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IN THE PRIVY COUNCIL.

Council Chamber,
Whitehall, S. W. 1.

Monday, 18th June, 1951.

Present:

LORD PORTER
LORD NORMAND
LORD OAKSEY
LORD REID
LORD ASQUITH

ON APPEAL FROM THE SUPREME COURT OF CANADA

Between:

THE CITY OF MONTREAL

(Appellant)

and

SUN LIFE ASSURANCE COMPANY OF CANADA (Respondents)

*To Judicial Committee of Privy Council,
H.M. Patent Office, &c., &c.*

MARTEN, MEREDITH & Co.,

Shorthand Writers,

11 New Court,

Carey Street, W.C.2

(Midland Circuit and Leeds Assizes)

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

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

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

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

MR. BEAULIEU: May It please your Lordships. This is an appeal by special leave from the judgment of the Supreme Court of Canada delivered on the 21st February, 1950, maintaining the Respondent's appeal and reversing the decision of the majority of the Court of King's Bench (Appeal side) for the Province of Quebec. The Court of King's Bench itself had reversed the decision of the Superior Court presided over by Mr. Justice MacKinnon, and had restored the decision of the Board of Revision, a special tribunal created under the Charter of the City of Montreal for the express purpose of hearing complaints against the assessments prepared by the assessors of the city.

LORD PORTER: You have the original assessment, then the Board of Revision, then the Superior Court.

MR. BEAULIEU: Acting as a Court of Appeal.

LORD PORTER: Then the Court of King's Bench.

MR. BEAULIEU: And finally the Supreme Court. Then we have special leave to appeal to this Board. The subject matter of this litigation is the assessment, for municipal purposes, of a large building owned by the Sun Life Assurance Company and occupied by the Sun Life as its headquarters; also, a secondary building which is called sometimes "the power house" and sometimes a "boiler house". It is an accessory to the main building. The main building is a 25 storey building with three basements below ground. It has a cubic content of over 22,000,000 feet. All its exterior walls are of granite. Its architecture is classical, with its massive balustrade and colonnades of Corinthian order. Its bronze doors and sashes, its arch and columns form the entrance and the wonderful great hall, which is called sometimes a banking hall, made all of marble, with the floors, walls and columns, it has been described by the witnesses as one of the most beautiful buildings not only of Canada, but of the whole Empire; in other words, a building of unique beauty.

In a letter of invitation Mr. Macaulay, who was then the President of the Respondent, spoke of this building as a monument to the skill of the engineers, architects and artisans of our great Dominion, and Mr. Justice Rand of the Supreme Court said that it was intended to symbolise "a" business position of commanding power.

This building was erected in three stages beginning from 1913 and finishing in 1930. The first stage began during the month of June, 1913, and extended to March, 1918. Then the second stage began in 1922 and extended to 1927, and finally the last stage was from 1927 to 1930.

The actual cost of the building is admitted to exceed 22,000,000 dollars. Exactly, according to the admissions filed by the parties, it cost 22,377,769 dollars. There is no quarrel about that, it is admitted.

Further, in a public document under oath which was filed by the Respondent in the hands of the Superintendent of Insurance according to the provisions of the Insurance Act, the Respondent itself placed a value of 16,258,050 dollars both book value and market value. There is a report made to the Superintendent. One is market value and the other is book value and the same figure appears in the two headings.

The total valuation placed upon that building by the assessor, and which was confirmed by the Board of Revision, was 14,276,000 dollars. The Superior Court, presided over by Mr. Justice MacKinnon, acting as a first Court of Appeal, decreased that amount to 10,207,000 dollars. These figures were adopted by the Supreme Court of Canada.

The relevant provisions of the Charter concerning this assessment are the following. They are in a separate book and I am now referring to page 281, section 361. There there is a definition of what the assessors are called upon to assess. "(1). All immovable property situate within the limits of the city shall be liable to taxation and assessment, except such as may be hereinafter declared exempt therefrom.

"(2). Immovable property shall comprise lands, buildings erected thereon and everything so fixed or attached

to any building or land as to form part thereof, but shall not include machinery, tools and shafting used for industrial purposes except such as are employed for the purpose of producing or receiving motive power".

LORD PORTER: Does the power house or boiler house come in that last part?

MR. BEAULIEU: There is only the small power house upon which there is no further litigation. The only litigation actually is upon the main building. The balance of the section, I think, has no relevance to the present case, but I wanted to show your Lordships what we consider as being "immovable property" under the Charter.

Then there is section 373 which contains provisions concerning assessors. It is on page 317 of the Charter. "(1). The chief assessor and the assessors constitute the Assessors Department. (2). The Council, on a report of the Executive Committee, appoints or dismisses the chief assessor and the latter shall have the same responsibility and the same authority as the head of a department. The Executive Committee, on the recommendation of the chief assessor, appoints or dismisses the assessors.

"(3). The Executive Committee determines the salary of the chief assessor and, on a report of the latter, those of the assessors".

LORD PORTER: The rest does not really affect us, does it, at all? There is no dispute under that.

MR. BEAULIEU: There is no dispute there. It is to show there is a department of assessors which now is composed of 15 assessors.

LORD PORTER: Do you want section 375?

MR. BEAULIEU: Yes, I think I should read that now. That is on page 318. "(a) Every three years the assessors shall draw up in duplicate for each ward of the city a new valuation roll for all the immovables in such ward. Such rolls shall be completed and deposited on or before the 1st December, after having been signed by the chief assessor". The roll now under consideration was deposited on the 1st December, 1941. "This roll and each of the supplementary rolls mentioned in paragraph (b) shall contain", then there is a long list of provisions.

LORD PORTER: We need not worry about that.

MR. BEAULIEU: Except paragraph 3: "The actual value of the immovables". That is the only part concerning us. That is the duty of the assessor, to find the actual value.

Then there is procedure as to the complaints against the rolls.

Then may I read section 376: "Tax Roll". "Each year, before the 1st August, the assessors shall draw up by wards a tax roll specifying all personal, business and water taxes due to the city in virtue of any law, resolution or by-law, and indicating the names of the persons subject thereto. The assessors shall enter thereon the annual rental value of every immovable or part of immovable, whether occupied or capable of being occupied by persons subject to the said taxes.

"The said roll shall be signed by the chief assessor and deposited not later than the 1st August and shall be used for the then current fiscal year".

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Section 378 gives the duty of the rate payer to give all information required. That was the source of the admissions. "It shall be the duty of every rate payer and citizen to give, when requested, all information that may be sought by any of the assessors or any member or representative of the Board of Revision of valuations in the discharge of their duties; and any such person refusing to give such information or who knowingly misleads or deceives any of the assessors or any member or representative of the Board of Revision, or insults or assaults him, or refuses to allow him, in the discharge of his duties, to enter in or upon the property or premises owned or occupied by such person, shall, for each offence, be liable" and so forth; the balance we are not concerned with.

Section 379 begins the proceedings for the complaints: "Immediately upon the completion of the tax roll, the Chairman of the Board of Assessors shall give public notice of such completion in one daily newspaper published in the French and one published in the English languages in Montreal, specifying in each advertisement the delay for examining said roll, as regards the several wards of the city, which delay shall not be less than eight days from the date of the last insertion of such notice; and the said notice shall also announce the days on which the said roll will be revised, specifying, in particular, the days on which the roll affecting the different wards of the city will be revised.

"The revision of the tax roll shall be completed not later than the 20th August of each year, and, except as regards the contested part thereof, such rolls shall come into force without any other formality, shall be transmitted to the Director of Finance on that date, and shall then be binding upon all persons named or assessed therein for the amounts fixed by the said roll".

LORD PORTER: The next does not affect us, does it?

MR. BEAULIEU: No, my Lord. I think the next one which may have some importance is section 380. "During the delays fixed by the notices prescribed by articles 379 and 379(a), the chief assessor shall receive complaints that may legally be filed with him respecting any entries or omissions, in the valuation roll, or in one of the supplementary rolls or tax roll, at the times and places mentioned in such notices and, if need be, according to the Charter, he shall transmit them immediately to the Board of Revision. No complaint shall be received after the delays fixed as aforesaid.

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

It may be pointed out that prior to 30th May, 1938, the Board of Assessors, or a majority of them, were entitled to revise the decision of the particular assessors of a ward. They were constituted as a kind of Court of Appeal from the assessments made by their members, but under the Act, I George VI, Chapter 103, which came into force on the 30th May, 1938, the special Board of Revision to which I refer previously was created independently from the assessors themselves.

LORD PORTER: Then the assessors ceased to be an appellate body on themselves and the appeal passed to a new body.

MR. BEAULIEU: Yes, my Lord. The jurisdiction of that particular body shows, I respectfully suggest, that it is really a tribunal having judicial powers and acting as such. This jurisdiction, as well as the powers and duties of the Board of Revision, are given by section 382: "(1). There is created by the present Act a Board of Revision of valuation which shall be composed of three members, whom the Council shall appoint on a report of the Executive Committee, and who may not be dismissed by the Council, on a report of the Executive Committee, except by the vote of two-thirds of all the members of said Council. The persons thus appointed shall reside in the City of Montreal.

"(2). The Council designates the President and Vice President of the Board, following the procedure established in the preceding paragraph. The President must have been a member of the Bar of the Province of Quebec or of the Order of Notaries of the said province for at least ten years.

"(3). Before taking office every member of the Board shall take the oath prescribed by article 374".

LORD PORTER: We need not trouble about the vacancies.

MR. BEAULIEU: May we refer now to subsection 12 which gives the jurisdiction: "The members of the Board shall devote all their time to the duties of their office.

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

"Each time the Board hears a complaint relating to an entry in the roll, its meetings shall be public, unless it shall decide otherwise. The witnesses who appear before it shall be sworn by the President or by the Secretary, who are authorised to do so.

"(12a). The President shall decide questions of law relating to the complaints which are within the competence of the Board".

LORD PORTER: Do you mind about 13?

MR. BEAULIEU: No, my Lord.

LORD PORTER: 14 is procedure and 15 seems to be getting to something of importance.

MR. BEAULIEU: I think we can go now to 18.

LORD PORTER: Is not that part of 15, you will tell me if I am wrong, which says "The Board may, whenever it deems it proper, after having heard the interested assessors, determine itself or with the assistance of experts, the valuation in question" material? That is on page 338, the first full paragraph. Offhand that struck me as being a direction as to how the valuation should be arrived at.

MR. BEAULIEU: It can visit the premises and arrive at its conclusion by a visit to the premises, but there is no complaint decided without notice given to the other side.

LORD PORTER: What I had in mind was that they had to hear the interested assessors as part of the scheme.

MR. BEAULIEU: Yes.

LORD PORTER: I thought perhaps that was important.

MR. BEAULIEU: May I proceed now to section 18: "The Board of Revision shall also hear all complaints produced legally, each year, within the required delays, against the valuations entered on the valuation roll and against any entry on the tax roll, the hearing whereof is within its power in virtue of this Act.

"The Board of Revision shall hear these complaints and render its decision within the shortest possible delay.

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

"(19). However, in the case where the decision of the Board of Revision is rendered before the contested roll is in force, the chief assessor, on receipt of a valuation certificate issued by the Board of Revision shall make the modification ordered on the said roll".

Then paragraph 24 says: "The chief assessor may submit any valuation for examination by the Board of Revision".

Then 27: "The Board of Revision may call any witnesses, proceed with the questioning of parties and their witnesses and proceed itself with the making of appraisals or causing the same to be made, in order to enable it to decide on the value of the immovables under examination.

"(28). The witnesses shall be called in the manner determined, mutatis mutandis, by article 532 of this Charter. They shall have the right to claim from the parties summoning them the payment of the costs which the Superior Court generally allows in similar matters.

"The depositions may be taken in shorthand by an official stenographer chosen by the Board, when one or other party or the Board requires it. Such stenographer shall be sworn in each case in which he acts. The losing party shall pay the costs of stenography and transcription" and so on. That is just to show they are acting as the Superior Court is acting.

The last paragraph is 29: "The members of the Board of Revision shall have the right to visit at any time the immovables entered on the roll".

Besides these provisions of the Charter, it might be advisable, I suggest, to consider now what has been called by the witnesses "the memorandum". It is exhibit "D.5". It is a memorandum containing fundamental principles of valuation which are considered to be an instruction but not binding upon the assessors in particular cases, that is to say, when there are large buildings with special features. The origin and purpose of this memorandum is explained by the chief assessor, Mr. Hulse, and if your Lordship would allow me, I will now refer to his evidence.

LORD PORTER: Before you get there I want to get a general view of the procedure. After that, by section 384 an appeal lies to the Superior Court.

MR. BEAULIEU: Yes, my Lord.

LORD PORTER: When you go to the Superior Court is that bound by the evidence which is taken below? I gather the procedure is this. The assessor can take evidence. After that the Board of Revision starts afresh and takes evidence and hears witnesses.

MR. BEAULIEU: The Superior Court does not start afresh. I think it would be better if I read section 384 which exactly gives the power of the Superior Court sitting as a Court of Appeal. "An appeal shall lie from any decision rendered by the Board of Revision in respect of any entry on the valuation roll or on the tax roll, and from the decision rendered by the assessors in respect of a complaint received relative to an entry made on the tax roll, when the estimation of the rental value so entered does not exceed 1,000 dollars, to any one of the judges of the Superior Court, by summary petition, either in term or vacation, within a delay of ten days from such decision. Such petition must be served upon the other party during the usual hours and according to the rules of the Code of Civil Procedure for writs and summons in ordinary matters.

"However, in the case of a decision rendered by the assessors in respect of a complaint received concerning an entry made on the tax roll, when the valuation of the rental value so entered does not exceed 1,000 dollars, said appeal shall not be made to the Superior Court after the 1st September following the decision rendered.

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

"An appeal shall lie from such decision to the Court of King's Bench, when the amount of valuation contested for the property concerned exceeds 5,000 dollars or when the amount of the rental value contested and under examination exceeds 1,000 dollars".

Now I will come to the memorandum and to the evidence showing what was the purpose and character of that memorandum. The memorandum itself can be found in Volume 4, page 695. The explanation of that memorandum is given by Mr. Hulse, chief assessor of the city, Volume 2, page 244.

LORD ASQUITH: The memorandum has no legally binding force.

MR. BEAULIEU: No, my Lord.

LORD ASQUITH: It is a mere exposition.

MR. BEAULIEU: Yes, my Lord. Mr. Hulse gave an explanation of the origin of that memorandum. It has no legally binding force.

The memorandum is on page 695 of Volume 4. "Copy of Memorandum on Assessment of large properties". "Memorandum". "On the assessment of large properties such as office buildings, apartment houses, departmental stores, hotels etc.

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

"(1). Properties that are developed and operated solely on a commercial basis as investment propositions, such as the Insurance Exchange Building, the University Tower Building, the Dominion Square Building, the Drummond & Drummond Court Apartments, etc. etc. The return on those investments varies from time to time according to the demand for and the supply of office and apartment space in the city and more particularly in the district in which they are situated. When the demand exceeds the supply, rents are pushed up and a high return is shown on the investment, encouraging new construction. When the demand is satisfied and there is an over-supply of space, rents fall and with them the return on the investment. In fact, the situation becomes extreme in a period of low rents, as the operating charges do not decrease proportionately. It would seem that the proper way to provide for this fluctuation in net revenue is to combine the factors of replacement cost and commercial value so as to allow for the more violent changes that occur in abnormal times, without departing too far from the normal values prevailing in a period of balanced supply and demand. It is recommended that these two factors, viz., replacement cost and commercial value, be given equal weight in valuing these properties for a three-year period. A re-valuation at the end of that time would, of course, take into consideration the conditions then prevailing".

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

We submit the Respondent's property falls within 3. "(3). Properties that are partly occupied by the owners and partly rented, such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life, etc. etc.

"It must be remembered that properties of this class have been constructed or acquired as a permanent home for the enterprise in question and that frequently the building is laid out for future development, the tenant situation being considered only temporary or incidental. In other cases, the space rented is provided to help carry the cost of the land, or to increase the size of the building, thereby adding to the prestige of the owner and giving what might be called advertising value to the project. In these cases the owner is enjoying the full utility only of the space occupied by himself, and is dependent on current rental conditions for the carrying charges on the balance of the building. It would seem that some consideration should be given to rental value in these cases, so that the replacement factor should be weighted somewhere between 50 and 100 per cent, and the commercial value factor make up the difference between 50 per cent and zero. No hard and fast rule can be given for the

division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above!"

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

As to the origin of this memorandum which, as was said previously, is not a legally binding document, I beg leave to refer to the evidence of Mr. Hulse, Volume 2, page 244, line 10: "Since the time I was placed in charge of the Department in 1934, I have carried out such reforms in the department as I found necessary, and as far as property valuations are concerned such reforms as would ensure that valuations were made according to well defined principles as to ensure a uniform basis of valuation for all property in general, and thus achieve as a final result, as near as is humanly possible, uniformity of valuations.

"These rules and principles are fully explained in the Montreal Real Estate Manual.

"By Mr. Geoffrion, K.C.: Q. You mean this. (Holding up book)? -- A. Yes.

"It is true, and that is where our system differs from those in many other cities, that the assessor is free to make and is responsible for the valuation figures which are entered on the Roll. But the assessor himself realises that he is better equipped and more qualified to do his work if he is in possession of the rules, principles and methods which apply to his type of work and which are the result of long use and experience and consideration and considered good assessment practice.

"He has something behind him which would take him years of experience to find out and something on which to solve the problems he meets with and on which to arrive at decisions in his work without relying entirely on his own opinions and ideas.

"Therefore, in view of the long experience which I have had in this class of work I shall endeavour to explain the particular functions which attach to the position of an assessor in the exercise of his duties in so far as they differ from the work of an individual appraiser". I think we can then proceed to page 245, because Mr. Hulse then proceeds to make a distinction between the function of assessor ----

LORD ASQUITH: Was Mr. Geoffrion's objection upheld or not?

MR. BEAULIEU: It was purely and simply mentioning; it was not an

objection, because he said: Are you referring to the book I have in my hand? and the book he had in his hand was the manual and not the memorandum.

LORD ASQUITH: I thought he was saying this was a question of law and not a question which can be decided by putting in a memorandum.

LORD PORTER: I thought the answer was over the page that the Court did not rule upon it at all, but took it with reserve.

MR. BEAULIEU: "Mr. Geoffrion objects to the testimony of the witness as being a question of law". That is at the end of the page and then I proceed to page 245: "The Court. Under reserve. The Witness. First and foremost, he is not a real estate agent nor real estate appraiser as commonly implied by those designations. He does not work on a commission. He is a permanent municipal official on an annual salary and has no personal monetary interest resulting from reduced or increased valuations.

"The real estate agent in fixing his price is not subject to any jurisprudence in that respect.

"What then, are the functions of the municipal assessor and what does he do? He is determining the value of each and every immovable according to a well defined basis to ensure complete equality of valuation and thereby ensure complete equality for all before the impost. But always subject to the stipulation in the law that he must determine the real value for each and every immovable.

"His work is subject to much jurisprudence, and some of which may reasonably be interpreted as protecting the assessor in the uniform work he is endeavouring to accomplish.

"Now in contrast, the work of an individual appraiser", we are not concerned with that.

LORD PORTER: An individual appraiser means a person employed by an individual to appraise the value of his property as opposed to the public official who is deciding what value is to be placed upon it.

MR. BEAULIEU: At page 246, line 23, he says: "In addition to the rules and tables given in the manual and to solve some of the problems in the application of the various principles involved, the assessors work out and decide the details to put these principles in force, and have done so as regards: (1) fixing the rates of capitalisation for the greatest bulk of the properties which are of residential class; (2) the variance to be given to rates according to the age of the building; (3) fixing the percentage of the revenue to be allowed in the case of service building such as for heating, janitor service, refrigerators, stoves and where water tax is included in the rental paid by the tenant; (4) fixing the weight to be given the different factors as regards residential properties; (5) fixing the weight to be given the different factors as regards large properties such as office buildings, large apartment houses, departmental stores, and hotels and other properties.

"It is the last rule which I think now very opportune to explain. As regards the weight which should be given to different factors in the case of residential properties, very little difficulties are experienced in that class of property for the reason that they are easily comparable. It was, however, necessary to make a more detailed study of the matter as regards large properties such as office buildings, apartment houses, departmental stores and so forth, as the style and special design of the building seemed to differ in almost every case. It was about the month of August, 1940" -- that is the origin of the memorandum -- "about fifteen months before we had to deposit the new roll, that after having fixed certain rules and tables for residential properties the question of the weight to be given the different factors in the case of large buildings came under discussion, and eventually the following decision was arrived at: So that the quality and class of the building itself would find some reflection in the final valuation, it was decided by the assessors that the minimum weight to be given the net replacement value factor would in no case be less than 50 per cent. Commencing with this, the principle adopted by the assessors is as follows, and covered by the memorandum which I now quote." Then comes the memorandum.

LORD PORTER: Is this the same memorandum?

MR. BEAULIEU: Yes, my Lord; the one that I have read previously.

May I now point out to your Lordships that the material facts are not in dispute. They are covered by the admissions of the parties, which are to be found in Volume I of the record, at page VII, under the heading "Joint Admission of the Parties". It says: "The parties hereto by the undersigned their respective attorneys, under express reserve of the right to object to the relevancy thereof at the hearing of this case, hereby admit the following facts: A: Questions asked by the respondent" -- it was in answer to these questions that we have this part of the admission -- "(1). The cost of the complainant's head office building up to 30th April, 1941, including all capital expenditures to that date, but excluding the cost of land, was 20,627,873 dollars 92 cents". These are exclusive of the land. When I mentioned the figure of 22,000,000 dollars I was including the land; everything was included. "The foregoing figure includes architectural and engineering fees, but no taxes or interest during construction. (2)(a) Excavation for the construction of the complainant's original head office building, situated at the corner of Metcalfe and Dorchester Streets, was commenced in the month of June, 1913, and the said building was completed and occupied in the months of January, February and March, 1918. (b) Excavation for the construction of the first extension of the said

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head office building, carrying the same to Mansfield Street, was commenced in the summer of 1922 and the said first extension was completed and occupied in December, 1925.

(c) Excavation for the construction of the second extension of the said head office building was commenced in May, 1927, and the structural portion thereof was completed by December, 1930. Partial occupation commenced in 1929 and certain of the upper floors have been completed from time to time since."

"(3). The amounts spent per year on the construction of the said head office building, making up the total of 20,627,873 dollars 92 cents (including costs of demolition, removal, reconstruction and making good occasioned by the aforesaid extensions) are as shown in the statement hereto annexed as schedule A to form part hereof. (4) The amount spent on construction of the said head office building from 30th April to 1st December, 1941, was 58,713 dollars 70 cents."

LORD PORTER: Do we add the 58,000 dollars to the 20,000,000?

MR. BEAULIEU: Yes; that has to be added. It was not added by the assessor because he did not know of it. The assessor made his visit before that amount was spent. The City was informed of it later on, it being explained that after the visit of the assessor up to the 1st December, 1941, that that additional amount had been spent. That is why the board took into account that additional amount.

The admission continues: "The cost of completing the power house for the said head office building and of the equipment for the said power house exclusive of the cost of land was 709,257 dollars 14 cents. The foregoing figure includes architectural and engineering fees, but no taxes or interest during construction. (6) Excavation for the construction of the said power house was commenced in November, 1928, boilers were first inspected and steam used in October, 1929, and the structure was completed in March, 1930. (7) The only addition or modification to the power house, plant and equipment since completion was a ladder added to the stack in the year 1938 at a cost of 154 dollars."

LORD PORTER: So far as we are concerned, may we neglect paragraphs 5, 6 and 7, because there is no dispute about the matter? Is that right?

MR. BEAULIEU: There is no dispute now, as far as the power house is concerned.

LORD PORTER: Then we will neglect paragraphs 5, 6 and 7.

MR. BEAULIEU: Yes, my Lord. We now come to the floor area, which concerns the rental value. "(8). The floor area exclusive of corridors for each floor of the said head office building including the basements is as shown in the statement annexed hereto as Schedule B to form part hereof. (9). The floor area on each floor occupied on 1st December, 1941, by the complainant company and by tenants was as shown in the said Schedule B. (10). The unoccupied floor area of finished rentable space and of unfinished space for each floor including basements as at 1st December, 1941, was as shown in the said statement Schedule B. (11) The complainant company's tenants on 1st December, 1941, the floor area occupied by each tenant on each floor including the basements and the annual rental in respect thereof were as shown on the statement hereto annexed as Schedule C to form part hereof. (12). The gross rental receipts for each tenant and each floor including the basements for the year 1941, to wit, the complainant company's last

financial year, were as shown in the said Schedule C. (13). Concessions or free space in the said head office building together with the occupants concerned and the area occupied are shown in the statement annexed hereto as Schedule D to form part hereof. (14). The yearly rental actually charged to the complainant company for the years 1937 to 1941 inclusive, as appearing in the books of the company, in the company's annual statements and in statements supplied to the Superintendent of Insurance for the Dominion of Canada for the floor space occupied by it per floor, including the basements and the totals thereof, were as shown in the statement annexed hereto as Schedule E to form part hereof."

LORD PORTER: I am not sure that I follow. How did it come about that the complainant company was paying rent?

MR. BEAULIEU: That is for the part of the building occupied by the company itself. It amounts to approximately 60 per cent of the whole area. The company charged to itself in its books a rental.

LORD PORTER: It is a book-keeping account to show the proportion.

MR. BEAULIEU: Purely and simply. When it came to determine the commercial value, account was taken not only of the rent received but of the rental charged by the company to itself in its books.

LORD PORTER: That is really a book-keeping account to show the proportion which the company attributed to the rental value of its own space?

MR. BEAULIEU: Yes, my Lord; and, of course, the assessor adopted its figures. It continues: "(15). The cubic content of the said head office building and of the said power house (exclusive of tunnel under Mansfield Street) is 21,931,761 cubic feet and 549,396 cubic feet respectively. (16). The amounts shown under the respective headings of book value and market value in the company's annual general statements and in the company's returns to the Superintendent of Insurance for the Dominion of Canada for the years 1914 to 1941 inclusive were as set forth in the statement hereto annexed as Schedule F to form part hereof."

We come now to the Questions asked by the Complainant. "(15). The date of erection and cubic content of the buildings enumerated in the statement annexed hereto as Schedule G to form part hereof are as shown in the said statement."

LORD PORTER: Is that an attempt to get the link comparatively?

MR. BEAULIEU: I understand that there you have a definite admission as to these dates. "The date of erection and cubic content of the buildings enumerated in the statement annexed hereto ... are as shown in the said statement."

LORD PORTER: That is an admission merely that you are right in what you said?

MR. BEAULIEU: That is right, my Lord; the figures are right. "(18). The annual assessed values and assessed rental values, as shown in the records of the City of Montreal, of the buildings enumerated in the statement annexed hereto as Schedule H to form part hereof for the years therein set out are shown in the said statement. (19). The percentage of owner

occupancy to total rentable space as at the 1st December, 1941, for the buildings enumerated in the statement annexed hereto as Schedule I to form part thereof were as shown in the said statement."

Then, of course, all the statements are attached. We will probably have to refer to them later, but there is no conflict about these facts.

My Lords, there is one last admission to which I would like to call your attention. It is as to the legality of the roll. There was possibly some irregularity in the roll, but the parties were anxious to have a decision upon the merits themselves, and, in order to avoid any technicalities, we find at Volume 2, page 376, an admission, which was dictated by Mr. Geoffrion, representing the respondent.

LORD PORTER: It is an admission of the validity of the roll. Is that right?

MR. BEAULIEU: Yes, my Lord. On page 376, line 19, it is said: "On this subject the President ordered the following admission entered on the record, which was dictated by Mr. Geoffrion, K.C., and agreed to by the attorneys for the City of Montreal: 'It is agreed between the parties that the company (Sun Life Assurance Company of Canada) does not dispute the valuation of lands inserted on the rolls. It is agreed that it will not challenge the legality of, or the procedure in making, the roll, or the jurisdiction of this Board. On the other hand, the City agrees that any evidence that may happen to enter this case on the value of the land shall not be used either to increase the assessment on the land or to offset a diminution, if any, on the value of the buildings'." There were some experts who had given a valuation of the land which was higher than the valuation mentioned in the admission, and the parties wanted to be clear upon that that the evidence would not be considered against the admission.

LORD PORTER: I gather from this that in valuing in the City of Montreal buildings and land are separately valued?

MR. BEAULIEU: Yes, my Lord. The balance of the evidence is expert evidence purely and simply.

May I now come to the judgments which have been rendered in the present case. The first one is a judgment of the Board of Revision and is to be found in Volume V, at page 983-A-1. One comes to page 983 and then after that there is inserted page 983-A-1, because the judgment of the Board of Revision was inserted after the pages were numbered. At line 33 it says: "The subject of this contestation is the assessment of the head office building of the Sun Life Assurance Company of Canada, in Montreal, located on Metcalfe Street at the corner of Dorchester. It is 27 stories high above ground, with three basements. To use the same expression as one of the expert witnesses for the complainant, it 'is one of the largest office buildings in the world'." That comes from Mr. Lobley's report. "The erection of the property was commenced in June, 1913, and continued until December, 1930. It was constructed in three units. An original building was first put up and occupied in March, 1918; a first extension was commenced in 1922 and occupied in December, 1925; a second extension was commenced in 1927 and partially occupied by December, 1930.

"The contestation also affects a secondary building called the power house or heating plant on Mansfield Street,

which was commenced in November, 1928, and completed in March, 1930. The cubic contents of the two buildings are 22,481,157 cubic feet. In a foreword by the architects, Messrs. Darling and Pearsons of Toronto to the description contained in the February, 1931, number of the Engineering Journal, we find that 'The complete building, including the old, had to be designed to accommodate a population of approximately 10,000 persons'.

"On the valuation roll deposited the 1st December, 1941, for the three following fiscal years, the main building is assessed with the land at 13,755,500 dollars, namely: land 730,600 dollars, building 13,024,900 dollars; the heating plant is assessed at 520,500 dollars; land 74,100 dollars, building 446,400 dollars: total assessment, 14,276,000 dollars. The valuation placed on the land is not in dispute. The complainant contends for a valuation of the main building of 8,330,600, and on the boiler house or heating plant of 102,600, or a combined total of 8,433,200 dollars. The City of Montreal, on the contrary, through its attorneys, is asking us to increase the assessment of the main property of 15,130,600 dollars and to maintain the assessment of the power house at 520,500 dollars. These cases are before this Board in virtue of Article 382 of the Charter of the City of Montreal, which article, at paragraph 18, reads as follows".

LORD PORTER: We have had this, so that we need not repeat it. I think we have really had read down to line 13 on the following page, where we get the actual value of immoveables, and there is some contrast between the French and the English version.

MR. BEAULIEU: Yes, my Lord. "The French version reads 'La valeur réelle' and it always uses this same expression of 'valeur réelle' in all the other articles, referring either to valuations or to expropriations; the English text of the Charter uses indifferently the expressions 'real value'. This difference is immaterial, however, the parties having admitted that the words 'valeur réelle' and 'actual value' are synonymous.

"In Montreal, the tremendous work of assessing all immoveables is accomplished by the official assessors who are appointed by the Executive Committee on the recommendation of the Chief Assessor and who constitute with him the Assessors Department. This work is divided amongst the assessors by the Chief Assessor, under whose exclusive jurisdiction they are as to the fulfilment of their duties, their working hours and other internal administration rules which the Chief Assessor shall deem fit to impose. According to their oath before taking office, the assessors bind themselves to 'faithfully, impartially, honestly and diligently perform the duties of an assessor according to law'.

"In the accomplishment of their work of assessing these immoveables, the assessors have to be completely independent; they decide the amounts they put on the valuation roll and no one, not even the Chief Assessor, is empowered to dictate to them or even influence them in the full discretion they have of valuing the immoveables according to their personal judgment. They are fulfilling quasi-judicial duties and their decisions enjoy the benefit of a legal presumption. The law is clear and the jurisprudence is firmly established. We cannot make a better summary of the decisions on this point than by quoting the following passage of the Real Estate Valuation Manual: 'In brief, it is to be remembered that the municipal assessor, in the exercise of his duties, fulfils almost judicial functions: he is not to be influenced by nor to receive instructions from the municipal council, or from any other person or body. He must personally execute his duties with the fullest

independence, to the best of his judgment and according to his conscience." Various authorities are then referred to. "The law further allows of appeal to certain courts which it designates with fixed delays and in conformity with a specified procedure in cases of illegality or erroneous valuation. The courts should then intervene with prudence: they have not 'to judge the competency of the assessors'; they must not 'substitute their personal opinion to that of the assessors ... whose valuation is presumed to be correct and reasonable so long as the parties concerned have not established "a real injustice or an important deviation", or that "it is so erroneous that an honest and competent man could not have made it" and that "a substantial injustice has been committed".' Then there is a list of authorities.

The judgment of the Board of Revision continues: "Previous to the amendments of the 29th April, 1941, (5 George VI, Chapter 73, section 33) the valuation roll had to be made every year. The roll deposited the 1st of December, 1941, was the first one under the new law and it was also the first valuation roll which was made and deposited since the one of December, 1937. The reason of such a solution of continuity is to be found in 2 George VI, Chapter 105, section 11, paragraph 7, and in 3 George VI, Chapter 104, section 11, paragraph 7, and in section 13, paragraph 31. In virtue of these statutes, the valuation rolls were stabilised (pegged) firstly for the fiscal year 1939-40 and subsequently for the years 1940-41 and 1941-42. By the statute stipulating this last extension of the valuation roll of December, 1937, it was also enacted (3 George VI, Article 13) that: 'Notwithstanding any law to the contrary and in order to permit to the Board of Revision to proceed with the general and complete revaluation of the immoveable property, no decision upon the complaints relative to the real estate valuation made before this Board or on the revaluation of the immoveables shall be rendered by this Board before the 1st May, 1941.'

"This was in April, 1939. The valuation roll remained unchanged until December, 1941, so that the figures appearing on this roll of December, 1941, are new assessments resulting from the general and complete revaluation made by the assessors following the orders issued by the Board of Revision under the authority of the amendments above referred to. Whatever may be the discrepancies between the assessments which appear on the roll of December, 1941, and the assessments on the roll for the preceding years, it is not correct to contend that such discrepancies are increases or decreases in the assessments. They are simply new assessments. A valuation roll does not constitute a revision or re-vamping of the preceding one which is in force at that moment (the new roll being deposited for the incoming fiscal year), but it is a completely new roll. When it begins to be used as a basis for the taxation of the next fiscal period, the preceding roll will be no longer in existence.

"Now the words 'valeur réelle', 'actual value', of article 375, paragraph 3, of the Charter of the City of Montreal are not defined, their interpretation being left to the discretion of the assessors in each particular case. Lawyers and experts in real estate have found here a field wide open to their explorations from both a theoretical and a practical standpoint. The coupling of the word 'real' with the word 'value' indicates that real value is a fact, not a hypothesis. Because this conception of real value is overlooked or ignored, the means, the elements to determine the said real value are

often taken for the value itself. Such elements are unlimited in number. They vary ad infinitum as the cases. There are no fixed rules to determine in what proportion every element must be taken into account and what importance should be given to any element in particular. The same element may have more importance in one case than in another. The law imposes on the assessor the duty of finding the real value of an immovable and of inscribing it on the roll, but does not in any way put any limit to the assessor's discretion in considering all the elements he thinks it advisable to consider in exercising his judgment and arriving at a decision. The enquete was started with the filing in the record of a document called 'Joint admission of the parties', from which were transcribed the following paragraphs" ----

LORD PORTER: You need not worry about this, because that is what we have read. I think you can go to page 983-A-8, line 32.

MR. BEAULIEU: Yes, my Lord. It says: "The first witness was Mr. Edward J. Lynch, City Assessor. Examined by Aime Geoffrion K.C., for the complainant, Mr. Lynch declared that he is a partner of the assessor of St. George's Ward, Mr. Vernot, and that he is not in a position to speak of the new assessment of the Sun Life property. The second witness was the City Assessor who made these assessments, Mr. George E. Vernot. He became assessor for St. George's Ward in September, 1941. He was previously assessor for other wards and in September, 1941, had to finish his own wards and continue on in St. George where his predecessor had left off. Mr. Vernot admits that he did not visit the property in the capacity of assessor before making this assessment, but says that when he was with the Bell Telephone he 'was in between jobs and helped with Mr. Cameron, who was superintendent of the construction' and that he spent two months on it. 'It must have been the spring - February or March, 1928'. He also 'visited it (the building) many times after to see Mr. Cameron and also with the Engineering Institute of Canada'. He made his valuation 'not only from a knowledge of the building; from all available information we had in the office'.

"A complete explanation of the method followed by Mr. Vernot in valuing the main property is contained in Exhibit D.2, which speaks for itself." Then there is a recital of D.2. "Sun Life Head Office Building - Assessor's notes. Total cost as reported by the company as at April 30th, 1941, 22,377,769 dollars 26 cents, Less Power house building and equipment 709,257 dollars 14 cents; land for head office and power house 1,040,638 dollars 20 cents; cost of sidewalk 70,335 dollars; cost of temporary partitions during construction 233,713 dollars 38 cents; cost of parts demolished to connect up to new building 1,215,450 dollars". The total deduction is 3,269,393 dollars 72 cents. Then there is: "Reported cost of head office building, without land 19,108,375 dollars, 54 cents. Cost" -- and he repeats it. "To adjust to 1941 figure, 1927 to 1930 most money spent", and he goes on to establish his index cost of these four years, which were the highest years of index cost for a long period. The 1927 index cost was 113.6; 1928, 115.9; 1929, 120.3; and 1930, 117.1. That forms a total of 466.9, which is divided by 4, giving 116.7. The 1941 figure is 109, and the difference is 7.7. On account of that he made a further deduction of 1,471,344 dollars.

LORD PORTER: He deducted 7.7 per cent and that is 1,471,344 dollars.

MR. BEAULIEU: Yes; that is one of the points in dispute.

LORD REID: Is that in dispute?

MR. BEAULIEU: Yes, my Lord. We contend that, first of all, the building was not erected in 1927 to 1930, but that it was erected from 1913 to 1930. We made a new index cost for every year, because we had been informed at the time by the company itself of the sums of money as to every year, which information, of course, Mr. Vernot did not have. He took as granted that all the structure, or the greatest part of it, had been erected in these four years, which was not the fact. Basing himself on that information or belief, he established his index cost at 7.7 per cent. The Board of Revision changed that. That is one of the points in dispute.

LORD PORTER: I am not sure that I follow what "index cost" means there. Does it mean that the amount which would have been spent was less?

MR. BEAULIEU: It is the average index cost of the year. First of all, they took the actual cost as admitted; then they tried to discover what was the index cost in 1941, the time of making the roll. They have tried to adjust the index cost ----

LORD PORTER: Let me see if I can clear it up by asking this. I may not have followed it completely. Does that mean this? If you were considering this building in 1941, you would find that it was cheaper than it was in the average of 1927, 1928, 1929 and 1930, and, therefore, you would deduct 7.7 per cent? Is that right?

MR. BEAULIEU: Yes, my Lord. It was their purpose of adjusting the average cost to the cost of 1941. If the building had been erected in 1941, what would it have cost? Mr. Vernot said that it would have cost 7.7 per cent.

LORD ASQUITH: Is 1941 taken as 100?

MR. BEAULIEU: No, my Lord; 1941 is 109. 100 is 1936.

LORD ASQUITH: What is the datum year?

MR. BEAULIEU: 100 is 1936. The assessor had adopted for the year 1941, 109; and the 109 index cost is the index cost established from ~~this~~ the last six months of 1938 and the first six months of 1939, because they have to have an index cost figure when they begin to do their work; but there is no doubt -- I do not think it is contested -- that by giving to the respondent the benefit of 109 we were giving a real benefit to the respondent, because it was actually lower than that in 1941.

LORD PORTER: You are not accepting that ---- ?

MR. BEAULIEU: The index cost 109 was adopted by referring to 1939-40.

LORD PORTER: What I really wanted to find out was: which of the elements do you say was wrong in this calculation?

MR. BEAULIEU: The date of construction was wrong as taken by Mr. Vernot.

LORD PORTER: What ought to have been taken?

MR. BEAULIEU: He ought to have taken every year during the construction, and the amount spent during every year. That is what the Board did. Of course, Mr. Vernot did not have this information, so that he took it for granted that the largest

part of the building was erected in 1927 to 1930 and he considered these four years, although they were exceptional years, as far as the index cost -----

LORD ASQUITH: It actually started being built as far back as 1913?

MR. BEAULIEU: Yes, my Lord; it started in 1913 and went on to 1930. According to the admission of the respondent, we now have the exact amount spent every year from 1913. The Board of Revision took every amount spent every year and took what was the cost during that year ----

LORD PORTER: They went on actual figures and made no calculation; they took the actual figures and said: "That is what it cost; therefore, we do not have to make a calculation as to what it would have cost in 1941".

MR. BEAULIEU: I do not think I have explained myself correctly. They did try to find a difference between the actual cost in 1913, for instance, and the amount that it would have cost in 1941. They discovered that during that long period in some years the actual cost was lower than it would have cost in 1941; sometimes they discovered the contrary and that it would have been higher. But they adjusted the actual cost of every year to the index cost of 1941 and they made a calculation year by year instead of making an average.

LORD OAKSEY: What this witness has done is to apply the actual amounts spent in 1927, 1928, 1929 and 1930 to the index figures for those years, but not to the previous years from 1913. Is that your objection?

MR. BEAULIEU: That is my objection, because he did not know, as a matter of fact, in what year the building was erected and he did not know what amount had been spent over the years.

LORD PORTER: Then he gives his deductions for the building erected in three units.

MR. BEAULIEU: Yes; it is 16,755,180 dollars. On the next page he takes into account the depreciation. First there is the assessed value of the ~~xxx~~ first two corner buildings, less allowance for portions demolished. As to the depreciation, he considered first of all as a group the first two corner buildings. There were three stages. From that amount he made a deduction ~~xxxxxx~~ for the depreciation and then he made a further allowance for the portion which was demolished. Then he adopted 25 per cent depreciation for sixteen years, deducted that, and came to the figure of 15,794,180 dollars, less about 15 years depreciation, say 18 per cent, which is another depreciation of 2,840,952 dollars. Adding the two previous deductions, he came to the net cost in 1941 of the building after depreciation - 13,673,978 dollars. The value of the land, which is not in dispute, was added to that, and his figure was 14,404,578 dollars as the replacement cost.

He then took into consideration the other angle, the commercial value; that is to say, the value resulting from the capitalisation of the income. Your Lordships will remember that this building falls into the third category, in which a building is partly occupied by the owner and partly rented, so that Mr. Vernot thought that he had to take into account in his actual value not only the production cost less depreciation, but also, in a certain proportion, the commercial value; that is to say, the value resulting from the capitalisation of the rentals. He proceeded to do that in the following paragraph. On page 983-A-10, at line 23, he says: "The total revenue of the property is 1,187,225 dollars" -- that includes

the rent as actually received and the rental charged by the company to itself in its books -- "which calculated on a 15 per cent capitalisation rate gives an economic value of 7,915,000 dollars." Taking these two elements of value, he proceeded to spend them in the proportion of 90 per cent for the replacement value and 10 per cent for the economic value. Now he comes to the actual value. The valuation replacement of 90 per cent on 14,000,000 amounts to 12,964,120 dollars, and the revenue of 10 per cent of the capitalised value of 7,915,000 dollars is 791,500. The total is 13,755,620, "say 13,755,500, less land 730,600, and so the building is now correct at its actual value of 13,024,900 dollars.

LORD ASQUITH: Why does he blend them in that proportion?

LORD PORTER: He gives an explanation in the next paragraph.

MR. BEAULIEU: It was in order to comply with the memorandum.

LORD PORTER: He gives a reason at the bottom of the page. We had better find out what he says.

LORD REID: Before you leave this, is it agreed that in fixing the replacement value it is proper to take depreciation into account?

MR. BEAULIEU: I do not think that anybody denies that. The question is what replacement value ought to be taken into account.

LORD REID: Yes; I understand that; but it is a proper thing to take into account?

MR. BEAULIEU: Yes; it was not disputed before the other Courts. As to the amount in dispute, some say that it is too heavy and others say that it is not high enough; but the principle of taking replacement cost into account is not disputed.

The judgment continues: "When being pressed by the complainant's attorneys on the combination of 'replacement' at 90 per cent and 'revenue' at 10 per cent, here is how Mr. Vernot explains his system. 'We decided that on the large buildings in our wards that were rented, totally rented, we took into consideration 50 per cent commercial value and 50 per cent replacement value; that is, where the building was built solely for commercial purposes and occupied solely for commercial purposes by tenants. Those that were occupied by owners we would take at 100 per cent replacement cost and nothing for commercial value. So the Sun Life happened to fall between these two categories. The total floor space occupied by the Sun Life and the tenants is given by their list and came out to be 60 per cent and 40 per cent. (Q). You take that, anyway. (A). So, if it was in a commercial building where there is no owner we allow 50 per cent replacement and 50 per cent commercial. In a place where the owner is in the building, that would mean 20 per cent commercial and 80 per cent replacement. But that would be if the owner was mixed up among the tenants in the more or less poorer parts of the building as well as the better parts of the building as if the building was completely divided down the middle. In this particular case, the Sun Life occupied the best part of the building and I thought 10 per cent was fair'. He means 10 per cent in addition to the 30 per cent.

"On page 35 of his deposition, Mr. Vernot gives further explanations: 'The assessors at a meeting, (I think it was on the instructions of the Board of Revision) decided that commercial values should be taken into consideration and at the end of our meeting we decided that in the tenant occupied

building like flats and apartments, the commercial value should be taken as 75 per cent and the replacement value as 25 per cent, and it was the majority opinion that the capitalisation figure should not be used as one figure in estimating valuation of a property unless the result of its use given by itself is a fair indication of the real value of the property; also it is evident that it cannot be used in proprietor occupied properties or stores in high priced retail districts.' When examined later on by the respondent's attorney, Mr. Vernot on page 5 of his deposition says: 'I must say that in the mass of data received for the building, the man who handled it, he also made a preliminary assessment on it and he put the figure of 90 and 10, 90 for replacement and 10 for commercial. After studying it, I thought it was a fair value. (Q). It is a question of opinion'".

LORD PORTER: Before you go on, would you mind telling me, if you can, who is "the man who handled it", who he represented, and what the value of his evidence is?

MR. BEAULIEU: I think it was the Chief of the Statistical Department of the City of Montreal.

LORD PORTER: I think that answers my question - a Montreal representative.

MR. BEAULIEU: "(Mr. Hansard): You said 'the man'. Who is that man? (A). Mr. Munn. (The President): Can you give us some more particulars as to the proportion between the 90 and 10? Do you conclude that 90 per cent must be given to replacement cost and 10 per cent to the commercial? (A). Yes. (Q). Why not 15 and 85, or 20 and 80 per cent? You could give me some explanations? (A). I think I will have to corroborate what Mr. Hulse said about the principles and methods agreed upon by the assessors, and in commercial buildings, first we agreed on 50 per cent replacement for strict commercial buildings, and 50 per cent commercial value. When I say 'strictly commercial', I mean a building designed and built for revenue purposes only. When you come into the owner occupied building and renting part of it, we would have to balance the part of the building assessed for commercial purposes and the part assessed as owner occupied. In the case of the Sun Life it was 40 per cent tenant occupied in 1941 and 60 per cent owner occupied. The occupied space. So that would mean that the 50 per cent for commercial would be divided into 20 and 60. There would be another 30 per cent replacement cost added on to the 50, to make it 80 and 20."

LORD PORTER: It does not make it very plain when he talks about 20 and 60. He means 20 and 60 percent, which, in the case of the 50 per cent you are dealing with, would mean 10 and 30.

MR. BEAULIEU: His method was to divide, for the purpose of blending the two elements of value, into two units, one unit, being occupied by the owner, 50 per cent; that is to say, for that part the reproduction cost was considered as 100 per cent, but 100 per cent of only half of the building is 50 per cent; and he is proceeding to say "for the other part".

LORD PORTER: Yes; that is what I thought. You divide that into whatever it may be. He says 60 per cent of 50 per cent, which again is 30 per cent, and I add that 30 per cent to the first 50 per cent.

LORD PORTER: And 20 per cent of the 50 per cent is 10 per cent.

MR. BEAULIEU: Yes, my Lord. Then he said that it normally would have been 80 per cent against 20 per cent.

LORD PORTER: But, as the Sun Life occupied the best part of the building, he thought it fair to make it 10 per cent.

LORD ASQUITH: Why 20 and 60 per cent? That is what I do not follow. I can understand 40 and 60 per cent, but why 20 and 60 per cent?

MR. BEAULIEU: As far as the occupied space is concerned, I do not think the exact figure is given. I understand that the exact figure is 48 ----

LORD ASQUITH: I can quite see that 20 per cent of 50 is 10, but why apply the 20 per cent at all? That is what puzzles me. Where does it come from?

MR. BEAULIEU: First of all, when he comes to find upon the basis of commercial value, he allows for that part, the 50 per cent, for a replacement value. That is the first 50 per cent. Then he says: "I must give some value to the rental value". Then he takes into consideration the percentage of building occupied by each.

LORD ASQUITH: It would be 40 and 60 per cent.

MR. BEAULIEU: Yes; he has this 40 and 60 per cent. He says: "60 per cent of half of the other"; that is 50 per cent of the building. 50 per cent of 60 per cent makes 30 per cent, and he adds that 30 per cent. He should have stopped there, and he would have stopped there if the Sun Life had not occupied the best portion of the building. Then, for the fact that the Sun Life was occupying the best portion of the building, he added an arbitrary 10 per cent. He was not concerned with the space occupied when he added that. He said that he did not consider that Sun Life should like another, but that the Sun Life should pay a little more, because they were occupying the best part; so that the 30 per cent is 50 per cent of 60 per cent.

LORD PORTER: What he did at the beginning was to add 30 and 50 per cent. He took it ultimately as 40 and 10 per cent. Then we can go on to line 41.

MR. BEAULIEU: Yes, my Lord. "As the revenues in this building were based on revenues of much cheaper buildings -- the revenue of this building received no competition -- I consider that half of the commercial value of 20 per cent, making it 10 per cent, would pay for the amenities and benefits received by the owner of the building. As to his assessment of the power house or heating plant, Mr. Vernot was not examined in the examination in chief. In his evidence as the City's witness, he filed a letter received from the Sun Life showing the various main disbursements amounting to 709,257 dollars 14 cents. The letter is filed as D.53.

"The next three witnesses testified, on behalf of the complainant, on the revenue approach. Colonel Owen Lobley says that in his opinion the valuation of the land and the building and the heating plant is 7,250,000 dollars. That is the actual value which he defines as follows on page 2 of his report, filed as P.5. 'Value, for the purpose of this evidence, pertains to actual value, that is the price at which an owner is willing to sell, but does not have to sell, to a buyer who is willing to buy but does not have to buy.' He then takes a gross rental income of 1,109,000 dollars and deducts 430,000 dollars for operating expenses, leaving a gross operating profit or net income of 679,000. After that he proceeds to set aside two items of 50,000 dollars each, namely, 50,000 dollars as reserve for major items or replacement and renewal, and 50,000 dollars as reserve for obsolescence and for extraordinary tenants'

alterations. The balance for net operating return before providing for municipal real estate taxes is 579,000 dollars. Then he takes off the municipal taxes on a basis of a municipal valuation of 7,250,000 dollars; that is 217,000 dollars, obtaining a net operating return of 362,000, which he capitalises at 5 per cent, thus obtaining a commercial value of 7,250,000 which in his opinion is the actual value of the whole property.

"Being cross-examined by Counsel for the City, Mr. Lobley says that he did not take into account the replacement value of the building. 'Not at all'. He did not consider it. 'The depreciated replacement cost merely constitutes the ceiling over which a value cannot normally go and because I know that ceiling is higher than the income value, I did not bother with it.' Finally to the following question put to him by the President: 'With your theory a valuation of such an immoveable as the Sun Life cannot be arrived at without imagining a change of proprietor?', he answers: "Definitely, Sir. And I am capable of imagining it'."

(Adjourned for a short time).

LORD PORTER: You had reached page 983-A-13, I think.

MR BEAULIEU: Yes, my Lord.

"Mr. Alan C. Simpson, the next witness for the complainant, is also of opinion that the only proper way to determine the 'real' or 'actual' value of this property, 'is to determine the price that it would bring in the full and open market'. He contends that 'the original cost obviously has no bearing on the value of an old property and the depreciated replacement cost is only pertinent to the extent that it tends to set an upper limit of market value in the sense that, assuming the revenue producing possibilities were sufficient to warrant it, a prospective purchaser, rather than exceed this upper limit, would buy another site and reproduce a similar building as a source of revenue. The case of the Sun Life is a striking illustration of this. It is a large office building of the monumental type, originally built for exclusive use at the head office of a large Company, and as such, with many refinements and embellishments which, while reflected in the rentals obtainable for space in the building to the extent that they add to the value of the 'address', do not add to these rentals an amount commensurate with the cost of producing or replacing them etc.' (Exhibit P-10, pages 1 and 2).

He has based the rentals for the space occupied by the Company on the rentals paid by tenants and arrives to a potential gross revenue with 100 per cent. occupancy of \$1,260,545. He deducts 10 per cent. for vacancies, \$863,560 for operating expenses and municipal taxes, and a depreciation of $1\frac{1}{2}$ per cent. on assessed building value, thus obtaining a net potential revenue of \$68,860. Such a return would be absurd, he says, on the City's valuation, because it would represent 0.48 per cent. net while it would represent a normal net income of 5 per cent. on an investment of \$7,500,000. He concludes that the market value of the property at the time of the assessment was not more than \$7,500,000.

Commenting on Mr. Vernot's, Mr. Simpson says: 'I don't think I would have followed the same methods. I realize that Mr. Vernot, like the other assessors, is confronted with a great many valuations and he cannot go through every building and examine it as carefully as a man making an investigation'. (Of: Mr. Simpson's deposition, page 130).

Mr. Arthur Surveyer, the next witness, considered only the investment standpoint. If a purchaser were to purchase the Sun Life property at the real value of \$14,276,000 set upon by the City's assessors, with an operating income of \$700,000 he would get a return of 0.68 per cent. on his investment. On a purchase price of \$7,000,000 the return of the total money invested would vary between 4.4 per cent. and 5.9 per cent. depending on the occupancy.

So much for the point of view of revenue exclusively.

Two important experts, Messrs. J.J. Perrault and G. Archambault, have filed reports and given lengthy evidence on the subject of the replacement cost approach.

Mr. Jean Julien Perrault has valued the Sun Life property by using the cube method. He obtained from representatives of the Company all the cube data and the percentage of rentable area in order to establish the real value of this property, but as a revenue producing building. Mr. Perrault subdivided the building in three units: Unit 'A' comprising that part situated at

the corner of Metcalfe and Dorchester constructed from May 1914 to January 1918; Unit 'B' comprising that part situated at the corner of Mansfield and Dorchester constructed from 1923 to December 1925; Unit 'C' the balance of the structure constructed from 1927 to late 1930 and small sections terminated in August 1931. The heating plant is situated across Mansfield Street; the garage has not been included. Mr. Perrault is the only witness who referred to a garage on top of the heating plant, which is also mentioned in the Technical Service inspection card.

For the valuation of the Sun Life building, including the heating plant, Mr. Perrault has taken 22,484,061 cubic feet at \$0.81, \$18,212,000; he deducted \$250,000 for unfinished floors; granted a reduction of 10 per cent. to reduce the valuation to the 1939 basis; then deducted 23.3 per cent. for depreciation due to planning functional inadaptability and a further depreciation of 21.26 per cent. due to loss of rental, thus arriving at an amount of \$9,763,200 for the two buildings, which was brought down to \$8,202,600 in applying a physical depreciation of 28½ per cent. for 'A', 21 per cent. for 'B' and 14½ per cent. for 'C'.

For the main building, exclusive of heating plant, Mr. Perrault has taken 21,931,761 cubic feet at \$0.80, \$17,545,000; deducted \$250,000 for unfinished floors; 10 per cent. to reduce the valuation to the 1939 basis."

LORD PORTER: What does that mean? What does he mean by "to reduce the valuation to the 1939 basis?"

MR BEAULIEU: I do not know. I am told that it was for the purpose of getting back to the pre-war figures. The other figures were after-war figures, which were abnormal, and he explained in his evidence that that was his purpose, to get at more normal prices.

LORD PORTER: It is the replacement. He reduced by 10 per cent. the cost of building, did he?

MR BEAULIEU: Yes, my Lord.

LORD PORTER: I follow. I interrupted you at line 38.

MR BEAULIEU: It goes on: "23.3 per cent. depreciation due to planning functional inadaptability".

LORD NORMAND: What does that mean?

MR BEAULIEU: Because they considered that this is a purely commercial building and as such there was much space which was lost on account of the amenities and ornaments of the building. So they said: If you consider it as a commercial building, there is functional depreciation besides the physical depreciation, and the two must be added together.

LORD ASQUITH: To what function was it inadaptable?

MR BEAULIEU: It is inadaptable in this sense, my Lord, that it was not erected as a purely commercial building. For instance, the corridors are much too wide. The great hall on the first floor cannot be used as tenant space, so they say. All that is lost and in view of the fact that we are considering the building as a purely revenue producing building we consider that it was erroneously built as a purely commercial building. So here if

it had been built as a commercial building probably all these things were unnecessary, but they first of all take the view which we respectfully submit is erroneous that it is a purely commercial building, and then they say: Because it was not built as a purely commercial building there is functional depreciation because it is not adapted totally and fully to the uses of a commercial building.

LORD REID: You say it has a value over and above its commercial value?

MR BEAULIEU: Yes. We say we must take it as it is. It is first of all and principally a building which was built by the Sun for their own purposes; the Sun are occupying that building, and that must be considered; and the part that is rented we do consider also by taking into account the 40 per cent. of the space rented and by blending the two factors of valuation together, the rental value and the owner's value, as one might call it. ---

LORD OAKSEY: Besides which a commercial market does not consist entirely of applicants of exactly the same nature. There may be people who would want it for somewhat similar purposes to the Sun Life, I suppose -- other Insurance Companies.

MR BEAULIEU: Yes.

LORD PORTER: I do not think anybody took that point in Canada, did they? What they said was: Here is a building which we have to take, of advantage to the Sun Life because of its advertisement value. Nobody said, so far as I know, did they, that you would get somebody other than the Sun who would be likely to take it?

MR BEAULIEU: I think that is practically the substance of the evidence with this qualification that everybody understood that besides the special adaptability for the Sun Life there was undoubtedly a part which could be rented, but it was considered to be rented only temporarily. So the Assessors thought that principally it was an institutional building for the glory of the Sun Life, and not only for its glorification but its particular usefulness; it has been adapted precisely for the use of the Sun Life, with elevators and so forth.

The Judgment continues: "10 per cent. to reduce the valuation to the 1939 basis; 23.3 per cent. depreciation due to planning functional inadaptability and 21.26 per cent. depreciation due to loss of rental, thus arriving at a final amount for the main building alone of \$9,401,000. Then Mr. Perrault proceeds to take off the physical depreciation of 28.5 per cent. and 14.5 per cent., according to the units 'A', 'B' and 'C' thus arriving at a total depreciated value for the main building alone of \$7,894,600. The heating plant, less a physical depreciation of 14.5 per cent. for 11 years, gives a net value of \$308,100, and the grant total for both buildings is \$8,202,700.

At the end of his report, Mr. Perrault says: 'In order to arrive at the real value for taxation purposes, that is to say, the value established in a transaction between a seller who wishes to sell but does not have to do so, and a buyer who wishes to buy but is not obligated to do so, the above valuation of \$8,202,600.00 may be subject to a fluctuation, depending on the net revenue of the property. It is quite evidence that this net revenue is a very important factor in determining the true

real value of this property. The net revenue should be determined after deducting from the gross revenue all operating charges against the property and setting aside an amount to amortize the capital invested in the building, so as to compensate for the physical depreciation of the structure.' (Page 11).

Mr. Gaspard Archambault, Civil Engineer, has also used the cube method and also valued the property as a revenue producing enterprise. He has taken for the main building 22,000,000 cubic feet at \$0.80, \$17,600,000.; has deducted \$464,600. for unfinished parts; has taken a physical depreciation of 15 per cent. \$2,570,310.; has also deducted 5 per cent. for obsolescence \$728,255.; has allowed 18 per cent. for functional depreciation due to low ratio of rentable area \$2,490,630. and 19 per cent. for functional depreciation due to value of renting space below normal \$2,155,779.; then he has on top of that put a special deduction to readjust abnormal 1941 wartime prices to 1939 level \$919,043.; thus arriving at a final replacement cost of the main building of \$8,271,383. For the power house, he has taken 552,000 cubic feet at \$1.00, \$552,000.; has allowed a depreciation of 46.37 per cent. \$265,962., and has deducted 10 per cent. for special wartime prices \$28,604, thus arriving at a net replacement cost for the building of \$257,434. which makes altogether with the replacement cost of the main building, a total of \$8,528,817.

Mr. Archambault also says in the conclusions of his report: 'The buyer should add to the sum of \$8,528 817. a fair price for the land and the total obtained will represent the replacement cost less depreciation value of the property. He should also establish the commercial value of the property. With these two values at hand, a comparison should be made and should the replacement cost less depreciation value of the property prove to be higher than its commercial value, then a downward revision should be made in order to find its real value and what price should be paid for it, as the commercial value is the one to which the willing buyer will attach the most importance, when he contemplates investing his money in this property.' (Report, page 5).

Other witnesses for the complainant were Mr. William MacRossie, Mr. H.J. Nobley, Mr. D.L. McCaulay and Mr. McAuslane. They have given evidence on point of details on which we do not think it useful to make a review in our decision. We simply want to refer 'en passant' to the deposition of Mr. MacRossie. He is real estate broker and appraiser in the United States, and President of the American Institute Real Estate Appraisers. In the course of his remarks, which are of rather general character, he said that he doubted whether the method followed by Mr. Vernot proved that the figure arrived at was the actual reproduction cost at the date the assessment was made. He also doubted if any one would give out a contract to build this building if it was not already built, at a figure thus arrived at. 'Historical cost (says he) is knowledge and it undoubtedly is a guide but it is not usually accurate in reflecting current reproduction cost.'

Mr. MacRossie also mentioned that there are three important factors to arrive at the real values: First, replacement cost; Second, market value; Third, income value. Furthermore he informed us that the rate of capitalization in New York varies from 7 per cent. to 7½ per cent.

The City of Montreal, being in the roll of Defendant in

this case, has offered the testimonies of the following witnesses: Messrs. A.E. Hulse, Chief Assessor, Jos. Houle, architect, J.A.E. Cartier, architect, all three employees of the City, and also the testimonies of Messrs. Victor Fournier, civil engineer, Brian Perry, civil engineer, Harold Mills and G. Desaulniers, real estate experts, B.C. Empey, William Reed and Albert Grimstead. Mr. Geo. Vernet, the assessor who made this assessment was also heard on behalf of the City. We have already summed up his evidence. Messrs. Houle, Empey, Reed and Grimstead have given evidence which needs not to be summarised here.

Mr. A.E. Hulse, said that one of his chief duties is co-ordination, and explained the system and the principles followed in his department.

It was decided amongst the assessors, says Mr. Hulse, that in no case the weight to be given to the replacement cost should be less than 50 per cent. Some consideration should also be given to the commercial value in cases in which the owner partly occupies himself and partly rents to others the building. Mr. Hulse has filed in the Memorandum on the assessment of large properties the Exhibit D-5, in which we find that the said properties fall into four categories which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation.

The third category is the one which embraces the properties that are partly occupied by the owners and partly rented such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life etc.; we quote from this paragraph of the Memorandum", and we have already read that. Perhaps therefore I can dispense with reading that again; it is a memorandum.

LORD PORTER: Yes, certainly.

MR BEAULIEU: "Mr. Victor E. Fournier, civil engineer, has examined the Sun Life buildings and studied its plan in view of determining their replacement cost. He has arrived at his prices in taking an ordinary building of \$0.40 per cubic foot, i.e. 22,000,249 at \$0.40" -----

LORD PORTER: Is the difference between the 40 and 80 per cent. the difference between the types of building?

MR BEAULIEU: The 40 per cent. and the 80 per cent. were taken by Mr. Archambault and Mr. Perrault who appeared for the

Complainant, and Mr. Fournier takes only 40 per cent.

LORD PORTER: That is because he is taking an ordinary building.

MR BEAULIEU: He considers it as an ordinary building; the others

apparently took the building as it was and figured out a cubic

foot price.

"He has arrived at his prices in taking an ordinary building of \$0.40 per cubic foot, i.e. 22,000,249 at \$0.40 equals \$8,800,099.60 adding for extra features \$9,369,443, plus architects fees \$726,781.70, which give a total of \$18,896,324.30; then he takes off for unfinished parts \$355,775.68 and for heating apparatus \$273,974.40, thus arriving at a sum of \$18,266,574.22. Then he adds financing expenses, 3 per cent. equals \$481,400.30 and obtains, as replacement cost, \$18,747,974.53. Reducing this cost to the figure of 1939 and taking off a depreciation of 1 per cent. per annum, he arrives at a net replacement cost or replacement value in 1942 of \$16,387,966.88 for the main building. As to the tunnel and the replacement cost of the power station, he arrives at a net value in 1942 of \$424,144.46, making altogether with the main building a total of \$16,812,111.34.

Mr Brian R. Perry, consulting engineer, has made his estimate from plans furnished by the Company, after having made a very careful personal inspection of the buildings. His estimate of replacement cost was made without reference to any of the other three experts and was prepared by a method completely different from that used by them. He has based his analysis of cost on units applicable in 1939-40 in order to eliminate any unfair influence due to war conditions. After having made a quantity survey he arrives for replacement cost of the main building at a sum of \$20,008,700, to which he adds \$750,000. for financing costs. Then he deducts 13 per cent. for 13 years depreciation, thus arriving at a net sum of \$18,060,070. For the heating plant, he arrives by the same way at a net sum of \$501,220 making for both buildings a total of \$18,561,290.

Messrs. Desaulniers and Mills declare in their joint report that by reason of their investigation and correlation of the various estimates, they have formed the opinion that the real value of the subject property as of December 1st 1941 is \$15,800,000. But they take the land at another price than the assessed value, and in making the necessary correction, as the land value is not in dispute, they would arrive at \$15,674,700. They put the replacement cost of the main building at \$14,400,000, and of the heating plant at \$470,000.

There remains the evidence of Mr. Cartier, architect in charge of the Valuation Department of the Technical Service of the City of Montreal. He has filed and explained the report of inspection of the property by the staff of the Technical and the cards based on the said report.

There were three inspections made of the Sun Life building by the employees of the Technical Service Department, the first in June 1938, the second in December 1941 and the third in November 1942. Since the date of the first inspection, the Company admits having spent \$674,788.81.

The estimate amounting to \$18,706,115.53 was prepared at the end of 1942. The admissions of the Company, as filed in the record, were known in March 1943 and the Technical Service then compared its estimate with the sums spent by the Company brought to the index 109 for 1939 as used in 1941 with the following results: From 1913 to 1941, the Company spent \$20,686,587.62, which amount reduced to the index 109 comes to \$18,985,585.92 which represents the cost of the construction of the main building. In taking off the depreciation and adding the power plant and the land for both buildings, the Technical Service figures come to \$17,301,320.

After this necessarily brief review of the evidence, there remains for us to decide if the Complainant has established that the real value of its immoveables, as at the 1st of December 1941, was not in excess of the sum of \$8,433,200, to which we are asked to reduce the assessments, and consequently if the assessors have grossly exaggerated the real value in assessing this property at \$14,276,000. There are three main questions:- 1. The validity of the theory in virtue of which this property should be assessed on the revenue approach exclusively, using the said revenue to establish an 'imaginary market'. 2. Does the proof reveal that the assessors have erred, (a) in figuring the replacement cost of the buildings; (b) in giving an importance of 90 per cent. to the replacement cost and of 10 per cent. to the commercial value. 3. Does the proof reveal that there has been discrimination?

On the first question, we have no hesitation in declaring that we cannot find fault with the assessors for having not adopted such a method. For Messrs. Lobley and Simpson there is only one way to value the Sun Life property: it is to imagine a 'willing seller and a willing buyer' and to figure what maximum price the buyer should pay, if he wants to make a reasonably safe investment.

There is ^{no} proof of the existence of such a willing buyer. As to the willing seller, he could not be any other than the Sun Life itself, and the only figure contained in the record as to the price at which this prospective seller puts its property is \$16,258,050.27. (Cf.: Admission, Schedule F).

This disconcerting argument has likely been suggested to its sponsors by the reading of the following extract of the decision of the Privy Council in the case of Cedars Rapids Manufacturing and Power Company versus Lacoste (16 DLR., page 171) where Lord Dunedin says:- 'Where, therefore, the element of value ^{over} above the bare value of the ground itself (commonly spoken of as the agricultural value) consists in adaptability for a certain undertaking (though adaptability as pointed out by Lord Justice Moulton in the case cited, is really rather an unfortunate expression) the value is not a proportional part of the assumed value, of the whole undertaking, but is merely the price, enhanced above the bare value of the ground which possibly intending undertakers would give. That price must be tested by the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured the powers, or acquired the other subjects which made the undertaking as a whole a realized possibility.'

This was an expropriation case and the subject was an island situated to the north of the medium filum of the St. Lawrence River which at this place is in rapids. The project was to construct a dyke in the bed of the river and to provide for an uninterrupted flow towards the power house. The appellant had reserved for himself the exclusive right of exploiting a water power, and it has been decided that the extinction of such rights was worth the amount granted above the value of the bare land. It is a possibility which was expropriated, and the 'imaginary market' was referred to, not to find the real value of the land but to value the rights and possibilities and the expropriation indemnity which the appellant was entitled to.

There is absolutely no parity nor analogy between this case and the Sun Life case. Here is a completely developed -- and even over developed -- property, which is actually and fully and tangibly in existence. Its real value is all there.

Why imagine a different situation which may never present itself, a change of proprietor when it can be inferred from the evidence and circumstances that the present one does not contemplate selling?

Moreover there is nothing either in this decision of the Privy Council or in any of the other decisions quoted which would justify the contention that the assessors should have made the assessment on the revenue approach only. The stereotyped formula which is so frequently quoted: 'la valeur réelle est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui desire vendre, réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui desire acheter' does not constitute a complete definition of the real value, but is merely a qualification of one of the numerous elements which may help in determining same. This sentence is not limitative. It does not mean that real value is only that. Furthermore, it has its application to ordinary and current cases of immoveables which can easily be put on the market but cannot be applied rigorously to a property like the Sun Life which is definitely an unusual one.

To sustain the thesis developed by their experts, the learned Counsels for the Complainant have also recourse to the authority of Honore Parent, K.C., and invoked the following passage of the 'Real Estate Valuation Manual' (English version 2nd edition, 1941 page 57):- 'Whatever be the angle from which this problem is considered, there is only one solution possible - that the property tax rolls should have current value for their sole basis; that is to say, the valuation should be based upon "the price which a person who is not obliged to sell could obtain from a buyer who is not obliged to buy" '.

This general statement, made with reference to immoveables which do not fall out of the ordinary, must not be singularized and interpreted without reading the context. We could quote abundantly from the 'Manual' to show that Mr. Parent, never thought of stressing the opinion that the assessors should pay attention merely to the 'current values'. By instance, see page 17:- 'These three elements -- purchase price, market price and revenue -- as well as a fourth remaining to be defined, buttress and balance one another in such a manner as to insure a solid basis for tax rolls.'

'To these factors there must still be added intrinsic value or cost of replacement. I would carry the investigation farther. I would in the final analysis check the figures so obtained by comparing them with the amount of risk assumed by the insurers. That is not always conclusive, but at times may be very efficacious, if only to confound an owner who insists that his building is overvalued, when his own valuation, for purposes of insurance, shows the contrary. The same applies to the sum at which the property is carried in his books.'

Page 24: 'Purchase price, market price, revenue and cost of construction or of replacement are thus the principal factors which should receive the attention of the experienced buyer. These are the four elements, the combination of which will establish the value of property for purpose of municipal valuation. Considered singly, none can give the result required, any more than water can be secured from one part of oxygen without the two parts of hydrogen. That is why, in the course of these notes, an effort has been made to stress the close relation existing between these different factors, and to show that none may exist except as it functions with the others. It will be relatively easy for the buyer, the assessor, the expert or the expropriation commissioner, after having listed all these elements in proper order, to work out the problem to a well directed conclusion

corresponding to the true value of the property under examination.

Page 29:- 'The common method of assessing properties does not apply to immoveables difficult to sell in the usual course of business, such as large buildings for factory purposes; in such cases, other criteria should be applied, as the estimate of cost of construction or of replacement'

Page 40:- 'For instance, how may the value of all buildings be measured on the basis of yield when an important proportion yields nothing: whether because it is impossible to extract any profit from them, as in the case of vacant lots; or because at the moment of valuation they are unproductive, as in the case of unoccupied houses; or because the building is not on a rental basis, as in that of certain industrial enterprises? Three different methods, therefore, would be necessary to value the revenue, according to the cases which appear for consideration, or the value would have to be based on rental, where that would be possible, and on another basis, where rental is not available. Even in considering but one type of buildings -- dwellings, -- it would be necessary to calculate revenue in different ways, depending on whether we are dealing with apartment houses or individual dwellings, such as cottages. It is easy to see upon what an uneven basis such a taxation system might be laid.'

It is useful to consult, on this point the following authorities quoted by the attorneys for the Complainant and for the City", and then there is a list of the authorities set out.

It continues "Before leaving this question of 'revenue approach', it may be well to remark that, the assessor having taken as a basis an annual revenue of \$1,187,225, which is about \$2,000 less than the gross declared by the Company, there is not a substantial discrepancy between the figures arrived at for the commercial value, by the assessors and the witnesses for the Company:- Mr. Lobley: \$7,250,000; Mr. Simpson: \$7,500,000; Mr Vernot: \$7,915,000.

The assessor has figured the replacement cost of the buildings in taking as a basic figure the cost price reported by the Company. Messrs. Perrault and Archambault have used the cube method, Mr Perrault in taking 22,484,061 cubic feet at \$0.81 and Mr. Archambault, 22,552,000 cubic feet at \$0.80 with a net result of \$8,202,700 and \$8,528,817.

It is to be noted concerning the method of these two experts (a) that they have taken as starting point a cubic figure based solely on their experience. Although their cubic prices in this case, give gross figures which are not much at variance with the assessor's, we are of the opinion that, for a building of this importance, the cost price or the quantity survey methods are less arbitrary and more accurate; (b) that in making allowances for 'functional' depreciation and obsolescence, on top of the physical depreciation, they have overstepped the field of the replacement to encroach on the one of the economic value. The deficiencies, if they exist, are reflected in the rental value on which is based the commercial value; so that Messrs. Perrault and Archambault are making double use of the same allowances.

For the replacement as well as for the commercial value, there does not seem to be a great difference between the assessors and Messrs. Perrault and Archambault and these experts admitting that both factors should be used, the only question is in what proportion must each of the factors be taken into consideration. Mr. Vernot has explained why he gave an importance of 90 per cent. to replacement and 10 per cent. only to revenue. It may be, as we will explain later, that this proportion is not

mathematically adequate, but there has been no proof made against it.

This property a 'large and exceptional' one, as the learned Counsel for the Complainant puts it; cannot suffer any just comparison with other properties in the City. But it falls in one of the categories mentioned in the Memorandum filed as D-5 and has been accordingly assessed, as all the other large properties falling in the same category.

What would clearly constitute discrimination but in favour of the Complainant would be to assess this property on the revenue approach only and thus arrive to a cubic foot price of \$0.29 which would be ridiculous.

A former assessment does not constitute 'res judicata'; neither can the increase from the previous roll be invoked as discrimination, nor the fact that other large buildings were not increased in proportion. If the present assessment is correct, the previous one was wrong, or the property was not in the same condition, which is the case of the Sun Life building which has been gradually completed and occupied at various periods. It is not proven that other large properties in a similar condition have not been increased.

The wide margin between the commercial value and the replacement cost is not a proof of discrimination. It is due to the fact that the Sun Life property is a very exceptional one, not built to be rented to tenants but for the use of the Company itself with special amenities and facilities; it is also due to the fact that the commercial value has been arrived at in accepting the actual rentals as declared by the Company based on the tenants' rental, which are not a just yardstick to fix the value of the space occupied by the Sun Life itself; it is also to be noted that the service space, the vacant space are not accounted for in the revenue.

We are convinced that the Complainant does not suffer from any discrimination with the present assessment.

In reconstituting these assessments, along the same lines as the one followed by the assessors, whose method we find reasonable and just, and in taking the figures contained in the joint admission, we would proceed as follows:- The cost of the head office building up to April 30th 1941, was \$20,627,873.92. The amount spent on construction of the said head office building from April 30th to December 1st 1941, was \$58,713.70. (see joint admissions 1 & 4). The total cost of the head office building was \$20,686,587.62.

The said sum includes \$70,335. for the sidewalk \$233,713.38 for temporary partitions during the construction, and \$1,215,450. for cost of parts demolished to connect up the new building, altogether a sum of \$1,519,498.38 which we deduct from the total, obtaining a residue of \$19,167,089.24.

The construction having been started in 1913, the cost index from 1913 to 1941 varies from 68 to 149.8 (68 in 1915 and 149.8 in 1920) the total expenditure for each year being reduced to 109 which represents the index cost of 1939-40 used for all the assessments on the valuation roll deposited the 1st of December 1941. The fluctuation of market prices and the variation in the purchasing power of the dollar require an adjustment of values as needed. The cost of material and labour for different trades is obtained monthly and a summation of these prices is made each year in order to adjust the replacement cost of 1936 to that of the required year. The index number for 1936 is represented by 100 and every other year is adjusted to it.

For the year 1939-40 the index number is 109 and shows that the cost of construction is 9 per cent. higher than in 1936. Reducing or increasing accordingly, all expenditures to the year during which they were incurred, we find that the above amount of \$19,167,089.24 has to be reduced by \$181,503.32, or to \$18,985,585.92.

Mr. Vernot, the assessor, has made an allowance of 5 per cent. 'for presumed extra cost as building erected in 3 units', but he said at the hearing that if he had to remake his assessment he would not make such allowance. We think, on the contrary, that it is advisable to deduct from the original expenditure a certain percentage for loss of time, delays and other inevitable inconveniences in an enterprise of that size. We therefore take off 5 per cent. which we think is a reasonable allowance, i.e. \$949,279.30 leaving a cost, before depreciation of \$18,036,306.62.

The majority of the experts have allowed 14 per cent. for depreciation. We accept this rate of 14 per cent. and we deduct from the above amount \$2,525,082.93 thus arriving at a net cost of \$15,511,223.69 for the head office building, without the land. In adding the land, we have \$16,241,823.69.

Now as to the heating plant and equipment, its total declared cost is \$709,257.14 without land. Reducing this sum to index number 109 we obtain a gross replacement cost in 1939 of \$641,160. We allow a depreciation of 28 per cent. on account of equipment, the building being eleven years old only and we arrive at a net replacement cost of \$461,635, which added to the land \$74,100 makes a total value of \$535,735. The total replacement value for the two properties amounts to \$16,777,558.69.

Considering now the revenue approach, we take the given figures of \$768,265.56 as the rental of the part of the building occupied by the Sun Life itself (Schedule E of the joint admission) and \$420,789.74 as the gross rental receipts from the tenants. (Schedule C). These rentals are very low. For instance on the ground floor 22,817 square feet are occupied by the Company and 1,064 square feet used in common. The charge in the books of the Company is \$48,095.94 a year which is equivalent to \$1.97 per square foot for the best part of the building. Mr. Lobley puts the rental value of the banking hall at \$7.50 and Mr. Simpson at \$6.00 a square foot.

Besides that, the Company charges itself \$768,265.56 in all (Schedule E) taking as a basis the gross rental receipts of \$420,789.74 from the tenants. And this sum of \$420,789.74 represents the receipts only, not the rentals; some tenants also have the benefit of free occupation. This is not taken into account nor the fact that there is unoccupied space and unfinished space. All the rentable space has been very carefully estimated by Messrs. Desaulniers and Mills and it would be interesting to compare their figures with these. But, as we said at the beginning we are making our computation in accepting the figures of the joint admission, though we are not ready to approve them.

The total gross revenue, as given, namely \$1,189,055.30, divided into \$768,265.56 for the Company and \$420,789.74 paid by tenants, gives a percentage of 64.61 per cent. and 35.39 per cent. The building being partly occupied by the proprietor, the rule adopted and followed by the assessors for all the large properties of this category (See D-5) directs us to give a weight of between 50 per cent. and 100 per cent. to the replacement factor, proportionately to the proprietors declared occupied value. That is, each one per cent of the rental value charged to the proprietor should be multiplied by 0.5 plus 50 in order to obtain the rate of appreciation of this part in the net replacement cost. Thus,

64.61 per cent. above mentioned multiplied by 0.5 plus 50 will give 82.3 per cent. which is the ratio of importance to be given to the net replacement cost.

On the other hand, the commercial value is appreciated by the complement between 100 and 82.3 per cent. that is

17.7 per cent. In other words, the commercial value factor

should be weighed between 50 per cent and zero. The rentals

paid by the tenants being equal to 35.39 per cent. should be

multiplied by 0.5 which gives 17.695 or 17.7 per cent. as

above.

LORD ASQUITH: Where does the 0.5 come from?

MR BEAULIEU: 0.5 means one-half, my Lord. The conception is that the building is divided in two. 0.5 means 50 per cent.

LORD ASQUITH: 0.5 per cent is not the same as half.

MR BEAULIEU: 0.5 per cent is equal to 50 per cent.

Then continuing: "The next operation is to find the commercial value with the aid of the above figures. From the gross declared revenue we deduct the declared operating expenses of \$436,992.64, leaving a net revenue of \$752,062.66. We take these operating expenses but we do not admit them as 'service' expenses, which usually are what the tenants are paying for besides rental, for instance, heating, janitor service, elevator, frigidaire, gas stoves, cleaning, lighting, etc.

It is customary to capitalise the net revenue of properties of this category at 10 per cent for the first year and increasing by 0.05 per cent. per year for each of the following years. The 'effective' age of the property being 14 years, our capitalising factor should be 10.7 per cent. The net revenue of \$752,062.66 capitalised at 10.7 per cent. gives a capital sum of \$7,028,623.

To the net replacement of the two properties, that is \$16,777,558.69 we give a weight of 82.3 per cent. thus obtaining the sum of \$13,807,930.80; to the commercial value of \$7,028,623 we give a weight of 17.7 per cent., arriving at \$1,244,066.27 and the total of these two sums represents the real value, that is to say \$15,051,997.07.

Recapitulation: Replacement value. Total cost of main building as declared December 1st 1941: \$20,686,587.62, Less: Cost of sidewalk, \$70,335.00; Cost of temporary partitions \$233,713.38; Cost of demolishing, etc: \$1,215,450.00 - \$1,519,498.38. Construction cost of the building: \$19,167,089.24 Adjuster cost to index number 1939/40: \$181,503.32. Cost of building in 1941 \$18,985,585.92, Less 5 per cent. allowance for extra cost: \$949,279.30. Net cost of building in 1941, \$18,036,306.62, Less 14 per cent. depreciation \$2,525,082.93. Replacement cost of building in 1941, \$15,511,223.69; Plus land value \$730,600.00. Replacement value of main building, \$16,241,823.69.

Heating Plant. Total cost as declared December 1st 1941: \$709,257.14. Adjusted cost to index number 1939/40 \$68,097.14. Gross cost of heating plant in 1941 \$641,160.00; Less 28 per cent. depreciation for 11 years, \$179,525.00. Replacement cost of heating plant \$461,635.00; Plus value of land \$74,100.00. Total value \$535,735.00. Total replacement value \$16,777,558.69.

Commercial value. Revenue given for Company occupation: \$768,265.56 -- 64.61 per cent. Revenue paid by tenants for occupation: \$420,789.74 -- 35.39 per cent. Total gross revenue: \$1,189,055.30 -- 100.00 per cent. Rate of appreciation for Replacement Value equals 64.61 per cent. multiplied by 0.5 plus 50 equals 82.3 per cent. Rate of appreciation for Commercial Value equals 35.39 per cent. multiplied by 0.5 equals 17.7 per cent. making 100.00 per cent. Total gross revenue equals \$1,189,055.30. Less operating expenses equals \$436,992.64. Net revenue \$752,062.66 The effective age of the building being 14 years, we capitalise the net revenue of \$752,062.66 at 10.7 per cent. giving a commercial value of \$7,028,623.00.

Valuation. Replacement value - 82.3 per cent. of \$16,777,558.69 equals \$13,807,930.80. Commercial value - 17.7 per cent. of \$7,028,623.00 equals \$1,244,066.27. Real Value of both properties \$15,051,997.07.

The final figure of \$15,051,997.07 has been arrived at by making all possible concessions to the Complainant's statements. This sum is 5 per cent. over the contested assessment and 7.5 per cent. less than the book value and marked value in the Company's annual general statement for 1941 and in the Company's return to the Superintendent of Insurance for the Dominion of Canada (see joint admission 16 and Schedule F). Substantial discrepancies between the opinions of men of experience is of common occurrence when appraising or estimating enterprises of huge dimensions.

The Complainant is right in its contention that the boiler house of heating plant must be considered as an integral part of the main property and should not be valued separately. When several lots owned by the same proprietor are used for one and the same purpose, the whole may be valued as a single lot. (Charter, Article 375)

For these reasons we come to the conclusion that these two immoveables should be grouped in one for the purpose of assessment and that the Complainant has failed to establish that their present assessments at a total sum of \$14,276,000 is excessive. Wherefore, the said assessments, being considered and grouped as a single one, are hereby maintained, with costs of stenography and of transcription against the Complainant. The necessary changes on the roll are ordered and the required certificates are issued."

The next amount is the rental value, but that is no more in issue now.

LORD PORTER: It is abandoned?

MR BEAULIEU: Yes. There were two valuations, one for the Real Estate Tax and the other for the Business Tax and Water Tax. This not being any longer in issue, I beg leave to be relieved from reading the last part.

LORD PORTER: Am I right in this? Actually this body, in their view, thought that the assessment was lower than it need have been?

MR BEAULIEU: Yes, my Lord.

LORD PORTER: But nevertheless accepted it.

MR BEAULIEU: That is the result, my Lord. They found it was about \$1,000,000 more, but they did not want to disturb the finding of the Assessor.

Then we come to the Judgment of the Superior Court on page 984.

LORD ASQUITH: Before passing to that, would you just explain to me something on page 983 -A-30? If you look at about line 18, just after the figure \$752,000 net revenue, you see "The effective age of the building being 14 years". The first point I would like you to explain to me is this: What is meant by "effective age"? Part of this place was built from 1913 to 1918, and part of it later. What is "the effective age of the building"? Is it an average of some sort?

MR BEAULIEU: "The effective age of the building" means the effective age of the power building. The power building was completed in 1930.

LORD ASQUITH: They are not only talking about the power building there, are they?

MR BEAULIEU: He is assessing the heating plant, but of course he does not repeat it every time. It is the assessment of the heating plant.

LORD PORTER: I do not think it is.

LORD ASQUITH: I do not think it is limited to the heating plant
at all.

LORD PORTER: If you look at page 983-A-28, at the very bottom

of the page, you will see how the matter starts off.

LORD ASQUITH: You get a recapitulation which starts "Replacement Value". Is that limited to the heating plant? You then get at the bottom of the page "heating plant". If you turn over, on the next page you get the words "commercial value", and under that heading they are considering not the heating plant only, but the whole thing. When they said: The effective age of the building being 14 years, they were speaking of the effective age of the whole thing. I was wondering how they arrived at that, considering it was built at different dates. There is no doubt some quite simple explanation.

Mr. BEAULIEU: I am informed that you must refer to the fact that the building was built in three stages. In the first stage, it was so unimportant that they considered more particularly the last portions of the buildings.

LORD ASQUITH: They took the period from 1927 onwards?

Mr. BEAULIEU: Yes, my Lord. Up to 1927 the amount expended was only a few millions. We are always speaking of the effective age.

LORD PORTER: I want you to tell me something else. I daresay it is my stupidity, but how do you get 10.7? What we are told on page A-28 is that you take 10 per cent; you capitalise with 10 per cent for the first year, increasing by 0.5 per cent for each of the following years. "The 'effective' age of the property being 14 years, our capitalising factor should be 10.7 percent." I want to know what that means?

Mr. BEAULIEU: Their method of assessing, as I understand it, is first to say: when we have a building of a mixed character as this one, first of all we must take the replacement factor at 50 per cent for the first part.

LORD PORTER: That is not what I am dealing with.

Mr. BEAULIEU: Then there is the second part.

LORD PORTER: That is not what I am dealing with at all. He says: You have so much as the revenue. Having got your revenue at 752,062.6 you then have to discover at what figure you capitalise that. He says that you capitalise it by taking 10 per cent for the first year, and increasing by 0.5 per cent for each of the following years. Then you take 14 years as the number of years you have to deal with. How do you get 10.7 per cent out of those figures? That is what I want to know?

Mr. BEAULIEU: As the rate of capitalisation?

LORD PORTER: Yes.

Mr. BEAULIEU: It is purely and simply a matter of practice. They say that that has been the practice in this department.

LORD PORTER: I know the practice is to take 10 per cent for the first year, and 0.5 thereafter, but I cannot see how 10 per cent for the first year and 0.5 per cent thereafter reaches the figure 10.7. I have no doubt there is a perfectly simple explanation.

LORD OAKSEY: It is 0.05 and 13 times 0.05 get very near 0.7.

LORD PORTER: I did not observe it was 0.05. I follow it now. Then we come to Mr. Justice MacKinnon.

MR. BEAULIEU: "This case comes before the Court by way of an appeal by the Sun Life Assurance Company of Canada from a judgment of

the Board of Revision of Valuations of the City of Montreal rendered the 21st of June, 1943, dealing with a complaint against the assessment of its properties as entered on the valuation roll deposited the 1st of December, 1941, and another complaint against the assessments of its properties as entered on the valuation roll deposited the 1st of December, 1941, and another complaint against the rental value in respect of its own occupancy of the Head Office building or Heating Plant. For the sake of brevity the Sun Life Assurance Company of Canada, the complainant, will be referred to as 'the Sun Life', the City of Montreal as 'the City' and the Board of Revisions of Valuation as 'the Board'.

"The company has appealed from the decision of the Board by virtue of 384 of the charter of the City as amended by 1 George IV, chapter 103, section 59".

LORD PORTER: We need not deal with the next few pages, we have had them all before. We might go to page 988.

MR. BEAULIEU: Yes, my Lord; line 30. "The Board of Revision upheld the appellant's contention that the boiler house or heating plant, used solely in connection with the heating and operation of the main building, should not be assessed separately and joined the two together as one assessment, but maintained the assessments at the total of the two valuations placed thereon by the City Assessors, to wit, 14,276,000 dollars, and maintained the business and water tax assessment at 423,280 dollars, as fixed by the assessors in respect of the main building but reduced the business and water tax assessment of 26,000 dollars on the boiler house to 'nil'.

"The assessment of 13,755,500 dollars thus placed on the head office building and land occupied by it represents an increase of 3,769,300 dollars over the assessment for the previous year or in other words, an increase of approximately 40 per cent. The valuation placed on the land was in fact reduced by 3,200 dollars so that the actual increase in the assessment of the building as distinguished from the land was 3,772,500 dollars. The increase in the boiler house valuation over the preceding year amounts to 295,500 dollars or approximately 135 per cent. The total increase for the combined properties is 4,064,800.00 dollars.

"At the hearing the City Attorneys asked the Board to increase the assessment on the main building still further to 15,130,600 dollars which would represent an increase of 51.51 per cent over the previous assessment.

"As appears from the Joint Admission, the valuation of the Sun Life building had remained constant since the assessment of 1931-32 being increased only by the amount spent on additional floors from time to time. In November, 1931, on an appeal by the Sun Life the assessment of the immovables was reduced from 12,400,000.00 dollars to 8,000,000.00 dollars. The valuation of the boiler house during the same period prior to the assessment now in dispute had remained constant at 225,000.00 dollars for land and buildings.

"In its complaint the appellant company contends for a valuation on the main building of 8,330,600.00 dollars and on the boiler house of 102,600.00 dollars or a combined total of 8,433,200.00 dollars. The appellant likewise contends that the rental value of the space occupied by it in the main building should not have been assessed more than 352,034.50 dollars."

LORD PORTER: That is a subsidiary method of obtaining the commercial value, is it not? That is all.

MR. BEAULIEU: Yes, my Lord. That part is no longer in issue, the assessment for the water tax or business tax.

LORD PORTER: I was not thinking about that. I was thinking about this observation that the rental value of the space occupied by the main building should not have been assessed at more than 352,000 dollars. Is that merely a method of discovering what the business tax is, or, as I thought possible, is that a method of discovering what the revenue produced by the building was and so of assistance in calculating that portion which you attribute to the commercial value?

MR. BEAULIEU: As we understand it, the rental value of 352,000 dollars is the rental value for the purposes of business tax and water tax.

LORD PORTER: Only.

MR. BEAULIEU: Only.

LORD PORTER: Then we can neglect that.

MR. BEAULIEU: "Article 376 of the Charter of the City stipulates" -----

LORD PORTER: You need not deal with that. We can go to page 990, line 12, I think.

MR. BEAULIEU: Yes, my Lord. "The two assessors who were supposed to act in drawing up the valuation roll affecting the Sun Life were Lynch and Vernot. Lynch says in effect that he had nothing to do with the assessment of this property. While this was an illegal method of valuation it has been agreed that the legality of the procedure in making the roll would not be challenged. The only argument that can be advanced against the preparation of the roll by Vernot alone is that his valuation has not the same weight as it would have had were it the product of the joint collaboration of two assessors. He had the plans of the building and all the information that he required was put at his disposal. He had previously information that he required was put at his disposal. He had previously informally visited the building.

"During the hearing and in the judgment reference was made from time to time to 'The Real Estate Valuation Manual'. This was commonly referred to as 'The Manual'. This is a work prepared by Mr. Honore Parent, K.C., as a guide to the assessors of the City for the purpose of bringing some uniformity into the assessments of all immovables in the City which of necessity have to be made by wards and by different assessors".

LORD PORTER: The Manual is not the same as the memorandum?

MR. BEAULIEU: No, my Lord. "The first sentence of the preface explains the object of the manual: 'This manual has been prepared to explain the system and methods to be used in the municipal valuation of real estate in the City of Montreal and to demonstrate how the problems, so frequently met in the valuation of land and buildings, may be analysed and solved by the adoption of certain recognised rules and standards'.

"It has been explained that the Manual has no legal character and that the assessors are bound only by the City Charter - that the depreciation table found in the Manual is

not mandatory on the assessors and that its application is left to their discretion. However the depreciation table has been followed quite consistently by the witnesses examined by the City. The Manual represents a great deal of honest and efficient effort on the part of its author to establish uniformity in the assessments.

"The duties of the assessor are defined in the Manual as follows: 'In brief, it is to be remembered that the municipal assessor, in the exercise of his duties, fulfils almost judicial functions; he is not to be influenced by nor to receive instructions from the municipal council, or from any other person or body. He must personally execute his duties with the fullest independence, to the best of his judgment and according to his conscience'".

"The law further allows of appeal to certain courts which it designates with fixed delays and in conformity with a specified procedure in cases of illegality or erroneous valuation. The courts should then intervene with prudence; they have not 'to judge the competency of the Assessors'; they must not substitute their personal opinion to that of the assessors', whose valuations is presumed to be correct and reasonable, so long as the parties concerned have not established 'a real injustice or an important deviation', or that 'it is so erroneous that an honest and competent man could not have made it'".

Then page 992, line 10: "The court does not fully agree with that part of the judgment of the Board which states that the assessors 'are fulfilling quasi judicial duties and their decisions enjoy the benefit of a legal presumption. The law is clear and the jurisprudence is firmly established'. It goes far beyond the generally accepted rule laid down in Canada Cement Co. and the St. Lawrence Land Co. v. Ville de Montreal-Est. (35 King's Bench, 410), that a municipal valuation made by municipal assessors must be presumed just and reasonable so long as no injustice or important variance has been shown. This rule has been disregarded by the Board in its refusal to accept the valuation of the assessor Vernot and his method of arriving at his assessment and in establishing another of its own compounding.

"Article 375 of the Charter stipulates that the assessors shall draw up a valuation roll which shall contain 'the actual value of the ommovables'.

"The Board rightly considers that the expressions 'real value' and 'actual value' are synonymous.

"The French version reads: 'La Valeur réelle' and it always uses this same expression of 'valeur réelle' in all the other articles referring either to valuations or to expropriations: the English text of the Charter uses indifferently the expressions 'real value' or 'actual value'. The parties agree that the words 'valeur-réelle' and 'actual value' are synonymous".

LORD PORTER: And that presumably 'real value' has the same meaning, too.

MR. BEAULIEU: "There is a wide divergence in the view of the parties as to what method or methods of approach should be adopted in order to arrive at the 'actual value'. They are in agreement that the following methods of finding or of coming as close as possible to the real value are generally accepted: '(a) A recent free sale of the property itself where neither the condition of the property nor the market have

since changed. (b) Recent free sales of identical properties in the same neighbourhood and market. (c) Recent free sales of comparable properties. (d) The price which the revenue producing possibilities of the property will command. (e) The depreciated replacement cost'.

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

"The submission of the Sun Life is almost entirely based on the fourth of these methods, namely that the value is the price which the revenue possibilities of the property will command. On the other hand, the assessment of the city is based mainly on the depreciated cost approach.

"The authorities cited by the Sun Life are all in support of their contention that the 'actual' or 'real value' can only be determined by arriving at a market value based on a hypothetical sale and have based their valuations principally on the fourth of these methods namely, that the value is the price the revenue possibilities of the property will command, but as stated by Mr. Justice Guerin in Canada Cement Co. and Montreal East there exists in fact no rigid rule for a valuation which is affected by a multitude of circumstances which no ruling can foresee or provide for.

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

"In the Supreme Court case of King v. Halpin Mr. Justice Taschereau said: 'In order to determine the indemnity to be granted in an expropriation matter, several elements may and must be taken into consideration. Thus, it is permissible for the Judge to whom the matter is submitted to examine the purchase price, the municipal valuation, the price paid in the district for similar land, the costs of improvements, the revenue which the property provides, the use which the owner can make of it, the increase in value of neighbouring lands, the opinions of experts, and other special circumstances, which can help in finding a solution. And when after having examined these various elements, the Judge of first instance comes to a conclusion as to which there is no error in law, and the amount allowed is justified by the evidence, a Court of Appeal will not interfere. That is the jurisprudence that has been established in the case of The King v. Elgine Realty Co.'.

"In the King v. Spencer Mr. Justice Angers said: 'I may note that the market price is not necessarily a conclusive test of the real value'".

"In these circumstances it seems to me that the only manner in which a value may be set on the Spencer building is to figure out the replacement cost and deduct therefrom the depreciation which the buildings now standing have suffered since their erection".

"Schmutz in his book 'The Appraisal Process' dealt with the question of assessment as follows: 'The pertinent data, when assembled and verified, are then processed by one or more of the three basic appraisal techniques: (1) the market data approach, sometimes called the comparative approach; (2) the cost approach, sometimes called the summation and also the replacement cost approach; and (3) the income approach, also known as the income capitalization approach. There are cases, in which none of these three techniques, in simplest form is applicable and variations must be employed in the processing of the data.

"The appraisal process contemplates the development of three estimates of value, if the data are available, which are based upon market data, cost, and income. Having developed three indicated values, which are usually different, the question arises as to which, if any, is the indicator of a reasonable value estimate. The analysis of the different value estimates is called correlation and from this analysis emerges the value conclusion.

"Value cannot be determined. Of necessity it must remain a matter of opinion, and for this reason it should be viewed from as many angles as possible. Here we have mentioned three of the approaches and pointed out that, in most cases, no one can be used to the exclusion of the others'.

"McRossie, an expert examined by the Sun Life, mentioned that there are three important factors to be considered in arriving at the real value, namely, replacement cost, market value and income value.

"The Sun Life attaches considerable importance to the decision in the case of Cedars Rapids Manufacturing and Power Co. v. Lacasse. This case is hardly in point, as it dealt with the probable value of a property which has not been exploited, whereas the present case deals with a building already erected of which the cost, age, use and the real and possible revenues are known.

"In support of its contentions that our courts have repeatedly held that the words 'actual value' and 'real value' mean the current market value, the Sun Life has cited Montreal Island Power Co. v. The Town of Laval des Rapides", and other cases. "These cases all more or less follow the principle that the real value is the price which a seller who is not obliged to sell and who wishes to sell could get from a purchaser who is not obliged to buy and who desires to purchase. This is known as the 'willing buyer, willing seller' formula. The difficulty of applying this formula to a property of the nature and size of the Sun Life can well be understood.

"The Sun Life Building has been described by the various witnesses as monumental, colossal and unique and different from any other building in Montreal. Loblely in his report gives the following description of the building: 'The building may be described as three blocks of diminishing size superimposed each upon the other, together with a heating plant which is below the grade, separate from the building and connected therewith by two underground tunnels for the accommodation of pipelines and traffic.

"The first block of the building has a frontage on Metcalfe Street of approximately 413 feet by a depth of approximately 220 feet, occupying an area of approximately 87,132 square feet outside measurements. This block contains twelve storeys, one of which is entirely given up to the

accommodation of mechanical equipment for the operation of the building.

"Proceeding upwards the outside dimensions of the next block at its base are approximately 240 feet facing on Metcalfe Street by a depth of 168 feet, giving an approximate area of 38,400 square feet. This block contains nine storeys, one of which is entirely given up to the accommodation of machinery for the operation of the building.

"The uppermost block has dimensions at its base of 200 feet facing on Metcalfe Street by a depth of approximately 134 feet, giving an area of approximately 26,800 square feet. This block contains seven storeys, three of which are entirely given up to the accommodation of machinery for the operation of the building.

"The foundations of the building which extend deeply into the ground enclose a basement, sub-basement and sub-sub-basement, which provide space for machinery necessary for the operation of the building (other than the heating plant and for storerooms) both for the use of tenants and for materials necessary for the operation of the building. Throughout the building the quality of the materials and workmanship of construction is of the highest order'.

"Simpson, an expert examined by the City" -- I may say that that expert was not an expert examined by the City but by the complainants -- "in referring to the main building, said: 'It is not a building which is designed purely as a commercial building. It was designed for the head office of the Sun Life, and it was designed a number of years ago. The building has many faults. It has many good points, but it has also a distinct number of faults in its planning. There are various things there much in the manner of wastefulness of space, the amount of service space, the lighting of many of the offices, and the fact that some of the office windows are more or less obscured or partly hidden by balustrades. The building was designed to have a massive or imposing appearance and in order to get it they sacrificed somehow the utility of the building'.

"Cartier, one of the city experts, said: 'Ensuite, a l'interieur regardez le grand hall. On voit la que c'est une batisse reellement faite pour servir de monument, pour servir d'edifice exceptionnel. Le fait est que je ne crois pas me tromper en disant qu'il est unique dans tout l'Empire. Maintenant, sa forme. On aurait pu employer plusieurs sortes de formes mais l'on n'aurait jamais obtenue l'effet que l'on a obtenue avec la forme actuelle. Cette forme aurait pu peut-etre etre contestee pour l'effet d'eclairage, l'effet d'aeration du centre de la batisse, parce que c'etait eloignee des baies de lumiere, mais tout cela a ete prevu par des experts -- et il est incontestable que ce sont des experts: le centre de la batisse est occupe, par des services, par les ascenseurs, par les corridors, les escaliers d'honneur, les escaliers de service, les cafeterias, gymnases, auditoriums. Ce sont toutes des pieces qui necessairement ne demandent pas la lumiere du jour, la lumiere exterieure, le soleil, mais qu'en plusieurs cas meme il est preferable d'avoir un peu loin de la lumiere. Les corridors sont spacieux. Il ne pourrait pas en etre autrement a mon avis, puisque cette batisse-la est appelee a loger plusieurs milliers de personnes. On ne pouvait pas faire de petits corridors, il fallait necessairement faire de beaux corridors. Et ils ont eu raison parce que c'est meme tres bien. Meme dans les corridors du haut on sent encore la beaute du monument, elle se refleete jusque la.

"En outre de cela, les matériaux employés là-dedans sont de toute beauté et je crois que je me résume bien en disant que partout dans cette bâtisse-là, à l'extérieur comme à l'intérieur, on ne peut que voir le monument'.

"Perry, another of the City experts, referred to the building as follows: 'The Sun Life Building is unique. We all know that. It is three times as big as the next biggest building for anything like the same type of purpose in Montreal, which puts it in a class by itself. The materials used are completely unique. The planning of the building is not elaborate, but close to it. Some parts are distinctly elaborate. The classifications and types of material are of high quality and finish, throughout and makes it impossible to get prices on a great number of things that were made specially for the Sun Life, especially ten years or more after the event.

"The building has been constructed using the finest obtainable materials, equipment and workmanship. There has been no other building erected in this district with anything like the size or quantities of materials or the class used'.

"Desaulniers also described the building as follows: 'Both the site and building are unique in size and location. The quality of construction and luxury of appointments are of a higher standard than anything else in Montreal. The building, by its majestic beauty, the perfect harmony of its classic design and general appearance of plain dignity creates undoubtedly an impression on the mind of the passerby'.

"In order to apply the willing buyer, willing seller formula in valuing the Sun Life building one would have to imagine a hypothetical sale. This has been the main approach adopted by the Sun Life and its experts in making their valuations. They have based these on prices which would probably attract the prospective purchaser but have failed to consider the price which the Sun Life would have been willing to accept. The court cannot ignore the fact that the Sun Life carried this property at a price almost double the value given to it by its own experts. Not only did it carry it at a price exceeding the valuation now in dispute but in returns to the Superintendent of Insurance sworn to under the oath of its principal officers it gave the following valuation". During the years 1930 to 1941 -----

LORD PORTER: I do not think we need trouble with them. We can look at them. Actually in 1941 they place upon it the same book value as the market value; but it has varied in the previous years.

LORD ASQUITH: Is this list or table which you are looking at on page 999 the document referred to as Schedule F elsewhere?

MR. BEAULIEU: Yes, my lord.

LORD PORTER: What is interesting about it -- I do not know why it is -- is that from the year 1930 to 1936, which is seven years, a considerable variation took place between the book value and the market value; but from 1937 until 1941 the two were the same.

MR. BEAULIEU: It goes on: "Surely it cannot be contended that the Sun Life would be a willing seller at the valuation

placed on it by its experts in applying the 'willing seller, willing buyer' formula. Lobley places it as 7,250,000 dollars, Simpson as 7,500,000 dollars. On the other hand the Board of Assers of the City of Montreal on the 18th November, 1931, reduced the assessment of the property from 12,400,000 dollars to 8,000,000 dollars and the following appear as the annual assessments from then on". Is it your lordships' pleasure that I should read this?

LORD PORTER: No. For all practical purposes it is the same until 1942/43, and then the land figure remains the same.

MR. BEAULIEU: "The roll was frozen in 1937 by the Statute 7 Geo. VI, but this does not sufficiently explain why the assessments previous to 1937 varied so from the ones under consideration. Presumably they were prepared by assessors sworn to arrive impartially at the true and correct value after considering all the various elements entering into their estimate. While the Board has declared that the assessment of 1941 is not an increase in the previous assessments but is a new and independent one the bald fact remains that a tremendous increase was made.

"The court considers that for a property such as that of the Sun Life both the depreciated replacement approach and the commercial approach should be considered even though the valuations arrived at show a considerable variance. It is recognised that in dealing with buildings such as churches, theatres, railway stations etc. where there are no means of establishing a normal rental value or to get a true picture of net earnings that the replacement cost must have a considerable bearing on the valuation.

"The City has attached considerable importance to a judgment of the United States District Court, District of Minnesota, Fourth Division, in which the State of Minnesota was plaintiff and the Federal Reserve Bank of Minneapolis defendant, where the assessment of a building constructed for the sole use of a bank and as a special purpose building was assessed on its depreciated replacement value. This court also attaches considerable importance to this judgment as many of the features discussed there have arisen in the present dispute.

"The statutes of the State of Minnesota governing the method of assessment and defining what property is assessable are singularly similar to that governing the present case. In that case the experts produced by the Bank assumed the building vacant and estimated the annual rental that might be obtained for some presumed use. They emphasized that the bank building was unsuitable for most business purposes and that there was considerable waste space even in its present use. The building was about twelve years old and was intended and designed to house a Federal Reserve Bank for many years to come. The primary object in designing and constructing the building was to erect a structure that would safely preserve the funds and securities of the bank.

The only factors given any real consideration by the Bank's experts were the uses to which the building could be put if the Bank moved out and the rental that could be obtained if the building were used for other purposes. (The same approach was made by the Sun Life experts Lobley and Simpson).

"The State's experts limited themselves to a determination of the reproduction cost, less depreciation as determining the fair cash value. (The same approach was made by the experts examined by the City.) They contended that the bank building could be properly designated as a

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service building and that this is the only feasible, equitable and practical method of determining the true value.

"The assessor who assessed the building testified that he took, among other things, the following factors into consideration in determining the true value: location; size and shape of the lot; character of surroundings; cost of land; value of land; cost of building; reproduction cost of building; physical value of property; economic life of building; service character of building; previous assessments; previous agreements relative to assessments; character and permanency of occupancy; transportation; and sales and leases of property in the neighborhood. In substantiation of his estimate of the true market value, as contemplated by the statute, he figured the reproduction cost of the building as of 1st May, 1936, to be 2,600,000 dollars. He allowed 25 per cent depreciation, being approximately two per cent per year for the life of the building, and by reason of the apparent difference of opinion as to the effect of the distinctive architecture on its market value, both artistically and as an utilitarian structure, he allowed an additional 25 per cent for depreciation. Therefore, a total of 50 per cent depreciation is to be found in the assessor's computation.

"The following extracts from the judgment are pertinent: 'Obviously it is in the nature of a semi-public structure, erected for special use. It was not intended for general business purposes and when it was constructed it was assumed that its use would be limited to the needs of the Federal Reserve Bank in the Ninth District for many years in the future'.

"In attempting to set aside the assessor's valuation, defendant relies solely upon a valuation computed by the capitalization of estimated income. No consideration is given to the other factors which may bear upon the market value. The building when erected was not primarily constructed to return income as such. It is a single purpose building, and many of its features which may detract from its usefulness as an income producing building may materially enhance its value for the purpose for which it was built, and which purpose and use will probably continue for years to come. Demand for the use is only one factor. To rely entirely on the capitalization of income under these circumstances in determining the market value neglects considerations that are vital. If plaintiff's figures were adopted, there would result a discrimination and a relative injustice in tax valuation that could not be supported and which would run counter to Chapter 237, Laws of 1935. Defendant cannot escape its just share of the tax burden of erecting a building which is fairly adequate for its needs and which is devoted and intended to be devoted for its particular purpose for many years in the future, and then contend that, because it is only adapted for its requirements as a semi-public institution, it has no market value except as reflected in the capitalization of income for a use which is non-existent and which was never intended.

"No one factor should be controlling. Many facts and circumstances have evidentiary value in arriving at the true value contemplated by the statute. A rigid standard will only add to the confusion that undoubtedly does exist under the present system of computing values for real estate taxation. The assessor must be given a reasonable latitude in the exercise of his sound judgment in determining such values. Furthermore, it appears that due consideration and allowance

have been given by the assessor on account of the architectural and structural limitations that may exist in this building".

(Adjourned till tomorrow morning at 10.30).
