation made at 7.7 per cent instead of applying the historical figure which would have brought out a figure of about 180,000 dollars. So that he had deducted from the actual cost of the building for index - you know what I mean.

MR. BRAIS: He did not apply the index as regards depreciation.

LORD OAKSEY: He applied the index before getting to depreciation. If you look at page 714 he applied the 7.7 index and so arrived at a figure of 1,471,000 odd which he deducted from the actual cost.

MR. BRAIS: Yes.

LORD OAKSEY: So as to reduce it to the 1936 figure and then after that he depreciated.

MR. BRAIS: Yes.

LORD OAKSEY: Whereas if he had done it on the true index figure applied to the individual years, he would have deducted instead of 1,471,000 dollars a figure of less than 200,000 dollars. That is what the courts have shown.

LORD ASQUITH: 180,000 dollars.

LORD OAKSEY: That is accurate, is it not?

MR. BRAIS: It is accurate in the figures, but it is not accurate in the application. What he should have done would have been to do what the other assessors were doing for the other buildings. At the bottom of page 2.A. we have the whole story. May I try to explain it. I think there is some importance in this if we are going to look at the figures. He should take his buildings as they are erected and put them down column by column. He applies the cost of building index for replacement year by year from the historical year of construction, and after having done that he would apply year by year depreciation to that portion to which he applied the cost of building index.

LORD OAKSEY: That is what I was pointing out to you earlier. That would be a logical way of doing it, but you are not contending for that.

MR. BRAIS: I am contending for it in a broad way. I am contending

for it except that I am limiting the buildings to an average period for eachyear. I am just contending, if you go reasonably back to a building which was started in 1914 and finished in 1920, you can average that building out because it is one building and it will lose - it is as strong as its oldest parts or average parts and so forth. I am not asking that it be taken year by year, but I do say it should be taken building by building.

LORD OAKSEY: You do not take it building by building, you are only applying it to two buildings.

MR. BRAIS: We have three buildings.

LORD PORTER: There is another unit.

MR. BRAIS: We have everything on page 2.A. here, my Lord. It is rather a simple process which this City department has followed. They have put down the 1936 value of the 1917 building. That is page 737 2.A. Then they have put down the 1941 value; that has been multiplied by 109 and of the 1917 building they apply depreciation which is so much. Then they do the same thing with the 1925 building and apply depreciation which is so much. That is all we have done on this example No. 8 and the result shows that there is a very considerable discrepancy. If it is good enough to take your building index year by year, it is certainly good enough to take your depreciation year by year. That is the submission I present to this court. I just present it on the basis of saying that if you do that, and if you take those figures out it would show that Mr. Justice MacKinnon, in refusing to throw out the 7.7 of Vernot and not going through the other process -----

LORD OAKSEY: He said he threw it out because he could not understand it.

MR. BRAIS: He threw it out in any event. It is not in there, my Lord. Mathematically, as I have said, it is a mistake, but he could not understand it, probably because he could not understand why Vernot had not done the same thing with the depreciation by using the cost of building index.

LORD ASQUITH: I thought he did not throw out the 7.7.

MR. BRAIS: He did not throw out the 7.7 argument. He failed to accept the argument against the 7.7 argument.

LORD PORTER: Mr. Vernot, by way of finding out the true cost knocked certain figures off as being things which ought not to be charged for at all. When you come to calculate depreciation, do you take off those parts and the things which have been disallowed altogether?

MR. BRAIS: You mean the parts which have been demolished?
LORD PORTER: Yes.
MR. BRAIS: Yes.

LORD PORTER: Is that accurate if you look at page 737 2.A? As far as I can see they take the actual cost, they take off their depreciation and make no allowance for those features of the building which have been ruled out altogether.

MR. BRAIS: Yes. The answer to that is this, my Lord. These figures found on page 737 are appraisal figures on actual inspection of the material in the building.

LORD ASQUITH: At the time they inspected the building the walls had been pulled down.

MR. BRAIS: They had been pulled down.

LORD PORTER: I am obliged. That is so?

MR. BRAIS: Yes, my Lord. The difference between the 3,300,000 dollars and the 3,900,000 dollars, which is found here, is the result of the different views between the appraisers as to how much material is in the historical cost, as to how much material was put in and was taken out. Of course, you have another ground of discrepancy on what basis of value was that 1,250,000 dollars of demolition calculated. Was it calculated on the year of demolition or on the year it was put in? We do not know that but it is so easy to see where discrepancy would normally come in in any appraisal.

LORD PORTER: Would you look at page 983-A-9? You have told me that the explanation of 2.A. is that it is an appraisal value.

MR. BRAIS: Yes.

LORD PORTER: And that the calculation was found there. When they made their calculation of the power house, building and equipment was there?

MR. BRAIS: Yes.

LORD PORTER: When they made their valuation, the land you can knock out because that is separate?

MR. BRAIS: Yes.

LORD PORTER: But the sidewalk was there, was it not?

MR. BRAIS: When the appraisal was made?

LORD PORTER: Yes.

MR. BRAIS: It was not taxable. It is not taxable.

LORD PORTER: I dare say it is not, but he knocks it off here. Was it knocked off before the depreciation was allowed on page 737 2.A?

MR. BRAIS: I am sure it was. I would be sure it was. It is part of the historical cost, but it would not appear in the appraisal cost because they would not look at the sidewalks.

LORD PORTER: Very well. If you say it would not, it would not.

MR. BRAIS: I say normally it would not.

LORD ASQUITH: The essence of the appraisal is you do not look at the history at all, you put yourself in 1941 and see what is there.

LORD PORTER: That I am accepting, but the cost of the sidewalk was there.

MR. BRAIS: In the historical cost.

LORD PORTER: The sidewalk was there when they came to appraise. That is all I am asking.

LORD NORMAND: But it would not be included in their measurement of the building.

LORD PORTER: That I am prepared to accept, but I am not prepared to accept that it was not there.

MR. BRAIS: It was there.

LORD PORTER: Cost of temporary partitions would be out, and the cost of the part demolished would be out so what you have got not knocked out is the 709,214 dollars. It is not going to make a vast amount of difference.

MR. BRAIS: The power house and equipment comes back in the future.

LORD ASQUITH: They are dealt with separately?

MR. BRAIS: Yes, it is because the power house and equipment was part of the historical cost. There was only one historical cost of the building, the total cost including the power house. They have to take that out of the historical figure. They start off by removing that but they bring that back afterwards. At that time they put it in a separate assessment completely; that is the second assessment.

LORD ASQUITH: One of the many things which has puzzled me about this case is that the power house and the land dodge in and out. It has been taken out for one purpose and put back for another. Their exits and entrances are quite capricious but they both come back.

MR. BRAIS: Quite. If I may be permitted to apply myself to your Lordship's question, at that time there were two separate and distinct assessments which have since been consolidated. We see that the power house comes back even on Mr. Vernot's figures, because Mr. Vernot made his working sheets. He took off the power house and then he proceeded to make a separate assessment for the power house. We have it in the file here. There are two separate assessments. When the Board considered the matter they, on page 983-A-29, line 38, after recapitulating the replacement value and so forth, added "Total cost as declared December 1st, 1941, 709,257 dollars 14 cents" which I think is exactly what Mr. Vernot took out in his original report. This case starts off at volume 4, page 712, which is exhibit P.1. You see in the top left hand corner "Assessment of the Sun Life Main Building" and then if we turn over immediately to page 716 we see in the left hand top corner "Sun Life Power House". It was at that time put into a separate assessment but has since been consolidated.

LORD REID: A day or two ago, if I remember aright, you told us that if you were right on the question of depreciation that would go rather more than halfway to meet the difference of the 7 per cent on the index figure.

MR. BRAIS: Yes.

LORD REID: Does all that you have told us since modify what you then said in any way?

MR. BRAIS: No, my Lord, because we have had example No. 8. I have it worked out here.

LORD REID: I merely want to know it generally. I do not want to know to the nearest dollar; but generally I understood you to say if you were right on this question it made up rather more than half what you would lose if you were on the index figure. Is that right or wrong?

MR. BRAIS: It is right to a certain extent, to the extent that if Mr. Justice MacKinnon had simply taken Vernot's application of depreciation without taking into account the cost of building index it would dispose of half of my 7.7 difficulty. If Mr. Vernot had taken the cost of building index, I have on example 2 the final figure to the $10,450,000 against $10,200,000 found by MacKinnon.

LORD REID: So you are now making up about three-quarters?

MR. BRAIS: I have gone over it.

LORD REID: The other way?

MR. BRAIS: Quite, and with a great deal of facility in the process.

LORD REID: I cannot understand if Mr. Justice MacKinnon had accepted that view, how he could say the amount involved by the 7.7 had to be taken into account, but the amount involved in the depreciation was so small that he need not take it into account. It must follow that he did not accept the argument now presented otherwise he would have seen the depreciation figure was, like the 7.7 index figure, large enough to require to be taken into consideration.

MR. BRAIS: When I have a judgment with which I am not satisfied, all I can point out is where I am dissatisfied, and if the judgment is not correct it is because there has been an error and my views have not been accepted, rightly or wrongly so; but, if your Lordship is right, that he thought the difference was so small, I do not think he figured them. I do not know to what extent they were put to him.

LORD OAKSEY: Is not this what you are saying in example 2? If you apply Vernot's percentages and depreciation you would get a figure of $3,695,774. It is the passage at the bottom of the page.

MR. BRAIS: Yes, my Lord.

LORD OAKSEY: You would apply that figure of $3,695 twice over in the same way that $2,525,000, which was 14 per cent depreciation had been applied before, would you not?

MR. BRAIS: No , because I am substituting.

LORD OAKSEY: If you are substituting $3,695,000 for $5 million?

MR. BRAIS: For $2,500,000, my Lord.

LORD OAKSEY: In the one case and then not in the other.

MR. BRAIS: The other is an entirely different thing. That is depreciation for unnecessary waste decoration. That is out of the question.

LORD PORTER: In this observation you are dealing only with the 14 per cent. for actual depreciation?

MR. BRAIS: Actual physical depreciation, and I am substituting.

LORD OAKSEY: Right up to $2,500,000 in the one case to $3,695,000.

MR. BRAIS: I am just substituting the figure which would have been arrived at if I had been given the same measure, if I had been put through the same requirements in depreciation as was applied to me in replacement cost, and if they had taken the formula of page 2a and applied depreciation to me in the formula of the manual, they would have gone about it in that way.

LORD NORMAND: Does it come to anything more than this when all is said and done, that if you take the figures of Mr. Justice Mac Kinnon they can be justified if you eliminate the error he made as regards the 7.7, but correct his other figures in relation to depreciation?

MR. BRAIS: If I am given the same treatment on depreciation which is given to everybody else and given by the assessors and given to all the other buildings as is charged against me when I do not get the advantage of the 7.7, that is to say, the cost of building index correctly applied as the manual says, I will come out at a lesser figure than MacKinnon's.

LORD OAKSEY: Then you are taking a figure of depreciation of 18 per cent, are you not, for all the construction which took place up to 1941?

MR. BRAIS: Yes, my Lord.

LORD OAKSEY: That is not in accordance with the depreciation tables at all, is it? The building which took place in 1940 ought not to be depreciated by 18 per cent?

MR. BRAIS: In 1927 it was started, the larger part in 1928 and 1929.

LORD OAKSEY: Some part was done in 1940, was it not?

MR. BRAIS: Insignificant, my Lord, a matter of a few hundred thousand dollars, just finishing the last floors.

LORD OAKSEY: You need not bother about the details, but a straight figure of 18 per cent for everything after the first two buildings, is it not?

MR. BRAIS: There is a straight figure of 18 per cent for the buildings which went up, large part in 1927, 1928 and 1929. The assessment is for 1941. If I take the years 1928 to 1941, I have thirteen years. The depreciation table of the manual says you give 1½ per cent a year. If I take thirteen years at 1½ per cent I come to more than 18 per cent. The depreciation table is filed with the record.

LORD NORMAND: It is more like 10 years, is it not?

MR. BRAIS: The assessment is for 1941/42. It is more than that, it is 1941, 42, 43 and 44.

LORD PORTER: You are going to give us first a page in the blue book. After we have that we can see what the result is.

MR. BRAIS: I am sorry. It is page 197 of the manual.

LORD NORMAND: What is the rate?

MR. BRAIS: The rate for fourteen years is 17.5 per cent, the final column, "the building of reinforced concrete or steel frame with solid construction".

LORD OAKSEY: And all the other percentages lower as you go on?

MR. BRAIS: As we come down. A wooden framed building of course ---

LORD OAKSEY: I do not mean that. Fourteen years was the longest period and the other expenditures were all later?

MR. BRAIS. No; the large part of our building was put up between 1927 ----

LORD PORTER: You get it at page 737, 2A. That will give you the figures year by year for the expenses.

MR. BRAIS: Yes, my Lord.

LORD PORTER: And you are going to tell us what they were.

MR. BRAIS: I am not going to follow this figure here, because they have literally jockeyed their figures, because in 1941 they arrived at three millions too much money. That cannot apply; but, if we look at page 10, volume 1, in Roman numerals, you will see that the big years were 1928, 29, 30 and 31. In 1930 there is $6,000,000 and in 1931 $3,207,000. Those obviously are the dates of payment. The building goes up and the contractor puts in his stones and puts in his material and so forth before the contractor finally gets paid. These are the years of payment. All these were in six months or a year before the period of the contract. After that ~~presumably~~ there is only $600,000 that went in.

LORD PORTER: From when on?

MR. BRAIS: 1931 on.

LORD PORTER: Do you know how much?

MR. BRAIS: 1932 on. If I recall, there is $600,000 that went in. I am speaking very roughly there.

LORD REID: There is over a million on page 680, which you have directed our attention to before.

MR. BRAIS: Yes, but this was prepared by the City.

LORD PORTER: I do not know how far my brethren agree with my, but I find it easier to take 2a on page 737. Admittedly it is not accurate, admittedly it lumps together a certain number of years, but in this kind of calculation you do not want to get all your dots in the right place, and, if you look at 2a you will get roughly a period in which the various expenditures were made, that is to say, you get the biggest portion in 1931. That does not mean you do not get something about $1,400,000 up to 1941.

LORD OAKSEY: Upon which 2a applies the appropriate percentages for the particular year, namely 6.8 per cent for one year and 1.5 for another, and you are applying a percentage of 18 per cent over it all?

MR. BRAIS: It is because Vernot made the assessment. I do not think I can be wrong all the time. I am not allowed to use 2a when they apply the cost of building index according to the formula which is prescribed, and, when they applied 2a all they had to go on was the historical cost and that is a refraction.

LORD OAKSEY: If you are looking at 2a, you have told me it was not historical cost; you have said it was appraisal value. I do not know which it is. Either that is right or wrong.

MR. BRAIS: It is historical cost applied to appraisal value raised to meet historical cost.

LORD PORTER: I do not know how you combine the two, how appraisal value and historical cost can possibly co-exist.

MR. BRAIS: My Lord, I would like to do it; but we see the heading which is immediately above that "To depreciation, proportionate to disbursement of the Sun Life see the two following sheets". The total figure theyhave arrived at, the so called appraisal figure to arrive at the historical cost -----

LORD PORTER: Why do you say the appraisal value to arrive at the historical cost? Appraisal value is one thing and historical cost quite a different one.

MR. BRAIS: I agree with you.

LORD PORTER: You have told me the figures I took on 2a are appraisal and nothing to do with historical. Is that right or wrong?

MR. BRAIS: May I have your Lordships' consideration for just one moment. The figures at 2a result from the contemplation by the assessors of the historical cost figure which they then had before them. Then, in order to bring up their total appraisal figure to their historical cost they started adding, putting on, these extraordinary additions of 10 per cent omission, 19 per cent construction en hauteur, 10 per cent sous contrat and come to the $17 million, which is entirely out of proportion to what they had properly assessed before. That is all I can say on that.

LORD ASQUITH: The whole logical basis of this thing is appraisal cost?

MR. BRAIS: Yes.

LORD ASQUITH: You may say they manipulated the figures to bring them up to historical cost, but I thought you told us at the beginning of this case, when I was a comparatively young man, that the whole of the thirty-one pages opposite page 737 were all on appraisal and not on historical. Is not that so?

MR. BRAIS: That is so, where appraisal was worked out to bring up historical cost, except for the last paragraph on 2a where they say in so many words they are making apportionments not according to appraisal but according to historical cost.

LORD PORTER: That is what is puzzling me. I do not mind how we do it as long as we do it somehow; but you told me on page 2a the figures beginning 1,356,812 and so on down were all on appraisal value. Now you are saying they are not appraisal value, but historical. I should like to know which is right.

MR. BRAIS: I say the division of the figures is on the historical basis.

LORD PORTER: What do you call the division?

MR. BRAIS: 1925, 1931, 1936, 1940. They say so in so many words just above.

LORD PORTER: Does that mean they have taken what it cost in 1935 and 1931 and so on, what it cost the Sun Life, or does it mean they have taken an appraisal of the material they found; which of those two? That is what I want.

MR. BRAIS: It is neither. They have said in so many words just above. A deprecier proportionnellement aux debourses du Sun Life." Those words mean what they say. They are blown up or pumped up appraisal figures and in order to distribute it according to years they have used the historical cost figures of the Sun Life.

LORD REID: The total is an appraisal total, but the apportionment is what it cost the Sun Life in each period of years?

MR. BRAIS: That is quite right, and the purpose of that was to correct this other appraisment distribution which was made on page 5, which left the appraiser with $3,000,000 spent in 1941 which was entirely senseless. Have I succeeded in making myself understood, my Lord?

LORD PORTER: I still do not understand this particular page. They have got a total value, first of all an undepreciated value of 18,707,000?

MR. BRAIS: Yes.

LORD PORTER: Is that when added together the figures which will actually be expended by the Sun Life in that period?

MR. BRAIS: No.

LORD PORTER: Then what is it?

MR. BRAIS: It is the figure of the appraisal originally arrived at, plus certain arbitary additions put to it on an appraisal basis to arrive at the figures ----

LORD PORTER: All I have to say is appraisal plus additions?

MR. BRAIS: Yes. I would be inclined to call it padding, but I cannot call it padding.

LORD PORTER: That does not matter. That is merely additions with the words of vituperation added?

MR. BRAIS: Why I referred to this is because it shows the principle of taking your depreciation year by year as of the dates of the several buildings which I say if Vernot had properly done and applied the cost of building index as he should have done in the process, we would be well away.

I was on Mr. Justice Galipeault's decision at page 1,032 in volume 5. With your Lordships' permission we can go by pages 1,032, 1,033 to page 1,034, line 33, to which I draw your Lordships' attention. "It must be recognised that there is no market for a property" -- the proper word would be "property"; in French you get the word "immeuble" and they have a very wide connotation for "property" -- "of the Sun Life that there has not been, any in the past and only an institution identical to the appellants' with the same resources, the same objects, the same purposes in mind could become a possible purchaser at the price which it would suit it to propose. It does not appear in the record that this rara avis has been found." May I immediately suggest there that his Lordship is misdirecting himself in the most complete fashion possible if he is there considering the doctrine of the willing buyer and the willing seller, and of course, I lay particular emphasis on this thought of Mr. Justice Galipeault.

LORD PORTER: Suppose you had a building like the War Office building which was put up in the war, which is made to resist bombs and is useful as a chart room and that sort of thing below, but is

perfectly useless for any other purpose, how would you say that ought to be valued?

MR. BRAIS: I would say you would have to deduct from the replacement value an amount commensurate with those portions which are useless to the building as a building. For that purpose I would have to say that war has been banned from the earth and that bombs are never going to fall again. If I have under my house a shelter and I am living in an area or close to an area where war and bombing is possible, there is a very definite value.

LORD PORTER: But this is not a building in which people can take shelter. It is made for a Government shelter and here are people planning how the war should be conducted and this is a place where records can be kept and is quite useless to the public. How are you going to deal with that on the principle of a willing buyer and seller?

MR. BRAIS: May I just say this. We would then fall into the distinction between the commercial building and the public building, which is recognised in all theories of valuation, churches and city halls and so forth. There is no possible sale of that; that building will never be sold. It cannot be sold. It is the Minnesota case cited by my learned friends. In that case they took 25 per cent off, because there was something there which by any standard did not give any value. What the figure would be I do not think I should even try to give to your Lordships, and the exact formula to be used would simply be the cost should be taken as one factor and the physical depreciation as another factor and another factor put in.

LORD PORTER: Your quarrel with the only judge here is not with the statement that there may be a building which is unsaleable and cannot be calculated in that way, that that observation does not apply to this building?

LORD ASQUITH: A church is the perfect example.

MR. BRAIS: Yes.

LORD PORTER: The only possible example there would be historical cost plus depreciation.

MR. BRAIS: Yes.

LORD PORTER: Then your quarrel with the learned judge here is not with the general statement, but with the particular application to the Sun Life building?

MR. BRAIS: Yes, and it leaves no doubt of course, because he says it is only a company with the same objects in mind, the same purposes and so forth, and leaves no doubt as to his thinking there. If your Lordships would refer to the manual you would find the commercial building and the appartments and the public buildings, and obviously to the public buildings I have not applied my mind to the assessment.

Then on page 1,035 his Lordship continues to set out rather verbatim from my learned friends' factum the statement of what has gone in the judgment and page 1,036 also and 1,037 ----

LORD PORTER: He is there criticising the deduction of certain portions which in fact were deducted?

MR. BRAIS: Yes, taken off by Mr. Justice MacKinnon. The fault he

commits there on page 1,037 at line 18 is this; the judge estimates certain items do not add to the value of the property and does not deduct them completely; he deducts $2,000,000 and that is true. That is after the other deductions have been applied; but, if one would apply the deductions and give them the advantage or the benefit of the other deductions, you would come to $2,600,000 without taking into account the fact that $600,000 worth of decoration in granite. As we saw yesterday Mr. Justice MacKinnon reduced that to $200,000, and when he says it is deducted entirely, that is incorrect. Then there are the details of these deductions by Mr. Justice MacKinnon. He summarises them at 14 per cent, because he already had the 14 per cent I think on the depreciation and applied a rule of thumb to that; but it is not 3,500,000, and it is not the 3,500,000 to which the deductions have been applied either.

Then we go through to page 1,037. He gives the details of the deductions and he continues figuring through the figures 1,038 and 1,039. I do not think there is anything I have to direct your attention to there, except at page 1,040, line 45 he refers again to the Mr. Justice MacKinnon's second deduction of 14 per cent, and at line 44 says: "The prices that these specialities and ornaments cost should then be deducted from the value. For this reason he entirely eliminates seven items in the major portion of one-eighth". That is entirely incorrect.

LORD PORTER: He reduced that figure to 2,000,000 odd?

MR. BRAIS: He reduced it to $2,300,000 and, even if you apply the other 14 per cent to $3,700,000 you are still a long call from $2,300,000, and he took 14 per cent on a rule of thumb and did not take the totality of the figures mentioned by Perry, and reduced one of the large items from $600,000 to $200,000.

LORD PORTER: He says that it is $3,725,000 before the depreciation, but what he actually deducts is $2,352,000 after the depreciation?

MR. BRAIS: Yes, but in the judgment he twice says he takes the totality.

LORD PORTER: He puts it right here anyhow?

MR. BRAIS: Yes, he charifies it there. Then we can go over page 1,041 and, unless I am directed otherwise, I will go to page 1,042 where he says at line 4: "The Sun Life property belongs both to the commercial and institutional classes. They are of a commercial nature and institutional." The Judge is himself obliged to admit that the company has the benefit of the entire space occupied by it. Obviously we have the benefit of the space we occupy, to wit, 58.5 per cent of the utilisable space in the building. That is entirely wrong in standard. We do not occupy the utilisable space in the building, we occupy 58.5 per cent of the space which is used, not the utilisable space, and "as the valuation for 1941 is not fixed for always it will be time for the Sun Life to have its protestations heard if the conditions come to change later". That is not good in law.

Then he says at line 27: "The assessors, who did not ignore the rule confirmed by the jurisprudence of the willing buyer and willing seller would have been too happy to make use of it if they could have applied it to the Sun Life." That is completely contrary to the evidence.

Then page 1,044, line 12, it quotes the Superior Court when it says: "The Court does not criticise the assessor for following the memorandum" etc. "It does, however, question

the percentages allotted by Vernot and the Board." Then Mr. Justice Galipeault continues. He states the reason for that. He says in an explicit fashion that Vernot and the Board made a mistake de categorie in applying the memorandum. The Sun Life is an ordinary commercial building and not a building in whole or in part special. The memorandum does not recognise buildings in whole or in part special. It recognises buildings wholly occupied by tenants, originally occupied by the owner and tenant and wholly occupied by the owner and, ~~contrary to~~ a lot of buildings, a special building, which is still a commercial building, the owner has bought it to keep it whole, and he incorporates the word "special" which we do not find anywhere. Then he quotes "it is absolutely a commercial building. It is not a one purpose building like a church."

LORD ASQUITH: He is criticising that statement, is he not?

MR. BRAIS: Yes, he is criticising that statement. I do not see how we can criticise it, if I may very respectfully submit, but he is criticising the fact that Mr. Justice MacKinnon said it is a commercial building and not a one purpose building like a church. It is absolutely a commercial building.

LORD PORTER: That is a matter of dispute.

MR. BRAIS: The City of Montreal and its manual have made no distinction between that and the other commercial buildings. It may for one purpose be and insurance building and nothing else but it never is and never will be. Now we come to page 1,045.

LORD OAKSEY: I thought your whole argument was in great part or substantial part that it was not commercially useful and could not be used, because it is too big and too dark and therefore is unsatisfactory for being used as a commercial building.

MR. BRAIS: It is a commercial building with unsatisfactory features, because it has been built into a square block. I have not said for one moment it is not a commercial building. I say it is a commercial building and used for no other than commercial purposes, the housing of a large insurance staff which may be any other kind of staff, but the ordinary commercial space we give that staff, floors with wire connections and so forth, that space is not up to the standard you should have in a building of that type.

LORD OAKSEY: You say it is a wholly commercial building, but a bad commercial building.

MR. BRAIS: A bad commercial building, my Lord. Then at line 33 it says: "The extent to which the commercial features" etc. He quotes "and we have had that before from the memorandum". It says: "Each property will have to be considered on its merits within the limits outlined above". Mr. Justice Galipeault sees fit to consider that the words "outlined above" applied directly to the extent to which the commercial features of the building have been sacrificed. I would take it by this quotation. It is of little importance.

Then at the bottom of page 1,045 the judge says: "The memorandum is the fruit of consultations and experience and consideration of the jurisprudence so as to come to an equitable and practical basis. I must say on this point I prefer it to the theory of experts produced by one side and the other. It is ~~and based~~ at the base of all special valuations at Montreal, as we see from a long list of valuations appearing in the record." Special valuations cannot exist in law. That does not exist under any system of law, I submit, and with the long list of valuations

to which the trial judge referred he has not noted in the process that the special valuation has done anything to any other building except the Sun Life. If you call a special valuation in in the process you bring in fifty buildings and do not change them, and that special valuation becomes only applicable to the Sun Life, I submit to the Court. It is a memorandum which has been made to give a special valuation to the Sun Life, and if we have that, we have discrimination. That is my submission and that has been the only result. His Lordship applies his mind to that and finds a justification in that, but as I submit respectfully it is exactly the contrary that should take place. If you have to build up something foreign to all systems of value in one building, the words "special valuation" should not be used; it should be called the Sun Life valuation, memorandum.

We come to the bottom of page 1,046, line 38. "None of the tribunals to which this case has been submitted has really criticised basically the directives and the teaching of the memorandum in question. It has been said to reverse these ~~the~~ principles and matters of valuations would be practically to annul the valuation of all the categories of immovables in Montreal." That is wrong in fact and in law. It would not change anything, because it did not change anything from 1939 to 1941 and if the memorandum was deleted we continue with our assessment as before with no more changes or modifications except Sun Life.

LORD OAKSEY: I should not have thought that was true at all because I thought the memorandum said of a building it had got to be assessed on the whole of the replacement value. That does not apply to the Sun Life, does it?

MR. BRAIS: It has been applied only to the Sun Life, I say.

LORD PORTER: What you were saying was something different from that. You were saying the memorandum was prepared not in order to give a general direction, but in order to enable the City to increase the assessment of the Sun Life. What my Lord is pointing out is if you read the memorandum it is not confined to the Sun Life and, if you apply it to the others, it will make a difference to them and therefore it cannot be true to say it was done expressly to deal with the Sun Life, thought in fact they may have so used it.

MR. BRAIS: I am taking the results. I cannot go beyond that.

LORD OAKSEY: The terms of the memorandum apply impartially as between buildings of that character. It might have been impartially applied.

MR. BRAIS: Yes. The only reason I bring this up is because his Lordship is applying himself to the terms, but when he says a long list of valuations would be destroyed I am entitled to say that the other valuations which are just a continuation of the previous figures would not be destroyed.

LORD PORTER: I think on the other hand you say they ought to have been destroyed, but the memorandum applies?

MR. BRAIS: I do not know . I do not want to go as far as that. Yes; if the memorandum applies all the assessments should be destroyed.

LORD REID: Have you considered its effect on the other buildings at all? We have not gone into those. If the memorandum is wrong, then these assessments are wrong too?

MR. BRAIS: I apply my mind to that, because his Lordship says the

other assessments should be destroyed, and, if the memorandum has been applied to the other buildings, the assessment of the other buildings could be reset. I do not think the others have complained. I think the evidence says the Sun Life was the only one to complain.

At page 1,047 we go through the story of the beauty of the building and at page 1,048, line 12, he says: "The administrators of the company may have committed the sin of pride, but the weight of this fault cannot be imposed even in part on the other taxpayers."

LORD PORTER: That is saying that if you get a building, however useless it may be, of a grandoise character, then it must pay the full amount, otherwise you are being unfair to other buildings?

MR. BRAIS: Where the unfairness comes in I do not know.

LORD PORTER: That is what he is saying, is it not?

MR. BRAIS: Yes, that is right. If I built ofgold ----

LORD PORTER: I follow the argument. I do not want to urge you to argue it. I only want to see if I followed what he is saying.

MR. BRAIS: If your Lordship pleases. Then at line 26 he says: "Once more why pay any attention to the indications of the market if everybody realises that there is no market possible for such a immovable?" I do not want to reiterate the evidence on that.

Then we come to the bottom of page 1,048. "Before that I must state that he refers to the value declared in the book".

LORD PORTER: That is done throughout?

MR. BRAIS: Yes. Then at line 42 he says: "There is there an admission which cannot be ignored, and this admission carries much more heavily or takes great precedence,or takes very considerable precedence, over the fact that the valuation of the roll before that of the 1st December, 1941, carried the immovable at $8,000,000"

LORD PORTER: That is as opposed to the other view, which is the $16,000,000 can be set on one side and the $8,000,000 on the other and they cancel out.

MR. BRAIS: He says something here which I do not find in the evidence anywhere. "It is not the courts which have fixed this valuation. There was an agreement between the representatives of the company and those of the City". That, my Lord, is entirely wrong.

LORD PORTER: That means the reason why the $8,000,000 was fixed was because the City and the Company agreed?

MR. BRAIS: Yes.

LORD PORTER: Need you worry about that, because if they did, presumably the City agreed because it was a proper figure to agree? That is your argument any-how?

MR. BRAIS: It would be my argument, but there is nothing in the evidence that I can find, subject to correction. I have read it very carefully. There is not one word in the evidence to suggest there is any such thing as an agreement. They went before the

Board of Assessors, which at that time had properly constituted a board to hear these complaints. The assessors then, as now, were certainly just as good as Vernot was in this case, and this brand new board of revision which had been set up under the new law, these assessors, weighed the problem, examined the building and did what they had to do; they were sworn as the other gentlemen were since sworn,and reduced it to $8,000,000; but to say there is an agreement and adduce anything from that I say is contrary to the evidence and would not contradict the argument made, that if they did assess they must have done it honestly and properly. Then the evidence as to the freezing of the roll and then to the 1941 price coming along.

At line 10, page 1,049: "Why did the City accept the valuation of $8,000,000 in 1939?" That we ignore. There may have been numerous reasons. This is a judge of the Province of Quebec speaking. There may have been numerous reasons. Onthis point we have practically only the deposition of M. McCaulay, volume 2, page 211 and following and the explanations of Mr McAuslane in a letter reproduced in volume 5, page 907. There is one thing certain, the Board of Revision which rendered judgment here was not then constituted. It was three of the estimators of the City who were sitting in revision, which body, composed as I have just said, did not offer the guarantees of independence and precision as the bureau which we now form, such as the one which we now have. Did the estimator of that time fear to face a considerable trial, necessitating such a great deal of preparation as that necessitated by the trial of to-day?" He cites on that the memoir of the appellant. These things are taken holus bolus with all due respect to my very distinguished friends with an imaginative factum when these things were put in. Mr. Justice Galipeault cites these in his judgment and as we read these things we think there is some basis, some ground. If it was true that the assessors at that time were of that type let us have the reason. There is nothing on that, and I say when that is found in a judgment it does show that his Lordship was entirely misdirecting himself as regards the application of the weight to be given to previous assessments, and, if he had only looked at the assessors' figures of 1938 he would have found the assessors of 1931 sitting as a Board of Revision were not so far out either. They were right in line with their figures.

Now page 1,050, at line 33: "For the reasons given by the Board and the reasons of fact appearing in the evidence " -- there are no reasons of fact appearing in the evidence; that appears to have been also got out of my learned friends' factum -- " we submit that the judge a quo should not have taken into consideration the previous estimations previous to 1941." Mr. perrault in his manual is very careful to say one of the important things to be taken into consideration is the previous estimations." What must not be forgotten is that in 1941 after the roll had been frozen for several years, the valuers of the City who had had the necessary time to study and look into the question have offset the valuation of the immovables of the City in such a fashion as to give justice to each and every person.

The chambardement which was done then is the chambardement that we find on sheet 28 of Exhibit P.36 at page 737 in volume four. That was the chambardement which gave the net figure of 9,300,000 dollars before applying the cost of building index. When you apply the index it is 10,154,000 dollars. That was the chambardement which was applied at the date of assessment.

LORD PORTER: That was the original assessment before it was added on?

MR. BRAIS: Yes, my Lord - before they started playing with it. It does not include the 109; it could not come in at that time; it is on the 1936 value. If you apply that you come to 10,154,000 dollars. What is wrong with that I do not know, but that is the way we were assessed, according to the statute, according to the law and according to the principles in force.

LORD PORTER: Where do you get that figure from?

MR. BRAIS: It is sheet 28 of Exhibit P.36.

LORD ASQUITH: Can you tell me exactly what a chambardement means?

MR. BRAIS: A chambardement is this. You go into an office and you change everything around.

LORD ASQUITH: Some sort of readjustment?

MR. BRAIS: It is a little more colloquial than "readjustment."

LORD ASQUITH: A reshuffle?

MR. BRAIS: You change round everything.

LORD ASQUITH: A general post?

MR. BRAIS: It is a reshuffling; that would do. /We call it a chambardement when it comes out at the same figure I do not know. It is the right hand bottom figure. That does not include the assessment, but, if you apply 109 to that figure, it is 10,134,177 dollars. That figure I tell your Lordships. The others I prefer to guarantee, because they were done by actuaries, whereas that figure was done by myself; but I do not think it is very far out. "Chambardement" in the dictionary is said to mean to sack, to rifle, to upset, to smash up, like furniture, to upset the apple cart. "Chambard de tout", to make the fur fly.

LORD ASQUITH: It is what a bull does in a china shop?

MR. BRAIS: Yes, my Lord. It is an upsetting - an upheaval. Then "Grand chambardement" is the great social upheaval to come. It is quite a hard term to use.

LORD ASQUITH: Mr. Justice Gallipeault in effect says this, does he not? He is for allowing the appeal, he is in favour of the Board of Revision's views on the index figure, he is in favour of the Board of Revision's views on depreciation in the sense that he is anti Mr. Justice Mackinnon's extra 14 per cent., and as regards replacement or commercial value he is in favour of the 83 to 17 proportions of the Board of Revision and against the 50/50?

MR. BRAIS: Yes, my Lord.

LORD ASQUITH: He is really pro Board of Revision all along the line?

MR. BRAIS: Completely. I may be curtailing too much, but I do not dare find myself standing here much longer. In those portions which I have curtailed he has said that there is sanctity in the work of the assessors and of the Board.

LORD OAKSEY: He is setting out what he porposes to deal with at page 1034?

MR. BRAIS: Yes, my Lord. I am being as brief as I can with these judgments, which have already been read, and I am limiting myself to the passages which I have to criticise directly and which do not form part of the argument which I have already been allowed to submit to your Lordships. If your Lordships wish me to be a little more particular ----------

LORD PORTER: No. You cannot go into too much detail. You have to deal with it on general principles.

MR. BRAIS: Then I am trying to do it in that way. I am fully in agreement with your Lordships on that point.

Now comes Mr. Justice St.-Germain. He delivers a long judgment, which begins at page 1052. I go through page 1052, which does not set out anything new; nor do pages 1053, 1054 or 1954 until one reaches line 30: "Notons, le plus, qu'en outre de pouvoir", etc. (Reading to the words, at line 35) "doit accorder a leur decision."

Subject to correction on this point, I do not see anywhere in the evidence (and I am told that I am correct on this) where the Board of Revision examined the immovables.

LORD PORTER: They had the right: that is all he is saying?

MR. BRAIS: If they had the right and did not exercise it, they have not had the benefit of it; and the judges refer to that, and my learned friend Mr. Beaulieu referred very strongly to the fact; and, the Board of Revision having that right, it comes some way towards the result. If they had exercised it I think we could have shown the chain to the Board of Revision, because it might possibly have brought them to consider that the startling argument was not so startling.

Then, my Lords, I go through page 1055, where there are authorities and what is said by various witnesses. May I spare your Lordships that, and page 1056.

LORD PORTER: That is the manual, is it not?

MR. BRAIS: That is the manual, and there is some evidence in there, too.

LORD PORTER: It is the manual really, and Mr. Parent?

MR. BRAIS: Some of it is the manual, but this is the evidence of Mr. Hulse. The manual comes in at page 1055, line 40.

LORD PORTER: Then Hulse goes on again?

MR. BRAIS: Then Hulse goes on again. I do not think there is anything there that would add anything, except that I have noted that at page 1057, line 47, it says: "It follows then that in Montreal, where a number of assessors must be employed, it is necessary that certain methods and systems be formulated which will aid the assessors in establishing that valuations made in parts of the city by different assessors will illustrate the same standards of valuation". When it says that valuations made in different parts of the city of similar properties will give

the same result, I have to disagree in part; but that is a matter of very secondary importance.

Now may I go to the bottom of page 1058, where there comes the evidence bearing on the memorandum. At line 15 it speaks about the month of August, 1940, about 15 months before we had to deposit the new roll, when these rules were fixed. Then we go through the memorandum.

Then I can go to the bottom of page 1061, where his Lordship says: "Nous avons aussi dans cette categorie, entre autres proprietes, les suivantes: Bank of Toronto; Globe Realty Corporation, Limited; Montreal City & District Savings Bank."

Then he says, at page 1062, line 8: "Cans le present cas", etc. (Reading to the words, at line 18) "vu la caractere de la propriete." I am in agreement that, in view of the character of the property, there was no market of similar properties; but I submit that his Lordship makes a mistake in this way. In the memorandum he could not take into account the market of similar properties, because they say that, if the owner owns it, its worth to him is what it will cost him to rebuild. The memorandum is of the greatest precision possible; and therein lies its principal fault, that in no circumstances can the assessor do that first elementary and important thing and look at the market. As a matter of fact he cannot look at an imaginary market; buy, if there is a real market, he cannot look at it.

LORD OAKSEY: That is for the owner-occupiers?

MR. BRAIS: Yes, my Lord. If it is fully owner-occupied; but a property such as ours is then treated in the same way, with the only difference that we are to be loaded with the special features which we have put in there for purposes of our own future complete occupancy.

LORD PORTER: As far as I can make out, most of the judges thought that your real argument was that you must calculate this purely upon an economic basis, and over and over again that is what they are attacking. It is quite true that they go further, and many of them say that it is not an economic proposition at all; but if you look at page 1062, line 19, you will see what he is aiming at?

LORD NORMAND: The dissenting judge, Mr. Justice Casey, gave effect to that contention, did he not?

MR. BRAIS: He did the same as the Chief Justice of the Superior Court. I made the very careful statement in the Supreme Court that I did not think that the rentals alone should be looked at. That was his Lordship's view, and it is a view which could be held in the jurisprudence. Mr. Justice Casey and the Chief Justice, when they used the rentals as a formula, used them in such a way that they compared it properly on the other yardstick which had been used by their colleagues, and, if it satisfied them that they had arrived at the correct result on the rental basis, they could come to the correct conclusion.

LORD NORMAND: I think also Mr. Justice St.-Jacques took the same view as Mr. Justice Casey?

MR. BRAIS: Mr. Justice St.-Jacques adopted that view. He said: You, the City of Montreal, valued that building in 1931 at 12,500,000 dollars. That was your upset price. Since that time certain things have been done to this building which we will

take into account. We had that. Then we take the commercial value of the building as we have it today, and we blend the two, or weigh the two, 50/50. That was what Mr. Justice St.-Jacques, as I read his judgment, did. He said: Here is a very difficult building to value, and there are all kinds of views as to what it is worth. You have 9,000,000 in 1928 and 10,000,000 in 1930, but in 1931 you took that building and you valued it at 12,500,000 dollars. It is not such a bad yardstick when a judge is entitled to look at all ~~things, because~~ all things in considering value.

LORD NORMAND: It is not perhaps worth disputing, but I think he first took the earliest value and said: If you have to take both elements, then I will take 50 for each?

MR. BRAIS: Yes, my Lord. I think that is what it works out at. It is an entirely different approach from anybody else.

LORD NORMAND: So did Mr. Justice Casey.

MR. BRAIS: Then he says, at line 18 on page 1062: "The Board of Revision, as well as the Superior Court, have approved of this principle" - that is the principle of taking the last two alone - "contrary to the pretensions of the company, which advances the contention that it is to be arrived at on the revenue only." The Board of Revision taxed it very severely on the revenue approach, and in the process the other courts have picked up from that judgment that our approach was revenue only. The Board of Revision over looked the fact that careful and methodical values were given by two men who spent six months on the property, Mr. Perrault and Mr. Archambault, who submitted their conclusions on the replacement value theory alone. All Mr. Perrault said about revenue was that, once the purchaser arrives at this figure, he ~~ad~~ tests it with the revenue approach, which Mr. Perrault did not do. It was not within his capacity. He is an architect and a builder. That is indicated in the record. But the Board said (and it is peculiar how certain formulae persist through judgments; and this did carry right through) that we were approaching it on the revenue basis only.

LORD OAKSEY: Surely that approach was examined by the learned judge whose judgment you are now reading at page 1076?

MR. BRAIS: Yes, my Lord. All he is doing there is either echoing something which has been said in the factum or echoing something which has been said in the judgment. I do not attach any importance to that, because he has considered the evidence on the other approach.

He sets out the cases of Alliance Nationale and Lynch-Staunton at very considerable length. We have read this. Then, with regard to Dominion Textile Company v. City of Montreal, on page 1065, he says that the assessors must be recognised as competent and experienced persons. He is going through the jurisprudence that we have seen.

LORD PORTER: It is a quotation from Dominion Textile, which we have already had?

MR. BRAIS: Yes, my Lord. Then page 1066 is the same thing.

LORD PORTER: I do not think that you will get anything further until you get to page 1068. If there is anything you want earlier, you may, of course, call attention to it.

MR. BRAIS: No, my Lord. He says that there can be no change unless there is a manifest error of law. At the bottom of the page he

says: "In their valuation of the property of the company, the experts of the said company declared expressly that that they have not taken into account the replacement value."

LORD PORTER: You say that that is untrue?

MR. BRAIS: Mr. MacRosie said that, and Mr. Simpson.

LORD PORTER: Some have and some have not?

MR. BRAIS: Some have and some have not. There are two approaches. The work of Perrault and Archambault was exhaustive; everything was measured and taken into account.

Then on page 1069 the learned judge says that, where you come to 29 cents, it would be ridiculous. It cannot be ridiculous if that is right. Whether it is 29 cents or not I do not know. The City of Montreal come to a far less figure at page 1058. That is 57.4 cents. How he gets the 29 cents I do not know; but, if it was 13 cents and it was the correct figure, it would not be ridiculous.

Then he refers to Mr. Justice Mackinnon. He cites Mr. Bonbright, and talks about the market doing an injustice by considering only those taxpayers whose property happened to take marketable form. "James C. Bonbright, professor of finance at the University of Columbia, in his work entitled 'The Valuation of Property', in chapter 17, 'Valuation for tax purposes,' has dealt with this question in this way: 'A nicer question of choice concerns the alternatives of market value and value to the owner, where the property is demonstrably worth far more to its present owner than the price at which it could be sold to anyone else. Some writers in finance, while conceding that value to the owner may be the ideal basis of valuation under the laws of damages and of eminent domain, have insisted that, for tax purposes, market value in its literal sense of realisation price should always be adopted. This position is plausible, though not conclusive, in inheritance taxation, where the tax is generally paid by the sale of a part of the very property in question. But it hardly applies to the general property tax, where the taxpayer's usual procedure is to pay the tax from his current income rather than by liquidation.

"'The literal adoption of a market value rule would seem to do gross injustice by hitting only those taxpayers whose property happens to take marketable form. Consider an extravagant mansion, unsalable because it is now owned by ~~one~~ the one man in the community who is wealthy enough to indulge in such a luxury" - that is not quite the Sun Life - "or a factory whose very value to its owner consists in a special design which makes it unsalable.'" I do not know whether I should spend time on that. There is in Montreal one well-known property which is referred to in the evidence and in the judgments which is lost in a factory region, and for that reason the valuation, compared to other buildings, is practically nil. What Mr. Bonbright of the University of Columbia in New York has to say about valuation cannot, in my submission, change the law and doctrine which these courts have had to consider.

Then on page 1071 the learned judge continues: "These decisions convince me that the assessment has been properly arrived at." Then he refers to certain sections of the then respondents' factum.

Then on page 1072, line 28, he says: "Le juge de la Cour superieure insiste, lui aussi", etc. (Reading to the words, at line 44) "en revision de leurs propres estimations."

The only reason I stop there is because it is true that they are not sitting in their own estimations, but they are sitting and directing and operating upon their own instructions, rules and regulations and upon the work which is carried out, apparently, with a great deal of precision by those who have their orders.

LORD PORTER: A fixed and rigid system where it ought to be flexible, is your argument?

MR. BRAIS: I go further than that. I submit that the Board of Revision should have nothing to do with the assessment. There could be men such as the Board of Revision, a body whose duty it would be to see that these regulations were carried out; but when it comes to reviewing for the Board its own rules, its own regulations, its own doctrine, its own forms and it is own formulae, you have the mother of the child passing in judgment upon it, and it might show a pulchritude. I would sooner have three independent assessors reviewing what was done by one of their colleagues than the Board passing upon their own instructions, their own formulae and their own law. It does not change anything if the assessment is correct; but, when his Lordship says that there is something preferable in that system, I cannot subscribe to it.

Then we come to a very interesting story which takes a long, long time, which goes through pages 1074, 1075, 1076 and 1077, which I will summarise in this way. Mr. Justice St.-Germain goes into a great deal of detail. He does not find any, or at any rate he finds very little, of that in my learned friend's factum. He goes into a great deal of detail to show that, when the assessment of 1931 and 1932 was entered into, there had not been spent on the building the rather substantial amounts which were later spent on it. He goes through a rather interesting process to show that those amounts were not taken into account, because on page 1074 he says: "The revision of the roll of valuation must be terminated on the 20th August in each year, and not later." That is the revision. Then he continues this argument: "Or, as we have seen according to the charter as amended, article 375a says: 'The Roll shall be ~~maint~~ always completed and deposed on or before the 1st December', and not in the month of August." That is the present law. "The assessors of the City who made the valuation role for 1931-32 have been nominated in December, 1930, and it is certain that these assessors" - I must stress this - "must have begun their work immediately in the spring of 1931 to visit the properties that they had to value, in order to finish the making of the roll by the 1st September." There is not an iota or tittle of evidence anywhere for this supposition, that the assessors ran out on the 1st January, or early in the spring, to go to the Sun Life building, which was then in the course of construction.

LORD ASQUITH: Most of the big building had been done by the spring of 1931, had it not?

MR. BRAIS: As a rule they carry from year to year, and you are just taking the additional amount; but it is rather interesting to read this story. Then, from this supposititious premise, that they must have gone out early in the spring and that they had until September anyway, we then come to this positive conclusion: "Therefore, when they visited this property in the spring of 1931" - the premise is pure imagination - "they must necessarily have realised that during the previous year, in 1930, the Sun Life had spent, according to their estimations, in 1930" ----------

LORD PORTER: What he is saying is this, is it not: How was the

8,000,000 dollars arrived at? The actual sum which was spent was less by 6,000,000 dollars than might be supposed, because the 1930-31 figure had to be arrived at in 1930, before the main portion of that sum was spent, or before it was paid. Is that right?

MR. BRAIS: Yes, my Lord: before it was spent, and before it was paid. If it was spent it would be visible on the premises. Then he says that the valuation or the verification had to be completed before the end of December, 1930. Your Lordships will have noticed that, according to the law, they had only 20 days before the end of December, 1930, to carry out all the calculations; but, if you will look at page 693, in volume four, you will see that on the 18th November, 1931, there is a letter from the secretary of the Board of Assessors to the Sun Life, for the information of Mr. Macaulay, which says: "Sirs, at a meeting of a Board of Assessors held on the 17th November" - 1931, I take it - "it was resolved to reduce the valuation of your property . . . . from 12,400,000 dollars to 8,000,000 dollars."

In my submission that destroys this supposititious time-tabling of the learned judge, who says that, because you had to have your assessment out in September, the assessors must have gone early in the spring, but none of the work was done, which is not supported by the evidence, not referred to anywhere and is not correct; and then he says: Because you went in ~~Spring~~ the spring of 1930 the work was not done. Here was the greatest and most wonderful building in the British Empire going up. Thousands and thousands of workmen were going in there every day, and hundreds of thousands of dollars' worth of material and time were going in every month. Would it be supposed that this assessor would have been such a stupid assessor, having to make his assessment, to wit to find out what was going in? If anything was known at that time it was the construction of the Sun Life building; but when we find that the assessors, instead of building their assessment in December, 1930, wait until the 11th November, for their final meeting, unless it cam be said that they were completely remiss in their responsibility there is nothing that they would not do the same thing as was done in other cases, namely bring up their figures to date as of the date of the assessment and then reduce them as they thought proper. There is not a tittle of evidence in the file to justify this thought that the assessors did not wait until they found out what was spent on this whole thing as it is built up. Then he throws the 1931 assessment completely out of balance, because he said: You had some figures in 1930 and 1930 which the assessor surely did not take into account. We see that we are long past the closing of the building dates. There are building periods in Canada depending on the weather, of course, as regards any outside work, especially, on a structure of that type.

I have such precise notes taking care of this, but I feel that it is unfair to take up the time of the court in going through it.

LORD PORTER: There is not much in this part, except this. He is saying that they must have taken account of the 6,000,000 in 1930 but not taken account of the 3,000,000 odd in 1931; and you knock that off. Therefore, when you are comparing ~~8,000,000~~ 8,000,000 ~~and~~ in 1931 that really ought to be 11,000,000?

MR. BRAIS: Yes, my Lord; and then he refers to the evidence of Mr. Macaulay, where at one time they were apparently talking of two different things and neither was applying himself to the question in point. What I must have before me is the fact that

the assessors would have been in a position to settle what had gone on in the Sun Life building. By that time everything was in. It cannot be said that the assessors had to sit and meet within 20 days of the assessment roll. They took 11 months. Since then, the evidence is clear, given by the City and all sorts of people, that year by year, after the assessment, the actual amount of disbursements was added on.

LORD REID: I have not discovered to my satisfaction just what weight you say ought to be attached to an old assessment when there is admittedly a full and complete revaluation of the building taking place, as on everybody's showing took place here. When that is being done, what weight do you say this Board ought to attach to the fact that some years before an assessment was made which could not be defended as being on the same principles?

MR. BRAIS: The assessment before was made on the same principles as the 1941 assessment was supposed to be made. It was actual value. The law in 1931 was the same as the law which came just before the 1941 assessment went in. At that time an assessment was made. Market value or actual value is contemplated by the assessors, as it would be by a board before whom an appeal was made. Since that time additions have been made to the building, and they are put in. All I can about that - and I submit it with complete confidence - is that, if at that time you took that building which had its intrinsic replacement value and its intrinsic replacement value continued on, and you saw fit, assuming it was the type of building and was of the type of material which would have to go into the replacement to weigh those things in the light of the assessors' results, and you came to the conclusion that it was only worth ultimately 9,000,000 and some odd thousand dollars, there is a yardstick, there is a criterion and there is the opinion of competent men to arrive at the assessment which they had concluded in 1936.

LORD REID: But why is it to be presumed that the 1936 figure was right in the present case and the present one wrong rather than to be presumed that the present one is right and the 1936 figure wrong? One must be wrong. Why should there be an assumption in favour of one or the other when we now come to examine the matter?

MR. BRAIS: In my submission you cannot presume either. You are entitled to consider the 1936 assessment as one of the elements. All the authorities tell you that. You are called upon to take the previous assessment as one of the elements in calculating the assessment under dispute. I do not have to take the position that one is wrong and the other is right. I say: Add the 1936 assessment to all the other figures which we have and weigh it with the rest as an element in the calculation, the appreciation of competent and honest men. I take it that they are competent and they are presumed to be honest. The whole Board of Assessors has reduced that to 8,000,000 dollars. I cannot go beyond it, but I submit that it is not only valid but a strong element in support of what has been found by the other witnesses as representing actual market value, because at that time the law was the same as in 1941, the assessors were finding, and when they wrote this letter were saying that in their opinion the market value of that building as it stood then was 8,000,000 dollars. I cannot add to that. That is my submission.

LORD PORTER: The figures I was putting to you, namely that he is saying that the 3,000,000 ought to have been added and was not, appear on page 1077. He then goes on, as another excuse for the

diminution in value in 1931, to the fact that there was a depression, which is true, of course?

MR. BRAIS: Yes, my Lord.

LORD PORTER: Then his next argument is: Now take the cubic measurement of the various buildings. If you cube ~~this~~, and compare it with certain of the other big buildings in Montreal, you will find that the figure of the cube works out not entirely as between the different buildings as now assessed. That is all he is saying so far, as it not?

MR. BRAIS: On page 1077 he said that at that time the building was not completely occupied.

LORD PORTER: We have had that before.

MR. BRAIS: May I submit that that is the theory that we complain of, because today, if the manual is good law and if it is a good formula and had been applied in 1930 and 1931, the less occupation there would have been the higher would have been the ultimate assessment.

LORD PORTER: If the proportion of occupation of the Sun Life to the proportion let was greater, the valuation would be higher. What happens about the non-completed portion I do not think comes into that question?

MR. BRAIS: No more than it did when the Board of Mr. Vernot applied their formula. They lowered the value there because we were not occupying the building, and in my submission that was a proper application of the principles of actual value; but when under the formula you are doing the contrary of that, which Mr. Justice St. Germain approves indirectly, you are proving that your memorandum would be wrong. There I take it for granted that you are applying it in the proportions applied by the Board or Mr. Vernot. If you had applied it then you would have found 95/100ths, because there were very few tenants, and the building was just being completed, and we should have been further penalised, because we were not able to find tenants.

Then, my Lords, at page 1078 your Lordships will see exemplified the basic error in the formula in category 3, which is only an extension of category 2.

Then his Lordship takes buildings and compares then, which is prohibited both by law and by statute, and he takes them and compares them and says that, because other buildings bear differently, that shows that the Sun Life valuation is wrong.

LORD PORTER: I thought he said that, if you compare it with other buildings by means of cube, you find that the Sun Life is cubed at a different value per foot from the other buildings?

MR. BRAIS: That is not so in fact; but supposing he came to the conclusion that it was 50 per cent., that would mean per cube it was only worth 50 per cent. of the other buildings, which would only serve to prove what has been proved by the other witnesses. When he says it is about the same price, it is when he takes the Board's figure; it is when he takes Mr. Justice Mackinnon's figure. You cannot compare two buildings per cube. In the Sun Life building there should be at least three storeys more in height compared to taking in the total height. If you are cubing vacant space with your ceiling at 16 feet when you need only 12 feet - in the Insurance Exchange building it is 11 feet - and you are comparing that with the cube of the Sun

Life, you are comparing empty space against available floors.

LORD PORTER: All that means is that cubing is an inaccurate method of calculating the value of buildings, because the height and the size of the rooms are important and may make a great deal of difference?

MR. BRAIS: Yes, my Lord. There is the elevator space and the floors in the auditorium. I will try to find the plans of the building during the adjournment to show you the corridors that have gone in in the new sections.

LORD PORTER: The only difficulty you have to meet about this is that your two witnesses, Perrault and Auchambault, both cube?

MR. BRAIS: Yes, my Lord; but in the result of their cubing they came to the same figures.

LORD PORTER: You say that they used the same system, whatever the results may be.

(Adjourned for a short time).

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MR. BRAIS: May I leave page 1078 with one notation only at line 40, where they refer to 66 per cent of the total area of the Royal Bank. I am not going to take your Lordships into it, because it is quite involved in the evidence; but there is a great deal of discussion as to whether in the case of the Royal Bank a proper allowance was made for the three-storey vast banking chamber of the Royal Bank, which takes the totality of the area of the lower floor of the Royal Bank. I do not explore that, for the reason that the comparison between areas, cubing and price can, I submit, be no basis of valuation; but I just draw your Lordships' attention to the fact that a great deal of evidence, which I may quite frankly say that I have tried to follow, was led to the effect that in establishing the assessment of the Royal Bank neither a seller was taken into account nor the proper allowance was made for the vast vault of what is a tremendous banking chamber, which is the whole lower floor of the Royal Bank; but I do not ask your Lordships to attach anything to that.

LORD PORTER: He then comes next to other matters.

MR. BRAIS: He comes back at page 1079 to his computation of the 1930, 1931 and 1932 figures, which nobody else considers and which he has made on his own, or he has entirely forgotten that the final figure had been arrived at away back in November, 1931, and not in the Spring of 1930.

Then at page 1080 he comes to the 7.7 per cent. May I spare the Board that?

LORD PORTER: Yes; I think that we have that.

MR. BRAIS: I think that, if we have anything to say on that, we have said it all.

Then at page 1081, line 30, he says: "The second point on which there is a divergence of opinion is the question of depreciation." May I be permitted to say that we have had all of that?

LORD PORTER: I think that we have discussed the whole of that.

MR. BRAIS: At page 1082, line 35, he refers to Mr. Archambault and Mr. Perrault and the 18 per cent and 23.3 per cent, which we have already had and which I think is sensible and useful and consistent with the others.

LORD PORTER: We have had the question of how far you ought to make allowance for depreciation in addition to calculating the revenue and whether that is properly represented by 82½ per cent and 17½ per cent as the relationship.

MR. BRAIS: I have said everything that I want to say about that, except when I come to the conclusions, when I will try to pin point the formula that I want to suggest. At that moment I will not be very long.

He then refers to the Minnesota case and at page 1083, line 30, he says that he would, again, for the reasons submitted by the attorneys for the City of Montreal in their memoire -- that is in what we call their Factum in our jurisdiction and what is called the Case here, and which, as your Lordships may doubtless know is much more argumentative and much more diffuse, possibly wrongly so, than what we are instructed to prepare for your Lordships' Board.

LORD PORTER: It is a different system. The American system is much

2

more like yours than ours.is.

MR. BRAIS: It is, my Lord? I would not have known that. It is a long and diffuse document. Sometimes you get yourself very completely embroiled in a line of argument, and they sometimes run into one hundred pages.

Then at page 1083, line 35, he says: "The third point is the influence of replacement value and commercial value in the final valuation." Then he refers to what the assessor did and to what the Board of Revision did.

Then he refers to the category and says that equal weight should be given to these two factors in valuing these properties for the three-year period.

Then he says that Mr. Justice MacKinnon used that first category.

Then he describes what kind of a building the Sun Life is and there is nothing to be added there, save that, in so far as he describes the Sun Life building as being one of vast and sumptuous expense, the more, in my submission, he shows that the Sun Life should be given the benefit of the most favourable treatment possible as regards its assessment, in its proportion of the replacement value.

Page 1085 offers nothing new.

At the bottom of page 1085 he considers the assessors and the Board of Revision, and at page 1086 he states, at line 10, what the Board of Revision has said; and that offers nothing new. I would appreciate it if your Lordships would say if you wish me to halt at any point.

LORD PORTER: I think that we have had all this. I have read these pages through more than once and, glancing through them, I see nothing in them.

MR. BRAIS: Yes; we have had all these.

LORD ASQUITH: It is entirely a pro-Board of Revision conclusion.

MR. BRAIS: Yes.

LORD ASQUITH: All along the line.

MR. BRAIS: Yes. He says that they have accepted it. It is all in one line.

Then at page 1086, line 34, he says: "I must admit that, although I do not think that I should intervene in the appreciation of the proportion granted by the Board of Revision to these two factors, replacement value and economic value, I would be inclined, however, to grant a larger proportion than 17½ per cent to the economic value and that, having regard to the proof, a proportion of 25 per cent in respect of economic value would have been, in my view, more in conformity with the view of the experts dealing with the question of the economic value."

LORD PORTER: Then he says that all that is set off by the fact that the Board of Revision came out with the figure of 15,000,000 dollars and reduced that to 14,000,000 dollars. I am talking in rough figures.

MR. BRAIS: Yes, my Lord. When we come to what is to be set off,

I can use his argument by asking for the set off to be applied against my 7.7 per cent troubles or whatever other troubles that your Lordships think that I might have when we come to the final conclusion.

Then, my Lords, Mr. Justice St. Jacques goes through the case at pages 1087, 1088, 1089, 1090 and 1091, where there is a direct parting of the ways between Mr. Justice St. Jacques, who gives a careful analysis of the evidence based on the proof, and Mr. Justice St. Germain in his figures as regards the working of the 1931 assessment and the subsequent assessments.

Mr. Justice St. Jacques comes to the pith of his decision at page 1091, where he says: "If, on the contrary, the imposition of taxation by the municipality is upon the basis fixed by the Superior Court, to wit, in round figures, of 10,200,000 dollars, the amount of municipal and school taxes would be about 306,000 dollars, which would leave a net amount of 464,000 dollars on a capital of 10,200,000 dollars, to wit, a return of 4.5 per cent. Is it possible to conceive that a purchaser who is not forced to buy, but who would wish to make a safe and sure investment, would not take into account the possibility of a return of 5 per cent; and, in that case, how could one hope that a sale, even imaginary, could be effected on a basis exceeding 10,000,000 dollars. I cannot bring myself to believe this. The play of the combinations which are brought into the strictly commercial value of the property of the company and the speculative cost of replacement lead to results which I cannot accept in the present case, in face of the brutal figures of return of these buildings established by the proof.

"I arrive at this reasoning with the more facility in that I find in the file a sufficiently solid base so to dol

"It was in 1931 that the company terminated the exterior portion of its principal structure, although at that time the interior divisions were not completed. One knew or at least at that time one could know what the construction cost, commencing some nineteen years back, of this majestic building, imposing but extravagant in its taste of construction, had been, if one places oneself especially from the commercial point of view."

LORD PORTER: What he is really saying here is: I found myself on the 8,000,000 dollars; I think that that was justified at the time; to that has been added year by year whatever in addition has been expended and that is about the correct sum at which it ought to be assessed. That is the argument so far, is it not?

MR. BRAIS: That is the argument so far. He was impressed by that and briefly I ought to look right through this, I think.

He goes on: "The assessors of the City of Montreal in 1931, sworn to accomplish their duty, the same as those in 1941, and holding not only according to law, but according to the instructions received from their superiors, to find and establish the real value of the taxable immovables, had fixed the limit at 12,400,000 dollars. It should be noted that at that moment there was no other basis to arrive at a valuation than the intrinsic value of the immovables, and not the return, because at that time the buildings produced little or none. The company having complained of the valuation, the Board of Assessors united together, all of them, and, without doubt having carefully studied the problem and placed themselves from

the point of view of the interests of the City of Montreal, reduced to 8,000,000 dollars the valuation for the principal building and 225,000 dollars for what was called the heating plant.

"From that moment until 1941 it was this amount which was maintained every time that the valuation roll was re-established, adding, however, the sums expended by the company to terminate the interior of the construction, its divisions from the point of view of receiving tenants. The valuation as it appeared on the roll in 1941 was therefore 9,986,200 dollars."

LORD ASQUITH: He has said so far nothing at all about replacement value, has he? The page before was concerned with what the prudent investor would demand as a return and therefore how much he would put up.

MR. BRAIS: Except that he says that at one time, at the moment of 1941, when the figure was arrived at it could only be on replacement value, because there was no commercial value.

LORD ASQUITH: I suppose that he does not count the rent which the company charged itself, does he?

MR. BRAIS: No, and probably because at that time, as the building was going up, I do not know how much of the building was being occupied by the Sun Life. It was still in the final process of erection, the inside divisions, and, of course, you would have your towers and your workmen, and lifts being used for taking things upstairs for that portion which was being finished. He considers it then on the replacement basis.

LORD PORTER: He says roughly that there was no or little revenue.

MR. BRAIS: There was no or little revenue.

LORD PORTER: All that my Lord is saying is that he might have made some calculation of revenue if they had found out what the company charged itself; but they did not in fact.

MR. BRAIS: May I direct my Lord Asquith's attention to page 1091, line 35, where he refers to the figure of 12,400,000 dollars and says: "It should be noted that at that moment there was no other basis to arrive at a valuation than the intrinsic value of the immovables, and not the return, because at that time the buildings produced little or none."

LORD ASQUITH: The first two paragraphs on page 1091 proceed entirely on the commercial basis, do they not? It is not until line 35 that you get the other basis even hinted at?

MR. BRAIS: Yes. He is looking at the commercial basis. Then he says that the 12,400,000 dollars must have been on the intrinsic valuation basis.

Then at page 1092, line 5, he says: "One asks onself why this valuation, which had been thought reasonable and equitable since ten years, should be raised to 14,000,000 dollars for the purposes of the taxations of 1942 and 1943. The buildings had not become any younger since 1931, although without doubt by reason of the fact of this construction of the principal building they had not appreciably depreciated during the course of these ten years; but what is called the heating plant and the machinery which was there installed had not either increased in value since 1931. They had considerably depreciated and, however, the sum of 225,000 dollars which had been fixed in 1931

had been carried in 1941 to more than 500,000 dollars (see Exhibit P.2). I find nothing in the record which could justify this increase, which appears to me to have been discriminatory."

Then there is a reference to the fact that the legislature had frozen the roll, but they had not frozen the duty of the assessors obviously during that time.

Then he says at line 28: "It is said in the judgment of the Board of Revision that the roll made in 1931 cannot raise the judicature for the subsequent years. I do not intend to discuss this proposition. However, there arises for me a conclusion from which I cannot detach myself, and that is that the assessors in 1931 must have carried out their duty, and the presumption which is attached to the preparation of the roll, maintained with modifications which were necessary during the period of ten years, strongly destroy the presumption which we are asked to apply in favour of the roll of 1941 and sanctioned by the Board of Revision.

"I am the more at ease to take into account this strong presumption that the figure maintained in the roll of valuation until 1941, to wit, 9,900,000, seems to me to correspond more with the real value of the assessable immovables of the company than the one which was indefinitely fixed by the assessors in 1941; in other words, if the properties of the company remained taxable on a basis of 14,200,000 dollars (in round figures) that would mean that they produced a return of only 2.5 per cent, whereas if, on the contrary, they are taxed on a basis of 10,000,000 dollars, the net return would be 4.5 per cent.

"If I were to take into account the two elements proposed by the City, to wit, the commercial value or the economic value and the intrinsic value of the immovables, I would none the less conclude that the amount of the valuation as fixed by the judgment appealled from is much more in line with the real taxable value than is the one which we find in the valuation roll.

"The assessment sheet (Exhibit P.1) shows that the assessors fixed the commercial valud of the immovables at 7,900,000 dollars, and for the purposes of my calculation I will accept this figure, although it is higher than that suggested by the witnesses Lobley and Simpson."; and much higher than the amount of 7,200,000 dollars, my Lords, which was the proper computation of the Board of Revision, but he has taken the higher figure arrived at by Vernot.

"As regards the intrinsic value" ---------

LORD PORTER: You need not worry to read that at all, need you, because we all agree that 7,200,000 or 7,800,000 dollars is the correct commercial capitalised value. You can leave that altogether.

MR. BRAIS: The only reason that I mention that at the moment is that when he blends he blends the higher commercial value to arrive at a figure. He makes a blend of the commercial and what he calls ---------

LORD PORTER: You mean that the proportion is different, but the actual commercial value that he takes is approximately the same as the City had taken or the Board of Revision.

MR. BRAIS: He takes 7,900,000 dollars. There is 700,000 dollars.

LORD PORTER: You say that, so far as he is concerned, you are on better ground?

MR. BRAIS: Much better ground, my Lord.

"As regards the intrinsic value of the assessable immovables, the assessors who had prepared the roll of 1941 had arrived at the final figure of 12,400,000 dollars. At that moment, as I have said above, the building was complete and partially occupied by the company, but it remained still to sub-divide some top storeys which were destined for rental. It is certain that the assessors had no other basis than the intrinsic value of the edifice; that is to say, the normal cost of construction. One must assume that they obtained all the necessary information to permit them to accomplish the duty which was imposed upon them by the provisions of the Charter and thereby determine the real value for the purposes of taxation. They must have considered at that moment that the cost of the building should normally come to a figure which they have fixed at 12,400,000 dollars.

"I am satisfied, according to the whole of the proof" -- and that "whole of the proof" is all these other matters, more or less extraneous, that we have been discussing for comparison purposes; I mean extraneous from the point of view of the reasons, but very requisite from the point of view of comparison purposes which I have submitted to this Board -- "that, looking solely at the intrinsic value of the property, land and buildings, it was not unreasonable to fix it in 1931 at 12,400,000 dollars. During the course of the ten years which followed, this building, so perfectly constructed as it was, has necessarily been subjected, by the admission of the witnesses here, to a certain depreciation. The experts seem to admit that depreciation of 1 per cent per year is the least which can be contemplated. One must then conclude that in 1941, when the cost of replacement of this building was being considered, it was necessary to deduce from this sum of 12,400,000 dollars, an amount of 10 per cent, to wit, 1,240,000 ~~dollars, wh~~ dollars, which would leave an intrinsic value of 11,160,000 dollars.

To this sum, it is necessary to add what the Company spent between 1931 and 1941 to complete the interior of the structure, to wit, the amount that the City itself has added to the roll, 1,986,200 dollars. The intrinsic value of the property in 1941, basing oneself on the figures adopted by the City in 1931, would be 13,150,000".

He continues on page 1094: "The structure was then occupied by the Company in the proportion of about 50 per cent, and the balance was destined for being rented." That is a proper statement of fact, the first time we have had it with clarity. "I would be definitely of opinion that if one must take these two elements into account, it is not in the proportion adopted by the Board of Revision, but what the Superior Court adopted, to wit, 50 per cent commercial value and 50 per cent intrinsic value, for cost of replacement. The working out of this combination produces the following result: Commercial value" so much, "Intrinsic value" so much, "total 10,482,500 dollars". Then he says that the Superior Court arrived at the amount of 10,207,817 dollars following a different process. "If I look at the valuation from the point of view of investment only, it is impossible for me to exceed the amount of 10,000,000 dollars. If I have to follow the combination of commercial value and intrinsic value I arrive at the amount of 10,482,000. There is so little difference between either with the valuation as fixed by the judgment of the Superior Court that I do not believe it my duty to intervene to modify it by increasing it, and I would confirm the judgment rejecting the appeal of the City of Montreal".

There we have his Lordship, Mr Justice St.Germain, coming to an amount a little over 200,000 dollars more, but he says he would not intervene as the figures come within a reasonable area, and we do not have to hurdle 7.7 or any other formula in arriving at that figure

Now we come to page 1095, the notes of Mr. Justice Pratte. Mr. Justice Pratte has delivered a carefully worded judgment, as he always does, and has taken up a number of points of considerable interest, which I will have to consider.

I do not think that we need look at page 1095, except to note that at line 31 he refers to the same basis of taxation throughout.

Then on page 1096 at line 15 he says: "By reason of the multiplicity of the factors which must enter into account, and because of the variable and uncertain character of some of them, the assessor requires particular knowledge that one cannot hope to find except in the experimental specialist who orients his work towards a single object, to give justice at the same time to the taxpayer and collectively. In consequence the City has striven to organise a precise valuation method which, without unduly impeding the independence of the assessors, leaves at any rate little space to the hazards of caprice, and tends to assure a juster distribution of the municipal taxation. To verify this, one has only to read through the Manual which is at the disposal of the assessors, and recall that the City holds at the disposition of the latter all the technical information which it may need. One would have also a good idea of the system established by the City by reading the deposition of Mr Hulse, the Director of Municipal Services".

As regards the manual, we would have no objection at all if it had been followed, and, secondly, the manual which sets forth how valuations are to be arrived at does not even suggest the existence of the memorandum, nor does it say anything

directly or indirectly, by implication or otherwise, which could in any way condone the memorandum and what the memorandum seeks to achieve. There is a good book, although there are things that one does not agree with in toto, but across the Board it does set forth the law, and it does set forth the requirements of assessment.

I would draw your Lordships' attention to this, that if these sheets, exhibit P38, were used for the Sun Life Company and the formula of appraisal were used for the Sun Life Company, and were allowed to remain as they were, and if the manual had been followed, instead of the historical basis of valuation, based on our figures when they found them out, and instead of the memorandum which is not in the manual or condoned in the manual, we would have had no cause of complaint if, these principles having been applied, the City assessors had arrived at a figure. You cannot say that the City has a good system and on account of that conclude further that the assessment has been carried out; it is the opposite, because in this case the manual was not followed; the memorandum was, and the memorandum was never contemplated in the assesssment.

Then at line 35 he says: "When one has to value small properties" -- I am taking a little more time in looking as rapidly as I can at Mr Justice Pratte's judgment because he has gone to considerable pains to reason it out, but what he does say he says with a great deal of clarity. There is no ambiguity in his thoughts and there is no intermingling of half-a-dozen thoughts; he goes down a thought which he has in mind, and be his principle good or bad, he follows it with clarity. It is a well drafted judgment. "When one has to value small properties for which there is a constant market, the assessors may control the exactitude of their figures in referring, when that is necessary, to the prices paid for properties of the same type" etc.

Then at line 41: "But one quickly realises that there exists in all districts properties which, either on account of their particular distinction or on account of their imposing dimensions, never change proprietors". That is not correct. No-one has suggested that the buildings which were subjected or apparently subjected to this memorandum have not changed hands and have not changed hands several times; as a matter of fact at least half of them have changed hands at least once, but ther is nothing in the record to say that these buildings were segregated because they do not change hands. The Sun Life has not. "The assessors realise that in the dase of these immoveables there is no market price to which they can refer". They are not allowedto refer to it, andthere are market prices for at least half of these immoveables, and I say that without fear of contradiction. There is no evidence that there would be no market price. They say: you will assess against the owner because if he did not have that property he would go and build himself one the same. That is not because he has built the property; the memorandum says he has built the property or acquired it. If hehas acquired it on the open market,there is the market price which is, all things being considered, the closest in arriving at a proper criterion of value. He is not allowed to do that.

"Theproblem of valuing these immoveables is the object of a special study on the part of the assessors, and the latter have come to a method of valuation which is set forth in the memorandum which follows". That goes on to page 1099.

Then line 15: "I cite the text of the assessors' memorandum because it contains an expose of the methods followed

not only by the assessors, but by the Board of Revision when valuing the property of the Company, and the Company pretends thi method of valuing does not give justice".

There are then three paragraphs which are his mechanical set up, and then the dates of construction, and the historical cost, which takes us over the page. Then at line 5: "If the lack of continuity of construction has contributed to augment the cost of construction, one cannot believe, however, that the appearance of the building has suffered. In fact the structure is a monument of grand style which the Engineering Institute has called one of the finest in the world". The lack of continuity did not spoil the outside style, but the lack of continuity did have the result that when the third and large building was put on, one thing was contemplated and that was the shape of the smaller building, and when that was increased almost tenfold all that could be looked at was the outside. It is true that the lack of continuity did not spoil the outside, but it did result very sadly so far as the interior of the building was concerned.

Then line 16: "The building in question can house approximately 10,000 people. The company has spared nothing in order that its employees might work in the best conditions of hygene and comfort, and in surroundings as agreeable as possibl One finds in this building, over and above the most perfect technique which can be offered to assure the efficacy of the work of its employees and the proper functioning of the services of the company, all that is reasonable to expect from an owner who is rich and interested inthe welfare of his employees. All that is in the greatest of good taste and made with the best materials that one can find".

I do not think it appears on the valuation, but the building is an ordinary office building. On account of the very deep suites there is ventilation in places that you could not possibly use. Another thing that was done for the welfare of the employees, except providing the restaurant and the hall which is charged double space, is the Vitaglass in the windows, which is a calamity by itself, because Vitaglass does not arrest the passage of the purple rays, or whatever it is. The employees cannot stay near the window because they get burned by the sun. That is only applicable when the sun is pouring in. There is Vitaglass in every window of the Sun Life building. Whoever would conceive the thought of putting Vitaglass in an office building? You put it in sanatoriums when you stretch people out in the sun and do not want the wind to get to them. In an office, when you are burning people with rays which the Vitaglass does not filter, it is no good. However, the building has Vitaglass in every window and the result is that they have to pull down the blinds for those who are near the windows, and few get any any sun.

He continues at line 28: "The Company has constructed this immovable as a symbol of their strength, a monument to the high prestige of their institution and to establish its permanent home. Nothing was spared of any nature to realise its ambition. But it has come about that the services of the company are not sufficient to occupy all the immovable, aportion having been given in rental to business tenants. According to what has been established, the company itself occupies sixty per cent of the utilisable space". That is not correct. "The rest is occupied by the tenants". That is not correct. It is sixty per cent of the used space. "Therefore one can realise that the space which is rented does not bring in as much as if the

building had been constructed with a view to tenancies. This results principally because on each floor there is a great deal of wasted space, and the whole of the building was constructed of material more expensive than those employed in the construction of properties which are to be rented. In 1941 we have the roll being deposited here". Then we have the details on page 1101 and we can go from there to line 33: "To fix the real value, the actual value of the property in question, the assessors have had recourse to the methods set forth in the memorandum above cited. For the immovable occupied both by the proprietor and by tenants one will recall this method will consist in fixing a value taking into account both the replacement and economic factors. The first of these two factors must never be less than 50 per cent of the total". Then he goes through the 90 and 10 of Vernot and then at line 3 on page 1102 he says: "It must be noted here that in establishing this net replacement value the assessors have been exceedingly generous to the company in taking away from the real cost what can be deducted to take depreciation into account and to cover the construction by sections which had to be added to the cost without in any way increasing the value of the immovable". That is a very backhanded generosity that is attributed to the assessors.

1,200,000 dollars worth of walls had to go and others put in, and yet the assessors have been generous. "In consequence, and it is important to recall, the real value established by the assessors is the result of those two factors 90 per cent and 10 per cent", as it was entitled to do. "The company then had recourse before the Board of Revision and it maintained the method employed by the assessors did not do justice. According to its provisions the assessors should have fixed the value of this property in considering only the revenue which it was capable of producing". There, again, that goes holus-bolus from the facts. It never was the judgment of the Board of Revision. It was not the position we took before the Board of Revision and it is not the position that we necessarily take today, because that evidence is here before the Board. "If they thought fit to base their valuation on the replacement value, they should have deducted a large sum for depreciation by reason of the peculiarities of the building". Then he goes through the calculations and the finalising of the judgment.

On page 1103 he mentions the appeal. If we continue the reference to what was done in the Superior Court, Mr. Justice Pratte at line 20 pinpoints and discusses the judgments. There is no difference as regards the value of the land.

Then on page 1104, at line 15: "As has already been seen the valuation of the immovable is above all a technical question which must, first of all, be referred to specialists. The legislature seems to have interested itself in establishing a Board of Revision. In fact the rules set forth for the composition of this Board and the powers which are granted to those who form part of it, shows that the legislature has desired to create a special tribunal composed of experts in the matter". By the same token those powers are given to a second appellate tribunal in every municipality in the province of Quebec, because this is the only place where the Board is its own master and its own judge.

In this case the Board is its own master and its own judge. It sets forth all the rules. Certain rules show

it coincides, yet if they are within the formulae of the law they constitute the law. It would be the judiciary taking the place of the legislature in those matters. "Moreover, the question of how these factors should be taken into account in determing the assessible value of the immovable is more relevant to the economic realm than to juridical science. There is no rule of law which says how you proceed to establish value". I cannot subscribe to that. "All that is certain is that the valuation should tend to establish as much as possible a value which would reflect what one generally understands is the real value and the method employed to establish this value should lead to a just distribution of taxes". That I have to inscribe again; I cannot agree to that. That is the formula which Mr. Justice Pratte is using in applying himself to the problem which he has before him. He has the merit, however, of saying clearly what he wants to say. "It appears necessary to me to distinguish between the valuation made for the purpose of expropriation and that which is made in view of the imposition of taxes. The first has for its object to indemnify the proprietor who is going to be despoiled and the other", well, he explains that.

Then line 42: "Therefore, when the legislature granted a right of appeal from the decision of the Board of Revision it appeared it had not desired the Superior Court or the Court of King's Bench to substitute itself for the Board and to adopt a valuation method different from that applied generally to the other taxpayers, or to decide otherwise than the Board on the points of solution which require discretion. What appears to me reasonable is that the legislature has only wished to grant the taxpayer a means of having recourse against positive errors or decisions which would manifestly violate principles upon which the valuation should be made in order that the burden of taxation should be equitably distributed among all taxpayers". As I have said before, when that is said you have there valuation principles of taxation.

"If otherwise it could happen that the Board of Appeal with a certain particular case before it would set aside a basis of valuation of all the immovables of the City and substitute one or other of the numerous theories which are current in this matter". That is the duty of the Court of Appeal and it is the duty of the Supreme Court, and this Board in due course has recognised that as its duty when assessment of valuation or expropriation has been conducted in an improper manner. That is why, in the proper establishment of Courts of Justice for the protection of the taxpayer and everybody else, to which one has to have recourse - it is not because the Court of Appeal would set aside a whole valuation roll - the Court of Appeal shall not intervene.

"For this reason it appears to me that if in a particular case the basis of the valuation arrived at by the Board of Revision is not manifestly false or incomplete, if the Board has not committed any flagrant error in its calculation and if the method which has been followed has not had the effect of creating injustice, neither the Superior Court nor the Court of King's Bench should intervene to modify the decision. In this matter I feel that one should adopt, with reference to the Board of Revision, the rule followed by the appellate tribunal with regard to the decision of the judge who has fixed damages in a case where there is no fixed rule of law for their determination". In one case you have to have a flagrant injustice and in the second one he says you ought to apply the ordinary rules which are applied by courts, and those are contradictory. One

gives the fullest possible latitude to the court, and the other says: You must show flagrant injustice. I am sure if I went before the Court of Appeal with a case where flagrant injustice is shown - I do not have to show flagrant injustice to obtain redress.

Then on page 1105 his lordship goes through the details of the judgment of the Superior Court.

LORD PORTER: Then he takes three points which have been taken before.

MR. BRAIS: I would like to refer to line 16 on page 1106, which is of some importance: "In fact the assessor Vernot took for granted that the total amount spent by the Company for the construction of this property had been between 1927 and 1930 when the price of the construction was very high. The Board of Revision ascertained that in reality the construction began in 1913 and that before 1927 they had already spent anamount in excess of four million dollars". The four million dollars at which we arrived this morning, as compared with Vernot's 2,100,000 dollars as the assessment value of the first two buildings, is exemplified here. I would explain that the reason for the difference is that they were proceeding presumably on the assessment basis. With this information, the Board of Revision could not do otherwise than resettle the cost of 1940 by the amount spent only since the beginning of the construction. This explains the difference underlined by the judge of first instance".

On that point I may say that when Vernot applied the 7.7 for the whole building to 1927, 1928, 1929 and 1930, he obviously was led astray. He knew he was applying a rule of thumb. It was not an error of fact; that is apparent for two reasons. First of all, he had worked on the foundations, and, secondly, when he fixed the depreciation he gave 25 years to the old buildings, so he knew that the old buildings had been there for 25 years. This just helps me to follow the reasoning when he puts 7.7 across the Board, and when he fails to increase his cost of building for depreciation. Depreciation is what this would represent in 1936. He is balancing them in his mind. If he does that, his only fault is to put it down in black and white in his calculations: otherwise it would be quite all right.

Then at line 35 it continues: "The second point upon which there is divergence between the Superior Court and the Board of Revision bears on the percentage of depreciation. The assessor, after having established the replacement value at fifteen million dollars, deducted 2,800,000 dollars" -- the judge on the same page refers to four millions which had been spent there -- "for depreciation at the rate of 18 per cent. The Board of Revision fixed the rate at 14 per cent and on this point the Superior Court accepted its decision".

The Superior Court did not change it.

LORD PORTER: The Superior Court gave 2,140,000.

MR. BRAIS: I am referring now to physical depreciation. Then we come to the other one: "But that depreciation having been taken off, the judge of the Superior Court took off another 14 per cent, because, from what appears in the judgment, one would have spent on the construction of this building considerable sums which would add nothing to the value of a commercial immovable". Then he goes through the figures.

LORD PORTER: We have already had them.

MR. BRAIS: Then he says at the bottom of page 1107:

"A person who buys or erects an immovable for the purposes of investment is not only interested in the rate of interest which he will receive during the years which will follow the construction; he is equally interested, if not more interested, that the revenues shall maintain themselves as long as possible. The longer the investment is required the more the property should have a long duration in order that the proprietor may eventually obtain his profit. On account of that, the proprietor who constructs a large immovable is interested in seeing that it is made of material which will ensure its permanence. In the case in which we are concerned, if he decides to use granite for the main walls, it is precisely because the material guarantees a longer duration than limestone and does not need any maintenance and nobody would think for one moment that the marble lining which covers the interior walls does not have a longer duration than plaster." I follow him on the marble lining, but I will not follow him on the granite for a commercial building. I cannot with due respect follow Mr. Justice Pratte in saying that this is the type of building that the investor would build just because it is going to last for a longer time. If it is going to last 100 years, in that time he may not get any money at all. He is interested in a building which, when depreciation is taken off, leaves him with a proper net return. Being investment in a building, if it is of short duration, he takes off a large depreciation; if it is of long duration, he takes off a small depreciation, but when he is spending twice the amount of money that is necessary to make a building, even giving some semblance of service and service as a commercial building, I just simply say - and I do not have to go further into it - that I cannot subscribe to the reasoning of Mr. Justice Pratte onthat point.

LORD PORTER: If he spent a million on a building and got back one per cent, it would not be any good to him if the building lasted a very long time: that is your argument?

MR. BRAIS: He will keep on losing every year then, because his carrying charges, his interest alone, will completely offset it, and the longer he owns the building the more he is going to lose. His interest and carrying charges are going to wipe out his returns on the building. He would be far better off if he bought bonds.

LORD OAKSEY: Surely you take a lower rate of interest if the thing has permanence about it?

MR. BRAIS: No, my lord. Your investment is always there.

LORD PORTER: It depends upon what you mean by a lower rate of interest.

MR. BRAIS: The net return, my lord.

LORD PORTER: Then you calculate your net return after knocking off the amount of depreciation.

MR. BRAIS: The difference comes in in the amount of depreciation.

LORD ASQUITH: The more durable the building the smaller the annual depreciation is, and to that extent the net return increases.

MR. BRAIS: And, if I have a cheap economical building, in considering my net rate of interest, which I am going to compare, I first of all take off the depreciation which may be 3 per cent instead of 1 per cent. I take that 3 per cent every year, which I have taken off my gross return, and put that 3 per cent aside, and when that building is through at the end of twenty-five years and no longer good I still have my money and depreciation fund. When I buy a building I do not want to lose my money, and the computation at all times is the rent less depreciation on that building, less the cost of operating the building, and that brings me to my net return.

LORD PORTER: I do not think there is any difficulty about that problem. The real question is how much is the return.

MR. BRAIS: Yes.

LORD PORTER: It is not a question of saying granite or marble or whatever it is is undesirable. It is a question of what you get back, regarding it as a commercial building.

MR. BRAIS: But the durability of the building has nothing to do with it.

LORD PORTER: Yes, it has, that you take off less depreciation.

MR. BRAIS: Yes, take off less, and the result is when that building is finished I have in my bank or investment fund the amount I started off with. I have no building. I have my net revenue and still have the same capital I started with, and it does not make any difference what the durability of a building is, because, if it is durable, I have a very small depreciation, and it takes many years to catch up with the cost of the building and abandon it as no longer good. I sell it for a nominal 25 per cent of its value and get my money back and the investment remains intact. That is the way all this is computed; not if all the rent was spent and then it was found out the capital was gone.

LORD PORTER: All the learned Judge is saying is what we are saying and what you have been saying, subject to this, that the difference in quantity of resources is not adequately met. There is no difference in principle.

MR. BRAIS: He says if the building is of long duration my building will last longer.

LORD PORTER: It has to be notified, but they are both true.

MR. BRAIS: Yes, but one is only a half truth. It only goes half-way in the computation of the investor --

LORD ASQUITH: Supposing the building is lasting 100 years instead of twenty-five. He has to wait longer for it and the longer the depreciation ~~fund is taxed again~~. The depreciation fund takes 100 years to mount up in the case of a granite building,

LORD PORTER: He gets his rents all the time. In the other case he

only gets twenty-fice years in the rents till he arrives at his replacement.

MR. BRAIS: By that time he has his money back in his pocket.

LORD PORTER: Yes, and the other fellow has his money back in his pocket and on each occasion they get the same amount of interest, subject to this that in one case you allow more depreciation than the other.

MR. BRAIS: If the building which is more expensive nets me only 1½ or 2½ net per cent rent, I am out of pocket.

LORD PORTER: I took you a great deal further than that by taking the ridiculous example of supposing you only got 1 per cent. That gives an example.

MR. BRAIS: Yes; so instead of the expensive construction being useful to me, it is useful to me in so far as it is practical to a building and will bring about adequate rental, but, when it does not bring adequate rental and the more it is expensive, the grwater my handicap. That is why I cannot subscribe to that phrase at all, which is in complete contradiction. That is in agreement with what my friend Mr. Beaulieu stated to this Court when he made a comparison between a long-lived building and a short-lived building, they are on exactly the same footing. If I have a long-lived building, my loss is diminished. He goes on to say in a building of this type there should be good equipment and so forth, and on page 1109, at line 10: "One recognises generally the real value of an immovable means the price a purchaser is not obliged to purchase, the price of a vendor but not obliged to sell. This means to say the real value is equivalent to the price paid on a free market. The determination of the real value presents no real difficulties, but one has to value a building at the moment of its acquisition or construction; one has to fix the value at a date after these difficulties arise. One comes then into the region of hypothesis". Then he says: "En supposant que le proprietaire" etc. (reads to the words at line 25) "trois elements".

LORD PORTER: He goes back on those three.

MR. BRAIS: He goes back on those three. Then we have a clear statement of what he has seen and what I have been trying to indicate: "Nous avons vu dans le memoire" etc. (reads to the words at line 47) "en partie par des locataires." The large buildings, the memorandum ---

LORD PORTER: He follows the memorandum.

MR. BRAIS: Yes, but he gives to the memorandum this difference, that the memorandum first considers the commercial properties, and that has nothing to do with whether they can be or may be readily sold. That is the first category; where they have recently been sold on a free market and whether they are comparable properties which have been sold, and what he says at the top of page 1110 is not in the memorandum. The only reason they give is not whether they have been or could have been sold or whether these properties have no market value indicia; that they are put in here in the memorandum itself.

LORD PORTER: From where are you reading?

3

MR. BRAIS: From the Memorandum, Exhibit D-5.

LORD PORTER: It is page 1097 here.

MR. BRAIS: I do think at this time and with the permission of the Court I will read this very briefly to see to what extent the market ---

LORD PORTER: Tell me what the difference between his exposition and the Memorandum is?

MR. BRAIS: The difference is he says there is no market and that is why the buildings have been put in this category. There is no suggestion in the Memorandum that these buildings are so segregated on account of the fact that there is no market.

LORD PORTER: They do not deal with the market at all?

MR. BRAIS: Not at all.

LORD PORTER: They are dealing with the question of how much you put for replacement value?

MR. BRAIS: Yes.

LORD PORTER: How much you put for commercial value?

MR. BRAIS: Yes; but most of the dissenting Judged, with whom we do not agree, proceed on the necessary assumption that these buildings were segregated because there was no market. Of the buildings in the first category there is only one that has not changed hands several times and it changed hands several times in 1941.

LORD PORTER: Does that appear in evidence?

MR. BRAIS: It does not appear in evidence. I say that because they could not possibly have put it in here; but my learned friends will not disagree with me when I say there is nothing here or anywhere to indicate there is no market for these buildings.

LORD REID: It is as plain as can be that the Memorandum is designed to supersede the market price and get something more stable. It says so. It says its object is "without departing too far from the normal values prevailing in a period of balanced supply and demand", which is to get a stable value which evens out the fluctuations on the market value. What they say is as plain as a pikestaff.

MR. BRAIS: The learned Trial Judge says these buildings were segregated because there was no market value. That point I am entitled to make.

LORD PORTER: I do not see what difference it makes to you. I should have thought it was more in your favour to say here that every principle at one time said what you had to do was somehow or other to get at a market value. Often you could not do it by means of sale; often you could do it by means of what your cost and what the commercial value was; but that is what you had to aim at, and then your answer would be, rightly or wrongly, that the Memorandum neglects that one fundamental question altogether.

MR. BRAIS: That is my point. Why I pick this up is because the learned Trial Judge - and he has to do that if he wants to be consistent with the law - says the reason these buildings are segregated is there is no market indicia available. The Memorandum does not say that; but he has to say that to himself to justify the possibility of a memorandum. That will be my submission.

Then, of course, when you come to category (2) on the next page, it says: "In the case of the buildings which are aqquired by these institutions to establish their permanent homes, those are buildings that are either acquired or built or occupied exclusively for this purpose" - they are either that or bought by them; if they are bought by them, there has been a market, and that is an indicia that cannot be put aside if we follow the law generally - "it is considered they ought to be valued according to what it would cost to reproduce them in their present condition. I do not feel there is anything to say against this method." My only comment there is if that is good law, where required to be built. "As long as a building of this type is required to be used according to its destination and it is situated properly for the accomplishment of the purposes for which it has been directed it would appear to me eminently just to say what it is proprietor would disburse to obtain another one." I am in possession of a white elephant, and I am sorry and regret every day I bought the building; but that does not make any difference, I am losing money and it is a bad investment. I bought a building for twice its price, and because I am occupying it, says the Memorandum, I shall have to pay what it would cost me to go into another bad bargain, which I would never do.

LORD ASQUITH: The Memorandum goes further than that, does it not? It says even if you were not occupying it, but let it all out on a commercial basis, still 50 per cent replacement value would operate.

MR. BRAIS: If I just had a little office in the corner. If I reached the conclusion that I just loathed the building and would just keep a telephone office there and go and live in the country and retire, I would have to have that building charged against me and a minimum of 50 per cent on the cost of replacement, and every day I am increasing my blood pressure because I bought that and all my friends tell me I made such a foolish investment; I could have got the building next door twice the size and three times the revenue. That is what the Memorandum says.

LORD PORTER: There is much the same at line 12.

MR. BRAIS: Yes. He paraphrases the memorandum.

LORD PORTER: He says you have to consider things as they are and not things as they ought to be, at page 1110.

MR. BRAIS: He paraphrases the Memorandum, my Lord, and the Memorandum by itself as you read it has been carefully prepared in sophistry that it does not strike one at first glance. I say "sophistry", because it is an explanation which I respectfully submit, and do not want to labour further, is not consistent in law.

LORD PORTER: I think we have the problem very clearly.

MR. BRAIS: Thank you, my Lord. Then of course, Mr. Justice Pratte does not cite the last sentence in paragraph 3 of the Memorandum: "Each property will have to be considered on its meritsm within the limits outlined above." He does not apply his mind to that, and I think if he had Mr. Justice Pratte would have stopped, I respectfully submit.

LORD PORTER: We have to take Mr. Justice Pratte as he is and not as you say he ought to be.

MR. BRAIS: Then he says there is the memorandum; It justifies this way of proceeding; in other words, the Memorandum as it is explains itself and therefore justifies itself. Then he adds there is nothing there which is not reasonable. He gives his own view. Then: "The revenues which the building can produce must not be the sole element of value. There are some buildings which bring much more and others much less than their owners should normally receive, and that under the influence of elements, factors, completely foreign to the intrinsic value of the building and by the sole play of offer and demand. The real value must reflect at last to a certain extent an element of stability that the economic value does not indicate."

LORD PORTER: There again it is a question of degree.

MR. BRAIS: Yes. "It appears to me moreover the interests of those who require an immovable destined to be renewed is not limited to the value the buildings should bring. This extends also to the time the building can produce its fruits." That is a completely erroneous doctrine from the point of view of investment, because the time it is going to produce its fruite has nothing whatever to do with it, because you are going to be left just with the fruits and left whether the time was long or short.

LORD PORTER: If you conceive this learned Judge to have wiped out from his mind the whole question of having a replacement value in these properties, that is true; but if what you have been saying, if he puts by a sum in order to replace the building, then it is quite true. It depends purely upon the amount you are able to put by, to replace and keep a reasonable investment.

MR. BRAIS: As to how long this building will produce revenue, but when you get the money back you reinvest it in another building or other revenue-producing assets.

LORD PORTER: Yes. Then he says it is an expert's question to decide the proportions.

MR. BRAIS: The memorandum does not take into account the length of the building either. That is a new thought he has added, and plays no role one way or the other.

At page 1111 he discusses those proportions, and then says the memorandum says a minimum of 50 per cent, and says the company complains of this. Then at line 19: "If it is proper to value according to the replacement value, the property is occupied exclusively by their owners". He is begging the question. I do not see how these buildings can be otherwise valued. That is not proper in law. "It is equally proper to value the immovables ~~xx~~ occupied exclusively by the owners." His premise is wrong to conclude it would be wrong

to do so with the partially occupied building. "I see nothing there which would not be equitable; it is absolutely logic that replacement value should be considered for 50 per cent of the real value of the immovables, of which the primary destination is to serve as a permanent residence for which it has been constructed, and the commercial utilisation is secondary and accessory". For as long as we are going to live the commercial utilisation of that building is not going to be secondary or accessory. "To pretend an injustice of this method of valuation, the company is obliged to attribute to the edifice a destination other than that which is proper, and to put in relief all the faults of the building that render improper the location of the offices." It is improper to the location of all offices, including our own to some extent, and that is what goes into the principles of assessment, and he complains we bring those matters forward.

Then he continues: "If it is true that the portion of the edifice of the company which is occupied by the tenants brings a small return in regard to the costs of construction, the reason is fairly simple. It is that the building has not been conceived for that purpose. The building has not been organised primarily for a commercial exploitation. It has been destined for a particular purpose and has achieved that destination. The company wanted to expel its services from any incomparable building". The purposes which the company had in mind for the building when conceived has not been achieved, they never will be achieved, and the learned judge on that point is also completely in error, and on account of that sole fact there are matters which have to be taken into account, which he has not taken into account.

Now we have page 1112.

LORD PORTER: He starts off there on the proportions.

MR. BRAIS: Yes. Then he gives all credit possible to the Board of Revision. He entirely forgets the dual role they occupy, that this is their own plane which is followed not as regards proportions, but the memorandum was prepared on their instructions. To what extent there is nothing to indicate; but why they should be called special buildings I do not know; but it apparently was prepared on their instructions and they passing on their own rules as judges. In those circumstances whether they should have the sanctity , which the assessors in advising are free and untrammelled to do, I do not think can be said.

We now come to page 1113.

LORD PORTER: Just tell me this on page 1112, line 16: "In the case of the company the Board of Revision have applied to the company's building the same rule as was applied to the other buildings in the same category." Do you accept that?

MR. BRAIS: No, my Lord.

LORD PORTER: Why do you say that is wrong?

MR. BRAIS: I do not know where he gets that from. He gets that from the Board of Revision, and, when the memorandum refers to the necessity of maintaining stability of rents, which I presume they wanted to indicate did not exist under the old formula, and when you look at all the examples which are filed, you will find without the benefit of this memorandum the buildings were maintained absolutely stable in assessment through the ten years, the most awful we have ever known in our part of the world, so that when he says the purpose is to maintain stability ----

LORD PORTER: I am not at the moment worried about stability; I have seen that point. I am worried about the question of their having used the same system in this case as in other cases, and you tell me that that is not true?

MR. BRAIS: They used the appraisal method for the other building.

LORD REID: But the memorandum has nothing whatever to do with whether you take the appraisal method or the historical method. It applied with percentages. I have looked through all the valuation sheets used in these books, and in every one the memorandum is in fact applied. Is not that so?

MR. BRAIS: When your Lordship put the question I am afraid that I was applying my mind to something else, and I did not follow. The evidence shows that the memorandum was applied to all the other buildings. There are percentages brought out.

LORD PORTER: Percentages on what?

MR. BRAIS: Percentages on commercial and percentages on replacement, with the result that in almost all cases there has been no change at all.

LORD PORTER: There is one thing more I want to ask you. Have they taken as replacement the cost of erection?

MR. BRAIS: What I can say on that from the evidence is that they took from replacement the value on the appraisal as first prepared for the Sun Life.

LORD PORTER: I am not asking about the Sun Life for the moment. I am asking about this.

MR. BRAIS: I have to pass by the Sun Life, because in the evidence of Mr. Cartier it is said that all the other buildings were there treated to the same increases of this, that and the other thing, which would mean that all the other buildings were assessed on the appraisal method. I come to it inferentially.

LORD REID: What this learned judge points out is that (I am not quite sure what it means by "the same law") if you were to give effect to the company's contentions it will be based on cubic feet compared with the others?

LORD PORTER: One of the others did begin by applying the method of the cube; and the other buildings were treated on the same basis?

LORD REID: Do you mean only that the rule that he is considering is a calculation per cubic foot?

MR. BRAIS: May I ask permission, in all fairness to the parties in this case, to correct that. I must say that, when that has been the value arrived at by either the appraisal method or the historical method, then the cube is taken of the building, which is very easy. Then you apply the cube to the price arrived at by appraisal or historical method, then you arrive at a positive cube. It is not a cube arrived at by the cubic method; it is not a cubic figure which is used for arriving at the cost; it is the cost which is divided by the size of the building to arrive at a precise cube. Under the appraisal system or under the historical system, once they have arrived at the price -----

LORD PORTER: Once they have arrived at the value on that principle

then you say that they find out by cube what each cube is worth?

MR. BRAIS: Yes, my Lord.

LORD PORTER: That does not help you at all.

MR. BRAIS: I am not saying that it does.

LORD PORTER: That is merely a calculation to find out what the cube costs after you have taken one of two other methods?

MR. BRAIS: I am not suggesting that it helps me.

LORD PORTER: I was not saying that it helped you. I do not think that it helps ~~myxxxxx~~ anybody - that is my trouble - because it does not give any regular value.

MR. BRAIS: It is only a calculation.

LORD PORTER: How do they use it afterwards? Do they say: This is a reasonable amount per foot?

MR. BRAIS: I suppose so.

LORD OAKSEY: They sometimes appraise by taking the cubic content of the house and applying what they think is the right value per cubic foot to that house, and that is a form of appraisal. On the other hand, another form of appraisal is to take the quantity method of appraising. Having taken the quantity method of appraising, you get to a certain figure, and then you go back to the cubic method and see how much it comes out per cubic foot. Valuers, I think, very often have in their minds the sort of figure which governs in a certain street or a certain area of a town - so much per cubic foot?

LORD PORTER: I think that at the present time in small working-class houses in England you cube.

MR. BRAIS: Yes, my Lord. Any good contractor can do that.

LORD PORTER: Yes; but what I am troubled about and what I do not understand from you is this. One way of appraisal is to go through the material, as my Lord has said, and to find out what it costs in that way. Another way is to cube and get a rough-and-ready method of appraisal; but that is not what you said they did. What you said they did was to appraise or take the replacement value and then, having found a figure in that way, you then said: "How much is that per cubic foot?" Is that what you were saying?

MR. BRAIS: Yes, my Lord; that is what I was saying. It does not come into my argument at all.

LORD PORTER: No. I do not think it does.

MR. BRAIS: Lord Normand was referring to the cube method.

LORD NORMAND: I thought that what the learned judge was saying was this: If you follow the method that was applied and which derives from the memorandum and then find out what that involves as a cost per cubic foot and compare it with other buildings, you will find that it leads to a fair result. I think that is what he is trying to say?

MR. BRAIS: Yes, my Lord. /~~Xhere~~ Why I wanted to make a statement at that moment was because I did not think it proper, standing here and having that remark read to me, in fairness to my

learned friends, that the impression should remain that that cubic cost which the judge used for comparison purposes was a result of arriving at the cost by the cube method. It is the other way round. It is the end result of the appraisal or historical method, and then that is cubed, and when that is cubed as long as your historical or appraisal figures are correct you get the exact cube on whatever figure you have started from. I do not make anything from it. I am not trying to extract anything from it. I did not want to allow any misapprehension on the matter that it could be the cubic method which had been employed on these buildings. I do not think that was employed for any building.

LORD ASQUITH: May I go back from the cube method to a question put to you by my noble friend Lord Reid some time back. He put it to you that the memorandum was applied in the case of all these other big properties as well. Is your answer to that that, in so far as that imposes a percentage method as between replacement value and commercial value, it was applied to all of these buildings, but that the peculiarity of this application to the Sun Life was that in the case of the Sun Life historical cost was taken as the basis and in the others appraisal or some other method was used?

MR. BRAIS: Yes, my Lord, I say that, and I add that this memorandum may work out all right for ordinary buildings of economical construction, and it apparently has done, because it has led to no change.

LORD OAKSEY: It cannot work out fairly, because a man occupies his own house?

MR. BRAIS: It cannot.

LORD OAKSEY: I thought you just said that it could?

MR. BRAIS: It works out fairly in figures, but not in formula. The formula is wrong; but, if you start building where the figures of replacement and rental are practically equivalent or so near that you do not have to worry your head that the owner is not charging himself the same proportion as we are charging, and he comes to a figure which is equal to what he had a year before, he does not complain, and he has never heard of the formula.

LORD PORTER: If you build a building for the purpose of letting, and if you get a reasonable return upon your money, the replacement value has nothing wrong with it?

MR. BRAIS: No, my Lord.

LORD PORTER: What you say is therefore this: In other cases, or in a number of the other cases anyhow, it has nothing wrong with it, because that is what has been done, but in the case of the Sun Life that is not what has been done, and therefore it works out wrong. Is that a correct summary?

MR. BRAIS: No, my Lord: I go further than that. I say that it is wrong to apply this formula to any buildings in Montreal. I say that in the other buildings it has no difference between the former and the latter assessment. These other buildings had never heard of this maximum, and we never did until we complained. As they then had the same figures as before, nobody complained.

LORD OAKSEY: The only question I wanted to put to you was one of

pure fact: Is it true to say that among the big buildings/only the one to which the historical method has been applied is the Sun Life?

MR. BRAIS: Yes, my Lord; I would say that. I think we can deduce from Mr. Cartier's evidence that all the other buildings were valued on the appraisal method. Cartier said that these other buildings had these increases added to them.

LORD OAKSEY: It is an inference rather than a direct statement?

MR. BRAIS: It is not a direct statement, but what one might call a direct inference. He said that all the other buildings, the Royal Bank and the others, were treated the same way with these increases. They have received these increases, and they can only be received by having applied an appraisal method. In the historical cost method you have the dollars spend, and you cannot put on 19 per cent. for hauteur and 10 per cent. for subcontracts and 10 per cent. for everything else.

LORD OAKSEY: But many days ago I thought you agreed that there had never been any objection in the course of this case to the historical method?

MR. BRAIS: My Lord Asquith asked me whether there was anything to indicate that the other buildings were done on the appraisal method. The second question of my Lord is to the effect that we have never complained of the appraisal method. My answer is that we have not complained. We complain today. We did not realise it before. We realise it now. So far as that is concerned, I bear my full and complete responsibility, and that is not due to anybody else who was in the record previous to me. When I saw that, it was too late to make any changes in the reasons. I brought it before this court, and it was my duty to bring it for this reason, which your Lordships will appreciate, that, if there is a judgment in this case which proceeds on the historical method, I shall have to draw your Lordships' attention to the fact that, if the next assessment is reheard, it would be necessary to submit that, if view of the evidence on this historical method, this has been arrived at. If we go in for the next assessment before the courts we shall wish to be free to submit what is the law, under the directions of the Board of Assessors. On that point I would much sooner not have to bring it before this Board; but I must do my duty to my clients, having in mind the subsequent assessments that have to be contested. I must take my full responsibility, and, if your Lordships have to say that this point was not brought up but that, taking the evidence as it is, you have to conclude as follows, I am going to have to ask your Lordships not to condone my lapse, if it is one; I cannot properly do that in the light of the interests of my clients; I would much sooner it not be mentioned otherwise; but it is too serious a matter for me to allow to be overlooked, namely the fact that that other contention was raised; and, if it is brought up properly in due course, I would ask your Lordships to leave the reserve there, so that it will not close the door.

LORD PORTER: It will not make any difference, except in a court of law. We cannot affect the future on this.

MR. BRAIS: No, my Lord, except that sometimes a judgment is broad in its scope, and one has to endeavour to interpret it. It is better, I submit, that I should draw that to the attention of this Board now than have to interpret what might be a broader statement than would be made otherwise, when one does not contemplate that there is something else.

LORD REID: Is this the position: You admit that there is now no issue in this case between the historical and the appraisal methods, because you did not complain in time; but you want it made clear that, as there is no issue in this case, so there could be no decision in this case between those two methods?

LORD PORTER: I think subject to this, that he would say: I do not admit anything, but, if the Board rules against me, I shall have to accept it?

MR. BRAIS: May I put it in this way. I did not come lightly before this Board on that matter. It was one of the points that should have been seen sooner, but was not. It is not the first time that that has happened, but I hope that it will be the last time.

LORD PORTER: Then the next thing the learned judge does is to take about the amount which they have put in their books?

MR. BRAIS: Yes, my Lord. I am obliged to your Lordship. That is one point I do not want to overlook, and I am afraid that I did. He refers to the 16,000,000 dollars in the books, and I should have drawn that to the Board's attention. He does say that that has some slight importance, at page 1112, line 40. It would have been offset by this unfortunate book slip.

Now, my Lords, I come to Mr. Justice Casey. Pages 1113, 1114, 1115 and 1116 are of no importance. On page 1117 he goes into the law and sets that forth.

LORD PORTER: Will you take this from me as the opening of his judgment: The important thing when you are trying to discover the real value of property is the exchange value. All the other elements are methods of arriving at that result; and that is really what he says down to page 1113?

MR. BRAIS: He says it with a great deal of clarity. He disagrees with Mr. Justice Mackinnon's view as regards the memorandum being in any way applicable. He sets forth the jurisprudence in a clear fashion. He gives a judgment where he says with precision what he has in view.

Then on page 1120, after citing Cedar Rapids and various other cases, including Ontario and Minnesota Power Company on page 1119, on which my learned friend relies and on which we also strongly rely, he says, at line 41 on page 1120: "I take it to be well established that any proper definition of 'actual value' must contain as an element the idea of objective exchange value. In addition, such a definition should indicate at what moment in its life the property must be regarded when the valuation is made." I do not think anybody can quarrel with what we now have as a clear, precise summary. Then he refers to what the Board of Revision has said with reference to the previous valuation, and, without too seriously criticising what the Board of Revision said as regards the previous valuation, he seems to find some consolation for the price that that valuation will reach.

Then he takes up the cases of Pigeon v. City of Montreal and Lacroix v. City of Montreal, and on page 1122 He refers to the Bishop of Victoria, which we have had. That reference is: "It is improper, for assessment purposes, to mentally convert it, so to speak, into a revenue-producing commercial structure (for example, an apartment house) and value it accordingly." The Board and everybody else turned this building into a totally unoccupied ~~xxxxxxxx~~ palace for the Sun Life. "To follow

this method one would be taking into account potential values whereas the meaning of 'actual' is 'as opposed to potential'. It must be valued qua school and although the task is difficult it cannot be shirked by adopting an easier or unsound method."

Then he refers to expropriation cases, and to the making of the roll.

Then at line 43 he says: "Attempts have been made to express all this in the form of a definition, and of these, the first is the 'willing seller, willing buyer formula'".

LORD PORTER: Actually the passage you want most is the passage before: "I draw the conclusion that 'actual value' as used in the City's charter means the objective exchange value of the property; that this value must be determined as of the date of the making of the roll (1st December, 1941); that the buildings must be taken in their then condition; and that all the circumstances affecting the value of the property must be taken as they then were, and not as they were before, or as they may be later."

MR. BRAIS: I submit that that is a rather terse summary of all the jurisprudence that has been cited by my learned friends and the jurisprudence we are prepared to cite.

Then the learned judge refers to Mr. Parent's view in the manual, at line 4 on page 1123. He says: "Whatever may be the angle from which this problem is considered, there is only one solution possible - that the property tax rolls should have current value for their sole basis; that is to say, the valuation should be based upon 'the price which a person who is not obliged to sell could obtain from a buyer who is not obliged to buy.'" He cites the case of La Compagnie d'approvisionnement d'Eau and the case of Canada Cement, which we have heard, and which is severely criticised by Mr. Parent in his manual.

Then at line 31 on page 1124 the learned judge says: "It may be that in the two cases immediately above referred to the 'willing seller-willing buyer' definition ~~xx~~ of 'actual value' wasconfused with the method by which such value must be determined." I have indicated to your Lordships that they had nothing to go on. "If that be the meaning of the passages which I have quoted, I have nothing further to say. If nowever the meaning be that one may use this yardstick only with respect to certain types of property, then I must disagree. For purposes of taxation 'actual value' can only have one meaning, and ~~this~~ the soundness of this principle is in no way affected by the fact that in certain cases it may be necessary to use a method of calculation different from that employed in others.

"True, it may be more difficult to determine what the willing buyer will pay in a particular case than to justify the general rule that what he is prepared to offer for a property is that property's actual value. In attaching the problem however we find assistance in the 'Prudent Investor' theory which emerges from other decisions on this question."

What I would draw to your Lordships' attention there is that he starts by considering the willing buyer and ~~xxx~~ person not being obliged to sell. It is important in considering this judgment to avoid a misinterpretation. Then, having taken his willing seller not obliged to sell, he continues for a number of pages looking at the willing buyer to see what he would say; and it is not proper to segregate what he has said about the willing buyer and to say that he has been looking at the willing

buyer as a prudent investor. He has been dealing briefly with the willing seller, but he has him well in mind.

(Adjourned till tomorrow morning at 10.30)