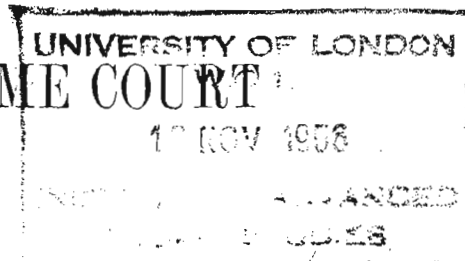


In the Privy Council.

No. 42 of 1950.

ON APPEAL FROM THE SUPREME COURT
OF CANADA



BETWEEN

BENNETT & WHITE (CALGARY) LIMITED

(Plaintiffs) Appellants

AND

MUNICIPAL DISTRICT OF SUGAR CITY (No. 5)

(Defendants) Respondents.

RECORD OF PROCEEDINGS

LAWRENCE JONES & CO.,

Winchester House,

Old Broad Street, E.C.2,

Solicitors for the Appellants.

WHITE & LEONARD,

4 St. Bride Street, E.C.4,

Solicitors for the Respondents.

IN THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF CANADA.
RECORD OF PROCEEDINGS

BETWEEN:

BERNARD & WHITE (CALGARY) LIMITED (Plaintiffs)
Appellants.

and

MUNICIPAL DISTRICT OF SUGAR CITY No. 5. (Defendants)
Respondents.

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No. 1.

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated under The Companies Act of the Province of Alberta, having its head office in the City of Calgary, in such Province. The defendant is a Municipal District constituted pursuant to the provisions of the Municipal District Act, Ch. 151, R.S.A., 1942.

10

2. On the 22nd day of July, 1946, the plaintiff entered into an agreement with His Majesty, the King, represented therein by the Minister of Agriculture of the Dominion of Canada to construct certain Diversion and Irrigation Tunnels at the St. Mary's Dam Project, which lies within the defendant's Municipal District. In and by the said agreement it was provided that all machinery, tools, plant, materials, equipment, articles and things whatsoever provided by the plaintiff for the works therein contemplated should from the time of their being so provided become, and until the final completion of the said works should be, the property of His Majesty for the purpose of the said works and the same should on no account be taken away or used or disposed of except for the purpose of the said works.

20

30

3. In and by the said agreement it was further provided that upon completion of the works and upon payment by the plaintiff of all moneys, less, costs and damages, if any, which should be due from the plaintiff to His Majesty or chargeable to the plaintiff under the contract, such of the said machinery, tools, plant, materials, equipment, articles and things as should not have been used and converted in the works or disposed of by His Majesty should, upon demand, be delivered up to the plaintiff in such condition as they then might be in.

40

4. The plaintiff will refer to the said agreement upon the trial of this action.

5. In pursuance of the provisions of the said agreement and for the purpose of the works therein contemplated the plaintiff moved into the Municipal District of the defendant a considerable quantity of chattels, equipment and tools, which thereupon became the property of His Majesty under the provisions of the aforesaid agreement and such chattels, equipment and tools are situated in the vicinity of the said works, which works have not yet been completed, nor has there been any settlement between the plaintiff and His Majesty entitling the plaintiff to the redelivery of such chattels, equipment and tools. A considerable portion of the said chattels, equipment and tools consist of tractors, self-propelled drag lines, locomotives, bull-dozers, dumpsters, and mine-cars, all of which are motor vehicles.

10

6. The Assessment Act, being Ch.157, R.S.A. 1942, and amendments thereto relates to and governs the liability to assessment and taxation of property and business in every Municipality for the purposes of the Municipal District Act; and pursuant to the provisions of the Assessment Act the following property is declared to be exempt-

20

- (1) Every right, title and interest of His Majesty, whatsoever.
- (2) Money, bank notes, cheques, bills of exchange and choses in action.
- (3) All motor vehicles.

30

7. Notwithstanding the provisions of the Municipal District Act and the said Assessment Act and the terms of the said contract, the defendant in September 1947 wrongfully and illegally proceeded to assess the said chattels, equipment and tools in the name of the plaintiff and has entered the plaintiff in the Assessment Roll in respect thereof at a valuation of \$119,980.00 and has further wrongfully and illegally entered the plaintiff in

10 the tax roll for taxes and penalties in respect to
the said chattels, equipment and tools in the sum
of \$3,915.27, which the defendant alleges is owing
by the plaintiff to the defendant.

8. The plaintiff threatens to seize goods
and chattels of the plaintiff as well as the said
chattels, equipment and tools, in order to enforce
payment of the said amount alleged to be owing for
taxes and penalties and to sell the same to satisfy
the said alleged liability.

20 9. The plaintiff says, as the fact is, that
its name has been wrongfully and illegally
entered in the tax roll and that it has been wrongfully
and illegally assessed for the following amongst
other reasons,-

30 (1) The plaintiff is under the terms of
the said contract an agent of His
Majesty to do and perform the work
provided by the contract and the
plaintiff can not be assessed in
respect thereto.

(2) The said chattels, equipment and
tools are and were at all relevant
times, the property of His Majesty
and the plaintiff can not be in
law assessed or placed on the tax
roll in relation thereto.

40 (3) The right of the plaintiff to
acquire the said chattels upon the
conclusion of the contract, if
the same are then in existence, is
a chose in action within the meaning
of the Assessment Act and is exempt
from taxation.

(4) Tractors, self-propelled drag-
lines, locomotives, bull-dozer,
dumptors and mine-cars are motor.

vehicles within the meaning of the Assessment Act and are exempt from taxation.

(5) The plaintiff has no assessable interest in the said chattels, equipment and tools. 10

10. The plaintiff further says that until the said contract is completed the defendant can not in any event make seizure of any chattels, equipment and tools supplied by the plaintiff at the said works and now the property of His Majesty as such seizure and removal or sale will result in the removal and sale of the property of His Majesty and will interfere with the contract with His Majesty. 20

11. The plaintiff says that unless the defendant is restrained by order of the court it will seize and sell the chattels, equipment and tools which the plaintiff has supplied as aforesaid and so prevent the plaintiff from completing its contract or being in a position to receive the same back in accordance with the provisions of the contract upon its terms having been carried out and the plaintiff will suffer irreparable damage. 30

12. The plaintiff says, as the fact is, that it has been improperly and illegally assessed and placed on the tax roll and that it is not liable to the defendant for the taxes and penalties demanded from it.

13. The plaintiff has at all times objected to being assessed by the defendant as above set out and it has objected to being placed on the tax roll, and has been put to considerable legal and other expense by reason of the defendant's unlawful acts herein referred to. 40

14. It is proposed that this action be tried at the City of Calgary, in the Province of Alberta

THE PLAINTIFF THEREFORE CLAIMS:

- 10 (1) a declaratory judgment declaring the plaintiff's rights in accordance with the judgment of the court on the foregoing.
- (2) An interim and permanent injunction restraining the defendant, its servants and agents, from attempting to enforce the alleged claim for taxes or taking any steps to seize or sell any of the said chattels, equipment and tools.
- 20 (3) An order rectifying the tax roll and assessment and striking the plaintiff's name off the said tax roll and setting aside the said assessment
- (4) Damages in the sum of \$2,500.00.
- (5) Costs.
- (6) Such further and other relief as to this Honourable Court may seem meet.

30 DATED at the City of Calgary, in the Province of Alberta, this 15th day of April, A.D. 1948, AND DELIVERED by Messrs. Helman, Mahaffy and Barron, for the plaintiff whose address for service is in care of said Solicitors, 803 Lancaster Buildings, Calgary, Alberta.

ISSUED out of the office of the Clerk of the Supreme Court of Alberta, Judicial District of Calgary, this 15th day of April, A.D. 1948.

"J. H. CHARMAN"

Acting Clerk of the Court.

STATEMENT OF DEFENCE

AND COUNTERCLAIM.

1. Defendant admits the allegations contained in paragraph 1 of the Statement of Claim.

2. Defendant admits that on the 19th day of June, 1946, the Plaintiff entered in an Agreement with His Majesty the King represented therein by the Minister of Agriculture of the Dominion of Canada, to construct certain diversion and irrigation tunnels at the St. Mary Dam project, and admits that the said project lies within the Defendant Municipal District.

20

3. The Plaintiff carries on business within the Defendant Municipal District for that and other purposes.

4. Defendant does not admit that the said Agreement was as set out in paragraphs 2 and 3 of the Statement of Claim. The said agreement, among other clauses, contained the following:

Preamble:

30

"WHEREAS the party of the second part, for the consideration hereinafter mentioned, has agreed with the party of the first part, to do, furnish and perform the works, materials, matters and things required to be done, furnished and performed, in the manner hereinafter described, in connection with the following work or works namely:-"

(Here follows a description of the said works)

40

Clause 1. (in part):

10 "Contractor", or other words relative thereto or of the like import, shall mean and include, irrespective of sex or number, the party or parties of the second part as above designated or described, jointly and severally, and their and each of their executors, administrators, curator or successors, or assigns (duly consented to under this contract)."

Clause 3 (in part):

20 "The Contractor shall, at his own expense (except as in this contract otherwise specifically provided) provide all and every kind of labour, superintendence, services, tools, implements, machinery, plant, materials, articles and things necessary for the due execution and completion of all and every the works set out or referred to in the specifications hereto annexed and in any special specifications referred to therein..."

Clause 4:

30 "The works shall be constructed by the Contractor and under his personal supervision of the best materials of their several kinds, and finished in the best and most workmanlike manner and in the manner required by and in strict conformity with this contract, the said specifications and special specifications, and the plans and drawings relating thereto, and the works or detail drawings which may from time to time be furnished (which said specifications, and special specifications, plans and drawings are hereby declared to be part of this contract), and to the complete satisfaction of the Engineer."

Clause 5:

10

"The work shall be commenced, carried on and prosecuted to completion by the Contractor in all its several parts in such manner and at such points and places as the Engineer shall, from time to time, direct, and to his satisfaction, but always according to the provisions of this contract, and if no direction is given by the Engineer, then in a careful, prompt and workmanlike manner."

20

Clause 6:

"The several parts of this contract shall be taken together, to explain each other and to make the whole consistent, and if it be found that anything has been omitted or mis-stated which is necessary for the proper performance or completion of any part of the work, the Contractor shall, at his own expense, execute the same as though it had been inserted and properly described, and the correction of any such omission or error shall not be deemed to be an addition or deviation from the works hereby contracted for."

30

Clause 13:

"A competent foreman shall be kept on the ground by the Contractor during all the working hours, to receive the orders of the Engineer, and should such foreman be deemed by the Engineer incompetent, or conduct himself improperly, he may be discharged by the Engineer, and another shall be at once appointed in his stead by the Contractor. Such foreman shall be considered as the lawful representative of the Contractor, and shall have full power to carry out all requisitions and instructions

40

10 of the said Engineer, but this clause shall not relieve the Contractor from the duty of personally superintending the work."

Clause 14:

20 "Should the Contractor use or employ, or intend to use or employ, any material, plant, tools, equipment, articles or things, which in the opinion of the Engineer are not in accordance with the provisions of this contract, or in any way unsuitable for the works or any part thereof, or should the Engineer consider that any work is, for any reason, improperly, defectively or insufficiently executed or performed, the Engineer may order the Contractor to remove the same, and to use and employ proper materials, plant, tools, equipment, articles and things, or to properly re-execute and perform such work, as the case may be, and thereupon the Contractor shall immediately comply with such orders, and if the Contractor fail to comply with such orders within twenty-four hours the Engineer may, at any time thereafter, execute or cause to be executed, the orders so given, and the Contractor shall, on demand, pay to His Majesty all costs, damages and expenses incurred in respect thereof, or occasioned to His Majesty by reason of the non-compliance by the Contractor with any such orders, or His Majesty may, in the discretion of the Minister, retain and deduct such costs, damages and expenses from any amounts then or thereafter payable to the Contractor."

40 CLAUSE 15:

"All machinery, tools, plant, materials, equipment, articles and things whatsoever

provided by the Contractor or by the Engineer under the provisions of sections 14 and 16, for the works, and not rejected under the provisions of section 14, shall from the time of their being so provided become, and, until the final completion of the said work, shall be the property of His Majesty for the purposes of the said works, and the same shall on no account be taken away, or used, or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not, however, be answerable for any loss, or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor of all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall, upon demand, be delivered up to the Contractor in such condition as they may then be in."

Clause 16:

"If the Engineer shall at any time consider the number of workmen, horses, quantity of machinery, tools, plant or equipment, or of proper materials, articles or things, respectively, employed or provided by the Contractor on or for the said works, to be insufficient for the advancement of such works or any part thereof toward completion within the time

10 limited in respect thereof, or that the
works are, or some part thereof is,
not being carried on with due diligence,
then, and in every such case the Engineer
may, in writing, order the Contractor to
employ or provide such additional workmen,
horses, machinery, tools, plant, equipment,
materials, articles and things, as the
Engineer may think necessary and in case
20 the Contractor shall not, within three
days, or such longer period as may be
fixed by any such order, in all respects
comply therewith, the Engineer may employ
and provide such additional workmen,
horses, machinery, tools, plant, equipment,
materials, articles and things, respectively,
as he may think proper, and may pay such
additional workmen such wages, and for such
additional horses, machinery, tools,
30 plant, equipment, materials, articles
and things, respectively, such prices
as he may think proper, and all such
amounts so paid shall, on demand, be
repaid to His Majesty by the Contractor,
or the same may be retained and deducted
from any sum that may then or thereafter
be or become due from His Majesty to the
Contractor. The Contractor shall employ
the additional workmen, horses, machinery,
40 tools, plant, equipment, materials,
articles and things, so provided and
employed by the Engineer, in the diligent
advancement of the works, the workmen
and horses so provided shall, however,
be thereafter subject to discharge by
the Contractor, but only with the consent
and approval of the Engineer".

CLAUSE 24 (in part):

50 "The Contractor shall, also, unless the
Minister otherwise directs in writing, at
his own expense, at all times during
construction and until the final acceptance

of the works, keep all buildings and structures insured against loss by fire, in such insurance company or companies and in such amount or amounts as may be approved of by the Engineer, and the policies of such insurance shall be made payable as the interest of the Contractor and His Majesty may, respectively, appear, and shall be deposited with the Engineer."

10

Clause 29 (in part):

"The Contractor shall promptly pay for all labour, services and materials in or about the construction of the works, and all payments for such purposes shall be made by the Contractor at least as often as payments are made to the Contractor by His Majesty under this contract ..."

20

Clause 48:

"The Contractor shall upon the execution of this agreement furnish to His Majesty the King a Bond with sureties satisfactory to His Majesty the King, in the sum of One Million, Forty Thousand, Eight Hundred and Fifty Dollars and no cents."

Clause 52:

"It shall be understood and agreed that where the Contractor has undertaken to construct or perform said works or undertakings under this contract in consideration of the payment to him of a fixed contract price, that this price shall include all sales or other taxes and when the contract work or undertaking extends into a period in which the sales tax on materials used by the Contractor in the execution of this contract has been

30

10 increased or decreased. His Majesty
 will allow to the Contractor or the Contractor
 will allow to His Majesty, as the case
 may be, the amount of the difference
 between the sales tax in effect on the
 date of the contract and any increase or
 decrease tax imposed before all materials
 to be used in such works have been
 purchased."

Clause 53:

20 "The Contractor shall comply with the
 provisions of the Workmen's Compensation
 Act and all other acts and regulations of
 the Province in which the work is being
 performed and to make all returns and
 pay all assessments required under any
 such acts or regulations. Within
 fifteen days after the close of each
 calendar month, the Contractor shall
 furnish a statement made under oath
 30 setting forth the amounts of his pay-
 roll including that of all sub-
 contractors assessable under the said
 Act or Regulations and that all assessments
 levied have been paid. His Majesty may
 pay them out of moneys due to the
 Contractor."

5. The Defendant also will refer to the
 whole of the said Agreement upon the trial of
 this Action.

40 6. Defendant admits that Plaintiff moved
 into the Defendant Municipal District a considerable
 quantity of chattels, equipment and tools.
 Defendant denies that the said chattels, equipment
 and tools thereupon or at all became the property
 of His Majesty the King under the provisions of the
 aforesaid agreement, and says that on the other
 hand the interest, if any, of His Majesty in the
 said chattels, equipment and tools is only the
 interest defined by the above quoted terms of the

said agreement.

10

7. Defendant admits that the said chattels, equipment and tools are situated in the vicinity of the said works.

8. Defendant says that the said chattels, equipment and tools are in the legal possession of the Plaintiff and have been in such possession at all times material to this Action.

9. Defendant admits that a considerable portion of said chattels, equipment and tools consists of tractors, self-propelled draglines, locomotives, bulldozers, dumptors, and mine cars, but says that in addition there are may other chattels and articles of equipment and tools. 20

10. Defendant says that none of the said articles in question in this Action are motor vehicles.

11. Defendant admits that The Assessment Act, being chapter 157 of the Revised Statutes of Alberta, 1942, and Amendments thereto relates to and covers the liability to assessment and taxation of the property and business in such Municipality for the purposes of The Municipal District Act, and says that such assessment and taxation is also covered by the said The Municipal Districts Act, being chapter 151 of the Revised Statutes of Alberta, 1942, and the Defendant pleads both of the said Acts and will rely thereon. 30

12. Save as aforesaid, Defendant denies the remaining allegations in paragraph 6 of the Statement of Claim, and particularly paragraph 6(1). 40

13. In answer to paragraph 7 of the Statement of Claim, Defendant says that pursuant to the provisions of The Municipal District Act and The Assessment Act, the Defendant did assess the said chattels, equipment and tools in the name of the

Plaintiff and entered the name of the Plaintiff in the Assessment Roll in respect thereof, but denies that the Defendant did so wrongfully and illegally.

10 14. In the alternative the Defendant so assessed and entered the Plaintiff in respect of the Plaintiff's right, title and interest in the said chattels, equipment or tools.

15. The said assessment was originally for a greater sum or valuation than \$ 119,980.00. The Plaintiff pursuant to the said Assessment Act appealed or complained in respect of the said assessment to the Court of Revision and the said Appeal or complaint was duly dealt with by the Court of Revision.

20 16. Subsequently the Plaintiff appealed to the Alberta Assessment Commission against the said decision. The said Assessment Commission, pursuant to the said Act, duly heard and dealt with the said appeal and on or about the 15th day of January, A.D. 1948, rendered its decision upon the said appeal reducing the said assessment to the following amounts, namely :

Personal Property	\$119,980.00
Buildings & Equipment	4,470.00

30 and the Alberta Assessment Commission so ordered and decided.

17. The Defendant will rely upon the provisions of the said "The Assessment Act", and upon the said complaint and appeal taken thereunder and the decision rendered.

18. Pursuant to the said assessment and the decision of the Alberta Assessment Commission the said taxation was imposed, and is owing by the Plaintiff to the Defendant.

40 19. In answer to paragraph 8 of the statement of claim the Defendant will pray and does hereby pray for a declaration of this Honourable Court that the Defendant is entitled to seize sufficient of the

said goods and chattels of the Plaintiff, or in the alternative the interest of the Plaintiff therein pursuant to the said acts, in order to enforce payment of the said amounts, and any other amounts that may subsequently become owing under such, and future, assessments.

20. Defendant denies and says that the fact is not that Plaintiff's name has been wrongfully or illegally entered in the Tax Roll, and denies that Plaintiff has been wrongfully or illegally assessed for the reasons given in paragraph 9 of the statement of claim or any reasons. 10

21. In particular, Defendant denies that the Plaintiff is under the terms of the said contract or at all an agent of His Majesty to do or perform the work provided by the said contract, and the Defendant will refer to the terms of the said contract

22. Defendant denies that the said chattels, equipment and tools are or were at all or any relevant times the property of His Majesty. In the alternative Defendant says that if His Majesty had or has any right, title or interest in the said property, the Plaintiff also had and has some interest in the said property, and the Plaintiff is and was at all times material to this action in legal possession of the said property. 20

23. The Defendant says that the matters set out in paragraph 9 (3) of the Statement of Claim are matters of law and that the statement of law therein contained is incorrect. Defendant denies that tractors, self-propelled draglines, locomotives bulldozers, dumpers and mine cars, are motor vehicles within the meaning of The Assessment Act, and denies that they or any of them are exempt from taxation. 30

24. In answer to paragraph 9 (5) Defendant says that the Plaintiff had and has an assessable interest in the said chattels, equipment and tools.

25. In reply to paragraph 10 of the statement of Claim the Defendant says that the said paragraph is not a statement of facts but a statement of law or argument. Defendant says that upon payment by the Plaintiff of the taxation for which the Plaintiff is liable it will be unnecessary to sell any interest of the Plaintiff in the said property; that it is not the intention of the Plaintiff to remove or sell
 10 any interest which His Majesty may have in the said property.

26. In answer to paragraph 11 of the Statement of Claim, the Defendant will pray and hereby prays this Honourable Court for a declaration that the Plaintiff is liable to the said assessment and taxation, and ~~says~~ that any seizure and sale which may be carried out by the Defendant will be subject to the rights and interests of His Majesty, if any.

27. In answer to paragraph 12, Defendant denies
 20 and the fact is not, that Plaintiff has been improperly or illegally assessed or improperly or illegally placed on the Tax Roll and that Plaintiff is not liable for the taxation and penalties demanded, and Defendant says that the contrary is the case.

28. Defendant says that the said assessment and taxation and the matters relied on in the Statement of Claim are res judicata by reason of the matters set forth in this Defence, and in the Plaintiff's own Statement of Claim; and that the Plaintiff is
 30 precluded and estopped by reason thereof from bringing or prosecuting the present action and from taking any objections or exceptions to the assessment and taxation now or previously complained of.

29. The Defendant says that by By-law passed pursuant to Section 8 (2) of The Assessment Act, the said assessment and taxation were duly provided for.

30. Defendant further says that by By-law duly
 40 passed by the Defendant the said levy was duly provided for and the Defendant says that the said

By-law has not been squashed or appealed and that no notice in writing of any intention to bring the present Action has been given to the Defendant. The Defendant will rely upon Section 571 of The Municipal District Act.

31. Wherefore the Defendant will pray that the Plaintiff's Action be dismissed with costs.

COUNTER - CLAIM.

1. Defendant repeats the allegations in its Defence. 10
2. Defendant says that Plaintiff is justly indebted to the Defendant in the amount above set forth.
3. Defendant prays for a declaration and decree of this Honourable Court, -
 - (a) That the assessment and taxation referred to were properly imposed .
 - (b) In the alternative and in any event that the proceedings before the Court of Revision and the Alberta Assessment Commission preclude the Plaintiff from further appeal and from this present action. 20
 - (c) In the further alternative, for Judgment against the Plaintiff for the amounts of the said taxation and penalties and costs.
 - (d) Terminating the interim injunction already granted
 - (e) Enjoining and restraining the Plaintiff from removing any of the said goods and chattels out of the said Municipal District before payment of all taxes and penalties and costs. 30

- (f) Damages respecting the said Interim Injunction.

DATED this 7th day of May A.D. 1948, and delivered by VIRTUE & RUSSELL, Barristers, McFarland Building, Lethbridge, Alberta, whose address for service is in care of MESSRS. SHOULDICE, MILLMAN and MacDONALD, Barristers, Canada Life Building, Calgary, Alberta.

10

No. 3.

JOINDER OF ISSUE.

1. The Plaintiff joins issue with the statement of defence.
2. The said defence does not, in point of law, contain any answer or defence to the plaintiff's claim.

DEFENCE TO COUNTERCLAIM.

20

1. The plaintiff denies each and every allegation contained in the counterclaim or repeated therein.
2. The plaintiff is not indebted to the defendant in the amount alleged or otherwise howsoever.
3. The plaintiff says that the proceedings referred to in paragraph 3(b) of the prayer for relief do not in point of law preclude the plaintiff from the present action.

4. The plaintiff therefore prays that the said counterclaim be dismissed with costs.

DATED at the City of Calgary, in the Province of Alberta, this 14th day of May, A.D. 1948, AND DELIVERED by Messrs. Helman, Mahaffy & Barron, for the plaintiff whose address for service is in care of said solicitors, 803, Lancaster Building, Calgary, Alberta.

No. 4.

Opening of Case.

10

THE COURT: Bennett & White and the Municipal District of Sugar City.

MR. HELMAN: I am appearing with Mr. Barron for the plaintiff, My Lord.

MR. RUSSELL: I am appearing with Mr. Morgan for the defendant, My Lord.

THE COURT: All right, Mr. Helman.

MR. HELMAN: Originally, My Lord, this should have been a very simple case, which probably could have been tried out on an agreed set of facts, but the defendant, in order to get the trial moved from Calgary to Lethbridge, filed an affidavit saying that they had four to six witnesses, and we have been waiting with considerable anxiety to see who these four to six witnesses are. Their assessor, Mr. Carmichael, lives in Bowness, which is outside of Calgary. In any event here we are.

20

THE COURT: It is a nice city to spend a day or two in.

30

MR. HELMAN: It has turned very nice today. The plaintiff, Bennett & White of Calgary, Limited, entered into a contract to construct a certain work referred to as Diversion and Irrigation Tunnels of the St. Mary's Dam Project. Perhaps in the course of my opening, so Your Lordship may have it, I would like to tender

10 this as an exhibit. It has been agreed upon by both parties, at least we both rely on it in the Pleadings. This is a contract between His Majesty the King, represented by the Minister of Agriculture, and Bennett & White (Calgary) Limited. I had a copy prepared and it is a rather lengthy document, so I think Your Lordship would like to have the use of it. You can write on it and make remarks on it, instead of on the original.

THE COURT: You admit that, Mr. Russell?
 MR. RUSSELL: Yes.
 20 THE COURT: Mark that Exhibit 1.

EXHIBIT 1.
 Contract between His Majesty the King and Bennett & White (Calgary) Limited dated 22nd July, 1946.

30 MR. HELMAN: Under this contract, the Plaintiff was to supply the materials and equipment for and construct a diversion and irrigation tunnel known as the St. Mary Dam Project. And the Plaintiff did supply a considerable quantity of the plant, materials, equipment, which were moved to the location of the St. Mary's Dam Project on Crown lands in the Municipal District of Sugar City, the defendant, under the contract which is set out in paragraph 15, My Lord, with all machinery, tools, materials, equipment, articles and things whatsoever, provided. Paragraph 15 is on page 5. "Provided the machinery, tools, 40 plant, materials, equipment, articles and things whatsoever, provided by the contractor or by the engineer under the provisions of Sections 14 and 16 for the works, and not rejected under the provisions of Section 14, shall from the time of their being so provided become, and, until the final completion of the said works, shall be the property of His Majesty, for the purposes of the said works, and the same shall on no account be taken away, or used, or disposed of, except for

the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not however, be answerable for any loss or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor for all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall, upon demand, be delivered up to the Contractor in such condition as they may then be in." 10 20

We will have occasion to analyze the rest of the contract for Your Lordship in the course of the Argument, but I would just bring that clause to your attention at this stage. And now while the work was in progress, the defendant Municipal District, not satisfied with the fact that this great work was being placed there for the benefit of its taxpayers, at the expense of the Dominion Government, proceeded to endeavour to collect taxes from the Contractor. And, on the 16th June, 1947, they sent out an Assessor, Mr. Carmichael, who made a valuation of the various tools and equipment that were there on the location. This was in June, 1947, on the 16th June. And, in September, 1947, the plaintiff was apparently entered in the Assessment Roll, and an assessment slip was sent to the plaintiff, in which these items were shown at the sum of \$183,147.00. An appeal was launched against this assessment, which was taken to the Board of Review, and in turn, a further appeal was sent to the Assessment Commission. The last Commission made simply an over-all reduction of the assessment, without any indication of how it was arrived at, and by which that figure of \$183,147.00 was reduced to \$124,450.00. 30 40 50

THE COURT: \$124,450.00?

MR. HELMAN: Yes. Following on this assessment, a tax notice was sent to the plaintiff company, which has been apparently lost, neither the company has got it nor my friend a copy of it, but we are all agreed that some kind of tax notice was sent us for the sum of \$3,915.27.

THE COURT: How much?

10 MR. HELMAN: \$3,915.27 was demanded for taxes. And, in this lawsuit, the defendant has counterclaimed for that sum of money. Now, following on that tax notice, while the work was in progress, the municipal district thereupon seized all this machinery and equipment, and Your Lordship will remember that you granted an injunction restraining the seizure pending the trial of this action. Now, the statute with
20 which we are principally concerned in this case is the Assessment Act which is Chapter 157 of the statute, Revised Statutes of Alberta, 1942.

THE COURT: What do you call it?

MR. HELMAN: It is called "The Assessment Act", Chapter 157. The provisions making personal property assessable are to be found in sub-sections 1 and 11 of Section 26. "1" reads, My Lord, it says:-

30 "The name of the person who is the owner or of the person who is in legal possession of assessable personal property or the names of both such persons;"

are put together into the roll, if you will read the previous part. When we look at that section, it says:-

"The name of the person who is the owner or of the person who is in legal possession of assessable personal property ---"

Your Lordship has to go back and look at the definition of "owner" which is contained in 2(n):-

"'Owner' means in the case of land, any person who is registered under the Land Titles Act as the owner of land, or, used with reference to property other than land, any person who is in legal possession thereof;" 10

So that when you go back to the section I have just read to you, the name of the person who is the owner, or person who is in legal possession, you come down to the same thing, the person who is assessed is the person who is in legal possession of the personal property. That is what it all boils down to. 20

THE COURT: So the legal possessor is the owner?

MR. HELMAN: Yes. We contend that the legal possession of this property at the time of the assessment was by virtue of this contract in the Crown and if we look at the exemption parts of the Assessment Act, Your Lordship will see in 5, section 5, the heading is: 30

"It is hereby declared for the purposes of this Act ---"

THE COURT: Section 5 of the same Statute?

MR. HELMAN: Yes.

"It is hereby declared for the purposes of this Act, the following property shall be exempt from assessment and taxation,---"

And then we drop down to, - (c) - and it says -

"every right, title and interest of His Majesty in any property whatsoever;" 40

And now there is another section to which I would like to refer you, and I will come back to it again. While we are looking at section 5, it is sub-section (z), which is an exception and in addition to that are all motor vehicles.

So that right at the outset of the contract, the Crown got a bond of roughly \$400,000.00, just a few cents under that, and they got on the place all of this machinery and equipment which was to be used in the course of the contract, and which became their property for the purpose of the contract. Now, Your Lordship will appreciate when this machinery and equipment and the materials put on, much of it would be used up in the course of the contract. Some trucks would break down, and a considerable part of the material worked into the dam itself, wooden scaffolding and stuff like that. Forms were made and a great deal of materials were from time to time actually being incorporated into the dam itself.

10

20

THE COURT: Was that a material part of the stuff that was assessed?

MR. HELMAN: Yes, My Lord, part of the materials that were assessed and entered into the Assessment Roll made in September. At the close of the contract, much of the material and equipment that had been supplied would be valueless, used up, and trucks would become obsolete. This tractor equipment would become worn out, and that is apart from what was actually worked into the dam itself.

30

Now, our contention is that under Clause 15, the legal possession of all this plant, equipment, materials, the minute it was moved on to the property provided by the Contractor went into the legal possession of the Crown. The word "possession" is something that is batted around and all the books say that the word "possession" has a whole set of different meanings. One of these words "of easy virtue" whose meaning depends on whichever bed it happens to lie in. You get the physical possession and the legal possession, and in trying to arrive at the meaning of these words we have the greatest amount of difficulty, because "possession" is not an exact scientific term that may be decided with

40

legal right to get something back that somebody else had agreed to give us.

When we go back to the assessment of material and we look at section 5(r) of the Assessment Act, we will see that amongst other things that are exempt is our choses in action. It says:-

10

"money, bank notes, cheques, bills of exchange, promissory notes and choses in action,"

So that we have two horns to our exemption. First, we say it was not in our legal possession but in the legal possession of the Crown, and the Crown is exempt under this statute; and we say that in any event our right to get this back, whatever was left of it after this all took place, was merely a chose in action, and under 5(r) that is exempt as well.

20

Now we will tender evidence, My Lord, I should just -- no, I will come to that in argument. We will tender evidence to show that a considerable portion in any event if it was taxable on any basis, consists of motor vehicles. We contend such things as caterpillar tractors, dumptor trucks, consisted of motor vehicles and I will have the manager of the company go into the box and enumerate those. We have had a list prepared, and of the original assessment of \$183,000.00 we can make a total of some \$120,000.00 which we say are really motor vehicles in the true sense of the word. An alternative argument is that under this contract, Bennett & White were merely an agent of the Crown, in any event and as such are not taxable.

30

40

Now, we will first of all put in the Discovery. Mr. Barron will read that to Your Lordship, in addition to the contract which we have already filed.

in fact made the inspection and the assessment which gave rise to this litigation?

29 A Yes.

Q What is his position with the municipality?

A Well, he was engaged as assessor.

30 Q And when did he make the assessment in question? 10

A I do not remember that date being in the minutes. The date he was appointed assessor is in the minutes. His assessment notice is dated the 16th day of June, 1947.

31 Q And can we take it from that that he made the inspection on that date?

A It would be very close to that date.

32 Q It would be very close to that date, probably within the preceding week? 20

A I would think so. Now I am not positive of that. I think that you have a copy of that assessment notice.

33 Q Yes, we have a copy of it but I am afraid our copy has been marked up pretty well so I would like to tender your copy as an exhibit. (Assessment notice put in and marked Exhibit 3.)" 30

That assessment notice was marked as Exhibit 3.

THE COURT: You are putting it in now?

MR. BARRON: I tender Exhibit 3 on the Examination of Holladay as Exhibit 2.

THE COURT: It is Exhibit 2 in the trial.

EXHIBIT 2.
Assessment Notice.

MR. BARRON: It is a four page document consisting of items, lists of equipment, and the only thing I should point out to Your Lordship at this stage is the date at the bottom, dated 16th of June, 1947. And signed "W.O. Carmichael." Referring back to the Discovery: 40

(34-35)

10 "34 Q Now let us see if we cannot describe Exhibit 3. This document lists the property which Mr. Carmichael inspected at the site of the St. Mary's Dam some time in June, 1947?

A That is right.

35 Q And contains his valuation of that property?

A Yes. "

(39-41)

20 "39 Q Now when was the assessment roll prepared?

A You see, we have a loose leaf system in our assessment roll, just a card for each party, for each parcel of land or for each party.

40 Q I see. Now you have produced to me a document headed "Assessment and Tax Roll"?

A That was made up after this assessment was turned into our office.

41 Q After Exhibit 3 was turned in you then prepared the document I have before me, which I will tender as Exhibit 4. (Assessment Roll put in and marked Exhibit 4.)"

30

MR. BARRON: I now tender Exhibit 4 in the examination.

THE COURT: This will now be Exhibit 3.

EXHIBIT 3
Assessment Roll.

40 MR. BARRON: On this document we find the assessment against Bennett & White (Calgary) Limited in the sum of \$124,450.00 for the year 1947. There is also an assessment for the year 1948, but we are not concerned with that in this action. I will continue to read the Discovery. That figure is explained in this Discovery by the witness. We find also that the assessment notice was filed on the 22/9/47. In other words, on September 22nd, 1947. That is written in pencil on the document. And then there are the details as

to the calculation of the tax, the mill rate, and the levy is shown as \$3,693.65.

THE COURT: That was marked as 10
Exhibit 3?

MR. BARRON: The difference between that figure and the figure involved in this action are penalties in the sum of \$221.00. There is a slight difference between the actual tax demanded, according to the roll, and what is involved in this action. And the differences are the penalties.

THE COURT: Did you pay the 20
\$200.00?

MR. BARRON: No, nothing Sir.

MR. HELMAN: We cannot pay the penalty if we are not liable for the tax.

MR. BARRON: To continue with Question 42, where I left off.

42 Q Now this was the first time on which Bennett & White had been assessed?

A Yes.

43 Q At least by your Municipal District?

A That is right. 30

44 Q So this sheet was opened up at that time?

A That is right.

45 Q Now I am inclined to think that could hardly be right because you see your figures are not the figures contained in Exhibit 3 but are the figures as ultimately reduced by the Assessment Commission?

A There is an error there. The 40
correct way to do that is to ink those figures in that come from this sheet (indicating).

46 Q That is Exhibit 3?

A Yes. And when there is a reduction by the Court of Revision or the Assessment Commission, this should be struck out with red ink and the new figures put in with red ink. We put them in in pencil originally and 50
the assessment commission's figures

are inked in.

47 Q So that the figures that are inked
in ...

A ...Are those set by the Assessment
Commission.

48 Q Now, following on the assessment,
what did the municipality do next?

A We sent Bennett & White Limited an
assessment notice.

10

49 Q Would this be the document headed
"Assessment Slip"?

A Yes. And there was a copy of this
assessment sheet attached to that.
(Assessment slip put in and marked
Exhibit 5)"

MR. BARRON: That slip was marked
Exhibit 5 on the Discovery, and I tender it in
this action.

20

THE COURT: It will now become
Exhibit 4.

EXHIBIT 4.

Assessment Slip.

MR. BARRON: That document is
headed "Assessment Slip". It says:

"Assessment slip for land, buildings and
improvements assessment, Municipal District
of Sugar City No. 5, Province of Alberta,
Raymond, Alberta.

30

Date Assessment Slip Mailed (Annual Assess-
ment) September 22nd, 1947. To Bennett &
White, Calgary, Ltd. Toronto General
Trusts Building, Calgary, Alberta."

It states:

"TAKE NOTICE that you are assessed as below
for the year 1947 and should you consider
yourself aggrieved, you or your agent may
lodge a complaint within 30 days after the
date of the posting of the notice of the
completion of the Assessment Roll, in the case
of a General Assessment; or within 30 days
after the date of mailing of the Assessment
Slip in the case of an Annual Assessment, as
indicated above."

40

And then the valuations are given. The assessed

value, a total of \$183,147.00. The date of mailing is September 22nd, 1947. It is stated on the document that it is for the year 1947.

Proceeding, Sir,
with the Discovery: 10
(57)
"57 Q Well then, after Exhibit 3 had been prepared, which was in June, 1947, the first official notification to Bennett & White was the assessment slip which I have here, Exhibit 5? Yes."
A Yes."
(70-72)
"70 Q And the appeal was heard by the Alberta Assessment Commission sitting in Raymond? 20
A Yes, that is right.
71 Q On the 28th of November, 1947?
A On the 28th of November, 1947.
72 Q And after reserving their decision the Assessment Commission ultimately handed down the decision by a document dated the 13th of January. Will you examine that document and tell me if it is the decision of the Commission? 30
A Yes.
(Document put in and marked Exhibit 10)"
THE COURT: That will be Exhibit No. 5. EXHIBIT 5. Decision of Assessment Commission, January 13th, 1948. 40
MR. BARRON: This Exhibit is there, Sir, and I will read it.

"IN THE MATTER OF 'The Assessment Act':
AND IN THE MATTER OF an appeal from the decision of the Court of Revision of the Municipal District of Sugar City No. 5:

BETWEEN: Bennett & White, Calgary Ltd.,
Appellant.
- and -
10 M.D. of Sugar City No. 5.,
Respondent.

This is an appeal to the Alberta
Assessment Commission from the decision
of the Court of Revision of the Municipal
District of Sugar City No. 5, respecting
the assessment of the following property:

Personal Property within the Municipal
District of Sugar City No. 5. \$178,022.00
Buildings and Improvements, 6,140.00

20 The appeal was heard in the office
of the Municipal District of Raymond, on
November 28th 1947. R.H. Barron, Esq.,
of Helman, Mahaffy and Barron, Barristers,
Calgary, appeared for the appellant, and
W. A. Carmichael, Esq., Assessor, rep-
resented the respondent.

30 In the course of the hearing it was
found that the appellant company had
appealed the assessment on the ground
that through a contract between the
Dominion Government and Bennett and
White Calgary Ltd., the property
assessed had become the property of
His Majesty in the right of the
Dominion of Canada and was therefore
not assessable.

40 Since the hearing at Raymond, briefs
have been submitted by R. H. Barron, Esq.,
for the appellant and by Virtue & Russell,
Solicitors for the Municipal District.
A copy of the contract between the
Dominion Government and the appellant
company was also supplied by Mr. Barron.

" After due consideration of these briefs and the evidence submitted, the Commission is of the opinion that the property in question has been right-fully assessed to Bennett & White Calgary Ltd. The Commission, however, feels that the assessments are excessive and should be reduced to amounts as follows:

10

Personal Property,	\$ 119,980.00
Buildings & Improvements	4,470.00

And it is so ordered.
No costs to either party.

"J. M. Forbes"
Chairman, Alberta Assessment Commission.

20

Dated at Edmonton, in the Province of Alberta, this 13th day of January, A.D. 1948. "

MR. BARRON: It is under seal.
THE COURT: That is a Provincial Commission?
MR. BARRON: Yes, a Provincial Commission set up under the Provincial Act.
Proceeding with Question 73:

(73)
"73

Q Now, what was the next step following on the disposition of the Appeal?
A I think we sent the company a corrected tax notice, didn't we, computing their tax on this reduced assessment? Now I haven't a copy of that notice. "

30

It has not turned up yet, Sir.

MR. HELMAN: We are not raising any question about that. It just isn't here. We have not got it and they have not got it.
THE COURT: It may not be of any consequence. Go ahead.

40

MR. BARRON:

(74-76)

"74

Q I don't seem to have it either. I am wondering whether you could have sent that, Mr. Holladay? I don't seem to have it. About what date would that have been sent?

10

A It would have been quite soon after we received the decision of the Assessment Commission. There was a notice on our file in the office but when we made up our new notices this Spring we destroyed all those old ones. I regret that I didn't keep it but I haven't got it.

75

Q Well, it may turn up later, if you should run across it. The next thing I have from you is a letter dated April 5th, 1948, to Bennett & White. Now is that the next document that you have? That is the next document?

20

A Yes.

76

Q I will tender that letter. (Letter put in and marked Exhibit 11.)"

30

That was Exhibit 11 on the Discovery, Sir. I now tender it, and it now becomes Exhibit 6, I believe.

THE COURT:

Yes, Exhibit 6.

EXHIBIT 6.

Letter dated April, 5th 1948, addressed to Bennett & White.

MR. BARRON:

Exhibit 6 is on the stationery of the defendant, the Municipal District of Sugar City No. 5.

" MUNICIPAL DISTRICT OF SUGAR CITY No. 5 10
Office of the Secretary-Treasurer,
Raymond, Alberta.

April 5, 1948.

Bennett and White Calgary Limited,
Calgary, Alberta.

Gentlemen:

According to our Tax Roll you owe taxes and penalties in the amount of \$3,915.27. Would it be possible for you to pay this before the 13th of this month? 20

In the event that it isn't paid, the Council have instructed me to advise you that we will have to have our Bailiff seize and if necessary sell enough of your goods and chattels to satisfy the account. This we dislike to do as it is an added expense to you. Therefore, may we have your cheque for the above amount before that date.

Yours truly,

"D. M. Holladay"

D. M. Holladay, 30
Secretary-Treasurer."

And then, Sir, continuing with question 77:
(77-89)

- "77 Q And as a result of this letter this action was commenced?
- A It was right soon after that, yes.
- 78 Q It was your intention, was it not, as stated in the letter, to seize the property in question?
- A That is what the letter states. 40
- 79 Q Yes. Now, as I understand it, Mr. Holladay, in preparing Exhibit Number 3, Mr. Carmichael established certain valuations which totalled \$183,000.00

- for the personal property and from \$6,140.00 for the buildings?
- 10 80 A Wouldn't that be \$178,022.00 for the personal property and \$6,140.00 for the buildings?
- Q I am sorry. You are right. And in arriving at those valuations he did so in an effort to cut down the actual value of the items in question?
- A I believe the Assessment Act says that in making a personal property assessment, they shall be assessed at their fair, actual value, as if they were taken in payment of just debts or something to that effect, and I think that is the way he tried to assess them.
- 20 81 Q I see. He did not endeavour to assess a limited interest or anything of that nature, he assessed it on the basis that Bennett & White had a full interest in the property?
- A We had no way of knowing what interest they did have.
- 30 82 Q Yes, but you know what the problem is in this litigation, Bennett & White take the position that the ownership of the property is actually vested in the Crown. That is what they claim in this action?
- A Yes.
- 40 83 Q But when Mr. Carmichael made this assessment he did not take that position into consideration, or if he did, he did not agree with it. I mean, he did not make any allowance for the interest of the Crown in the items in question, assuming the Crown had an interest?
- A Does he have to take that into consideration?
- 84 Q But I just want to know, did he or didn't he?
- A He assessed it at its fair, actual value.

- 85 Q Without reference to any possible interest that the Crown might have in the property?
- A Yes.
- 86 Q And I believe the Court of Revision and the Assessment Commission acted on the same basis, namely, that if the Crown had an interest it was of no value, or that they had no interest of any kind? 10
- A State that again, will you?
- 87 Q Yes, it is a little confused. Just following out what we have already established, in connection with Mr. Carmichael, I suggest to you that when the Court of Revision heard the complaint and when the Alberta Assessment Commission heard the appeal, they both acted on the basis that the Crown either had no interest at all in the property or if it did have an interest, it was of no value. In other words, both the Court of Revision and the Assessment Commission assessed Bennett & White for the fair actual value of the property in question without reference to any other interest in that property. Now do you understand that? 20
- A The decision from the Assessment Commission, may I read part of it?
- 88 Q Yes. 30
- A 'After due consideration of these briefs and the evidence submitted the Commission is of the opinion that the property in question has been rightfully assessed to Bennett & White Limited. The Commission, however, feels that the assessments are excessive and should be reduced to amounts as follows:' 40

89 Q In other words, it follows from
that that the only change that
the Commission made was to revise
the valuations which had been
made by Mr. Carmichael?

10

A Yes. "

That concludes the Discovery, Sir.

MR. HELMAN:

Call Mr. Walden.

No. 6.

Plaintiff's Evidence.

Edward Walden.

(Examination)

EDWARD WALDEN,

having been first duly sworn, examined by Mr.
Helman, testified as follows:

20

Q Mr. Walden, do you live in Calgary?

A Yes.

Q Are you President and General Manager of
Bennett & White (Calgary) Limited, the
Plaintiff in this action?

A Yes.

Q The agreement, Exhibit 1, was in force
between yourself and the Crown for the
whole of the year 1947?

30

A Yes.

Q Now, the property in the assessment list
dated June 16th, 1947, which has been
made Exhibit 2, or which is now Exhibit
2, it is Mr. Carmichael's assessment list,
that consists, Mr. Walden, of machinery,
tools, plant, materials, equipment and
articles provided by the plaintiff company
for the construction of the work set out in
the contract, Exhibit 1?

40

A Yes.

Q Now, on the 16th June, 1947, which is the
date of Exhibit 2, all of those articles
were at the site of the St. Mary's Diversion

- and Irrigation Tunnel, the subject of Exhibit 1. They were all at the tunnel site?
- A Yes.
- Q And they were all on Crown property?
- A Yes.
- THE COURT: All on Crown property? 10
- MR. HELMAN: Yes.
- Q All the articles in the assessment list continued to be used for the work mentioned in Exhibit 1?
- A Yes.
- Q And I see by the contract that the machinery and equipment which you are to supply is to be, in paragraph 12, supplied to the satisfaction of the Engineers. Was this machinery and equipment and the articles discussed with the Dominion Government or the Engineer in charge? 20
- A Not at that time. But previously to submitting of the tender.
- Q Previously to the submitting of the tender?
- A We had to state on our tender form as to what equipment we would supply.
- Q And it is highly special equipment?
- A The greatest majority of it is.
- Q THE COURT: I take it, it was supplied to the satisfaction of the Engineer? 30
- A Yes.
- Q MR. HELMAN: It was supplied to the satisfaction of the Engineer?
- A Yes.
- Q And you realised that at the end of the contract it would be greatly reduced in value when you would get it back?
- A Yes. 40
- Q Now, the work was not completed by the end of 1947?
- A No.
- Q And were the articles contained in this assessment list, Exhibit 2, necessary for the execution and completion of the work contracted for in Exhibit 1?

A Yes.

10 Q And I take it your company was not carrying on any other work or performing any other contract in the Municipal District of Sugar City in 1947 except this Exhibit 1?

A Not in that district, no.

Q Not in that district. That is all I am getting at. Now, at the time the assessment was made, namely on the 16th June, 1947, was your company already in default under the contract, Exhibit 1? Had you been able to keep up your time schedule?

20 A No.

Q THE COURT: What date?

MR. HELMAN: I am mentioning the date of the assessment. They were already in default at that time.

THE COURT: That date would be June 16th.

MR. HELMAN: Yes, the date that the list was made up, My Lord.

30 Q Now, and you continued to be in default during the whole rest of the year of 1947?

A Yes.

Q I don't think you ever did catch up?

A No, never did catch up.

Q Now, I have had you go through the list which has now been made Exhibit 2, with a view to you setting out what in your opinion are the articles that are motor vehicles, and we have had it typed out. Let us look at that. Will you look at that and tell me whether in your opinion those articles are motor vehicles?

40 A Yes.

Q And opposite each one you have set out in the original, and I have set out in this copy, the actual valuation that was placed thereon by Mr. Carmichael in that Exhibit 2. That is right, isn't it? Those figures on the right hand side are the actual valuation?

50 A Yes.

Q And when we take all of those articles that are alleged to be motor vehicles, we get a total at the bottom of \$120,930.00?

A Yes.
THE COURT: Just what you say are motor vehicles?

MR. HELMAN: Yes.

THE COURT: How much?

MR. RUSSELL: Could my learned friend let me have a copy of that?

MR. HELMAN: Yes, right away. I am going to tender that as an exhibit so Your Lordship will have it before you.

THE COURT: Yes, this will be Number 7.

10

EXHIBIT 7.
Articles alleged to be motor vehicles.

It is an enumeration of what you say are motor vehicles?

MR. HELMAN: Yes, are motor vehicles.

20

Q The first item we have in that list on Exhibit Number 7 of the articles you say are motor vehicles, first of all there is what is called a Northwest Drag-line, which had a value fixed on it of \$16,800.00. Will you describe what that is?

A I will show you this.

Q You had a picture of it. Is this an exact picture of the kind of one in this case? Or is it just the same type?

30

A It is the same, similar type.

Q I thought it would be of some help to the Court if we put that in.

THE COURT: It indicates what kind of a thing it is?

MR. HELMAN: Yes, that is what a drag-line is. I would like to tender that as an exhibit.

40

EXHIBIT 8.
Photograph of a drag-line.

- 10 Q Now this Exhibit 8, it is called a gasoline drag-line excavator in this picture and has at the bottom of it a series of tractor treads?
- A Yes.
- Q And does it move on its own power from place to place?
- A Yes.
- Q And that is the power that is, that it uses, is mechanical power by gasoline engine?
- 20 A Gasoline or diesel engine.
- Q THE COURT: Similar to any automobile? The power in it is in the engine itself?
- A Yes.
- Q MR. HELMAN: What type of work does it do when it gets to the place?
- A Earth moving, rock work, and anything in the way of excavation or elevating heavy pieces of equipment.
- 30 Q It lifts up pieces of dirt or other objects and moves it from one place to another, or loads it into a truck?
- A Yes.
- Q In the course of its work it also moved from place to place while it is actually working?
- A Yes.
- Q As well as being moved from location to location when required for difference types of work?
- 40 A Yes.
- Q Now, the next article we have in this list that has been made Exhibit 7 is a Plymouth gasoline locomotive, a value of \$3,000.00. It is the second in the list in Exhibit 7. It is the second on that list. Have you got a picture of a Plymouth gasoline locomotive?
- 50 A No, sir, the only one we have is a battery-driven locomotive, or a locomotive driven by a battery. This locomotive is a gasoline vehicle, and the chassis is mounted on four wheels and it operates on steel rails.

Q. It operates on steel rails?
A Yes, it is used for hauling muck cars or rock cars in and out of the tunnel.
Q Have you a picture of that locomotive?
A I have a picture of a battery locomotive.
Q Is it similar in type?
A Similar in type. 10
Q Only this is operated by gasoline?
A This is operated by a battery and this one listed here operated by gasoline.
Q Is the general shape ---
A Just about similar shape to the one there.
Q You are pointing to the one at the top left hand corner of this list, and you say while this one is operated by electricity, yours was operated by gasoline?
A Yes. 20
Q And it ran on rails and pulled cars from place to place?
A Yes.
Q I will tender that as an exhibit.
THE COURT: It ran on rails?
MR. HELMAN: Yes, My Lord.

EXHIBIT 9.
Photograph of a
Plymouth Battery
Locomotive. 30

Q THE COURT: This picture is a similar machine, only the one in the picture operates by battery and the one you had there operated with gasoline. That is the only difference?
A Yes.
Q MR. HELMAN: Now the next thing we have in this list is called a Koering dumptor. Have you got a picture of something like that which we can look at? 40
A That is a similar model to what we had down at the job.
Q I see. I tender that as an Exhibit, My Lord.
THE COURT: A Koering dumptor.

That will be Exhibit 10.

EXHIBIT 10.
Photograph of a
Koering Dumptor.

- 10 Q MR. HELMAN: This looks to me
like some kind of a truck which takes dirt
and operates under its own power?
A Yes. That is either gasoline-driven, or
diesel driven.
Q With its own power?
A Yes.
Q A kind of truck for moving the dirt?
A Yes, a heavy duty truck.
20 Q The next thing I have in this list of
articles that were assessed as against you
and which we claim to be motor vehicles is
a mucker unit. Have you got a picture of
that Mr. Walden?
A Yes. It is very similar to that type there,
like that style anyway. That is not the
exact style but it operates on the same
basis.
Q We had better tear this off and not give His
Lordship too much in here.
30 A That just gives an illustration as to how
the machine operates.
Q That is a very similar machine?
A Yes.
Q Perhaps we will just have what you have
been pointing at to be marked because it
is the top part of the page. Are they
both the same?
A Very similar, the same.
Q We will mark that page. That is it there.
40 Q THE COURT: What do you call it?
A A Mucker.
Q A Mucker. That will be Exhibit 11.

EXHIBIT 11.
Photograph of a Mucker
Unit.

- Q MR. HELMAN: What does a mucker do? 10
- A A mucker does similar work to what a drag-line shovel does. That has a bucket attachment in front, and the mucker picks up the rock and brings it up over on to a hopper affair and carried by an endless belt and dumped into rock cars. It is mounted on wheels and runs back and forth on steel rails. It can be operated by electricity or compressed air. This one was operated with electricity. 10
- Q This mucker unit, on which a value of \$1,500.00 was placed, was run on electricity?
- Q THE COURT: Batteries? 20
- A No, a direct electric motor.
- Q Operated by an electric motor?
- Q MR. HELMAN: So that in fact it was a machine that was operated by an electric motor, it has wheels and on rails and it goes back and forth to different locations to do certain work in connection with carrying off mud or stone or whatever you happen to be excavating.
- Q THE COURT: Or rock or dirt or anything? 30
- Q MR. HELMAN: Anything we can call "muck".
- Q THE COURT: Yes.
- Q MR. HELMAN: Now the next thing we have in the typewritten list, Mr. Walden, is an Owen Bucket. 40
- A That is part of the attachment which should have been assessed along with the Northwest Shovel. You cannot operate the shovel with that drag-line without the bucket.
- Q The bucket is part of the drag-line?
- A Yes.
- Q Which bucket was given a value of \$1,050.00, and it is really part of the Northwest drag-line that we have already put in a picture of? A. Yes.

- THE COURT: It is part of Exhibit 8. 8 is the drag-line?.
- 10 MR. HELMAN: Yes.
- Q And the bucket is the part of it that holds the dirt when it is scooped into the ground?
- A Yes.
- Q The next item we have down here is a Dozer blade. What is that? A. A Dozer blade?
- Q THE COURT: What is that?
- A What is that? A Dozer blade is an attachment that belongs further down in the list on the caterpillar tractor. To describe a dozer blade, they are approximately four feet long and three to four feet high and they are concave shaped and attached to the front of a caterpillar tractor for the purpose of pushing dirt or rocks or any materials that require to be pushed along.
- 20 Q It cannot be used by itself but it always has to be attached to a caterpillar tractor for use?
- A Yes.
- 30 Q It is really an accessory to a caterpillar tractor?
- A Yes to a caterpillar tractor.
- Q And the next thing we have in here is called a LeTourneau Carryall. What is that?
- A A LeTourneau Carryall is a vehicle, it is l-e T-o-u-r-n-e-a-u.
- Q We are going through in order, in the order exhibited there. Just tell us, what is that?
- 40 A It is what we call a scraper unit. It is attached to the rear of a caterpillar tractor and used for the purpose of scraping up dirt in the quantity of anywhere from 12 to 28 yards at one operation, and used strictly for excavating materials such as dirt and gravel and light materials like that.
- Q It is attached to the tractor?
- A Yes.
- 50 THE COURT: It is the same as the dozer blade?

MR. HELMAN: Only it goes on the other end.

Q It pushes dirt from one place to the other?

A Scrapes dirt and then conveys it.

Q And it has wheels? A. Yes.

Q And it moves on its wheels with the dirt after it is picked up, after it has picked it up. Have you got a picture of that?

A Yes. 10

Q Is it the exact same type?

A Not, but a very similar type.

Q It is a similar type of implement?

A Yes.

Q Or vehicle? A. Yes.

THE COURT: Exhibit 12.

EXHIBIT 12
Photograph of a
LeTourneau Carryall
Scraper. 20

Q MR. HELMAN: The next thing we have on Exhibit 7 is called a Le Tourneau Dozer, \$1,000.00.

A That is similar to the one mentioned just above there, a dozer blade.

Q That is also an accessory to a caterpillar, and forms part of a caterpillar tractor unit? A. Yes.

Q Well then, we have a caterpillar tractor and I think we all probably know what it is. Tell us what it is. 30

A A caterpillar tractor is a vehicle which operates on its own power, and instead of having wheels it has caterpillar tracks and it is used for pushing dirt or dragging dirt, or in heavy hauling.

Q Any heavy kind of conveyance that you may have?

A Yes.

Q Have you a picture of a caterpillar tractor? 40

A Yes.

Q There are two caterpillar tractors, and on the front of them on this picture is an

implement, is that the dozer blade?
 A Yes, that is the dozer blade.
 Q I would like to tender that for Exhibit.
 THE COURT: Exhibit 13.

EXHIBIT 13
 Photograph of a
 Caterpillar Tractor.

10

Q MR. HELMAN: The next item we have is a Bucyrus Drag-line. Is that a similar kind of a drag-line to the Northwest Drag-line we have already put in?
 A Yes.
 Q It also moves on its own power?
 A Yes.
 Q And conveyed from place to place in the same way?
 THE COURT: Similar to Exhibit 8?

20

MR. HELMAN: Yes.
 Q And then we had a Caterpillar Power Unit, is that something different from a Caterpillar tractor?
 A No, a Caterpillar Power Unit is an attachment fixed to the rear of the tractor for the purpose of operating the carryall.
 Q It really should form a part of the carryall?
 A Yes, in order to operate smoother.
 Q It just happens to be separate. It is really part of it? A. Yes.
 Q Have you a picture of a power unit?
 THE COURT: Caterpillar power unit.
 MR. HELMAN: Yes.
 Q You are pointing to the thing in this catalogue there? A. Yes, it is similar to that.

30

40

Q What is its purpose? A. Its purpose is, it is hooked up to the transmission in the tractor, and geared up and as you notice on the exhibit there, there are wheels on it, and the tables which operate the raising and lowering of the scraper are there and

Q the operator can control that by levers.
 I would like to mark that as an exhibit.
 We are looking at Number 25 there. It has
 no use aside from its attachment to the
 caterpillar tractor for that purpose? 10
 A The dozer blade can be operated from it.
 Q That is all part of the caterpillar tractor?
 A Yes.

THE COURT: Exhibit 14.

EXHIBIT 14
 Photograph of a
 Caterpillar Power
 Unit.

Q MR. HELMAN: And then we have
 \$300.00 worth of Koppel Mine Cars. What are
 those? 20

A Those are steel cars with boxes on them, or
 the boxes are mounted on wheels which run on
 steel rails, and the boxes are about five
 feet by four feet, or five feet by five feet,
 and they are used for the purpose of hauling
 the rocks or dirt out of the tunnel.

Q You were using them on this job for the
 purpose of hauling the rock out of the
 tunnel? A. Yes. 30

Q And they were attached to the, to one of
 these locomotives? A. Yes.

Q And it is like any ordinary mine car, that
 is used in any mine? A. Yes, that is
 right.

Q THE COURT: Each car would not
 have any power? A. No.

Q MR. HELMAN: It is to be pulled
 by a locomotive? A. Yes.

Q THE COURT: Yes, I see. 40

Q MR. HELMAN: Now, then, lets go to
 the next page, and still dealing with Exhibit
 7, an Allis Chalmers Caterpillar Tractor.
 That is the same type of a tractor as
 Exhibit 13? A. Yes.

Q And that has the same function in your
 operations?

10 A It depends on which caterpillar tractor is listed here. There is one listed with an overhead loader.
Q This is a \$5,500.00 one. Do you think it had an overhead loader on it?
A Yes, that one did. There is the machine mentioned and that is the work it does with a bucket and in that way.
Q Do we need both of these pictures?
A No.
Q This is a picture of the type of, the kind of caterpillar we are describing as an Allis Chalmers Caterpillar Tractor?
20 A Yes.
Q Only this is made by another company?
A Yes.
Q I will mark that as an exhibit.
THE COURT: Exhibit 15.

EXHIBIT 15
Photograph of a
Caterpillar tractor

30 Q MR. HELMAN: This tractor with the overhead loader, it moved about from place to place on its own power?
A Yes.
Q Just like any tractor, but it had an overhead loader. What does that do?
A Similar work to what the mucking machines do. It will excavate dirt, or rocks, bring it over the top of the machine, or dump it in a truck, or convey it along.
Q This overhead loader, what do you call, is it a shovel that catches...
40 A Yes, a shovel.
Q It catches dirt, or rocks?
Q THE COURT: The operator pitches it over his head? A. Yes.
Q MR. HELMAN: And he can carry the dirt and the rocks with the tractor if he wants to for some considerable distance?
A Yes.
Q That often happens, he carries it for some

- distance before he dumps it into a truck?
- A On occasions.
- Q And there might be an occasion when he was just moving the dirt or rocks to another part of the work?
- A Yes.
- Q And then we have a Caterpillar Tractor. I suppose nothing special in that to distinguish it from the other tractors we have already had? 10
- A No.
- Q And caterpillar tractor again, and then a Le Tourneau Carryall. We have already had one of those, that is, in Exhibit 12. And you told us about it. And then there is a caterpillar tractor again, and a Le Tourneau Carryall and an Allis Chalmers H.D. 14 tractor.
- A That is a similar machine, caterpillar tractor. 20
- Q But made by the Allis Chalmers people?
- A Yes. kind
- Q And 3 dozer blades, \$4,000.00. Those/are the kind of blades which are accessories to a tractor?
- A Yes.
- Q And used for this work?
- A Yes.
- Q And then 2 Koering Dumpsters, again, \$12,000.00. Those are the kind of dumpsters you have already described, and which are a part of Exhibit 10. And then the last one we have is a Utility Wagon? 30
- A A steel Jumbo. A drilling Jumbo made of 4 inch pipe mounted on wheels which we took off the rock cars, and its purpose was for mounting the drills to the front end and it conveyed the drills, the steel and pipe and then it was used for the purpose of drilling, and hauled in and out on rails by either the mucking machine or the locomotive. 40
- Q It was a device that you made up out of a mine car?
- A Yes, a mine car, and four inch pipe.

- Q And it had a drilling apparatus on it, and you would attach it to a locomotive and push it to where you wanted to do some work?
- A Yes, inside the tunnel.
- Q And it conveyed the drilling attachment from place to place, wherever you wanted it ?
- A Yes.
- 10 Q And how long was this tunnel when it got through?
- A 2,100 feet.
- Q And they had rails running right through the whole tunnel as the work progressed?
- A The rails were picked up and moved ahead again.
- Q THE COURT: It was pulled by a locomotive?
- A Yes.
- Q MR. HELMAN: And how many years experience have you had as a contractor, Mr. Walden?
- 20 A As a contractor, 10 years. Building construction, 35 years.
- Q 35 years?
- A Yes.
- Q And you are thoroughly familiar with this type of work, and you were in charge of it at the St. Mary's Dam for the company, the work at the St. Mary's Dam. A. Yes.
- 30 Q And you are thoroughly familiar with the equipment and the use it was put to?
- A Thoroughly familiar with it.
- Q And in your opinion, are all these articles set out in Exhibit 3 motor vehicles?
- A Yes.
- Q And the total figure we got for them is \$120,930.00 and that was taken on the basis of the value made by Mr. Carmichael in his original assessment?
- A Yes.
- 40 Q Mr. Barron puts it to me that I did not establish about whether or not you put up that \$400,000.00, \$399,000.00, your company in fact set the bond required under Section 20 of the contract?
- A Yes.

- Q Well now, in this list of items that Mr. Carmichael prepared, which is Exhibit 2, there are a considerable number of items which we have which were to be called "consumable items", items which would be used up in the course of the work, completely used up or destroyed. Now, I just want to go through with you, I didn't have this separately typed out, so if your Lordship would prefer me having them typed out at noon, I could get them typed out, and then it will save you the bother of writing these down. I will just go through them with the witness, and figures. First of all, used timbers, \$110.00, contained in the assessment list. Page 2. What would happen to this before the job was finished? 10
- A In the terms of the contract, we were to supply to the Dominion Government 44,000 board feet of timber used for the purpose of shoring rock inside the tunnel. used 20
- Q I am talking about certain/timber worth \$110.00 in this item.
- A That is the property of the Government.
- Q Air nose, \$125.00?
- A That is a consumable article. They were used for the purpose of conveying from the compressors to the drilling machine, and that was used day by day with rock falling on it and a considerable amount of air hose used throughout the entire job. 30
- Q There were a certain number of timbers you used for shoring up?
- A Yes.
- Q And they would have no use after the job was through?
- A Yes.
- Q And then certain things we have called "pipeline" and "water line"?
- A They had the same abuse as the air hose. 40
- Q Those would be valueless?
- A Yes, continually buying that stuff.
- Q You were continually buying that stuff. What about items such as barrels, pipe nipples?

A The same thing applies there, if the pipe is damaged or nipple damaged.

THE COURT: I take it there is quite a lot of that stuff?

MR. HELMAN: Yes, it all totals \$8,099.00.

THE COURT: Couldn't you agree that that was what he calls a material ---

10 MR. RUSSELL: I think before Mr. Walden leaves the stand, we should have an opportunity to cross-examine.

THE COURT: Yes, of course. Have a list typed out. It would be useful. You can probably agree on what the typed sheet shows, consumable materials, like timber and so on. If you cannot, we will have to stay here and go into the details. To save time, I would suggest that you make that list and then this witness can tell me that this is a list of that kind of stuff. And if you are not

20 satisfied you can cross-examine. I take it there is considerable.

MR. HELMAN: Yes, Sir, and the total is \$8,099.00.

THE COURT: How much?

MR. HELMAN: \$8,099.00 worth of these consumable items. Those would be constantly used up as the job was progressing.

30 THE WITNESS: Yes.

Q MR. HELMAN: And if Mr. Carmichael found some of it there on June 16th, by September when he actually entered it in the Assessment Roll the chances are most of that would be used up?

A Yes.

Q And in any event, by the completion of the contract it would have been entirely replaced with new items?

40 A Yes.

Q Just answer my learned friend.

No.7

CROSS-EXAMINATION BY MR. RUSSELL:

- Q Now, Mr. Walden, subsequent to your Examination for Discovery, I believe you prepared under the Order of the Appellate Division, Supreme Court, a list which corresponds with the Personal Property List which is Exhibit 2 today, and in which you deemed to show the location of the various articles included in Exhibit 2 at the time of the Examination for Discovery. Is that correct? 10
- A Yes.
- MR. HELMAN: I don't see what the effect of this is. This is something as to where the stuff was at the time of the Examination for Discovery, which took place ...
- MR. RUSSELL: I don't care to argue the point. I am wondering if he has an original or not. 20
- MR. HELMAN: I care to argue it right now and I don't think it is admissible. My friend had the witness prepare a list of the whereabouts of the machinery
- THE COURT: Was it discussed in the Examination for Discovery?
- MR. RUSSELL: Yes.
- MR. HELMAN: That does not make it admissible. It is where the machinery was in July 1948. 30
- THE COURT: Ask the witness about it.
- Q MR. RUSSELL: Is this the list you prepared, Mr. Walden?
- A There is nothing on it to indicate that I prepared it.
- Q Tell me what that is?
- A It is a list of equipment, of the list that you have there.
- Q In Exhibit 2? 40
- A Which indicates where the equipment was at the time when the last Examination took place, and I had, to the best of my ability, lists where this equipment was.

Q MR. RUSSELL: This is a list prepared by you?

A Yes.

Q Put that in as an exhibit.

MR. HELMAN: I object. It shows something that took place in 1948. What is the whereabouts of these materials and equipment in July 1948 to do with the Assessment made in June 1947?

10

THE COURT: What is the purpose of it?

MR. RUSSELL: The purpose is this, in his Direct Examination the witness said that all these were necessary on the job.

THE COURT: Yes?

MR. RUSSELL: This list shows a large number of those articles were not on the job, they were removed from the job.

20

THE COURT: Were they on the job in 1947?

MR. RUSSELL: Yes, they were on the job in 1947.

THE COURT: What difference would it make where they were in 1948? He says they were necessary on the job in 1947.

MR. RUSSELL: And he also said they were continued to be used on the job subsequent to the assessment.

30

Q THE COURT: Is that right?

A Yes.

MR. RUSSELL: I think it is a very important piece of evidence, My Lord.

MR. HELMAN: My friend has constantly been, from the Examination for Discovery, trying to deal in what happened to these things, what happened to this contract after it was all through. What took place in 1948. On this question the matter went to the Appeal Division, and the Court there held he was trying to ask about a negotiation between the Dominion Government and the Contractor about his release from further performance of the contract, and Mr. Justice Ford, in delivering the judgement of the

40

Appellate Division, said?

"All these questions are irrelevant and the Defendant (Respondent) is not entitled to the production asked for. The assessment and taxation is for the year 1947 and the plaintiff's claim for the declaration asked, as well as the claims of the defendant on its counterclaim, so far as the latter relate to the property covered by the contract, depend not upon any relief from performance which may take place after 1947, but upon the construction which may be given to the contract as an existing one."

10

What has this to do as to the whereabouts of these goods and chattels in 1948, at the time the Examination for Discovery took place. I have no objection to my learned friend asking as to where these things and chattels were at the time of the assessment.

20

THE COURT: What does it matter to you where the things were a year after?

MR. RUSSELL: Amongst other things, the subject matter of this argument is a contract in which the Plaintiff is claiming ownership of those articles.

THE COURT: Yes. He is claiming that during 1947, the year they were assessed, they were not his property but belonging to the Crown. You can cross-examine him on that point, as long as you want to. I do not see where this property happens to be in 1948 is of any consequence.

30

MR. RUSSELL: Don't you think it would assist you in establishing the ownership of these articles under this particular clause in the contract quoted by my learned friend?

THE COURT: 15?

40

MR. RUSSELL: Clause 15 in the contract. I am just starting at the middle of it:

10 "shall be the property of His Majesty for the purpose of the said works and the same shall on no account be taken away, or used, or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer."

THE COURT: Would that be not confined to the year 1947?

MR. RUSSELL: This contract covered the entire arrangement.

THE COURT: Your assessment is only for one year. Did you make any other assessment for the year following?

20 MR. RUSSELL: Yes, we did, but notwithstanding that, the matter is a 1947 assessment. I believe this is extremely useful to Your Lordship to show what articles were retained on the job and what articles removed, also to show what articles were consumed in the work and what articles were not consumed.

THE COURT: Even if they were removed from the job, wouldn't the Crown still own them until the contract was completed?

30 MR. RUSSELL: No. We take the position the Crown never did own those articles.

THE COURT: If they did own them, if they were the property of the Crown under this contract, they remained the property of the Crown until the job was completed and their location, it seems to me, would be immaterial, where they happened to be.

MR. RUSSELL: My Lord, is not the inference that if the plaintiff was moving these articles from place to place ---

40 THE COURT: Yes.

MR. RUSSELL: --- notwithstanding the provisions of this contract, they were exercising a degree of ownership over those things?

THE COURT: He is an agent of the Crown, and he is using them and managing them. If I have a chattel mortgage on a farmer's property, he may have a half dozen farms situated ten miles apart and can move stuff around, and take it from one place to the other. It does not detract from my claim on the goods.

MR. RUSSELL: I would think it would have some bearing here when the contract pur- 10
ports to show no articles shall be removed from the work without consent of the Crown.

THE COURT: That was a warning to him not to take them away and if he did take them away, and the Crown did not see fit to exercise this right to reclaim them, it is all right, I suppose, but it would not inter- 20
fere with any ownership of the stuff, no matter where he took it.

MR. RUSSELL: If the Crown owned those articles, and without the consent of the Engineer, and presuming I could prove that ---

THE COURT: The Crown didn't bother about where the stuff was taken, that is it's risk, I would think. I do not see what difference it makes to the ownership of the goods as to where they happen to be loc- 30
ated. I do not see that. I do not see what difference it would make. The Crown would have said immediately he took this stuff away, "Here, Mr. Bennett & White, you bring the stuff back or we are going to take possession of it, and close out this contract. You are violating a term of it."

The term that the Crown have rights, but as to whether the goods might have been moved, I do not see that has anything to do with the right of ownership at all.

MR. RUSSELL: We feel, My Lord, it does have some bearing. 40

THE COURT: I do not care what you feel, it is what the facts are. Here, I take it, in brief, this matter has resolved itself simply to whether these goods were the property of the Crown, and under that clause of the contract that sets that forth. It seems to me after the goods were brought on the job, they then became the property of the Crown, and moving them off the job would not eliminate them from Crown ownership.

10

MR. RUSSELL: Not if you take it to give the Crown ownership in the first place. I submit it is one circumstance which may be looked at to decide what the effect of Clause 15 was in the contract. Other than that ---

THE COURT: The important fact is where the things happen to be. This witness says they were there on the job when they started work, brought there for the purpose of doing the job they were obliged to do under this contract.

20

MR. RUSSELL: There is another point for which this document is valuable and that is to assist us in establishing what material was consumed on the job and what remained in existence as at the time of the Examination for Discovery. In other words, what were consumable articles and what were not consumable articles.

30

THE COURT: You can examine the witness on that point.

MR. HELMAN: I will give you the list of consumable articles.

MR. RUSSELL: Perhaps we are not convinced your list is the list we should adopt.

MR. HELMAN: Do you want to show something else is consumable that we do not want to claim is consumable?

40

THE COURT: When you get that list, if you are not satisfied those are all the consumable articles, you cross-examine this witness and find out.

MR. HELMAN: If my friend wants to add to it, we would be glad to have him add some more consumable articles.

MR. RUSSELL: We will endeavour to help my friend in any way.

THE COURT: I suppose the plaintiff would be willing to call everything consumable.

MR. RUSSELL: Yes.

THE COURT: When you get that list, if you are not satisfied with it, you cross-examine this witness and get any information that you can now. It is just a matter of saving time. If you want to take up the time of the Court and your own time, and get it out in full from this witness's mouth, go ahead and do it. 10

MR. RUSSELL: I feel this particular document would go a long way in corroboration of the list being prepared at noon by my friend. 20

THE COURT: I don't know anything about that list now. We are dealing with consumable things at the moment, and a means is suggested of settling what they were. There is a better way to do it. You can get the information and then cross-examine this witness all you like.

MR. RUSSELL: The situation was at the time of the Examination for Discovery that operations had more or less ceased. I think my learned friend will agree with that. 30

THE COURT: Yes. I suppose they had.

MR. RUSSELL: It follows from that that articles which were valuable at that time were not subsequently consumed on the job.

THE COURT: Yes.

MR. RUSSELL: And this particular list --- 40

THE COURT: You can get that from the mouth of the witness when you get the list.

MR. RUSSELL: Yes.

10 MR. HELMAN: My friend is just trying to clutter up the record. There is no hiding what we are doing. He has a list of where we have all this machinery and equipment at the time of the Examination for Discovery, at a time when the most of such work had more or less stopped. And he wants to put it in, not for the purpose that he says, to show what was consumable and what was not ---

MR. RUSSELL: I will say what I am going to put it in for.

MR. HELMAN: I have a right to take the whole objection without interference. Would you mind sitting down and let me finish my objection?

MR. RUSSELL: Would you mind sitting down until I finish what I am saying?

20 THE COURT: We will hear the objection first.

MR. HELMAN: My friend got a list from us of where the machinery and equipment was in July 1948. The Appellate Division said that anything that took place after 1947 has nothing to do with it where the assessment was begun in 1947. Now, my friend comes forward with the suggestion there are certain items still contained in there which we said were consumable items. I am willing to give my friend the list of what we contend were consumable items. And to the extent that he can find any of them in this document, he can go ahead and say in 1948 they still exist, but from all of that this document is of no effect and has no relation to this lawsuit where my learned friend is trying to slide it in and say it has something to do with consumable items. It shows the whereabouts of material and equipment in July 1948, for the year after the assessment.

40 Q THE COURT: The Appellate Division seems to have dealt with this thing.

MR. RUSSELL: The Appellate Division answered that question. The only reason this list was drafted was because the Appellate Division ordered it.

THE COURT: The list of consumable goods?

MR. RUSSELL: A list of the goods we have shown their location at the time of the Examination for Discovery. 10

THE COURT: I thought that the Appellate Division said what happened to those goods in 1948 is not relevant. It strikes me that it would not be relevant.

MR. HELMAN: I want to ask Your Lordship for permission to make it while he is still talking. He was saying why this list was produced. During the Examination Mr. Russell asked the witness:

"Now, are the chattels which were assessed in the possession of your company?" 20

"Objection was raised that possession is a question of law. The question should be answered in view of the dispute as to the right to seize and sell to enforce the claim for taxes."

That is all my friend was getting this document for. He wanted to know whether he could seize and sell and he wanted to know where these goods were in 1948. He is wanting to put them in for an improper use and clutter up the records. 30

THE COURT: To seize them or sell them, what is the difference where they are? If you can not find them, that would be his funeral. I will not admit that document now, Mr. Russell. No. 40

Q MR. RUSSELL: Mr. Walden, I think that you were aware, and gave instructions that after the assessment was made, notice of objection was made to the Municipal District, is that correct?

A Through Mr. Helman.

Q And notice of objection was sent to the Secretary-Treasurer of the Municipal District?

A Yes.

Q Is the Notice of Objection which was prepared on your instructions, or stating the grounds of your complaint to the Court of Revision of the Municipal District?

10 A Yes.

THE COURT: Notice of the objection to the assessment. You say that is what this is? What do you call it, Mr. Russell?

MR. RUSSELL: Notice of Objection to Assessment.

THE COURT: That will be Exhibit 16.

EXHIBIT 16.

20

Notice of Objection to the Assessment.

Q MR. RUSSELL: At that time, Mr. Walden, you set out certain objections to the assessment?

A Yes.

Q I will just read these to Your Lordship. It is addressed to the Secretary Treasurer, Municipal District of Sugar City Number 5, Raymond, Alberta.

30

" The undersigned hereby complains that the property assessed as set out in the Assessment slip dated September 22nd, 1947, relating to certain personal property at St. Mary's River Dam has been improperly assessed for the following reasons:-

40

1. The said personal property is only temporarily within the Municipal District and is not subject to taxation.

2. The said assessment contains a considerable number of motor vehicles which are exempt from assessment.
3. The said assessment on personal property has been made only in relation to the personal property of the undersigned and is an attempt by the Municipal District to discriminate against it and other Construction Companies operating in the locality without it being intended that a general assessment of personal property in the Municipal District should be made, and therefore the said assessment is illegal and void. 10
4. The said assessment is too high.

DATED at Calgary, Alberta, this 15th day of October, A.D. 1947.

BENNETT & WHITE CALGARY
LIMITED
Per: HELMAN MAHAFFY & BARRON 20

Per: S.J. Helman,
Its Solicitor.

The address for service of all notices on the Complainant is at the office of its solicitors at the address given above. "

That was a document which was originally submitted as the basis of your objection to this assessment, is that correct? 30

A Yes.

MR. HELMAN: I don't think my friend -- Read the letter immediately afterwards, raising other problems.

THE COURT: It speaks for itself.

MR. RUSSELL: Now, to make my friend happier, I will put that document in now. Subsequently, I think you prepared a further

letter stating further grounds for your objection to the assessment, is that correct, which was also mailed to the Secretary-Treasurer, and to be used before the Court of Revision?

A It depends upon what letter.

Q I will show you the letter.

10

THE COURT: Show him the letter, and he can judge whether he wrote it and what it was for.

Q MR. RUSSELL: Subsequently ---

THE COURT: Show him the paper, look at it.

Q MR. RUSSELL: Was that letter sent by you to the Secretary Treasurer of the Municipal District Sugar City?

MR. HELMAN: It was not sent by him. It was sent by our firm.

20

Q THE COURT: Tell me what that is.

A It is a letter sent by Mr. Helman to Sugar City with a further dispute.

Q On behalf of your Company?

A Yes.

Q MR. RUSSELL: That letter is dated October 25th, 1947?

A Yes.

THE COURT: Exhibit 17.

30

EXHIBIT 17.

Letter dated

October 25, 1947.

It is a further protest against the assessment.

MR. RUSSELL: Yes, that is what it would be.

40

Q Now, I wonder if you can explain to us this reason you have, you were the manager, I think, and President of the Company at the time the original objection went in to the Municipal District. You were an officer for the company at that time and you knew there was a matter of some \$183,000.00 worth of equipment in dispute at that time. The ownership and the

assessment of the property, is that correct?
Yes.

A
Q

How is it, then, that you made such an obvious oversight that you had not in your first notice of objection mentioned the rather important fact that you had no property in that machinery?

MR. HELMAN: I think my friend is trying to get me fired as solicitor for Bennett & White.

10

THE WITNESS: I raised the objection and I asked Mr. Helman, at that time I didn't give Mr. Helman, at least, I don't recall giving Mr. Helman a copy of our original contract. I raised the objection we were on Crown property and that all our vehicles were motor vehicles. And we didn't go into it much at that time till we found we were going to be assessed for the whole thing.

20

MR. RUSSELL: The most important point on the objection you are claiming now, namely, that the Crown owned this property, was never even mentioned in your first notice of objection. It went in as an afterthought.

THE COURT: An oversight of the solicitor.

MR. HELMAN: My friend keeps saying "you did". It was myself. They are all signed by me. I don't think it is a legitimate cross-examination.

30

THE COURT: I see they are both signed by the company's solicitors, the firm of Helman, Mahaffy & Barron. I would take it that the position is this, that the solicitor overlooked that particular item in sending in hurriedly the first objection, but he sent you another one within ten days. I can easily understand how it might have happened.

40

MR. RUSSELL: Yes.

THE COURT: This witness says that he doesn't think that he gave Mr. Helman the copy of the contract when he first went to see him about that assessment notice. Go ahead. I don't know if it is of any consequence.

MR. RUSSELL: I simply draw that to Your Lordship's attention.

THE COURT: Yes, it is obviously a very important phase of the objection, but it was not mentioned in the first notice.

MR. RUSSELL: They never even thought they were owners until ---

10

THE COURT: I don't think it matters what they thought. The contract speaks for itself, Exhibit 1, and it is there in plain English. And it speaks for itself. We are not going to vary it here. Go ahead.

Q MR. RUSSELL: Subsequently to the Hearing of the Assessment Commission, I believe you received a notice setting down what the, the Court of Revision I mean, you received a notice of the decision of the Court of Revision stating what the finding of that Court of Revision was?

20

MR. HELMAN: Do you want to put that in? I have no objection to you putting it in. I do not think he ever got it. It came to our office.

MR. RUSSELL: Yes, I will put it in. It is ---

THE COURT: What do you call it?

30

MR. RUSSELL: Notice of Decision of the Court of Revision.

THE COURT: Notice of the Decision of the Court of Review?

MR. RUSSELL: Well, of Revision is what it is called.

MR. HELMAN: The Municipal Council itself sits as a Court of Revision.

THE COURT: And then it went from that to the Assessment Commission?

40

MR. RUSSELL: Yes.

EXHIBIT 18.
Notice of the Decision
of the Court of
Revision.

- Q MR. RUSSELL: I believe subsequent
to you receiving the judgment of the Court
of Revision, you then filed an appeal with
the Secretary Treasurer of the Alberta Ass-
essment Commission, is that correct?
- A Yes.
- Q I think possibly my learned friend will admit
this document.
- MR. HELMAN: I have no objection 10
to it going in. My friend wants to put in
our Notice of Appeal to the Assessment
Commission. I have no objection to it going
in.
- THE COURT: Notice of Appeal to
the Assessment Commission, all right.
- EXHIBIT 19.
Notice of Appeal to the
Assessment Commission.
- Q MR. RUSSELL: After that, the 20
Alberta Assessment Commission sat and heard
representatives from both the Municipal
District, the Defendant, and yourself, is
that correct? A. Yes.
- Q Were you present at the ---
- THE COURT: Their decision is
in now.
- MR. RUSSELL: Yes, their decision
is in.
- Q Were you present at that Hearing, Mr. Walden, 30
of the Alberta Assessment Commission?
A Which one?
Q That was the second one.
A Were they in the Court House in Calgary?
- THE COURT: Where was that held?
- MR. RUSSELL: At Raymond, in the
Municipal office.
- THE WITNESS: Yes, I was there.
- Q MR. RUSSELL: Were you represented 40
by counsel? A. Yes, Mr. Barron was there.
Q And eventually you got a decision which is,
I think, now on the file as Exhibit 5?

A Yes.

Q You are familiar with the decision?

A Yes.

Q Now, there was a viva voce hearing, your solicitor made representation at that time to the Assessment Commission, and I believe also the Municipal District made representation, and subsequent to that did you not supply a written brief by your solicitor?

10 A I don't recall.

Q Perhaps my friend will admit that.

MR. HELMAN: I don't see why we should clutter up this record with a written brief. This case is obviously, possibly will end up in the Supreme Court of Canada, and are we going to shorten these arguments?

Q MR. RUSSELL: Did a brief go in from you or your counsel?

20 A I can't say now.

Q I am not going to ask you to produce it.

MR. HELMAN: I think we put one in.

Q THE COURT: Was there one?

A I don't recall, Your Lordship.

MR. HELMAN: It is right in the decision. The decision says that written briefs were put in by counsel representing this man.

30 THE COURT: It was a written argument against the assessment?

MR. RUSSELL: Yes.

THE COURT: We will probably have another one much more elaborate before we get through with this trial. A written argument was filed?

MR. RUSSELL: Yes.

THE COURT: And the Commission gave the decision against them?

MR. RUSSELL: Yes.

40 THE COURT: Mr. Helman admits that that is what happened. His brief then didn't convince the Commission so I will probably get a better one.

Q MR. RUSSELL: Now turning to this list of motor vehicles you put in as Exhibit 7, Mr. Walden.

- A Yes.
- Q Was this list prepared by yourself?
- A Yes. I marked the motor vehicles from the original Assessment List of what I considered ---
- Q You drew this list up yourself?
- A Yes.
- Q What characteristics of these vehicles did you, or what characteristics did you take in determining that these were motor vehicles? 10
- A All mobile equipment, or some of the items there are part of a unit, such as that dozer blade which is part of the caterpillar tractor.
- Q Just looking at this list briefly, this Northwest Drag-line, it is power operated?
- A Yes.
- Q On tracks?
- A On caterpillar tracks. 20
- Q On caterpillar tracks?
- THE COURT: I suppose, Mr. Russell, it is a question of argument whether that is, those various articles enumerated in Exhibit 7, come within the category of motor vehicles. That is probably a matter of argument. This witness or a hundred witnesses could give me their opinion. I don't know if that would be of much help. We have a clear illustration of what they look like and how they operate, and he claims they are motor vehicles. You may be introducing some other evidence to suggest they are not motor vehicles. However, go ahead. It may be helpful to me to get what this witness thinks about it. Go ahead. 30
- Q MR. RUSSELL: This Plymouth gasoline locomotive, I believe you said it ran on rails?
- A Yes, it ran on rails. 40
- Q It was a power operated?
- A Gasoline power.
- Q Gasoline power. And this Koering Dumptor, was it on tracks?

- A No, that is only an illustration there. It is a heavy duty truck of a very short wheel base.
- Q On wheels?
- A Yes, on rubber tyred wheels.
- Q And this Mucker Unit, do you -- according to the picture there are no wheels on that item?
- A There are wheels.
- 10 Q Does this Mucker Unit run on rails?
- A On rails.
- Q Is it power operated in itself?
- A Electric motor, 60 horse power electric motor.
- Q Do those electric motors cause it to move back and forth on the rails?
- A Yes.
- Q It does not travel on the ground at all, just on the rails?
- 20 A On rails, yes.
- Q These two Carryalls with the list, one on page 3 and another on page 5, are they tractor drawn?
- A Yes.
- Q Do they have no motor in them at all?
- A No.
- Q They are trailers, a form of trailer?
- A Yes.
- 30 Q They are trailed after some other power-operated equipment?
- A Yes. May I say something in addition to that, in connection with that scraper itself, a very similar machine of that nature which is called a Turnapole. You are working now to determine whether that is a motor vehicle, and in my opinion that is a motor vehicle, compared with other types of equipment of a similar nature. It is used for that similar purpose.
- 40 Q These caterpillar tractors, some of them were equipped with accessories and some were not. Some of them had, one had considerable equipment added to it. Is that correct?
- A I don't get you.

- Q I believe the Allis Chalmers, which you described, had some sort of bucket on the top?
- A That bucket can be used on the same principle as a dozer blade. It is used on the same principle. It has various operations.
- Q Yes. When you buy the tractor do you necessarily buy the dozer blade or the bucket or the power take-off? 10
- A They are all additional accessories.
- Q They are something that does not come with the tractor?
- A No.
- Q THE COURT: I suppose the tractor would not be of much use in connection, would not be of any use in your work without these accessories?
- A That is right. 20
- Q Would it be?
- A No, very little use unless you have these accessories. You could not haul anything. The machine is practically useless without a power takeoff.
- Q MR. RUSSELL: You mean for your particular work?
- A Yes, or for any type of work.
- Q THE COURT: In digging a tunnel, that is what this contract is about, would these various machines that you claim to be motor vehicles, would they be of any use to you without the accessories that are being described? 30
- A None whatever.
- Q None whatever?
- A No.
- Q The accessories on automobiles, Mr. Russell, one important accessory is a heater in a motor car, but you can get along without it. It is not an essential part. That is what I am trying to get from this witness. 40
- A These are essential.
- Q These are essential parts of the machine. In other words, the machine would not be any good for the work he is intending to use it

for. They are not in themselves motor vehicles, of course.

MR. RUSSELL: They are simply accessories.

THE COURT: We will hear a lot of arguments about that, I have no doubt, before we get through.

10 Q MR. RUSSELL: What are these two
A Koering Dumpsters. Were they on tracks?
Q No. There is a picture, I think, which
A would define them very clearly.
Q They have a motor?
A Motor operated, either gasoline or diesel.

THE COURT: That is Exhibit 10?

MR. RUSSELL: Yes, Exhibit 10.

MR. HELMAN: Your Lordship probably could give us more evidence about the use of these machines than any of us here.

20 THE COURT: I think I have a clear enough idea of how they work and what they are used for.

MR. RUSSELL: Now, My Lord, I was wondering whether we might adjourn now until that list is presented.

THE COURT: Now, I don't want any adjournments if they can be avoided.

MR. HELMAN: I will give my learned friend the list. It is in ink now, and he can have it.

30 THE COURT: There are a lot of cases waiting to be heard, when you gentlemen get through. We want to go on as far as we can. Is this the list?

MR. HELMAN: This is the list I was going to have typed

THE COURT: Is it in legible writing?

MR. RUSSELL: Yes.

40 THE COURT: That is furnished to you as a list of the consumable goods, is that right?

MR. HELMAN: Yes.

THE COURT: All right.

- Q MR. RUSSELL: You list these used timbers as being consumable items. What were they consumed, how were they consumed in the work?
- A Shoring the rock in to the tunnel. In lots of cases --
- THE COURT: Put that in as an exhibit.
- MR. HELMAN: I would ask leave to replace it with the typewritten document. 10
- THE COURT: If it is legible writing ---
- EXHIBIT 20.
List of consumable items.
- Q MR. RUSSELL: And then you show a quantity of air hose, quite a lot of air hose, as being consumable. Was that incorporated into the dam? 20
- A Incorporated into the process of drilling the rock out.
- THE COURT: What^{do}/you call it?
- MR. RUSSELL: The air hose.
- Q What you mean, do you not, it simply depreciates?
- A Yes.
- Q Just the same as a motor car depreciates from wear?
- A Although the depreciation is much heavier. 30
- THE COURT: Let me look at that for a minute, would you? Air hose. I thought that you said air holes.
- MR. HELMAN: It is just stuff that is used up in a few weeks or a month instead of lasting for any length of time.
- THE COURT: Yes. All right.
- Q MR. RUSSELL: That air hose, is it not like these timbers, it is not something you use in the actual dam itself? Not construction material? 40
- A It is construction material. It is the same way as the drifter, in my opinion. It is material used in the construction, in the excavation of rock.

Q It wears out fast. It is not used like cement, or rock itself?

A No, you can lay a 200-foot length of hose today and the piece of rock comes down on it

10 THE COURT: We should describe both consumable and perishable. They are consumable in the sense they wear out with use. I don't know what is on that list, but it pretty well applies to most of it.

MR. HELMAN: It is just the rapidity with which it wears out.

THE COURT: Take timbers, you put that into there. I suppose that timber is lost?

MR. RUSSELL: Anything that is incorporated into the dam.

20 THE COURT: It is useless for any further purpose except what you might get for salvage.

Q MR. RUSSELL: Are you familiar with this list?

A Thoroughly familiar.

THE COURT: I don't think that he has seen it.

30 Q MR. RUSSELL: Are there any articles which are actually incorporated in the dam itself besides those used timbers which are shown at \$110.00? I want you to explain to His Lordship if there are any other items which are incorporated into the actual dam itself?

40 A In my opinion, Sir, all these items were rather consumable items and they composed of that air hose, pipeline, water line, electric cable, electric cable used in the process of tunnelling. If there is any danger of the cable, the installation on the cable being broken, we condemn the whole cable rather than have men --- Otherwise we can say all this material there was not actually used in the construction of the dam, but it was essential for us to go ahead with our work. It was not actually used in the dam itself. The timbers

- were not our property. None of those timbers were our property. They paid for it and we had to turn it back to them, what was left.
- Q Am I correct in saying this, apart from those timbers which are listed, none of these items were actually incorporated in the dam itself?
- A Not actually incorporated in the dam.
- Q No. 10
- THE COURT: It is only the timbers which were actually incorporated into the dam?
- MR. HELMAN: Yes.
- Q MR. RUSSELL: Referring to the ---
- THE COURT: Just a minute. I just want to get enough of that. Only the timbers were actually incorporated in the dam, the others were all goods that deteriorated or were consumed with use?
- MR. HELMAN: Which in time, which would be consumed in time with use. 20
- THE COURT: Yes, just the same as a motor car would wear out. We understand that now.
- Q MR. RUSSELL: In answering my learned friend, you mentioned that this machinery listed in this, this equipment listed in Exhibit 2, continued to be used in the work and were articles which were necessary for the work? 30
- A Yes.
- Q Is that true of the entire list?
- A Yes.
- Q Did you ---
- A They were pieces of equipment which were not used on the job at all, but it was down there as an emergency for any breakdown. The equipment was put there for the sole purpose of us having it there, if we needed it. 40
- Q I think that is all.

No. 8

RE-EXAMINATION BY MR. HELMAN.

- Q I just want to ask this witness a few questions about this consumable stuff. These consumable items, such as air hose, would be used up rapidly?
- A Yes, sir, rapidly.
- 10 Q What is the average life of a piece of air hose?
- A Under ideal conditions, anywhere from 6 months to 12 months, but in conditions where you, where it is being dragged along in rock, the life would not average more than a month to six weeks.
- Q A month to six weeks under the conditions you were using it?
- A Yes.
- 20 Q What about cables?
- A Same thing. That was badly abused on account of falling pieces of rock, and their trailing on the ground.
- Q And then one of the things contained in the list was grease.
- THE COURT: Grease?
- MR. HELMAN: Yes.
- A Yes. This is immediately used, further, the same thing applies to drill steel because you are continually shortening your steel.
- 30 Q And all of these items we have indicated are stuff that you very rapidly consumed, not like automobile tires that might go for a considerable period of time?
- A Yes.
- Q I see.
- THE COURT: Just a minute, Mr. Walden. On this question of motor vehicles, you told me that all this equipment is mobile equipment and in your judgment, as a matter of opinion, mobile equipment is properly classified as a motor vehicle?
- 40 A Yes, that is my interpretation of it.

Q That is all. I just wanted to get your view.
(Witness stands down.)

MR. HELMAN: Just a minute. I want a minute to look through my notes. I think we have completed the case for the plaintiff, Mr Lord. I observed that in the list of articles which were set out in the Statement of Claim as being motor vehicles, in paragraph 5, I only listed at that time certain items. At that time I listed tractors. It is in paragraph 5, self-propelled drag-lines, locomotives, bull-dozers, dumptors and mine cars. In view of the evidence that was given, I would like to add to that the muckers, the carryall --

THE COURT: Referring to paragraph 5?

MR. HELMAN: Yes, to the list in the last sentence of what we allege were motor vehicles. 20

THE COURT: Oh, yes.

MR. HELMAN: The mucker, carryalls and utility wagon.

THE COURT: Two or three carryalls?

MR. HELMAN: Yes, three carryalls.

THE COURT: And utility wagon?

MR. HELMAN: Yes, and the utility wagon.

THE COURT: You have no objection to that, Mr. Russell? 30

MR. RUSSELL: No.

MR. HELMAN: I do not suppose we have to add those items that we said were accessories to the caterpillars, to the tractor, such as the dozer blades. Well, perhaps we should add after the word "tractors" the words "and accessories". Mr. Barron thinks I have it in the wrong place, that I should put the words "and accessories" after the last one, after the words "mine cars", and he is right. I would ask to add the words "and accessories" after the word "mine cars". 40

THE COURT: That may be accessories to mine cars?

MR. HELMAN: The "and accessories" is intended to cover all the articles.

THE COURT: "And accessories" to the foregoing."

MR. HELMAN: Yes, Sir, that is a better expression. Your Lordship has fixed it up.

10 THE COURT: I guess there will be no trouble in getting what you mean. After "mine cars"?

MR. HELMAN: Yes, add the words "and the accessories to the foregoing".

THE COURT: In the last line of paragraph 5. All right.

MR. HELMAN: That is the case for the Plaintiff, My Lord.

20 THE COURT: All right.

No. 9
Defendants' Evidence
Edward Walden. Examination
for Discovery.

MR. RUSSELL: Call Mr. Holladay My Lord, at this time, before calling this witness, I believe I could put in the Examination for Discovery.

30 THE COURT: Put it in whenever you wish. Do you want to put it in now before you call that witness?

MR. RUSSELL: Yes. This is the Examination for Discovery of Edward Walden.

" Examination for Discovery of Edward Walden, taken before J.H. Charman, Esq., K.C., Acting Clerk of the Supreme Court of Alberta, Judicial District of Calgary, at the Court House, Calgary, on the 13th day of July, A.D. 1948.

40

EDWARD WALDEN, having been first duly sworn, examined by Mr. Russell, testified as follows:

(1-9)

- "1 Q What is your position with the plaintiff company, Mr. Walden?
 A General Manager and President of Bennett & White (Calgary) Limited.
- 2 Q How long have you been occupying that position or those positions? 10
 A About 4 years. 3 years, 4 years.
- 3 Q You are the officer of the plaintiff company who has been selected for examination for discovery in this action?
 A Yes.
- 4 Q You have been sworn to tell the truth?
 A I have.
- 5 Q Will you please produce the agreement between the plaintiff company and the Crown referred to in your statement of claim? 20
 (Document produced.)
 MR. BARRON: One is the contract and the other the specifications, apparently.
- 6 Q MR. RUSSELL: These specifications are referred to in the contract?
 A THE WITNESS: Yes.
- 7 Q Just to identify this contract, it is made between the plaintiff company and His Majesty the King, represented by the Minister of Agriculture of Canada, dated the 22nd. of July, 1946, and signed by yourself? 30
 A Correct.
- 8 Q On behalf of the company?
 A Yes.
- 9 Q I will put that contract in as an exhibit. (Contract put in and marked Exhibit 1.)" 40
 That contract is in as an exhibit. It is Exhibit 1.

(15-17)

"15 Q Is this the only agreement between your company and the Crown relating to the work in question?

A It is.

16 Q In paragraph 5 of your Statement of Claim you say: "which works have not yet been completed."

10 MR. BARRON: Speaking there of the works undertaken by you pursuant to the Contract, Exhibit 1.

17 Q MR. RUSSELL: Are those works not completed today?

A THE WITNESS: That is an undecided factor. Briefly, we have two tunnels to do and other matters that are involved in this contract I would rather not disclose here because that would be a question we would have to take up with Mr. Barron, but so far we have tentatively been relieved of the other tunnel but we have not been relieved of the contract at present; therefore, so far as we are concerned we are still at St. Mary's job."

20

(19-24)

"19 Q MR. RUSSELL: You stated you had been tentatively relieved. In what way have you been tentatively relieved?

30 A Through negotiations on our part with the Dominion Government to relieve us of the other contract and the other tunnel but it has not been officially authorized at present.

MR. BARRON: I think the question is, What is the present position? Have we cleared that up.

20 Q MR. RUSSELL: I will ask a few more questions, perhaps. Do you still maintain all the equipment originally taken to the St. Mary's Dam on the location?

40

A The majority of it, yes.

21 Q The majority of it. Do you still employ a full staff of men at the St. Mary's Dam?

A Not a full staff, no.

"22 Q How many men do you employ at present?
 A Two at the present time.
 23 Q How does this compare with your scale
 of operations when you were constructing
 your first tunnel?
 A An average between 80 and 120 men.
 24 Q In other words, you have more or less
 ceased operations?
 A Yes. " 10

(35-38)
 "35 Q You mentioned removing some scrapers and
 so on?
 A Yes.
 36 Q Were these part of the machinery, tools
 and equipment, included in the contract?
 A Yes.
 37 Q What authority had you to move those?
 A By permission from the Engineers.
 38 Q Was that a written permission? 20
 A No."

MR. HELMAN: That question and
 answer, there is nothing to indicate when it
 was removed. He mentioned that he removed
 some of them. Here is an examination in 1948.
 Surely my friend has to show some relevancy
 to the present situation in '47?

MR. RUSSELL:

(62-66)
 "62 Q Mr. Walden, your company received an 30
 assessment notice from the defendants
 some time in 1947?
 A Yes.

63 Q Have you that here?
 (Document produced.)
 (Document put in and marked Exhibit 2.) "
 THE COURT: That is now Exhibit 2.
 MR. RUSSELL: This is actually the
 notice of the assessment. It is not the
 assessment list. 40

THE COURT: You refer to it in
 question 62 as an assessment notice. Now
 Exhibit 4 is an assessment list. Is there
 any difference?

MR. RUSSELL: I think it is the
 same thing.

THE COURT: It is now Exhibit 4 then.

"64 Q For identification, this assessment slip was mailed September 22nd, 1947, to Bennett & White, showing a total assessment of \$183,147.00. I believe there is another document which accompanied that assessment slip. Is that correct?

10 A Yes.

MR. BARRON: Yes, it is a copy of the document which you have. I prefer not to put in mine because I have pencil notes all over it, but it was a copy of your document.

65 Q MR. RUSSELL: I show you a document called 'Personal Property Assessment 1947', dated the 16th June, 1947. Is that a true copy of the document you received?

20

A Yes.

66 Q With the assessment notice? A. Yes. (Document put in and marked Exhibit 3.)" The one marked 3 in the Examination for Discovery is now here as 2.

(67-69)

"67 Q And you received likewise a tax notice? MR. BARRON: I haven't got it but I am satisfied to have you prove your copy.

30

68 Q MR. RUSSELL: Do you know if the company did receive a tax notice? THE WITNESS: Well, that I could not say. I would have to go through the files. I am pretty sure that anything that came in connection with this from the time the first notice came out are turned over to Mr. Helman. I don't recall having a revised assessment tax notice at all. The only things I remember are these and this one here. (Indicating.)

40

- 69 Q MR. RUSSELL: Will you have a further look for that notice? I would like to have that produced when you have a chance to go through your files.
- MR. BARRON: We will let you know definitely, yes. I think it is more or less common ground that you have done everything as far as you can to see that this property was assessed and we are not questioning it." 10
- MR. HELMAN: I am not now questioning whether they have done everything to assess this property. I think they have done too much.
- THE COURT: Not a question on the Examination for Discovery. Go ahead.
- MR. RUSSELL: (reading)
- (70-89)
"70 Q MR. RUSSELL: Now in paragraph 8 of your Statement of Claim, you say: 'The defendant threatens to seize the goods and chattels of the plaintiff....' I want you to produce all your letters, notices and correspondence between the defendant and yourself relating to these threats you mentioned. (Letter produced.) This letter is dated April 5th and is from the Municipal District of Sugar City No.5 to Bennett & White, Calgary, Alberta, and asking for taxes and penalties amounting to \$3,915.27. Would you mark that as an exhibit? 20
- "(Document put in and marked Exhibit 4.) "
I believe it is in here as Exhibit 6.
- THE COURT: It is in now as 6?
- MR. RUSSELL: Yes.
- THE COURT: All right.
- MR. RUSSELL: (reading)
- "71 Q Now what other correspondence or documents have you which you received from the defendant? 40
- MR. BARRON: The only other document received from the defendant, emphasizing the defendant, is the Notice of

- Decision of the Court of Revision.
- 72 Q MR. RUSSELL: Possibly I had better take this in sequence then. As a result of this assessment your company did certain things. Would you outline what steps you took and what documents you received as a result of dis-agreeing with this assessment.
- 10 A THE WITNESS: Well, not being satisfied with the assessment we took the matter up and asked Messrs. Helman, Mahaffy & Barron to act for us. From then on the matter has been turned over to them.
- 73 Q What did they do under your instructions, MR. BARRON: Filed with the municipality a complaint.
- A THE WITNESS: Filed with the municipality a complaint dated the 15th of October, 1947.
- 20 74 Q MR. RUSSELL: And this is a copy of your complaint?
- A Yes.
(Document put in and marked Exhibit 5.) "
That document was put in and marked Exhibit 5, which is Exhibit 16 here in this trial.
- THE COURT: It is what now?
MR. RUSSELL: Number 16 on the trial.
THE COURT: 16?
MR. RUSSELL: Yes.
- 30 "75 Q When was that complaint sent?
MR. BARRON: It was mailed on October 15th, 1947.
- A THE WITNESS: Mailed on October 15th, 1947.
- 76 Q MR. RUSSELL: What occurred then?
A A letter was written on October 25th, 1947.
- 77 Q By whom?
A By Mr. S. Helman.
- 40 78 Q To whom?
A To the Secretary, treasurer of the Municipal District No. 5 of Sugar City, Raymond.
- 79 Q In short, it stated your objection to this assessment?

- " A It stated our objection to this assessment.
- 80 Q I will put that in as Exhibit 6.
(Document put in and marked Exhibit 6.)"
That is Exhibit 17 here.
- "81 Q That is his letter?
A That is his letter, yes.
- 82 Q And when was that mailed?
A It is dated October 25th. 10
- 83 Q As a result of this, what documents did you receive?
A The decision of the Court of Revision dated November 1st, 1947.
- 84 Q When did you receive that?
MR. BARRON: We can assume it was received shortly after that date.
(Document put in and marked Exhibit 7.)"
The decision of the Court of Revision is Exhibit 18 here. It is 18 in this trial. 20
- "85 Q MR. RUSSELL: Will you proceed to tell us what occurred from the date of receiving that Notice of Decision?
A Notice of Appeal was filed on our behalf to the Alberta Assessment Commission.
- 86 Q When was that filed?
A Filed on the 6th day of November, 1947.
- 87 Q I show you a copy of it. Is that correct?
A Yes.
(Document put in and marked Exhibit 8.)" 30
That is Exhibit 19 at this trial.
- "88 Q Will you go on, please, in sequence. After filing this Notice of Appeal to the Assessment Commission?
A The appeal was heard at Raymond on November 28th, 1947, and the decision was handed down by the Alberta Assessment Commission on the 13th day of January 1948.
- 89 Q And I show you a copy of the decision? 40
A That is correct.
(Document put in and marked Exhibit 9.)"
The Exhibit is now No. 5 in this trial.

(91-93)

"91 Q When did you receive Exhibit 2, the Assessment Notice?

A This is dated the 22nd of September, so I presume we received it around that date, the 22nd of September, 1947.

92 Q And Exhibit 3, the Personal Property Assessment, was included with it, is that correct?

10

A Yes.

93 Q You allege in your Statement of Claim, paragraph 9(1) that you are the agent, that the plaintiff is the agent of His Majesty the King?

A Yes. "

Now, this is really part of question 96. The question follows on at the top of page 22.

" MR. RUSSELL: I think we will have to have Mr. Charman come in.

20

(Mr. Charman was called in and after some discussion the examination continued.)

A THE WITNESS: In my view there is no specific clause in the contract which constitutes the plaintiff the agent of the Crown. It is a matter of interpreting the agreement as a whole."

MR. HELMAN: I wouldn't have made it part of the record. It is purely a question of law. Your Lordship will see by looking at the discussion that Mr. Russell insisted on the witness, who has never troubled answering a question about what he knows, to try and see what specific clause in the contract

30

THE COURT: Read all that discussion preliminary to the question.

MR. HELMAN: I don't think it is admissible. What is the good of asking a witness what is contained in a covenant.

The contract is there.

40

THE COURT: If you want to put it in, it will go in subject to Mr. Helman's objection. Whether it should go in, it is a question of law. I don't suppose a layman could be expected to say whether the contract

" contained anything.

MR. HELLMAN: The same problem came up at the Appellate Division when on part of this Examination my friend went to the Appeal Court, and he is trying to get an answer to the question as to the allegation that the chattels were the property of His Majesty, and Mr. Justice Ford said: "Even a lawyer, much less a lay witness, would properly decline to truncate the document which must speak for itself." 10

THE COURT: I suppose you interpret that contract to say that they were not the agents. They will say they were the agents. What do you expect a layman to say? What does he know about it, if the lawyers can't agree? How can you expect him to say whether there is something in that contract that makes him an agent of the Crown? 20

MR. RUSSELL: Simply the facts which they are relying on to their agency.

THE COURT: If you want to put it in - I don't think it should go in - if you insist, it cannot have any weight, it is a question of law. It is one of the very things you two men are fighting about.

MR. RUSSELL: Exactly, I will take that question out.

THE COURT: Why try to embarrass a layman who does not pretend to have any knowledge of such matters? You won't try to put it in then? 30

MR. RUSSELL: No.

(97-98)

"97 Q MR. RUSSELL: You are still under oath?

A Yes.

98 Q Have you any other authority for saying that you are the agent apart from your contract? 40

MR. BARRON: No, we rely entirely on the contract, Exhibit 1.

A THE WITNESS: Yes. "

- " THE COURT: I guess they will have to do that whether he says so or not, Mr. Russell.
- MR. RUSSELL: And then on page 31, My Lord, questions 133 to 135 inclusive.
- THE COURT: 135?
- MR. RUSSELL: Questions 133 to 135 inclusive.
- 10 (133-135)
- "133 Q We have gone through the procedure by which you appeal to the Court of Revision and the Alberta Assessment Commission, is that correct?
- A Yes.
- 134 Q You received copies of the decisions in both cases.
- A Yes.
- 135 Q And in both cases those proceedings were initiated by the plaintiff itself?
- 20 A That is correct. "
- (147-148)
- "147 Q MR. RUSSELL: Can you make a general statement on that?
- A The majority of the equipment that was used on St. Mary's tunnels is still in the hands of our company either in Alberta or B.C.
- 148 Q Do you know what happened to the balance of the equipment? You say the majority is in your hands. What happened to the balance of it, generally? "
- 30 MR. HELMAN: This is all just as inadmissible as the other. This is all the same problem as to what we have had at the date of the Examination in '48, in July 1948, and has no relation.
- THE COURT: He is speaking of its whereabouts on the date of the Examination?
- 40 MR. HELMAN: Yes. How is it admissible in view of Mr. Justice Ford's judgment. I have said they wanted it for us in connection with the seizure. Are we worried about a seizure here? I dislike intensely putting in something to a devious purpose.

THE COURT: You can put it in.
I don't know if it is, if it has any effect
one way or the other.

(149-150)

" A (to Q.148) When I make that statement,
equipment that we shipped out to Van-
couver, some of it was getting old and
what Vancouver may have done in trade-in
of a Cat or Scraper on a new piece of
equipment, I am not prepared to say. 10
That is why I say the majority of the
equipment is still in the hands of our
company.

149 Q How much of it is in the Municipal Dis-
trict of Sugar City still?

A You mean in dollars and cents?

150 Q If you are prepared to value it that way,
on the basis of assessment, yes.

MR. BARRON: Mr. Walden says there
is going to be an inventory taken very
shortly. Now we will give you a copy of
that inventory. When will it be taken? 20

A THE WITNESS: Within the next few
weeks."

THE COURT: That is referring to
what we dealt with a little while ago, that
list of equipment you didn't think was nec-
essary. I overruled it after entry?

MR. RUSSELL: Yes. 30

THE COURT: Why put this in? It
is relating to the same thing. If I am right
in keeping out that list we talked about a
while ago, I must keep this out too. It is
the same subject exactly.

MR. RUSSELL: It is, actually. It
is the same topic.

THE COURT: Well, don't read it.

MR. RUSSELL: To what extent will
you permit these questions to go in, 147 and
148? 40

THE COURT: You are familiar with
this Examination for Discovery. I don't know
what is in it until you start to read it.

MR. RUSSELL: Would you like me to
start again?

THE COURT: I think I had better eliminate this reference to where the stuff was in 1948. Eliminate this question. If I am right in prohibiting you from filing a list, I think that should go out as well in the Examination for Discovery.

MR. RUSSELL: Yes.

10 THE COURT: Cut out question 147 and 148 then. And now where do you want to begin again?
Is there much more of this Examination?

MR. RUSSELL: Just about through. There is just a letter we received pursuant to the ---

THE COURT: Any more from the Examination?

MR. RUSSELL: This is a part of the Examination for Discovery.

20 THE COURT: Where is it mentioned in the Discovery?

MR. RUSSELL: Actually, certain questions were objected to, and the plaintiff was ordered to answer them and a letter was supplied to us by Messrs. Helman ---

THE COURT: The answers came to you by mail?

MR. RUSSELL: Yes.

30 THE COURT: If you will file that, it will be Exhibit 21. These answers are correct, are they, Mr. Helman?

MR. HELMAN: I have no objection to it.

EXHIBIT: 21
A letter.

THE COURT: No objection. Made later by letter. What is the date?

MR. RUSSELL: Letter dated November 10th, 1948.

40 THE COURT: All right, read it.

MR. RUSSELL: I will read you this question.

THE COURT: Are you putting all this
in as part of your case?
MR. RUSSELL: Yes.
MR. HELMAN: I said I had no
objection to my friend reading it, but
Question 137 is just the same thing all over
again as to what happened in July.
THE COURT: Go ahead and read it.
I guess we will wait until after lunch. This 10
case gives promise of consuming most of the
day.
(Court adjourned at 12:40 P.M.)

COURT RESUMED AT 2:00 P.M.

MR. HELMAN: I have had Exhibit
20, which was the consumable items, duly
typewritten, and I was wondering if I could
substitute that for the written one?
THE COURT: Have you seen it, 20
Mr. Russell?
MR. RUSSELL: I think - I have not
had the opportunity to compare it but I guess
it is all right.
THE COURT: It will be substit-
uted for, or just pin them together and make
them one. The other isn't too legible. All
right.
MR. RUSSELL: I think we can cut
down a bit on the amount of evidence we are
going to bring in this afternoon. I under- 30
stand that my friend is agreed that as far as
the procedurally aspects of the Assessment
Act and the Municipal Districts Act are con-
cerned, they are in full compliance, and he
is not asking us to prove those various steps,
and the argument is really on whether or not
we should assess at all. I think I am cor-
rect in that, Mr ---
MR. HELMAN: We have never set up 40
anything to the contrary in my Statement of
Claim. You are quite correct.

10 MR. RUSSELL: I didn't want any objection somewhere along the line that we have not proved some mechanical operation of the Act. The Court of Revision, the Alberta Assessment Commission found that they are in compliance with the Act, and it will ---
 THE COURT: --- With all procedurally requirements of the Assessment Act and Municipal Districts Act have been complied with.
 MR. RUSSELL: Yes. I will call Mr. Holladay

No.10.
 Defendants' Evidence
 Dannel Marler Holladay
 Examination.

20 DANNEL MARLER HOLLADAY
 having been first duly sworn, examined by Mr. Russell, testified as follows:-
 Q Mr. Holladay, you are Secretary Treasurer of the Defendant Municipality?
 A Yes.
 Q And how long have you had that position?
 A Since July 1st, 1942.
 Q Since July 1st, 1942. And you have held that position continuously since July 1st, 1942?
 A Yes.
 30 Q And I am going to show you a certified copy of a by-law which, My Lord, I think is admissible, under Section 271 of the Municipal Districts Act, in lieu of producing the Minute Book.
 THE COURT: A certified copy of a by-law?
 MR. RUSSELL: By-law Number 67. It is actually assessment on Personal Property, authorizing him to assess personal property?
 40 A That is a copy, yes.

- Q That is a by-law that was passed at the meeting of the Municipal Council on April 3rd, 1947?
- A Yes.
- THE COURT: What date does it bear?
- MR. RUSSELL: April 3rd, 1947, My Lord.
- THE COURT: That will be Exhibit 22. 10
- THE CLERK: Exhibit 21 wasn't put in.
- THE COURT: Yes. You didn't get that marked.
- MR. HELMAN: I shall object to the letter. I said I didn't want my friend to put any questions about the proof of the letter but I was objecting to it going in because it covered exactly the same thing we have been debating all morning, custody of the goods in 1948. 20
- THE COURT: Well then, it goes out the same as the rest of the questions following on that matter, Mr. Russell, doesn't it, if that is all it contains?
- MR. RUSSELL: That is all it contains, My Lord.
- THE COURT: Well, I don't think it is admissible. If the other material wasn't admissible that wouldn't be either. That was all that was attempted. We won't put it in then. I will just cancel it then. It is not marked. Now, this certified copy of the by-law will be Number 21. 30
- EXHIBIT 21
Certified copy of
By-law No. 67.
- Q MR. RUSSELL: I will show you a certified copy of by-law number 68, which permits you to tax -- 40
- THE COURT: The document speaks for itself.

MR. RUSSELL: Yes. Should we read the by-law?
 THE COURT: I don't think so.
 10 Q MR. RUSSELL: It is a true copy of the by-law on the Minutes?
 A Yes.
 Q And it is duly certified with the seal of the Municipality and signed by the Reeve and the Secretary Treasurer?
 10 A Yes.
 THE COURT: That will be Exhibit 22.
 EXHIBIT 22
 Certified copy of By-Law No. 68.

Those are by-laws allowing him to do what he did in connection with this assessment?
 MR. RUSSELL: Yes.
 20 Q Was either by-law 67 or 68 ever quashed?
 A No.
 Q They are still in force, do you know?
 A Yes, they are. Pardon me, 68 refers to 1948 only. That is the by-law that states the mill rate that year, and for that year only.
 Q Insofar as being valid is concerned, it has never been quashed?
 THE COURT: They were both apparently passed in April 1947?
 30 MR. RUSSELL: Yes, My Lord.
 THE COURT: All right.
 Q MR. RUSSELL: In 1947 was there an assessor appointed by the Municipal District, the defendant?
 A Yes.
 Q Who was that assessor?
 A William A. Carmichael.
 Q THE COURT: Appointed when?
 When was he appointed?
 40 A It was early in 1947. Now I would have to refer to the Minutes.
 Q I don't know whether the dates are of any importance or not. He was appointed to make an assessment for 1947?

A Yes.

Q MR. RUSSELL: By the Municipal District of Sugar City?

A Yes.

THE COURT: Any questions, Mr. Helman?

MR. RUSSELL: One other question.

Q Did you ever receive the taxes in this matter? 10

A No.

Q Have you received any money on account of taxes from Bennett & White in connection with this assessment?

A No, sir.

Q You have not?

A No, sir.

No. 11
Cross - Examination. 20

CROSS-EXAMINATION BY MR. HELMAN.

Q There has been a by-law in connection with the collection of personal taxes, that is being marked Exhibit 21, which purports was passed at a meeting held on the 3rd. of April 1947. Did you send out a written notice of that meeting?

A To whom?

Q To the councillors?

A We didn't need to, it was a regular meeting. 30

Q What date was it held on?

A 3rd April, 1947.

Q 3rd of April. What do you mean, it was a regular meeting"?

A That is a meeting set by Statute, isn't it?

Q Well, I am asking you what you mean by it being a regular meeting. That you didn't have to give notice in writing of it?

A I don't think we did. 40

- Q You don't think you did. The Statute I am reading says:- "... give written notice of the meeting to each councillor by mailing the same to his address at least six clear days prior to the date of the meeting, or by personally delivering it to each councillor---" What I am trying to get at, was there a notice sent out of this meeting, whether it was right or wrong?
- 10 A I can't remember.
- Q Well, will your books show it?
- A Not the Minute Book.
- Q The Minute Book?
- A No.
- Q Have you any way of finding out?
- A I don't know that I have.
- Q So you can't give us any evidence by which you can say positively that notice was given of this meeting at which this by-law was passed, notice in writing to the councillors?
- 20 A All of these councillors were there.
- Q All of them were there?
- A They were all present.
- Q Who were they?
- A May I see the Minute books please? Have you got that here. Those present were Councillors J.D. Brown, L. Nelson and J.W. Banis. And the Councillors elect J.S. Henry and W.W. Peterson.
- 30 Q There were three members of the old council, is that right?
- A Yes.
- Q When did they go out of office?
- A I would have to check my records to be sure.
- Q When do you think? Were they still councillors at that time, or had they gone out of office?
- A They were still councillors at that time.
- 40 Q All the council men?
- A Those three were.
- Q That is the whole council board, those three?
- A Yes, and the other two were elected a month before, in March, at the general election.

- Q Those three constituted your whole board of councillors? The old ones were the whole old board? There are only three councillors appointed by the Municipal District of Sugar City?
- A There are five.
- Q What about the other two?
- A Their terms expired, and there were two men elected to fill those terms. They were the same two men. They were re-elected. 10
- Q And there were five present at this meeting?
- A Yes.
- Q And they were the same five who had been council men previously, only two had been re-elected?
- A Yes.
- Q THE COURT: The same five?
- A Yes.
- Q Two out one year, three out the next? 20
- A No, two go out each of two years, and one the third year.
- Q I see.
- A They serve three year terms.
- Q MR. HELMAN: So that the whole Board of five of them were personally present there, that is your oath?
- A Yes.
- Q They were all there in person on that occasion? 30
- A Yes.
- Q And they were present throughout the whole meeting, the five of them?
- A Yes.
- Q You were there yourself?
- A Yes, I was there.
- Q THE COURT: The Municipal Council consisted of five members?
- A Yes.
- Q And they were all present. 40
- A Yes.
- Q MR. HELMAN: And you were there?
- A Yes.
- Q So you know they were there?
- A Yes.

Q And can you tell me from the Minute Book, can you say whether or not notice of that meeting was given in writing?
 A I can't tell from the Minute Book.
 Q You can't tell from the Minute Book. Is there any place you can tell from?
 A Well, if I notified them by letter, I would have a copy of the letter. But it is possible I telephoned them, but I don't know if I gave them notice.
 10 Q You don't know whether you gave them notice?
 A No.
 Q Do you know whether you gave them notice it was intended to pass this kind of a by-law dealing with Personal Property?
 A Gave them notice before the meeting?
 Q Yes?
 A No, I don't.
 20 Q That is all.
 MR. RUSSELL: That is all.
 THE COURT: That is all, thank you.
 (Witness stands down.)
 MR. RUSSELL: Call Mr. Carmichael.

No. 12
 Defendant's Evidence.
 William Archibald Carmichael.
 Examination.

30 WILLIAM ARCHIBALD
 CARMICHAEL, having first been duly sworn, examined by Mr. Russell, testified as follows:

Q I believe, Mr. Carmichael, you are the assessor for the Municipal District of Sugar City No. 5?
 A Yes.
 Q And you were the party who made this assessment which is being complained of in this action?
 40

- A That is right.
- Q Would you tell His Lordship how you made this assessment?
- A Just exactly what do you mean?
- Q Where did you go?
- Q THE COURT: The method you adopted?
- A By examination of the particular items that have been listed on the premises. 10
- Q MR. RUSSELL: On what premises are you referring to?
- A Well, you will find at the top of the list the exact section, township and range where they were located at that property known as ---
- Q Let me show you Exhibit 2.
- Q THE COURT: Show the witness that. This is Exhibit 2.
- A At the top of this list was shown the location of the property, the North half of Section 5, and the South half of Section 12, Township 5, Range 24, West of the 4th Meridian. 20
- Q Township 5, Range 24?
- A Yes.
- Q Is that land within the Municipal District?
- A Within the Sugar City Municipal District.
- Q In this list here, and those articles --- You have seen that list before? 30
- A Yes, that is the list that was prepared and there is my signature.
- Q And this is the valuation which you put on that property for the purpose of assessment?
- A They are.
- Q In whose custody was this property?
- MR. HELMAN: My friend can ask any question about anything that he saw, any man who was there, but using the word "custody" is not a proper question. 40
- THE COURT: Who did he see? Who did he get information from?
- Q MR. RUSSELL: Who did you see?
- A Mr. McAtee, the Superintendent, part of the time.

- Q THE COURT: What is his name?
 A Mr. McAtee, and the Timekeeper.
 Q MR. RUSSELL: The Timekeeper for whom?
 A Bennett & White (Calgary)Ltd.
 Q Who is Mr. McAtee superintendent for?
 A I believe the same firm.
 Q THE COURT: Through the Superin-
 10 tendent and the Timekeeper of this plaintiff company?
 A Yes.
 Q MR. RUSSELL: Did they show you around at all?
 A No, not particularly. I was told that, on any particular item that I wished to get information, I could get from the different men operating the different pieces of equipment.
 Q Who told you that?
 20 A Mr. McAtee.
 Q Did you go to any of those men to get any information, any of these operators?
 A Yes, at times.
 Q Who were the operators working for?
 A As far as I know, for the Defendant company.
 Q The Plaintiff company?
 A Yes, the Plaintiff company, rather.
 Q Now, in this list, Exhibit 2, has that included everything that you saw in that area?
 30 A No.
 Q How was it that there were some items not included that you saw?
 A They were items that I classified as expendable items that would be used up in the actual construction, that were not included in that list.
 Q What does this list include?
 A That list includes what I considered, believed to be personal property as described in the Assessment Act, which is not specifically exempted in that Act.
 40 Q THE COURT: I take it these expendable items were items you considered were not assessable under the Statute?
 A Yes.

- Q Put it that way.
- A Yes.
- Q MR. RUSSELL: You assessed certain buildings, I believe, on the premises?
- A Yes.
- Q On what basis did you make your assessment there?
- A On two-thirds of the valuation after making allowance for the fact that those buildings were of a temporary nature, and that when the construction work was completed they would have less value than a permanent building. The valuation I considered very low on these buildings. 10
- Q WHAT ---
- THE COURT: Are you seriously contesting the valuation?
- MR. HELMAN: We never have, My Lord. I am just trying to find out what this is all about. I am interested, as Your Lordship is --- 20
- THE COURT: I don't think that is any issue at all as to whether Mr. Carmichael's assessment was fair or not, fair as to valuation. I don't think that the plaintiff is attacking that at all. If they have to pay the taxes, they will pay them. The amount is not a serious matter. All right. 30
- Q MR. RUSSELL: Were any representations made to you as to the ownership of the articles listed on Exhibit 2?
- A No.
- MR. HELMAN: The question is improper, - "were any representations made to you as to ownership". Representations by whom? As to what ownership?
- MR. RUSSELL: Had the answer been "yes" I might have cleared that up for you. 40
- Q THE COURT: The situation would be this, you thought you were assessing Bennett & White property?
- A Naturally.
- Q Whether you were or not?

- A That is the question today.
- Q That is the question I have to decide.
- Q MR. RUSSELL: I am showing you Exhibit 7. This is a list of Personal Property which in Mr. Walden's opinion are motor vehicles and which you assessed as personal property. What have you to say to that?
- 10 A Well, in my opinion they are. None of them are covered by The Vehicle Act. That is my opinion in the Instructions to Assessors issued by the Director of Assessment.
- MR. HELMAN: How are we getting that in?
- MR. RUSSELL: We don't want to hear that.
- THE WITNESS: You don't?
- Q MR. RUSSELL: No.
- 20 A I take it none of these are motor vehicles within the meaning of Personal Property items. In other words, I mentioned the articles that were not specifically exempted, and those are the articles I considered were not specifically exempted.
- Q Do you know if, or which of these articles, of those articles mentioned in that Exhibit 7, were not actually used? Can you tell us that?
- 30 A No, they were, some of them were just standing on the property, not in use at any time during the time that I was there making the assessment.
- Q Can you name which of those that would be, on that list, Exhibit 7?
- A That would be difficult to do. This Owen bucket was one item that was not in use and one dozer blade, I don't know if it was this particular one here or not, but an extra dozer blade on the property. And these Koppel Mine cars were not being used at the time of the assessment. And this Utility Wagon, or it was called a Jumbo, was not actually in use and these three dozer blades were not attached to any piece of equipment at the time. I believe there was another item that
- 40

was not on here that was taken from one of the pieces of equipment, that was a Power Unit. Oh, it is on here, the Caterpillar Power Unit. That was not actually on the equipment at the time I was there. It was being repaired.

- Q How long does it take you to make up the assessment?
 A About three days. 10
 Q Where did you stay during that time?
 A I stayed at the camp.
 Q What Camp?
 A At the Bennett & White (Calgary)Limited camp.
 Q When you say those articles were not in use, do you mean they were not in use during those three days?
 A As far as I know, they were not. Various items were being changed during the course of the work, but as far as I can recall, none of those particular items were put to use while I was there. 20
 Q During those three days when you were at the Bennett & White camp, what other people were there besides Bennett & White employees actually using this equipment?
 A What other people?
 Q Yes?
 A No one, as far as I know. 30
 Q No one other than Bennett & White employees. That is all.

No.13
 Cross Examination.

CROSS-EXAMINATION BY MR. HELMAN.

- Q Where do you live, Mr. Carmichael?
 A The City of Bowness, of which Calgary is a suburb. 40

Q Did you have a pleasant trip to Lethbridge?
 A Very pleasant, thank you. The wheels of the car I was riding in were slightly flat but outside of that ---

THE COURT: That is all, Mr. Carmichael.

A Thank you.
 (Witness stands down.)

10 MR. RUSSELL: In view of the position which I think that the plaintiff has taken, I do not think there are any more witnesses I need to call in this matter.

THE COURT: All right, that is all your evidence?

MR. RUSSELL: That is all.

20 THE COURT: Well, Gentlemen, do you want to argue this thing now, this afternoon? It appears to me to be really a question of law on this matter. There is no dispute about any tax.

MR. HELMAN: I am entirely in Your Lordship's hands, if you would just as soon have us put in written arguments.

30 THE COURT: I would like it that way, when it is purely a question of law. In this case, it appears to me to be in that category. If you want to argue it now, all right, or submit a written argument within any reasonable time, whichever you prefer. I would prefer written arguments. If you prefer the other, I can sit here and listen today.

MR. HELMAN: No, I have no belief in my persuasive power of talking. I would like Your Lordship to fix a time to have our argument, and then either party would have leave to, within other fixed time, to reply to any argument. And if there is any point that has been raised that they think they have not covered in their original argument

40 THE COURT: Whatever time you want - 10 days? Two weeks?

MR. HELMAN: If you will give us one week to put in argument and then another week to put in a reply?

THE COURT: Yes, Is that quite agreeable to you, Mr. Russell?

MR. RUSSELL: Yes.

THE COURT: You can file your argument with the Clerk of the Court, and any reply when and if, and that will give you time for plenty of deliberations. I guess that is all we can do with this matter today.

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(Which concluded the Hearing.)

EXHIBIT 1. (Plaintiffs).

THIS INDENTURE made the twenty-second day of July, one thousand nine hundred and forty-six,

BETWEEN:

HIS MAJESTY THE KING, represented herein by the Minister of Agriculture of Canada,

of the first part

and

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Bennett & White Calgary Limited, Toronto General Trusts Building, Calgary, Alberta,

of the second part;

Work to be done

WHEREAS the party of the second part, for the consideration hereinafter mentioned, has agreed with the party of the first part, to do, furnish and perform the works, materials, matters, and things required to be done, furnished and per-

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formed, in the manner hereinafter described, in connection with the following work or works, namely:-

Diversion and Irrigation Tunnels
St. Mary Dam Project.

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NOW THIS INDENTURE WITNESSETH that the said parties hereto hereby covenant, promise and agree, each with the other, as follows:

Interpretation

1. In this contract the following words shall, unless the context require a different meaning, have the following meanings respectively, that is to say:-

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"His Majesty", or other words relative thereto, or of like import, shall mean and include the reigning Sovereign or the successors or assigns of the Sovereign.

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"Contractor", or other words relative thereto, or of like import, shall mean and include, irrespective of sex or number, the party or parties of the second part as above designated or described, jointly and severally, and their and each of their executors, administrators, curator or successors, or assigns (duly consented to under this contract).

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"Minister", shall mean the person holding the position, or acting in the capacity of the Minister of Agriculture, for the time being, and shall include the person holding the position, or acting in the capacity of the Deputy Minister of Agriculture, for the time being.

"Engineer", shall mean the senior engineer employed under the authority of the Prairie Farm Rehabilitation Act or such other engineer as may from time to time be designated by such senior engineer or the senior administrative officer employed under the said Act: Provided that every order, direction, certificate, instructions or decision given or made by any engineer other than the senior engineer shall be subject to the approval of such senior engineer, and may be cancelled, altered or otherwise modified by such senior engineer, as he sees fit.

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"Work or works", shall mean the whole of the work and materials, matters and things required to be done, furnished and performed by the Contractor, as above described, under this contract.

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2. All the covenants and agreements in this contract binding on, and all the provisions in this contract inuring to the benefit of, the Contractor shall, respectively, be binding on, and inure to the benefit of the executors, administrators, curators, successors and assigns (duly assented under this contract) of the Contractor, and all the covenants and agreements in this contract binding upon, and all the provisions in this contract inuring to the benefit of, His Majesty, shall, respectively be binding upon and inure to the benefit of the successors and assigns of His Majesty.

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Provision by
Contractor for
completion of
work.

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3. The Contractor shall, at his own expense (except as in this contract otherwise specifically provided) provide all and every kind of labour, superintendence, services, tools, implements, machinery, plant, materials, articles and things necessary for the due execution and completion of all and every the works set out or referred to in the specifications hereto annexed and in any special specifications referred to therein, and set out or referred to in the plans and drawings prepared and to be prepared for the purposes of the work, and shall forthwith (or within seven (7) days from the execution thereof) commence the works and diligently execute and fully complete the respective portions thereof, and shall deliver the works complete in every particular to His Majesty, on or before the date or dates following, viz:-

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Time for
Completion

Diversion Tunnel -April 24,1947
Irrigation Tunnel-April 23,1948

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Plans and
specifications
part of
contract.

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4. The works shall be constructed by the Contractor and under his personal supervision of the best materials of their several kinds, and finished in the best and most workmanlike manner and in the manner required by and in strict conformity with this contract, the said specifications and special specifications, and the plans and drawings relating thereto, and the working or detail drawings which may from time to time be furnished (which said specifications, and special specifications, plans

and drawings are hereby declared to be part of this contract), and to the complete satisfaction of the Engineer.

Execution
of work
directed by
Engineer

5. The work shall be commenced, carried on and prosecuted to completion by the Contractor in all its several parts in such manner and at such points and places as the Engineer shall, from time to time, direct, and to his satisfaction, but always according to the provisions of this contract, and if no direction is given by the Engineer, then in a careful, prompt and workman-like manner.

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Construction
of Contract.

6. The several parts of this contract shall be taken together, to explain each other and to make the whole consistent, and if it be found that anything has been omitted or mis-stated which is necessary for the proper performance or completion of any part of the work, the Contractor shall, at his own expense, execute the same as though it had been inserted and properly described, and the correction of any such omission or error shall not be deemed to be an addition or deviation from the works hereby contracted for.

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Extra work

7. The Engineer may, in writing, at any time before the final acceptance of the works, order any additional work, or materials or things, not covered by this contract, to be done or provided, or the whole or any portion of the works to be dispensed with, or any changes to be made which he may deem expedient, in,

How treated

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10 or in respect of the works hereby
contracted for, or the plans, dim-
ensions, character, quantity, quality
description, location or position
of the works, or any portion or por-
tions thereof, or in any materials
or things connected therewith or
used or intended to be used therein,
or in any other thing connected
with the works, whether or not the
effect of such orders is to increase
or diminish the work to be done or
the materials or things to be prov-
ided or the cost of doing or prov-
iding the same, the Engineer may,
in such order, or from time to time
as he may see fit, specify the time
or times within which such order
20 shall, in whole or in part, be com-
plied with. The Contractor shall
comply with every such order of the
Engineer. The decision of the
Engineer as to whether the compli-
ance with such order increases or
diminishes the work to be done, or
the materials or things to be pro-
vided, or the cost of doing or pro-
viding the same, and as to the amount
30 to be paid or deducted, as the case
may be, in respect thereof, shall
be final. As a condition precedent
to the right of the Contractor to
payment in respect of any such order
of the Engineer, the Contractor
shall obtain and produce the order,
in writing, of the Engineer, and a
certificate in writing of the Eng-
ineer, showing compliance with such
order and fixing the amount to be
40 paid or deducted in respect thereof.

Engineer's
order and
decision

Covenants herein apply to extra work.

8. All the clauses of this contract shall apply to any changes, additions, deviations or additional work, so ordered by the Engineer, in like manner, and to the same extent as to the works contracted for.

No claim for anticipated profits.

9. If any change or deviation in or omission from the works be made by which the amount of work to be done shall be decreased, or if the whole or any portion of the works be dispensed with, no compensation shall be claimable by the Contractor for any loss of anticipated profits in respect thereof.

Engineer sole judge of work and materials

10. The Engineer shall be the sole judge of the work and material, in respect of both quality and quantity, and his decisions on all questions in dispute with regard thereto, or as to the meaning or intention of this contract and as to the meaning or interpretation of the plans, drawings and specifications shall be final, and no work under this contract shall be deemed to have been performed, nor materials or things provided, so as to entitle the Contractor to payment therefor unless and until the Engineer is satisfied therewith, as evidenced by his certificate in writing, which certificate shall be a condition precedent to the right of the Contractor to be paid therefor.

Work subject to control of Engineer

11. The work shall, in every particular, be under and subject to the control and supervision of the Engineer, and all orders, directions, or instructions at any time given by the Engineer with respect thereto,

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or concerning the conduct thereof, shall by the Contractor promptly and efficiently be obeyed, performed and complied with, to the satisfaction of the Engineer.

<p>10</p> <p>Description of work. What items include.</p>	<p>12. The description or descriptions of the work and materials or any portion of the works, set out or referred to in or covered by any item or items for which a price or prices are given in clause 34 of this contract, include not only the particular kinds of work or materials mentioned in the said item or items, but also all and every kind of work, labour, tools, plant, materials, equipment, articles, and things whatsoever necessary for the full execution, completion, and delivery, ready for use, of such respective portions of the works, in accordance with the plans, drawings and specifications, to the satisfaction of the Engineer. The said price or prices, as a whole, shall cover not only the particular descriptions of work and materials mentioned therein,</p>
<p>20</p>	<p>but also all and every kind of work, labour, tools, plant, materials, equipment, articles and things whatsoever, necessary for the full execution, completion and delivery, ready for use, of the entire work as herein contracted for, in accordance with the plans, drawings and specifications, to the satisfaction of the Engineer. In case of dispute as to what work, labour, tools, plant, materials, equipment, articles and things are so included or covered, the decision of the Engineer shall be final and conclusive with respect thereto.</p>
<p>30</p> <p>List of prices what covered.</p>	
<p>40</p>	

Foreman of
the works.

13. A competent foreman shall be kept on the ground by the Contractor during all the working hours, to receive the orders of the Engineer, and should such foreman be deemed by the Engineer incompetent, or conduct himself improperly, he may be discharged by the Engineer, and another shall be at once appointed in his stead by the Contractor. Such foreman shall be considered as the lawful representative of the Contractor, and shall have full power to carry out all requisitions and instructions of the said Engineer, but this clause shall not relieve the Contractor from the duty of personally superintending the work.

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Defective work
or material.

14. Should the Contractor use or employ or intend to use or employ, any material, plant, tools, equipment, articles or things, which in the opinion of the Engineer are not in accordance with the provisions of this contract, or in any way unsuitable for the works or any part thereof, or should the Engineer consider that any work is, for any reason, improperly, defectively or insufficiently executed or performed, the Engineer may order the Contractor to remove the same, and to use and employ proper materials, plant, tools, equipment, articles and things, or to properly re-execute and perform such work, as the case may be, and thereupon the Contractor shall immediately comply with such orders, and if the Contractor fail to comply with such orders within twenty-four hours the Engineer may, at any time thereafter, execute or

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Engineer
may order
removal or
re-execution.

Non-Compliance
by Contractor,

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10 cause to be executed, the orders so given, and the Contractor shall on demand, pay His Majesty all costs, damages and expenses incurred in respect thereof, or occasioned to His Majesty by reason of the non-compliance by the Contractor, with any such orders, or His Majesty may, in the discretion of the Minister, retain and deduct such costs, damages and expenses from any amounts then or thereafter payable to the Contractor.

Contractor's
machinery,
plant, etc.

20 15. All machinery, tools, plant, materials, equipment, articles and things whatsoever, provided by the Contractor or by the Engineer under the provisions of sections 14 and 16, for the works, and not rejected under the provisions of section 14, shall from the time of their being so provided become, and, until the final completion of the said work, shall be the property of His Majesty for the purpose of the said works, and the same shall on no account be taken away, or used or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not, however, be answerable for any loss, or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor of all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such of the

30 Becomes
property of
H.M. until
completion
of work.

40 said machinery, tools, plant, mater-

ials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall, upon demand, be delivered up to the Contractor in such condition as they may then be in.

Insufficient
workmen,
plant, etc.

16. If the Engineer shall at any time consider the number of workmen, horses, quantity of machinery, tools, plant or equipment, or of proper materials, articles or things, respectively, employed or provided by the Contractor on or for the said works, to be insufficient for the advancement of such works or any part thereof toward comple-

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Work not
proceeding
with due
diligence.

tion within the time limited in respect thereof, or that the works are, or some part thereof is, not being carried on with due diligence, then, and in every such case the Engineer may, in writing, order the Contractor to employ or provide such additional workmen, horses, machinery, tools, plant, equipment, materials, articles and things, as the Engineer may think necessary and in case the Contractor shall not, within three days,

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Engineer may
provide
additional
workman, etc.,
at Contractor's
expense,

or such other longer period as may be fixed by any such order, in all respects comply therewith, the Engineer may employ and provide such additional workmen, horses, machinery, tools, plant, equipment, materials, articles and things, respectively, as he may think proper, and may pay such additional workmen such wages, and for such additional horses, machinery, tools, plant, equipment, materials, articles and things, respectively, such prices as he may

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Repayment by
Contractor

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think proper, and all such amounts so paid shall, on demand, be repaid to His Majesty by the Contractor, or the same may be retained and deducted from any sum that may then or thereafter be or become due from His Majesty to the Contractor. The Contractor shall employ the additional workmen, horses, machinery, tools, plant, equipment, materials, articles and things, so provided and employed, by the Engineer, in the diligent advancement of the works, the workmen and horses so provided shall, however, be thereafter subject to discharge by the Contractor, but only with the consent and approval of the Engineer.

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Work not
comprised
in contract.

17. His Majesty may, at any time, without payment therefor, send and employ on, in and about the works other Contractors and workmen, with such horses, machinery, tools, plant, equipment, materials, articles and things, as the Engineer may deem necessary to do any work not comprised in this contract and the Contractor shall afford to them all reasonable facilities, to the satisfaction of the Engineer, for doing such work, the work of the Contractor being interfered with as little as the Engineer may deem practicable.

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The taking of possession of the whole or any part of the works of the Contractor for such purpose shall not be deemed an acceptance by or on behalf of His Majesty, of the whole or any portion of the works comprised in this contract.

Default or
delay by
Contractor

Notice by
Engineer

Minister may
take work out
of Contractor's
hands.

Damages
Arising from
non-completion.

18. In case the Contractor shall make default or delay in commencing or in diligently executing, any of the works or portions thereof to be performed, or that may be ordered under this Contract, to the satisfaction of the Engineer, the Engineer may give a general notice to the Contractor requiring him to put an end to such default or delay, and should such default or delay continue for six days after such notice shall have been given by the Engineer to the Contractor, or should the Contractor make default in the completion of the works, or any portion thereof, within the time limited with respect thereto, in or under this Contract, or should the Contractor become insolvent, or abandon the work, or make an assignment of this Contract without the consent required, or otherwise fail to observe and perform any of the provisions of this contract, then and in any of such cases, the Minister for and on behalf of His Majesty, and without any further authorization, may take all the work out of the Contractor's hands and may employ such means as he, on His Majesty's behalf, may see fit to complete the works, and in such case the Contractor shall have no claim for any further payment in respect of work performed, but shall be chargeable with, and shall remain liable for, all loss and damage which may be suffered by His Majesty by reason of such default or delay, or the non-completion by the Contractor of the works, and no objection or claim shall be raised or made by the Contractor by reason or on account of the ultimate

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10 cost of the work, so taken over, for any reason proving greater than, in the opinion of the Contractor, it should have been, and all materials, articles and things whatsoever, and all horses, machinery, tools, plant and equipment and all rights, proprietary or otherwise, licenses, powers and privileges, whether relating to or affecting real estate or personal property, acquired, possessed or provided by the Contractor for the purposes of the works, or by the Engineer under the provisions of this contract, shall remain and be the property of His Majesty for all purposes incidental to the completion of the works, and may be used, 20 exercised and enjoyed by His Majesty as fully, to all intents and purposes, connected with the works as they might theretofore have been used, exercised and enjoyed by the Contractor, and the Minister may also, at his option, on behalf of His Majesty, sell or otherwise dispose of, at forced sale prices, or at public auction or private sale or 30 otherwise, the whole or any portion or number of such materials, articles, things, horses, machinery, tools, plant and equipment at such price or prices as he may see fit, and retain the proceeds of any such sale or disposition and all other amounts then or thereafter due by His Majesty to the Contractor on account of, or in part satisfaction of, any 40 loss or damage which His Majesty may sustain or have sustained by reason aforesaid.

Power to
take action
on default of
Contractor.

19. Whenever in this contract power or authority is given to His Majesty, the Minister, the Engineer or any person on behalf of His Majesty to take any action consequent upon the insolvency of the Contractor, or upon the acts, defaults, neglects, delays, breaches, non-observance or non-performance by the Contractor in respect of the works or any portion or details thereof, such powers or authorities may be exercised from time to time and not only in the event of the happening of such contingencies before the time limited in this contract for the completion of the works, but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed further with the execution of the works.

Minister sole
judge of
reasonableness
of extension
of time for
completion.

Provided always that after the expiration of the time limited for the completion of the works, the Minister shall be sole judge as to what additional time, if any, may be allowed to the Contractor for such completion, and his decision as to the reasonableness of sufficiency thereof for the purposes of completion shall be final and binding upon the Contractor.

Damages to
work in
progress.
Contractor
assumes risk.

20. The Contractor shall be at the risk of, and shall bear all loss or damage whatsoever, from whatsoever cause arising, which may occur to the works, or any part thereof, until the same be finally accepted by the Minister, and if any such loss or damage occur before such final acceptance, the Contractor shall

immediately, at his own expense, repair, restore and re-execute the work so damaged, so that the whole works, or the respective portions thereof, shall be completed within the time limited for completion thereof.

10 Rectification
of defects in
work.

21. The Contractor shall, to the satisfaction of the Engineer, rectify any defects in either workmanship or materials supplied under the contract, or of which he shall receive notice from the Engineer, and for which he may have been responsible, in the opinion of the Engineer, during the period of one year after the date of the final certificate of the completion of the work.

20 Damages to
persons or
property.

22. The Contractor, his agents and all workmen and persons employed by him, or under his control, shall use due care that no person or property is injured and that no rights are infringed in the prosecution of the work, and the Contractor shall be solely responsible for all damages by whomsoever claimable, in respect of any injury to persons or to lands, buildings, structures, fences, trees, crops, roads, ways or property of whatever description, and in respect of any infringement of any right, privilege or easement whatsoever, occasioned in the carrying on of the works or any part thereof or by any neglect, misfeasance or nonfeasance on the Contractor's part or on the part of his agents, workmen or persons employed by him or under his control, and shall, at his own expense, make such temporary provisions as may be nec-

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- Contractor assumes liabilities
 Contractor to clean premises on completion.
 Precautions as to fire.
- essary to ensure the avoidance of any such damage, injury or infringement and to prevent that interruption of or danger or menace to the traffic of any public or private road, and to secure to all persons and corporations the uninterrupted enjoyment of all their rights, in and during the performance of the said works, and shall submit to His Majesty, before receiving final payment under this contract, proper receipts or releases for all lands used or required for camp sites, erection of shops, storage framing of material, easements or rights of way, and the Contractor shall indemnify and save harmless His Majesty from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by, or attributable to any such damage, injury or infringement.
23. The Contractor shall upon the completion of the works remove all temporary structures and clear away all rubbish and surplus and waste materials remaining on or about the works, and place the premises in a neat and tidy condition satisfactory to the Engineer.
24. The Contractor shall, at his own expense, take special precautions to prevent fire occurring in or about the works, and employ his own workmen, to the satisfaction and under the direction of the Engineer, in extinguishing all such fires which may occur; and shall observe and comply with all laws and
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- 40

regulations in force respecting fires, and with all regulations and instructions made and given, from time to time during construction, by the Engineer, with respect to fires and the prevention and extinguishing of fires, and shall pay all wages and other outlay occasioned by reason of the observance or compliance with such regulations and instructions.

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Insurance

The Contractor shall, also, unless the Minister otherwise directs in writing, at his own expense, at all times during construction and until the final acceptance of the works, keep all buildings and structures insured against loss by fire, in such insurance company or companies and in such amount or amounts as may be approved of by the Engineer and the policies of such insurance shall be made payable as the interest of the Contractor and His Majesty may, respectively, appear, and shall be deposited with the Engineer.

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Assignments.

25. The Contractor shall not, without the written consent of the Minister, make any assignment of this contract, or any sub-contract, for the execution of any of the works hereby contracted for, and, in any event, no such assignment or sub-contract, even though duly consented to, shall exonerate the Contractor from liability under this contract for the due performance and completion of the works hereby contracted for.

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Time essence of contract.

26. Time shall be deemed to be material and of the essence of this contract.

Members of
H. of C. not
to benefit.

27. Pursuant to the provision of the statute in such case made and provided, no member of the House of Commons of Canada shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

Fair Wage
schedules part
of contract.

28. The Contractor shall, in the execution of the works and as far as may be practicable and consistent with reasonable efficiency and economy, select and employ labour from the Rural Municipalities in which the work is situate. In the selection of such labour, first consideration shall be given to the employment of those who, if available and competent, are most in need in the locality in which the works are to be performed, without any discrimination whatsoever, preference being shown to unemployed ex-service men and unemployed married men and single men with dependents. The Contractor shall supply board and lodgings for men who wish to stay in camp at a rate not exceeding \$1,20 per day per man, and for horses, at a rate not exceeding 60¢ per day per horse. The schedule of wages and payments to be made by the Contractor, shall be in accordance with the Fair Wage Schedule of the Province in which the work is situate and with the schedules established by the National War Labour Board from time to time, as they may apply, but in no case shall they be less than those set out in Schedule "A" attached hereto.

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Payment by
Contractor
for labour
etc.

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Power to
retain money
on default of
Contractor
paying for
labour etc.

29. The Contractor shall promptly pay for all labour, services and materials in or about the construction of the works, and all payments for such purposes shall be made by the Contractor at least as often as payments are made to the Contractor by His Majesty under this contract, and in the event of failure, by the Contractor at any time so to do, or if any sum due for labour of any foreman or workman, or for hire of horses, teams or carts upon or in respect of the works, or any part thereof, remains in arrear or unpaid, or if there be at any time found to exist any claims against the Contractor, or any subcontractor, for labour, teams, tools, plant, equipment, materials, articles or things employed, hired or supplied upon or for the works or any part thereof, or if the Minister has reason to believe that any such payments, sums or claims will not be promptly made or paid, the Minister may in addition to or in lieu of exercising any powers conferred by the said fair wage clause, at his option, retain out of any moneys due or to become due to the Contractor from His Majesty such amount or amounts as the Minister deems sufficient to satisfy the same, or pay the Contractor the moneys due him in instalments, giving him from time to time such sums as the Minister or the Engineer deems sufficient to meet such payments, sums or claims or any of them, and withholding the balance until the same are satisfied, or may pay all or any of such payments, sums or claims, rendering to the Contractor

the balance due him after deducting the payments so made.

The Contractor shall be estopped from denying the accuracy and correctness of any and all payments so made by the Minister.

Books, etc.,
of Contractor
open
for inspection.

The Contractor's pay-rolls, time-books, books of account, invoices, and statements shall be at all times open for inspection and extract by the Engineer and any authorized representative of the Minister, or either of them, who shall be assisted in every possible way by the Contractor, to enable the Engineer and such representative to ascertain as far as possible, the exact payment, sums or claims so due and remaining unpaid by the Contractor. 10

Work to be
free from all
encumbrances.

30. Before making any payment on any progress or final estimate, the Minister may require the Contractor to satisfy the Engineer, or other authorized representative of His Majesty, that all work performed and materials supplied and all structures built, for which payment is being made, are free and clear from all lawful claims or liens under any law for labour, workmanship, materials or otherwise, and the Contractor shall indemnify and hold harmless His Majesty from and against any and all kinds of claims or liens accruing from labour and services performed and materials furnished, or otherwise, and any of the same, in or about the works. 30

Sanitation.

31. The Contractor shall comply with and the works shall be carried 40

10 on subject to all regulations for the time being in force pursuant to the Public Works Health Act and all regulations made by any lawful authority and applicable to said works, and all orders given by the Engineer with respect to sanitation or preservation of health on the works. The Contractor shall, at his own expense, make adequate arrangements, to the satisfaction of the Engineer, for the medical and sanitary supervision of all his employees.

20 Engineer's stakes or other marks not to be removed.

32. The Engineer will stake out the work for the Contractor and furnish him with such details, plans and special instructions as may be necessary. The stakes and marks given by the Engineer must be carefully preserved by the Contractor who must give the Engineer or his assistant all necessary assistance and facilities for establishing bench marks and stakes and for taking measurements. The Contractor shall be responsible for the proper alignment, height and depths and shall lay out on the ground all the works embodied in the contract.

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40 Notice:
how given.

33. Any notice, order, direction or other communication given to the Contractor under the provisions of this contract shall be sufficiently given if delivered to the Contractor personally, or to his foreman, or left at the Contractor's office, or mailed at any post office to the Contractor or foreman addressed to the address mentioned in this contract, or to the Contractor's last known place of business or residence. Every such notice, order,

direction or communication, shall be sufficient which expresses in general language and without detail, the matters required or communicated, or which follows the general language of the section or sections of this contract under which it is given, and no objection shall be taken to the form thereof.

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Payment by
His Majesty.

34. His Majesty, in consideration of the premises, and subject to the performance and observance on the part of the Contractor of all covenants, provisoes and conditions in this contract contained, will pay to the Contractor for and in respect of the works, in manner hereinafter stated, the price or several prices following vis:-

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DEPARTMENT OF AGRICULTURE
Irrigation Farm Rehabilitation Act

Quotations will be received until 12:00
noon Regina Daylight Saving Time, Monday
May 20, 1946.

Project: St. Mary Dam,
Diversion and Irrigation Tunnels.

To: George Spence, Director of Rehabilitation,
910 McCallum Hill Building, Regina, Sask.

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We, the undersigned, hereby offer the Honourable Minister of Agriculture to furnish, execute and complete in a satisfactory and workmanlike manner, in accordance with the specifications hereto attached, the following items:

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SCHEDULE OF PRICES

Item	Amount	Unit	Description	Unit Price	Extension	
1.	115,000	cy.yd.	Common Excavation	.40	46,000.00	
2.	70,000	cu.yd.	Rock excavation, open cut	1.25	87,500.00	
3.	150	cu.yd.	Trench Excavation	49.24	7,386.00	20
4.	67,000	cu.yd.	Tunnel Excavation	4.80	321,600.00	
5.	15,000	cu.yd.	Concrete(less cement) in Tunnel Lining.	15.12	272,160.00	
6.	1,000	cu.yd.	Concrete(less cement) in Portals and Transitions	16.00	16,000.00	
7.	2,000,000	lb.	Placing Reinforcing Steel	.0154	30,800.00	
8.	8,000	lb.	Placing Inserts	.249	1,992.00	
9.	3,000	lin.ft.	Supplying and Placing 6" Tile Drains	.64	1,920.00	
10.	2,200	lin.ft.	Supplying and Placing Metal Sealing Strips.	.80	1,760.00	30

Item.	Amount	Unit	Description	Unit Price	Extension
11.	1,200	lin.ft.	Drilling Weep Holes	1.23	1,476.00
12.	450	each	Supplying and placing 2½"x15" Pipes for Weep holes.	1.54	693.00
13.	3,000	sq.yd	Sprayed Asphaltic Seal Coat	.443	1,329.00
14.	30,000	lin.ft.	Supplying poles up to 6" diameter for temporary timbering.	0.04	1,200.00
10 15.	30,000	lin.ft.	Supplying poles over 6" diameter for temporary timbering	0.06	1,800.00
16.	40	M.F.B.M	Supplying dimensioned timber, all sizes, for temporary timbering	50.00	2,000.00
17.	60,000	lin,ft.	Erecting and removing poles, all sizes, temporary timbering	0.03	1,800.00
18.	60	M.F.B.M	Erecting and removing dimensioned timber, all sizes, temporary timbering.	25.00	1,500.00
TOTAL - - - - -					<u>\$ 798,916.00</u>

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BENNETT & WHITE CALGARY LIMITED
 SIGNED: Per. "E. WALDEN"
 ADDRESS: Toronto General Trusts Bldg., Calgary, Alta.
 DATE: May 20th, 1946.

Note: Schedule of Prices is to be completed in duplicate and both unit price and extension must be filled in.

Payment for
additional
work.

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And for any work or additional work done or materials or things provided, under the written orders of the Engineer pursuant to Clause 7 of this contract, for which no price or prices are named herein, His Majesty, in consideration and subject as aforesaid, will pay to the contractor the actual and reasonable cost, as determined by the Engineer, of such work, materials and things, with an additional 10 per cent thereon for the use of tools, Contractors plant, superintendence and profits.

Approximate
quantities.

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35. The quantities (if any) given are approximate only and no claim shall be made by the Contractor against His Majesty on account of any excess or deficiency, absolute or relative, in the same.

Prices to be
accepted as
full compen-
sation.

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36. The said price or prices shall be accepted by the Contractor as full compensation for every thing furnished and done by the Contractor under this contract, including all work required but not included in the items herein above mentioned, and also for all loss or damage arising out of the nature of the works or the action of the weather, tides, elements, or any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description connected with the works, and for all expenses incurred by or in connection with the works, and for all works, and for all expenses incurred by or in consequence of any delay or suspension or discontinuance of the

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work as herein specified, and for well and faithfully completing the works as in this contract provided.

Progress payments.

Ninety per cent.

Ten per cent retained until completion.

37, Cash payments equal to about 90 per cent of the value of the work done, approximately estimated from progress measurements, and computed at the price or prices agreed upon or determined under the provisions of this contract, will be made to the Contractor monthly, on the written certificate of the Engineer stating that the work for or on account of which the certificate is granted has been done, and stating the value of such work computed as above mentioned, and the said certificate shall be a condition precedent to the right of the Contractor to be paid the said 90 per cent or any part thereof. The remaining 10 per cent shall be retained till the final completion of the whole work to the satisfaction of the Engineer, and will be paid within two months after such completion. The written certificate of the said Engineer certifying to the final completion of the said works to his satisfaction, shall be a condition precedent to the right of the Contractor to receive or to be paid the remaining 10 per cent or any part thereof.

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Engineer in certifying values for progress payments may disregard price-list.

38. Provided always, that where in the opinion of the Engineer the work done is not sufficiently finished, or is not of sufficient value to justify payment at the price or prices agreed upon or determined under the provisions of this contract, the Engineer may for the purpose of such payment,

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- disregard the price or prices agreed upon or determined, and may estimate the proportionate value payable in respect of such work, and issue a certificate accordingly, in which case the Contractor shall only be entitled to receive 90 per cent of such estimated proportionate value as stated in such certificate, and shall not be paid the 90 per cent of the price or prices agreed upon or determined under the provisions of the contract until such time as the Engineer, by reason of the performance of additional work, shall certify that the Contractor is entitled thereto.
- 10 Full prices when obtainable
- 20 Claims under progress certificate.
- 30 Limitation of time for presentation of claims.
- 40 Claims evidence of accuracy.
39. It is intended that every allowance to which the Contractor is fairly entitled will be embraced in the Engineers' monthly certificates but should the Contractor at any time have claims of any description which he considers are not included in the progress certificates, such claims must be made in writing to the Engineer within thirty days after the date of the delivery to him of the certificate from which he considers the items of such claims to have been omitted, but in no case beyond the period of 60 days from the date of the practical completion of that portion of the work to which such claims apply. And in default of the presentation of such claims within the time or times so limited the Minister may treat such claims as absolutely barred.
40. The Contractor in presenting claims of the kind referred to in the last preceding clause must accompany them with satisfactory

evidence of their accuracy, and the reason why he thinks they should be allowed.

- Progress measurements and progress certificates shall not in any respect be taken as binding upon the Engineer, or as final measurements, or as fixing final amounts, they are to be subject to the revision of the Engineer in making up his final certificate, and they shall not in any respect be taken as an acceptance of the work or release of the Contractor from responsibility in respect thereof. 10
- Delays. 42. The Contractor shall not have nor make any claim or demand, nor bring any action or suit or petition against His Majesty for any damage which he may sustain by reason of any delay or delays, from whatever cause arising, in the progress of the work. 20
- Parliamentary appropriation exhausted. 43. Should the amount voted by Parliament and applicable towards payment for the works hereby contracted for be at any time expended previous to the completion of the works, the Minister or the Engineer may give the Contractor written notice to that effect. Upon receiving such notice the Contractor may if he thinks fit, stop the work - but shall not be entitled to any payment for work done beyond the amount voted and applicable as aforesaid - until the necessary funds shall have been voted by Parliament in that behalf. 30 40

Contractor
proceeds
at own risk.

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And in no event shall the Contractor have or make any claim on His Majesty for any damages or compensation by reason of the suspension of payment, or by reason of any delay or loss caused by the stoppage of the work. And in the event of the Contractor electing to proceed or proceeding with such work after such notice and before such additional funds are voted, no action of the Engineer, or of any other person on behalf of His Majesty, in giving orders, instructions, or directions, or otherwise acting with respect to such work, shall be taken or considered as in any manner improving the rights of the Contractor or as waiving in any particular way any of the provisions of this section.

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Minister may
suspend work.

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44. The Minister may, from time to time and for such period as he may deem expedient, delay or suspend, in whole or in part, operations under this contract, either upon the whole of the works, or at any particular point or points. Should any such delay or suspension, or the stoppage of the works under the last preceding clause of this contract, or should any delay caused by any circumstance which, in the opinion of the Engineer, is beyond the control of, or not the fault of, the Contractor in the opinion of the Minister unreasonably limit the time for the completion of the works, within the time specified by this contract, the Minister, as often as the case occurs, shall allow such additional time as to him may seem sufficient, in the extension of such time for completion, but no such delay,

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suspension or stoppage shall vitiate or avoid this contract, or any part thereof, or any bond, guaranty, security or obligation for the performance hereof, nor shall the Contractor be entitled to make any claim for damages by reason thereof. Upon the termination of such delay, suspension or stoppage, or upon the removal of the cause thereof, or upon the Contractor receiving notice from the Minister or Engineer requiring him to resume the work, he shall at once resume operations and diligently carry on same. 10

Liquors.

45. The Contractor shall not bring nor permit to be brought anywhere on or near the works any spirituous or intoxicating liquor; and if any person employed on the works be in the opinion of the Engineer, intemperate, disorderly, incompetent wilfully negligent or dishonest in the performance of his duties, he shall, on the direction of the Engineer, be forthwith discharged, and the Contractor shall not employ, or permit to remain on the work, any person who shall have been discharged for any or all of the said causes. 20 30

Orders by Engineer's agent.

46. All orders, directions, instructions or notices to be given or issued by the Engineer, under and pursuant to any section in this contract, may be given or issued by a duly and expressly authorized agent or agents of the Engineer.

Extension of time.

47. Any extension of time that may be granted to the Contractor shall be so granted and accepted without prejudice to any rights of 40

His Majesty whatsoever, under this contract, and no assent thereto on the part of the contractor shall be necessary.

Security Bond.

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48. The Contractor shall upon the execution of this agreement furnish to His Majesty the King a Bond with securities satisfactory to His Majesty the King, in the sum of Three Hundred and Ninety-nine Thousand, Four Hundred and Fifty-eight Dollars, conditioned upon and as security for the full and complete keeping, observing and performing by the Contractor of all terms and conditions of this Agreement, and the due performance of the work agreed to be done in accordance with the terms thereof.

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Return of Security Bond.

49. Upon the due and faithful performance, observance and fulfillment by the Contractor of all and every the terms provisions, covenants, agreements, conditions and reservations hereinbefore contained on the part of the Contractor to be observed, performed and complied with, the Contractor shall be entitled to receive back the said Bond.

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Forfeiture of security.

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50. In the event of any breach, default or non-performance being made or suffered by the Contractor in, or in respect of, any of the terms or conditions, covenants, provisions, agreements or restrictions herein contained, which on the part of the said Contractor should be observed, performed or complied with, the said money, and interest thereon, so delivered to or deposited with His Majesty, or by him received in respect thereof, shall, by the Contractor be forfeited absolutely

to His Majesty.

51. No condoning, excusing or overlooking by His Majesty, or any person acting on his behalf, on previous occasions, of breaches or defaults similar to that for which any action is taken or power exercised, or forfeiture is claimed or enforced against the Contractor, shall be taken to operate as a waiver of any provision of this contract, nor to defeat, affect, or prejudice in any way the rights of His Majesty hereunder.

Waiver
negatived. 10

52. It shall be understood and agreed that where the Contractor has undertaken to construct or perform said works or undertakings under this contract in consideration of the payment to him of a fixed contract price, that this price shall include all sales or other taxes and when the contract work or undertaking extends into a period in which the sales tax on materials used by the Contractor in the execution of this contract has been increased or decreased, His Majesty will allow to the Contractor or the Contractor will allow to His Majesty, as the case may be, the amount of the difference between the sales tax in effect on the date of the contract and any increase or decrease tax imposed before all materials to be used in such works have been purchased.

Sales or
other taxes. 20

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53. The Contractor shall comply with the provisions of the Workmens Compensation Act and all other acts and regulations of the Province in which the work is being performed and to make all returns and pay all assessments required under any such

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acts or regulations. Within fifteen days after the close of each calendar month, the Contractor shall furnish a statement made under oath setting forth the amounts of his payroll including that of all sub-contractors assessable under the said act or regulations and that all assessments levied have been paid, His Majesty may pay them out of moneys due to the Contractor.

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Contractor 54. This contract is made and to investigate entered into by His Majesty and the every condit- Contractor on the distinct understanding ion of the work) that the Contractor has, before before execution) execution, investigated and satisfied of contract. himself of the character and topography of the country, its rivers, streams, water courses and rainfalls, the dimensions, levels, character and nature of all existing works, buildings, constructions, roads, lands, waterways, sewers, pipes, the nature of the strata through which excavations, if any, are to be made, and all other things, and of every condition affecting the works to be executed and the labour and material to be provided, and that the execution of this contract by the Contractor is founded and based upon his own examination, knowledge, information and judgment, and not upon any statement, representation or information made or given by, nor upon any information derived from any quantities, dimensions, tests, specifications, plans, maps or profiles made, given or furnished by His Majesty or any of his officers, employees, or agents, and that any such statement, representation or information, if so made, given or furnished, was made, given or furnished merely for the general information of the bidders,

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and is not in anywise warranted or guaranteed by or on behalf of His Majesty, and that no extra allowance will be made to the Contractor by, and the Contractor will make no claim against, His Majesty for any loss or damage sustained in consequence of, or by reason of, any such statement, representation or information being incorrect or inaccurate, or on account of excavating in rock or other difficult ground, or of unforeseen difficulties of any kind. 10

Eligibility of employees. 55. No person shall, with relation to his employment or eligibility for employment, be discriminated against nor favoured by reason of his race, religious views or political affiliations. 20

Inconsistency between contract and specifications. 56. In the event of any inconsistency between the provisions of the aforesaid clauses of this contract and the provisions of the specifications forming part hereof, the provisions of the foregoing clauses of this contract shall prevail.

IN WITNESS WHEREOF the parties hereto have executed these presents.

SIGNED, SEALED AND DELIVERED)
by the Minister of Agriculture)
representing His Majesty as) "JAMES G. GARDINER"
aforesaid, in the presence of:) 30

"D. M. ALAN."

SIGNED, SEALED and DELIVERED)
by the Contractor, in the) "BENNETT & WHITE"
presence of:) CALGARY LIMITED"

"M. LANGSTON"

Per E. Walden.

MINIMUM WAGE SCHEDULE

Schedule "A"

All labour, both skilled and unskilled, shall be paid in accordance with any Fair Wage Act in effect in the Province of Alberta, and should any dispute arise as to what constitutes the current or a fair rate of wages it shall be decided by the Board of Industrial Relations whose decision shall be final but in no event shall the following classes of labour be paid less than that shown in the following schedule:

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	Foreman	200.00	per month	
	Sub-Foreman	160.00	per month	
	Timekeeper, experienced	125.00	" " (140)	
	Cook	90.00	" " aboard (200.00)	
	Cooker	55.00	" " "	
	Dragline Operator	.85	hour	{ 1.00 }
	Dragline Ciler	.50	" "	{ .65 }
	Bulldozer and Scraper			
	Operators,	.85	" "	{ .90 }
20	Tractorman (Cat. Operator)	.75	" "	{ .90 }
	Elevating Grader Operator	.75	" "	{ .85 }
	Blade Graderman	.75	" "	{ .85 }
	Bucket Loaderman	.75	" "	{ .85 }
	Compressor Operator	.70	" "	{ .85 }
	Steam Operator	.70	" "	{ .85 }
	Crusherman	.70	" "	{ .85 }
	Blacksmith (camp)	.70	" "	{ .85 }
	Dumpman	.60	" "	{ .70 }
30	Powderman	.60	" "	{ .70 }
	Drillers (hand)	.60	" "	{ .70 }
	Timberman	.60	" "	{ .70 }
	Truck Driver	.60	" "	{ .70 }
	Laborers	.50	" "	{ .65 }

Miners base .90 cents

" E.W. "

General and Detailed Specifications

Diversion and Irrigation
Tunnels St. Mary Dam Project

A - GENERAL SPECIFICATIONS AND CONDITIONS

Section 1 - Work Included

It is required that two tunnels be constructed and completed, in accordance with these specifications and the drawings listed in Section 4 hereof, said work being the first step in the construction of the St. Mary Dam. The work is located about forty miles southwest of Lethbridge, Alberta, or four miles northwest of Spring Coulee, Alberta, on Sections 1 and 12, Township 5, Range 24, West of the fourth Meridian. 10

Section 2 - Description of Work

The two tunnels to be constructed are referred to as the 'Diversion Tunnel' and the 'Irrigation Tunnel'. The Diversion Tunnel will be constructed first, will be 20 feet finished diameter and approximately 2,100 feet in length with a circular section. The lining will be re-inforced concrete, varying in minimum thickness from 12 inches to 21 inches. The Irrigation Tunnel is a horseshoe type, 17 feet in finished diameter, and approximately 2,600 feet long. The reinforced concrete lining will vary in minimum thickness from 12 inches to 24 inches. The rock through which both tunnels will be driven is expected to be interbedded sandstone and sandy shale with thin, lensy layers of clayey shale. 20 30

Section 3 - Approximate Quantities

The following are the main items of work and the approximate quantities of each:

1. Common Excavation	115,000 cu.yd.
2. Rock Excavation, open cut	70,000 " "

	3. Trench Excavation	150 cu.yd.
	4. Tunnel Excavation	67,000 " "
	5. Concrete (Less cement) in Tunnel lining	13,000 " "
	6. Concrete (less cement) in Portals and Transitions	1,000 " "
	7. Placing Reinforcing Steel	2,000,000 lb.
	8. Placing Inserts	8,000 "
10	9. 6" Tile Drains, supplying and Placing	5,000 lin. ft.
	10. Metal Sealing Strips, supplying and placing,	2,200 " "
	11. Drilling Weep Holes	1,200 " "
	12. 2 1/2" x 15" Pipes for Weep Holes, supplying and placing,	450 each
	13. Sprayed Asphaltic Seal Coat	3,000 sq.yd.
	14. Supplying poles up to 6" diameter for temporary timbering,	30,000 lin.ft.
20	15. Supplying poles over 6" diameter for temporary timbering,	30,000 lin.ft.
	16. Supplying dimensioned timber, all sizes, for temporary timbering,	40 M.F.B.M.
	17. Erecting and removing poles, all sizes, temporary timbering	60,000 lin.ft.
30	18. Erecting and removing dimensioned timber, all sizes, temporary timbering,	60 M.F.B.M.
	St. Mary Tunnels	"E.W."

Section 4 - Drawings

The following drawings are made a part of these specifications :

General Plans

40	4471-G-1	Location and Reservoir Topography
	4471-G-2	Hydrographs of St. Mary River

4471-G-3	Logs of Diamond Drill Holes	
4471-G-4	General Plan	
Irrigation Outlet Tunnel		
4471-T-6	Irrigation Tunnel Plan and Profile	
4471-T-7	General Plan and Section of Irrigation Outlet Tunnel	
4471-T-8	Detail Plan of Conduit to Tunnel Transition	
4471-T-	Steel Details	10
4471-T-10	Outlet Transition Layout Plan	
4471-T-11	Outlet Transition Steel Details	
Diversion Tunnel		
4471-T-1	Plan and profile of Diversion Tunnel	
4471-T-2	Inlet Portal to Diversion Tunnel	
4471-T-3	Detail Plan Diversion Tunnel	
4471-T-4	Outlet Portal Diversion Tunnel	
4471-T-5	Detail Plan showing Valve Room portion of Diversion Tunnel	
<p>These drawings show the approximate dimensions and general arrangement of the principal features of the work. Where necessary, as determined by the Engineer, additional drawings showing further details or alterations will be furnished to the Contractor during the progress of the work.</p>		20
<p>Section 5 - Commencement, Prosecution and Completion of Work</p>		
<p>The contractor shall begin work within seven (7) calendar days after receipt of notice to proceed, and shall complete all work in connection with the Diversion Tunnel within two hundred and eighty-five (285) calendar days from the date of receipt of such notice. The Irrigation Tunnel shall be completed within six hundred and fifty (650) calendar days from the date of the contractors' notice to proceed with this contract.</p>		30

Section 6 - Construction Programme

The contractor's construction operations shall be subject at all times to the approval of the Engineer. The capacity of the contractor's construction plant, sequence of operations, and methods of operation shall be such as to ensure the completion of the work within the period of time specified. Within thirty (30) calendar days after date of receipt of notice to proceed, the contractor shall furnish the Engineer a complete construction programme showing in detail his proposed programme of operations. The contractor shall immediately advise the Engineer of any proposed changes in his construction programme. If, in the opinion of the Engineer, any construction programme as submitted is inadequate to secure the completion of the work within the specified period of time or is otherwise not in accordance with the specifications, or if, in the opinion of the Engineer, the work is not being adequately or properly prosecuted in any respect, the Engineer shall have the right to require the contractor to submit a new construction programme providing for proper and timely completion of the work, and the contractor shall be entitled to no claim for additional compensation on account of such requirement.

The Government will make every reasonable effort to secure delivery of reinforcing steel or other materials and power and other facilities to be supplied by the Government in connection with the work in time to avoid delay to the contractor's progress under any approved construction programme; However, should the Government for any reason fail to secure delivery of such materials and facilities in time to meet the requirements of said programme, the contractor shall be entitled to no damages or additional compensation on account of such delays, and the only adjustment which will be made will be the granting of an appropriate extension of time, to be determined by the Engineer.

Section 7 - Materials Furnished by
the Government.

The Government will furnish all cement and admixtures required for concrete, mortar and grout; all steel reinforcing bars, and rods, bent to shape and generally cut to length, as well as inserts to receive threaded dowels. All material furnished by the Government will be delivered to the Contractor f.o.b. cars at Spring Coulee, Alberta,. The Contractor shall haul all of the materials from the point of delivery to the site of the work; shall provide suitable warehouses or other means of protection satisfactory to the Engineer for such of the materials as, in the opinion of the Engineer, require storage protection; and will be charged for any materials lost or damaged after delivery, except as otherwise specifically provided, the same amounts that the materials cost the Government at the point of delivery to the contractor. The contractor shall be responsible for the prompt unloading of materials delivered on cars and for proper care of the materials, and will be held liable for any demurrage charges incurred due to failure to unload cars promptly. The contractor shall report to the Engineer, in writing, within twenty-four (24) hours after unloading, any shortage in or damage to materials when delivered. The cost of unloading, hauling, storing and caring for all material furnished by the Government shall be included in the prices bid for work to which they are appurtenant, as determined by the Engineer. The contractor shall return to the Government at the site, as directed by the Engineer, all unused materials and will be charged for any materials not used and not returned the same amount that the materials cost the Government at the point of delivery to the contractor.

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Section 8 - Materials to be Furnished
by the Contractor.

The contractor will be required to furnish all materials and supplies necessary for the

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satisfactory completion of the contract except such items as are specially mentioned in Section 7 and elsewhere in these specifications. The cost of hauling, storing, processing, handling and caring for all materials and supplies furnished by the contractor shall be included in the prices bid in the schedule for the work for which the materials and hauling are required.

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Section 9 - Sand and Gravel Deposits

Sand and Gravel for concrete, for drains and other purposes will be supplied by the contractor in accordance with Section 8. Several deposits exist on land which will be acquired by the Government in the vicinity of Section 24, Township 4, Range 25, West of the Fourth Meridian. No charge will be made to the contractor for materials taken from such Government owned deposits and used in the work covered by this contract. If used by the contractor these deposits shall be operated so as to preserve, insofar as practicable, their future usefulness or value. Nothing contained in this section shall be construed as constituting the approval of any materials taken from such deposits, as the contractor will be solely responsible for supplying materials of the quality specified for the various portions of the work.

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Section 10 - Records of Test Borings

The drawings included in these specifications show the available records of borings made at or near the sites of the tunnels. The Government does not guarantee any interpretation of these records or the correctness of any information shown on the drawings relative to geological conditions. The contractor must assume all responsibility for deductions and conclusions as to the nature of the rock and other materials to be excavated, the difficulties of making and maintaining the required excavations and of doing other work affected by the geology of the site of the work.

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Section 11 - Lines and Grades

The contractor shall provide such drill holes, forms, ladders, spikes, nails, light and such assistance as may be required by the Engineer in giving lines and grades. The Engineer's marks shall be carefully preserved by the contractor until they have served their purpose. Work shall be suspended at such points and for such reasonable time as the Engineer may require to transfer lines and to mark points for line and grade. No additional compensation will be paid to the contractor for required assistance in setting lines and grades or for loss of time on account of such necessary suspension of work or otherwise on account of the requirements of this section.

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Section 12 - Camp Sites

The contractor will be permitted to use for construction camp purposes any land available in the vicinity of the work that is the property of the Government; Provided, that such use shall not interfere with any part of the work or of the work of other contractors or of the work of the Government in the vicinity. The Government will assume no responsibility for damage to or interference with the contractor's camps due to any operations under this contract or any other work connected with the project. If private land is used by the contractor, he shall make all necessary arrangements with the owner and shall pay all rentals or other costs connected therewith. The location, construction, maintenance operation and removal of the contractor's camps and of the camps or establishments of all persons or parties in the vicinity, operating or associated with the contractor, shall be subject to the approval of the Engineer.

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Section 13 - Roads

An access road will be constructed by the Government connecting the Lethbridge-Cardstone

highway with a point at the site of the work. The surface of this road will be gravelled, and will be available for the use of the Contractor and all other persons connected with the work but shall be maintained by the contractor to the satisfaction of the Engineer. Local roads in the vicinity of the site required by the contractor shall be constructed at his own expense. The contractor shall provide, install, and maintain any barricades, lights or danger signals necessary for the protection of the work or safety of the public.

Section 14 - Electric Power for Construction Purposes

As soon as possible after the contract is awarded the Government will construct a transmission line to and will provide a suitable substation at a point near the site of the work with transformer capacity of 300 K.V.A.. Power will be delivered to the contractor by the Government on the low voltage side of this substation at 2500 volts, 3 phase, 60 cycles, and no charge will be made to the contractor for such power when used only for the purpose of carrying out work under this contract. In the event that Government power is not yet available when required by the contractor, the contractor shall supply the necessary power for his requirements until it is available under the terms laid down in Section 49 of these specifications.

The contractor shall construct and maintain, at his own expense, the necessary circuits for distributing the power. All equipment, materials and work in connection with the contractor's electrical installation shall conform to Provincial or Power Company specifications and plans and shall be acceptable to the Engineer, and such installation shall be maintained in a safe and satisfactory operating condition. The use to which the power is put shall be subject to the approval of the Engineer, and the contractor shall endeavour to make economical use of such power, for the purpose only of carrying out the work under this contract.

Section 15 - Use of Construction
Facilities.

It is possible that work at or in the vicinity of the site will be performed by the Governemnt or by other contractors during the period covered by the contract under these specifications. the contractor shall permit full use, without charge therefor, by the Government and/or other contractors of roads, bridges, lighting and such other facilities constructed by the contractor for use in performance of the contract under these specifications, and usable jointly by the contractor, the Government, and other contractors, as are available for such use without additional cost to the contractor. 10

B - DETAILED SPECIFICATIONS.

EXCAVATION

Section 16 - Classification of
Excavation

Except as otherwise provided in these specifications, all materials moved in required excavation for the construction of the tunnels and adits will be measured in excavation only, to the lines shown on the drawings or prescribed by the Engineer, and will be classified for payment as follows: 20

(a) Open Rock Excavation - Will be all solid rock in place, except that defined as tunnel excavation and which cannot be removed until loosened by blasting, barring or wedging, and all boulders or detached pieces of solid rock more than one cubic yard in volume. No material, except Boulders as described above, will be classified as rock excavation, which is not actually loosened by blasting before removal, unless blasting is prohibited and barring, wedging, or similar methods are prescribed by written order of the Engineer. 30

(b) Tunnel Excavation -- Will be all material excavated from locations within the portals of the tunnels, by tunneling methods.

(c) Trench Excavation -- Will be all material excavated for concrete cut-off walls in accordance with these plans and specifications or as directed by the Engineer.

10 (d) Common Excavation -- All material excavated in accordance with these plans and specifications or as directed by the Engineer, which cannot be defined as either "open rock excavation", "trench excavation", or "tunnel excavation" shall be classified as common excavation. Common excavation shall include all overburden, gravel and loose rock in open cut, except as otherwise provided in this section.

Section 17 - Blasting

20 Blasting will be permitted only when proper precautions are taken for the protection of persons, the work and private property, and any damage done to the work or private property by blasting shall be repaired by the contractor at the contractor's expense. Caps or other exploders or fuses shall in no case be stored, transported or kept in the same place in which dynamite or other explosives are stored, transported, or kept. The location and design of powder magazines, methods of transporting explosives, and in general, the pre-
30 cautions taken to prevent accidents shall be in accordance with Provincial laws and regulations and subject to the approval of the Engineer, but the contractor shall be liable for all injuries to or deaths of persons or damage to property caused by blasts or explosives.

Section 18 - Open Cut Excavation

All excavation for tunnel adits, portal walls, transitions and other structures, situated outside the tunnel portals, shall be made to the

lines and grades established by the Engineer.

The adit canals shall be trimmed to the cross-sections shown on the plans or established by the Engineer, except that undisturbed ledge rock will be permitted to extend not more than six (6) inches into the prescribed lines.

If at any point the natural foundation material at structure sites is disturbed or loosened during excavating operations, it shall be consolidated in a manner satisfactory to the Engineer, or, where so directed by him, it shall be removed and replaced with selected material compacted to his satisfaction at the contractor's expense. 10

Where concrete is to be placed upon or against rock, the excavation shall be sufficient to provide for the minimum thickness of concrete at all points, and the prescribed minimum thickness shall be exceeded as little as possible. Measurement of such excavation for payment will be limited to the excavation required for the prescribed minimum thickness of concrete, plus six inches. Any and all excess or over-excavation performed by the contractor for any purpose or reason, except as may be ordered in writing by the Engineer, and whether or not due to the fault of the contractor, shall be at the expense of the contractor. 20

No blasting that might injure the work will be permitted, and any damage done to the work by blasting, including the shattering of material beyond the required excavation lines, shall be repaired by and at the expense of the contractor and in a manner satisfactory to the Engineer. All cavities in rock excavation upon or against which concrete is to be placed, caused by careless excavation, as determined by the Engineer, or by removal, as directed by the Engineer, of rock or other foundation materials needlessly damaged by blasting or other operations of the contractor, shall be solidly filled with concrete entirely at the expense of the contractor, including the cost of all materials required therefor. 30 40

10 The quantity of excavation for which payment will be made will be measured in excavation to the lines and grades established by the Engineer and no payment will be made for material excavated beyond those lines. Except where concrete is to be placed upon or against rock, structure excavation will be measured for payment to slopes of 1 to 1 for earth or overburden, and to $\frac{1}{2}$ to 1 for rock and to lateral dimensions of one foot outside of the foundations of the structures.

Section 19 - Trench Excavation

20 Trenches for concrete cut-off walls shall be excavated in the rock foundation by the contractor as shown on the drawings or directed by the Engineer. Trenches shall generally have vertical sides and shall be excavated to the alignment, grades and dimensions shown on the drawings or as directed by the Engineer. The excavation shall be performed by the use of hand tools or power cutting drills, in such manner as to prevent shattering the sides or bottom of the trenches, and no blasting will be permitted. Measurement, for payment, of rock excavation for cutoff walls will be made only to the neat lines shown on the drawings or established by the Engineer, and payment therefor will be made at the unit price per cubic yard bid in Schedule for "Trench Excavation".

Section 20 - Tunnel Excavation

30 The item of the schedule for "Tunnel Excavation" shall include all required excavation performed within the portals of the tunnels. All excavation shall be made to the lines and grades shown on the drawings or as directed by the Engineer. The general dimensions, arrangements and details of the typical tunnel sections are shown on the drawings. The dimensions of the concrete lining as shown on the tunnel sections are minimum thickness, and no un-excavated material of any kind, or roof supports
40 shall be permitted to remain within these lines. Payment for tunnel excavation will be made to the

outer surface of the lining plus six inches measured in a radial direction, regardless of whether the limits of the actual excavation fall inside or outside of this prescribed tolerance line. It may be decided in the field, by the Engineer, to increase or otherwise alter, the thickness of the lining as shown on the plans. The contractor shall be entitled to no additional compensation because of such changes, other than that resulting from increased quantities due to the new position of the tolerance line, which will still remain a radial distance of six inches from the outer boundary of the lining; Provided, that any additional excavation required on account of any enlargement of section ordered after the completion of the excavation of the section to the previously prescribed dimensions, will be paid for as extra work. 10

The contractor will use every precaution to avoid excavation beyond the tolerance line. All drilling and blasting shall be carefully and skillfully performed so that material outside of the required lines will not be shattered. No blasting that might injure the work will be permitted, and any damage done to the work by blasting shall be repaired by and at the expense of the contractor and in a manner satisfactory to the Engineer. 20

Measurement of tunnel excavation for payment will be limited to the specified sectional dimensions except as described in this paragraph, and will be made along the located centre lines of the tunnels, and only between the inside faces of the portal walls: Provided, that the measurement for payment will include all required excavation for permanent tunnel drains, outside of the tunnel lining as shown on the drawings or established by the Engineer. 30

Payment for excavation in the tunnels will be made at the unit price per cubic yard bid therefor in the schedule. No additional allowance above the unit price bid in the schedule for excavation in the tunnels will be made on account of 40

the class, nature or condition of any of the material encountered, or on account of the presence of water or for any other reason. The unit price bid shall include all costs of excavation in the tunnels, disposal of excavated material as provided for in Section 24, the costs of supports, except as provided in Section 21, and all other costs incidental to the preparation of the tunnels for their permanent lining.

Section 21 - Temporary Timbering
in Tunnels.

Temporary timbering, including logging, may be used where such temporary timbering is necessary to support the roof and the sides of the tunnels; Provided, that such timbering shall be removed by the contractor before the concrete lining is placed. Payment will be made to the contractor for such timbering, as is required by the contractor and approved by the Engineer, only for such items as appear in the schedule, and at the prices fixed for such items. All other or further costs connected with temporary timbering shall be borne by the contractor.

All salvage materials from temporary timbering for which the contractor has been paid under the provisions of this section, shall be neatly piled at a point near the site designated by the Engineer and shall remain the property of the Government.

Nothing contained in this section shall prevent the contractor, at his own expense, from erecting such additional amounts of temporary timbering as he may consider necessary, nor shall it be construed to relieve the contractor from sole responsibility for the safety of tunnels or from such liabilities as may result from inadequate temporary timbering.

Section 22 - Draining, Lighting and
Ventilating Tunnel.

The contractor shall drain the tunnel where necessary to rid it of standing water. Pumping shall be done where gravity flow to an outlet cannot be secured. The contractor shall also properly light and ventilate the tunnel during construction. The cost of all work required by this paragraph shall be included in the unit prices bid in the schedule for the various items of tunnel construction. 10

Section 23- Protection of
Rock Surfaces

There are certain layers or strata in the rock through which the tunnels are to be driven which may tend to disintegrate when exposed to dry air. If, as determined by the Engineer, it is considered necessary to protect these surfaces from weather, the contractor shall do so as directed. Such protection shall consist of spraying the rock with an asphaltic oil or emulsion approved by the Engineer in such a manner that a coating or seal is obtained which will be airtight as determined by the Engineer. 20

The cost of all work required by this section shall be included in the unit prices bid in the schedule for "Sprayed Asphaltic Seal Coat". It shall include the cost of supplying the material and all costs of applying it.

Section 24 - Disposal of Excavated
Materials 30

The disposal of all excavated materials shall be subject to the approval of the Engineer. All waste piles shall be located where, in the opinion of the Engineer, they will not harmfully interfere with the flow of the river, the construction operation or accessibility of other structures or the operations of other contractors. The maximum haul for tunnel excavations will not exceed a distance

of fifteen hundred feet (1,500 ft.) from the respective tunnel portals. The cost to the contractor of disposing of all excavated materials shall be included in the unit prices bid therefor in the schedule for excavation, all classes.

CONCRETE.

Section 25 - General

10 Reinforced concrete structures shall be built as shown on the plans or as required by the Engineer during the progress of the work. All structures and tunnel lining shall be carefully and accurately built to the lines and grades established by the Engineer.

Section 26 -- Plant

20 Plant, labour, tools appliances and materials, except cement and admixtures, for proportioning, mixing, and placing concrete shall be provided by the contractor. Materials will be tested and if found defective must be removed from the work and replaced at the contractor's expense.

Section 27 - Aggregates

All aggregates required for the making of concrete will be supplied by the contractor at his expense, as provided by Section 8. All aggregate shall be screened and washed to comply strictly with the following specifications for both coarse and fine aggregate.

30 Coarse aggregate shall consist of crushed rock or gravel from which sand has been screened, or both. It must be composed of clear, hard, strong, durable pieces and free from injurious amounts of soft, friable, thin, elongated or laminated particles of shale, alkali, organic or other deleterious matter. It shall be well graded with the following limits:

Passing 1" sieve not less than 95%
Passing No.4 sieve not more than 10%

Fine aggregate shall consist of clean, uncoated grains of strong and durable sand. It shall be free from shale, coal, loam or other organic matter or impurities and shall be of such quality that it will pass all standard test of the Canadian Engineering Standards Association Specifications for the presence of organic matter and sulphates. It shall be well graded with the following limits:

Passing No.4 sieve not less than 90%	10
Passing No.50 sieve not less than 8%	
nor more than 30%	
Not more than 35% shall be retained on any intermediate standard sieve.	

Section 28 - Water

Water for mixing concrete must be reasonably clear and colourless and must be free from injurious amounts of oil, acid, alkali, organic matter or other deleterious substance,.

The water shall be measured by a device such that the quantity of water in each batch can be regulated to give concrete of uniform consistency in successive batches, due allowance being made for free moisture in aggregate. 20

Section 29 - Strength

The concrete shall be of one class for the entire work and shall be based on a water cement ratio not exceeding .85 cubic feet of water per sack of cement (87½ lb.) and shall yield a strength of 3,000 lb. per square inch at 28 days when tested under the standard methods. 30

Section 30 - Proportions

The proportions of the mix shall be approximately 1 part of cement to 2.4 parts of fine aggregate, by weight, and 3.5 parts, by weight, of coarse aggregate; the actual field mix will be

given by the Engineer when the contractor has submitted his aggregates. Should admixtures be specified by the Engineer they will be supplied by the Government, as provided in Section 7, and shall be mixed in the concrete as directed by the Engineer.

Section 31 - Inspection

10 A rigid inspection shall be maintained over the mixing and placing of the concrete. In the placing of the concrete, it shall be insisted that all concrete shall be worked sufficiently so that it is plastic; that water shall not accumulate on the surface; that mortar and coarse aggregate shall not be allowed to separate, and that all surfaces shall be spaded so that all stone shall be removed from the surfaces.

Section 32- Placing Concrete

20 All concrete shall be deposited in place immediately upon mixing and should any concrete receive its initial set before being placed it shall be rejected and removed from the site of the work.

30 No concrete shall be placed in any forms until the Engineer shall have checked the forms and notified the contractor that they are in proper alignment and adequately braced, and if at any time there is evidence of yielding of forms the contractor shall stop concreting and restore the forms to their proper position. No mortar or concrete shall be placed except in the presence of a duly authorized Government inspector.

Concrete shall not be dropped through a greater height than 4 feet, and when it is conveyed by chuting, the plant shall be such size and design as to ensure a practically continuous flow in the chute. The angle of the chute with the horizontal shall be such as to allow the concrete to flow without separation of the ingredients, but in no case shall the slope be less than 1 vertical to 2 horizontal. The delivery of the chute shall be as

close as possible to the point of deposit. When the operation is intermittent, the spout shall discharge into a hopper. The chute shall be thoroughly flushed with water before and after each run; the water used for this purpose shall be discharged outside the forms.

Only methods of transporting or placing which will deliver concrete of proper consistency into the work without segregation and without objectionable porosity will be permitted. Should the contractor desire to use pneumatic methods for placing concrete in tunnel lining, these methods shall be subject to the approval of the Engineer. 10

Section 33 - Vibrating

All concrete shall be consolidated by vibrating using an immersion type vibrator approved by the Engineer. The vibrator shall be used vertically at points 18 to 30 inches apart and the period of vibration shall be decided by the Engineer. The vibrator shall be supplied and operated by the contractor at his own expense and under the direction of the Engineer. 20

Section 34 - Cold Weather

Concrete mixed and deposited when the temperature of the atmosphere is 40 degrees Fahrenheit or lower shall have a temperature of not less than 50 degrees at the time of placing. Suitable means shall be provided for maintaining a temperature of at least 50 degrees for not less than 72 hours after placing or until the Engineer has decided the concrete has sufficiently hardened. the methods of heating the material and protecting the concrete shall be subject to the approval of the Engineer. 30

Section 35 - Construction Joints

The placing of concrete shall be stopped only at such points as the Engineer may direct,

and at all times must be subject to his approval. The contractor shall not begin to place concrete until he has on the site sufficient materials which have been inspected and accepted to construct any one portion without interruption. The concrete shall be deposited in layers not over one foot in depth and thoroughly tamped, except as otherwise provided in these specifications.

- 10 In case of unavoidable interruption in pouring or at any construction joint authorized by the Engineer, a 2" x 4" construction joint, or a joint specified by the Engineer, shall be made parallel to the wall. Before a new pour is begun the surface of the hardened concrete shall be roughened, thoroughly cleaned of foreign matter and laitance, saturated with water and sprinkled with dry cement or covered with a thin layer of neat cement paste which shall not be allowed to dry out.
- 20 The surface shall then be covered with mortar to a depth of two inches or the superimposed concrete shall be placed in such a manner as to ensure an excess of mortar over the entire surface of the joint.

- 30 Where asphalt expansion joints are shown on the plans or requested by the Engineer, the joint shall be carefully covered with $\frac{1}{2}$ " industrial asphalt plank before the adjoining section is poured. The cost of this asphalt plank and the placing of it is to be included in the tendered price for concrete.

Section 36 - Curing Concrete

The surface of the concrete slabs shall be kept moist for seven days after pouring by covering with either burlap or moist earth as soon as the concrete has sufficiently hardened and keeping the cover moist for that period.

Section 37 - Chamfers

All exposed corners, both vertical and horizontal, shall be chamfered with a 2" x 2" chamfer.

Section 38 - Standard Specifications

Except as otherwise provided in these specifications, placing and finishing of concrete shall be done in accordance with the Canadian Engineering Standards Association Specifications for Concrete and Reinforced Concrete A.23-1942.

Section 39 - Concrete in Tunnel Lining

The item in the schedule for "Concrete in Tunnel Linings" includes all concrete in the normal circular section of the "Diversion Tunnel" shown on the drawings as from stations 3 + 67.75 to 24 + 53, and all concrete in the "Irrigation Tunnel" in the normal 17 foot horseshoe section as shown on the drawings from stations 0 + 20 to 25 + 67.9. The above described reaches of the tunnels shall be lined throughout with concrete having minimum thicknesses as shown on the drawings or as prescribed by the Engineer. 10 20

All excavation outside of the tolerance line shall be completely and solidly filled with concrete, and special care shall be taken to force concrete into all irregularities in the rock surfaces and to completely fill the tunnel arches. The contractor shall fill with mortar or grout, by method all spaces in the tunnel arches remaining unfilled after the placing of concrete has been otherwise completed. The mortar or grout shall be placed through pipes set in the concrete for this purpose, or, at the option of the contractor, through holes drilled by the contractor through the concrete after the concrete has hardened. The placing of mortar or grout shall be done at low pressures, not exceeding 25 pounds per square inch, as determined by the Engineer. The mortar or grout shall be composed of cement, sand and water in proportions to be determined by the Engineer. 30

In the tunnel inverts, loose excavation shall be removed to firm surfaces, and all such 40

surfaces shall be cleaned to the satisfaction of the Engineer before concrete is placed.

10 The finished interior surfaces of the tunnels shall conform accurately to the shape, alignment, grades and sections as shown on the drawings or prescribed by the Engineer. A smooth, dense finish will be required on the interior surfaces of all tunnel lining, and, where practical, as determined by the Engineer, the concrete shall be vibrated by power vibrators of an approved type in such a manner as to produce dense, impervious concrete having a smooth surface against the forms.

20 Measurement for payment shall be made on the basis of the minimum thickness of the lining plus six inches, and payment will be made to these lines regardless of the actual thickness of the concrete. No payment will be made for concrete required to be placed outside the tolerance line due to over breakage, excess excavation or for any other reason, but such cavities shall be solidly filled with concrete entirely at the expense of the contractor.

The unit price per cubic yard for "concrete in tunnel lining" shall include the cost of all labour, forms, equipment and materials, except cement required for manufacturing and placing concrete and mortar or grout, by any method.

Section 40 - Concrete in Portals and Transitions

30 The item in the schedule for "Concrete in portals and Transitions" shall include all concrete structures shown on the drawings or specified by the Engineer which does not properly come under the heading of concrete in Tunnel Lining. All concrete structures covered by this section shall be constructed carefully to the lines and grades as shown on the drawings or as established by the Engineer. These structures shall include generally the portal walls and cutoffs at the tunnel entrances, and exits,
40 along with the trumpet shaped portions of tunnel

lining at the entrance to the diversion tunnel and at the exit of the irrigation tunnel. They shall also include the open transition beyond the exit of the irrigation tunnel.

All concrete shall be manufactured and placed in the forms in accordance with the general concrete specifications, and shall be vibrated with a power vibrator of approved type. Where concrete is placed upon or against rock surfaces, such surfaces shall be firm and clean. Measurement for payment will be made on the basis of minimum thicknesses as shown on the drawings or specified by the Engineer, plus six inches, except in cutoff walls. Any cavities beyond these lines, due to carelessness or excess excavation, or any other cause, shall be solidly filled with concrete entirely at the expense of the contractor. Except as otherwise provided, payment shall be made for concrete in portals and transitions on the basis of the neat lines shown on the drawings or as established by the Engineer

The unit price per cubic yard for "Concrete in Portals and Transitions" shall include the cost of all labour, forming, equipment and all materials, except cement, for the manufacture and placing of concrete.

Section 41 - Measurement of Concrete

Except as otherwise specifically provided in these specifications, measurements of concrete for payment will be made only to the neat lines of the structures as shown on the drawings or as established by the Engineer. Any thickness of concrete shown on the drawings may be changed by order of the Engineer, in which case the changed thickness will be used as the basis of measurement for payment. In the event cavities resulting from careless excavation, as determined by the Engineer, are required to be filled with concrete, the materials furnished by the Government and used for such re-filling will be charged to the contractor at their

cost to the Government at the point of delivery to the contractor.

Section 42 - Payment for Concrete

10 Payment for concrete in the various parts of the work will be made at the unit prices per cubic yard bid therefor in the schedule, which unit prices shall include the cost of all labour, materials and plant required in the construction except that cement will be furnished by the Government as provided in Section 7.

Section 43 - Cement

20 Cement for concrete, mortar and grout will be furnished to the contractor by the Government as provided in Section 7. The contractor shall give the Engineer not less than 30 days' notice in writing of his cement requirements. The requirements shall be stated, insofar as practicable, in quantities not less than carload lots.. In order that cement may not become unduly aged before using, the contractor shall not use cement in the work direct from his freighting or other hauling operations whenever any cement is available that has been stored more than 60 days after delivery to the contractor.

Section 44 - Reinforcing Steel and Inserts

30 Steel reinforcing bars and inserts shall be placed in the concrete wherever shown on the drawings or where directed by the Engineer. The reinforcing bars and inserts will be furnished to the contractor by the Government as provided in Section 7.

Before reinforcing steel and inserts are placed, the surfaces shall be cleaned of objectional rust, scale, dirt, grease or other foreign substances and, after placement, they shall be maintained in a clean condition until they are completely

embedded in the concrete. The Government will make every reasonable effort to have the reinforcing steel and inserts delivered to the contractor in good condition, but this shall not relieve the contractor from full responsibility for their condition immediately prior to covering them with concrete. All bars and inserts shall be accurately placed and secured in positions so that they will not be displaced during the placing of concrete, and special care shall be exercised to prevent any disturbance of the bars and inserts in concrete that has already been placed. 10

Payment for placing reinforcing steel and inserts will be made at unit prices per pound bid for each in the schedule, which unit prices shall include the cost of furnishing and attaching wire ties and metal supports, and for unloading, hauling, sorting, storing, any cutting and field bending required, cleaning, placing and securing and maintaining all bars and inserts in position, as shown on the drawings or as directed by the Engineer. The quantities of each for which payment will be made will be based on the weights obtained from the shipping bills or invoices. 20

MISCELLANEOUS CONSTRUCTION

Section 45 - Pipes for Weep Holes

Two and one-half inch standard galvanized iron pipes in overall lengths of 15" with one coupling attached shall be supplied and installed by the contractor in the concrete lining of the tunnels or the floors or walls of other structures as shown on the drawings or as specified by the Engineer. The pipes shall be placed and secured in the forms in such a manner that the coupling will be flush with the finished interior surface of the tunnels, and so that no concrete will get inside the pipes. The cost of supplying, storing and installing pipes for weep holes shall be included in the unit price each bid therefor in the schedule. 30 40

Section 46 - Drilling Weep Holes

Weep holes shall be drilled by the contractor through the walls, floors and concrete lining of tunnels and structures, either through the weep hole pipes or through the concrete after it has been placed, as shown on the drawings or directed by the Engineer. All weep holes shall have a diameter of not less than $1\frac{1}{2}$ inches and shall be drilled to such depths as may be directed by the Engineer: Provided, that weep holes in the tunnel will not be required to be drilled to a greater depth than five feet. Weep holes will be measured for payment after the holes are drilled, and only the lengths of holes actually drilled by direction of the Engineer will be considered in making measurements for payment. Payment for drilling weep holes will be made at the unit price per lineal foot bid therefor in the schedule.

10

Section 47 - Tile Drains in Tunnels

Six inch tile drains shall be supplied and installed by the contractor as shown on the drawings or directed by the Engineer. Tile shall be laid with open joints and imbedded in gravel in trenches cut for that purpose. The drain beneath the invert of the irrigation tunnel shall be laid in a trench having an average depth and width of 1' 6". The trench around the pipe shall be completely filled with gravel containing not more than 5% of material passing a No. 4 screen. Pipe shall be laid accurately to line and grade as established by the Engineer. The cost of supplying pipe and gravel, of performing all work connected with the installation, except excavation, shall be included in the unit price per lineal foot bid therefor in the schedule.

50

Section 48 - Copper Sealing Strips

Copper sealing strips shall be supplied and placed by the contractor at construction or expansion joints as shown on the drawings or as directed by the Engineer. The copper sealing strips

shall be flat strips, 6 inches wide, and made of 20 gauge copper. The strips shall be carefully jointed together by brazing or welding so as to form continuous watertight diaphragms in the joints. Adequate provisions shall be made to support and protect the sealing strips during the progress of the work. Measurement for payment for supplying and installing copper sealing strips will be made of the strips in place, and payment will be made at unit price per lineal foot bid therefor in the schedule, which price shall include the cost of supplying, storing, placing, welding and protecting until embedded in concrete. 10

Section 49 - Extra Work

The contractor shall, when ordered in writing by the Engineer, perform extra work and furnish extra material, not covered by the specifications or included in the schedule, but forming an inseparable part of the work contracted for. 20

For any extra work done or material or things provided under the written orders of the Engineer for which no price or prices are named herein, the Governemnt will pay to the contractor the actual and reasonable cost, as determined by the Engineer, of such extra work, materials and things, with an additional 10% thereon for the use of tools, contractors plant, superintendence and profits.

Exhibit 21

30

BY-LAW NO.67

A By-law of the municipal District of Sugar City No.5 to provide for the assessment and taxation of Personal Property.

Under authority of Section 8, of the Assessment Act, being Chapter 157 of the Revised Statutes of Alberta 1942, and subject to the various

provisions of the said Act, the Council of the Municipal District of Sugar City No.5 enacts that within the boundaries of the Municipal District of Sugar City No. 5 all Personal Property shall be liable to assessment and taxation for both municipal and school purposes.

All previous personal property tax by-laws passed by this Council are hereby repealed.

10 Done and passed at Raymond, Alberta, this 3rd day of April, 1947.

First reading April 3, 1947
Second reading April 3, 1947
Third reading April 3, 1947.

"N. M. PETERSON"
Reeve
REE

(SEAL)

"D. M. HOLLADAY"
Secretary Treasurer

20 WE HEREBY CERTIFY that the foregoing is a true and correct copy of By-law No. 67 which was passed by the Council of The Municipal District of Sugar City No. 5 April 3rd, 1947.

"N. M. PETERSON"
Reeve

"D. M. HOLLADAY"
Secretary Treasurer

EXHIBIT 22.

BY-LAW NO.68 OF THE MUNICIPAL DISTRICT OF SUGAR
CITY NO. 5.

10 A BY-LAW to set the mill rates for the year 1947 for Municipal, School and Hospital purposes.

WHEREAS it is estimated by the Council of the Municipal District of Sugar City No. 5 that the said municipal district will require approximately \$72,700.00 for municipal purposes, and

WHEREAS the various requisitioning bodies have requisitioned this Council as follows:

St. Mary's River School			
Division No. 2	\$112,740.08		
St. Mary's River School			10
Division, Special levy in			
Magrath School Dist.	2,257.00		
Lethbridge School			
Division No. 7	13,641.91		
Galt School District No. 647	9,788.00		
New Dayton Consolidated			
School District No. 5,	792.00		
Raymond School District No. 700)	29,357.00		
Cardston Municipal			
Hospital District No. 5	4,666.55		20
Magrath Municipal			
Hospital District No. 29	12,500.00		
Raymond Municipal			
Hospital District No. 31	7,950.00		

THEREFOR BE IT ENACTED by authority of Section 288 and 289 of The Municipal Districts Act, being Chapter 151 of R.S.A., 1942, and amendments thereto, the mill rates for the various purposes in the Municipal District of Sugar City No. 5 for the year 1947 shall be as follows:

30

Municipal purposes	8	
St. Mary's River School		
Division No. 2	21.5	
Magrath School District		
(Special Levy)	3.5.	
Lethbridge School		
Division No. 7	18.5	
Galt School District No. 647	20	
New Dayton Consolidated		
School District No. 5	17.5	40

Raymond School District No.700	23.5
Cardston Municipal Hospital District No. 5	5.5
Magrath Municipal Hospital District No. 29	4
Raymond Municipal Hospital District No. 31	3

10 DONE AND PASSED in Council this 9th day of April,
A.D. 1947.

(Sgd) .N.W. Peterson
Reeve

(SEAL) (Sgd) D.M.Holladay
Secretary Treasurer

WE HEREBY CERTIFY that the foregoing is a true and
correct copy of By-law No. 68 which was passed by
the Council of The Municipal District of Sugar City
No. 5 on 9th April 1947

20

"N. W. PETERSON"
Reeve

"D.M. HOLLADAY"
Secretary Treasurer.

EXHIBIT 2

SUGAR CITY MUNICIPAL DISTRICT No. 5.

PERSONAL PROPERTY ASSESSMENT - 1947

Owner, - Bennett & White Calgary, Limited,
Toronto General Trusts Building,
Calgary, Alberta.

Location of property, - N $\frac{1}{2}$ Sec. 5 & S $\frac{1}{2}$ Sec. 12,
Tp. 5, Rge. 24, W4M,
Alberta, St. Mary's
River Dam.

10

Buildings.

Repair shop, frame, 28' x 48'
x 14', single sheeting, dirt
floor, rubberoid roofing,
unpainted, electric lights, 750.00

Warehouse, frame, metal clad,
10' x 16' x 8 $\frac{1}{2}$ ', rubb. roof,
shiplap floor, 80.00

Storeroom, frame, 12' x 20'
x 9 $\frac{1}{2}$ ' and addition 8' x 12'
x 7', single sheeted,
rubberoid roof, shiplap
floors, unpainted, 110.00 20

Dormitory, frame, army type
constr., 60' x 24' x 14'
and 60' x 24' x 14" with
lean-to addition 16' x 60',

10	and interconnecting additions 36' x 18' x 14', 36' x 22' x 14' and 12' x 12' x 8½', single sheeting, rubberoid clad and roofing, partitioned, sleeping quarters, wash room, showers, toilets, etc., elec. lts. metal chimneys,	4,000.00
	Cook house, 24' x 20' x 14', dining room, 24' x 60' x 14', and store room, 24' x 60' x 14' ceiled, frame constr. rubberoid roof, single spruce flooring, and coal house addition 8' x 8' x 7', unpainted, water and elec. lts.	2,500.00
20	Office Building, 12' x 24' x 11½', addition 8' x 8' x 11½', and addition 12' x 32' x 11½', all frame constr. sided and inside sheeted, rubberoid roof, unpainted, elec. lts. (new)	600.00
	House, frame constr. 16' x 24' x 11' (new) inside sheeted (tentest) painted, rubberoid roof, wired.	350.00

Cement warehouse, 28' x 32' x 9', single sheeting & floor, rubberoid roof and sheeting, partitioned, unpainted,	400.00	
Shop and powder house, 14' x 20' x 8½', single sheeting, spruce floor, rubber- oid roof and add'n 14' x 20' x 8½', spruce sheeting and rubberoid roof and siding, no floor, unpainted, on sills,	250.00	10
Power House, (west tunnel) frame 16' x 24' x 10', single sheeted, dirt floor, rubberoid roof, with platform add- ition 4' x 12' x 8' of timber constr. 11" x 11" and 11" x 8",	170.00	
	<hr/>	
Total valuation of buildings,	\$ 9,210.00	
	<hr/>	
Assessment at 66 2/3 %	6,140.00	
Personal Property Items at same location		20
West end tunnel		
1 Ingersoll Rand Marine type station- ary engine 13½x8x3-#11500, 500 RPM, 100#P, 100 HP, 3 Ph. 60 cyc. Serial #18149,	4,500.00	
1 Ingersoll Rand Mod. 75CH40 Compressor 7½x6½x5, 100#, 870RPM, #11397, w/Westinghouse 75HP Generator, Fr. 711A, 3 ph. 440V, 870RPM, 60 Cyc. Ser.#336556 (M311)	3,000.00	30
1 Boiler Plate tank 3' x 8', rivetted, w/valves and fittings,	100.00	
1 Starter compensator-75HP-Cat#0127192 G11 w/control panel #25375 SO 5964	250.00	

	1	Square D switch No. 463, Series 3.	150.00
	1	Westinghouse Elec. motor-H203, 60 cyc. 3 ph. 1 HP. geared to monarch centri- fugal pump CP-1	90.00
	1	Air pressure tank-welded-3' x 8' with 4" pipe fittings, 2 Crane-4" 300# valves and 1 Crane 2" Globe valve.	125.00
10	1	welded tank 4' x 12' with 2" fittings- on platform (water)	100.00
20	1	Rex pumpcrete unit powered by 30HP Westinghouse induction motor type CW. Ser# 2-18N410-style 18N410-220- 440V-3 ph. 60 cyc. 56 amp. 1160 RPM w/Westinghouse line starter 6 HP, class 11200, 3 ph. 60 cyc. 440 V. style 808215 and Westinghouse manual control class 12-300, type 12303, all mounted on portable steel skid frame.	4,000.00
	2	Can. Gen. Elec. transformers, 2300-110, 220V, 25KVA, 60 cyc. form KFKY, No's 195035 and 195045,	500.00
	1	Inglis duplex pump #2101810, 4 $\frac{1}{2}$ x2 $\frac{3}{4}$ x4.	135.00
		Used timbers-14 pcs 12x12-10, 16 pcs 10x10-10', 3 pcs 10x12-12', 57 pcs 8x8-8' (approx. 5500 ft)	110.00
30	2	Cleveland rock drills Ser#s 42FS7670&7676 w/carriage No's 42FS 7669 and 42FS 7677 each with Cleve- land D14 drills(portable)	2,000.00
		150 ft. $\frac{1}{2}$ " air hose and 100 ft $\frac{3}{4}$ " air hose.	125.00

410 ft. 4" pipe line to compressor station (welded) 210 ft.-2" water line to same and 650 ft from river.	350.00	
310 ft- $\frac{1}{2}$ " bleeder pipe line (galvd) 145 ft 2" pipe line to pump.	65.00	
1 Cleveland jack hammer 41H2-9367, 2 same- 3164(S80)	400.00	
3 air drills #s C1283, C1596, C1807, all No's 18PF2,	1,480.00	10
200'-1" air hose, 150'- $\frac{3}{4}$ " same and 175'- $\frac{1}{2}$ " same.	220.00	
2 H.D screw jacks 21"x 2 $\frac{1}{4}$ (3B) \$15.ea., 1-6" bench vise-\$10	40.00	
1 Elec.2 wheel bench grinder Ser#FJ 1254309-1/3HP-Miller's Falls.	25.00	
Miscellaneous bench tools, supplies and repair parts, valves, pipe nipples, electric wiring, drill, repair parts, couplings, gaskets, sledges, picks, shovels, canthooks, peavies, light globes, drill clamps, lubricating grease (4 pails) miner's helmets, etc.	150.00	20
1 Canadian Blower & Forge Co. 20" ventilating fan w/G.E. motor, Model 8F1767 Type K, 5 HP, #406210	125.00	
1 Steel tank 4' x 7' and 1 same 3' x 5' on 7' h platforms (diesel fuel)	75.00	30
1 Alemite tractor pump #6521 lubricator unit.	30.00	
140 ft. 4" pipe - poor cond.	20.00	

	1 Northwest dragline-Model 4, 1 $\frac{1}{4}$ yd bucket-#3550 (2871)	16,800.00
	1 Plymouth gasoline locomotive, Model TU#3828-Climax Eng. Co.	3,000.00
	1 Koering Dumptor-size W55-#D706, 5 yd-Wt.6.5 ton.	6,000.00
	1 Sterling Mach'y Corp. pumping unit Type P, Mod.11G, Ser.#10926,	100.00
10	(at E. tunnel)	
	4 cement forms-portable-constr. of 7"x 2" steel Ibeam base-15ft9in. 4 pcs, w/4 double cross beams, 2-16ft x 12 in. plank, bolted, as base for 14'8" tower of 8-10" x 10"-148 and 2-10" x 10" - 14'8" high, 9 $\frac{1}{2}$ ' wide,	800.00
	360 ft channel iron 4 $\frac{1}{2}$ x 1 $\frac{1}{2}$, 80 ft. 7 $\frac{1}{2}$ x 2, 160 ft. angle iron 4x4x $\frac{1}{2}$	220.00
20	100 ft-4"x1/8" flat iron and 140 ft. 6" x 1/8" flat iron.	160.00
	1 Mucker unit w/30" conveyor belt powered by Delta Elec. motor, W/GE magnetic switch CR7006, Form D4C, Cat.#4481768-25-50HP, 3 ph. 220 V, 60 cyc.	1,500.00
	500 ft. N.Elec. 1 $\frac{1}{2}$ B&S 3 cond'r cable & 2 Ext lt. with rubb. ins. cables,	200.00
30	1 Can. Ingersoll Rand Compressor unit on rubber 750 x 16, Waukeshaw motor Mod.45HK- 5 $\frac{1}{4}$ x6, Specif. No.145HK19R-Ser.#635565, Compressor-HK315, No. 12353-100 lbs Pressure at 1160RPM, w/pressure tank 7' x 30" rivetted and auxilliary tank 30" x 24"-W.P. 125 lbs- Ser.#3809	7,500.00

1	Worthington pump, $4\frac{1}{2} \times 2\frac{3}{4} \times 4$ -No.125-1099-air connected (1945) w/welded water tank 30" x 6'	125.00 20.00	
50	ft.-1" air hose- $\$35.1-3 \times 16$ 10 ton screw jack- $\$20.$	55.00	
1	Alemite Tractor lubricator pump, Model 6521-3 gal.	25.00	
1	4 gal. lubricator unit- $\$25.1$ -First Aid Kit- $\$20.$ 1-Lincoln gr.gun $\$5$	50.00	10
1	10 ton Duff Norton lever jack - $\$20.$, 1-20 ton Hydraulic jack- $6\frac{1}{2}$ "- $\$75.$	95.00	
1	4" leg type bench vise- $\$15.$ Misc.pipe fittings, log ch., turnbuckles, in shop $\$25.$	40.00	
120	ft. 60# rails	140.00	
1	20" Ventilator fan powered by G.E Motor Mod.#8F1767, Type K, 5 HP 3 ph. 60 cyc. 220V	<u>125.00</u>	20
	Total this sheet	46,805.00	
	Forward from Sheet #1, . . .	<u>14,455.00</u>	
	Total forward to Sheet #3	61,260.00	
Assessment notices mailed Sept. 22nd. 1947.			
(at E.tunnel)			
2	transformers-2300 V-220V(10KVA)	400.00	
1	C.G.E. swithh-3 pole, S14632-Cat. #25335	9.00	30
2	Bulldog D switches, Type C-Cat. #224322- $7\frac{1}{2}$ HP.	18.00	

	1 G.E. Magnetic switch CR7006-Form D1C	22.00
	1-3 pole Cat #4231-250 V-fuse box and switch	6.00
	1 GE starter compensator #934097 Type NR1625 Form A3/Induction motor type 1-form K-35 HP-60 cyc. 3 ph.	75.00
10	1 Electric pumping unit (rotary type) vertical adjustable, powered by Howell elec. motor #67-8" discharge-tripod of 15 ft. lengths of 4" pipe	150.00
	1 portable pumping unit, type LFB-2 $\frac{1}{2}$ x 2 $\frac{3}{4}$ -4" suction - 4" discharge gasoline powered #663365	100.00
	350 ft. ventillator pipe-18 $\frac{1}{2}$ " Lt.	210.00
	120 ft. 4" water line - \$36, -160 ft. 2" black pipe - \$32.	68.00
	1000 ft. 4" air line to working face - \$300., 1000 ft. 2" water line - \$200.	500.00
20	2 Ingersoll rock drills-size KLDA35-Ser. #s 2849 and 2915	800.00
	Misc. repair parts in shop gears, elec. conduit, drill steel, etc.	60.00
	210 ft. 4" pipe - \$63. -60ft. -2" pipe - \$12. 100ft 60 lb. steel nails \$150.	225.00
	2 Screw jacks-9' posts x 3 $\frac{1}{2}$ "-6" base and tops - #535	40.00
	2 Screw Jacks-8 ft posts - \$30. -2 screw jacks-5 $\frac{1}{2}$ ft. posts - \$25.	\$ 55.00
30	1217 ft-1" octagon steel-10,12,14 & 18 ft lengths	900.00

1	Cement mixer unit-Falk motor reducer size 44RU-M018-107, Howell motor #216534, type Sc3214-7.5 HP.	600.00	
	390 ft. 8" lock-joint cementing pipe on rack, 4 timbers 10" x 10" x 12" (in camp yards)	585.00	
1	Fairbanks Morse duplex steam pump 7x4 $\frac{1}{2}$ x7	150.00	
17	timbers-10" x 10" - 16', 19-12" x 12" -16', 6-10" x 12"-14, 2-10x12-12 ft., and 1-10" x 12"-18'	210.00	10
	760 ft. light hydraulic pipe-18 $\frac{1}{2}$ "	450.00	
1	Owen bucket- $\frac{3}{4}$ yd. CSC190-2324-1925- #350. 1 Page auto bucket-1 $\frac{1}{4}$ yd-No. 4-2945-#700.00	1,050.00	
1	Adams leaning wheel, portable grader, Model 105, Ser.#377, CSC5006 w/10' x 18" blade, Winsconsin motor 3 $\frac{1}{2}$ x 4- type AF-#25944 (control)	1,350.00	20
1	Bucyrus Erie shovel-25' boom, $\frac{3}{4}$ yd bucket w/extra 1 $\frac{1}{4}$ yd bucket	6,500.00	
1	portable waggon-6x6 bolsters, 4x4 bed, 24' long, HD rubber tires, welded pipe pole and reach.	100.00	
1	Fairbanks Morse 3 HP gas engine style C-800RPM, connected to FM typhoon pump- 100# press. 270RPM-1000 gal. per hr.	350.00	
1	12 ft dozer blade-3 $\frac{1}{2}$ ' w/10" blade	1,650.00	30
1	Letourneau carryall-Model LP-Ser. #S27215-LP-F-12 yd.	5,660.00	
1	Letourneau 10' dozer	1,000.00	
2	Portable 6-oil drum-racks on skids.	10.00	

	1	4 wheel trailer on rubber 625-650-16-4' x 8' x 1' box - steel chassis.	50.00
	1	Horiz. storage tank 11' x 36" on platform 5' x 14' x 9' H-w/delivery hose	75.00
	2	rubber tired wheel barrows- 835 -160'-4" glazed tile- 830	65.00
	1	Caterpillar tracktor RD 7 w/pusher plate - CSC 5050	5,850.00
10	1	Bucyrus Erie drag line-50' boom- $\frac{3}{4}$ yd bucket-CSC 5057	8,000.00
	9	12" x 12" timbers-16 ft, 2-10" x 12"-14', 43 pcs 6" x 6"-8'	90.00
	1	dry mix unit w/16 ft tower on base of 12" x 12" - 12' L	400.00
		390 ft. - 60 lb. mine rails-120 ft. switch ends, 56 ft switch rails, 40 ft. frogs, 4 W.Va. Rail Co. switches, tie plates, spikes, etc.	900.00
20	1	Fuel tank-4'x 12', w/fittings and service hose.	100.00
		500 ft. 8" pat. coupling, Simax pipe	1,000.00
	1	cement mixer hopper 10' x 10' x 4', tapered to 18" (hvy)	150.00
	1	Caterpillar power unit No. 9J4091 (CSC5020) w/5KW generator 15KL29, DC14777, Fr.186, w/self regulating alternator 5KW No.15KL29-on skids Block #4B8522	2,100.00
30	1	Vertical boiler 30" x 6'6" w/45-1 $\frac{3}{4}$ " tubes.	100.00
	1	Vertical boiler 36" x 7' w/85-1 $\frac{3}{4}$ " tubes	125.00

1	London #30 cement mixer on skids- CSC5082, less hopper above	500.00	
1	30-gal. hot water tank w/fittings	15.00	
1	Induction motor Model #EN38681-type FT-3 ph.60, cyc.220 V-20HP, C.G.E.No. 227404	200.00	
10	Koppel mine cars-side dump-9-10 yds- w/Madsen 13" H.D. wheels-3½"	300.00	
1	Power Saw w/13" blades-31" x 49" table, powered by Winsconsin 3 5/8 x 4 motor- type AH No. 79813	<u>150.00</u>	10
	Total this sheet	43,473.00	
	Forward from Sheet 2	61,260.00	
		<hr/>	
	Total forward to sheet 4,	104,733.00	
1	Allis Chalmers Cat. tractor-HD7 w/cable operated loader-1 yd.	5,500.00	
1	Caterpillar tractor D7 w/Hoover dozer loader (hydraulic) 2 yd.	9,000.00	20
1	RD8 Caterpillar tractor (CSC 5030)	7,500.00	
1	Letourneau carryall-12 yd 707J12 (CSC 5041)	5,660.00	
1	RD8 Caterpillar tractor w/12' angle dozer Mod. FCKD8-A17713	9,850.00	
1	LeTourneau carryall-12 yd-#3493U12 (CSC 5031) (in repair shop)	5,660.00	
1	Allis Chalmers HD14 (CSC 5055) Diesel motor Model 671RC3-67149864,	7,000.00	
1	Schram compressor Model 315-Ser#450085S- 315 cu.ft. at 1180RPM on steel skid	4,500.00	30

	1	Acetylene welding outfit w/fittings, hose and supplies, rods, etc.	150.00
	1	Black & Decker H.D. electric drill- $\frac{3}{4}$ "	150.00
	1	H.D. travelling shop crane with chain hoist 10-ton.	450.00
	1	Alemite 5 gal. lubricator unit - 5 grease guns	45.00
	1	Duff No. 1022-10 ton H.D. jack	20.00
10	2	Hydraulic jacks - 5 tons	20.00
	1	Smart-Turner Mach.Co. steam pump $4\frac{1}{2}$ x $2\frac{3}{4}$ x 4 #01762	60.00
	1	Bench vise-5" jaws- \$10. , 1 Pyrene - bracket type- \$10.	20.00
	1	Elec. bench grinder-w/3 emery wheels 3 x 1, 6x1 & 6 x1	25.00
	1	Portable "Champion" forge and blower(hand)	30.00
	1	small generator powered by 1 cyl. gas engine (air cooled)	40.00
20	1	set taps and dies $\frac{1}{4}$ to 1" std. thrd-1 set same-Nat'l fine thrd	100.00
		Misc. bench. small tools, gasket material, packing, nuts, bolts, greases,	60.00
		600 ft. used 2" black pipe	75.00
	1	chain type pipe vise and pipe work bench	25.00
	1	Westinghouse transformer-2300V-220V-10KVA	150.00
	3	dozer blades-30" x 12'	4,000.00
		1150 ft. $\frac{5}{8}$ " trulay cable 6/19 in whse.	285.00
30		4000 ft. elec. cable - size 4/0 DBRC	1,600.00

500 ft. 1/2" guy wire	25.00	
4500 ft. (9 spools) 1/2" trulay steel cable 6/19	800.00	
100 ft. 1" hydraulic hose w/couplings	75.00	
200 ft. 1" hemp rope	19.00	
1 Acetylene tank generator - 1 can carbide (in whse)	25.00	
(in charging room)		
1 A.C. Induction motor type R31P-60 cyc. 110/220V-1/2 HP.	40.00	10
1 D.C. Generator-Type D21D-3KW-120V- (Continental Elec. Co.)	225.00	
4 D type knife switches- \$ 10. misc. insulators, elec. wiring- \$ 10.	20.00	
2 Blow torches-pipe cutters, battery tester & misc. bench tools.	40.00	
50 ft. hvy rubber insulated-4 w.cable (in yard)	20.00	
2 Koering dumptors on rubber-5 yd capcy. No's 2 & 3 (W55-6.5 ton)	12,000.00	20
(at W. tunnel)		
2 Jack Hammers - A/3464	250.00	
160 ft. 1" drill steel	200.00	
1 Utility wagon (Jumbo) 3 deck, steel chasis, 1050 x 16 tires, 9 ft bed, welded posts of 5" hvy steel pipe, w/3 ft folding side extensions on 2nd and 3rd decks, steel bound deck beds of 3" plank, length 11 ft. height 13'8" (CSC 2240)	1,850.00	
1 Lincoln Elec. Welding unit- Ser. #TD 421655, Specif. No. S7042 1800 RPM on rubber w/V8 motor (CSC 5044)	350.00	30
1 Rock drill 18PF2-C1627 w/air hose 50' x 3/4"	500.00	
Total this sheet	78,414.00	
Forward from sheet #3.	104,733.00	
Assessment total	<u>\$ 183,147.00</u>	

Dated at Sec. 12.Tp.5, Rge 24, W4M, Alberta this 16th day of June, A.D. 1947. 40

"W. A. CARMICHAEL"

Assessor
Sugar City M.D.No.5.

ASSESSMENT SLIP

FOR LAND, BUILDINGS AND IMPROVEMENT ASSESSMENT

MUNICIPAL DISTRICT OF **Sugar City**, No. **5**
PROVINCE OF ALBERTA
Raymond, Alberta

Date Notice Posted (General Assessment)
Date Assessment Slip Mailed (Annual Assessment) **Sept. 22nd, 1947**

To **Bennett & White, Calgary Ltd.,**
Toronto General Trusts Bldg.,
Calgary, Alta.

TAKE NOTICE that you are assessed as below for the year **1947** and should you consider yourself aggrieved, you or your agent may lodge a complaint within 30 days after the date of the posting of the notice of the completion of the Assessment Roll, in the case of a General Assessment; or within 30 days after the date of mailing of the Assessment Slip in the case of an Annual Assessment, as indicated above.

Account Number	HAMLET OF					No. of Acres Assessed	ASSESSED VALUES (Dollars Only)			
	Pt. of Sec.	Sec. Lot	Twp. Blk.	Rge. Mer. Plan	Land		Buildings and Improvements	P/P	TOTAL	
	1/2	5)	5	24			6140	177,007	183,147.00	
	3/4	12)								
	at St. Mary's River Dam									

Sec. 35. The Assessment Act
TO.....
Secretary-Treasurer Municipal District of....., No.....
.....P.O.

Date....., 19.....
Sir: I hereby complain that the following property has been wrongly assessed* or assessed too high or too low, or against the insertion upon or omission from the roll of the name of

*Strike out matters which are not subject of complaint.

Account No.	Part of Section (or) Hamlet	Section (or) Lot	Township (or) Block	Range (or) Plan	Meridian

Land.....
Buildings and Improvements.....
Name.....Complainant.
Address in full.....

D. M. Holladay
Secretary-Treasurer

(Set out on reverse side details of complaint.)

FOR YOUR INFORMATION ONLY

The Council of your Municipal District is desirous of having the assessment as fair and equitable as possible and therefore invites your assistance in reaching this object.

The Assessment Roll will be open for your inspection in the office of the Secretary-Treasurer each day during office hours for thirty days from the date of the posting of the notice of the completion of the Assessment Roll in the case of a General Assessment, or within 30 days after the date of mailing of the Assessment Slip in the case of an Annual Assessment, whichever is indicated on this Assessment Form.

If you consider the assessed value of your own property or the property of any other person, is **too high** or **too low**, you may lodge complaint in writing with the Secretary-Treasurer within 30 days from the date of the **posting of the notice** referred to above in the case of a General Assessment; or within 30 days after the date of **mailing of the Assessment Slip** in the case of an Annual Assessment.

No person shall be entitled to consideration by the Council sitting as a Court of Revision, unless due notice of complaint has been forwarded to the Secretary-Treasurer, and the complaint fully set out in writing.

The assessment indicated hereon will be effective for taxation purposes for the year commencing.....

EXHIBIT 16. (DEFENDANTS).

TO:

The Secretary-Treasurer,
Municipal District of Sugar City, No.5,
Raymond, Alberta.

Sir:-

The undersigned hereby complains that the property assessed as set out in the Assessment Slip dated September 22nd, 1947, relating to certain personal property at St. Mary's River Dam has been improperly assessed for the following reasons; 10

1. The said personal property is only temporarily within the Municipal District and is not subject to taxation.

2. The said assessment contains a considerable number of motor vehicles which are exempt from assessment.

3. The said assessment on personal property has been made only in relation to the personal property of the undersigned and is an attempt by the Municipal District to discriminate against it and other Construction Companies operating in the locality without it being intended that a general assessment of personal property in the Municipal District should be made, and therefore the said assessment is illegal and void. 20

4. The said assessment is too high.

DATED at Calgary, Alberta, this 15th day of October, A.D. 1947.

BENNETT & WHITE CALGARY LIMITED 30
Per HELMAN MAHAFFY & BARRON
Per "S. J. HELMAN"
Its Solicitors
803 Lancaster Building,
Calgary, Alberta.

The address for service of all notices on the Complainant is at the office of its solicitors at the address given above.

EXHIBIT 17 (DEFENDANTS).

HELMAN, MAHAFFY & BARRON
Barristers & Solicitors

Telephone M 1040

S.J. Helman, K.C. J.C. Mahaffy, K.C. M 1240
R.H. Barron, LL.B.

10

803-804 Lancaster Building,
CALGARY, Canada,

October 25th 1947

The Secretary-Treasurer,
Municipal District of Sugar City No.5.
Raymond, Alberta.

Dear Sir:

Re: Bennett & White Calgary Limited

20 Your notice addressed to Bennett & White
Calgary Limited that the Council would sit as a
Court of Revision on the 31st day of October, 1947,
has been brought to our attention.

It is impossible for us to attend personally at the hearing of this Council and we would therefore ask that you bring our letter to the attention of the Court of Revision.

30 Since the complaint was launched herein
our client, Bennett & White Calgary Limited has
ascertained that the equipment in question, which is

the subject of the assessment, does not belong to them but to His Majesty the King, in the Right of the Dominion of Canada.

Under the contract with the Government -

"All machinery, tools, plant, materials equipment, articles and things whatsoever, provided by the Contractor..... shall from the time of their being, so provided become, and until the final completion of the said work, shall be the property of His Majesty for the purposes of the said works, and the same shall on no account be taken away, or used, or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer Upon completion of the works..... such of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall upon demand, be delivered up to the Contractor in such condition as they may then be in." 10 20

It therefore follows that the proper party to be assessed and charged with these taxes is the Dominion Government and not our client.

We shall be pleased to produce and file with you a copy of the contract in question, which seems to be a standard form of contract used by the Dominion Government, the provisions above quoted being contained in paragraph 15. 30

The foregoing objection is of such paramount importance that if effect is not given to it, it will be necessary for our client to take court proceedings to have the assessment quashed.

NOTICE OF DECISION OF COURT OF REVISION

MUNICIPAL DISTRICT OF Sugar City No. 5 No. _____
 PROVINCE OF ALBERTA
Raymond, Alberta

Date Notice Mailed Nov. 1, 1947.

Secretary-Treasurer

To Bennett & White Calgary Limited
1120 - 9th Avenue West
Calgary, Alberta.

You are hereby advised that the Council of the above Municipal District, sitting as a Court of Revision, having heard complaint against the Assessment placed on the lands listed below have decided as follows:

Account Number	HAMLET OF				No. of Acres Assessed	ASSESSED VALUES (Dollars Only)			TOTAL
	Pt. of Sec.	Sec. Lot	Twp. Blk.	Rge. Mer. Plan		Land	Buildings and Improvements	Personal Property	
	Equipment in use at St. Mary's Dam					6,140.00	178,022.	184,162.00	

And you are further advised that you have the right to appeal against such decision by serving in person or by registered mail upon the Secretary-Treasurer of the Municipal District, within twenty-one days of the date of this notice, a written notice of your intention to appeal to the Alberta Assessment Commission.

We would ask that the above ground of objection be added to the grounds of our complaint previously filed with you.

Yours truly,

HELMAN MAHAFFY & BARRON

per "S. J. HELMAN"

EXHIBIT 19 (DEFENDANTS.)

IN THE MATTER of the Assessment Act,
Chapter 157, R.S.A.1942, and

IN THE MATTER of an Assessment against
BENNETT & WHITE CALGARY LIMITED, and

IN THE MATTER OF MUNICIPAL DISTRICT OF
SUGAR CITY No. 5.

N O T I C E

TAKE NOTICE that Bennett & White
Calgary Limited hereby appeals from the decision
of the Court of Revision respecting the assess-
ment of the equipment in use at St. Mary's Dam
at \$184,162.00 in respect to which a notice was
mailed on November 1st, 1947.

10

The said appeal is made to the
Alberta Assessment Commission upon the following
amongst other grounds,-

1. The personal property which comprises
\$178,022.00 of the said assessment is the property
of His Majesty in the right of the Dominion of
Canada, and therefore the appellant can not be
assessed with regard thereto.

20

2. The said assessment contains a con-
siderable number of motor vehicles which are
exempt from taxation.

3. The said personal property is only
temporarily within the Municipal District and is
not subject to taxation.

4. The said assessment against the
appellant is a discrimination against it and other
Construction Companies operating in the Municip-
ality, there being no general assessment of per-
sonal property in the Municipal District.

30

5. And upon such other grounds as appear in the proceedings herein.

DATED at Calgary, Alberta, this 6th day of November, A.D. 1947.

10

BENNETT & WHITE CALGARY LIMITED
By HELMAN MAHAFFY & BARRON
Per "S. J. HELMAN"
Its agents
HELMAN MAHAFFY & BARRON
Per "S. J. HELMAN"
Solicitors for the Appellant.

TO:

The Court of Revision,
Municipal District of Sugar City No.5,
Raymond, Alberta.

and

20

The Alberta Assessment Commission,
Parliament Buildings,
Edmonton, Alberta.

EXHIBIT 5. (PLAINTIFFS.)

IN THE MATTER OF "The Assessment Act":

AND IN THE MATTER of an appeal from the decision of the Court of Revision of the Municipal District of Sugar City #5:

BETWEEN:

30

Bennett & White Calgary Ltd., Appellant

- and -

M.D. of Sugar City No. 5. Respondent.

This is an appeal to the Alberta Assessment Commission from the decision of the Court of Revision of the Municipal District of Sugar City No. 5, respecting the assessment of the following property:

Personal Property within the Municipal District of Sugar City No.5,	\$178,022.00	10
Buildings and Improvements	6,140.00	

The appeal was heard in the office of the Municipal District at Raymond, on November 28th, 1947. R.H. Barron, Esq., of Helman, Mahaffy and Barron, Barristers, Calgary, appeared for the appellant and W.A. Carmichael, Esq., Assessor, represented the respondent.

In the course of the hearing it was found that the appellant Company had appealed the assessment on the ground that through a contract between the Dominion Government and Bennett & White Calgary Ltd., the property assessed had become the property of His Majesty in the right of the Dominion of Canada and was therefore not assessable. 20

Since the hearing at Raymond, Briefs have been submitted by R.H. Barron, Esq., for the appellant and by Virtue & Russell, Solicitors for the Municipal District. A Copy of the contract between the Dominion Government and the appellant Company was also supplied by Mr. Barron. 30

After due consideration of these Briefs and the evidence submitted, the Commission is of the opinion that the property in question has been rightfully assessed to Bennett & White Calgary Ltd. The Commission, however, feels that the assessments are excessive and should be reduced to amounts

as follows:

Personal Property	\$119,980.00
Buildings and Improvements. .	4,470.00

And it is so ordered.

No costs to either party.

"J. M. FORBES"
CHAIRMAN
ALBERTA ASSESSMENT COMMISSION

10 DATED at EDMONTON, in the Province of Alberta,
this 13th day of January, A.D. 1948.

EXHIBIT 6. (PLAINTIFFS).

MUNICIPAL DISTRICT OF SUGAR CITY NO.5

Office of the Secretary-Treasurer

RAYMOND, Alberta,

April 5, 1948.

Bennett & White Calgary Limited,
CALGARY, Alberta.

Gentlemen;

20 According to our Tax Roll you owe taxes and pen-
alties in the amount of \$3,915.27. Would it be
possible for you to pay this before the 13th of
this month?

In the event that it isn't paid, the Council have
instructed me to advise you that we will have to
have our Bailiff seize and if necessary sell

enough of your goods and chattels to satisfy the account. This we dislike to do as it is an added expense to you. Therefore may we have your cheque for the above amount before that date.

Yours truly,

"D. M. HOLLADAY"
D. M. Holladay,
Secretary-Treasurer.

EXHIBIT 20. (DEFENDANTS.)

10

CONSUMABLE ITEMS:

Page 2

Used timbers	\$ 110	
Air Hose	125	
Pipe line and water line	350	
Air Hose	220	
Valves, pipe, nipples, electric wiring, gaskets, lubricating greases (includes other items)	150	
Pipe	20	20
4 cement forms	800	
Cond'r cable and rubb. ins. cables	200	
Air Hose	35	

Page 3

Air line and water line	500	
Octagonal steel	900	
Pipe and timbers	585	
Timbers	210	
Timbers	90	
Couplings, simax pipe	1000	30

Page 4

Trulay cable	\$	285
Elec. cable		1600
Guy wire		25
Trulay steel cable		800
Hydraulic hose w/couplings		75
Hemp rope		19
		<hr/>
10	TOTAL	\$ 8,099

EXHIBIT 7. (PLAINTIFFS.)

ARTICLES ALLEGED TO BE MOTOR VEHICLES

Extracted from original assessment of
W. O. CARMICHAEL, with values fixed by
him.

Page no.

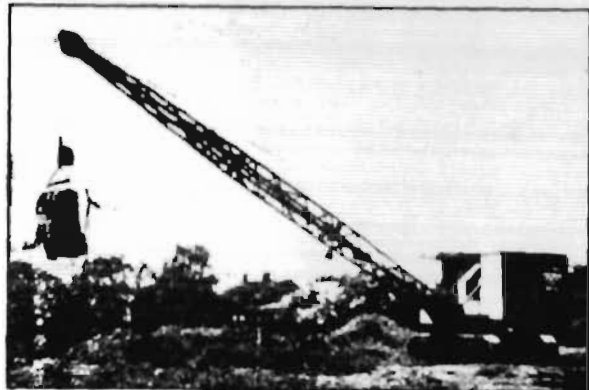
	2	North-west DRAGLINE	\$16,800
		Plymouth gasoline LOCOMOTIVE	3,000
		Koering DUMPTOR	6,000
20		MUCKER Unit	1,500

	3	Owen BUCKET	1,050
		DOZER Blade	1,650
		Letourneau CARRYALL	5,660
		Letourneau DOZER	1,000
		Caterpillar TRACTOR	5,850
		Bucyrus DRAGLINE	8,000
		Caterpillar POWER UNIT	2,100
		Koppel MINE CARS	300
30		-----	

Page No.

4	Allis Chalmers Caterpillar TRACTOR	5,500	
	Caterpillar TRACTOR	9,000	
	Caterpillar TRACTOR	7,500	
	Letourneau CARRYALL	5,660	
	Caterpillar TRACTOR	9,850	
	Letourneau CARRYALL	5,660	
	Allis Chalmers H.D. 14 (TRACTOR)	7,000	
	3 DOZER blades	4,000	10
	2 Koering DUMPTORS	12,000	
	Utility WAGON	<u>1,850</u>	

TOTAL - \$ 120,930



At left: Lowering the bucket into the cut for another bite, on dragline excavation. The operator of the Type "1030" BUCYRUS-ERIE Dragline Excavator has no trouble in spotting the bucket just where he wants it, because of the machine's accurate control.



At right: Type "1030" BUCYRUS-ERIE working as dragline excavator. This machine is also easily and quickly convertible to work either as Power Shovel, Clamshell, Crane, or Drag Shovel. The only change necessary is in the drum lagging, which are split for ready removal and replacement.

Type "1030" BUCYRUS-ERIE ¾ cu. yd. Gasoline Dragline Excavator

MAIN SPECIFICATIONS

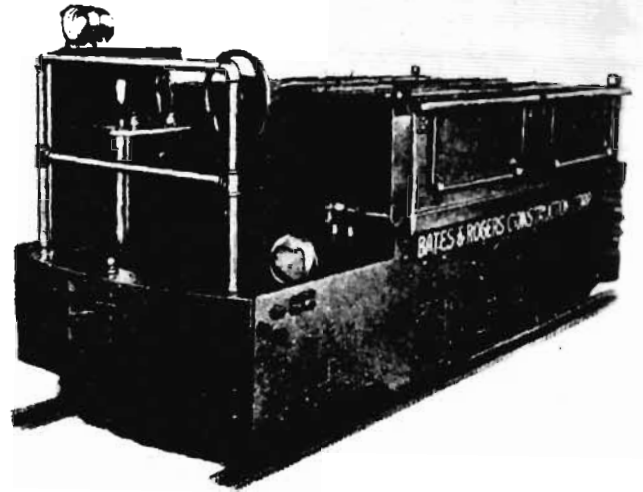
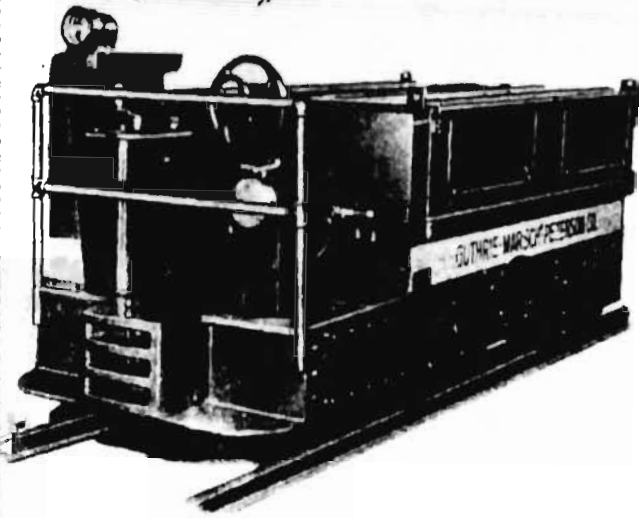
Working weight (approx.) 35' boom	51,400 lbs.	Gas engine:	
Shipping " " 35' "	53,100 "	4 Cylinder 5 1/2 x 6 1/2 Wisconsin Type B-3	
Working " " 40' "	54,200 "	Speed, 1000 R.P.M.	
Shipping " " 40' "	55,900 "	Rated at 72 1/2 H. P.	
(Shipping weights include 2000 lbs. for blocking on car.)		Twin disc type clutch	
Dragline bucket (capacity)	1/2 or 3/4 cu. yd.	Zenith Carburetor	
Hoist line speed (single line)	139 1/2 F.P.M.	American Bosch Magneto	
Hoist line pull	14,700 lbs.	Gasoline Storage: 50 gallons	
Dragline speed	126 F.P.M.	Engine Starter: Leece-Neville	
Dragline pull	16,300 lbs.	Electric starter with storage batteries can be provided.	
Swing speed	4 R.P.M.	Boom Hoist: Cut steel worm and cut bronze worm wheel enclosed and running in bath of oil; self locking.	
Distance center pin to rear end	8' 11 1/2"	Power Steer: Steering is controlled from operator's position.	
Clearance height of machine (boom lowered)	11' 0"	Cab: All steel, fully enclosed, with clear vision from operator's position.	
Length over caterpillar type mounting	11' 6"	Caterpillar: Single shaft drive with special service brake. Unit steel construction, simplest and, sturdiest of mountings.	
Width over caterpillar type mounting	8' 10"		
*Width of caterpillar treads	19"		
Caterpillar bearing area (approx.)	31.4 sq. ft.		
Caterpillar bearing pressure, lbs. per sq. in. (approx.)	11 lbs.		
Bucket cables	3/4" diam.		

*(Extra wide Caterpillar Treads can be furnished to meet special conditions at slight additional cost)

BUCYRUS-ERIE COMPANY, South Milwaukee, Wis. - Erie, Pa. - Evansville, Ind.



Branch Offices in all principal cities
Offices and agencies in all the principal countries throughout the world.
Representatives and Service throughout the U. S. A. and Canada.



16000

Two Goodman Storage Battery Locomotives used in the Pennsylvania Turnpike tunnels.

GOODMAN MANUFACTURING COMPANY

HALSTED STREET AT FORTY-EIGHTH • CHICAGO, ILLINOIS

BRANCH OFFICES AND WAREHOUSES

WILKES-BARRE PENNSYLVANIA
35 New Bennett Street

HUNTINGTON WEST VIRGINIA
837 Second Avenue

ST LOUIS MISSOURI
322 Clark Avenue

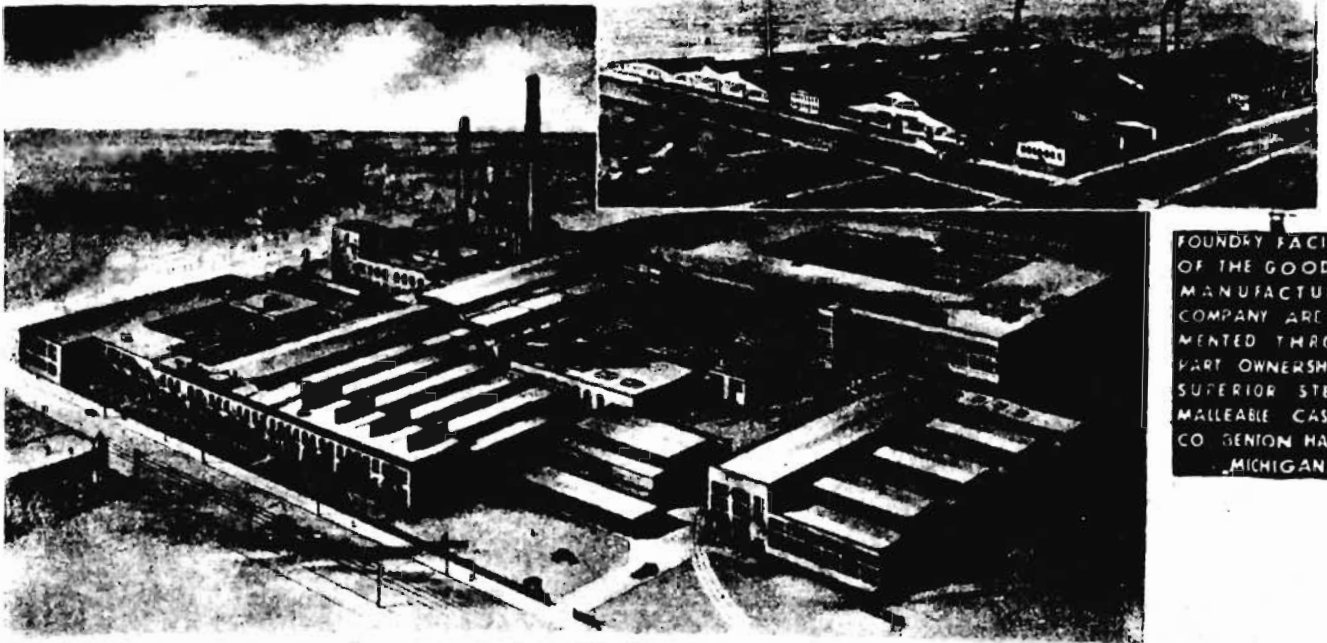
PITTSBURGH PENNSYLVANIA
1714 Liverpool Street

BIRMINGHAM ALABAMA
400 Second Avenue South

TERRE HAUTE INDIANA
411 Opera House Building

DENVER COLORADO
704 Denver National Building

SALT LAKE CITY UTAH
314 Dooly Building



PLANT
•
STORY
•
FLOOR
•
MAIN
OFFICE

FOUNDRY FACILITIES
OF THE GOODMAN
MANUFACTURING
COMPANY ARE AUG-
MENTED THROUGH
PART OWNERSHIP OF
SUPERIOR STEEL &
MALLEABLE CASTINGS
CO GENTON HARBOR
MICHIGAN



KOEHRING WHEEL DUMPTOR

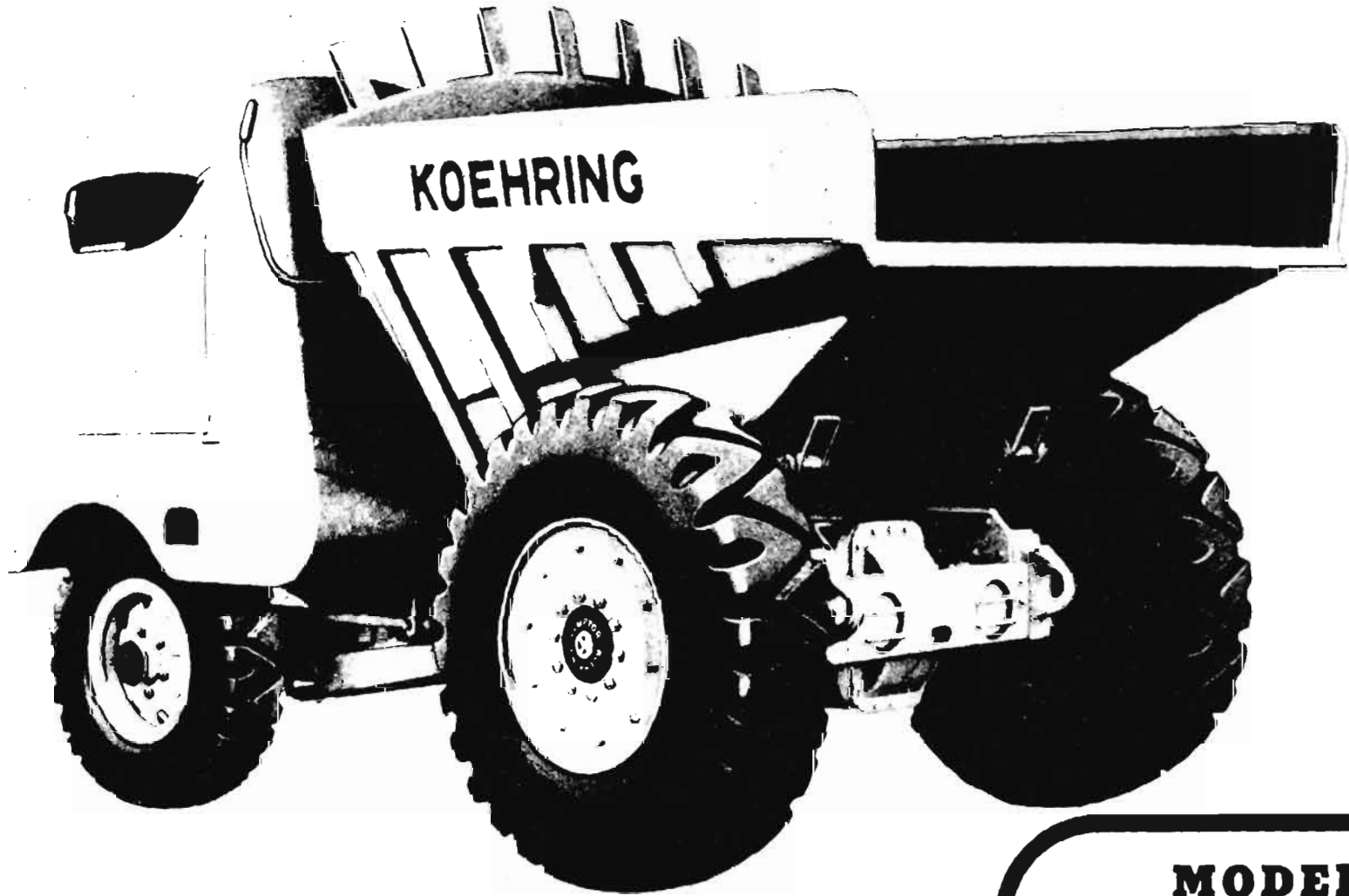


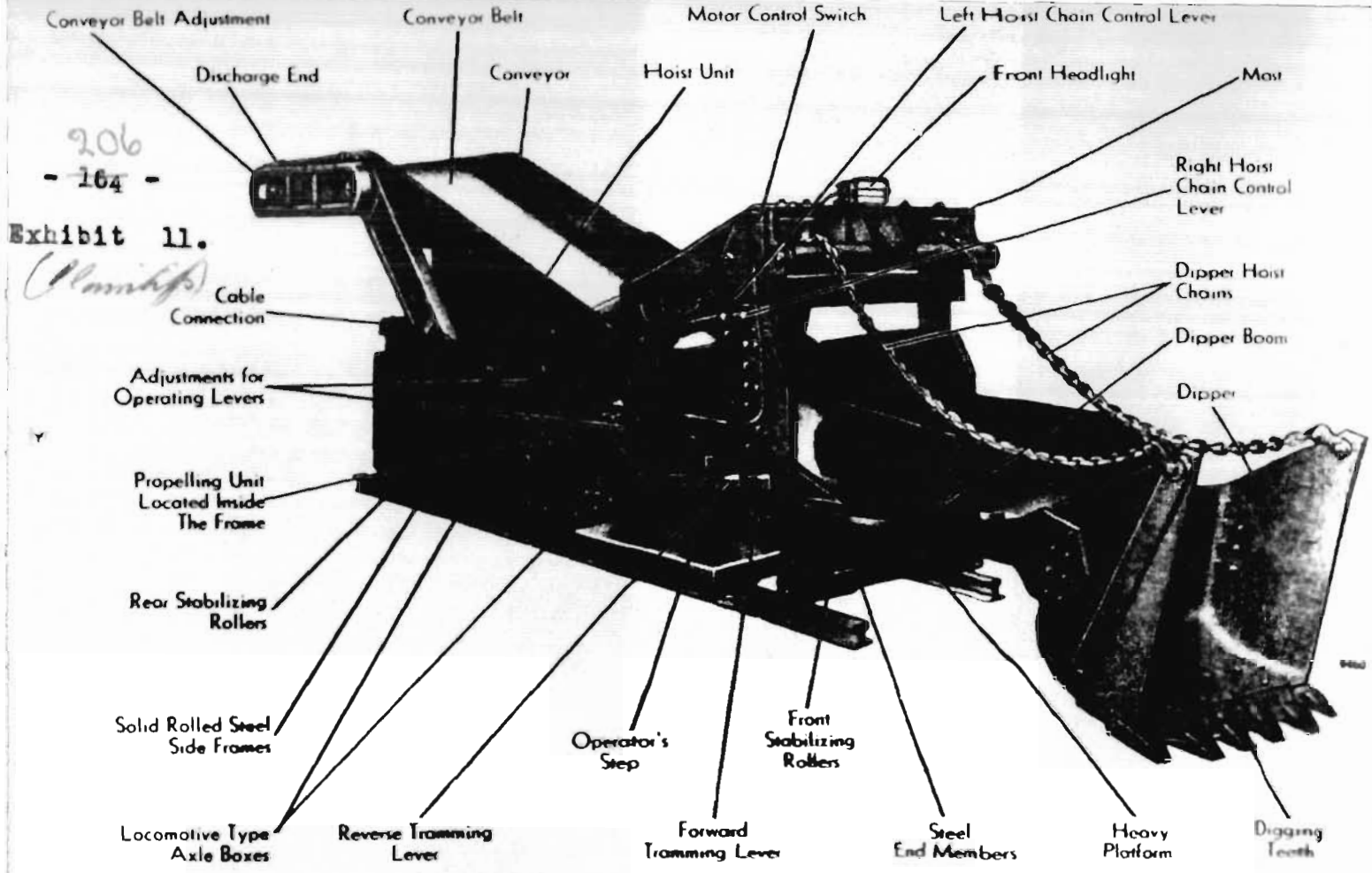
Exhibit 10.
(Promiss)

Page 183. 205

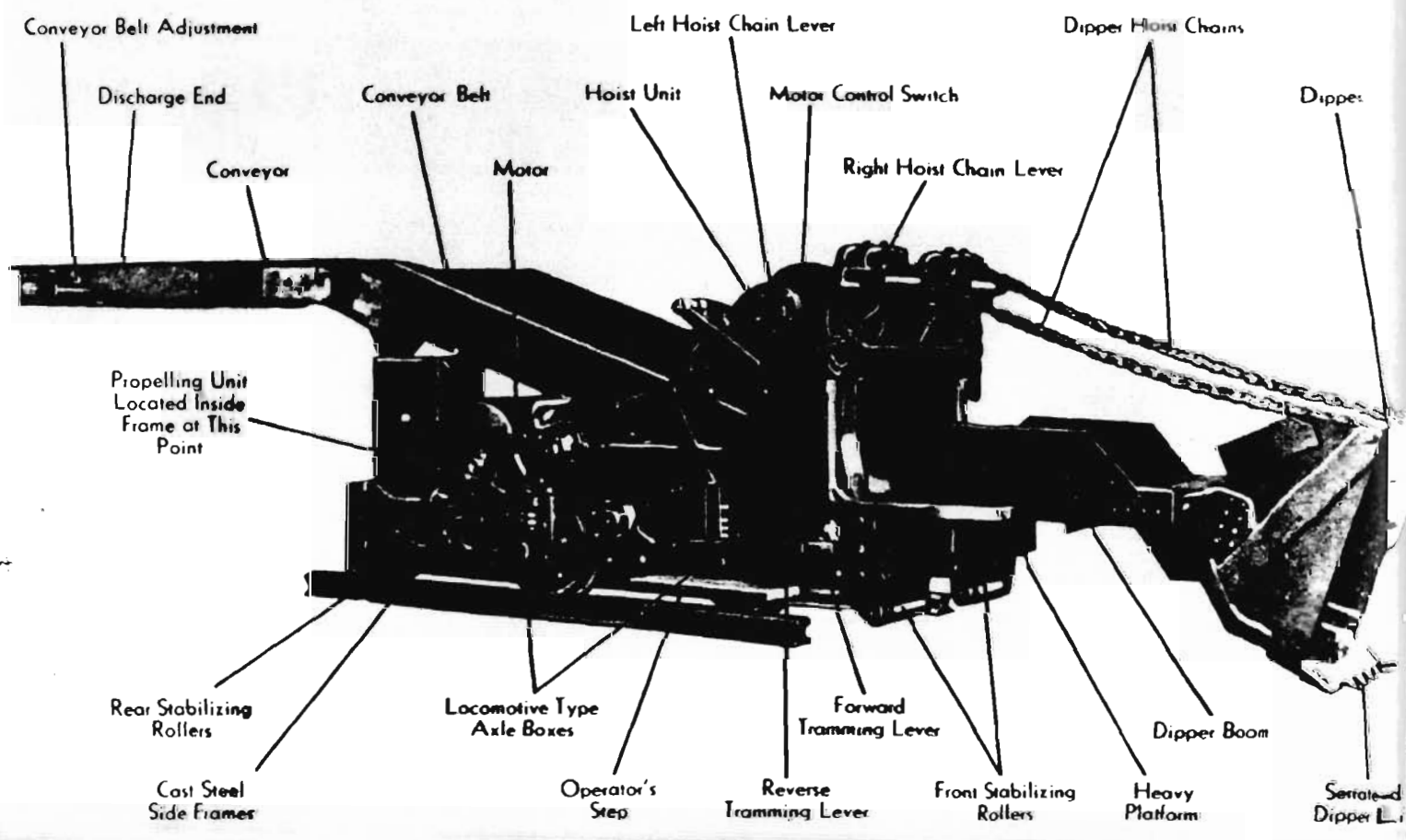
**MODELS
W-60 WD-60**

For complete information and catalog write to KOEHRING COMPANY, 3026 West Concordia Avenue, Milwaukee, Wisconsin

HEAVY-DUTY CONSTRUCTION EQUIPMENT



Descriptive Details of the Conway
Above, Types 20, 20A Below, Types 50, 60, 75

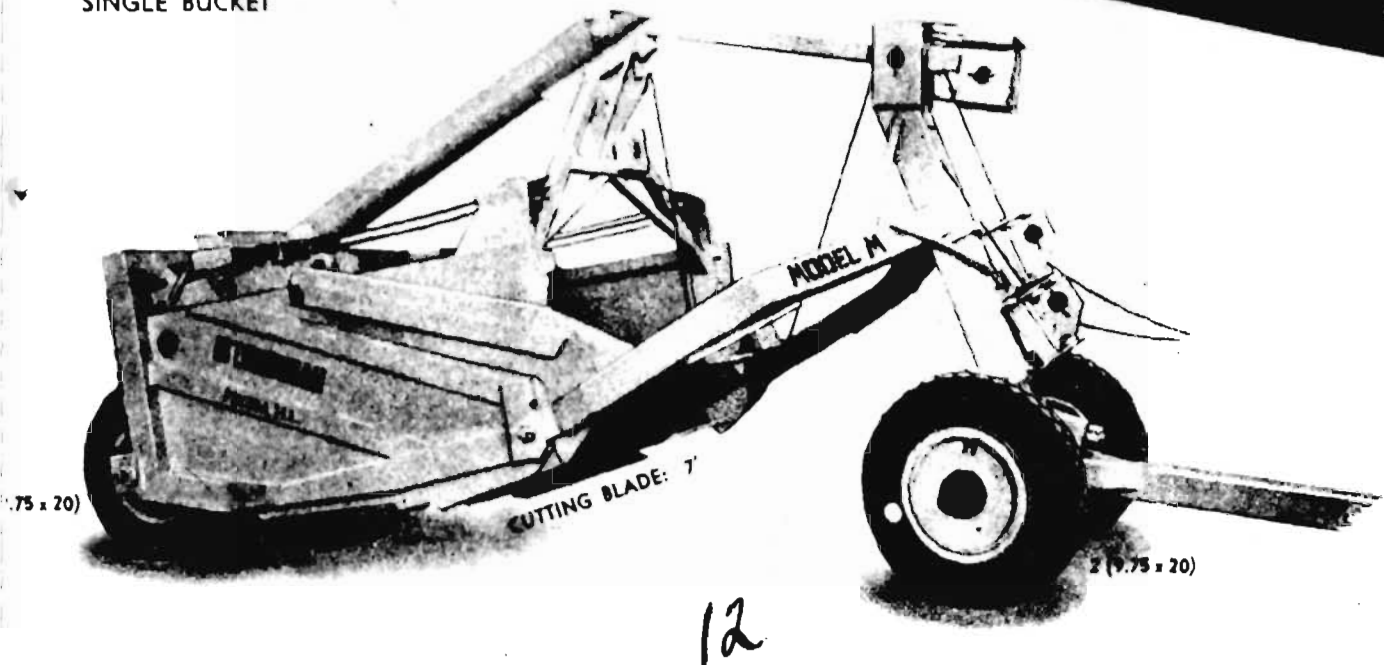


CARRYALL SCRAPER

CAPACITY IN CUBIC YARDS . . .

MODEL M	
STRUCK	6.0
HEAPED	7.5

SINGLE BUCKET



FEATURES

1. Positive ejection — sliding tailgate wipes bowl clean.
2. Apron design which carries a maximum of material with the greatest ease of unloading.
3. Cutting edge may be tilted from side to side by turning eccentric rear axle.
4. Double, wood-filled bottom for greater durability.
5. Fractional inch control cutting and spreading.
6. Variable radius spool for even tailgate return.
7. Short wheelbase enables this machine to work in confined areas.
8. Ample strength at all points assured by special analysis steel, box-beam construction and standardized welding.

USE

Designed for use behind either a D6 or D7

tractor, this model is extremely popular with county officials, building contractors and those who have general short haul work.

It is efficient for finishing, ditch excavation, basement excavation and innumerable other small quantity dirt-moving jobs.

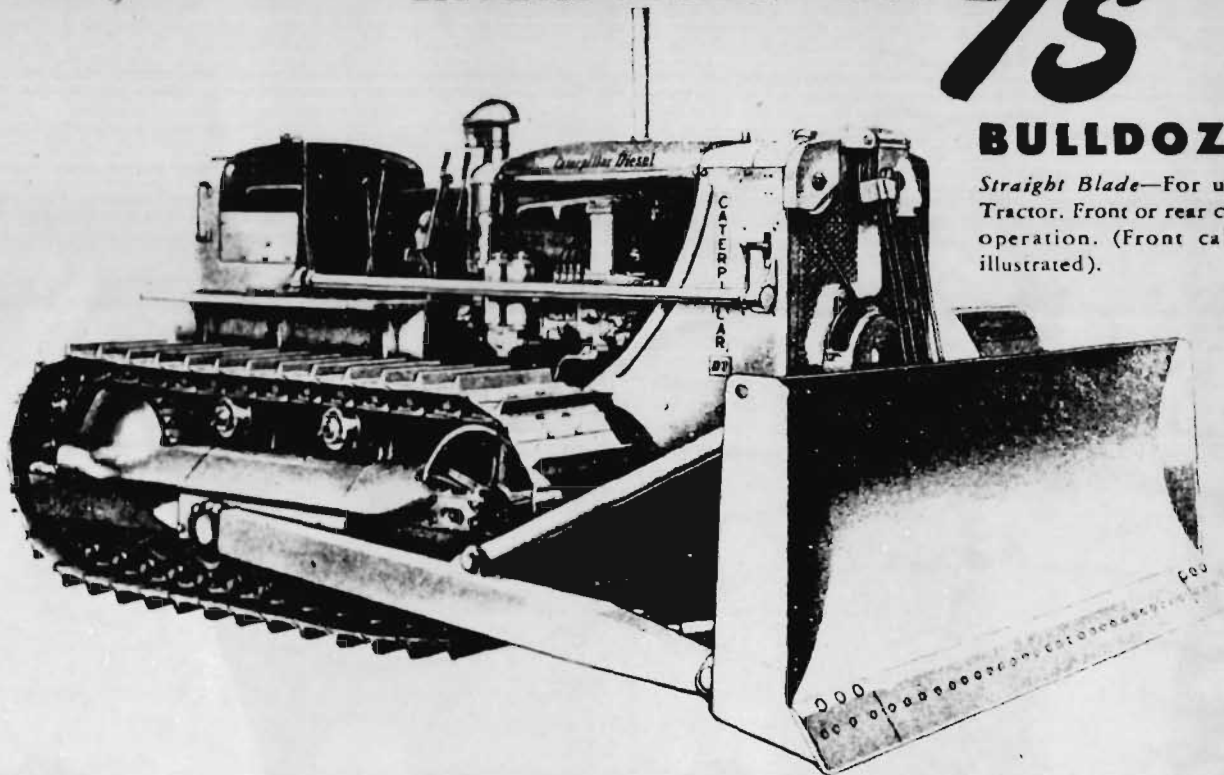
PRODUCTION

The yardages given on the back of this sheet are obtainable under average conditions with a D7 and D6 tractor.

These yardages may even be exceeded but caution should be exercised in applying them to specific jobs as each project is sure to present conditions that vary from the average, thus increasing or decreasing possible production. Best use of these figures is to indicate the capabilities of the M and to afford a comparison with other earthmoving equipment.

Sand, due to footing, is slower loading, slower dumping than common earth, but has less swell.

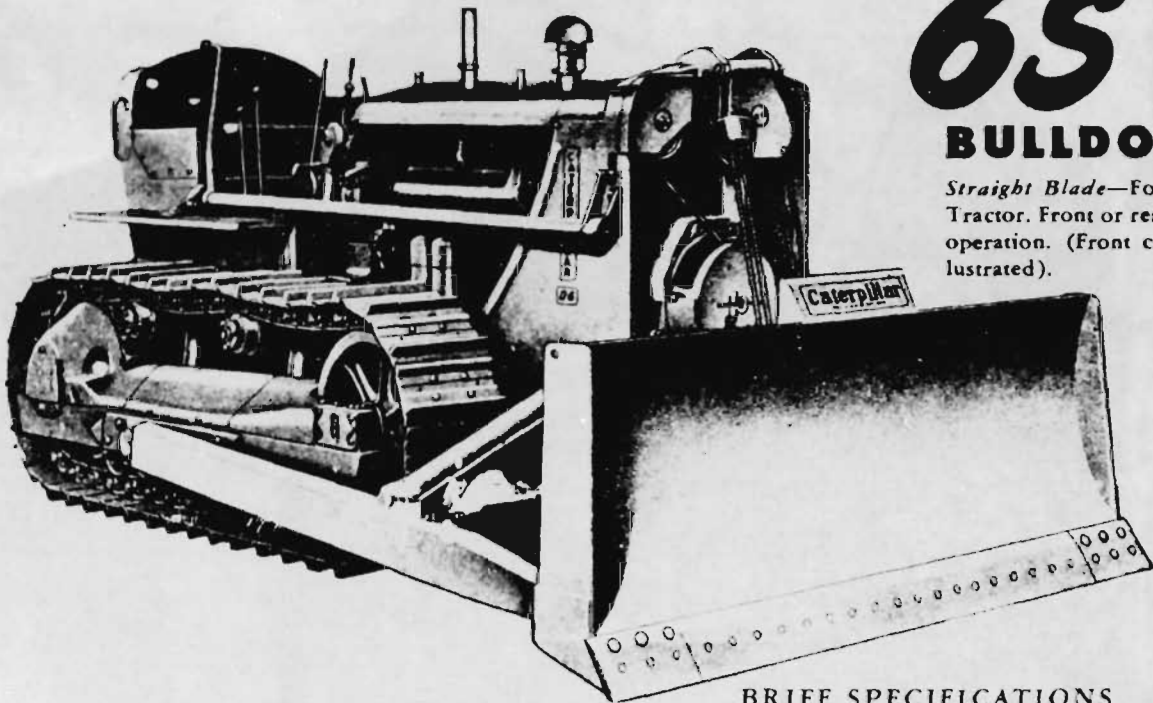
"CATERPILLAR" No. **75**



BULLDOZER

Straight Blade—For use with D7 Tractor. Front or rear cable control operation. (Front cable control illustrated).

"CATERPILLAR" No. **65**



BULLDOZER

Straight Blade—For use with D6 Tractor. Front or rear cable control operation. (Front cable control illustrated).

Specifications

BRIEF SPECIFICATIONS

Blade:	No. 75	No. 65
Length, inches.....	123½	98½
Height, inches.....	45½	37½
Maximum blade pitch adjustment.....	10°	10°
Maximum blade tilting adjustment, inches.....	12	10
Maximum lift above ground, inches.....	42	36
Maximum drop below ground.....	Not limited	Not limited
Weight, Shipping (approx.), without Cable Control:		
Equipped for use with front cable control, Lbs....	4,340	2,725
Equipped for use with rear cable control, Lbs....	4,620	3,000

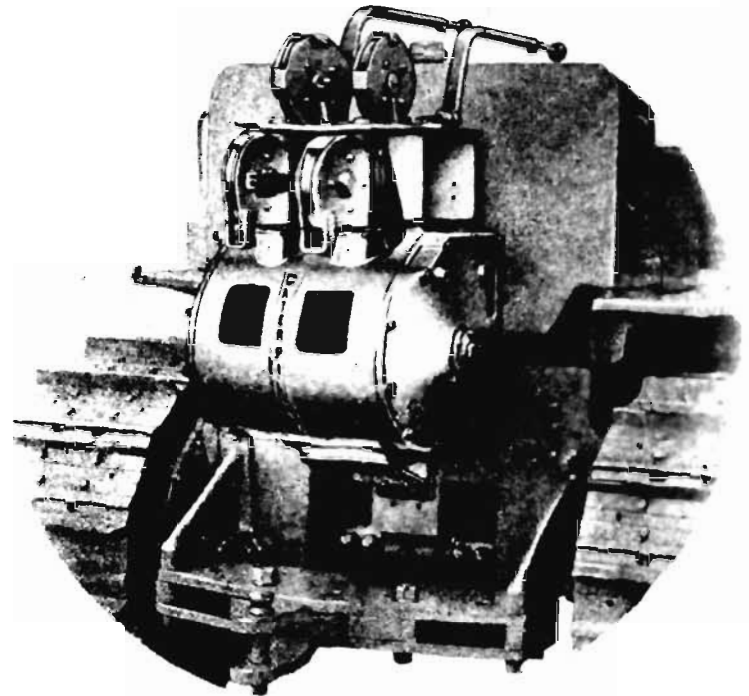
"CATERPILLAR" Cable Controls

No. 25

REAR DOUBLE DRUM HEAVY DUTY

The No. 25 Cable Control is designed to fit the D8, D7, and D6 Tractors. (Adapter required for the D6.) Multiple disc clutches, with metallic facings, and generous sized brakes plus synchronized action of clutches and brakes give smooth operation and accurate control. The long life built into these parts allows extended periods of use between adjustments although these are easily made from the outside of the unit when required. Rigid, cast steel case assures good alignment of bearings and gears and high structural strength. Anti-friction bearings throughout contribute to long, trouble-free operation. Line pulls are ample for all requirements of cable-controlled equipment such as scrapers, bulldozers and rippers.

For use with tractor model.....	D8	D7	D6
Line speed F.P.M.:			
Bare drum.....	326	343	376
Full drum.....	470	500	537
Drum Capacity (1/2 inch cable), feet.	225	225	225
Weight, (approx.) Lbs. (including adapter group).....	1750	1750	1800

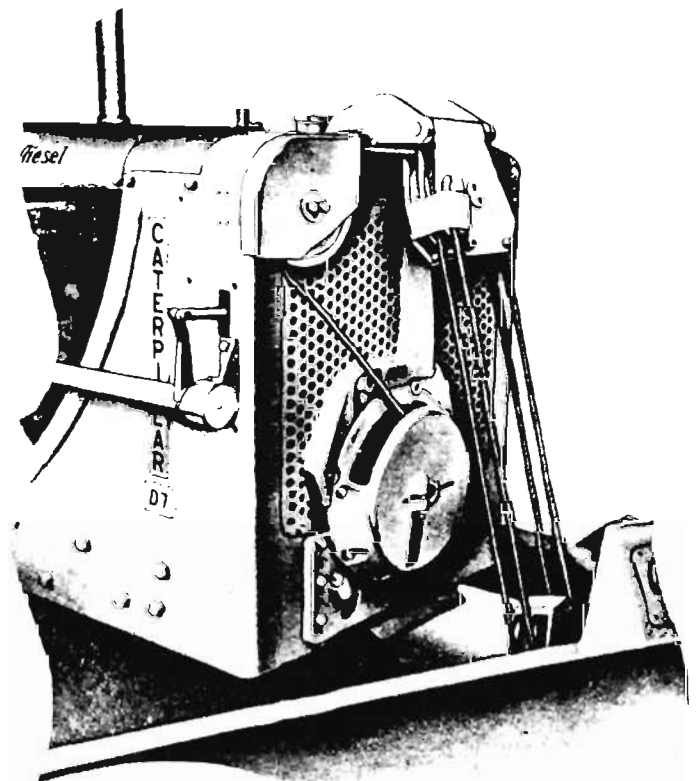


No. 24

FRONT SINGLE DRUM

The No. 24 Cable Control has been designed to provide a front cable control for the D8, D7 and D6 Tractors. Its use allows equipping a tractor with a bulldozer, leaving the rear of the tractor clear for mounting other equipment. The multiple disc clutch with metallic facings, large size brake and synchronized action between clutch and brake are of the same type as used in the No. 25. All normal adjustments are easily made from the outside. Anti-friction bearings are also used throughout on the No. 24. Its compact design allows it to be mounted close to the tractor, well protected from damage.

For use with tractor model.....	D8	D7	D6
Line speed F.P.M.:			
Bare drum.....	357	375	364
Full drum.....	527	552	538
Drum Capacity (1/2 inch cable), feet.	75	75	75
Weight, (approx.) Lbs.....	550	550	550



168
210

OBECO

ation **OVERTHROW LOADER**
ANGLE - BULLDOZER



ROBINSON ENGINEERING & DEVELOPMENT
CO., LTD.
1820 NINTH AVENUE EAST
CALGARY ALBERTA

MAIL
BOX

become, and, until the final completion of the said work, shall be the property of His Majesty for the purposes of the said works, and the same shall on no account be taken away, or used, or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not, however, be answerable for any loss, or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor of all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall, upon demand, be delivered up to the Contractor in such condition as they may then be in." 10 20

It is necessary that Paragraph 12 of the agreement should be considered in connection with said Paragraph 15, quoted infra, as this Paragraph 12 provided that all plant and materials furnished by the plaintiff were included in the price payable by the Government under the agreement. 30

Pursuant to this agreement, the plaintiff moved considerable plant and materials to the site of the work to be performed, the site being within the boundaries of the defendant Municipal District, and in the year 1947 the defendant proceeded to assess and tax said plant and materials under the provisions of The Assessment Act, R.S.A. Ch. 157, and The Municipal District Act, R.S.A. Ch. 151. 40'

No. 19

REASONS FOR JUDGMENT
of The Honourable Mr. Justice S.J. Shepherd.

The Plaintiff is a company incorporated under The Companies Act of the Province of Alberta, having its head office in the City of Calgary. The defendant is a municipal district, constituted pursuant to the provisions of The Municipal District Act, Chapter 151, R.S.A. 1942.

10 On the 22nd day of July, 1946, the plaintiff entered into an agreement with His Majesty, The King, represented therein by the Minister of Agriculture for the Dominion of Canada, to construct certain diversion and irrigation tunnels at the St. Mary's Dam Project, which lies within the defendant Municipal District, the Dam Project being part of a large irrigation scheme on which the Government of Canada had embarked in Southern Alberta. The agreement provided (Par. 3) that the plaintiff would provide at
20 his own expense, all and every kind of labour, superintendence, services, tools, implements, machinery, plant, materials, articles and things necessary for the due execution and completion of the works, and it further provided that the Government of Canada would retain complete control over the carrying out of the work in all particulars.

30 The most important provision in the said agreement insofar as this case is concerned, is contained in Paragraph 15 thereof, which reads as follows:

40 "15. All machinery, tools, plant, materials, equipment, articles and things whatsoever, provided by the Contractor or by the Engineer under the provisions of sections 14 and 16, for the works, and not rejected under the provisions of section 14, shall from the time of their being so provided

The plaintiff objected to the assessment, but a Court of Revision upheld it. The plaintiff then appealed to the Alberta Assessment Commission, which Commission, while reducing the amount of the assessment, upheld it as being valid and proper.

There is little, if any, dispute between the parties as to the procedural aspects of the assessment and taxation.

10 The plaintiff commenced this action on April 15th, 1948, wherein, among other remedies, it prays for a declaration that it is not liable for the taxes and penalties demanded, that it has been improperly and illegally assessed, and asks for an injunction to restrain the defendant from attempting to enforce its claim, and further prays that the tax roll and assessment be rectified accordingly.

20 The defendant has counterclaimed for a declaration that the assessment and taxation are valid, and asks for the payment of the amount of taxes and penalties.

The defendant contends that all the matters raised by the plaintiff are res judicata, having regard to the provisions of the Assessment Act, R.S.A. 1942. Ch. 157, Section 53, of which provides:

30 "In determining all matters brought before the Commission it shall have jurisdiction to determine not only the amount of the assessment, but also all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment."

40 The leading cases and authorities on this phase of the matter are considered by the Appellate Division of the Supreme Court of Alberta in "In re Companies Act, In re Northern Transport-

ation Co. Ltd., and Village of McMurray, 1949, 1 W.W.R.338." In considering the effect of Section 53 of The Assessment Act with its provision that the Assessment Commission was to determine not only the amount of the assessment but all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment, Mr. Justice Frank Ford, in delivering the judgment of the Court, held at Page 339:

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"I take it to be the law that unless it is clear that a tax is by law imposed upon any particular species of property, or upon a person owning or having an interest therein, there is no liability to pay unless by reason of clearly effective legislation the person said to be liable to pay is precluded from setting up the non-liability of the property to taxation."

20

And further, at page 342:

"With great respect, I think this section does not give the commission the power to decide that non-taxable property is taxable, and that the principle of Toronto Ry. Co. v. Toronto (City) supra, applies. To use the words of Anglin, J. in Donohue v. St. Etienne (Parish) supra, 'such property cannot be made the subject of taxation' (p. 516) by the commission."

30

This judgment, I consider effectively disposes of the res judicata argument in the plaintiff's favour.

Just here I would refer to Section 26 of The Assessment Act, which section, among other things, provides that in the preparation of the assessment roll, the secretary-treasurer shall enter on the roll the name of the person who is

40

the owner, or the person who is in legal possession of the assessable personal property, and the word "owner" under Section 2 (n) is defined as follows:

10 "'Owner' means in the case of land, any person who is registered under The Land Titles Act as the owner of the land, or, used with reference to property other than land, any person who is in legal possession thereof."

In order to establish its right to make a valid assessment, the defendant must show that the plaintiff was in legal possession of the property in question, and it does seem to me that in view of the explicit terms of the agreement, Exhibit 1, it cannot be said that the property was in the legal possession of the plaintiff.

20 I now come to consider Section 5 of The Assessment Act. This section, which declares certain property to be exempt from assessment and taxation, includes among other such exemptions the following:

"(o) every right, title and interest of His Majesty in any property whatsoever;"

"(r) money, bank notes, cheques, bills of exchange, promissory notes and choses in action;"

"(z) all motor vehicles."

30 The plaintiff contends that the plant and materials are not subject to assessment and taxation as the property in them had passed to the Crown. Provisions similar to Clause 15 of the agreement, Exhibit 1, are not uncommon, particularly in building contracts, and I refer to *Ashfield v. Edgell*, 21 O.R. 195, where Mr. Justice Rose uses these words:

"I think the clause means just what it says, that the material delivered on the premises for the purpose of forming part of the works is to be considered the property of the proprietor."

In *Reeves v. Barlow* (1884) 12, Q.B.D., 436, the building agreement provided that all material brought upon the land should become the property of the owner of the land, and a question arose as to whether such an agreement was an agreement by which a right in equity to any personal chattel should be conferred within the meaning of the Bills of Sale Act. Lord Justice Bowen in delivering the judgment of the Court stated, p.441, 442: 10

"..... in our judgment whatever right is conferred by the clause of the building agreement now under discussion is not a right in equity at all, but a right at law. Down to the time when the building materials were brought upon the landlord's premises there was no contract relating to any specific goods at all, nor anything which could be subject to a decree for specific performance. The contract was only to apply to goods when brought upon the premises, and until this happened there was no right, or interest in equity to any goods at all. Upon the other hand, the moment the goods were brought upon the premises the property in them passed in law, and nothing was left upon which any equity as distinct from law could attach. No further performance of the contract was necessary, nor could be enforced. The builder's agreement accordingly was at no time an equitable assignment of anything, but a mere legal contract that, upon the happening of a particular event, the property in law should pass in certain chattels which 20 30 40

"that event itself would identify without the necessity of any further act on the part of anybody, and which could not be identified before."

10 I refer also to *Hart v. Porthgain Harbour Co. Ltd.* (1903) 1 Ch. 690. This case dealt with another building contract which provided that all plant and materials brought upon the ground by the contractor should be considered the property of the owner of the land until the owner's engineers should certify the contract was completed. In a contest between a mortgagee of the contractor and the owner, Mr. Justice Farwell stated in part:-

20 "Now this clause 11 appears to me to be inserted, amongst other things, for the purpose of securing to the company the due performance of the contract. In my opinion the true construction of the clause, 'all such plant and material shall be considered the property of the company', is that it vests the property in the materials in the company at law subject to a condition that, when the engineer shall have certified the completion of the contract, the contractor shall be at liberty to remove them. I think that is in accordance with the decision of the Court of Appeal in *Reeves v. Barlow*, although neither the words nor the decision were quite the same. There was in that case 'an agreement by a clause in the ordinary building contract that all building and other materials brought by the builder upon the land shall become the property of the landowner', and there was no condition, nor anything in the way of a defeasance. Bowen, L.J. says: 'The contract was only to apply to goods when brought upon the premises, and until this happened there was no right or interest in equity to any goods at all. Upon the other

30

40

"hand, the moment the goods were brought upon the premises the property in them passed in law and nothing was left upon which any equity as distinct from law could attach. No further performance of the contract was necessary nor could be enforced." Applying that statement here, the true view is that the materials have become the property at law of the company subject to this condition: and the condition has not been performed by reason of the default of the contractor."

10

It can be readily understood why such a clause as Clause 15 in the agreement should be a part of an agreement of the nature of the one under consideration. It guarantees to the Crown that adequate plant and materials will be furnished by the contractor; and that if the contractor falls down or makes default, the plant and materials will be available to the Crown to complete the work, the contractor having no right to remove such plant and materials until the contract has been completed, and furthermore, it is not difficult to conceive of a situation where, upon completion of the works, the whole plant and materials may have been incorporated in the said works, or rendered useless for any purpose. One can also think of another important reason for inserting such a clause in that it would prevent creditors of the contractor from interfering with the works by seizing his equipment, and, in the case at bar, to prevent a municipality from seizing and disposing of the plant and materials to satisfy unpaid taxes which it might allege were owing by the contractor, and thereby defeat the purposes of the contract. The contention of the plaintiff is further fortified by a reference to Section 18 of Exhibit 1, wherein is set forth what was to happen to the plant and materials if the contractor made default, namely, that

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"all materials, articles and things whatsoever, and all horses, machinery, tools,

10 "plant and equipment and all rights, proprietary or otherwise, licences, powers and privileges, whether relating to or affecting real estate or personal property, acquired, possessed or provided by the contractor for the purposes of the works, or by the engineer under the provisions of this contract, shall remain and be the property of His Majesty for all purposes incidental to the completion of the works, and may be used, exercised and enjoyed by His Majesty as fully, to all intents and purposes, connected with the works as they might theretofore have been used, exercised and enjoyed by the contractor."

20 I am, therefore, of the opinion that the words of Clause 15 mean exactly what they say and no other clauses in the agreement take away or abridge the rights of the Crown in the plant and materials which I hold to be the property of the Crown, and as such exempt from assessment and taxation by the defendant municipality. In view of the conclusion I have come to, I do not find it necessary to deal with the plaintiff's argument in respect to that part of the plant and materials which is composed of motor vehicles, and, therefore
30 exempt from taxation under Section 5(z) of The Assessment Act.

The plaintiff is entitled to judgment declaring the assessment and taxation invalid, and an Order directing that the plaintiff's name be struck off the defendant's tax roll and the assessment set aside.

Costs to the plaintiff under Column 5, including discovery, Rule 738 not to apply.

(Sgd) "S. J. SHEPHERD"

J.S.C.

Calgary, Alberta,
April 16, 1949.

Messrs. Helman, Mahaffy & Barron,
Solicitors for the Plaintiff.

Messrs. Virtue & Russell,
Solicitors for the Defendant.

No. 20

10

JUDGMENT ROLL.

DATED at the City of Calgary in the
Province of Alberta, this 21st. day of April,
A.D. 1949.

THIS action having come on for trial at
the City of Lethbridge in the Province of Alberta
on the 10th day of February, 1949, before The
Honourable Mr. Justice S. J. Shepherd in the pre-
sence of counsel for both parties, and this Court
having been pleased to direct that this action
stand over for Judgment and the same coming on
this day for Judgment;

20

1. IT IS ADJUDGED AND DECLARED that the assess-
ment of the Plaintiff for personal property made
by the Defendant for the year 1947 is invalid, and
the same is hereby quashed and set aside.

2. IT IS ORDERED that the Defendant do strike
the Plaintiff's name off the Defendant's tax roll
in respect of personal property for the year 1947.

30

3. IT IS ADJUDGED that the counterclaim herein be and the same is hereby dismissed.

4. IT IS ORDERED that the Defendant do pay to the Plaintiff the costs of this action and forthwith after taxation thereof, such costs to be taxed on Column 5 and to include the examinations for discovery, Rule 738 not to apply.

10

(Sgd) "A. R. TURNER"
Deputy Clerk of the Court

APPROVED AS TO FORM:

Entered this 4th
day of May, 1949.
"V. R. JONES"
Clerk of Supreme Court
"W" S.J.S".

Virtue, Russell & Morgan

20

Per "A. G. VIRTUE"
Solicitors for the Defendant

I HEREBY CERTIFY that the above costs have been taxed and allowed at the sum of £ _____ this _____ day of _____, A.D. 1949.

Clerk of the Court

No. 21.

Notice of Appeal To The Appellate Division.

TAKE NOTICE that the Defendant intends to and DOES HEREBY APPEAL to the Appellate Division of the Supreme Court of Alberta at the next Sitting thereof at the City of Calgary in the Province of Alberta, commencing on the 6th day of June, A.D. 1949; from the Judgement of the Honourable Mr. Justice S.J. Shepherd given in this Action and dated the 16th day April, 1949, and entered on the 4th. day of May, 1949, upon the following amongst other grounds:- 10

1. The said Judgement is contrary to the law, the evidence, and the weight of evidence;
2. The Learned Trial Judge erred in excluding certain evidence tendered by the Defendant, as appears from the record of the proceedings of the said trial;
3. The Learned Trial Judge erred in admitting certain evidence tendered by the Plaintiff as appears from the record of the proceedings of the said trial; 20
4. The Learned Trial Judge misinterpreted the Agreement in question in the said Action, which said Agreement was dated the 22nd day of July 1946;
5. The Learned Trial Judge erred in holding that the Plaintiff had no interest in the property in question;
6. The Learned Trial Judge erred in interpreting and applying the provisions of the Assessment Act, being R.S.A. 1942, Chapter 157; 30
7. The Learned Trial Judge erred in his application of the Decision of the Appellate

Division of the Supreme Court of Alberta "In re The Companies Act, In re Northern Transportation Company Limited and Village of McMurray, 1949, 1 W.W.R. 338".

8. The Learned Trial Judge erred in not distinguishing the said Decision in view of the facts of the present case.
9. The Learned Trial Judge erred in finding that the property in question was not in the legal possession of Plaintiff;
10. The Learned Trial Judge erred in his interpretation of Section 5, Section 53, and other Sections of the Assessment Act;
11. The Learned Trial Judge erred in not applying the provisions of the Municipal District Act, being Chapter 151, R.S.A. 1942;
12. The Learned Trial Judge erred in not finding that the matters raised by the Plaintiff in its Statement of Claim were and are res judicata in view of the Appeals by the Plaintiff to the Court of Revision and the Alberta Assessment Commission, and the adjudications thereon;
13. The Learned Trial Judge erred in not holding that clause 15 of the Contract in question should not be segregated from the remainder of the contract but that the said contract should be read and interpreted as a whole.
14. The Learned Trial Judge erred in not allowing the counter-claim of the Defendant.
15. And upon such other grounds as appear in the Pleadings and evidence herein.

AND TAKE NOTICE that upon the hearing of the said Appeal the Defendant will move that the said

judgement of the Honourable Mr. Justice Shepherd be set aside and the said Action dismissed with costs, and that the Defendant's counter-claim be allowed, or, in the alternative, that a new trial be directed herein.

The whole of the said Judgment is appealed from.

AND FURTHER TAKE NOTICE that upon the said Appeal a Motion will be made to the Appellate Division to receive further evidence upon questions of fact, consisting of the questions and answers contained in the Examination for Discovery offered in Evidence by the Defendant and not admitted in evidence by the Learned Trial Judge; the Minutes of Judgement of the said Appellate Division in connection with the Appeal to the said Appellate Division from the Order of Chief Justice Howson dated the 16th day of August, A.D. 1948; the Formal Judgement of the said Appellate Division; the letter from Plaintiff's solicitors to Defendant's solicitors dated 10th day of November, 1948, and the letter from Defendant's solicitors to Plaintiff's solicitors dated 12th day of November, 1948, and also further evidence upon questions of fact consisting of questions offered in evidence by the said Defendant and ruled inadmissible by the said Learned Trial Judge. 10 20

AND FURTHER TAKE NOTICE that upon the said Appeal the said Appellate Division will be moved to receive further evidence by Affidavit, viva voce evidence, documents or otherwise, to show the interpretation placed by the parties themselves upon the said contract in question in this Action, and referred to in the Plaintiff's Statement of Claim. 30

DATED at the City of Lethbridge in the Province of Alberta, this 7th day of May, A.D. 1949

VIRTUE, RUSSELL & MORGAN

Per "A. G. VIRTUE"
Solicitors for the Defendant 40

TO : The Clerk of the above named Court;
AND TO: Messrs. Helman, Mahaffy and Barron,
Solicitors for the Plaintiff.

No. 22.

REASONS FOR JUDGEMENT
of The Honourable Mr. Justice Frank Ford.

10 This is an appeal from the judgement of Shepherd J. declaring that the Assessment of the Plaintiff for personal property for the year 1947 is invalid, setting it aside and ordering the defendant to strike the plaintiff's name off the tax roll for that year and dismissing a counter-claim for payment of the amount claimed by the defendant for unpaid taxes.

The facts are sufficiently set out in the judgement appealed from.

20 Without expressing any opinion as to whether the learned trial judge was right in holding that the plant and materials in question became by the terms of the contract the property of the Crown and treating the case on the view that the contractor, the plaintiff, respondent, has an interest therein and is in physical possession thereof, I am of the opinion that the appeal should be dismissed.

50 As to personal property the power given is to tax property and not persons in respect of an interest therein. But even if it were otherwise, and the interest of the contractor is subject to assessment and taxation, I agree with the learned trial judge when he says, in effect, that the interest of His Majesty provided for in the contract prevents a Municipality from seizing and disposing of the plant and materials to satisfy a claim for taxes. It is not enough for Mr. Virtue to say that although a seizure has been made it is not intended to take the property out of the possession of the contractor or to proceed to sell until the completion of the contract or the restoration to the contractor of the property seized. As seizure and sale is a consequence of taxability, I think it follows that while the interest of His Majesty continues the property is not subject to taxation.

40

There is no doubt that His Majesty has an interest therein and that that interest is included in the assessment made and upheld by the Assessment Commission. The assessment, therefore, is invalid for the reason that by section 5 (o) of the Assessment Act, R.S.A. ch. 157, "every right, title and interest of His Majesty in any property whatsoever" is exempt from taxation. See R.M. of Buckland v. Donaldson and Horton (1928) 1 W.W.R. 40. 10

I agree with the learned trial judge that for the reasons stated by him the decision of the Assessment Commission is not res judicata.

I would dismiss the appeal with costs taxable under column 5.

Sgd. "Frank Ford"

J.A.

Edmonton
June 23, 1949.

A. G. Virtue, Esq., K.C.,
Counsel for Appellant. 20

R.H. Barron, Esq.,
Counsel for Respondent.

I concur: Horace Harvey, C.J.A.
W. A. MacDonald, J.A.

No. 23.

JUDGEMENT ROLL.

(Appellate Division)

10 The Appeal of the above named Appellant from the Judgement of the Honourable Mr. Justice S. J. Shepherd, pronounced in the above cause on the 16th day of April, in the year of our Lord One Thousand Nine Hundred and Forty-nine, having come on to be heard before this Court on the 14th and 15th days of June, in the year of our Lord One Thousand Nine Hundred and Forty-nine, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Appeal should stand over for Judgement, and the same coming on this day fo judgement,

20 IT IS ADJUDGED that the said Appeal be and the same is dismissed, and that the said Judgement of the Honourable Mr. Justice S. J. Shepherd be and the same is affirmed;

AND IT IS FURTHER ADJUDGED That the Respondent recover from the Appellant the costs incurred by the said Respondent in this Appeal, to be taxed under column 5.

Sgd: W. K. JULL
A/Registrar at Calgary.

APPROVED AS TO FORM:

30 Helman, Mahaffy & Barron,
per: R. H. Barron
Solicitors for Plaintiff (Respondent)

Virtue, Russell & Morgan,
per: W. S. Russell
Solicitors for Defendant (Appellant).

Entered this 28th day of
June 1949.

(SEAL)

W. K. JULL
A/Registrar of Calgary

No. 14.

CERTIFICATE AS TO SECURITY.

I, Walter Kingsley Jull, Acting Registrar of the above Court HEREBY CERTIFY that the above named Defendant (Appellant) did on the 28th day of June, A.D. 1949, deposit with the said Court the sum of FIVE HUNDRED DOLLARS (\$500.00) as security by the said Defendant (Appellant) that it will effectually prosecute its Appeal herein to the Supreme Court of Canada, and pay such costs and damages as may be awarded against it by the said Supreme Court of Canada. 10

DATED at Calgary, Alberta, this 28th day of June, A.D. 1949.

Sgd: "W. K. JULL"
A/Registrar at Calgary of
the Appellate Division of
the Supreme Court of Alberta.

Approved as to form only:
Helman, Mahaffy & Barron,
per: R. Barron
Solicitors for the Plaintiff (Respondent)

20

.....

No. 15.

ORDER APPROVING SECURITY.

UPON the application of the above named Defendant (Appellant), and UPON reading the Certificate of the Registrar of this Court, at Calgary, dated the 28th day of June, A.D. 1949, and UPON reading the Consent of the solicitors for the Respondent endorsed herein, 30

IT IS ORDERED:

1. THAT the deposit by the Defendant (Appellant) with the Registrar of this Court at Calgary, of the

sum of Five Hundred and 00/100 -- (\$500.00) --
 Dollars as security that the Defendant (Appellant)
 will effectively proceed to prosecute its Appeal
 from the Judgement of the Appellate Division of the
 Supreme Court of Alberta pronounced the 23rd day of
 June, A.D. 1949, and will pay such costs and damages
 as may be awarded against said Appellant by the Supreme
 Court of Canada, BE and THE SAME IS HEREBY ALLOWED
 10 AS GOOD AND SUFFICIENT SECURITY.

2. THAT the costs of this Application shall be
 costs in the cause in the said Appeal to the Supreme
 Court of Canada.

"W. K. JULL"
 Registrar of Appellant
 Division at Calgary (SEAL)

ENTERED this 28th day of June, A.D. 1949.

"W. K. JULL"
 Registrar of the Appellant
 Division at Calgary (SEAL)
 A.R.T.

20

SETTLED and APPROVED.

"W. A. MACDONALD"
 Judge of the said
 Appellate Division.

As solicitors for the Plaintiff (Respondent)
 WE HEREBY CONSENT to the above Order.

"PELLAN, MAHAFFY & BARRON"
 per: R. H. Barron
 Solicitors for the above
 named Plaintiff (Respondent)

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No. 16.

ORDER SETTLING CONTENTS OF CASE
TO THE SUPREME COURT OF CANADA.

UPON THE APPLICATION of the Defendant (Appellant), and UPON hearing Counsel for the Defendant (Appellant) and Plaintiff (Respondent),

IT IS ORDERED that the case on appeal herein to the Supreme Court of Canada is hereby stated and the same shall be composed of the following documents: 10

1. Pleadings;
2. Evidence at trial;
3. All exhibits put in at the trial;
4. Those portions of Examination for Discovery put in evidence.
5. Reasons for Judgement of The Honourable Mr. Justice S. J. Shepherd;
6. Formal Judgement Roll in the Trial Division;
7. Notice of Appeal from Judgement of Mr. Justice Shepherd; 20
8. Reasons for Judgement of the Appellate Division of the Supreme Court of Alberta on Appeal from Mr. Justice Shepherd;
9. Formal Judgement of Appellate Division;
10. Certificate as to security;
11. Order approving security;
12. Registrar's Certificate;
13. This Order.

2 AND IT IS FURTHER ORDERED that in addition the following documents shall be added as an addendum 30 to the said case hereby stated:

1. The Reasons for Judgement of the Appellate Division on the Appeal from the Order of The Honourable Chief Justice of the Trial Division (Mr. Justice Howson), dated the 16th day of August, A.D. 1948;
2. The formal Judgement of the Appellate Division entered the 26th day of November A.D. 1948;

3. The following letter:
Letter, Helman, Mahaffy & Barron to
Virtue and Russell, dated November
10th, 1948.

AND IT IS FURTHER ORDERED that the costs
of this Application shall be costs in the cause in
the Appeal to the Supreme Court of Canada.

10 (SEAL) "W. K. JULL"
Registrar of Appellant
Division of Calgary.

ENTERED this 28th day of July, A.D. 1949,

(SEAL) "W. K. JULL"
Registrar of the Appellant
Division at Calgary. W.

SETTLED AND APPROVED

"W. A. MACDONALD"
Judge of the said
Appellate Division.

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No. 17.

CERTIFICATE OF REGISTRAR.

I, William Kingsley Jull, the undersigned
Acting Registrar of the Appellate Division of the
Supreme Court of Alberta,

30 DO HEREBY CERTIFY that the foregoing
printed document from page 1 to page 188 inclusive
is the Case stated by the parties pursuant to Section
73 of the Supreme Court Act, and the Rules of the
Supreme Court of Canada, in a certain case pending
in the Supreme Court of Alberta, between Bennett &
White (Calgary) Limited, (Plaintiff) and Municipal
District of Sugar City No. 5 (Defendant).

AND I DO FURTHER CERTIFY that the said

Municipal District of Sugar City No. 5 has given proper security to the satisfaction of the Honourable Mr. Justice W. A. Macdonald, being the deposit of \$500.00 cash, a copy of the Order of The Honourable Mr. Justice W.A. Macdonald allowing the same may be found on page 186 of the annexed case.

AND I DO FURTHER CERTIFY that I have applied to the Judges of the Supreme Court of Alberta, Appellate Division, for their opinions or reasons for Judgement in the case, and the only reasons delivered to me by the said Judges are those of the Honourable Mr. Justice Frank Ford, concurred in by the Honourable, The Chief Justice and the Honourable Mr. Justice W. A. Macdonald. 10

IN TESTIMONY WHEREOF I have herunto affixed the seal of the Supreme Court of Alberta, 26th day of August, A.D. 1949.

Acting Registrar of the
Supreme Court of Alberta
at Calgary. 20

No. 18.

SOLICITOR'S CERTIFICATE.

I, Frederick John Morgan, hereby certify that I have personally compared the annexed print with the case in appeal to the Supreme Court of Canada, with the originals, and that same is a true and correct reproduction of such originals.

F. J. MORGAN.

A solicitor for the Appellant.

No. 24.

A D D E N D U M

REASONS FOR JUDGEMENT.

of The Honourable Mr. Justice Frank Ford.

.....

10 In July, 1946, the plaintiff, appellant, Bennett and White (Calgary) Limited, entered into a contract with His Majesty the King, therein represented by the Minister of Agriculture of Canada, for the construction of the "Diversion Tunnel" and "Irrigation Tunnel", being the first step in the construction of what is known as the St. Mary Dam.

The St. Mary Dam project is located to a large extent within the boundaries of the Municipal District of Sugar City No. 5, the defendant, respondent.

In order to carry out its agreement the contractor moved on to the dam site large quantities of chattels, equipment and tools, which as stated in the appellant's factum were "owned by the appellant".

20 In September, 1947, the respondent assessed the appellant in the sum of \$183,147.00 in respect of this personal property. On appeal to the Alberta Assessment Commission, the assessment was reduced to \$119,980.00 on which was levied a tax of \$3,915.27.

Although the contract called for its earlier completion, the Diversion Tunnel was not completed until May 1948, many months after the making of the assessment.

30 The contractor did not commence the construction of the Irrigation Tunnel but instead entered in-to negotiations with the Dominion Government with a view to the cancellation of the contract. The negotiations were continuing at the time of the examination for Discovery which was held on July 15th, 1948.

The appellant commenced this action on April 15th, 1948.

Its main allegation is that the property assessed is exempt from taxation as belonging to His Majesty.

This allegation is based upon the construction the appellant contends should be given to clause 15 of the contract, which is as follows:-

"15. All machinery,, tools, plant, materials, 10
equipment, articles and things whatsoever, provided
by the Contractor or by the Engineer under the
provisions of sections 14 and 16, for the works, and
not rejected under the provisions of section 14,
shall from the time of their being so provided be-
come, and, until the final completion of the said
work, shall be the property of His Majesty for the
purpose of the said works, and the same shall on no
account be taken away, or used, or disposed of,
except for the purposes of the said works, without 20
the consent in writing of the Engineer. His Majesty
shall not, however, be answerable for any loss, or
damage, whatsoever, which may at any time happen to
such machinery, tools, plant, materials, equipment,
articles or things. Upon the completion of the works
and upon payment by the Contractor of all such moneys,
loss, costs and damages, if any, as shall be due from
the Contractor to His Majesty, or chargeable against
the Contractor, under this contract, such of the
said machinery, tools, plant, materials, equipment, 30
articles and things as shall not have been used and
converted in the works or disposed of by His Majesty
under powers conferred in this contract, shall, upon
demand, be delivered up to the Contractor in such
condition as they may then be in."

The other grounds alleged for exemption do not call for consideration in this appeal.

The Statement of Claim prays also for an injunction restraining the enforcement of the claim for taxes or taking any steps to seize or sell any of 40

the property assessed.

By counter-claim the defendant prays, inter alia, for a declaration that the assessment and taxation were properly imposed and alternatively, for judgement for the amount of the taxation and penalties. It also asks that the plaintiff be enjoined from removing any of the goods and chattels out of the Municipal District before payment of all taxes and penalties.

On the examination for discovery of an officer of the plaintiff company, he, on the advice of counsel, refused to answer certain questions and to produce certain documents. On motion made in Chambers the Chief Justice of the Trial Division ordered that the questions be answered and the production made.

The appeal is from this order.

The first part of the order deals with the production of correspondence "leading up to or in any way relating to the contract", and the plaintiff's books of account, securities and writings relating to its assets and liabilities,

This production is desired in order to show that the property assessed was owned by the plaintiff.

On the argument before us it was admitted by counsel for the plaintiff, appellant, that at all times, subject to the terms of the contract, it treated the property in question as its own, and that, apart from any question as to the validity in form of the assessment, the property was taxable unless its claim that it is exempt as the property of His Majesty prevails in the action.

In view of these admissions, and the statement in the appellant's factum that the property brought by it on to the dam site was owned by it, the production ordered is unnecessary even if clause 15 itself was not sufficient for the purpose.

The groups of questions 25 to 29 and 43 and 44, which relate to the negotiations between the Dominion Government and the Contractor, for his release from further performance of the contract, have all been answered with the exception of the production demanded by 29 of what were called by the examining solicitor "documents relating to these negotiations".

In my opinion, all these questions are irrelevant and the defendant, respondent, is not entitled to the production asked for. The assessment and taxation is for the year 1947 and the plaintiff's claim for the declaration asked as well as the claims of the defendant on its counter-claim, so far as the latter relate to the property covered by the contract, depend not upon any release from performance which may take place after 1947 but upon the construction which may be given to the contract as an existing one. 10

The answer made to question 30 puts the situation clearly: 20

"30. Mr. Russell: What is the present situation at the dam?
The witness: The present situation, as I have explained just now, is that we are to the negotiating stage of being relieved of the balance of the contract.. . . ."

This answer was made on July 15th, 1948. The assessment was made in September 1947. 30

Questions 55 to 61 which deal with a demand for the production of correspondence relating to the contractor's "reduced scale of activity in anticipation of being relieved" are in the same category and covered by what I have already said.

The defendant, if it insists, should have a categorical answer to question 68: "Do you know if the company did receive a tax notice?" It may, however, well rely on the statement made by the

Defendant's solicitor on the examination when he said "I think it is more or less common ground that you have done everything as far as you can to see that this property was assessed, and we are not questioning it."

10 By questions 99, 100 and 101, an attempt is made to compel the officer examined to specify the clauses in the agreement to support the allegation in the statement of claim that. "The said chattels, equipment and tools are, and were at all relevant times, the property of His Majesty." Even a lawyer, much less a lay witness, would properly decline to truncate the document which must speak for itself.

20 Question 103 asks production of correspondence with anyone with whom the plaintiff has obtained credit during the period covered by the contract, and question 115 is, "Have you ever given any person to understand that these were the property of the plaintiff since the contract was entered into?" Even if not previously objectionable, these questions cease to be of importance in view of the admissions already stated.

Questions 119 to 122 and 125 and 126 demand production of financial statements given by the plaintiff to anyone. Apart from being otherwise irrelevant, their purpose is served by these same admissions.

30 Questions 127 to 130 were answered on the examination.

Question 137 is: "Now are the chattels which were assessed now in the possession of your company?" Objection was raised that possession is a question of law. The question should be answered in view of the dispute as to the right to seize and sell to enforce the claim for taxes. It is physical possession that is the subject of the enquiry.

40 As to questions 149 and 150, the plaintiff's solicitor should carry out his undertaking to give

the inventory promised as to the property still in the Municipal District. This is important in view of the counter-claim for enforcement of payment and the plaintiff's injunction restraining the seizure and sale. If the undertaking is not implemented the witness must attend and answer questions 149 and 150.

Questions 201 and 202 were answered categorically.

I would allow the appeal except as to questions 68, 157 and 149. The plaintiff will have the costs of appeal on final taxation, taxable under Col. 4. The costs of the original application will be costs in the cause.

10

"Frank Ford"
J.A.

Edmonton, November 9th, 1948.

I concur:

"Horace Harvey, C.J.A."

"G. B. O'Connor, J.A."

"W. A. Macdonald, J.A."

"H. H. Parlee, J.A."

20

R. H. Barron, Esq., Counsel for the Appellant.

A. G. Virtue, Esq., K.C., Counsel for the Respondent.

No. 25.

Formal Judgement of the Appellate Division.

THE appeal of the appellant from the Order of The Honourable Chief Justice Howson made herein on the 17th day of August, 1948, and entered on the 9th day of September, 1948, having come on to be heard before this Court on the 19th day of October, 1948, AND UPON hearing counsel both for the Appellant and the Respondent :

30

AND this Court having been pleased to direct that the said appeal should stand over for judgement and the same having come on this day for judgement;

THIS COURT DOETH ADJUDGE AND ORDER:

1. That the appeal herein be and the same is hereby allowed except as to questions 68, 137 and 149, subject to the qualification contained in the Reasons for Judgement herein, and that the said Order of the Honourable Chief Justice Howson be and the same is hereby reversed except as to the said questions;
2. That the costs of and incidental to the application before the Honourable Chief Justice Howson be costs in the cause;
3. That the Appellant do have the costs of this appeal on final taxation, such costs to be taxed on column 4.

"V. R. JONES"
Registrar

20 Approved as to form:

(SEAL)

"Virtue, Russell & Morgan"
Per A. M. Morgan.

STAMP: "Entered this 26th
day of November,
1948.

V. R. Jones
Registrar at Calgary"

"H.H.
CJA"

No. 26.

50 Letter from - Helman, Mahaffy & Barron
to - Virtue & Russell.
10th November 1948.

Calgary, Alberta,
November 10th, 1948.

MESSRS. VIRTUE & RUSSELL,
Barristers and Solicitors,
McFarland Building.

Attention: Mr. Virtue.

Dear Sirs:

RE: BENNETT & WHITE VS. M.D. SUGAR CITY
Our file # 650.

The Appellate Division has now ordered that the Plaintiff answer questions 68 and 137 on the examination for discovery of the Plaintiff's officer and has also directed the Plaintiff to comply with the undertaking contained in questions 149 and 150. We feel that there is no need for a continuation of the examination for discovery for such a limited purpose and we are therefore prepared to make and do hereby make the following admissions:

Question 68:- A further examination of the files of the Plaintiff and of the Plaintiff's solicitors fails to disclose the whereabouts of the document in question. Furthermore the Plaintiff has been unable to obtain any information which would indicate whether or not this document was in fact received by it.

Question 137:- The Plaintiff subsequent to the examination for discovery prepared a complete inventory of the property located at the dam site or used in connection with the construction of the tunnels and the Plaintiff undertakes to furnish the solicitors for the Defendant with a copy of this inventory within the next day or two from the date hereof. The property listed in this inventory was, subject to the terms of the agreement dated July 19th, 1948, in the possession of the Plaintiff on the date that the inventory was taken,

10

it being understood that by "possession" is meant "physical possession" within the meaning of that expression as used by Mr. Justice Frank Ford in delivering the reasons for judgement in the recent appeal. In view of the fact that the inventory was prepared very shortly after the examination for discovery it may be assumed that the conditions prevailing at the time the inventory was prepared were the same as the conditions prevailing on the date of the examination for discovery.

Questions 149 and 150 :- The inventory in question will, as mentioned before, be furnished to the Defendants' solicitor within the next day or two from the date hereof.

20

30

With regard to the date of the trial, there is, unfortunately a complication that has occurred, namely that the writer will be in District Court here on Tuesday, November 25rd, and furthermore either the writer or our Mr. Helman or possibly both will be engaged with a criminal prosecution at about that time and it is impossible to estimate at the present time how long this prosecution will take. For that reason it is impossible for us to give any undertaking that we will be prepared to proceed with the trial of this action on Thursday the 25th. Have you any suggestion to make in connection with this matter, as we are just as anxious as you to proceed with this trial but we naturally require a reasonable time within which to prepare properly for the same.

Yours truly,

HELMAN, MANAFFY & BAYLON,

Per: "R.H.B."

RHB:MW

IN THE SUPREME COURT OF CANADA

No. 27
FORMAL JUDGMENT.

The Appeal of the above named Appellant from the Judgment of the Appellate Division of the Supreme Court of Alberta pronounced in the above cause on the 24th day of June, in the year of Our Lord One Thousand Nine Hundred and Forty-nine, affirming the Judgment of Mr. Justice Shepherd of the Supreme Court of Alberta, rendered in the said cause on the 21st day of April in the year of Our Lord One Thousand Nine Hundred and Forty-nine, having come on to be heard before this Court on the 25th, 26th and 27th days of October in the year of Our Lord One Thousand Nine Hundred and Forty-nine, in the presence of counsel as well for the Appellant as the Respondent, and of counsel for the Attorney General of Canada, WHEREUPON and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Appeal should stand over for Judgment, and the same coming on this day for Judgment, this Court did order and adjudge that the said Appeal should be and the same was allowed that the said Judgment of the Appellate Division of the Supreme Court of Alberta should be and the same was reversed and set aside, and that the action herein should be and the same was dismissed. 10 20

AND this Court did further order and adjudge that the Appellant is entitled to a declaration that the assessment and taxation of all the personal property in question in this action, except the dumpsters were properly made and imposed. 30

AND this Court did further order and adjudge that the Appellant is not entitled to seize any of the machinery, tools, plant, materials, equip-

ment, articles and things of the Respondent referred to in the Agreement between the latter and His Majesty while they are subject to the terms thereof.

10. AND this Court did further order and adjudge that the Respondent should and do pay to the said Appellant the costs of the claim and counterclaim against the Respondent as well at the trial as in the Appellate Division of the Supreme Court of Alberta as in this Court.

AND this Court did further order and adjudge that there should be no costs to or against the Attorney General of Canada.

(signed) Paul Leduc

REGISTRAR.

No. 28
REASONS FOR JUDGMENT.

Kerwin J.

The respondent, Bennett & White (Calgary) Limited, brought an action in the Supreme Court of Alberta against the appellant, Municipal District of Sugar City No. 5, for a declaration that the assessment of the respondent for personal property, made by the appellant for the year 1947, is invalid; for an order that the respondent's name be stricken from the appellant's tax roll in respect of personal property for 1947; and for an injunction restraining the appellant from attempting to enforce its alleged claim for taxes and taking any steps to seize any of certain chattels, equipment and tools, hereafter referred to. The appellant counter-claimed for a declaration and decree that the assessment and taxation referred to were properly made and imposed; terminating the interim injunction already granted; in the alternative and in any event, that certain proceedings before the Court of Revision and the Alberta Assessment Commission preclude the respondent from maintaining the action; and, in the further alternative, for judgment against the respondent for the amount of the taxes involved and penalties. The trial judge granted the declaration and order firstly and secondly asked by the respondent, dismissed the counter-claim and, no doubt considering it unnecessary, made no order continuing the interim injunction. His judgment was affirmed by the Appellate Division.

The respondent is a company incorporated under the Companies Act of the Province of Alberta, having its head-office in Calgary, and the appellant is a municipal district constituted pursuant to the provisions of the Municipal District Act, R.S.A. 1942, c. 151. On July 22nd, 1946, the respondent, therein called the contractor, entered into an agreement with His Majesty, represented therein by the Minister of Agriculture of the Dominion

of Canada, to construct certain diversion and irrigation tunnels at the St. Mary's Dam Project which lies within the boundaries of the appellant. By clause 3 of this agreement, it was provided that the respondent should at its own expense provide all and every kind of labour, superintendence, services, tools, implements, machinery, plant, materials, articles and things necessary for the due execution and completion of the works, and should deliver the works complete in every particular to His Majesty on or before certain fixed dates. By clause 12, all plant, materials, etc., were included in the price payable by His Majesty under the agreement. By clause 15 (speaking generally) all plant, etc., became the property of His Majesty subject to a term whereby upon the completion of the works such of the plant, etc., as should not have been used and converted in the works, or disposed of by His Majesty under powers conferred by the contract, should upon demand be delivered up to the respondent. This clause reads as follows:-

"15. All machinery, tools, plant, materials, equipment, articles and things whatsoever, provided by the Contractor or by the Engineer under the provisions of sections 14 and 16, for the works, and not rejected under the provisions of section 14, shall from the time of their being so provided become, and, until the final completion of the said work, shall be the property of His Majesty for the purposes of the said works, and the same shall on no account be taken away, or used or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not, however, be answerable for any loss, or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor of all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such

of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall upon demand, be delivered up to the Contractor in such condition as they may then be in."

In pursuance of this agreement, the respondent moved considerable plant and materials to the site of the works to be performed, the site being owned by His Majesty and being within the limits of the appellant. In 1947, the appellant assessed and taxed the said plant and materials under the provisions of the Assessment Act, R.S.A. 1942, chapter 157, and the Municipal District Act. Upon receipt of notice of the assessment, the respondent, in pursuance of section 35 of the Assessment Act, appealed to the Court of Revision which, by section 37, is composed of members of the council of the municipal district. By a letter supplementary to its notice of appeal to the Court of Revision, the respondent had taken the ground that the plant, etc., which was the subject of the assessment, did not belong to it but to His Majesty in the right of the Dominion of Canada. The Court of revision confirmed the assessment and, pursuant to section 47, the respondent appealed against that decision to the Alberta Assessment Commission, constituted as provided by the Alberta Municipal Assessment Commission Act, R.S.A. 1942, chapter 156. Section 53 of The Assessment Act reads as follows:-

"53. In determining all matters brought before the Commission it shall have jurisdiction to determine not only the amount of the assessment, but also all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment."

The Commission dismissed the appeal except for a reduction in the amount of the assessment.

10 The appellant thereupon threatened to seize the plant and equipment under the powers of distress given it by subsection 4 of section 310 of the Municipal District Act in relation to taxes which are not a lien upon land. The present action followed and the interim injunction referred to above was secured.

20 A number of interesting and difficult questions were argued at bar and some of them are referred to in the reasons for judgment in the Courts below. The first to be determined is whether the decision of the Assessment Commission is res judicata. The trial judge considered that a previous decision of the Appellate Division in In Re Companies Act, In Re Northern Transport Co. Limited and Village of McMurray (1949) 1 W.W.R. 338, effectively disposed of the contention, and his reasons were adopted by the Appellate Division in the appeal in the present case. In the McMurray case, the Appellate Division, holding that the principle to be applied was to be found in Toronto Railway Company v. Toronto (1904) A.C.809, Victoria v. Bishop of Vancouver Island (1921) 2 A.C. 384, and Donohue Bros. v. St. Etienne (1924) S.C.R. 511, decided that the Alberta Assessment Commission had no power to determine that non-taxable property was taxable.

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The Toronto Railway case was decided upon the provisions of the Ontario Assessment Act, R.S. O. 1897, chapter 224. Section 68 of that Act enacted with reference to the Court of Revision:-

"At the time or times appointed, the Court shall meet and try all complaints in regard to persons wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum"

40 Provision was made for an appeal to a Court of

Revision, a County Judge, a Board of County Judges where the assessment exceeded a certain amount, and to the Court of Appeal. Proceedings were taken thereunder wherein the Court of Appeal determined that the Railway Company's electric cars were real estate and assessable. The Company brought an action for a declaration that its cars were personal property and not subject to assessment or taxation. The Judicial Committee held, reversing the Court of Appeal and the trial judge, that the previous decision of the Court of Appeal in the assessment proceedings was not res judicata because by section 68 the jurisdiction of the assessment courts was confined to the amount of assessment and did not extend to validate an assessment unauthorized by the statute.

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In the Victoria case, no appeal from the assessment had been taken by the Bishop, and the Judicial Committee held that provisions whereby any one complaining of an "error or omission in regard to himself" as having been wrongfully placed on the assessment roll should have a right of appeal to a Court of Revision and that the assessment roll, as revised, confirmed and finally passed, should be deemed valid and binding notwithstanding any defect or error, etc., were merely machinery sections and did not empower the corporation or its officers to assess and tax any property expressly or impliedly exempt from taxation.

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In the Donohue case, which arose in the Province of Quebec, this Court held that the appellant was not restricted to an appeal under the assessment provisions but was entitled to bring an action in the Superior Court for a declaration that the assessment of its machinery was null and void.

After the decision in the Toronto Railway case, the Ontario Assessment Act was amended in 1910 by 10 Edward VII, chapter 88, when section 19 was enacted, which subsequently became section 83 of R.S.O. 1914, chapter 195, whereby power

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and jurisdiction were given the Court of Revision to determine not only the amount of any assessment but also all questions as to whether any person or things are, or were, assessable.

10 In Village of Hagersville v. Hambleton (1927) 61
O.L.R. 327, Hambleton had been assessed by the
Village in respect of income and the assessment was
confirmed by the Court of Revision and no further
appeal taken. The defendant's plea in an action
subsequently brought by the Village for taxes,
based upon that assessment, that he did not reside
in the Village and was not assessable was rejected
by the Court of Appeal who held that it was res
judicata because of the provisions of section 83.
Middleton, J.A., pointed out that in two interven-
ing cases, City of Ottawa v. Nantel, 51 O.L.R. 269,
20 and City of Ottawa v. Koefer, 54 O.L.R. 86 the atten-
tion of the Court had not been drawn to the amend-
ment of the Assessment Act.

The Hagersville case ^{was} referred to by Smith J.,
in delivering the judgment of this Court in Sifton
v. Toronto (1929) S.C.R. 484. There, Sifton
removed from Toronto to the Township of York on
December 14th, 1923. An assessment roll for
Toronto had been prepared in 1923 while Sifton
30 still resided there and he was entered on the roll
for income. It was pointed out that he could not
have successfully appealed against this assessment.
In 1924, Toronto adopted, pursuant to a by-law
passed in accordance with the Assessment Act, the
1923 assessment as the one for 1924. It was held
that the assessment in question was on Sifton's
income for 1924, and that by various enactments
referred to, the municipality was prohibited from
attempting to exercise jurisdiction outside the
40 municipality and was exceeding its powers to "levy
on the whole rateable property within the municipality."
The Hagersville case was clearly distinguishable
and it was held that it had no application.

In the subsequent case of *City of Ottawa v. Wilson* (1933) O.R. 21, the Court of Appeal held that where a person in an action for income taxes was found to have been not resident in the municipality at the time of assessment, the provisions of the Ontario Assessment Act did not empower the assessor to place her upon the assessment roll. The *Hagersville* and *Sifton* cases were referred to by Grant, J. A., and it was found that as the facts underlying the *ratio decidendi* in the former were not present, the decision did not affect the matter under consideration. Middleton, J. A., and Masten, J. A., who had taken part in the *Hagersville* decision, agreed. In *Becker v. Toronto* (1933) O.R. 843, the Court of Appeal, without giving reasons, held that a man whose property was exempt from taxation could recover taxes paid under protest. In each of these cases the party assessed had not appealed from the assessment.

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In the present case, section 53 of the Alberta Assessment Act is very clear in conferring jurisdiction upon the Commission to determine whether any things are, or were, assessable, or persons were properly entered upon the assessment roll, or are, or were, legally assessed. That jurisdiction was appealed to by the present respondent and it cannot now be heard to raise the same point again. It is not to the purpose to argue that the members of the Court of Revision were not lawyers and, therefore, presumably incompetent to pass upon legal questions, and that the Commission might not be composed of persons of legal training. The legislature has seen fit to set forth in unmistakable language the power and jurisdiction of the Commission and the meaning of section 68 should not be abridged even if it were thought that such a power should not have been conferred upon such a body. This is the only point decided and, in the absence of the Attorney General of Alberta, nothing is said as to the power of the legislature to confer such a jurisdiction upon the Commission.

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10 The respondent is therefore not entitled to a declaration that the assessment in question was invalid or to an order that its name be stricken from the appellant's tax roll in respect of personal property for 1947 and, on the other hand, the appellant is entitled to a declaration and decree that the assessment and taxation were properly made and imposed. However, the appellant is not entitled to judgment for the amount of the taxes involved. Section 305 of the Municipal District Act provides that the taxes due in respect of any land, mineral, or timber, or business, may be recovered with interest as a debt. There is no reference to taxes due in respect of personal property and the rule is well-settled at common law that there is no such right. Section 370 of the Municipal District Act does not confer it. The appellant is entitled to exercise whatever powers of distress 20 are conferred by subsection 4 of section 310 of the Municipal District Act but, in view of the agreement between His Majesty and the respondent, the appellant is not entitled to seize any of the machinery, tools, plant, materials, equipment, articles and things of the respondent, referred to in the agreement, while they are subject to the terms thereof.

30 The appeal should be allowed and judgment entered for the appellant in accordance with the foregoing. The appellant is entitled to its costs of the claim and counterclaim throughout. There should be no costs to or against the Attorney General of Canada.

RAND, J.: (concurring in by Taschereau Estey and Locke, J.J.)

40 This appeal raises questions going to the taxability of certain plant and equipment used by the respondent as contractor for works undertaken with the Dominion Government. The works were on a large scale and embraced diversion and irrigation tunnels on what is known as the St. Mary Dam Project. The plant and equipment belonged to

the respondent and was within the municipality in such circumstances that if they had not been affected by the terms of the contract there would have been no question of their liability to taxation.

The main point of controversy arises from the provisions of paragraph 15 which reads thus :

"All machinery, tools, plant, materials, equipment, articles and things whatsoever, provided by the Contractor or by the Engineer under the provisions of sections 14 and 16, for the works, and not rejected under the provisions of section 14, shall from the time of their being so provided become, and, until the final completion of the said work, shall be the property of His Majesty for the purposes of the said works, and the same shall on no account be taken away, or used or disposed of, except for the purposes of the said works, without the consent in writing of the Engineer. His Majesty shall not, however, be answerable for any loss, or damage, whatsoever, which may at any time happen to such machinery, tools, plant, materials, equipment, articles or things. Upon the completion of the works and upon payment by the Contractor of all such moneys, loss, costs and damages, if any, as shall be due from the Contractor to His Majesty, or chargeable against the Contractor, under this contract, such of the said machinery, tools, plant, materials, equipment, articles and things as shall not have been used and converted in the works or disposed of by His Majesty under powers conferred in this contract, shall, upon demand, be delivered up to the Contractor in such condition as they may then be in."

The effect of that paragraph is said to be to vest such a title or interest to the plant and equipment in the Crown or to affect the title of the respondent in such manner as renders the assessment invalid, and the first question is whether

that conclusion is sound.

10 It will be seen that both plant, equipment and materials are included, and that they are declared to be the property of His Majesty "for the purposes of the said works". The purpose of the materials is obviously quite different from that of the plant and equipment, and the qualifying clause must appropriately respond to that difference. It was argued that the phrase defines the time or period of a transferred ownership; but at law there are no estates or remainders in personal property: the only title is the absolute title. The true conception where successive

20 ownerships in A and B are in mind seems to be that the property in B is made subject to a right or power of use in A for a specified period: but no doubt contractual stipulations may affect transfers of titles on the happening of events or conditions. The effect of the clause is both to bind the use of the plant and equipment to the works, and to tie them to the area within which they are brought for that purpose. It is seen that the Minister may permit units to be removed from the works which the contractor would be at liberty to return, and it would be treating title rather freely to conceive it as shuttling back and forth as the units might move on or off the working grounds.

30 The contractor is undoubtedly to remain in actual and legal possession of the plant and equipment while he is not in default; likewise his beneficial interest in them is not affected and with it the risk of loss or damage. Power is given to the Minister, in certain contingencies, to take the works, as it is said, "out of the hands" of the contractor and use the plant and equipment to complete them. Upon completion, the plant, and equipment are to be not "reconveyed" or "re-transferred" to the contractor, but "delivered up" to him as they may then be, which I take to signify

40 no more than that the powers binding them come

to an end.

Then it is contemplated that the plant or equipment or parts of either may not be owned by the contractor at all, but hired or rented by him, as in paragraph 29 which speaks of sums due for "hire of horses, teams or carts" "or any claims against the contractor, or any sub-contractor for plant, equipment hired or supplied upon or for the works". In case of default, also, paragraph 18 provides that, "all plant, including horses and all rights, licences, powers and privileges affecting the personal property acquired or possessed by the contractor for the purposes of the work shall remain and be the property of His Majesty for all purposes incidental to the completion of the works, and may be used, exercised and enjoyed by His Majesty as fully, to all intents and purposes, connected with the works as they might theretofore have been used, exercised and enjoyed by the contractor, and the Minister may also, at his option, on behalf of His Majesty, sell or otherwise dispose of them." 10 20

Shepherd, J., at the trial who found against the assessment seemed to extract some support for his view from the language of paragraph 12 providing, as he stated it, "that all plant and materials furnished by the plaintiff were included in the prices payable by the Government under the agreement;" but that, with great respect, does not seem to be the true meaning of the language paraphrased. What is there being declared is that the price or prices shown in paragraph 34, which deals with unit prices, include everything done and furnished by the contractor and the reference to the plant excludes by way of precaution any question of adding to those prices rental or other compensation for the use of the equipment. Such allowances are, in special circumstances, contemplated by the paragraph which, for new work, provides that in addition to the actual and reasonable cost, "10% thereon for the use of tools, contractor's plant, superintendence and profits" is 30 40

to be allowed. It is, I think, incontrovertible that neither plant nor equipment is, in such sense, "paid for" by the Crown.

10 These stipulations make it clear to me that what has been vested in the Crown, in relation to the plant and equipment, is a group of rights and powers to the extent of the contractor's title or interest in them; and that the contractor employs his own property as he would ordinarily do but within those restrictions both as to its use and its residence. The effect of the language is not, "I give you the property but subject to my use of it for the purposes of the contract;" it is rather, "I give you the right to have the property kept on your land and its use applied to those purposes whether I fulfil them or some one else does". That arrangement is virtually identical with that in *Keen v. Keen, Ex p. Collins*, (1902) 1 K.B. 555. Such was the situation at the time of the assessment.

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On appeal, Ford, J.A. seems to lay it down that taxability of personal property depends upon the competency of the taxing authority at the moment of assessment to exercise against the property the powers of distress given by the statute, which, in some manner, follows from the fact that the power given is "to tax property and not persons in respect of an interest therein." What, then, is meant by taxing property as distinguished from persons in respect of property?

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The notion that to "tax property" is to subject it, as a legal object to some sort of inhering obligation vaguely to be regarded as the equivalent of a lien, is, I think, a misconception. Although the Assessment Act speaks of the taxation of property or business, it does not always do so: section 26 (3), "every person who is assessed in respect of such property"; section 32, "where any person was at the time of the assessment taxable in respect of any property, business, trade or profession"; section 33, similar language but also

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"the assessment of the property;" section 291 of the Municipal Districts Act refers to business taxes "payable by each person assessed.....in respect of a taxable business;" section 295, to the taxes due by a person whose name appears on the roll "in respect of the property or business for which he is assessed;" section 310 (4), dealing with distress for taxes which are not a lien on land, in paragraph (a) provides for distress "upon the goods or chattels of the person taxed wherever found within the province;" and paragraph (c), "upon the goods and chattels in the possession of the person taxed, etc."

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On the other hand, section 305, dealing with taxes "due in respect of any land, etc.", declares that they may be recovered as a debt and "shall be a special lien on the land." But no lien is created on personal property. Although the personal property existing at the time is the basis of the assessment, the collection of the tax is not in any manner bound up with it. The tax based on today's personal property may be collected on tomorrow's property, whether within or without the municipality. These provisions distinguish between the assessment and imposition of a tax and the modes of collection, but all three of them must be found either expressly or impliedly in the taxing statute; together they constitute the legislative authority and power for the execution. Except as it may be evidential of an implied means of collection, the conception of the assessment, per se, as of property or of a person in relation to property, carries no practical significance of difference.

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The Minister's rights and powers, being security for the performance of the contract, would be specifically enforceable and constitute an interest ad rem. It may be on the principle of *In re Marriage, Neave & Co.*, (1896) 2 Ch. 663, that such an interest cannot be asserted by a subject against a distress of this nature: but, as enjoyed by the Crown, it could not so be defeated.

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But these rights and powers are no essential part of the title; they are exercisable in relation to the use of the property and so far they derogate from one of the incidents of ownership; but they assume title in the contractor. Being of such a nature, the interest as at the time of assessment, if held by a subject, would not be a taxable interest under the Assessment Act.

10 The statute contains nothing that even purports to make assessability conditional upon contemporaneous exigibility by distress. The basic fact for assessment is the ownership or legal possession of personal property, and here, at the critical time, both were in the respondent. Goods subject to a chattel mortgage and in the possession of the mortgagor are clearly liable to assessment and to distress, and seemingly, I should say, distrainable whether or not in his possession, where
20 not in the possession of the mortgagee. Before that step, the mortgagor is the owner within the meaning of the statute. A fortiori a mere interest ad rem does not affect that title or prevent a distress.

 Taking the personal property, then, as being taxable, can the taxes be recovered by suit against the owner as for a debt? Since the remedy must appear from the statute and as the statute here, while specifically providing for the recovery by
30 suit of taxes imposed in respect of land, has not done so for taxes on personal property and has instead provided the means of distress, no such right can be implied.

 It is objected that the interest of the Crown, exempt from taxation, has nevertheless been included in the property taxed; but as that interest was not at the time of assessment a taxable interest, and the value of the user has never in fact been out of the contractor, the point falls. Moreover, this
40 contention ignores the distinction between taxing an interest of the Crown and taxing an interest of the subject as if, for purposes of amount, he were

the owner of the Crown's interest; Fairbanks v. Halifax, (1928) A.C. 117.

The remaining question is whether any of the plant and equipment is exempt under paragraph (z) of section 5 (1) as being within the expression "motor vehicles". The word "vehicle" in its original sense conveys the meaning of a structure on wheels for carrying persons or goods. We have generally distinguished carriage from haulage, and mechanical units whose chief function is to haul other units, to do other kinds of work than carrying, are not usually looked upon as vehicles. But that meaning has, no doubt, been weakened by the multiplied forms in which wheeled bodies have appeared with the common feature of self-propulsion by motor.

The object, then, of the exemption becomes important; and, quite apart from the canon that an exemption from taxation should be in precise language, it seems to me that in this case, in relevant statutory expressions that object does appear. By section 119 of The Vehicles and Highway Traffic Act, chap. 275, R.S.A. 1942, it is declared that except where an Act specifically provides to the contrary, "no municipality shall have the power to pass, enforce or maintain any by-law requiring from any owner of a motor vehicle or chauffeur, any tax, fee, licence or permit for the use of the public highways" Although the tax is associated with the use of the high-ways, I take it to evidence the intention that the exaction of fees or taxation for motor vehicles - which, to some extent at least, use highways as part of their normal operation - is to be provincial and not municipal. But "motor vehicle" in that Act does not include traction engines or vehicles running on rails. What was intended by the exemption in the Assessment Act was to make clear the uniformity between the two statutes. The exemption then does not include units of self-propelled equipment, whose main purpose is either that of haulage or work other than conveying or vehicles running on rails.

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as distinguished from general locomotion.

The objects fall within four categories. There are, first, what are described as dumpsters assessed at \$18,000.00:- these are ordinary four-wheeled vehicles with gasoline engine, the body of which is a box and the purpose of which is to carry material from place to place. I am unable to distinguish them from the ordinary truck, and they would seem clearly to be exempt. The second class consist of caterpillar tractors used, with concave blades attached to the front as bulldozers, or with other devices attached behind to gather up material of excavation. These, as clearly, are not exempt. The third are known as draglines; these are large units, in operation like mechanical shovels, which excavate earth and other materials by means of scoop bucket dragged along the ground by heavy cables. The entire body moves on caterpillar treads by its own power, but as can be seen, its whole function is that of doing work as against carrying, which excludes it from the exemption. The fourth are locomotives and cars which run on rails to carry away the excavated material: they remain taxable. Other items of equipment such as dozer blades, caterpillar power units, dragline buckets, and Letourne Carryalls, are all accessories to or integral parts of the units in the four classes, which they must follow.

In the result, then, the assessment should be reduced by the amount representing the dumpsters and their accessories; subject to that, it remains.

Mr. Virtue contends that as the respondent appealed both to the Court of Revision and the Alberta Assessment Commission, the taxibility of the respondent is by the effect of section 33 of the Assessment Act res judicata. The section provides :-

"In determining all matters brought before the Commission it shall have jurisdiction to determine not only

" the amount of the assessment, but also all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment."

This language, it will be noticed, does not purport to conclude issues on the questions mentioned. If the Commission were an ordinary court, dealing in a judicial sense with matters of civil rights, the import of jurisdiction would be unquestioned. But taxation is essentially an administrative function; the assessor is directed by the statute to ascertain the value of certain property as the basis on which the province will exact a contribution from persons interested in it to enable government to be carried on. That ascertainment is an act in rem and its execution, given the jurisdiction to tax, lies in such mode and such means as the legislature may prescribe.

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But the statute, in defining the subject matter of taxation, necessarily limits the scope of legal action, and if, as we say, a subject is excluded from taxation, then as to it, a purported administrative act would have no legal effect.

Whether an act is or is not within a jurisdiction depends, if challenged, upon a determination by a tribunal. Ordinarily, jurisdictional facts, arising under a statute, are found by the civil courts; and when we speak of a finding of non-assessability of property, we mean as that conclusion has been or is declared by those tribunals. But the initial question is not what the fact is in actuality, which must be as it appears to some mind; it is rather, what is the tribunal to which we must look for that jurisdictional determination?

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In dealing with taxation, from assessors to taxation commissions, the provisions of the statute regarding liability and exemption are necess-

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arily taken into account by lay persons and bodies. The determination of an exemption involves an interpretation of the statute, and it thus affects a civil right. But the assessor must have regard to exemptions for the purpose of the administrative integrity of the roll; and although it is his duty to follow the provisions of the statute to the extent his judgment permits him to do so, it is undoubted that that preliminary judgment is essentially different from a judicial determination of the legal question.

The assessor, as part of his administrative duty and as distinguished from purely administrative acts, exercises a lay judgment in the interpretation of the statute. From the whole of his exercise of authority, the statute ordinarily gives a right of appeal. By the nature of appeal, in the absence of special and original powers given to the revising body, it is to be taken as limited to examination of the matter that was before the assessor and to the giving, in the same sense, of the decision which he should have given.

In this case, section 35 of the Assessment Act provides for a complaint to the Court of Revision which is to be in respect of :-

- (a) Any error or omission alleged in respect of the assessment of any property or persons;
- (b) any assessment alleged to be too high or too low;
- (c) any property or business in any way wrongfully assessed;
- (d) the name of any person alleged to be wrongfully entered upon or omitted from the assessment roll.

Section 45 provides :-

"Upon the termination of the sittings of the Court of revision the Secretary-Treasurer shall enter..... the following certificate; and the roll as thus finally completed and certified shall be the assessment roll for that year; subject to amendment on appeal to the Alberta Assessment Commission and shall be valid and bind all parties concerned, notwithstanding any defect in or omission from the said roll or mistake made in or with regard to such roll or any defect, error or mis-statement in any assessment slip or notice or any omission to deliver or to transmit any assessment slip or notice."

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Authority must obviously be vested in that court to amend in any respect the roll as completed by the assessor, and the provisions of the Act do that. As in the case of the assessor, finality is given or confirmed to the purely administrative acts, but in the quasi-judicial determinations, the decision is of the same character as that of the assessor.

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It is seen, next, that further amendment by the Assessment Commission shall be "on appeal", and it is on that footing that section 53 confers jurisdiction on the Commission as preceding sections had vested jurisdiction in the Court of Revision. But following the same rule, what the Commission does is to correct or confirm the actions of the assessor and the Court of Revision within their jurisdictions. It is for determining "all matters brought before the Commission" that the jurisdiction is declared, but those matters are such as come by way of appeal, and I see nothing in the section which introduces a new and original authority to deal with those matters in other than the administrative manner in which they have already been dealt with: I see nothing intended to confer a purely judicial function dealing with civil rights.

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10 The material sections in the Alberta Act have their prototypes in provisions of the Ontario Assessment Act, and it is argued that the case of Village of Hagersville v. Hambleton, 51 O.L.R. 327 has given an authoritative interpretation of section 83, which corresponds to section 53, to the effect that a confirmation by the Court of Revision of an assessment for income tax was con-

20 clusive as to the residence of the person assessed. The Judicial Committee in Toronto Railway Company v. Toronto, (1904) A.C. 809 had found the jurisdiction of the Court of Revision limited to the question of more or less in value, from which it followed that whether a person was or was not a resident of a municipal area within the meaning of the statute was a question to be determined by the civil courts. But section 83 had been amended and the application of that authority was rejected. Riddell, J. A., at the opening of his judgment, says :-

"I may say at once that if the liability of the defendant to be assessed depended on the evidence of residence given at the trial, the judgment appealed from could not stand."

30 He held the amendment to have established exclusive tribunals of appeal to which only the assessed person could resort, and that the fact of residence as found by the Court of Revision was conclusive. In this view, the other members of the court concurred.

In the next year, Sifton v. City of Toronto, 63 O.L.R. 397 came before the same court. There, the plaintiff had resided in Toronto from the beginning of the year until the 14th. December of 1923 when he moved to and became a resident

of another municipality where he continued to reside during the whole of 1924. He had been assessed in 1923 for income and had paid the tax to Toronto. Under section 56 of the Assessment Act, on the 28th of February, 1924, Toronto passed a bye-law adopting the assessment made for 1923 as that for the current year 1924, and later in 1924 demanded taxes accordingly from the former taxpayer. They were paid, and proceedings brought to recover them. On appeal from the judgment of the County Court dismissing the action, the court was equally divided: Mulock, C.J. and Grant, J. A. were to dismiss and Magee, J.A. and Hodgins, J.A. were for allowance. In this Court, (1929) S. C. R. 484, the judgment below was reversed. Smith J., who gave the judgment, distinguished the case of Hagersville v. Hambleton on the ground that upon the adoption of the roll by the bye-law of February 28th there was no tribunal to which the taxpayer could appeal against an improper assessment. But what lay at the bottom of the decision was the fact that in February, 1924, when the resolution of adoption of the roll was passed, the person assessed was not resident in Toronto. There was an apparent conflict between the statutory provision that Toronto could tax only those who were resident within its boundaries, and the declaration that the roll as certified was to be the roll for the year in question. But the fact giving rise to that conflict was held to be determinable by the civil court, and the former provision to be controlling.

That case was followed by Ottawa v. Wilson (1933) O.R. 21. The situation was somewhat similar. Before the assessment against the defendant was made, she had moved from Ottawa to Rockcliffe, but after that removal, and in the same year, her name had been entered upon the roll for Ottawa. No appeal was taken to the assessment tribunals. In an action to recover the taxes, it was held that it was ultra

vires of Ottawa to assess a person who, as determined by the civil courts, was not a resident. Although the Hagersville case is mentioned, it is declared by Grant, J.A. that, as interpreted by the Sifton judgment, it did not affect the case at bar. With Grant, J.A. agreed Mulock, C.J.O. and Masten, J.A. Middleton, J.A. concurred in those views; he treated the Sifton decision as carrying to its logical conclusion the principle that a person can only be assessed for income "in the municipality in which he resides." But again arises the question, as found by what tribunal?

So far as the Hagersville case declares an exclusive jurisdiction in the assessment tribunals for determining the fact of residence, it must be taken to be inconsistent with these subsequent decisions; and I attribute to those tribunals only a jurisdiction of an administrative body as I have defined it. What questions of law involved in the assessment can be dealt with on appeal from those tribunals to a superior court, a step which in Alberta does not lie, depends on the language of the statute giving the right of appeal. What appears then is this, that if as found by the civil courts, jurisdiction for the act of assessment is absent, neither the decision of the assessment courts nor any statutory provision dealing with the conclusiveness of the roll is effective. That was the view taken of somewhat similar language in *R. M. Buckland v. Donaldson*, (1928) 1 W.W.R 40: and in *Victoria v. Bishop of Vancouver*, (1921) 2 A. C. 384, at p. 396.

The same principle applies a fortiori to the question of exempted property. Whatever may be determined to be in that class is beyond the jurisdiction of assessment; and the judicial interpretation and application of the language of exemption is for the civil courts.

It may be, given property within the province, that the legislature might declare the scope of the exemption should be as interpreted by the assessment tribunal: that would be to vest a sub-legislative taxing authority in the Commission. But in this case the legislature has not done so. Or the legislature might purport to set up special provincial courts to interpret judicially legislative provisions affecting civil rights. If it were clear that that was the effect of the statute in this case, then the serious question of ultra vires would be presented. But where the legislative language is capable, as here, of being given rational meaning within undoubted provincial authority, and any other view would raise doubts and anomalies within the statute, the legislature's intention to go beyond that authority and within a questionable field should not be inferred.

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For these reasons, section 53 is not to be construed as purporting to vest in the Assessment Commission judicial authority to determine questions of jurisdiction arising out of the provisions declaring exemptions; as the civil rights of owners of property are involved, the section is to be taken, in that respect, to contemplate only such dealing with the roll by the Commission in the exercise of its practical judgment on such matters as will render it as free as possible from errors of law.

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I would, therefore, allow the appeal and, subject to the modification in the assessment roll mentioned, dissolve the injunction and dismiss the action. On the counterclaim, the appellant is entitled to a declaration that the taxes as modified were properly imposed: but the appellant cannot distrain upon the property taxed while it is under the obligations of the contract. The appellant should have its costs of the action including the counterclaim throughout. The intervention of the Attorney General will be without costs.

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No. 29.

IN THE PRIVY COUNCIL.

Order in Council Granting Special Leave
to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 28th day of July, 1950.

PRESENT.

THE KING'S MOST EXCELLENT MAJESTY

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LORD PRESIDENT
MR. SECRETARY EDEMR. NESS EDWARDS
DR. EDITH SUMMERSKILL.

"WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 24th day of July, 1950 in the words
following, viz :-

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WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was referred
unto this Committee a humble Petition of
Bennett and White (Calgary) Limited in the
matter of an Appeal from the Supreme Court of
Canada between the Petitioner (Plaintiff) Appel-
lant and Municipal District of Sugar City No. 5
(Defendant) Respondent and The Attorney General
of Canada (Intervener) setting forth (amongst
other matters): that the Petitioner desires
special leave to appeal from a Judgement of the
Supreme Court dated the 30th March 1950 which
allowed the Respondent's Appeal from a Judgement
of the Appellate Division of the Supreme Court
of Alberta dated the 23rd June 1949 which had
dismissed the Respondent's Appeal from a Judge-
ment of Shepherd J. dated the 16th April 1949
which had declared that the assessment of the

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Petitioner for personal property tax made by the Respondent for the year 1947 is invalid quashed and set aside that assessment ordered the Respondent to strike the Petitioner's name off the Respondent's tax roll in respect of personal property for the year 1947 dismissed the Respondent's counterclaim and ordered the Respondent to pay the Petitioner's costs: That the Petitioner submits that the case raises 10 important questions of law of general application concerning the construction of the Assessment Act (Revised Statutes of Alberta 1942 chapter 157 as subsequently amended) and the Municipal District Act (Revised Statutes of Alberta 1942 chapter 151 as subsequently amended): that the case also raises important general questions on the construction of clauses in a contract between Your Majesty (Represented by the 20 Minister of Agriculture of Canada) and the Petitioner which with minor variations are standard clauses in buildings contracts in Canada particularly in contracts to which Your Majesty is a party: that the Petitioner's tax liability not only for 1947 but for 1948 is directly involved amounting to \$7,926,74 (which sum together with costs the Petitioner has paid into Court under an arrangement that execution should be stayed pending the hearing of this petition and if Your Majesty should be graciously 30 pleased to grant special leave pending the determination of the Appeal): that the case will also govern the future tax liability in Alberta of all contractors with similar provisions in their contracts: that there has been a difference of judicial opinion: that the Attorney-General for Canada intervened in the Respondent's Appeal to the Supreme Court and supported the position of the Petitioner asserting a claim to the 40 personal property in question on the ground that it was the property of Your Majesty and as such exempt from assessment or taxation: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal

from the Judgement of the Supreme Court dated the 30th March 1950 and for such further or other Order as to Your Majesty in Council may seem just:

10 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said order have taken the humble petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgement of the Supreme Court of Canada dated the 30th day of March 1950 upon depositing in the Registry of the Privy Council the sum of \$400 as security for costs:

20 "AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal:

50 HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly

E. C. E. LEADBETTER.