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DOMINION OF CANADA

In the Supreme Court of Canada

(OTTAWA)

On Appeal from a judgment of the Court of King's Bench.

BETWEEN:—

SUN LIFE ASSURANCE CO. OF CANADA,

Petitioner before the Board of Revision;
Plaintiff-Appellant in the Superior Court;
Appellant-Respondent in the Court of King's Bench, Appeal Side,

APPELLANT,

— and —

THE CITY OF MONTREAL,

Respondent before the Board of Revision;
Respondent in the Superior Court;
Appellant-Respondent in the Court of King's Bench, Appeal Side,

RESPONDENT.

RESPONDENT'S FACTUM

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30

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RESPONDENT'S FACTUM

40

— I —

INTRODUCTION

This case comes before this Court, by way of an Appeal taken by the Appellant-Company from a judgment of the King's Bench Court for the District of Montreal, sitting in Appeal, the Tribunal of Higher jurisdiction and of last resort in the Province of Quebec.

The subjects of this contestation are:

1.—The assessment of the real or actual value placed on the valuation roll of December 1st, 1941 by the Assessors of the City-Respondent for the head-office and the secondary building of the Appellant-Company.

10 2.—The assessment of the annual rental value placed by the Assessors on the tax-roll of August 1st, 1942 for water and business tax purposes, for the space in the above mentioned buildings which was then occupied by the Company itself.

By the present Appeal the Company seeks a decision from a fifth successive jurisdiction on the subject matters, having already obtained those of the Assessor, of the Board of Revision, of the Superior Court and of the King's Bench Court.

20

— II —

HOLDINGS OF THE FOUR LOWER JURISDICTIONS

— A —

On the valuation roll deposited on December 1st, 1941, the main building and the heating plant were treated as separate accounts, the values shown being as follows:

30

Main Building (Head Office) Acc. No. 140896

Land	$730,600.00
Building	$13,024,900.00
	$13,755,500.00

Secondary Building (Heating Plant) Acc. No. 140942

40

Land	$74,100.00
Building	$446,400.00
	$520,500.00

Total of the two valuations: $14,276,000.00

On August 1st, 1942, a second roll, called the tax-roll, the basis of the water and business taxes, was deposited, the

following valuations of the annual rental value for the owner; occupied space, appearing as follows:

Acc. No. 151039-L Main Building: Water $423,280.00

Business 421,580.00

10 (Certain space though subject to water taxes is not subject to business taxes.)

Acc. No. 151178-L Secondary Building:

Water & Business $26,000.00

— B —

20 The Company appealed from these valuations to the Board of Revision, contending that the total valuation for both properties should be limited to $8,433,200.00 and that the rental value for the owner occupied space should be reduced to $352,-035.00.

On June 21st, 1943, the Board of Revision, after having heard the parties, rendered the decision that these two immoveables should be grouped in one for the purpose of assessment, 30 that the real or actual value of same was $15,051,997.07, but refused to disturb the figures set by the Assessor at $14,276,-000.00 and maintained the assessment. As to the rental values appeal, the Board maintained the assessments at $423,280.00 for water and $421,580.00 for business taxes, and having grouped the two properties reduced to nil the rental value of $26,000.00 put on the secondary building.

— C —

40

The Company appealed from the decision of the Board to the Superior Court but the City did not.

The judgment of the Superior Court was rendered on September 20th, 1944 by the Honourable Mr. Justice MacKinnon. By this judgment the assessment of the Appellant's properties was reduced from $14.276,000.00 to $10,207,877.40 and the judgment of the Board as to the rental values was maintained.

— D —

The City appealed from the decision of the Superior Court to the King's Bench Court, asking that the judgment of the Board be restored, while the Company took a cross-appeal asking 10 again for a real value of $8,433,200.00 and a rental value of $352,035.00.

The King's Bench Court by a majority judgment rendered on 25th June, 1948, restored the judgment of the Board as to the real value at $14,276,000.00 and maintained the judgment rendered by the Board and by the Superior Court as to the rental values at $423,280.00 and $421,580.00 respectively. The Appellant-Company is now before this Court by way of an Appeal 20 against the judgment rendered by the King's Bench Court.

— III —

GENERAL FACTS OF THE CASE:

The Appellant-Company owns two properties in the City of Montreal on Dominion Square. The larger one, known as the head-office, occupies the whole block along Dorchester street between Metcalfe and Mansfield streets and extends some dis- 30 tance to the north towards St. Catherine street. The smaller one is situated at the corner of Mansfield and Cathcart streets and is know as the powerhouse or the heating plant. The two buildings are connected by a tunnel which runs under Mansfield street.

As already mentioned, it is the quantum of the real or actual value of those two properties as of December 1st, 1941, and the quantum of the annual rental value of the owner occupied space in same as of August 1st, 1942, which, after having 40 been appealed before all the lower jurisdictions of the Province of Quebec, are now before this Court for adjudication.

— IV —

PERTINENT DISPOSITIONS OF THE LAW

The Respondent's Charter at Article 361 lays down the following general principles:

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

All property taxable unless declared exempt.

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

Immovable property what to comprise

In order to give effect to the above enactment the Charter, at Article 375 stipulates:

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

Valuation roll

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

Id., contents

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

Street names etc., cadastral numbers.

....

3.—The actual value of the immovables;

Value

3.—La valeur réelle des dits immeubles;"

Valeur réelle.

40

The Charter always uses the same expression of "actual value" as a translation of "valeur réelle".

For instance the third paragraph of Article 421 dealing with expropriation reads as follows:

"...Indemnity, in case of expropriation, shall include the actual value ("la valeur réelle") of the immovable, part of

Compensation what to include

immovable or servitude expropriated and the damages resulting from the expropriation; but, when fixing the indemnity to be paid, the commissioners may take into consideration the increased value of the immovables from which is to be detached the portion to be expropriated and offset the same by the inconvenience, loss or damages resulting from the expropriation."

10 The pertinent article relating to the tax-roll reads as follows:

Article 376:—"Each year, before the 1st of August, the assessors shall draw up by wards a tax roll specifying all personal, business and water taxes due to the city in virtue of any law, resolution or by-law, and indicating the names of the persons subject thereto.

Annual tax roll, etc.

20 The assessors shall enter thereon the annual rental value of every immovable or part of immovable, whether occupied or capable of being occupied by persons subject to the said taxes.

The said roll shall be signed by the chief assessor and deposited not later than the first of August and shall be used for the then current fiscal year.

Signature etc.

As pointed out in the judgment of the Board of Revision, in Montreal, the tremendous work of assessing all immoveables 30 is accomplished by the official assessors who are appointed by the Executive Committee on the recommendation of the Chief Assessor and who constitute with him the Assessors Department. (Charter, Art. 373). This work is divided amongst the assessors by the Chief Assessor under whose exclusive jurisdiction they are as to the fulfilment of their duties, their working hours and other internal administration rules which the Chief Assessor shall deem fit to impose (Charter Art. 373, 8 & 9).

According to their oath before taking office, the assessors 40 bind themselves to "faithfully, impartially, honestly and diligently perform the duties of an assessor according to law". (Art. 374).

According to Articles 379 and 379a of the Charter, as soon as the valuation roll, a supplementary valuation roll, or a tax roll is completed, the chief assessor shall give notice of such completion in a daily newspaper published in French and a daily newspaper published in English in Montreal that such roll

has been completed and deposited and that complaints against any entry must be filed in his office.

The right of complaint is given by Articles 380 and 381 of the Charter.

Complaints against rolls.

Article 380: "During the delays fixed by the notices prescribed by articles 379 and 379a, the chief assessor shall receive complaints that may legally be filed with him respecting any entries or omissions in the valuation roll or in one of the supplementary rolls or the tax roll, at the times and places mentioned in such notices and, if need be, according to the charter, he shall transmit them immediately to the board of revision. No complaint shall be received after the delays fixed as aforesaid.

Limitation

A complaint against the real value of an immovable may be made only once in the three years following the deposit of the valuation roll, unless a new valuation of such immovable has been made, in which case, a complaint may be made against such valuation. Any complaint referred to in this paragraph shall be produced within the delay fixed by Article 379a."

As to the complaints against the tax roll Article 381 provides as follows:

Complaints to be in writing.

Article 381: "All complaints in respect of an entry in the valuation roll or in one of the supplementary rolls must be made in writing.

How complaints to be dealt with.

The complaints relating to the tax roll received during the legal delays shall be dealt with as follows:

a) The complaints concerning a valuation of rental value not exceeding one thousand dollars may be submitted verbally, or in writing, to the assessors in charge of the ward where the immovable to which the said valuation relates is situated, and the said assessors may dispose summarily of the said complaint by issuing themselves, if need be, a valuation certificate, which shall be delivered to the director of Finance, on or before the 20th of August of the same year.

b) The complaints concerning a valuation of rental value exceeding one thousand dollars shall be submitted, in writing, to the chief assessor and transmitted by the latter to the board of revision, which shall dispose of the same, after having heard the parties, in accordance with the provisions of this act."

Article 381a also enacts an important principle concerning a contestation of real value.

Contestation as to valuation of immoveable.

Article 381a: "in the event of a contestation, arising as to the valuation of an immovable, such contestation shall apply to the total valuation of the immovable and not merely to the valuation of the land or to that of the buildings."

10

All complaints in respect of an entry in the valuation roll, or in the tax roll exceeding $1,000.00, are heard in due course by the Board of Revision of Valuation of the City of Montreal. The provisions of the law concerning such Board are contained in Article 382 of the Charter from which we quote the following important paragraphs:

Board of revision of valuation

Article 382: "1. There is created by the present act a board of revision of valuations which shall be composed of three members, whom the council shall appoint on a report of the executive committee, and who may not be dismissed by the council, on a report of the executive committee, except by the vote of two-thirds of all the members of said council. The persons thus appointed shall reside in the City of Montreal.

20

President, etc.

2. The council designates the president and the vice-president of the board, following the procedure established in the preceeding paragraph. The president must have been a member of the Bar of the Province of Quebec or of the Order of Notaries of the said Province for at least ten years.

30

Oath

3. Before taking office every member of the board shall take the oath prescribed by article 374 of the City charter.

....

Restriction

5. No member of the board may be mayor or an alderman or be in the employ of a muncipality or of any government, or be a member of a provincial legislature, or of the federal parliament or of a provincial legislative council or of the Senate of Canada or be a school commissioner.

40

....

Full time

12. The members of the board shall devote all their time to the duties of their office.

Convening meetings

The president shall convene his colleagues whenever a regular meeting of the board is held or whenever the latter is to consider a complaint, or when he needs to consult them or desires to entrust them with the study of particular questions on which he wishes to have their advice. These convocations shall be made by the secretary on the order of the president.

Public meetings

10 Each time the board hears a complaint relating to an entry in the roll, its meetings shall be public, unless it shall decide otherwise. The witnesses who appear before it shall be sworn by the president or by the secretary, who are authorized to do so.

Questions of law.

12a.—The president shall decide questions of law relating to the complaints which are within the competence of the board.

20 ....

Hearing of complaints etc.

18. The board of revision shall also hear all complaints produced legally, each year, within the required delays, against the valuations entered on the valuation roll and against any entry on the tax roll, the hearing whereof is within its power in virtue of this act.

Idem

The board of revision shall hear these complaints and render its decisions within the shortest possible delay.

30

Ordering of increase.

The board of revision, if it be of the opinion that the estimate of the immovable value or of the rental value complained of should be increased rather than reduced or maintained, may order such increase. In such case, the provisions of paragraphs 15, 16 and 17 of this section shall not apply.

Calling of witnesses etc.

27.—The board of revision may call any witnesses, proceed with the questioning of parties and their witnesses, and proceed itself with the making of appraisals or causing the same 40 to be made, in order to enable it to decide on the value of the immovables under examination.

How witnesses called etc.

28.—The witnesses shall be called in the manner determined, mutatis mutandis, by article 542 of this charter. They shall have the right to claim from the party summoning them the payment of the costs which the Superior Court generally allows in similar matters.

The depositions may be taken in shorthand by an official stenographer chosen by the board, when one or other party or the board requires it. Such stenographer shall be sworn in each case in which he acts. The losing party shall pay all the costs of stenography and transcription in accordance with the tariff established by the Superior Court of the District of Montreal, unless, for special reasons, the board shall order otherwise. For 10 his fees the stenographer shall have recourse against the party condemned by the board to pay them.

Taking of depositions

29. The members of the board of revision shall have the right to visit at any time the immovables entered on the roll.

Visiting of immovables.

All decisions of the Board of Revision are subject to appeal to the Superior Court and to the Court of King's Bench when the amount of valuation contested exceeds $5,000.00 or when the amount of the rental value contested and under exami- 20 nation exceeds $1,000.00.

Article 384: "An appeal shall lie from any decision rendered by the board of revision in respect of any entry on the valuation roll or on the tax roll, and from the decision rendered by the assessors in respect of a complaint received relative to an entry made on the tax roll, when the estimation of the rental value so entered does not exceed one thousand dollars, to any one of the judges of the Superior Court by summary petition, 30 either in term or vacation, within a delay of ten days from such decision. Such petition must be served upon the other party during the usual hours and according to the rules of the Code of Civil procedure for writs of summons in ordinary matters.

Appeal

Petition

Rules

However, in the case of a decision rendered by the assessors in respect of a complaint received concerning an entry made on the tax roll, when the valuation of the rental value so entered does not exceed one thousand dollars, said appeal shall not be made to the Superior Court after the 1st of September following 40 the decision rendered.

Delay for appeal in certain case

In the case of appeal, any judge of the Superior Court may order that a copy of the record, including copies of the valuation certificate and of the documents annexed thereto, of the proceedings of the board of revision as well as of the complaint itself, be transmitted to him, and, upon receipt thereof, and after having heard the parties, either in person or by attorney, but without inquiry, he must proceed with the revision of

Rendering of decision by judge of S.C.

the valuation submitted to him and with the rendering of such judgment as to law and justice shall appertain.

Appeal in certain case.

An appeal shall lie from such decision to the Court of King's Bench, when the amount of valuation contested for the property concerned exceeds five thousand dollars or when the amount of the rental value contested and under examination
10 exceeds one thousand dollars."

Article 378 of the charter provides that it shall be the duty of every rate payer and citizen to give, when requested, all information that may be sought by any of the assessors or any member or representative of the board of revision of valuations in the discharge of their duties.

Previous to 1 Geo. VI chap. 103 sanctioned the 20th of May 1937, the assessors themselves were sitting in appeal of
20 their own assessments in case of complaints. By the above mentioned law the Board of Revision was created for that purpose.

By 2 Geo. VI, chap. 105, section II, par 7. sanctioned the 12th of April 1938, and by 3 Geo. VI, chap. 104, sec. II, par. 7, sanctioned the 28th April 1939, the valuation rolls were pegged firstly for the fiscal year 1939-40 and subsequently for the years 1940-41 and 1941-42 so that the roll deposited December 1st, 1937 remained unchanged until the deposit of a new roll on
30 December 1st, 1941.

By the statute stipulating the last extension of the valuation roll of December 1st, 1937 it was also enacted at section 13, par. 31, that:

> "Notwithstanding any law to the contrary and in order to permit the Board of Revision to proceed with the general and complete revaluation of the immoveable property, no decision upon the complaints relative to the
> 40 real estate valuation made before this Board or on the revaluation of the immoveables shall be rendered by this Board before the 1st of May 1941."

The figures appearing on the roll of December 1st, 1941 are new assessments resulting from the general and complete revaluation made by the assessors following the order issued by the Board of Revision under the authority of the amendment above referred to.

We also mention that in the past a valuation roll was made every year. Since 5 Geo. VI, chap. 73, sec. 33, a triennial valuation roll is deposited every three years with a supplementary roll made in each of the two years following the deposit of the valuation roll.

Each valuation roll is deposited on December 1st, homologated March 1st of the following year and used for the fiscal year starting May 1st.

— V —

THE EVIDENCE

The enquete before the Board commenced on the 22nd of March 1942, and ended on the 21st of April of the same year. This long enquete started with the filing in the records of a document called "Joint Admission of the parties". This document is reproduced in the joint case Volume 1 at page VII to XXVII. During the enquete some other admissions were filed on two points. Besides that many experts were heard and more than 200 exhibits were filed.

The City asked for an increase of the valuation to $15,-800,000.00 and the Board had jurisdiction to grant it under Article 382, par. 18 of the Charter. Messrs. Desaulniers & Mills contended that in particular the two tracts of land were worth $125,300.00 more than the assessment. On the other hand the Appellant argued that Mr. Lynch, co-assessor with Mr. Vernot, had not played the active part assigned him by the Charter, Article 373.

It had been accepted before the hearing that the main object of the contestation was to find the quantum of the real value of the subject properties. An admission on those two points was agreed upon and is reproduced in the joint case Volume II page 376 and reads as follows:

> "It is agreed between the parties that the Company (Sun Life Assurance Company of Canada) does not dispute the valuation of lands inserted on the rolls. It is agreed that it will not challange the legality of, or the procedure in making the roll, or the jurisdiction of this Board.

On the other hand, the City agrees that any evidence that may happen to enter this case on the value of the land shall not be used either to increase the assessment on the land or to offset a diminution, if any, on the value of the buildings."

— A —

10

Date of construction and cost of the subject properties.

According to the "Joint Admission of the parties, the main building was erected in three stages. The original head-office was commenced in June 1913 and completed and occupied in March 1918. The first extension was commenced in the summer of 20 1922 and completed and occupied in December 1925. The second extension was commenced in May 1927 and the structural portion was completed by December 1930. Partial occupation commenced in 1929 and certain of the upper floors have been completed from time to time since.

The cost of the Complainant's head-office up to April 30th 1941 was $20,627,873.92, excluding the cost of the land and taxes and interest during construction. The amount spent from April 30th 1941 to December 1st, of the same year, the date of the roll, 30 was $58,713.70.

The cost of the power-house, which was commenced November 1928 and ready in March 1930, exclusive of the land and of interest and taxes during construction, was $709,257.14 plus $154.00 spent in 1938. The cost of the land as given by the Company to the assessor upon request of the latter, exhibit P-3, Vol. IV, page 717, was $1,040,638.20. By adding together the above mentioned amounts we find a total of $22,436,636.96.

40 Mr. Fournier, one of the City's experts, sets at $481,400.30 the interest on money supplied during construction (Vol. IV, page 735). Mr. Perry, for the same item puts $750,000.00 (Vol. V, page 900), assuming a three-year period for construction, a rate of interest of 3% and an equal amount spent every six months. Messrs, Desaulniers & Mills estimate this item at $711,-257.77 (Vol. IV, page 781).

As to the taxes paid on the lots during the unproductive

period of construction, Messrs. Desaulniers & Mills set at $66,-081.94 the amount of this item. (Vol. IV, page 781).

Based on the admission as well as on uncontradicted evidence a conservative total cost of the properties of the Appellant-Company exceeds $23,000,000.00.

10

— B —

FLOOR AREAS

Many experts gave evidence concerning floor areas of the building. However, Messrs. Desaulniers & Mills for the City jointly with the representatives of the Appellant-Company proceeded to the actual measurements of the floor areas of the head-office exclusive of corridors and the results are shown on schedule B of the "Joint admission". (Vol. X, page XII).

20

It appears that the Company occupies 393,233 square feet and the Tenants 279,000 square feet. There are also 2,908 square feet used in common by the Company and the Tenants, 27,831 square feet of finished space are unoccupied and 77,708 square feet are unfinished, giving a total rentable area admitted by the Company of 780,680 square feet.

The two figures of 393,233 square feet occupied by the Company and 279,000 square feet occupied by the Tenants, indicate that the Appellant-Company occupies 58.5% of the occupied areas as against 41.5% occupied by the Tenants.

30

If the space used in common or unoccupied was considered as occupied by the Company, the percentage obviously would be increased. The said schedule "B" also indicates that the Company occupies no space above the 10th floor.

— C —

40

Revenue from the Tenants occupied space.

Schedule "C" Vol. I. page XIII gives the annual rental for each individual's rented area and the gros rental receipts amount to $420,789.74. It is to be noted however that there are five spaces occupied free, five spaces rented on a percentage of

receipts or collections and thirty-three spaces rented during the course of the year for which rent was paid for only a fraction of the year.

OTHER ADMISSIONS

re rentals charged for owner-occupied space, book value,
10 market value and cubic content.

The admissions contain also four important schedules to which *reference is made* very *often* in the several judgments:

1.—Schedule "A" The amounts spent year by year by the Company on the construction of the head-office (Volume I, page X).

20 2.—The annual rentals actually charged to the Appellant Company for the space it occupied for the years 1937 to 1941, as appearing in the books of the Company, in the Company's annual statement and in statements supplied to the Superintendent of Insurance for the Dominion of Canada. (Volume I, page XVIII).

3.—The amounts shown under the respective headings of book value and market value in the Company's annual general statement and the Company's returns to the Superintendent of Insurance for the Dominion of Canada for the years 1914 to 1941.
30 (Admission Volume I, page IX and schedule F page XIX).

4.—The cubic content of the head-office building and of the power-house (exclusive of the tunnel) is admitted at 21,931.-761 cubic feet and 549,396 cubic feet, making a total cubic content

of 22,481,157 cubic feet. (Admission Volume I, page IX).
So much for the admissions.

40

— E —

WITNESSES

The first witness called by the Appellant was:

Mr. EDWARD J. LYNCH, City assessor. He declared that he is a partner of Mr. Vernot, the assessor for St. George Ward,

and that he is not in a position to speak of the value of the new assessment of the Sun Life property. He simply accepted the work of the assessor Vernot without expressing any opinion at all. (Volume I page 7).

The second witness called by the Appellant was:

10 Mr. GEORGE E. VERNOT, the City assessor for St. George Ward who made the assessments. He became an assessor for the City in 1939 and assessor for St. George Ward in 1941. He is a civil engineer. In 1928 he was for two months, assistant to Mr. Cameron, the construction supervisor and building superintendent while they were building the second extension. He also visited the building many times after and also with the Engineering Institute of Canada. His valuation was made "not only from a knowledge of the building; from all available information we had in the office." (Volume I page 10). This informa-20 tion was the two issues of the Engineering Journal giving the description, data, quantities, etc., of those two buildings (exhibit D-1 not reproduced). Of course, he also had the benefit of the complete survey made by the Technical service of the City of Montreal for the assessors.

A complete explanation of the figures adopted and method followed by Mr. Vernot in valuing the two properties is given in his evidence.

30 By a letter dated April 5th 1941 (Volume IV page 712) the Appellant was requested in conformity with the provisions of Article 378 of the City Charter to supply certain information as to the cost of the head-office and other particulars. The answer of the Company, dated June 11th 1941, is found in Volume IV, page 717 and reads as follows:

The Head Office of the

40 Sun Life Assurance Company of Canada Montreal
(Bureau des Estimateurs — Montréal Juin 11, 1941 — REÇU)

Mr. A. E. Hulse, June 10th, 1941.
Chief Assessor,
City Hall,
Montreal, P. Q.

Dear Sir:—

In answer to your letter of April 5th, addressed to the Secretary of this Company, I would advise you that the total

gross cost before depreciation of our Head Office Building, as at April 30th, 1941, was $22,377,769.26. This figures include the power house building with a gross cost of $709,257.14 and land for the Head Office Building power house, the cost of which totalled $1,040,638.20, so that the total cost of Head Office Building, exclusive of land and power house, is $20,627,873.92.

10 In answer to the other specific enquiries contained in your letter, the information is as follows:

a.—The cost of the sidewalk was $70,335.

b.—The cost of temporary partitions required for occupancy by our staff during the construction period was $233,-713.38.

20 c.—The value of the walls and floors demolished and the cost of demolishing to permit the old and new buildings to be blended into one building was a total of $1,215,450.

I wish to emphasize that the figures given above are gross figures before depreciation and that they also include architectural features and embellishments and other items for large amounts which, in our opinion, are not taxable. On a revenue basis, which is one of the chief methods used to determine value for assessment purposes, the present assessment on our Building 30 appears very high.

Faithfully yours,
(Signed) H. McAuslane,
Inspector of Real Estate.

HMcA/WB.

With this information in hand the assessor made his assessment, the particulars of which are reproduced in Volume IV page 714 as follows:

40

Sun Life Head Office Building — Assessor's Notes. Total cost as reported by the Company as at April 30th,

1941		$22.377,769,26
Less:		
Power House Bldg, & Equipment	$709,257.14	
Land for Head Office & Power house	1,040,638.20	
Cost of sidewalk	70,335.00	
Cost of temporary partitions during construction	223,713.38	
Cost of parts demolished to connect up to new building	1,215,450.00	$3,269,393.72
Reported cost of Head Office Building without land		$19,108,375.54
	Cost	$19,108,375.

To adjust cost to 1941 figure, 1927 to 1939 most money spent

1927	113.6 index figure	
1928	115.9	
1929	120.3	
1930	117.1	
	466.9	
Divide by 4 —	116.7	
1941 figure	109.0	
Difference	7.7	
		$1.471,344.
		$17,637,031.
Less 5% allowance for presumed extra cost as building erected in 3 units		881,851.
		$16,755.180.

DEPRECIATION

Assessed value of 1st two corner buildings —	$2,176,000.	
Less allowed for portions demolished	1,215,000.	
	$ 961,000.	
Say 25% depreciation	$240,250.	16 years —
Total as above	$16,755,180.	
Less	961,000.	
	$15,794,180.	

Less about 15 years depreciation say 18%	$2,840,952.	
		$ 3,081,202.
Net cost 1941 of building after depreciation		$13,673,978.
Add value of land		730,000.
10		$14,404,578.

The total revenue of the property is $1,187,225. which calculated on a 15% capitalization rate gives an economic value of $7,915,000.

VALUATION

20 REPLACEMENT		
	90% of $14,404,578.	$12,964,120.
REVENUE		
	10% of capitalized value of $7,915,000.	$ 791,500.
		$13,755,620
30	say	$13,755,500.
	less land	$ 730.600,
	Building	$13,024.900.

The Company in its answer admits having spent to the 30th of April 1941 for its Head Office and power house, the sum of $22,377,769.26 including the land which cost $1,040,638.20, the power house $709,257.14 the sidewalk, $70,335, the temporary partitions $223,713,38. and the value of the walls and floors
40 demolished owing to extensions, $1,215,450.

As to the first factor of replacement cost the assessor adopts the figures admitted by the Appellant in preference to any guess work. To find the replacement value of the Head-Office, he substracts from the declared cost of $22,377,769.26 the five items of land, power-house, sidewalk, temporary partitions, demolished parts to the admitted cost of $3,269,393.72, leaving a reported cost for the head-office building alone of $19,108.375.54.

As the assessment was made as of December 1st, 1941, it was important for the assessor to consider whether at the time of the expenditure the index cost of construction was higher or lower than at the time of the deposit of the roll. The City has adopted the index figure 109 for its 1941 roll. The assessor assuming all the expenditure as made in 1927-28-29 and 1930, found that the average index cost for those four years was 116.7. He therefore gave the benefit of the difference to the Appellant and substracted from $19,108,375. the sum of $1,471,-344. leaving $17,637,031. This index cost table prepared and used by the City is based on the Minister of Labour's figures and is found in Volume 4 page 678. As the Head-Office had been built in three units, Mr. Vernot gives a further allowance or reduction of 5% for presumed extra cost of $881,851. leaving $16,755,180. This reduction it is to be remembered is on top of the sums of $1,215,450. $223.713.38 and $70,335.00 already allowed for demolished parts, temporary partitions and sidewalk,

As to the physical depreciation, Mr. Vernot allows 25% for 16 years depreciation on the two corner buildings and 18% for 15 years on the balance, forming an amount of $3,081,202. leaving a net replacement cost for the head building of $13,673,-978. to which he adds the admitted value of the land $730,600. giving a net replacement cost factor of $14,404,578. for the head-Office property.

So much for the replacement factor. As indicated by his notes the assessor Vernot also took into consideration a second factor, the commercial or economic value found from the capitalized revenue.

Assessing the total revenue of the property at $1,187,225. he found by calculating on a 15% capitalization rate an economic value of $7.915.000. Then he adopted 90% of his replacement value of $14,404.578. and 10% of his economic value of $7.915,-000. which gave $13.755,620. as being his actual value.

When called upon to explain why he adopted 90% and 10%, Mr. Vernot said (Volume I page 23) as follows:

"We decided that on the large buildings in our Wards that were rented, totally rented, we took into consideration 50% commercial value and 50% replacement value; that is where the building was built solely for commercial purposes and occupied solely for commercial purposes by

tenants. Those that were occupied by owners we would take at 100% replacement cost, and nothing for commercial value.

So the Sun Life happened to fall between these two categories. The total floor space occupied by the Sun Life and the tenants is given by their list, and comes out to 60%
10 and 40%".

Subsequently called as a City witness he corroborated what the Chief assessor had said about the principles and methods agreed upon by the assessors as to the assessment of special buildings. Volume III page 556.

A.—I think I will have to corroborate what Mr. Hulse said about the principles and methods agreed upon by the assessors, and in commercial buildings, first, we agreed on
20 50% replacement for strictly commercial buildings, and 50% commercial value. When I say strictly commercial I mean a building designed and built for revenue purposes only.

When you come into the owner occupied building and renting part of it, we would have to balance the part of the building assessed for commercial purposes and the part assessed as owner occupied. In the case of the Sun
30 Life it was 40% tenant occupied in 1941 and 60% owner occupied. The occupied space. So that would mean that the 50% for commercial would be divided into 20 and 60. There would be another 30% replacement cost added on the 50, to make it 80 and 20.

But as the revenues in this building were based on revenues of much cheaper buildings — the revenue of this building received no competition — I consider that half of the commercial value of 20%, making it 10%, would pay for
40 the amenities and benefits received by the owner of the building.

As to the assessment of the power-house, Mr. Vernot was not examined on the examination in chief. As a City witness he filed as exhibit a letter received from the Appellant on October 1st, 1941, giving a complete break down of the cost of same at $709.257. letter reproduced at Volume IV pages 719-720. He also filed as exhibit, the valuation sheet reproduced on

Volume IV page 716. It indicates that he has reduced the admitted figures by $37\frac{1}{2}\%$ to take care of the depreciation etc., to bring the assessment for the building and equipment at $446,400. plus the admitted value of the land at $74,100. giving a total of $520,500.

Mr. Vernot also stated that the sidewalk is braketed with
10 the building as indicated per plans reproduced in the Engineering Journal (Volume I page 19, Volume III pages 553 and 554).

As to the 5% deduction for extra cost of building in three units he stated that if his assessment was to be made again he would not allow such deduction (Volume III page 555, Volume I, page 31).

He also added that he was not aware that the figures
20 supplied by the Appellant as to the cost of construction were not including interest on money and taxes during construction which figures should be added (Volume I, page 30).

The next witness called by the Appellant was Colonel Owen Lobley. His evidence is at Volume I page 41 etc., and his brief is reproduced at Volume IV, page 738. The principles followed are expressed by this witness at the opening of his
30 brief as follows Volume IV, page 738: "The Elementary Principles which have governed my considerations:

> I—"To state the value of anything in terms of money is to express the opinion that the thing valued is susceptible to being exchanged for the amount of money stated. To express the value of anything in terms of money with a provision that it can never be exchanged for the amount of money stated is as offensive to the intellect as a promissory note in the body of which is incorporated a declaration
> 40 by the debtor that he will never be willing or able to pay the debt.
>
> II—Qualities which are imparted to a thing by the owner but which cannot be transferred to another along with the thing do not affect the value of it.
>
> III—Any particular and perhaps profitable use which the owner of a thing makes of it does not increase its value;

it is the use which can be made of the thing by others which determines the value.

IV—Replacement cost is not a measure of value; it merely constitutes a ceiling over which value cannot normally go.
Definition:

10 Value, for the purpose of this evidence, pertains to actual value, that is, the price at which an owner is willing to sell, but does not have to sell, to a buyer who is willing to buy, but does not have to buy.
Introduction:

The Sun Life Building is one of the largest office buildings in the world. As a real estate agent and business man with a knowledge of the economic and political conditions, history and background of our country, I am convinced that
20 there does not exist an actual or potential "willing buyer" who would desire to possess the Sun Life Building for his sole occupancy. I shall therefore confine myself to the considerations of a "willing buyer" who would desire to buy the property so as to obtain a permanent income-producing investment and who would therefore be concerned with two paramount considerations:

i.—Rate of yield;

30 ii.—The enduring certainty of the yield and of the rate thereof.

His brief concludes as follows: Volume IV page 750

Valuation:

I have combined the value of the land and building in one total because I believe that the parcel of land upon which
40 the building stands is as fully developed, equipped and employed as it is possible so to be. My valuation of the property, including land, building and heating plant, is developed by capitalizing the net expectable operating return (after making reserves for accumulating repairs, physical depreciation and obsolescence) at a rate of 5%, which is... SEVEN MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS."

In his evidence this witness admitted that he did not bother with the replacement value, (Volume I page 64).

....

By Mr. Seguin:—

10 Q.—Did you take into account in your assessment the replacement value of the building? A.—No.
Q.—Not at all? A.—No.
Q.—You did not consider that at all? A.—No. I am going to qualify that, because I am suggesting that it is greater than my value, and according to my definition the replacement cost, the depreciated replacement cost, merely constitutes the ceiling over which a value cannot normally go, and because I konw that ceiling is higher than the income value I did not bother with it."

20

Further again at page 72 of the same Volume he adds:

"By the President:

Q.—With your theory, a valuation of such an immoveable as the Sun Life cannot be arrived at without imagining a change of proprietor? A.—Definitely, sir. And I am capable of imagining it.
30 Q.—And you consider only the commercial value? A.—I valued it by this method."

Applying the above mentioned principles, Mr. Lobley makes his assessment as follows; he takes a gross rental income of $1,109,000. adding no rental value for 16665 sq. feet. of vacant finished space and 72631 sq. ft. of unfinished rentable space. (Vol. IV, p. 744), and he deducts $430,000. for operating expenses. After he proceeds to set aside two items of $50,000. each, namely $50,000. as reserve for major items of replacement and
40 renewal and $50,000. as reserve for obsolescence and for extraordinary tenant's alterations. The balance for net operating return before providing for municipal real estate taxes is $579,000. He then takes off municipal taxes on a municipal valuation of $7,250,000. that is $217,000. obtaining a net operating return of $362,000. which he capitalizes at 5%, thus obtaining a commercial value of $7,250,000. which in his opinion is the actual value of the whole property head-office and power-house. The rental values for the owner occupied space were fixed by reference to the rented space. Vol. I, page 51.

"Q.—You stated the rental payable by each tenant was shown in the relevant areas. What have you done with the area occupied by the Sun Life Company itself? A.—My considerations under that heading were that a very large office building of this kind which provides shelter and places of business for a great number of enterprises and business activities, including some of the biggest in the
10 world, like the Aluminum Company of America, creates its own community. And the going rates which tenants are prepared to pay for space in such building constitute the most dependable index of the value of the space.

I assessed the Sun Life Assurance Company for the space which it occupies in the building at rates which are in keeping with the rates that are being paid for very substantial quantities of space in the same building by a
20 similar character of tenants."

The next witness for the Appellant was Mr. ALLAN C. SIMPSON. His evidence is found in Volume I page 79 etc., and his brief in Volume V, page 868. This witness adopts the very same theory as expressed by Mr. Lobley. At the beginning of his brief he says this:

"...In my opinion the only proper way to determine the "real" or "actual value" of your property, as called for in
30 taxation matters by the City of Montreal Charter, is to determine the price it would bring in the free and open market."

At the very same page he adds:

Cost and replacement value:

"...Before proceeding to deal with my valuation of the property on the basis mentioned above, I would point out
40 that the valuation of a commercial building or, in fact, of any other immoveable property by reference to it's original cost, or to it's current replacement cost, cannot be relied on to determine the present market value of the property in question, that is it's "real" or "actual" value. The original cost obviously has no bearing on the value of an old property and the depreciated replacement cost is only pertinent to the extent that it tends to set an upper limit of market value in the sense that, assuming the revenue-

producing possibilities were sufficient to warrant it, a prospective purchasser, rather than exceed this upper limit, would buy another site and reproduce a similar building as a source of revenue. The case of the Sun Life Building is a striking illustration of this. It is a large office building of the monumental type, originally built for exclusive use as the head office of a large company and,
10 as such, with many refinements and embellishments which, while reflected in the rentals obtainable for space in the building to the extent that they add to the value of the "address' do not add to these rentals an amount commensurate with the cost of producing or replacing them..."

The concluding paragraph of his brief reads as follows:

"...to summarize my opinion, therefore, I am of the view that the cost of replacement value has no relation to the
20 actual value of the Sun Life property and that the only proper basis on which to assess this property is by determining the market value through the revenue process above outlined, or, in other words, by determining the price which the property would command in the current market, given a reasonable time in which to make the sale. Considering the potential revenue value of the building and the expenses, I do not think that anyone would be likely to pay more than $7,500,000.00 for it."

30

On cross-examination, Volume I page 88, Mr. Simpson reiterates his theory.

"Q.—As far as I can see you have adopted the theory brought by Mr. Lobley, the theory of the willing buyer and the willing purchaser? A.—There is nothing new about that. I imagine the Board had heard of it before.
Q.—You did not take into consideration the replacement value? A.—I don't think it has any bearing on its real or
40 actual value. I would not say that the cost or replacement value has any bearing on it at all.
Q.—In fact, you did not consider that figure at all? A.—No.

To arrive at the above mentioned figures Mr. Simpson has based the rentals for the owner-occupied space on the rentals paid by tenants and arrives to a potential gross revenue with 100% occupancy of $1,260,545. He deducts $126,055.00 representing 10% for vacancies, $863,560.00 for operating expen-

ses and municipal taxes on the actual assessment and a depreciation of 1½%, $202,070.00, on the assessed value of the two buildings thus obtaining a net potential revenue of $68,860.00. Such a return he says would be absurd and would represent 0.48% net while it would represent a normal net income of 5% on an investment of $7,500,000.00. He concludes that the market value of the property at the time of the assessment was not more
10 than $7,500,000.00.

He has adopted as Mr. Lobley did the rental paid by the tenants as the basis for the rental assessed for the owner occupied space, Volume I, page 83.

"Q.—You said you took the rentals being paid by the tenants as being a fair indication of the rental value, and they were in fact, that, from your point of view? A.—Then in comparing space occupied by the Sun Life with the space
20 that was rented to tenants, I arrived at what I figured a fair value of the Sun Life space.

Then, on top of that, I realized that there are probably some cases in which certain concession have been made to get the tenants established and the rentals they were paying, in several cases, were less than other tenants were paying, and less probably than a fair rental, so I adjusted some of the rentals and added on an amount to cover any
30 cases like that".

Another witness, Mr. Arthur Surveyer was heard for the Appellant Company and considered only the investment stand point. His evidence it as Volume II, page 198 and his brief is reproduced at Volume V, page 880.

His is an administrator of the funds of a large invest-
40 ment trust. "So in preparing this report I have taken the approach of an investor, the approach that an investor would take towards this building."

If a purchaser were to purchase the Sun Life property at the real value of $14,276,000. the price which the City assessed it at with an operating income of $700,000. he would get a return of 0.68% of his investment.

On a purchase price of $7,000,000. the return on the investment would vary between 4.4 and 5.9 depending on the occupancy. He concludes therefore that $7,000,000. is the value of the property based on its earning power.

He made no reference to the replacement value and did not consider that factor. At Volume II, page 203 under cross-
10 examination he answered as follows:

> "Q.—You did not consider at all the replacement value of the building, or the hypothetical value? A.—I did not examine the replacement.
> Q.—You did not consider the rental value, I suppose? A.—I beg wour pardon?
> Q.—You did not consider the rental value, you adopted the figures of other witnesses in this case? A.—Yes."

20

Two other experts have been called by the Appellant Company, Messrs. J. J. Perrault and G. Archambault. They have given evidence and filed reports on what can be called the economic value of the property starting from the replacement cost.

The first of the two was Mr. Jean-Julien Perrault, an architect. His evidence is at Volume I, page 96 and his brief at Volume IV, page 834. He valued the Sun Life properties by establishing a unit price per cubic foot and multiplying same by
30 the cubic content, what is known as the cubic foot method.

For the valuation of the Sun Life building he obtained from representatives of the Company all the cube data and the percentage of rentable areas in order to establish the real value of this property, but as a revenue producing building.

Taking 22,484,061 cubic feet for the head office and the heating plant, he found $18,212,000.. From such amount he deducted $250,000. for unfinished floors, gave another reduction of
40 10% to reduce the valuation to the 1939 basis, then deducted 23.3% for depreciation due to planning functional inadaptability and a further depreciation of 21.26% due to loss of rental, thus arriving at an amount of $9,763,200. which was again brought to $8,202,600. in applying a physical depreciation of 28.½% for the first head office of 21% for the first extension and 14½% for the balance of the building including the heating plant. Those figures are reproduced in Volume IV, pages 839

and 840. As may be seen an amount of $6,402,600. is deducted from his replacement value under the heading of Planning Functional inadaptability and depreciation due to loss of rentals, to make the Sun Life building a common office building intended for piecemeal location to tenants.

This planning functional depreciation is defined by him
10 at Vol. IV, page 838 as follows:

"...The entire building suffered upon completion an immediate planning functional depreciation due to a low rentable floor area in comparison to the gross floor area."

The depreciation due to loss of rentals is explained at the same page as follows:

20 "The net rentable floor area mentioned above does not comprise space which can all be rented at the normal rate established for a building of this kind. Some of this space is composed of inside unlighted areas and the balance which is outside lighted space varies in depth from 30 to 48' and over. This latter space has been subdivided into two categories, firstly: space within 27'0" from the outside wall and secondly: space beyond the 27'0".
Assuming a normal rentable price of $2.00 per square foot, I am of the opinion that space within the 27'0" would
30 carry the normal rental of $2.00, the space beyond the 27'0" would carry a rental of $1.00 per square foot while the unlighted space would carry a rental of $0.30. This loss of rental produces an additional depreciation felt immediately upon completion of the building. The results are shown on table attached."

In his evidence at Vo. I, page 99, he says:

40 "In a building of that type 70% to 76% of the total gross floor area should be valuable as usable rentable floor space.

Now, in the Sun Life Building here we have a figure away inferior to that, and I maintain that the building has suffered a functional depreciation immediately upon completion due to this difference.

No matter what was spent in the planning, when the premises were completed if it could only be used to a certain

extent that is what it is worth to the owner or a buyer, or from any other similar point of view."

At page 101 he states:

"Offices should vary between twenty-five and twenty-six feet from the light to the inside wall. I have offices here thirty, thirty-eight and fifty feet and over in depth. The space beyond the 25′ or 26′ or 27′ line has a lesser value. Again, whether in terms of money or occupancy by the owner."

The next witness was Mr. Gaspard Archambault, a civil engineer. His evidence is at Vol I, page 139, His brief is reproduced at Vol. V, page 846. His evidence is along the same line as the evidence given by Mr. Perrault. He used the cubic-foot method and valued the property as a revenue producing enterprise. As indicated by his brief at page 846 he figures for the main building 22,000,000 cubic feet at 80¢ giving $17,600.00. He deducts $464,000. for unfinished spaces, takes out 15% for physical depreciation $2,570,310. also deducts 5% for obsolescence, $728,255. then allows 18% $2,490.630, for functional depreciation due to low ratio of rentable area and 19% for functional depreciation due to value of renting space below normal $2,155,779: then he proceeds to make a last deduction of 10% to readjust abnormal 1941 war-time prices to 1939 level $919,043. thus arriving at a final replacement cost for the main building of $8,271,383. As to the power house he has taken 552,000 cubic feet at $1.00 per cubic foot $552.000., has allowed a depreciation of 46.37%, $265,962., and has deducted 10% for special war-time prices, $28,604., thus arriving at a net replacement cost for the building of $257,434. which make altogether with the replacement cost for the main building a total of $8,528,817. exclusive of the land.

Mr. William MacRossie was also examined on behalf of the Appellant. He is a real estate broker, and appraiser, living in the United States and President of the American Institute of Appraisers. His evidence is of a rather general character and is found at Vol. I, page 104. At page 116, he states:

"Q.—They do not rely on replacement? A.—They consider that. It is one of the elements of value. It is a check. Value is the goal and three roads lead to it in different directions, but eventually they should arrive at the same place. One of the roads is cost approach. But it is only one of three.

It should be considered.

10

Q.—You state there is three approaches to an assessment to fix the value? A.—Yes.
Q.—Would you please mention the three again? A.—Cost, market, income."

Further at page 117, he adds:

"By Mr. Seguin:

20

Q.—Now that you have found represented in money the weight of the three factors, market, replacement, income, do you blend it or divide by three? A.—No. That is the last thing I would do.
Q.—You use the brain instead of dividing it by three?

By Mr. Geoffrion, K.C.:

Q.—What do you do? A.—I endeavour to use my judgment based on my experience, but I give various weights, depending on the property under discussion."

30

Mr. H. J. Knubley, D. L. Macauley, H. McAuslane and A. J. Paine were also heard on behalf of the Appellant on various details of more or less importance

As said by the Board, the City of Montreal being in the roll of Defendant in this case, has offered the testimonies of the following witnesses: Messrs. A. E. Hulse, Chief Assessor, Jos. Houle, architect, J. A. E. Cartier, architect, all three employees of the City, and also the testimonies of Messrs, Victor Fournier, civil engineer, Brian Perry, civil engineer, Harold Mills and G. Desaulniers, real estate experts, B. C. Empey, William Reed and Albert Grimstead. Mr. Geo Vernot the assessor who made the assessments was also heard on behalf of the City. We have already summed up his evidence. Messrs. Houle, Empey, Reed

40

and Grimstead have given evidence which needs not to be summarized here.

The first witness to be heard was Mr. A. E. Hulse, Chief Assessor for the City of Montreal. His evidence is found at Vol. II, page 241. At page 242 he stated the following principles of assessment:

10

....

Mr. President, in commencing I think I might be permitted to say that it is generally understood that every element which might influence the value of a property must be taken into consideration in arriving at the value of that property. However, in dealing with the question in the Manual we condensed those elements to arrive at four principal points. The first one Purchase Price; the second — Market Price; the third — The Revenue of the property, and the fourth — the Replacement value."

20

....

Also noted on page forty-seven (47) of the Manual is the following:

"If in a particular case certain of those elements are not utilizable, the others are used; if but one is available everything possible is drawn from it."

30

Further at page 245 he explains the function and duties of an assessor.

"The witness:—

First and foremost, he is not a real estate agent nor real estate appraiser as commonly implied by those designations. He does not work on a commission. He is a permanent municipal official on an annual salary and has no personal monetary interest resulting from reduced or increased valuations. The real estate agent in fixing his price is not subject to any jurisprudence in that respect.

40

What then, are the functions of the municipal assessor and what does he do? He is determining the value of each and every immoveable according to a well defined basis to

ensure complete equality of valuation and thereby ensure complete equality for all before the impost. But always subject to the stipulation in the law that he must determine the real value for each and every immoveable.

His work is subject to much jurisprudence, and some of which may reasonable be interpreted as protecting the
10 assessor in the uniform work he is endeavouring to accomplish. Now in contrast, the work of an individual appraiser generally is limited to individual appraisals. He may adopt a line of appraisal which he decides, and another appraiser appraising the same property may adopt a different line as he chooses, as the work of the appraiser may be said to be done solely for a client and his responsibility rests as to the client only.

20 A valuation roll covering one hundred and seventy thousand (170,000) valuations, made by a number of persons each following his own ideas, could not possibly lead to uniformity or equality in valuations, as to attain such an end it is necessary that certain recognized standards and methods be adopted and used."

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 esta-
30 blishing that valuations made in parts of the City by different assessors will illustrate the same standards of valuation and that valuations of similar properties in similar localities will give the same result.

"Besides his duty as an arbitrator between the individual proprietor and the municipal corporation, he has a duty to perform to the community at large in that the result of each assessor's work forms part of a general plan to secure a basis which will ensure that the burden of
40 taxation is imposed equitably and uniformly throughout the whole of the City.

Such then is the result, that the assessor must always be conscious that in performing his duty his work is always subject to comparison with any work done by another assessor in any other section of the City.

In addition to the rules and tables given in the Manual and to solve some of the problems in the application of

the various principles involved, the Assessors work out and decide the details to put these principles in force, and have done so as regards:

....

5.—Fixing the weight to be given the different factors as regards large properties such as office buildings, large apartment houses, departmental stores, and hotels and other properties."

At page 247 he explains that about 15 months before the deposit of the new 1941 roll the assessors examined the question of the weight to be given the different factors in the case of large buildings so that the quality and class of the building itself would find some reflection in the final valuation. As a result of their studies and discussions a Memorandum was adopted.

This Memorandum is reproduced at Vol. IV, page 695 and reads as follows:

"MEMORANDUM

On the assessment of large properties, such as office buildings, apartment houses, departmental stores, hotels, etc.

These properties seem to fall into four main categories, which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation;—

1.—Properties that are developed and operated solely on a commercial basis as investment propositions, such as the Insurance Exchange Building, the University Tower Building, the Dominion Square Building, the Drummond & Drummond Court Apartments, etc, etc. The return on those investments varies from time to time according to the demand for and the supply of office and apartment space in the city and more particularly in the district in which they are situated. When the demand exceeds the supply, rents are pushed up and a high return is shown on the investment, encouraging new construction. When the demand is satisfied and there is an over-supply of space, rents fall and with them the return on the investment. In fact, the situation becomes extreme in a period of low rents, as the operating charges do not decrease proportion-

ately. It would seem that the proper way to provide for this fluctuation in net revenue is to combine the factors of replacement cost and commercial value so as to allow for the more violent changes that occur in abnormal times, without departing too far from the normal values prevailing in a period of balanced supply and demand. It is recommended that these two factors, viz., replacement cost
10 and commercial value, be given equal weight in valuing these properties for a three-year period. A revaluation at the end of that time would, of course, take into consideration the conditions then prevailing.

2.—Properties that are completely occupied by their owners, whether constructed for that purpose or acquired with that object in view, such as the Canadian Bank of Commerce, the C.I.L. Building, Eaton's etc, etc. It would
20 seem that properties in that category are always worth to their owners the current cost of replacement less depreciation, since, if the owner had not already acquired such a property, but wished to provide himself with suitable premises at the present time he would have to pay current prices to secure suitable accommodation. In this theory of values being based solely on current cost of replacement less depreciation, it is assumed that the building is of a type suitable to the location. Otherwise, consideration will have to be given to the factor of obsolescence.

30

3.—Properties that are partly occupied by the owners and partly rented, such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life, etc, etc.

It must be remembered that properties of this class have been constructed or acquired as a permanent home for the enterprise in question and that frequently the building is laid out for future development, the tenant situation being considered only temporary or incidental. In other
40 cases, the space rented is provided to help carry the cost of the land, or to increase the size of the building, thereby adding to the prestige of the owner and giving what might be called advertising value to the project. In these cases the owner is enjoying the full utility only of the space occupied by himself, and is dependent on current rental conditions for the carrying charges on the balance of the building. It would seem that some consideration should

be given to rental value in these cases, so that the replacement factor should be weighted somewhere between 50 and 100 per cent, and the commercial value factor make up the difference between 50 per cent and zero. No hard and fast rule can be given for the division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of
10 the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above.

4.—In a separate category should be put buildings like theatres and hotels for two reasons. In the first place, buildings of this nature have not as long a useful life as the other classes of buildings, and should be allowed, in
20 addition to structural depreciation, an allowance to cover obsolescence or periodic remodelling and renovation. Secondly, their operation is usually in the hands of the owner or an affiliated company, and there is no way to establish a normal rental value, or to get a true picture of net earnings, as these are so seriously affected by the cost of management, the allowance set up for depreciation and maintenance, etc. It would seem that to some extent these properties should be valued on their individual me-
30 rits, bearing in mind the condition mentioned above of extra depreciation of obsolescence."

Mr. Hulse also filed a list of some 150 large buildings falling in categories 1-2-3, showing that they were assessed according to the principles outlined, with in each case the percentages of the factors used in the actual valuation on the roll. This document is reproduced at Vol. IV, page 697.

Mr. Victor A. Fournier, a civil engineer, was heard on
40 behalf of the City. His evidence is at Vol. II, page 285 and his brief is reproduced at Vol. IV, page 732. The evidence of Mr. Fournier is resumed as followed in the judgment of the Board.

"Mr. Victor A. Fournier, civil engineer, has examined the Sun Life Buildings and studied its plan in view of determining their replacement cost. He has arrived at his prices in taking an ordinary building of $0.40 per cubic foot, i.e., 22,000,249 at $0.40 — $8,800,099.60 adding for

extra features $9,369,443. plus architect fees $726,781,70, which give a total of $18,896,324.30; then he takes off for unfinished parts $355,775.68 and for heating apparatus $273,974.40 thus arriving at a sum of $18,266,574,22. Then he adds financing expenses, — $481,400.30 and obtains as replacement cost $18,747,974.53. Reducing this cost to the figure of 1939 and taking off a depreciation of 1% per
10 annum he arrives at a net replacement cost or replacement value in 1942 of $16,387,966.88 for the main building. As to the replacement cost of the tunnel and of the power station, he arrives at a net value of $424,144.46, making altogether with the main building a total of $16,812,111.34."

At page 292 of his evidence he states that the replacement cost is the basis to find the actual value. He adds at page 293 that the willing buyer and willing seller formula can not apply
20 unless there is a seller. In this case the buyer would make a good buy at $7,250,000. but the Company would never accept such a price and lose the difference.

Mr. Brian R. Perry was also heard as an expert on behalf of the City. His evidence it at Vo. II, page 331 and his brief reproduced at Vol. V, page 886. His evidence is accurately resumed by the Board as follows:

"Mr. Brian R. Perry, consulting engineer, has made his
30 estimate from plans furnished by the Company, after having made a very careful personal inspection of the buildings. His estimate of replacement cost was made without reference to any of the other three experts and was prepared by a method completely different from that used by them. He has based his analysis of cost on units applicable in 1939-40 in order to eliminate any unfair influence due to war conditions. After having made a quantity survey he arrives for replacement cost of the main building at a sum of $20.008.700. to which he adds $750.-
40 000. for financing costs. Then he deducts 13% for 13 years depreciation, thus arriving at a net sum of $18,060,070. For the heating plant, he arrives by the same way at a net sum of $501,220. making for both buildings a total of $18,561,290.

This witness considered only the replacement cost factor. His brief at Vol. V, page 893 contains an estimate of items about the buildings which are of use only to the Sun Life

Company also of features not usually found in competitive commercial buildings.

Messrs. Desaulniers & Mills were also heard on behalf of the City. They gave evidence on various occasions and produced
10 a joint brief which is found in the record at Vol. IV, page 756. By reason of their investigation and correlation of the value estimates their opinion is that the real value of the subject property land and building as of December 1st, 1941 is $15,800,-000. But they take the land at $930,000. while the value of same is admitted at $804,700. and by making the necessary correction they would arrive at $15,674,700. They put the value of the main building at $14,400,000. and the value of the heating plant at $470,000. At the beginning of their brief they say that they have considered all of the factors of value related to the subject pro-
20 perty and have made the correlation of those various factors of value.

As to the replacement cost factor they have taken the amount spent by the Company every year from 1913 to 1941 as appearing on the joint admission, have modified those figures according to a building cost index of their own compounding based on the Dominion Bureau of Statistics figures, have deducted $1,519,498.38 for cost of sidewalks, temporary partitions
30 walls and floors demolished, have taken off 1% per annum for physical depreciation, have added the cost of financing and taxes during construction and come to a replacement value of $17,531,786.82 for both buildings exclusive of the land.

As to the economic factor they have made an estimate of the rental value of the owner, tenant and vacant space, and of the expenses. But owing to the fact that there is for $4,618,500. of features which they class as amenities to the Sun Life, and for $2,434,000. of extra cost for finishing units of owner occupied
40 space, they consider that the property is a non investment proposition and that the revenue gives a distorted result.

In the correlation of the various factors, to compensate for the fact that for the time being, part of the building is leased at rentals below the intrinsic value of the space and for some light over-improvements in plumbing fixtures and six elevator shafts which may never be used, they reduce their replacement value of

the building by 15% thus giving $14,400,000. for the main building and $470,000. for the power house. Vol IV page 809.

There remains the evidence of Mr. Cartier. He is the architect in charge of the valuation department of the Technical
10 Service of the City of Montreal. He has given evidence several times and has filed and explained the report of inspection of the property by the staff of the Technical Service and the cards based on the said report.

He has made a semi-commercial appraisal of the subject properties based on prices prevailing during the last six months of 1939, and the first six months of 1940. He thus arrived at a replacement cost of $18,706,115.55 less $2,641,155. for depreciation leaving $16,064,960. net for the main building, Vol. IV, page 702.
20 As to the power-house and the tunnel, his figures cover the building but only part of the equipment and give the net sum of $249,-300., Vol. IV, page 704 and Vol. II, pages 270 and 271. By adding the amounts for the two buildings and adding the assessed value of the land he comes to a total value of $17,118,960.

Mr. Cartier also filed an important document reproduced in Vol. IV, page 680, and explained in his evidence at Vol. II, p. 274. Having in hand the amounts spent every year by the Company for the construction of the head-office, as per schedule A of
30 the Admissions and having deducted the amounts spent for sidewalks, temporary partitions, walls and floors demolished in proportion to the expenditures made every year between 1913 and 1931, he then took the index figure of every year and brought the amounts spent to the index 109 adopted for the 1941 roll and found that the several amounts spent by the Company every year were equivalent to $18,995,585.92 spent on the market prices prevailing during the last part of 1939 and the early part of 1940.

40

VI

THE JUDGMENT OF THE BOARD

In Law:

As to the theory in virtue of which the Sun Life properties should be assessed on the revenu approach exclusively, using

the said revenue to establish an imaginary market, the Board held that it could not find fault with the assessors for having adopted the principles of the memorandum and using the replacement value as well as the economic value.

ON FACTS:

10 The judgment *of the Board,* can be thus resumed:

The assessment is reconstituted along the same lines as the ones followed by the assessors, and modified in taking the figures of the joint admissions, and the evidence. The members adopted the several amounts admitted having been spent year by year by the Company in preference to any guess work of experts.

They deducted as the assessor did the amounts spent for the sidewalk, temporary partitions and for parts demolished.

20

As to the index cost, having in hand the actual expenditures made every year from 1913 to 1941 Schedule "A", the index cost used by the City Vol. IV, page 678, they adopted the accurate adjustments made by Mr. Cartier, Vol. IV, page 680.

They also granted the 5% for presumed extra cost for building erected in three units as being a reasonable allowance.

As to the physical depreciation they accepted 14% as being 30 justified by the evidence of the majority of the experts.

They thus came to a net replacement of $15,511,223.69 for the head-office which by adding the land gave $16,241,823.69.

As to the heating plant and equipment they took the total declared cost $709,257.14, they reduced this sum to index number 109, obtained a gross replacement cost of $641,160 and allowed a depreciation of 28% on account of equipment and arrived at a net replacement cost of $461,635., which added to the land $74,- 40 100. made a total amount of $535,735. and a total replacement value factor for the two properties of $16,777,558.69.

As to the revenue or economic value approach, once again they rely on the admissions. They took the figure of $768,265.56 given in the joint admission as the rental charged to the Appellant for the owner occupied space (Schedule E) and $420,789.74 the gross rental receipts from tenants (Schedule C). They noticed that these last figures were low and did not cover the vacant

space, in some instances covered only part of a year, but they said that they were using them to remain within the figures of the joint admission, though they were not ready to approve of them.

Accepting and applying the principles of the memorandum they took the revenue given $1,189,055.30 divided into $768,265.56 for the Company and $240,789.74 paid by tenants, which give 64.61% and 35.39% and obtained 82.3% importance to be given to the replacement factor and 17.71% to the economic factor.

To find the economic value from the gross declared revenue, they deducted the declared operating expenses $436,992.64 leaving a net revenue of $752,062.66 which they capitalized at 10.7% the rate adopted for similar properties of this age, and found a capital sum of $7,028,623.

By processing the replacement value and the economic value in the proportions above mentioned they found a real value of $15,051,997.07 for the two properties land and building.

The recapitulation of those figures is as follows, Vol. V, page 983-A-29.

RECAPITULATION

REPLACEMENT VALUE

Total cost of main building as declared December 1st 1941 $20,-686,587.62

Less:		
Cost of sidewalk	$ 70,335.00	$
Cost of temporary partitions	233,713.38	
Cost of demolishing, etc.	1,215,450.00	1,519,498.38
Construction cost of the building		19,167,089.24
Adjusting cost to index number 1939-40		181,503.32
Cost of building in 1941		18,985,585.92
Less 5% allowance for extra cost		949,279.30
Net cost of building in 1941		18,036,306.62
Less 14% depreciation		2,525,082.93
Replacement cost of building in 1941		15,511,223.69
Plus land value		730,600.00
Replacement value of main building		$16,241,823.69

HEATING PLANT

Total cost as declared December 1st 1941	709,257.14	
Adjusted cost to index number 1939-40	68,097.14	
Gross cost of heating plant in 1941	641,160.00	
Less 28% depreciation for 11 years	179,525.00	
Replacement cost of heating plant	461,633.00	
Plus value of land	74,100.00	
Total value:		535,735.00
Total replacement value:		$16,777,558.69

COMMERCIAL VALUE

Revenue given for Company occupation	768,265.56	= 64.61%
Revenue paid by tenants for occupation	420,789.74	= 35.39%
Total gross revenue	$1,189,055.30	= 100.00%

Rate of appreciation for Replacement Value = 64.61% x 0.5 plus 50 = 82.3%
Rate of appreciation for Commercial Value = 35.39% x 0.5 = 17.7%

100.00%

Total gross revenue	$1,189,055.30
Less operating expenses	436,992.64
Net revenue	$ 752,062.66

The effective age of the building being 14 years, we capitalize the net revenue of $752,062.66 at 10.7% giving a commercial value of $7,028,623.00.

Valuation:

Replacement value — 82.3% of $16,777,558.69 =	13,807,930.80
Commercial value — 17.7% of 7,028,623.00 =	1,244,066.27
	$15,051,997.07

The Board groups the head-office and the boiler-house in one assessment.

Having found a real value for the two properties of $15,-051,997.07 "by making all possible concessions to the Complainant's statements, it refused to disturb the assessment which was maintained at $14,276,000.

10

The assessment of the annual rental value of the owner occupied space is also maintained at $423,280. for water taxes and $421,580. for business tax while the rental value of $26,000. is reduced to nil owing to the fact that the two properties have been grouped.

The City did not appeal that judgment notwithstanding the fact that the increase asked for had been refused owing to the fact that the value found was only 5% over the assessment and that 20 value after all is merely a question of facts and opinions. The grouping of the two properties did not affect in any way the interest of the City. As to the reduction to nil of the rental value of the heating plant, there was perhaps something to be said because the upper floor is occupied as a garage for the employees of the Company and steam is sold for the purposes of an adjoining property belonging to a third party. Anyway the amount at stake was not worth while appealing. On the other hand the Appellant appealed from the judgment of the Board to the Superior Court.

30

VII

THE JUDGMENT OF THE SUPERIOR COURT

In law:

The Superior Court approved the view of the assessor and of the Board as to the import of the expression "actual value" and 40 also as to the principles applied that for a property such as the Sun Life both the depreciated replacement approach and the commercial approach should be considered.

ON FACTS:

The judgement of the Superior Court fully agrees with the judgment of the Board except on three points:

1.—In the reduction of the amounts admitted having been spent by the Appellant to the 1939-40 standards by the index

cost table, the Judge accepting the 7.7% reduction of the assessor Vernot $1,475,865.87 instead of $181,503.32 as adopted by the Board.

2.—The Superior Court gives on top of the physical depreciation a further depreciation of 14%, $2,352,932.70 for extra cost.

10 3.—In the correlation of the replacement approach and the economic approach, the Superior Court adopted 50% replacement and 50% economic, as against 82.3% and 17.7% by the Board and 90% and 10% by the assessor Vernot.

As a result of these three modifications the assessment of the Sun Life property is reduced to $10,207,877.40 that is to say $4,068,122.60 less than the assessment confirmed by the Board and $4,844,119.57 less than the figure found by the Board.

20 The recapitulation showing how the final figure of the Superior Court has been arrived at is found at Vo. V, page 1021 and reads as follows:

"The following is a recapitulation showing how the final valuation has been arrived at by the court :
The total cost of the main building as declared

Dec. 1st 1941		$20,686.587.62
Less		
30 Cost of sidewalk	$ 70,335.00	
Cost of temporary partitions	233,713.38	
Cost of demolishing etc.	1,215,450.00	1,519,498.38
Construction cost of the building		19,167,089.24
To adjust cost to index No. 1939-40 7.7%		1,475,865.87
Cost of the building in 1941		17,691,223.37
Less 5% allowance for extra costs		884,561.17
40 Net cost of building in 1941		16,806,662.20
Less 14% depreciation		2,352,932.70
Replacement cost of building in 1941		14,453,729.50
Less 14% depreciation for extra unnecessary costs		2,352,932.70
Replacement value		12,100,796.80
Plus land value		730,600.00
Replacement value of main building & land		12,831,396.80
Total value of heating plant and land		535,735.00
Total replacement value		$13,387,131.80

Commercial value

Total gross revenue	$ 1,189,055.30	
Less operating expenses	436,992.64	
Net revenue	752,062.66	
Capitalization of net revenue 10.7% giving a commercial value of	$ 7,028,623.00	

10

Valuation

50% of replacement value of	$13,387,131.80	$ 6,693,565.90
50% of commercial value of	7,028,623.00	3,514,311.50
		$10,207,877.40

20

VIII

THE JUDGMENT OF THE KING'S BENCH COURT.

The judgment appealed from is reproduced at Vol. V, page 1026. By a majority of three judges against 2, the judgment of the Board is maintained. The following propositions are formulated.

30

1.—That the law has vested with the assessors the difficult task of assessing which requires technical knowledge and experience to distribute equitably the burden of taxes and has also created a specialized tribunal whose members are at the same time judges and experts and that unless a gross error of figuring, evident injustice or mistake in law is committed the higher courts should not substitute their opinion on question which require special expert knowledge.

40

II.—That there is no strict and fast rule in law concerning the methods of assessing except as laid down by jurisprudence according to which the assessment should tend to establish a value reflecting as much as possible the price a buyer would be willing to pay on a free market and to distribute fairly the burden of taxes according to standards applicable to all tax payers.

III.—That the assessors were right in classifying the special buildings for which the market furnishes no data, in several categories applying the special methods of assessments for each of them as formulated in the memorandum.

IV.—That the assessors were right in valuing the Sun Life building by the method used for buildings having both a commercial and institutional character and that the Superior Court was wrong in classifying it as a purely commercial proposition.

V.—That the assessors were right in assessing the subject property by blending the economic and replacement factors, and
10 not considering the economic factor only.

VI.—That the members of the Board were duly qualified and trained to decide in what proportion these two factors must be appreciated, and that the figures of 82.3% and 17.7% found by the Board should not have been disturbed;

VII.—That the judge of the Superior Court was wrong when in his replacement value he adopted the figures of Vernot, instead of the ones found by the Board, by processing of the
20 amounts spent every year by the index cost.

VIII.—That the judge of the Superior Court was wrong in deducting 14% for extra unnecessary cost of construction on certain items.

IX.—That the admitted and sworn market value of $16,258,050.27 for the subject property, as filed with the superintendent of Insurance for 1941 is a serious indication that the assessment is more in line with the value than the amount asked
30 by the Appellant.

IX

PRESUMPTION IN FAVOUR OF THE ASSESSMENT

In all assessment appeals the onus, as might be expected, is upon the Appellant. The reason is that a court is not lightly to interfere with reasoned conclusions of an intelligent assessor
40 unless he has flown in the face of the law or has proceeded with a wrong basis of calculations.

In Lownsbury Co. Ltd., vs Bathurst 1949, 1 D.L.R. page 62 the court recalls, this dictum of Macdonald C.J.S. in re Mackenzie, Mann & Co., Assessment (1915) 22 B.C.R. page 16, "The assessor is in a much better position than a judge of the Court of Appeal to come to a conclusion as to the value of land. In the first place if the assessor has acted honestly, and there is no sug-

gestion here that he has not, without any mistake in principle or law, great weight ought to be given to his valuation."

Again in Maritime Telegraph and Telephone Company Limited vs The Municipality of the Town of Antigonish 1940 S.C.R. page 616, Mr. Justice Davis said at page 622, "It is always a difficult problem to fix the value of such personal property as
10 part of a telephone system within a given municipality. But the three municipal assessors were practical men engaged in assessment work for many years and when their valuation has been confirmed by three successive courts an Appelant has a formidable task in seeking to escape from the assessment: it must be plainly demonstrated to the Court that some error in principle has been applied and has resulted in an excessive assessment. This has not been shown, in my opinion, and I would therefore dismiss the appeal with costs."

20 The rule in such matters has been formulated by this Court in the King and Elgin Realty Company Limited 1943, Canada Law Reports, page 49, where Justice Taschereau says at page 51:

"In expropriation cases it is settled, I think, that when determining the amount, a court of first instance has acted upon proper principles, has not misdirected itself on any matter of law, and that when the amount arrived at is supported by the evidence, a Court of Appeal ought not to
30 disturb its findings. This rule has for many years been the guiding principle in this Court, and a reference may be made to Vézina vs. The Queen (1889) 17 Can. S.C.R. 1. At page 16, Mr. Justice Patterson, with whom concurred Strong J. Fournier J. and Taschereau J. said:

Where the tribunal of first instance has proceeded on correct principles and does not appear to have overlooked or misapprehended any material fact, an appeal against the
40 amount awarded will in most cases resemble an appeal against an assessment of damages in an action, which would be a hopeless proceeding, unless some very special reason for the interference of the appellate court can be show".

This rule was recalled and again applied in 1945 by this court.

In the Attorney General of the Province of Alberta and the Royal Trust Company re: Gill Withycombe, deceased, 1945 S.C.R. page 267 the Chief Justice of this Court said at page 281:

"Now if a finding of a Commissioner as to valuation can be supported by evidence and it cannot be shown that he acted on a wrong principle of law, as to my mind is the case here, his findings ought not to have been disturbed by the Appellate Division. Canadian Northern Railway Co. vs Billings; (1916) 19 C.R.C. 193; In re Canadian National Railways Co. and Terwindt (1930) 3 W.W.R. 345.; Montreal Island Power Co. vs
10 Town of Laval des Rapides, (1935) S.C.R. 304; Pearce vs The City of Calgary (1915), 9 W.W.R. 668, where the Chief Justice of this Court stated:— In these circumstances, I am satisfied that Judge Carpenter, sitting in appeal from the Court of Revision, with his wide local knowledge and experience in ascertaining the prices of real estate, was in much better position to judge of the value of the property than I can assume to be, and I adopt his conclusion."

The principles formulated by this Court have been cons-
20 tantly applied by the Superior Court of Montreal as to the judgments of the Board of Revision, since its creation. The two first judgments on similar appeals were delivered by Justice Gibson in Alliance Nationale vs Cité de Montréal et Bureau de Revision 76 C.S. page 281 and Lynch-Sataunton et al vs City of Montreal and Board of Revision 76 C.S. page 286.

The judgment in the first case was drafted in French and is reproduced in the notes of Justice St. Germain of the King's Bench Court at Volume 5 page 1062. The second judgment was
30 drafted in English and reads as follows:

"Seeing that the present application is made under the provisions of article 384 of the Charter of the City of Montreal (as enacted by 1 Geo. VI., c. 103. s. 59), and that the jurisdiction thereby conferred upon a judge of this Court, as now acting, is to view and consider the proceedings of the Board of Revision, to hear the parties upon the appeal made against the said proceedings and against the valuation declared by that Board, and, without the admission
40 of other or further evidence, to render: "such judgment as to law and justice shall appertain";

Seeing that the expression "such judgment as to law and justice shall appertain" is one which is wide and unrestricted: by its terms it authorizes judicial authority (a judge of this Court in first instance, and the Court of King's Bench in appeal) to review, in any respect, the valuation complained of such as; by giving a different inter-

pretation, or a different relative value, to all or to any of the evidence, or by applying some different rule for the ascertainment of value, or by correcting some error in law as to ownership or liability;

Considering that, in the opinion of the undersigned, it must be assumed and held that the jurisdiction so con-
10 ferred is to be exercised with reserve, and with careful regard for the following considerations namely:

a) The undoubted purpose of article 382 of the Charter of the City of Montreal is to secure mature deliberation upon any contested valuation, after a hearing of all interested parties, and this by a Board whose members have been selected on account of their special qualifications for the task;

20 b) The undoubted purpose of article 382 is to secure uniformity of valuation and of relative valuation for all parts of the City, namely by having all such valuations passed upon by one single specially constituted Board;

c) By this very nature, valuations are matters of opinion, (susceptible of factual test only in very few cases), and opinions as to value may differ by considerable percentage from each other without it being possible to say with certainty which of them approximates most closely to reality,
30 — and the "reality" in this connection is a relative term —;

d) If it were to be allowable that the individual opinion of the judge of the Superior Court, called upon to hear the appeal, would prevail over the opinion of the Board of Revision, the purpose of the said article 382 would be defeated, for the appeals would be unlimited in numbers, and there could never be uniformity or relative uniformity in the valuations by the many judges of this Court; — in
40 such case the very existence of the Board would be of doubtful utility;

Considering that, in the opinion of the undersigned the jurisdiction above mentioned should be exercised ex debito justitæ in cases such as the following:

a) If the proceedings before the Board of Revision are defective or illegal by reason of the inobservance of some

essential legal requirement, or if the finding appealed against has been reached in disregard of some provision of law, or if it is based upon some error of law as to title or liability or other such matter, or if the complainant has been refused of has not had a full hearing of his case and evidence, etc.;

10 b) If the finding appealed gainst is tainted with fraud or some improper motive;

c) If the valuation is so excessive or so insufficient that it could not reasonable be arrived at from the evidence, and the Board must have been induced into some error; But, in general, the jurisdiction should not be exercised if the purpose and effect is merely to substitute the appraisal of a judge of this Court for the appraisal made by the Board of Revision; in general, it should be assumed that a
20 valuation which has been made by the Board of Revision has been made with capacity, care and judgment after full consideration of all evidence to be found in the record, and after full consideration of the contentions of the owner; in general, it must appear from the application under article 384 that there is some serious reason for intervention and not merely a quest for a revaluation."

This jurisprudence has been followed by Mr. Justice Mc-
30 Kinnon of the Superior Court in Dominion Textile Co. vs City of Montreal and Board of Revision 1946, R.L. page 257.

After having made reference to the two previous judgments of Mr. Justice Gibsone, Justice McKinnon says at page 260:

"The Company submits that Gisone, J. had no right to lay down a general rule regarding a right of appeal granted by statute and that this court should not be affected by
40 them. The court has carefully considered both these judgments and is of the opinion that the learned judge has correctly interpreted his position and the duties of a judge of the Superior Court in dealing with appeals from decisions of the Board. The judgment of the Board of the 2nd of July 1941, was an unanimous one. The four members who heard and dealt with the complaints of the Company must be recognized as competent and experienced persons. They not only heard all the witnesses but in all cases visited

and inspected the site, the machinery and the buildings. That the members of the Board were in a far advantageous position than the court to consider the complaints is only too self evident. The rule laid down in Canada Cement Co. and St. Lawrence Land Co. vs Ville de Montreal Est, 35 K.B., 410 that a municipal valuation made by municipal assessor must be presumed just and reasonable so long as
10 no injustice or important variance has been shown applies with even more force to a finding of the Board of Revision."

In a case of Royal Trust Co. City of Montreal and Board of Revision ex parte No. 1194, an unreported judgment of January 11, 1944, Hon. Justice Trahan, of the Superior Court applied the same principles.

"Considérant que, conformément à jurisprudence, la dé-
20 cision du Bureau de Revision est, en principe, censée avoir été rendue avec compétence et discernement, présumée juste et raisonable et que la requête par laquelle le contribuable exerce un recours en appel de cette décision, doit formuler des griefs sérieux et ne pas constituer la simple manifestation du désir d'obtenir une nouvelle estimation (Alliance National vs Cité de Montréal et Bureau de Revision des Estimations, 76 C.S. page 218; Lynch Staunton vs Cité de Montréal et Bureau de Revision, 76 C.S. page 286; Canada Cement Company et St. Lawrence Land Com-
30 pany vs. Ville de Montréal Est, 25 K.B., page 410);

Considérant que la requête de la requérante n'allègue aucun grief sérieux pouvant nous justifier d'infirmer la décision incriminée et qu'elle semble avoir pour objet que le soussigné substitue sa propre estimation à celle du Bureau de Revision... Rejetons, etc."

Again, in Lacroix & Léger Limitée vs City of Montreal and Board of Revision, ex parte No. 1164 judgment of the Supe-
40 rior Court, March 7th, 1944, unreported, Mr. Justice Salvas says:

"Considérant que le Bureau de revision des estimations a été constitué pour s'occuper spécialement de l'évaluation des immeubles, pour fins municipales, dans la cité de Montréal. Ses pouvoirs sont très étendus et ses membres doivent consacrer tout leur temps à leurs fonctions. Le Bureau a, entre autres pouvoirs, celui d'entendre toute plainte dûment produite à l'encontre d'une estimation inscrite au

rôle d'évaluation. Il peut assigner tous témoins, entendre les parties et leurs témoins, faire lui-même ou faire faire des expertises et ce, pour pouvoir se prononcer en connaissance de cause, sur les évaluations qui lui sont soumises. Enfin, les membres du Bureau peuvent, en tout temps, visiter les immeubles inscrits au rôle;

10 Considérant que, dans l'espèce, le Bureau a vu et entendu les témoins, dont les experts en matière de valeur immobilière, produits de part et d'autre, et ses membres ont même visité la bâtisse de l'appelante comme ils en avaient le pouvoir selon les termes du paragraphe 29 du dit article 382 de la charte;

Considérant que le Bureau de revision se trouvait dans une position beaucoup plus avantageuse que le juge saisi du présent appel, pour se prononcer sur la valeur de la
20 bâtisse de l'appelante. Le législateur l'a voulu ainsi en confiant à ce Bureau les pouvoirs énumérés dans la loi qui le régit;

Considérant que, ce Bureau jouissant des pouvoirs aussi étendus en vertu de la loi, il faut, à plus forte raison, attacher à ses décisions la présomption, existant en faveur de celles des estimateurs, qu'elles sont justes et raisonnables aussi longtemps qu'une preuve n'a pas été faite d'une
30 injustice ou d'une différence importante entre l'évaluation établie et la valeur réelle du bien à estimer;

Considérant que le juge saisi de l'appel en vertu de l'article 384 de la charte de l'intimée, doit tenir compte des principes et des faits ci-dessus exposés, dans l'exercice des pouvoirs que lui confère le même article;

Considérant qu'il s'agit dans l'espèce, d'un entrepôt que l'appelante a construit pour son propre usage en l'année
40 1930, et depuis, elle s'en est toujours servie elle-même et pour les mêmes fins. Elle ne l'a jamais loué et ne l'a jamais offert en vente. Apparemment, aucune propriété du même genre, dans le même quartier, n'aurait été louée ni vendue dans la même période. Ce sont là des faits qui rendaient plus difficile l'évaluation du bâtiment de l'appelante;

Considérant qu'après étude complète de tout le dossier et en particulier de la preuve faite devant le Bureau de

revision, le juge soussigné est d'avis que le dit Bureau n'a pas mal jugé en droit et qu'il n'a pas erré dans ses conclusions sur les faits."

In re: Dame Joséphine Brunet vs The City of Montreal and Bureau of Revision ex parte No. 1237, judgment unreported delivered by Honorable Justice Décary of the Superior Court
10 dated June 19th, 1944 the same principles are followed:

"Il est de principe reconnu qu'à moins d'une erreur manifeste dans l'appréciation des faits créant une injustice grave pour une des parties, un Juge de la Cour supérieure ne doit pas intervenir dans l'évaluation faite par le Bureau de Revision dont les membres sont choisis à cause de leurs connaissances spéciales en la matière. L'honorable juge Gibson dans l'affaire de l'Alliance Nationale vs la Cité de Montréal, 76 C.S., p. 281, à la page 283 pose comme
20 principe qu'un juge de cette Cour doit intervenir dans la décision du Bureau que si l'estimation était si excessive qu'elle ne pourrait être raisonnablement basée sur les preuves et qu'évidemment, le Bureau a été induit dans une erreur quelconque. Les témoins entendus de part et d'autre devant le Bureau sont des gens compétents. Le Bureau lui-même est composé de personnes qui, comme nous l'avons dit plus haut, sont versées dans les valeurs immobilières.

30 La différence entre l'évaluation de la requérante et celle de la Cité n'est pas considérable. Intervenir dans la décision équivaudrait à substituer l'évaluation du juge à celle du Bureau. La requérante n'a pas fait voir de cause sérieuse pour justifier pareille intervention.

Comme le dit le juge Gibson dans la cause précitée à la page 283: "de leur nature les estimations sont des "affaires d'opinion". Dans le présent cas, les opinions émises diffèrent peu entre elles et, dans ces circonstances, nous sommes
40 d'opinion que justice a été rendue à la requérante par le dit Bureau de Revision."

Again in Ford Hotel Company of Montreal vs City of Montreal and Board of Revision, ex parte No. 1206 Mr. Justice L. Boyer of the Superior Court said in his judgment of May 3, 1944:

"Considering that:—

The assessing officers are presumed to have acted correctly and a fortiori the Board of Revision.

This is specially true of the assessors of Montreal who, as well as the staff who assists them, are well qualified, and also as to the members of the board.

10

The appellants, and this is the second appeal on what is really a question of fact, must, accordingly, prove a substantial injustice or gross misinterpretation of the evidence. 76 S.C. 281 and 286; B.R. 410; No. 1994 S.C. Royal Trust & City, Judgment, 11th January 1944 — 1164 S.C. Lacroix & Léger Ltée & City, 7th March 1944.

The Court, under the circumstances, does not feel justified in reversing the judgment of a better qualified board of revision."

20

The same judge said in Victor E. Lambert vs City of Montreal and Board of Revision ex parte No. 509, in a judgment unreported dated October 30, 1945.

"La Cour n'a pas à se prononcer sur la valeur des différentes méthodes d'évaluation, et est moins qualifiée d'ailleurs, que les membres du Bureau qui ont rendu la décision, dont appel, mais encore une fois, doit s'en tenir à la preuve, et d'après cette preuve, la décision attaquée doit être maintenue."

30

Again in Stanislas Christin vs The City of Montreal and Bureau of Revision, ex parte No. 1074, Mr. Justice Dalma Landry of the Superior Court, in an unreported judgment delivered on September 22, 1945, said:

"Attendu que d'après le dit article 384 sur tel appel, c'est le dossier qui a servi devant le Bureau de Revision qui sert et doit servir, sans enquête additionnelle, et c'est sur ce dossier que l'autorité judiciaire est autorisée et chargée de rendre "tout jugement que de droit";

40

Considérant que quoique l'article 384 n'indique pas de restriction quant à la juridiction conférée à l'autorité judiciaire le soussigné est d'opinion que cette juridiction devrait être exercée avec réserve et que le tribunal ne devrait intervenir que lorsque les procédures devant le

Bureau de revision étaient entachées de quelques informalités ou irrégularités de nature à apporter nullité ou illégalité; ou si la décision est basée sur quelque erreur de droit quant au titre, s'il y a eu fraude ou quelque mobile illégal ou si l'estimation était si excessive ou si insuffisante qu'elle ne pourrait être raisonnablement basée sur la preuve et que manifestement le Bureau a été induit dans une
10 erreur quelconque;

Considérant que dans le cas qui nous occupe aucune de ces choses ne semble s'être présentée et la décision du Bureau semble bien avoir été basée sur la preuve apportée de part et d'autre par les parties."

The same principles have been applied by Mr. Justice Denis of the Superior Court in re Eugène Simard vs The City
20 of Montreal and Bureau of Revision, C.S. ex parte No. 1477, in a judgment unreported dated January 18, 1946. The judge after having noted all the above judgments follows the same principles.

As to the general jurisprudence on the point we also refer to the numerous cases noted by the Board in its judgment at Volume V page 983-A-3 and 4.

In the present case the King's Bench Court has adopted the same view when it says Volume V pages 1027 — 8)
30

"Vu les dispositions de la charte de la Cité concernant l'évaluation des immeubles, et notamment celles concernant la formation du Bureau de revision des évaluations de la Cité et les pouvoirs accordés aux membres de ce Bureau;

Considérant que l'évaluation des immeubles pour les fins municipales est une opération qui requiert de la part de ceux qui en sont chargés des connaissances techniques et
40 une expérience qu'on ne saurait trouver que chez le spécialiste soucieux de concilier l'intérêt particulier des contribuables et celui de la collectivité, de manière à assurer une répartition équitable de l'impôt foncier suivant la valeur des immeubles imposables;

Considérant que les dispositions de la charte de la Cité relatives à la formation du Bureau de revision font voir que le législateur a entendu pourvoir à la création d'un

tribunal spécialisé dont les membres auraient le double caractère de juge et d'experts;

Considérant...

et que dès lors, il convient de dire qu'en accordant le droit d'appeler de la décision du Bureau de revision, la législa- 10 ture n'a pas dû vouloir que le juge de la Cour supérieure ou ceux de la Cour du Banc du Roi substituent leur opinion à celle des membres du Bureau sur les points dont la décision requiert une appréciation d'expert, mais qu'il a plutôt entendu accorder aux contribuables un moyen de se pourvoir contre les erreurs certaines, de principe ou de calcul, erreurs qui feraient manifestement échec au principe que les immeubles doivent être évalués de manière à repartir l'impôt équitablement suivant une norme com- 20 mune à tous;"

We will now try to demonstrate that the Board and the Appeal Court have applied the proper principles in law and that the judgment is supported in all points by the evidence.

THERE IS NO ERROR IN LAW IN THE JUDGMENT OF THE KING'S BENCH COURT.

30

— X —

Actual Value means Exchangeable or market value.

The expression "real or actual value" is a term of wide and general import, its interpretation being left with the assessors and the courts in each particular case.

There is no definition or qualification of this expression 40 in the charter of the City as may be found in some special statutes or charters.

When used in connection with assessments the meaning has been determined many times by this Court.

In Montreal Island Power Co. vs. Laval des Rapides (1936) 1 D.L.R. page 621, Sir Lyman Duff says:

"Obviously "real value" and "actual value" are regarded by the Legislature as convertible expressions. The construction of these phrases does not, I think, present any difficulty. The meaning of ""actual value", when used in a legal instrument, subject, of course, to any controlling context, is indicated by the following passage from the judgment of Lord MacLaren in Lord Advocate vs. Earl
10 of Home (1891) 28 Sc. L.R. 289, at p. 293:—

"Now, the word "value" may have different meanings, like many other words in common use, according as it is used in pure literature, or in a business communication, or in conversation. But I think that "value" when it occurs in a contract has a perfectly definite and known meaning, unless there be something in the contract itself to suggest a meaning different from the ordinary meaning. It means
20 exchangeable value — the price which the subject will bring when exposed to the test of competition."

When used for the purpose of defining the valuation of property for taxation purposes, the Courts have, in this country, and, generally speaking, on this continent, accepted this view of the term "value".

He then quotes the Supreme Court of the United States in the Cummings case:—

30

"It is proper to say, in extenuation of the rule of primary valuation of different species of property developed in this record, that it is not limited to the State of Ohio, or to part of it. The constitutions and the statutes of nearly all the states have enactments designed to compel uniformity of taxation and assessments at the actual value of all property liable to be taxed. The phrases "salable value" "actual Value" "cash value" and others used in the directions to assessing officers, all mean the same thing, and
40 are designed to effect the same purpose".

At page 623 he says:

"These assessment provisions, like other assessment provisions, contemplate an objective standard which can be applied with fairly reasonable uniformity to all classes of owners alike".

These principles were also applied by the court in re: Withycombe Estate. Attorney General of Alberta vs. Royal Trust Company (1945) S.C.R. page 267.

This conception of the real value has been always accepted by the King's Bench Court and the Superior Court.

10 In la Compagnie d'Approvisionnement d'Eau vs. la Ville de Montmagny, 24 K.B. page 416, justice Pelletier said:

> "Dans la cause du Roi vs. MacPherson (10 Exch. Ct. Rep. 208), je trouve une définition donnée par le juge Cassels de la Cour d'échiquier qui me parait excellente. Voici cette définition : "C'est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre réussira à avoir d'un acheteur qui n'est pas
> 20 obligé d'acheter, mais qui désire acheter."

This is known as the willing buyer, willing seller formula, on which the parties and all jurisdiction seem to be in accordance.

— XI —

All Elements of value must be considered.

30

The practical application of these principles encounters certain difficulties not as a general rule but because of exceptional cases.

As said by the Superior Court in Audet vs. Cité de Lévis, 30 R.L. n.s. page 406:

> "A première vue "valeur réelle" ou "actual value" semblerait être une expression non équivoque, mais l'expé-
> 40 rience démontre qu'il est très difficile quelquefois de savoir comment lui donner effet."

In Canada Cement Company vs. Montreal East, 25 K.B. page 411, Mr. Justice Guérin quoting Am & Eng. Ency of Law, vol. 27, p. 697, under the heading Methods of valuation, — Elements of value; said:

> "There exist in fact no rigid rule for valuation, which is affected by a multitude of circumstances which no rule can

forsee or provide for. The assessor must consider all the circumstances and elements of value and must exercise a prudent discretion in reaching a conclusion."

The courts in matters of assessments generally have to deal with the three following classes of property:

10 1o. Ordinary properties, as flats or duplexes, for which there is always a supply and a demand and a more or less steady flow of transactions;

2o. Special properties, as Head-office of Banks, insurance companies, public utilities, departmental stores, industries etc. for which there is no supply and a limited demand, and therefore have to be built specially for and by such concerns according to their needs, requirements and specifications for their use and accommodation. There is practically no competitive market for such properties.

20

3o. Properties for which there is no market at all like desaffected factories or plants, no longer operated as such vacant land, in time of depression, etc.

As to the first category, in normal times, the best proof of the value are market data.

30 As said by justice Pelletier in Compagnie d'Approvisionnement d'eau vs. Ville de Montmagny (1915) 24 B.R. page 418:

"Il y a une preuve à peu près sûre et qui à mon avis est la meilleure sous ce rapport; c'est celle des ventes faites par des gens qui possèdent les propriétés en question, et qui trouvent des acheteurs qui achètent au prix que fixe le vendent ou au prix sur lequel le vendeur et l'acheteur s'accordent."

40 Dans la cause de Dodge vs. The King (10 Exc. Ct. Rep. 208) la Cour d'échiquier, dont le jugement a été confirmé par la Cour suprême, a trouvé que cette preuve était la plus satisfaisante possible, et la même chose a été sanctionnée dans plusieurs autres jugements."

As to the properties of the second category, in which we put the Sun Life property, the courts have applied the "other indicia" theory. As to the third category, as there is no ascer-

tainable element of value present or future, this court has applied the "prudent investor theory".

The "other indices theory" provides a valuation of a somewhat synthetic character by the analysis of all elements of value and special circumstances. The valuation is by no means ready made, sacred, rigid or definite and each case requires a
10 particular and special investigation.

The courts have decided that the common method of assessing properties does not apply to immoveables difficult to sell in the usual course of busines such as large buildings for factory purposes etc., in such cases, other criteria should be applied as the estimated cost of construction or of the replacement etc., and that a judgment should be based upon consideration of all the factors of value.

20

In re: Withycombe Estate, Attorney General of Alberta vs. Royal Trust Company, 1945, S.C.R. at page 279, justices Rinfret and Rand said:

"There was no evidence that the Administrator ever offered the property for sale. As to this point, in Montreal Island Power Co. vs. The Town of Laval des Rapides (1935 S.C.R. 304) at page 306, the Chief justice Duff stated:—

30 "Of course, it may be that there is no competitive market at the date as of which the value is to be ascertained. In such circumstances, other indicia may be resorted to. There may be reasonable prospects of the return of a market, in which case it might not be unreasonable for the assessor to evaluate the present worth of such prospects and the probability of an investor being found who would invest his money on the strength of such prospects; and there may be other relevant circumstances which it might be proper to take into account as evidence of its actual capital value".

40

"In the case at bar there was no evidence that the property in question had ever been offered for sale and the commissioner had to reply on the other indicia referred to by Chief justice Duff in the passage of his judgment above quoted".

In the case of Montreal Island, the court was dealing with assessments of bare land and of course the other indicia, of replacement cost and revenue were lacking. In the Withycombe

estate matter, however, there was a built theatre and a revenue, and this court considered as indicia the revenue producing qualities, the conditions of the long term lease, the risk, the cost of construction, the money spent for alterations and improvements, the trend in the locality, the danger of competition and all elements of value disclosed by the evidence.

10 In the expropriation case of The King vs. Halin, 1944, 1 D.L.R. page 627, justices Tachereau, Rinfret and Rand said:

"In order to determine the indemnity to be granted in an expropriation matter, several elements may and must be taken into consideration. Thus, it is permissible for the judge to whom the matter is submitted to examine the purchase price, the municipal valuation, the price paid in the district for similar land, the cost of improvements, the revenue which the property provides, the use which the
20 owner can make of it, the increase in value of neighboring lands, the opinions of experts, and other special circumstances which can help in finding a solution. And when after having examined these various elements, the judge of first instance comes to a conclusion as to which there is no error in law and the amount allowed is justified by the evidence a Court of Appeal will not interfere. That is the jurisprudence that has been established by this Court for a long time and recently reaffirmed in the case of The King
30 vs. Elgin Realty Co. 1943 1, D.L.R. 497, S.C.R. 49, 55 C.R. T.C. 262".

In the King vs. Spencer 1940, 1 D.L.R. page 576, Mr. Justice Angers said:

"One of the main factor to consider in endeavouring to arrive at a fair valuation of a property is the market value. Dodge vs. The King, 1906, 38 S.C.R. 149 at p. 155; The King vs. MacPherson 1914, 20 D.L.R. 988, 15 Ex. C.R. 215. In the
40 present case, however, the evidence discloses that it is extremely difficult, nay, even practically impossible to determine the market value of the Spencer property on account of its size and character. It is not unique in its kind, but it is not at all common. Demands for this type and standard of residential property are very limited.

I may note that the market price is not necessarily a conclusive test of the real value. South Eastern R. co. vs.

London County Council, 1915, 2 Ch. 252 at p. 258; Pastoral Finance Ass'n vs. the Minister, 1914 A.C. 1083 at pp. 1087-8; Cripps on Compensation, 8th Ed. p. 182."

In Crampion Realties Co vs. Montreal East, 1932, 1 D.L.R. page 705, a case of assessment, justice Lemont delivering the judgment of this court said:

10

"For the appellant it was contended that the rule applicable to determine the "real value" of land was as follows:— "It is the price that a vendor who is not obliged to sell and who is not dispossessed against his will, but who wishes to sell succeeds in obtaining from a purchaser who is not obliged to buy, but who wishes to buy".

"this rule, however useful it may be in cases where the property is suitable for general busines purposes and there are buyers for such property, can have no application in a case like the present, where the property, owing to its location or surrounding is restricted in the use what can be made of it, but which when required for a suitable purpose is salable at a high price."

20

In a case of Canada Cement Co. vs. la Ville de Montréal, Est, 35 B.R. page 410, the judges recall the well known principles that the burden of proof against an assessment is on the petitioner and that there is no strict and fast rule concerning the methods and elements in valuing properties.

30

At page 416 justice Letourneau says:

"Il existait nous disent les procureurs des appelantes, une méthode d'évaluation éprouvée et reconnue par les tribunaux; trouver la valeur réelle en recherchant.—

Le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre, réussira à avoir d'un acheteur qui n'est pas obligé d'acheter mais qui désire acheter.

40

Oui, c'est là une base qui eut pu donner satisfaction, mais cette base ne peut valoir que dans un temps où la propriété dont il s'agit peut se vendre, et s'il s'agit d'une propriété susceptible d'être sur le marché, d'être vendue ou achetée. Or, et la chose est admise par les appelants, la propriété

dont il s'agit est à nulle autre pareille et une propriété dont la vente ne pourrait en aucune façon être considérée; du moins à l'époque où l'on en devait faire l'évaluation qui nous occupe. Ainsi, il faut renoncer à cette méthode possible pour ces propriétés ordinaires et qui jouissent d'un marché."

10 In Quebec Appartments Limited vs. Cité de Québec, 1939, R.L. Vol. 45, page 283, justice Prevost said:

"Considérant que les mots "valeur réelle, actuelle, commerciale, vénale" de l'article 212 de la charte de la Cité de Québec jouent le rôle de synonymes et n'affectent en rien le principe généralement suivi en matière d'évaluation municipale, puisque l'évaluation doit représenter la valeur réelle des immeubles et que la valeur réelle n'est autre que la valeur vénale ou commerciale, ou, suivant la

20 règle posée par la jurisprudence, le prix qu'un vendeur qui n'est pas obligé de vendre, mais qui est disposé à vendre, obtiendra d'un acheteur qui n'est pas obligé d'acheter, mais qui déside acheter;

Considérant, cependant, que la méthode d'évaluation suggérée par cette règle ne s'applique pas aux immeubles qui ne *sont* pas susceptibles de vente dans le cours ordinaire des affaires, comme l'édifice de l'appelante: Canada Cement

30 Co. & al vs. la Ville de Montréal Est, 35 B.R. 410; Grampian Realties Co. vs. Montreal East (1932, 1 D.L.R. p. 705).

Considérant que la Cour du recorder, en statuant sur le litige, a fait une sage appréciation de la preuve, et qu'un tribunal d'appel ne doit réformer les conclusions adoptées par une cour de première instance en matière d'évaluation, que dans le cas d'erreur de droit ou d'une méprise évidente dans l'appréciation de la preuve".

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In a case of Lounsbury Co. vs. Bathurst 1949, 1 D.L.R. page 71, the New Brunswick Supreme Court, appeal division, Harrison J. said:

"In arriving at such a valuation assessors have the right to consider not only the selling value of the property in question and of similar properties but also the actual cost of construction, replacement cost, depreciation, revenue-

producing capacity, location and all relevant local circumstances."

We also cite: Bishop of Victoria vs. City of Victoria, 1933, 4 D.L.R. page 524, and the Minesota Case reproduced: Joint Case, vol. 5, page 1137.

10 The parties and the lower jurisdictions are all in agreement that the following methods of finding or coming as close as possible to the real value are generally accepted:

a) A recent free sale of the property itself where neither the condition of the property nor the market have since changed;

b) Recent free sales of identical properties in the same neighbourhood and market;;

20

c) Recent free sales of comparable properties;

d) The price which the revenue producing possibilities of the property will command;

e) The depreciated replacement cost.

It is evident that in the present case only two of these five approaches can be considered in arriving at a valuation which can 30 be applied to the Sun Life property. As said by the judge of the Superior Court, Vol. V, page 993.

"The first three clearly cannot be used".

The parties and lower courts are also in agreement that the real value or rental value reflected in a roll in normal times must be the value existing at the date of the deposit of the roll, and not the value which may have existed in the past or which may develop in the future.

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Daoust vs. Ville de Beaconsfield et Peloquin, 26 R.J. 341,
Lacroix vs. Cité de Montréal, 54 C.S. p. 130.
Pigeon vs. Ville de Montréal Nord, 59 C.S. p. 143.

We conclude from the several judgments above quoted that the assessor must seek to find the exchangeable value, but that when there is no sale of the property in question or of

fairly similar properties, all other indicia, elements or factors of value must be considered and weighted.

This is exactly what all the jurisdictions have done so far.

Mr. Honoré Parent, in his Montreal Real Estate Valuation
10 Manual, drafted jointly with Mr. Hulse, Chief assessor for the assessors of the City, 1941 Ed. page 11 to 57, developes the very same principles.

The assessor Vernot, corroborated the chief assessor, Vol. III, page 556, when Mr. Hulse said, Vol. II, page 242, that it is generally understood that every element which might influence the value of a property must be taken into consideration in arriving at the value of that property, that however in dealing
20 with the question he and Mr. Parent in the Manual have condensed these elements into four principal points; purchase price, market price, revenue of the property and replacement value and that if in a particular case certain of those elements are not utilizable, the others are used and if but one is available, everything possible is drawn from it.

The Board of Revision has adopted a similar view, Vol. V, page 983-A-5:

30 "Now the words "valeur réelle", "actual value" of Art. 375, paragraph 3 of the Charter of the City of Montreal are not defined, their interpretation being left to the discretion of the assessors, in each particular case. Lawyers and experts in real estate have found here a field wide open to their explorations from both a theoretical and a practical standpoint. The coupling of the word "real" with the word "value" indicates that real value is a fact, not an hypothesis. Because this conception of real value is overlooked or ignored, the means, the elements to deter-
40 mine the said real value are often taken for the value itself. Such elements are unlimited in number. They vary "ad infinitum" as the cases. There is no fixed rule to determine in what proportion every element must be taken into account and what importance should be given to any element in particular. The same element may have more importance in one case than in another. The law imposes on the assessor the duty of finding the real value of an

immoveable and of inscribing it on the roll, but does not in any way put any limit to the assessor's discretion in considering all the elements he thinks it advisable to consider in exercising his judgment and arriving at a decision."

Again at page 983-A-22:

10

"The stereotyped formula which is so frequently quoted: "la valeur réelle,, est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre, réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui désire acheter "does not constitute a complete definition of the real value, but is merely a qualification of one of the numerous elements which may help in determining same. This sentence is not limitative. It does not mean that real value is only that. Furthermore, it has its application to ordinary and current cases of immoveables which can easily be put on the market, but cannot be applied rigourously to a property like the Sun Life which is definitely an unusual one."

20

The Superior Court said about the same thing. Vol. V. page 992:

"There is a wide divergence in the view of the parties as to what method or methods of approach should be adopted in order to arrive at the "actual value". They are in agreement that the following methods or finding or of coming as close as possible to the real value are generally accepted:

30

"(a) A recent free sale of the property itself where neither the condition of the property nor the market has since changed.

40

(b) Recent free sales of identical properties in the same neighbourhood and market.

(c) Recent free sales of comparable properties.

(d) The price which the revenue producing possibilities of the property will command.

(e) The depreciated replacement cost."

Only two of these five approaches can be considered in arriving at a valuation which can be applied to the Sun Life property. The first three clearly cannot be used."

Page 993:

"It cannot be seriously contended that these five approa-
10 ches are limitative and every angle tending to establish the worth of a property should be considered. The value at which the property is shown on the books of the Sun Life and as declared by it to the Superintendent of Insurance should be given consideration as having an indirect bearing on the value and previous assessments by the City should also be taken into account."

Page 995:

20

"These cases all more or less follow the principle that the real value is the price which a seller who is not obliged to sell and who wishes to sell could get from a purchaser who is not obliged to buy and who desires to purchase. This is known as the "willing buyer — willing seller" formula. The difficulty of applying this formula to a property of the nature and size of the Sun Life can well be understood."

30 Page 1000:

"The court considers that for a property such as that of the Sun Life both the depreciated replacement approach and the commercial approach should be considered even though the valuations arrived at show a considerable variance."

The King's Bench Court shares the same opinion, Vol. V, page 1028:

40

"CONSIDERANT qu'il n'y a pas de règles de droit qui édictent la manière de procéder à l'évaluation des immeubles, à part celles reconnues par la jurisprudence et d'apès lesquelles l'évaluation doit tendre à établir une valeur qui réflète autant que possible le prix qu'un acheteur paierait sur le marché libre, et être faite de manière à amener une juste répartition de l'impôt; ....

....

"CONSIDERANT qu'il est reconnu que pour déterminer la valeur réelle des immeubles, il y a lieu de tenir compte: 1. des indications du marché; 2. de la valeur de remplacement; et 3, de la valeur économique de l'immeuble, établie en capitalisant les revenus que cet immeuble est susceptible de produire;"

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XII

Real value means value not only to the buyer but to the seller and the public.

The Appellant so far had advanced many theories before the lower jurisdictions all tending to show that real, market, or exchangeable value means value to others, not to the owner, 20 and that, therefore, only the revenue would attract a prospective buyer.

Mr. Lobley has contended that a valuation cannot be arrived at without imagining a change of proprietor, that qualities which are imparted to a thing by the owner but which cannot be transferred to another along with the thing, do not affect the value of it, that any profitable use which the owner makes of the thing does not increase its value, that it is the use which can be made of the thing by others which determines the value and 30 that, therefore, replacement cost is not a mesaure of value.

MM. Lobley and Simpson have both concluded that with this theory of an actual sale a prospective buyer would consider the revenue alone. Messrs. Perreault and Archambault have assumed a strictly commercial use for the Sun Life Building, ignoring its present use and found a value as if all the building was rented piece-meal to ordinary tenants.

40 At the bar, it was contended that there is always a market at a price, and so long as the statute calls for the determination of that market value, one has to imagine an auction at the date of the assessment and the last bid will be the real value whether or not the owner would consent to sell its property for that price and even if he was ready to bid a far higher price for it.

Our contention is that the exchangeable value must be the result of a meeting of minds between a buyer and a seller otherwise, it is no more "the willing buyer, willing seller formula", it would be the willing buyer at his price formula.

Obviously going-concern, sentimental or speculative value must be eliminated from the real value but that does not mean that special buildings built and occupied by their owners must be assessed on the basis of a presumed use to others.

In this Montreal Island Power Case, chief justice Duff said:—

10

> "These assessment provisions like other assessment provisions, contemplate an objective standard which can be applied with fairly reasonable uniformity to all classes of owners alike."

Mr. George L. Schmutz in The Appraisal Process, 1948 edition, page 3, says:—

20

> "Briefly, the objective value of a thing is its cost of creation, whereas the subjective value is the price people will pay for it irrespective of its cost."

Actual value must reflect an objective and subjective standard.

The same author at pages 10 and 11 of his book develop the principle of substitution as a guide for the assessors.

This principle is defined as follows:—

30

> "One of the most important of all valuation generalities is the principle of substitution, which affirms that when property is replaceable its value tends to be set by the cost of acquisition of an equally desirable substitute property (or income)."

As to properties there can be utility and desire, for use, for income or profit or for pride of possession or distinction etc. Properties which are put up for use, pride and distinction must bear their proper share of taxation, so long as they serve the purpose for which they were erected. This is achieved by considering the replacement value as an element of value as well as other factors.

40

Mr. John A. Zangerlee in his Manual Principles of Real Estate Appraising, page 257, gives a definition of market value which we find very complete and which if adopted would eliminate many false theories of assessments:—

"By "market value" is meant the fair and reasonable cash price which could be obtained in the open market, not at a forced sale or under peculiar circumstances, but at voluntary sales as between persons who are not under any compulsion or pressure of circumstances, and who are free to act or, in other words, as between one who wants to sell and is not compelled to do so, and one who desires to pur-
10 chase and is not obliged to do so. The value is that for any and all uses, present and potential, *the value not only to the buyer but to the seller and the public*".

In England, the same principles are applied to find the rental value. Vide Wilton Booth on Valuations for Rating, Fourth Ed. 1947, at page 36.

The case of *Rex vs. London School Board* (1886), 17 Q. B.D. 738 is quoted.
20

In that case Bowen L.J. said: "The case cannot fairly be decided, on the hypothesis that the one person who wants the premises most would not take them".

Fry, L.J. stated that "the gross value to be ascertained was: "the annual rent which any tenant might reasonably be expected to pay any landlord, and the actual owner and occupier are not excluded".

30 We also quote "The Modern Law of Rating" by E. M. Konstam, 1927 Ed. at pages 127-130:—

"The Hypothetical Tenant". — Value is not a concrete thing: nor is there any rule by which it can be exactly measured. It must always be estimated; and the value of anything at any given time depends on the conditions of the market for that thing at that time. In order to estimate the rent at which he hereditament might be resonably expected to let to a tenant from year to year with a
40 prospect of continuance (m) subject to the undertakings by the tenant as to payment of rates, etc., and by the landlord as to payment for repairs, etc., which are predicated by the definition of gross value (n), it is necessary to acertain what is the market for such a tenancy at the time of valuation; and to assume such a market — if none exists — though it may contain only one bidder, the actual owner (e). Every tenancy agreement made between stran-

gers is the subject of negatiation between the prospective landlord and tenant, the tenant taking care to pay not more that he reasonably considers he can afford, the landlord to obtain as much as he can reasonably expect to get. The definition of gross value rests on the assumption that such negotiation takes place; in applying it, it is necessary to consider "all the existing circumstances . . . which would
10 reasonably influence the parties to a negotiation for a tenancy as to the amount of rent to be asked or given" (p). The supposed tenant who is a party to the bargain is commonly called the hypothetical tenant," the supposed landlord the "hypothetical landlord." The former expression is used more frequently than the latter, because where an actual rent does not exist, or, if it exists, afford insufficient guidance, the first consideration is, doubtless, how much rent could a tenant reasonably afford to pay for the advantages of the hereditament (including its capabilities
20 for the making of profits (q), remembering that he has to pay tenant's rates and taxes, with the rentcharge, if any, and other outgoings. *Nevertheless, the hypothetical landlord cannot be left out of sight as a party to the bargain; to do so would be to reduce the inquiry, and the definition of gross value, to an absurdity; for a hereditament cannot be reasonably expected to let at an adequate rent unless the landlord is assumed to require such a rent* (r). . . . .

30 *The actual occupier must be regarded as one of the possible bidders in the market for the hypothetical tenancy,* event though he be himself the owner of the hereditament and where the occupation of the hereditament by the owner himself or by another person who will carry out his requirements) is necessary to the owner, he must also be so regarded, though another person happens in fact to occupy it as his tenant (x). *It may often be the case that the owner is the only person who can reasonably be regarded as a possible tenant,* and in such a case it is not legitimate
40 to assume a competition which does not, or cannot legally exist (y). Nevertheless, there is no rule of law which prevents the gross value of a house or part of a house which is within the scope of the Rent Restrictions Act. 1920 *from being fixed at a larger sum than the landlord can recover as rent."*

XIII

The Court of King's Bench has rightly confirmed the Board of Revision's figures concerning the reduction on account of the index number.

10

We have previously seen that the valuation of all property in Montreal was made on December 1st 1941 on the basis of replacement cost which existed from May 1st 1939 and May 1st 1940, an index number of 109. We have also noted that the assessor, having at hand the total amount spent for the main building, but without having the amounts spent annually, assumed that the whole building had been built between 1927 and 1930 when prices were very high, at an average index figure of 116.7. In order to pro rate the amounts he substracted 7.7%, or 20 $1,471,344.

The Board of Revision having the admitted figures for the sums spent annually weighted the annual figures of amounts expended with the index figure for the specific year concerned, as compared with the index of 109 in 1939-40. As, at certain periods the building price index was very low, the Board only deducts $181,503.32, by perfectly scientific and exact figuring, making a difference of $1,289,840.68 with Vernot's figures.

30 The Superior Court accepted Vernot's figures stating that it could see no reason or logical explanation for the Board's action and on this count deducted 7.7% or $1,475,865.87.

We should point out here that about 35% of the building had been built and completed prior to 1927. According to the admissions of both parties (Vol. 1, P. X), more than $4,200,000. had been spent prior to 1927 and more than $4,700,000. was also spent after 1930 to complete and finish the upper storeys. Between 1927 and 1930 the construction of the tower or higher 40 portion (walls and floors) had been completed but the interior was not finished nor were the partitions made. Before 1927 and after 1930 building costs were generally much lower than between 1927 and 1930. In the examination of the joint case (Vol. 1 ,page X) the company gave details of the amount spent for building year by year from 1913 to April 30th 1941. It added $58,713.70 spent between April 30th and December 1st 1941, the date of the roll, (Id. p. VII, statement 4) which the assessor had not taken into account.

The valid reason and logical explanation are easy to give. Vernot took it for granted that all the building had been done between 1927 and 1930 in a period of very high prices while in reality the building began in 1913 and was still going on in 1941. Vernot did not have the exact details contained in the admitted statements and had to rely on approximations. The Board basing its decision on the annual expenditures as shown in the admis-
10 sions, with the index figure for each year, arrives at an exact estimate. There are in the record three tables of index figures from 1913 to 1941, all drawn up by experts of the City and based on information furnished by the Federal Government. These index figure tables are not contradicted by the Company.

The first table prepared by Messrs. Desaulniers and Mills, is in the joint case (Vol. 4, p. 776). This table is based on three documents received from the Federal Government's Statistical Bureau, Vol. 4 of the record, pp. 753, 754 and 677. With this table
20 they have adjusted the amounts spent annually, taking into account temporary partitions, walls and floors demolished and sidewalks, and the result of their calculations are found in Vol. 4, pp. 776, 778 and 779, making a reduction of $321,954.34. They took as a basis the 1939 costs instead of those from May 1939 to May 1940, and took 25% for work and 75% for labour, which explains the difference between them and the Board of Revision.

Mr. Perry has also his own index table and an adjustment of the amounts spent. This expert relies on the average prices
30 between the full years 1939-1940. As we well know, at the end of 1940, prices had risen by appreciable amounts. The results are shown in Vol. 5, pp. 902-3. He finds that the amounts spent by the Sun Life should be increased by $237,525.

Also the City's Technical Division has its own index table, applied to all ratepayers. This is found in Vol. 4, p. 678. In the same volume, p. 680, the Technical Division readjusts the amounts by deducting the sums substracted by the assessor, for sidewalks, temporary partitions, walls and floors demolished, pro rata from
40 1913 to 1930 and comes to the conclusion that the amounts spent should be reduced by $181,502.76, to bring them to the level of prices prevailing from May 1939 to May 1940. The Board has adopted this figure, almost to the cent.

Assessor Vernot acted to the best of his knowledge with the information which he had at hand but the Board had precise details of annual expenditures and index figures. It could not do otherwise than to adopt what had been admitted and proven without contradiction.

Once the Superior Court had adopted the principle of taking the amounts spent annually by the Company as given in the admissions, and the other principle of adjusting the expenditures according to the index figure, it could not logically set the proof aside and reverse the figure shown by the Board. We humbly submit that this point is clear and easily undersood in view of the proof and the attitude taken by the Superior Court.
10 It is therefore with good reason that the Court of King's Bench reaffirmed the judgment of the Board of Revision on this point.

XIV

The Superior Court was wrong in allowing 14% for additional depreciation due to "Excessive cost."

20 The Superior Court considering the Sun Life building as a strictly commercial building, has deducted 14% as additional depreciation for "special features and ornamentation which do not add to its commercial value and which can never be reflected in a sale price". Vol. V, pages 1005 to 10018.

The items deducted are as follows:—
Limestone could have been used instead of granite.

Excess cost of plain granite	$ 840,000.
30 Ornemental freatures in granite instead of limestone.	
Excess cost of granite	952,000.
Reducion in ornamental stonework	200,000.
Steel sash could have been used instead of bronze and good ordinary glass instead of Vita Plate	530,000.
Bronze doors, etc. instead of steel doors	144,000.
Marble floors instead of terrazzo	173,000.
Marble walls instead of plain plaster	310,000.
Decorative and ornamental finish in banking hall instead of ordinary construction	399,500.
40 Toal	$3,548,500.

To this amount the judge adds the architect's fee of 5%, $177,425. making in all $3,725,925.

At Vol. V, page 1007, the court said:—

"This amount of $3,725,925. represents additional and extravagant cost, incurred in constructing this monumental

and extravagant building instead of the usual type of fine qualiy first class building."

Further at page 1010, the court adds:—

"The court considers that in dealing with the replacement approach the extra cost of $3,725,925. for granite, ornemental stone work, bronze sash, bronze doors, etc. should be taken as an important fact. Consequently an additional depreciation of 14% should be allowed for this entire cost, i.e. $2,352,932.70. This additional 14% allowed for depreciation, takes into consideration the index figure and the 5% extra allowances which entered into the gross amount."

This sum of $3,725,925. depreciated by 14% for physical depreciation, by 7.7 by the index cost, by 5% due to construction in three stages, leaves around $2,720,000. But as the judge has adopted the estimate of Mr. Perry who finds a replacement value for higher than the figures adopted by the City, it may be said that the Superior Court in taking that additional depreciation of $2,352,932.70 has left absolutely no value for those 7 items and part of the eighth.

The answers to this question are:

1o. That those items add to the beauty and to the permanence of the building;

2o. That if the replacement cost is adopted as a factor it must be the replacement cost of the actual building and not of an imaginary one;

3o. That all those items are amenities for the owner, the Sun Life;

4o. That neither Mr. Perry nor Messrs. Desaulniers and Mills contended that those items were of no value.

In using the expression "excessive cost" in connection with the replacement cost of a building, just what is meant? Do we mean a cost in excess of the cost of an inferior building, or do we mean there has been included an amount for waste and leakage that have occurred in constructing the building and that it has cost more than it should have cost? Since no proof has been made of waste expenditure in the case of the Sun Life Building, the expression must be taken as meaning that it has cost more than

an inferior building, with the implied conclusion that the replacement cost of the latter should be substituted for the replacement cost of the actual building under consideraion.

There is no justification for such a conclusion, which is a flagrant *non sequitur*. If one man buys a suit of clothes for $100.00 and another a suit for $50.00, both prices representing the market 10 price for the article purchased, can it be said that the replacement cost of the $100.00 suit is only $50.00 because presumably they will serve equally well in protecting the wearer? Are quality and durability to be taken into account? Does not even appearance count for something, does not style, does not beauty, which in all human affairs carries a premium over ugliness or even mediocrity? The very enunciation of the proposition carries with it its own refutaton.

To return to the argument of excessive cost with regard to 20 buildings, let us consider one item only. It is said that a building could be constructed of limestone at less cost than of granite. Could it not be constructed of brick at less cost than of limestone? Could it not be constructed of wood at less cost than of brick? In our search for cheaper materials where would we stop and what would we have? We would certainly not have the original building, its stability, its durability, its life expectancy, and consequently its continued earning power, its appearance, even its beauty. The proposition is too ridiculous to dwell on. In considering the replacement cost of a building, we must take that of the actual building, 30 and not that of a hypothetical building inferior in all respects.

Mr. Fournier, Vol. II, page 298-299, says that he has taken a low rate of depreciation owing to the fact that granite and bronze depreciate very slowly and require a minimum of maintenance.

Mr. Lobley, Vol. I, page 43, Mr. Archambault, Vol. I page 179, Mr. Cartier Vol. II, page 277, all recognized that owing to the 40 quality of materials used, and specially granite and bronze, the life of the building is extended, its beauty enhanced, and its maintenance reduced.

To have built such a building with limestone would have been an error.

The judge of the Superior Court deducts $1,052,000. for outside ornemental stonework, ($952,000. to make it in limestone instead of granite and $200,000. for excess of ornementation.)

Limestone is much affected by rain and frost and it is bad practice to make columns and ornementation out of it.

If such ornementation did not exist or was made of limestone, it would not be possible for the company to say what it said in exhibit D-20 speaking of its building:—

10 "Of classical architecture, the Corinthian order finds expression in the massive colonnades which form the principal feature of the main facades. The emphasis of the horizontal and the general proportion of the mass which, observing the elements of classic precedents, give the building a monumental character in keeping with the enduring dignity of the great institution of Life assurance and the organisation it houses."

The vita plate is a glass through which X Rays pass for 20 the health and enjoyment of the occupants of the building.

As to the banking hall, it is quite a necessity for an institution such as the Sun Life.

Again in exhibit D-20 the Appellant writes:—

"This attains nobility of expression in the Great Hall. The columns and arch, forming the entrance, as well as the large columns in the Hall itself, are executed in green Syenite,
30 while the contrasting roses, blacks and greens of marbles, comprising the walls, pilasters, floors and bases, blend artistically, diffuse lighting, revealing the gold leaf of cornice and ceiling, illuminates the whole and softens the general effect."

The banking hall surely adds to the value of the building because even the experts of the Company fix a rental value of three times the rate of the space for the ordinary floor.

40 The judge of the Superior Court makes reference to the Minnesota case to justify his additional depreciation. In that case, the assessment was made on replacement value alone as being the only factor available. In the present case both the replacement value and the economic value are blended. As explained in the memorandum of the assessors, when a property is assessed by the replacement factor all indicia of lesser value must be substracted from it. In this case as the economic value is blended with the replacement value, the replacement factor has to be taken for the

existing building, as otherwise the same reduction would be used twice. The replacement value is always figured on a building as it stands and not on an imaginary creation which nobody has ever seen and will never see. If the quality of materials or ornmentation does not add to the value of the space for ordinary location this will be reflected and considered in the commercial or economic value.

10

Messrs, Perry, Desaulniers and Mills have never said or implied that the several items deducted by the Superior Court did not add any value to the building.

Mr. Perry said Vol. II, page 346:

"That value stands for the Sun Life"

At page 350 he adds:

20

"But there is a considerable part of the building that represents value in expenditure and value as it stands that is of use only to the Sun Life Company and the money was spent for that particular purpose to give the company the kind of office building they wanted."

Messrs. Desaulniers and Mills at Vol. IV, pages 798-799 explained why they asked Mr. Perry to evaluate the cost of specialities built exclusively for the use of the Sun Life and of other
30 items which may be classified as amenities for the company. They have made an appraisal of the rental value of the whole building but find $4,618,500. of features in the building to be classified as amenities to the Company and $2,434,000. of extra cost of finishing certain units of owner occupied space. Vol. IV, pages 803 to 805. From this they say that since amenity income is intangible and not measured by ordinary standards, it cannot be capitalized and to capitalize only the money part of the income would reflect a false value. Therefore they conclude that the property cannot be assessed on a revenue basis, being a non investment proposition.
40 Vol. IV, pages 798-799.

Nothing in the evidence of Perry, Desaulniers and Mills Justifies the Superior Court in saying that the eight items deducted have no value.

We submit that the King's Bench Court was right when it said, Vol. V, page 1030:—

"Considérant qu'après avoir établi le coût de remplacement comme susdit, le premier juge en a déduit 14% par le motif que l'emploi de certains matériaux ainsi que l'ornementation du bâtiment avaient augmenté le coût de celui-ci sans cependant ajouter à sa valeur au point de vue commercial; et que dès lors il apparaît que l'édifice dont la valeur de remplacement a été ainsi fixé par la Cour supérieure n'est pas celui de la compagnie mais un édifice imaginaire qui n'aurait ni le caractère ni la qualité du premier. . . . "

XV

The King's Bench Court was right in restablishing the proportion of replacement and economic value adopted by the Board.

The assessor Vernot took 10% of his economic value and 90% of his replacement value to come to the real value, the Board of Revision 17.7% and 82.3% and the Superior Court 50% and 50%

The Superior Court after having approved the action of the assessors and the Board in blending the two-factors says Vol. V, page 1013 that they have "adopted a peculiar method in its endeavour to corrolate the two."

The Method used by the assessors and by the Board is the one set forth and explained in the "Memorandum" of the assessors.

The judge said Vol. V, page 1020:

"The Court does not criticise the assessor for following the memorandum of 1940 concerning the assessment of certain large properties in order to arrive at a uniformity in the valuation of properties in the City, which was intended as a guide. It does however question the percentage allotted by Vernot and by the Board."

The reason given by the judge is that he has considered the Sun Life Building as a commercial building. He quotes Mr. Lobley when he says that the Sun Life Building is "absolutely a commercial building" with the result that he applied rule 1 of the memorandum instead of rule 3.

It is to be remembered that according to the Memorandum properties that are developed and operated solely on a commercial basis as investment propositions, for the reasons given, are assessed in giving equal weight to the replacement cost and economic or commercial value; that properties completely occupied by their owner constructed for that purpose or acquired with that object in view, are assessed on the current replacement
10 value less depreciation and obsolescence if any; and that properties partly occupied by their owners have to be considered on their respective merits and assessed so that the replacement factor be weighed somewhere between 50 and 100%, the economic factor making up the difference between 50% and zero depending on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design, or to the enhanced prestige, etc.

We have also seen that all the special properties in Mont-
20 real have been assessed according to the directives of the memorandum as indicated by exhibit D-6, Vol. IV, page 697.

All the jurisdictions so far have approved the principles of the "Memorandum" as being fair and the result of good faith, practice and experience.

There remains to be demonstrated that the Sun Life Building is not absolutely a commercial building developed and operated solely on a commercial basis as an investment proposition
30 but a semi-institutionnal building primarily built for its own use and therefore to be classified in class 3 of the memorandum and not in class 1, as is done by the Superior Court, the replacement factor dominating the economic factor.

The Company in its leter to the City, Vol. IV, page 717 says:—

> "I wish to emphasize that the figures given above are
> 40 gross figures before depreciation and that they also include architectural features and embellishments and other items for large amounts which in our opnion, are not taxable."

The judge of the Superior Court admits the fact that the Sun Life Building is not an ordinary commercial building when (Vol. V, page page 1007) he takes out an amount of $3,725,925. for bringing the building to the standard of a first class office building.

Further he adds: Vol. V, page 1011:—

"In allowing this additional 14% for depreciation the Court has not taken into consideration the excess cost of the hospital, auditorium, kitchen and cafeterias services and private elevators as they all form part of the special services enjoyed by the Sun Life, although adding little to the actual value of the building."

10 This enumeration is not complete. According to Mr. Perry, Vol. V, page 895, we must add as special, the expensive vaults, and according to Messrs. Desaulniers and Mills, Vo. IV, pages 803 to 807, the amenities resulting from the height of the floors, the style of the building, the exterior and interior ornamentation, the exclusiveness of materials and workmanship, the Banking Hall, etc. . . .

One can also find in the building bowling-alleys, billiard-rooms, a printing room, services to bring to the same place all 20 the correspondence of the company's departments, the refrigerating rooms, extensive filing accommodation, etc.

At Vol. IV, pages 770-771 is found a long description of all the specialties of the building by Darling and Pearson, the architects for the construction.

The concluding paragraph reads as follows:—

30 "From the number of large units mentioned and the diverse character of their requirements, it is possible to visualize to some extent the highly involved plan layout which had to be worked into one comprehensive whole. When, in addition, it is remembered that the dominating character of the design was necessarily strict classic, requiring absolute symmetry and balance, it will be seen that this was no ordinary problem of plan and design."

Mr. Simpson, an expert for the Appellant, admits that 40 the Sun Life Building is a special one built for the needs of the company, Vol. I, pages 81 and 88.

"They must have designated it for their own use. They must have designed it for the purpose they wanted, for their own use. If they wished to derive as much revenue as possible from it, they would not have designed it that way.

The building was designed to have a massive or imposing appearance, and in order to get it they sacrificed somehow the utility of the building."

If we refer to the Engineering journal produced as exhibit D-1, we find much praise about the beauty and the strength of the building and it is said, page 22:—

"It will be justly numbered among the finest in the world."

At page 144 the president of the Sun Life inviting the
10 engineers of the Dominion in a convention to visit the building, proudly said:—

"Our new Head Office Building which stands as a monument to the skill of the engineers, architects and artisans of our great Dominion."

Without going further with the description of the beauties and qualities of the building, we quote the following words from the Superior Court, Vol. V, page 995:—
20

"The Sun Life Building has been described by the various witnesses as monumental, collossal and unique and different from any other building in Montreal."

It is worth remarking that the assessor and the experts in fixing the rental value of the space occupied by the Sun Life Co., calculated its value on the same square foot basis as the rented space. Had they attempted to place a value on the amenities attaching to the Company space, the result could only be an arbi-
30 trary figure. As a result, the economic value is derived from a rental value which is incomplete in that it does not reflect all the value enjoyed by the Sun Life Company. This rental value is fixed in assuming a use for the entire building which is not its actual use.

It is for that reason that Messrs. Perry and Fournier contended that the building must be assessed on a straight replacement value factor. Messrs. Desaulniers and Mills have adopted the very same view when they said that their rental value
40 did not reflect the amenities to the Sun Life and that the capitalization of same gives a distorted result. Having to weight all the factors of value they discarded the economic value to deduct a figure of 15% from their replacement value, to take care of some over improvements, etc.

As the cost of providing these amenities is reflected in the factor of replacement cost, the blending of the factors takes care to a considerable extent of these items, although the fact

remains that the discrepancy between the two factors would not be so great if a proper rental value was placed on the Sun Life occupancy.

For every special building such as head office of a bank, a telephone or public utility company, a store, a factory etc., the current replacement cost less depreciation and obsolescence tend 10 to be the market price as long as the building serves the purposes for which it was erected.

A company is in need of a building in its desire for use, utility and prestige. Obviously, there is practically no such property on the actual market. There remains only one alternative, it is to built the building it desires. What is the difference between buying such a building from a contractor or from another party. The price paid for it to a contractor is the market price of such a building. Or else, if a stranger is called upon to built such a 20 property for the company, he will require a long term guaranteed lease with a rent sufficient to bring him let us say, 10% gross on his actual expenditure during a sufficient number of years to reimburse the replacement cost less the land and the salvage value if any. The rent is fixed once and for all.

When the Sun Life Company decided to spend $23,000,000. for its building it decided at the same time that in 1941 it would cost it about $1,900,000. to occupy it, plus its operating costs, less what it might receive in rentals. The net rental value which the 30 Sun Life set down at the start was fixed for the lifetime of the building. Rented space, in varying proporions, at higher or lower rates established by competition, can not appreciably affect the rental which the company considered it wise to assume. If the building is not rented at all, its rental is the whole of the return on its investment, or 10.7%, together with required operating expenses. Taking this real rental, paid, provided for, accepted, and capitalizing it at 10.7%, we would still obtain the replacement value and the difference of 100% between the economic and re- 40 placement values would cease to exist.

On the contrary when a financial concern builds a building as an investment in view of revenues and dividends, it tries to keep the cost as low as possible, and to provide as much as possible standard accommodation for which there is a steady demand on the market and competitive prices paid.

All those considerations are plainly expressed and reflected on a practical and workable way in the memorandum of the assessors.

At Vol. IV, pages 597 to 702, we see that the owner occupied special buildings of the Bell Telephone, The T. Eaton Company, the Bank of Montreal, the Royal Trust Co., La Presse, Dominion Textile, Montreal Tramways, Imperial Tobacco, Canadian Pacific Railways, Morgan, Canadian National, etc., are all assessed on a 100% replacement cost basis.

10 It is admitted that the company was occupying at the date of the assessment 393,233 square feet and the tenants 279,000. There was also 27,831 s.f. of unoccupied finished space and 77,708 s.f. of unfinished space and 2,908 s.f. occupied in common by the company and tenants.

Relying strictly on the admissions and without considering the vacant or unfinished space 393,233 s.f. owner occupied as against 279,000 s.f. occupied by tenants gives a percentages of 58.5 owner and 41.5 tenant occupancy.

20

By applying rules one and two of the memorandum this would give 79.25% of replacement value and 20.75 of economic value to be reflected in the assessment.

The Board relying also on the admissions and taking the admitted rent charged by the Company for its owner occupied space and the collections from tenants for 1941 and applying rules 1 and 2 of the memorandum finds 82.3% of replacement an 17.7% of economic value to be blended in the real value.

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These figures have the merit of relying on admitted facts and applied and known principles and not on mere guess, arbitrary or rule of thumb opinions.

The assessor Vernot by applying rules 1 and 2 of the memorandum and taking 60% owner occupancy and 40% rented, had 80% replacement and 20% economic as a factor. But owing to the fact that the rental value for the owner-occupied space was fixed on the standards of the rented space, that the Company 40 alone was enjoying the full prestige and advertising value of the building and that furthermore it was occupying the lower floors where the specialities and most of the amenities are found, using rule 3 of the memorandum had used 90% of the replacement factor and 10% of the economic factor to find his actual value.

We will wonder if Mr. Vernot was not nearer to the right figure than anybody else.

Anyway, the Board adopting 82.3% replacement value and 17.7% economic value, came to a real value of $15,051,997.07 but refused to disturb the assessment at $14,276,000. This indicates that even with 75% of replacement value and 25% of economic value, the assessment is still justified.

Now, let us suppose for a moment that the Sun Life Company is obliged to leave its building. According to the admissions, it occupies 393,233 square feet of floor space, in addition to the space it jointly shares or cedes gratis. Mr. Empey, manager of the Dominion Square building, Vol. II, page 397, declares that the whole Dominion Square building disposes of an area of 276,951 square feet only which is adaptable for renting purposes. Mr. Reid, manager of the Royal Bank building, has produced a statement of the areas adaptable for renting purposes in that building. This statement can be found in Vol. V, page 922. The whole Royal Bank building has a rentable area of 229,814 square feet. In short, the Sun Life, when assessed, could hardly accommodate its personnel and its active and inactive files without occupyng the two largest skyscrapers of Montreal. Mr. Harold Mills has proved that the nine office buildings which have been used by the experts of the Company as a means of comparison, with their cubic total of 21,833,088, can all be absorbed in the Sun Life building, the admitted cube of which, with the exclusion of the tunnel, is 22,481,157 cubic feet. Those nine buildings are Thémis, Crescent, University Tower, Drummond, Insurance Exchange, Dominion Square, Canada Cement, Transportation, Medico Dental. Vide Vol. IV, page 710 and Mills testimony, Vol. II, pages 393-394. These different buildings, as can be seen, would suffer from "functional disability" when considered from the Sun Life viewpoint and yet are efficient for ordinary lessees. Furthermore, in its building, the Sun Life can expend at will by way of appropriation of the area presently leased to strangers. The conclusion which seams self-evident is that the area presently occupied by the Sun Life is more valuable per square foot than the area occupied by its lessees and that the building serves the ends for which it has been erected.

The Sun Life building is a new property practically built in 1931 and completed since, in perfect condition as testified by all, and the depreciation of which does not exceed 14%. The Judge of the Superor Court estimates this property at 44.3% of its cost and the Assessor and the Board at 62%. We wonder which of these estimates seems "distorted" or fictitious.

The valuation fixed by the Superior Court is also "discriminatory" and fictitous when compared with the valuation of

the other skyscrapers of Montreal. To make this point, let us establish the following comparisons:

In Vol. I, page 9 of the admissions, we see that the Sun Life building has a total of 22,481,157 cubic feet. See Schedule "B" Vol. I, page XX for the cube of the other buildings.

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Name of the building	*Valuation of the building only on the roll of* 1-12-41	*Cubic content*	*Price per cubic foot*
Sun Life	$13,471,300	22,481,157	59.9
Bell Telephone	2,837,250	4,820,690	58.9
Royal Bank	3,615,800	6,925,618	52.2
Aldred Building	1,500,500	3,259,867	46.
Sun Life By the assessment of the Superior Court	9,403,177.40	22,481,157	41.8

20

It appears from the evidence that the most beautiful, the best and the most expensive of the four buildings is the Sun Life. According to the Superior Court, it would be assessed much less than the three others, which would be illogical and unfair. These four buildings were erected at about the same time.

We humbly submit that the King's Bench Court was right

30 in concluding as follows: Vol. V, page 1029.

> "Considérant que le point de savoir exactement dans quelle mesure chacun de ces éléments de valeur doit être considéré est du domaine des experts parfaitement au courant de tout ce qui peut avoir quelque influence en la matière; et que les membres du Bureau de revision ont toutes les qualités et connassances voulues pour décider cette question;

40

> Considérant, dans l'espèce que les membres du bureau de revision ayant pesé tous ces éléments du problème particulier qui leur était soumis, leur décision de faire entrer la valeur de remplacement pour 82.3% et la valeur économique pour 17.7% dans la composition de la valeur réelle n'eut pas dû être modifiée."

XVI

Other indicia of value derived from previous assessments, book and market value.

10 The judge of the Superior Court Vol. V, page 999, says:—

"The Court cannot ignore the fact that the Sun Life carried this property at a price almost double the value given by its own experts. Not only did it carry it at a price exceeding the valuation now in dispute but in return to the Superintendent of Insurance sworn to under the oath of its principal officers it gave the following valuation (including land)

20

Year	*Book value*	*Market value*
1941	$16,258,050.27	$16,258,050.27

Surely it cannot be contended that the Sun Life would be a willing seller at the valuation placed on it by its experts in applying the "willing-seller willing-buyer" formula. Lobley places it at $7,250,000.00, Simpson at $7,500,000.00.

On the other hand the Board of Assessors of the City of Montreal on the 18th of November 1931, reduced
30 the assessment of the property from $12,400,000. to $8,000,000. and the following appear as the annual assessment from then on:—

Year	*Land*	*Building*	*Total*
1931-32	$733,800.	$7,266,200.	$8,000,000.
....	....	....	....
....	....	....	....
1941-42	733,800.	9,252,400.	9,986,200.
1942-43	730,600.	13,024,900.	13,755.500."

40

and he adds that it is a tremendous increase.

At page 993 he also says:—

"The value at which the property is shown on the books of the Sun Life and as declared by it to the Super-

intendant of Insurance should be given consideration as having an indirect bearing on the value and previous assessments by the City should also be taken into account."

In the balance of the judgment, the judge does not indicate to what extent he was influenced by these two factors but it is obvious that he kept in mind only the previous assessments be-
10 cause his final figure in reality is about the same as the 1940 assessment for the financial year 1941-42.

A — *Previous assessments.*

The 1940 assessment was $9,986,200. and the one fixed by the Superior Court for 1941 is $10,207,877.40, a difference of some $211,677.40. According to the joint admissions, Vol. I, page 7, par. 4 and page 10, the company spent on the building in 1941 $58,713.70, plus $3,959.59, making a total of $62,673.29 during
20 eleven months and for that period of one year the net rental value had gone up by more than $100,000. (Joint admissions, Vol. I, page 25).

This question of previous assessments was exhaustively discussed by justice St-Germain of the King's Bench Court, Vol. V, pages 1071 to 1078 and there is not much which can be added. However, as Mr. Justice St-Jacques (dissenting) Vo. V, page 1091 seems to attach much importance to the 1931 and subsequent assessments up to 1941, the following facts and arguments may
30 be recalled.

It is common knowledge that in 1931 the depression was prevailing and continued for many years. The evidence does not disclose to what extent the conditions were different every year from those prevailing in 1941.

In 1930, the assessment was $7,500,000. and in 1931 it was raised to $12,400,000. and then reduced by the board of assessors to $8,000.000. The evidence does not show under what circum-
40 stances the increase was made and the reduction granted.

On this point we have only the evidence of Mr. Macaulay, Vol. II, pages 211 and following.

In 1930 and 1931 the dispositions of the Charter were different. There were only 8 assessors, who had to prepare between January 1st and September 1st, not only the valuation roll but also the tax roll for the current year. These two rolls were

deposited for September 1st and the assessors had 20 days, including holidays, to hear all the complaints and pass judgment on their own assessments. In a city like Montreal, it may well be understood that the assessors had only a few minutes to examine each case and to form their opinion. Furthermore, only the assessors in charge of the ward were familiar with the property under review. Now the valuation roll is distinct from the tax roll and
10 made every three years, five months in advance of the financial year. An independent Board of Revision has been created to hear the complaints. It is obvious that the Board in 1941, after a month of enquete, was more competent and more fully informed than the assessors were in 1931.

In 1931 the conditions of the building were far different from those prevailing in 1941. According to the joint admissions the second extension was commenced in May 1927 and the structural portion thereof was completed by December 1930. Mr. Per-
20 rault, expert for the company, Vol. IV, page 839, says that the original building had a cube of 1,850,000 cubic feet, the first extension 1,150,000 c.f. and the second extension 18,931,761 c.f. plus 552,300 c.f. for the heating plant built at the same time. In short, about 75% of the cube of the building was built between 1927 and 1931. But if the structural part was finished by December 1930, the inside was not. When the assessors made their roll between the 1st of January and the 1st of September 1931, it was impossible for them to consider the sum of $3,207,452.79 spent during that calendar year. As the structure, outside walls and
30 floors, were completed in December 1930, this sum was spent in inside finishing which was under way. It was impossible for them to take this amount into consideration and furthermore the company was not receiving a cent of revenue from tenants. (Admissions Vol. I, page 25). The money spent was there but the space was not finished, was unproductive and vacant.

McAuslane, superintendent of the building, says Vol. V, page 907, that the cost of standard finishing of four stories was $377,474. Since the company spent $3,207,452.79 in 1931 and more
40 thant $1,600,000. from 1932 to 1941 in finishing space, it may be seen in what condition was the inside of the building in 1931 when the assessors made their valuation. This condition may have been rightly considered at the time when the reduction was granted. Anyway, perhaps their reduction was too drastic but after all it is not their action at the time which concern this case, it is the actual value as of December 1st, 1941.

During the years from 1931 to 1938, the depression was still more pronounced and the company was receiving practically no rent from rented space. Admissions Vol. I, page 25.

In 1937, the rolls were pegged and a new complete valuation ordered by the legislative authority, under the supervision of the Board of Revision. It is to be presumed that such a drastic action was justified by good reasons. Some big assessments were doubled and even tripled in the new 1941 roll and accepted by the owners. The case of the Sun Life is not unique.

10 As may be seen by the admissions, much money was spent by the company in 1939-40 and 1941 in finishing space with the result that the net rentals of $92,440 in 1938-39 had attained $273,640 in 1941-42.

It is obvious that the conditions in 1941 were not the conditions prevailing before. The assessors in 1941 with new assistance, guidance, new supervision, as may be seen by the record, made a more exaustive study of the properties to be assessed and of the general conditions which were not those prevailing for 20 the last ten years.

For those reasons, we submit that the assessments existing from 1931 to 1941 can afford no sound indication of value in 1941 as the objective and subjective conditions were no longer the same.

B — *Book value and declared value.*

By the joint admissions, Vol. I, page 9, par. 16 and schedule 30 F, page 19, is indicated the amounts shown under the respective headings of book value and market value from 1914 to 1941 in the Company's annual general statement and in the Company's returns to the superintendant of Insurance for the Dominion of Canada.

For 1941 those values were as follows:—

Year	*Book value*	*Market value*
1941	$16,258,050.27	$16,258,050.27

40

We attach much importance to those figures as an indication of the real value. They are quasi admissions owing to the fact that they are controled and serve not only for private but also for public purposes, under the dispositions of the Canadian and British Insurance Companies Act, 1932, 22-23 Geo. V, chap. 46, which applies to the Sun Life Company.

In the preamble of the Act, par. 6 and 7, it is recalled that it is in the public interest that the insurance companies be solvent and that it is desirable to provide for a system of returns and inspection and to declare the conditions upon which such companies are solvent or not.

The office of the Superintendent of Insurance for the
10 Dominion is created:—

"By article 5, par. 9.

A general meeting must be held every year, and at such meeting a statement of the affairs of the company must be submitted.

By article 6, par. h.

20 Every holder of a participating policy for $2,000. shall be entitled to attend and vote at all general meetings.

By article 19.

Every director, officer or servant of the company who makes an untrue entry in any book is guilty of an indictable offence.

By article 31.

30

If the directors declare and pay a dividend which diminishes the capital of the company they shall be jointly and severally liable.

By article 39.

The books of the company shall in any suit or proceeding, be against the company or against any shareholder, prima facie evidence of all facts therein stated.

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By article 42, par. (2)

The capital shall be deemed to be impaired when the assets are less than the liabilities calculated according to the requirements of this art.

By article 44 (4).

the word surplus is defined by reference to assets over liabilities.

By Article 48 and following the company shall register with the department of Insurance before doing business, submit a statement of condition and affairs, obtain a permit and renew it every year.

10

By Article 68 the company has power to hold real estate as is required for its actual use or occupation, or as may reasonably be required for the natural expansion of its business.

By Article 69, the president, vice-president or managing director or other officers duly appointed to that effect shall prepare annually under their oaths, a statement of the conditions of the affairs for the minister.

20

By Article 71 any security must be taken in the yearly or half-yearly statement to the minister at the market value.

By Article 72, the superintendent shall:

> d) visit personally or cause to visit the head office of each company at least once every year and examine the statements of the condition of affairs and report thereon to the minister.

30

By Article 73 the minister may make an inspection and inquiry and examine the officers under oath.
Article 74: The report of the superintendent to the minister as to the standing and financial condition of every company is published."

Then we come to Article 75 which reads as follows:—

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> "If upon an examination of the assets of any company, it appears to the Superintendent that the value placed by the company upon the real estate owned by it or any parcel thereof is too great, he may either request the company to procure an appraisement of such real estate by one or more competent valuators, or may himself procure an appraisement at the company's expense, and the appraised value, if it is materially less than that shwon in the return made by the company, may be substituted for the latter in the annual report prepared for the Minister by the Superintendent."

The Provincial Law S.R.Q. 1941, chap. 299, art. 114, 135, 148, 149, 153, 155, 162, etc. contains dispositions to the same effect.

Every year, the Sun Life has had to give to its shareholders and policy-holders a statement showing the value of its building and two of its officials have had to attest under oath the value
10 of same. The superintendent of insurance has had to be satisfied as to the sworn value of the building, has approved it and sent it to the Minister. Both Governments have published these approved figures in public statements. Especially for 1941, the Sun Life, for purposes of its legal reserves, etc., benefited from its building to an amount of $16,258,050.27 in money, not only from the point of view of its shareholders and of the government, but also from that of other rival competitor insurance companies.

It is to be presumed that the Board of Directors as well
20 as the Crown have done their duty. It must also be presumed that, according to law, which is proved, the Sun Life building was erected entirely for present and future needs of the company, otherwise an illegality would have existed.

As a matter of fact, the Company admits that the market value of the building is $16,258,050.27. It is itself which established the price which would have to be paid by a purchaser who would need the property for similar purposes. This does not mean that the Company would be prepared to accept this sum as the
30 selling price but it does mean unequivocally and under a double oath, that the person who would need this property for the same purposes should(in its opinion, pay the sum of $16,258,050.27. This is the price which it would itself be prepared to pay if, were it not the owner, it should wish to buy the same building.

If this were not the import and meaning of this admission, we would have to come to the conclusion that the company has shamefully deceived its shareholders, its policyholders, rival companies and the Government, by submitting as the real value of
40 the property, a fictitious one.

XVII

The "Prudent Investor theory" does not apply.

Honourable justice Casey of the King's Bench Court (dissenting) seems to rely on the "Prudent Investor" theory as formulated on some special cases, to conclude that the prudent

investor would consider only the revenue factor. Vol. V, page 1124.

We humbly submit that this theory does not apply in this case, owing to the fact that the Sun Life property was not offered for sale, is occupied in major part by its owner, with pride and content, an owner who has no intention of vacating it or of put-
10 ting it on the market. Furthermore, there is sufficient indicia of value disclosed by the record without having recourse to the extreme criterium of value indicated by a liquidation.

The Prudent Investor theroy as formulated by justice Indington in the case of *Pearce vs City of Calgary* (9 W.W.R. 669) and followed in some other similar cases, is intended to meet abnormal situations. The court had to assess a big tract of bare land, which had stood on the market at a stated price for a long period of time, without any offer whatsoever and without any
20 immediate prospect for the future. The property was unsaleable "owing to a crisis the worst we ever had known and akin to madness".

The prudent investor theory applies only "when no present market is in sight and no such ordinary means available of determining thereby the value", which is not the case for the Sun Life property.

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XVIII

The judgments of the Board of Revision and of the King's Bench Court are justified by the evidence.

The replacement value is based on the amounts spent by the Appellant as disclosed by the joint admissions.

Reductions are made for sidewalk, temporary partitions, walls and floors demolished for the respective amounts indicated by the Appellant itself in its letter of June 11th, 1941.
40

A further reduction of 5% is allowed for construction in three stages.

The correlation of the amounts spent every year by the index figures is based on the admissions and on the index table of the City, corroborated by the tables of Messrs. Perry, Desaulniers and Mills, which are not contradicted.

The physical depreciation is based on the average depreciation found by the experts.

The economic value is based on the admissions by adopting the rental receipts from tenants and the amount the company charges itself for the space it occupies.

10 The operating expenses are those claimed by the company.

The prorata of importance to attach to the replacement and economic factor is also based on the admissions by weighting the percentage of the amount charged for the owner occupied space and the gross receipts from tenants.

CONCLUSIONS

For all those considerations and the additional ones that 20 may please the wisdom of the Court to supply, we humbly submit that the judgment of the Board of Revision and of the King's Bench Court should be maintained and the appeal of the Appellant dismissed with costs throughout.

Montreal, April 14, 1949.

St-Pierre, Choquette, Berthiaume, Emard,
Martineau, McDonald & Séguin,
Attorneys for the Respondent.

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DOMINION OF CANADA

IN THE SUPREME COURT OF CANADA
OTTAWA

On Appeal from a Judgment of the Court of King's Bench.

BETWEEN:—

SUN LIFE ASSURANCE CO. OF CANADA,

Petitioner before the Board of Revision;
Plaintiff-Appellant in the Superior Court;
Appellant-Respondent in the Court of King's Bench, Appeal Side,

APPELLANT,

— and —

THE CITY OF MONTREAL,

Respondent before the Board of Revision;
Respondent in the Superior Court;
Appellant-Respondent in the Court of King's Bench, Appeal Side,

RESPONDENT.

RESPONDENT'S FACTUM

SAINT-PIERRE, CHOQUETTE, BERTHIAUME, EMARD, MARTINEAU, McDONALD, & SEGUIN,
Attorneys for The City of Montreal.