1945
*May 22
*June 20

HIS MAJESTY THE KING (INTERVENANT) ..... } APPELLANT;

AND

THE CITY OF MONTREAL (DEFENDANT) ..... } RESPONDENT.

AND

MONTREAL LOCOMOTIVE WORKS LIMITED (PLAINTIFF) .....

THE CITY OF MONTREAL (DEFENDANT) ..... } APPELLANT;

AND

MONTREAL LOCOMOTIVE WORKS LIMITED (PLAINTIFF) .....

AND

HIS MAJESTY THE KING (INTERVENANT) ..... } RESPONDENTS.

MONTREAL LOCOMOTIVE WORKS LIMITED (PLAINTIFF) ..... } APPELLANT;

AND

THE CITY OF MONTREAL (DEFENDANT) ..... } RESPONDENT;

AND

HIS MAJESTY THE KING (INTERVENANT) .....

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Assessment and taxation (municipal)—Crown's interests—Construction and production contracts between Crown and industrial company—Sale of land by Company to Crown and building of plant for war purposes by Company for the Crown—Agreements stipulating Company to act on behalf of Crown and as its agent—Claim by municipal authority against Company for property and business taxes—Company erroneously described as "proprietor"—Company not liable for taxes—Company, under contracts, being the "agent" or "servant"

*PRESENT: Rinfret C.J.J. and Kerwin, Hudson, Taschereau and Estey JJ.

1945

THE KING
v.
CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

of the Crown—Crown, and not the Company, being "occupant" of land and building—Sections 362 (a) and 368 of the Montreal City Charter.

The Montreal Locomotive Works Limited (hereinafter called the Company), on October 23, 1940, entered into a first contract (construction contract) with The King in right of Canada (hereinafter called the Crown), where it was agreed, *inter alia*, that the Company would sell and transfer unto the Crown certain land in the city of Montreal and would construct thereon, for and on behalf of the Crown, as its agent and at its expense and subject to the supervision, direction and control of the Crown, a new plant to remain the property of the Crown, and to be capable of producing gun carriages and tanks. On the same day, a second contract (production contract) was passed between the Crown and the Company, where it was agreed, *inter alia*, that the Company, *acting on behalf of the Crown and as its agent*, would administer, manage and operate the new plant and produce therein, for the account of the Crown, gun carriages at a certain fee per gun and per tank. It was admitted that the new plant is, and has always been, the property of the Crown, and that the City was so informed by the Deputy Minister of Munitions and Supply. The Company was entered as proprietor in the valuation roll for the fiscal year beginning May 1st, 1941, and paid to the City $35,858.59 for taxes due under the assessment roll for that year. After the new building, erected under the construction contract, was completed, the building and motor power were added to the assessment roll in the name of the company for $18,934.78 from November 1st, 1941 to April 30th, 1942; and the Company was also entered on the tax roll for business tax on the same property for the same period for $3,425.22. Then, on the valuation roll for the fiscal year commencing May 1st, 1942, the Company was entered as occupant of the new building, motive power and land owned by the Crown and, on the assessment roll, was billed at the sums of $41,141.77 for property tax and $6,850.44 for business tax. The Superior Court dismissed the claim of the City for the first item of $18,934.78 because the claim was directed against the Company as proprietor and not as occupant; but, as respects the three other items, the Court held that the City's right against the Company as occupant had been established and condemned the City to pay these amounts. The appellate court, by a majority of the judges, affirmed that judgment.

Held, affirming the judgments of the Courts below, as to the first item, that the City cannot hold as valid the assessment and taxation of the Company for the amount claimed. The Company was in respect of that claim improperly assessed and taxed by the City as proprietor and not as occupant: it had been admitted, in the joint stated case submitted to the courts, that the new plant was, and always has been, the property of the Crown and that the City was duly informed of it. Upon that very admission, it was obviously erroneous to describe the Company as proprietor. The valuation and assessment rolls, as they existed, could and can be supported only if the quality of owner or proprietor had been established in respect of the Company.

The three other items were allowed by the Courts below against the Company, as to the property tax on the ground that the Company was during the material dates the occupant of the property and entered as such on the rolls, and as to the business tax on the ground that the Company occupied the premises for commercial and industrial purposes and was doing business at the new plant.

Held that, as to these items, the judgment of the appellate court should be reversed.—In order that the Company may be exempt from paying the taxes claimed by the City, it is not necessary that it should be either "an instrumentality of the Government, or an emanation of the Crown" (*City of Halifax* v. *Halifax Harbour Commissioners* [1935] S.C.R. 215). It is sufficient if, looking at the contracts as a whole, the Courts are satisfied that the Company, for the purpose of the present decision, is nothing but the agent, or the servant, of the Crown. Such decision turns on the meaning of the two contracts and, upon their construction, these agreements clearly provide for a case of agency. The Company is described throughout as the agent of the Crown. Although the use of this word is not in itself absolutely decisive, it is at least an indication of the intention of the parties; and it is that intention, gathered from the words used, that determines the nature of the contracts. There is absolutely nothing in the agreements inconsistent with the idea that the parties wanted the company to be anything else than an agent.

Held also that, under the agreements, the Company is not the occupant of the building and land, at least within the meaning of that word in the City's Charter; and, *a fortiori*, it does not occupy it for industrial purposes. The Company never carried on or exercised a manufacture, either under section 362a or section 363 of the Charter; and these sections are inapplicable for the purpose of establishing the right of the City to property tax as occupant or to the business tax. The occupation is not that of the Company, but the occupation of the Crown; and the business carried on, in the circumstances of this case and under the terms of the agreements, is not carried on by the Company, but carried on by the Crown itself on its own property.

City of Halifax v. *Halifax Harbour Commissioners* ([1935] S.C.R. 215), *City of Montreal* v. *Société Radio-Canada* (Q.R. 70 K.B. 65), *Regina Industries Ltd.* v. *City of Regina* ([1945] 1 D.L.R. 220) and *City of Vancouver* v. *Attorney General of Canada* ([1944] S.C.R. 23) discussed.

APPEALS (Three) from three judgments of the Court of King's Bench, appeal side, province of Quebec, affirming by a majority the judgment of the Superior Court, Bond C.J. The city of Montreal asserted claims against the Montreal Locomotive Works Limited to recover $18,934.78 and $41,141.77 for property taxes and $3,425.22 and $6,850.44 for business taxes.

1945

THE KING
v.
CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

The Superior Court maintained the claims, except as to the item of $18,934.78 which was rejected.

The city of Montreal appealed to this Court asking that that amount should also be awarded to it.

Both the Montreal Locomotive Works Limited and the Crown (intervenant) appealed to this Court from the judgment condemning the Company to pay the three other items claimed.

The Supreme Court of Canada dismissed the City's appeal and allowed the appeal by the Company and the Crown.

Aimé Geoffrion K.C. for the Crown.

J. E. L. Duquet for the Montreal Locomotive Works Ltd.

C. Laurendeau K.C. and *G. St-Pierre K.C.* for the city of Montreal.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—Montreal Locomotive Works Ltd., His Majesty the King, in right of Canada, and the city of Montreal have joined in submitting to the Courts questions of law upon facts admitted, pursuant to article 509 of the Code of Civil Procedure of the province of Quebec. For the purpose of abbreviation I will call them, in the course of the present judgment, the Company, for the Locomotive Works, the City, for the city of Montreal, and the Crown, for His Majesty the King.

The questions to be decided are whether, upon the facts about to be recited, the City is entitled to charge and to collect certain taxes from the Company. The facts which give rise to the questions of law involved are as follows:—

On the 23rd of October, 1940, a contract (hereinafter called the construction contract) was made between the Crown and the Company, wherein it was agreed, amongst other things, that the Company would sell and transfer unto the Crown certain premises forming part of the land of the Company located at Longue Pointe in the city of Montreal, and would construct thereon for and on behalf of the Crown, and as its agent and at its

expense and subject to the supervision, direction and control of the Crown, through the Honourable the Minister of Munitions and Supply, a new plant to remain the property of the Crown and to be capable of producing gun carriages and tanks.

On the same day a contract (hereinafter called the production contract) was made between the Crown and the Company, wherein it was agreed, amongst other things, that the Company, acting on behalf of the Crown and as its agent, would administer, manage and operate the new plant and produce therein, for the account of the Crown, gun carriages and tanks at a certain fee per gun carriage and per tank. It is specifically stated in the joint case that the new plant is, and has always been, the property of the Crown, and that the City was so informed by the Deputy Minister of Munitions and Supply by the latter's letter, dated December 1st, 1941. The sale of the land to the Crown by the Company was confirmed by a deed in authentic form on the 27th of February, 1942, which was registered the next day.

On the valuation roll of the City for the year beginning the 1st of May, 1941, the Company was entered as proprietor of the land in question, including the building, rails and motive power. On the real estate assessment roll for the municipal fiscal year beginning on the 1st of May, 1941, the Company was billed to the amount of $35,858.59, which the Company paid on the 30th of September, 1941.

After the new building, erected under the construction contract, was completed, the building and motive power were added to the City's real estate assessment roll in the name of the Company from the 1st of November, 1941, to the 30th of April, 1942, for the sum of $18,934.78. Moreover, the Company was entered on the City's tax roll for business tax, with respect to the new building and motive power, for the amount of $3,425.22 for the period extending from the 1st of November, 1941 to the 30th of April, 1942.

Then on the valuation roll for the fiscal year beginning the 1st of May, 1942, the Company was entered as occupant of the new building, motive power and land

1945

THE KING
v.
CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

Rinfret C.J.

owned by the Crown, and, on the real estate assessment roll of the City, the Company, in respect to the building, motive power and land, was billed at the sum of $41,141.77 as occupant thereof.

The Company was billed for the further sum of $6,850.44 on the business tax roll with respect to the same property.

The City, therefore, is claiming from the Company the following taxes:—

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

The contention of the City is that, for the period from the 1st of November, 1941 to the 30th of April, 1942, the new building and motive power were built on the property of the Company, that they were occupied by the Company for commercial and industrial purposes and the Company is, therefore, subject to municipal taxation in the hands of the Company by the City, in accordance with the provisions of the charter of the City. Further, that the Company, doing business at the said new plant, is also subject to the business tax for the same period, in accordance with by-law no. 1642 of the City. The City also contends that, for the municipal fiscal year beginning the 1st of May, 1942, the new building, the motive power and the land are the property of the Crown, but that they are occupied by the Company for commercial and industrial purposes and are, therefore, subject to municipal taxation in the hands of the Company by the City, in accordance with the provisions of the charter of the City, and more particularly section 362 (*a*) thereof and the taxation

by-laws passed in accordance therewith, being by-law no. 1704 of the City, and that the Company, doing business at the new plant, is also subject to the business tax for the same period of time, in accordance with by-law no. 1642.

The Company and the Crown, which intervened in the proceedings, deny the contentions of the City on the following grounds:—

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

(*b*) That for the municipal fiscal year beginning the 1st of May, 1942, the new building, the motive power, and the land were the property of the Crown and were not occupied by the Company for commercial or industrial purposes, or otherwise, and were not subject to municipal taxation in the hands of the Company by the City either as owner, occupant, or otherwise, and that the Company does not do business at the new building and is not subject to the business tax for the same period.

The Crown is interested and has become a party to the proceedings to hear judgment rendered and any recommendations which may be made by the Court.

The Superior Court (Bond C.J.) held that, as respects the claim of the City for the sum of $18,934.78 for property taxes on the new building and motive power from the 1st of November, 1941 to April 30th, 1942, the claim was directed against the Company as proprietor and not as occupant, and it rejected that item. But, as respects the three following items, the learned trial judge held that the City's right thereto against the Company as occupant had been established, both for business tax and for property tax, and accordingly condemned the Company to pay to the City the said sums, together with interest at the rate of five per cent. from the date when the taxes respectively were due, and also to the costs of the present proceedings. By the same judgment, the intervention of the Crown was dismissed, except as to the item of $18,934.78, and it was recommended that the Crown should pay to the City the costs upon such intervention.

The Court of King's Bench (appeal side) in three different judgments, although supported by the same reasons, affirmed the judgment of the Superior Court, by a majority of the judges, Walsh and St. Jacques JJ. dissenting.

1945

THE KING
v.
CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

Rinfret C.J.

To deal first with the item of taxation for the sum of $18,934.78. It is admitted in the joint case that the new plant, that is to say, the new building and the motive power, are, and always have been, during the material dates, the property of the Crown and that the City was duly informed of it. Nevertheless, on the valuation roll for the first period of time, and also on the real estate assessment roll, the name of the Company appeared as being the proprietor thereof; or, in other words, the Company was assessed and taxed as proprietor and not as occupant.

"Occupant", in the charter of the City, has a special meaning. In section (1), subsection (*h*), it is defined as follows:—

> The word "occupant" shall mean any person who occupies an immovable in his own name, otherwise than as proprietor, usufructuary or institute, and who enjoys the revenues derived from such immoveable.

Upon the very admission contained in the joint case, it was obviously erroneous to describe the Company as proprietor in the several rolls for the period extending from the 1st of November, 1941 to the 30th of April, 1942. The learned trial judge so found and that part of his judgment was affirmed by the Court of King's Bench (appeal side).

The title to the new building and equipment, as well as all material on hand, was undoubtedly vested in the Crown, which had assumed all risks and liabilities incidental to such ownership. It is true that at that time the land was still registered in the name of the Company, registration having taken place only on the 28th of February, 1942; but the City was fully aware of the true circumstances and, moreover, the purpose of registration is merely to establish the priority of title as between two purchasers who derive their respective titles from the same person. (Article 2089 C.C.) However that may be, for the purpose of the present submission, it is sufficient that the parties agree on the fact that the Crown is and has always been the owner of the new plant and motive power.

The ground of appeal of the City, in respect of the item we are now discussing, is based on section 362 (*a*) of the charter:

> The exemptions enacted by Article 362 shall not apply either to persons occupying for commercial or industrial purposes buildings or lands

belonging to His Majesty or to the Federal and Provincial Governments, or to the board of harbour commissioners, who shall be taxed as if they were the actual owners of such immovables and shall be held to pay the annual and special assessments, the taxes and other municipal dues.

Upon that fact and these admissions, it seems clear that the City cannot hold as valid the assessment and taxation of the Company as proprietor for the period in question. It was only, as we have seen, on the valuation roll for the fiscal year beginning the 1st of May, 1942, that the Company was entered as occupant of the new building, motive power and land there described as being owned by the Crown; so that up to the 1st of May, 1942, and, therefore, for the period extending from the 1st of November, 1941 to the 30th of April, 1942, in respect of which the claim of $18,934.78 is made, the Company was improperly assessed and taxed as proprietor. The City cannot, on the basis of the valuation roll and the real estate assessment roll, claim the tax against the Company otherwise than as a proprietor, which it was not at the time, and it cannot now come before the Courts to pretend that even if, with regard to the Company, the rolls were admittedly incorrect and the tax was erroneously claimed, it might yet have assessed and taxed the Company upon the ground that it was the occupant. A short answer to that contention is that the Company has neither been assessed nor taxed as occupant and that the rolls, as they existed, could and can be supported only if the quality of owner or proprietor had been established in respect of the Company. So far as the item of $18,934.78 is concerned, the unanimous judgments of the Superior Court and of the Court of King's Bench (appeal side) must, therefore, be affirmed.

I have only to add, with regard to that item, that I find sufficient reason to disallow the item, but it does not follow, as will be seen later, that I admit that at the material time the Company was the occupant, within the meaning of the definition in the Charter of the City.

Coming now to the three other items. They were allowed against the Company by the learned trial judge and the majority of the Court of King's Bench (appeal side) as to the property tax for the fiscal year commencing May 1st, 1942, on the ground that the Company was then the occupant of the property in question and entered as such on the rolls; and, as to the business tax, both for the period

1945

THE KING v. CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

Rinfret C.J.

extending from the 1st of November, 1941 to the 30th of April, 1942, and for the period commencing on the 1st of May, 1942, on the ground that the Company was then subject to such municipal taxation because it occupied the premises for commercial and industrial purposes and was doing business at the new plant.

In order to test the validity of the ground upon which the judgments *a quo* went against the Company for those three items, it is necessary to carefully examine the construction and production contracts between the Company and the Crown.

In my view, the learned trial judge rightly held that the situation created by these contracts in no way resembled that which arose in *The City of Halifax* v. *Halifax Harbour Commissioners* (1). In that case the Commissioners were held to be an instrumentality of the Government, or an emanation of the Crown, by virtue of the statute creating them and investing them with peculiar powers and attributes.

In the present case the Company is an ordinary commercial corporation and cannot, by any possible view of its status, be considered to come under one or the other of these designations. But, in order that the Company may be exempt from paying the taxes claimed by the City in the case now under consideration, it is not necessary that it should be either "an instrumentality of the Government, or an emanation of the Crown." It is sufficient if, looking at the contracts as a whole, the Courts are satisfied that the Company, for the purpose of the present decision, is nothing but the agent, or the servant, of the Crown.

In the Superior Court, with due respect, there seems to have been some confusion on this point. The learned trial judge says in his judgment that he finds it "necessary to find a name for such a contract", and that he would say "it was one of lease and hire of work rather than a contract of agency". He adds:—

Looking at the contract as a whole, I am satisfied that the Company is not an "agent" or "servant" of the Crown.

Then in the judgments of the majority of the Court of King's Bench (appeal side) the same confusion seems to have existed, although each of the judges forming the

(1) [1935] S.C.R. 215.

majority, upon an analysis of the construction and production contracts, do state that they have come to the conclusion that these contracts were in effect contracts of work by estimate governed by article 1683 *et seq* of the Civil Code. On this aspect of the case, I must say I find myself in agreement with the reasons of Walsh and St.-Jacques JJ.

The decision turns on the meaning of the two agreements. Throughout, the Company is described as the agent of the Crown. Of course, it is not claimed that the use of this word is absolutely decisive, but it is at least an indication of the intention of the parties, and it is that intention, gathered from the words used, that determines the nature of the contracts. Now, as pointed out by St. Jacques J., in the Court of King's Bench (appeal side), there is absolutely nothing in the agreements inconsistent with the idea that the parties wanted the Company to be anything else than an agency. The duties of the Company are minutely defined and, for the design and construction of the plant, the fullest control is given to the Minister. The Company is authorized to incur costs and pay for on behalf of the Government, as its agent, all that may be necessary or incidental to the performance of the agreements. Any act or thing, performed by the Company, is to be performed by it as the Crown's agent. The Company is authorized to sign deeds or instruments necessary, useful or incidental to the performance of the agreements, but always subject to the Minister's control. The cost is estimated only and not guaranteed; and the contracts provide that the Crown shall pay to the Company all its proper and reasonable costs and expenses. Moreover, these expenses will be met without the Company having to resort to its own funds.

The Company agreed to carry out any changes that the Crown may order on the same terms. It is stated in the contracts that the Company shall be fully indemnified and that it shall not be responsible except for definite bad faith or wilful neglect. They provide that the title to the plant and equipment, etc., shall at all times be vested in the Crown; that the Company will endeavour to obtain remission or refund of duties and taxes; that the Crown may at any time cancel the agreements, subject to the provi-

1945

THE KING v. CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

Rinfret C.J.

sion that the Crown will not dispose of the land and plant or equipment without first offering it to the Company and that, if the Crown disposes of the plant in favour of someone else, on the Company's refusal to take it, it shall pay to the Company the value of the land, but if the plant is disposed of to the Company, the land will be paid for at $1, the original purchase price; or, if the Crown demolishes the plant, the land will revert to the Company for $1 and if, after five years, neither of these events has happened, the Crown must pay the Company for the land.

Under the agreements, the Company, for its work, receives absolutely no remuneration, except the administrative and overhead expenses which, in the opinion of the Minister, are properly apportionable to the performance of the contracts.

The only difference between the construction contract and the production contract is that, under the latter, the Company receives a fee for its work; but, in each case and under each contract, banking arrangements are provided for so that the Company will not have to resort to its own funds. The Minister has full control throughout.

Therefore, the Company sells to the Crown for $1 land which it will get back at the same price, or which it will be paid for at its value if the Crown keeps it. It is to build and equip a plant and manufacture in it, as agent for the Crown, certain war implements, at the cost of the Crown, without using any of its funds, under the Crown's control and without any responsibility, except for bad faith or wilful neglect. Everything remains the property of the Crown and the agreements are revocable at any time. In my view, these contracts clearly provide for a case of agency.

The Company is not the occupant of the building and land, at least within the meaning of the definition of that word contained in the City's Charter. *A fortiori* it does not occupy it for industrial purposes. It never carried on or exercised a manufacture, either under section 362 (*a*) or section 363 of the City's Charter; and these sections are inapplicable for the purpose of establishing the right of the City to property tax as occupant or to the business tax.

In such a case and under such agreements, we have not the occupation of the Company, but the occupation of the Crown; and the business carried on, in the circumstances,

is not carried on by the Company, but carried on by the Crown itself on its own property. There is nothing in the law of Quebec to prevent a company from acting as the agent or servant of somebody else, and, in this case, the Company is nothing else than the agent or servant of the Crown. It works on the Crown's property for the Crown and cannot be said to occupy the property, or to use it for its business. Therefore, it cannot be taxed under sections 362 (*a*) and 363 of the City's Charter; and not only the Crown being the owner and being to all intents and purposes the occupant carrying on the business, the taxing sections of the City's Charter are inapplicable to it, but, as against the applicability of the text of the Charter, there exists a constitutional limitation. Whether an agent or servant, under the Civil Code the situation remains the same, so far as the present case is concerned, and if, as the learned trial judge seems to have held, the contracts are contracts of lease of hire and work rather than contracts of agency, the difference does not matter for the purposes of the decision which we have to give; the Company must succeed equally whether it was an agent or a servant. If these contracts, instead of being with a company, had been made with an individual, it seems that they would clearly have been considered as contracts of agency or service, and the fact that we have here a company instead of an individual makes no difference (Article 1701 C.C.; *Quebec Asbestos Corporation* v. *Couture* (1); *Lambert* v. *Blanchette* (2); *Hill-Clarke-Francis, Ltd.* v. *Northland Groceries (Quebec) Ltd.* (3).

We have already indicated that the case in this Court of *City of Halifax* v. *Halifax Harbour Commissioners* (4) has no analogy with the present case, nor is the judgment of the Court of King's Bench (appeal side), in the *Cité de Montréal* v. *Société Radio-Canada* (5); and we must say the same of the case decided by the Saskatchewan Court of Appeal in *Regina Industries Ltd.* v. *City of Regina* (6). I have carefully compared the analysis made of the contract in the latter case by Martin C.J.S., with the contracts in the present case, and I have come to the conclu-

(1) [1929] S.C.R. 166.
(2) (1925) Q.R. 40 K.B. 370.
(3) [1941] S.C.R. 437, at 442.
(4) [1935] S.C.R. 215.
(5) (1941) Q.R. 70 K.B. 65.
(6) [1945] 1 D.L.R. 220.

1945

THE KING
v.
CITY OF MONTREAL AND MONTREAL LOCOMOTIVE WORKS LTD.

Rinfret C.J.

sion that there is no analogy between them. It stands to reason that, in order to treat a judgment construing another contract between other parties, it can be looked upon as an authority only if the terms of both contracts are identical. Moreover, with due respect, the *Regina* judgment (1), although entitled to great weight, cannot be considered as an authority in this Court.

But, in addition to that, the section of the *City Act*, R.S.S. 1940, chap. 126, which the Saskatchewan Court of Appeal was called upon to apply, is not similar to that of the City's Charter under which the present case stands to be decided, nor was the definition of the word "occupant". So that from no point of view can the *Regina* case (1) be held identical with the present one. You do not find in it the same subordination of the Company, or the same authority to bind the Crown.

A further argument was made that, assuming the City could tax the Company in respect of this property under the provisions of section 362 (*a*) of the City's Charter, the general by-laws providing for the tax only contemplate a tax on taxable immovables. Now there can be no question of taxing this immovable. All that can be taxed under section 362 (*a*) would be persons occupying for industrial purposes buildings or lands belonging to the Crown.

It may be said that the wording of section 362 (*a*) is very unusual. Section 361 provides that all immovable property shall be liable to taxation; section 362 provides that certain immovable property is exempt from the ordinary and annual assessment (no reference being made to Crown properties). Then comes section 362 (*a*) which is very unusually worded in view of the provisions of sections 361 and 362. It is certainly to be doubted that such wording is apt to include in it persons occupying Crown property for commercial or industrial purposes and to say that they can be taxed by force of the said section. But, at all events, even if they could be taxed under the section, they are not taxed in the premises. The by-law levies a tax on the immovable properties in the City and that is all.

We do not consider that the case of *City of Vancouver* v. *the Attorney General of Canada et al* (2) has any application to the present case.

(1) [1945] 1 D.L.R. 220. (2) [1944] S.C.R. 23.

On the whole, I am of the opinion that the City's appeal as against the judgment denying its claim to the sum of $18,934.78 should be dismissed, and that the Company's appeal as against the judgment condemning it to pay to the City the sums of $3,425.25, $41,141.77 and $6,850.44 should be allowed, the whole with costs throughout against the City. The intervention of the Crown should also be allowed with costs throughout against the City.

City of Montreal's appeal dismissed with costs.

Montreal Locomotive Works Ltd.'s appeals allowed with costs.

Intervention by the Crown allowed with costs.

Geoffrion & Prud'homme
Solicitors for His Majesty The King.

Saint-Pierre, Choquette, Berthiaume, Emard, Martineau, McDonald & Seguin
Solicitors for the city of Montreal.

Ralston, Kearney, Duquet & MacKay
Solicitors for Montreal Locomotive Works Ltd.