

In the Privy Council.

UNIVERSITY OF LONDON W.C. 1 INSTITUTE OF ADVANCED LEGAL STUDIES
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ON APPEAL FROM THE SUPREME COURT 26 OCT 1956
 OF CANADA

BETWEEN

THE CITY OF MONTREAL (Defendant) Appellant

AND

MONTREAL LOCOMOTIVE WORKS LIMITED
(Pleading) Respondent

AND

THE ATTORNEY-GENERAL OF CANADA (Intervenant) Respondent.

CASE FOR THE RESPONDENTS.

CASE OF THE RESPONDENT

RECORD.

1.—This is an Appeal from a unanimous Judgment of the Supreme Court of Canada, Rinfret, C.J., and Kerwin, Hudson, Taschereau and Estey, J.J., allowing the Appeal of His Majesty, In Right of Canada and the Appeal of the Montreal Locomotive Works Limited and dismissing the Appeal of the City of Montreal from three Judgments of the Court of Appeal for the Province of Quebec. p. 200

2.—These latter Judgments unanimously dismissed an Appeal by the City of Montreal and dismissed with two dissenting judges out of five the Appeals of His Majesty and the Montreal Locomotive Works Limited, all three Appeals being from a Judgment of the Superior Court, Bond, C.J. p. 138-140

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3.—The Judgment of Bond, C.J., was given on a stated case or joint factum submitted by the three parties above mentioned to the Court for decision. p. 118

4.—The question is as to the liability of the Montreal Locomotive Works Limited to pay to the City of Montreal certain property taxes and business taxes.

RECORD.

5.—His Majesty is interested because it is liable for those taxes under the agreements hereinafter mentioned if they are due.

pp. 137-140

6.—In the Superior Court and the Court of Appeal the City of Montreal was unsuccessful as to the property tax for the period from the 1st of November, 1941, to the 30th of April, 1942, amounting to \$18,934.78, but was successful with the above-mentioned dissents as to the business tax for the same period, amounting to \$3,425.22, the property tax for the fiscal year beginning on 1st May, 1942, amounting to \$41,141.77, and the business tax for the same year amounting to \$6,850.44. The Supreme Court of Canada held that none of these taxes were recoverable. 10

pp. 18
& 40

7.—On the 23rd of October, 1940, the Government of Canada entered into two Agreements with the Montreal Locomotive Works Limited, one of these providing for the building by the Company for the Government on land transferred by it to the Government of a plant fully equipped to manufacture gun-carriages and tanks for war purposes and the other one for the conduct by the Company of the manufacturing operations for the purpose of producing such gun-carriages and tanks for the Government in this plant.

8.—In these agreements, the Company is described repeatedly as the agent of the Government. The Government is to bear the entire expense 20 and must even provide the necessary funds in advance, the Company incurs no liability except for bad faith and the Government has full control. There is no guarantee as to the cost of the work ; the Government may cancel it at any time.

9.—As all expenses are to be borne by the Crown, it follows that if the Company is ordered to pay these taxes to the City, the Government will have to repay them to the Company. That is the reason why His Majesty is a party to the submission of the stated case to the Courts and to this litigation.

10.—The charter of the City of Montreal provides, Section 362A, 30 first paragraph, as follows :—

“ 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 the board of harbor
 “ 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.
 “ (7 Ed. VII, c. 63, s. 10.) ”

It also provides, Section 363, first paragraph, as follows :—

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“ The City may also impose and levy, by by-law, a tax to be
 “ called the ‘ business tax ’ on all trades, manufactures, financial
 “ or commercial institutions, premises occupied as warehouses or
 “ storehouses, occupations, arts, professions, or means of profit
 “ or livelihood, carried on or exercised by any person or persons,
 “ in the city ; provided that such business tax does not exceed
 “ ten per cent. of the annual value of the premises in which such
 “ trades, manufactures, financial and commercial institutions,
 “ occupations, arts, professions or means of profit or livelihood
 “ are respectively exercised or carried on ; and all persons,
 “ companies and corporations engaged in or carrying on such
 “ trades, manufactures, financial or commercial institutions,
 “ occupations, arts, professions or means of profit or livelihood,
 “ shall be directly responsible for the payment of such tax.
 “ (25-26 Geo. V, c. 112, s. 4.) (See 4 Geo. VI, c. 75, s. 43, p. 295.) ”

RECORD.

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11.—The first defence of His Majesty and the Company is that these agreements make of the Company the agent or the servant of the Crown and that, consequently, the plant was not occupied for commercial and industrial purposes by the Company, and the Company did not carry
 20 on or exercise a trade or manufacture in the plant, but that such plant was occupied by the Crown which carried on in it this trade and manufacture. The Company therefore is not taxable under these sections.

12.—Alternatively it is suggested that even if the Company could be considered as an independent contractor managing the Government’s plant, the occupation of such plant and the carrying on of business in it would still be by the Crown.

13.—The Crown itself is not, and could not be taxed.

14.—As another alternative, it is suggested that the by-law of the City which imposes this tax merely presides for a tax on taxable
 30 immovables and does not impose a tax on occupants of land that is not taxable. The plant belonging undoubtedly to the Crown could not be taxed, and the alleged occupant from whom this tax is claimed is not taxed ; the property tax would not on that account be recoverable.

15.—The by-law imposing the tax for the fiscal year 1942 reads as follows :—

“ Article I.—A general assessment is imposed and shall be levied
 “ for the year beginning on the 1st May 1942 and ending on the
 “ 30th April, 1943, on taxable immovables within the City.”

There then follows an enumeration of different kinds of immovables
 40 and other provisions which are not material in this appeal.

RECORD. 16.—The by-law for the previous fiscal year is worded the same way.

17.—These by-laws are not filed in the Case, but Section 306 of the charter of the City of Montreal provides that the by-laws of the Council shall have full force and effect as public laws in the City, and as such, shall be judicially observed and enforced by all judges and Courts whether specially pleaded or not.

18.—Lastly, it is suggested that for the first period mentioned, even if it can be held that the Company was an occupant of the plant, it has been taxed for that period as a proprietor, and the tax on property on that account would be void for the first period. 10

19.—On this last point, the City has failed throughout, the trial Judge, the five Judges in Appeal and the five Supreme Court Judges finding against it.

20.—Bond, C.J., in the Superior Court, holds as to the property tax for the first period, that the Company, even if an occupant, could not be assessed as a proprietor, and that having been so assessed, it is not liable.

21.—As to the second period, he holds that the Company was a commercial corporation assisted by the Government to execute wartime contracts in a particular manner not essentially different from the manner in which other companies are assisted, such as by subsidies, grants, 20 exemptions, special depreciation, etc. He holds that properly construed the agreements though they expressly state to be agencies make of the Company an independent contractor and not an agent or a servant. He holds in consequence that the Company is liable to be taxed and he holds that the general by-law levying the property tax is sufficient to reach occupants of Crown lands. He also holds the Company liable for the business tax for both periods.

p. 150 22.—In appeal, Francoeur, J., also holds that the Company was an independent contractor.

p. 153 23.—Marchand, J., holds that the property tax for the first period is 30 not recoverable for the same reason as that given by Bond, J., in the Superior Court. He holds that the Company was an independent contractor and liable for the other taxes.

p. 169 24.—Bissonnette, J., agrees with Marchand, J., and Bond, C.J., as to the property tax for the first period and also holds that the Company was an independent contractor.

p. 141 25.—Walsh, J., dissenting, holds that under the terms of the agreement, the Company is either the agent or the servant of the Crown.

26.—St. Jacques, J., is of the same opinion.

p. 144

27.—In the Supreme Court of Canada, the unanimous Judgment of the Court was delivered by Rinfret, C.J. He analyses in detail all the clauses of the agreements and holds that the Company was either an agent or a servant of the Crown. pp. 200-206

His Majesty and the Montreal Locomotive Works Limited submit that the appeal should be dismissed and the judgment of the Supreme Court affirmed with costs for the following among other

REASONS.

- 10 Because the agreements make of the Company the agent or the servant of the Crown ;
- Because the plant was not occupied for commercial or industrial purposes by the Company, but such occupation was by the Crown ;
- Because the Company did not carry on or exercise a trade or manufacture in the plant, but this trade or manufacture was carried on or exercised by the Crown ;
- Because consequently the Company is not taxable in law ;
- 20 Because alternatively even if the Company could be considered as an independent contractor it would still be the Crown, that was occupying and carrying on business in the plant, and therefore, there could be no taxation of the Company ;
- Because the Crown is exempt from municipal taxation ;
- Because alternatively the by-law of the City imposes the property tax only on taxable immovables in the City and does not impose any tax on occupants of land that is not taxable ; the property tax in this case is claimed from the occupant and this land belonging to the Crown is not taxable ;
- 30 Because for the period ending on the 30th April 1942, the Company was improperly taxed as a proprietor when at most, though that is not admitted, it was only an occupant.
- For the Reasons given by the Chief Justice of the Supreme Court and by the two dissenting Judges of the Court of Appeal.

AIMÉ GEOFFRION.

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MONTREAL LOCOMOTIVE WORKS
LIMITED *(Plaintiff) Respondent*
AND
THE ATTORNEY GENERAL OF
CANADA ... *(Intervenant) Respondent.*

CASE FOR THE RESPONDENTS

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