

28, 1951

2

IN THE PRIVY COUNCIL.

Council Chamber,
Whitehall, S. W. 1.

Tuesday, 19th June, 1951.

Before:

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

(Respondent).

S E C O N D D A Y

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)

IN THE PRIVY COUNCIL

Council Chamber,
Whitehall, S.W.1.

Tuesday, 19th 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. (Respondent)

(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. Lawrence 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.

S E C O N D D A Y

LORD PORTER: We had got to page 1,003, line 12.

MR. BEAULIEU: If your Lordship pleases. "The Sun Life Building is a massive monument and one which, by reason of its construction in three stages, was costly and extravagant materials and ornamentation were employed in its construction. The design called for exceptionally wide corridors throughout the building and special features for the use of the Sun Life were incorporated in the building.

"When the building was originally planned and built the Sun Life contemplated the use of the entire building by its own employees. While it was erected for a special purpose

it was built to house office personnel. It is essentially an office building. The Sun Life subsequently found that instead of its staff increasing as contemplated it now requires only about 50 per cent of the building and has established that due to decentralisation of its business it will in the future require less space than it now occupies. The space not required by the Sun Life has been either rented or can be made available for tenants.

"The evidence of McCaulay, the assistant secretary of the company, on this point is clear: '(Q). Now, we have heard about the Sun Life Building being designed as an office building to house the head office staff of the company. Have you anything to say about that? (A). Well, at the time that the design of the building was being undertaken the company was growing at a very high rate. The staff was increasing very rapidly. The actual figures will be given by another witness, and consequently it was anticipated that eventually the company's Head Office would require a building of the approximate proportions of the present building. Consequently the building was designed with the object in view of its being used for offices for the Head Office Staff and rented to tenants, with the idea always in the back of the designer's mind that eventually it would probably become one hundred per cent occupied by the Sun Life. It is not necessary for me to tell you that that situation has not developed. The trend in the last eleven years has been continually downward, in numbers of company staff; so that at the time the designs were made the population curve was of a very steep upward trend, and which was offset and the population curve is now going downward. The occupancy has more or less followed that curve'.

"The whole building can be made available for tenants as indicated by Messrs. Mills and Desaulniers in their evidence but the wide corridors and design of the building will not allow the same percentage of rental space as is found in the usual office building. Desaulniers one of the city experts says that the floors above the tenth are advantageously planned to accommodate large companies. The monumental character of the building calls for extraordinary deep office space on the lower floors and a great deal of controversy has developed over the rental value of these floors. In view of the very complete and modern ventilation system in the building and the perfection of inside lighting it would not appear that their rental value has been impaired to the same extent as that considered by the Sun Life experts.

"It is considered that while the Sun Life building is essentially a commercial building it has certain special service features which would entitle the Sun Life to ask for a greater depreciation than allowed by the assessor Vernot and the Board.

"In the erection of its building the Sun Life spent considerable sums on special features and ornamentation which do not add to its commercial value and which can never be reflected in a sale price. In arriving at a value by means of the cost approach these features should be considered in arriving at a depreciation allowance as was done in the Minesota case.

"Perry, an expert examined by the City, said: 'In bringing down these items I considered, and this is hypothetical but backed by twenty-five years of experience in building business - had they used limestone instead of granite - it would have cost about the same for setting up - but by using limestone the saving would be about 840,000 dollars

That is for plain walls only".

LORD PORTER: That means, I gather, because the material would be 840,000 dollars less.

MR. BEAULIEU: Less, if it was limestone instead of granite.

LORD PORTER: For material.

MR. BEAULIEU: For material. "If you take the ornamental features in granite, the columns and then the cornices, with granite it is a great deal more expensive. On the whole I would say with limestone the cost would be roughly 40 per cent of the cost of granite, and this would be a saving of 952,000 dollars.

"How much of the ornamentation may be considered excessive, I do not know. That is a personal guess. I have left in an amount of limestone in 805,000 dollars for ornamentation. You could take out any amount for that depending on the appearance of the building and how it is designed. I put three-quarters of that eliminated, leaving one-quarter. Whether that is enough or too much is a matter of opinion".

LORD PORTER: Does that mean he has knocked off 600,000 dollars?

MR. BEAULIEU: He has knocked off 805,000 dollars.

LORD PORTER: He starts with that but then he says he takes off three-quarters of that, and three-quarters of that is 600,000 dollars. Therefore, that would mean that he has eliminated 600,000 dollars.

MR. BEAULIEU: Yes, my Lord. The details follow. "In his report Perry details these excessive costs as follows: 'Limestone could have been used instead of granite. Item 'e'. Plain walls in granite 2,100,000 dollars. Limestone would cost 50 per cent. Brickwork and setting of stone remain same'. Then there is a deduction of 1,260,000 dollars. "Excess cost of plain granite 840,000 dollars. Item 'f'. Ornamental features in granite 1,757,000 dollars. Limestone would cost about 40 per cent for material, no change for setting cost". There is a deduction of 805,000 dollars. "Excess cost of granite 952,000 dollars".

"2. Reduction in ornamental stonework: Ornament in modern revenue producing buildings is largely eliminated to save cost, for example, News Building, New York City. Some cost is justifiable - purely a personal guess - say 25 per cent of the item above".

LORD PORTER: Is that the one I was speaking about?

MR. BEAULIEU: Yes, my Lord. "Excess cost of limestone ornamentation 600,000 dollars".

LORD NORMAND: What is the "item above"?

LORD PORTER: For plain walls in granite the first deduction, I gather, is a difference in material of 840,000 dollars. Is that right?

MR. BEAULIEU: That is the material; first of all, the external walls. Then the ornamentations which are partly exterior. Also there are columns in granite outside which would have been made of limestone according to Mr. Perry.

LORD PORTER: The next one, again, is material. Item 'f' is material, I think. Then you come to the question of

reduction in ornamental stonework and for that he gives 25 per cent, of what? Do you know how he gets his 600,000 dollars? It is 25 per cent of what?

MR. BEAULIEU: I understand that after making the full difference between limestone and granite, Mr. Perry is nevertheless of the opinion that if it was limestone some ornamentation would have to be in limestone and he deducts only the difference between the actual ornamentation and the ornamentation which he considers as being necessary even if it was a limestone building.

LORD PORTER: I follow that, but what I do not understand is that on page 1,006 he takes 25 per cent of something.

LORD NORMAND: He takes off 25 per cent of 952,000 dollars leaving 600,000 dollars.

LORD REID: He has said that if you had all the existing ornamentation, but in a different material, it would save 952,000 dollars, but in addition to that you ought not to have all the existing ornamentation, you ought to have only some of it, and if you cut it down you would save an additional 600,000 dollars. So that in all, on this ornamentation heading, you would save 1,450,000 dollars. Is that not what he is saying?

MR. BEAULIEU: Yes, my Lord.

LORD PORTER: I agree with all that, but what I cannot understand is where he gets his 600,000 dollars. It is 25 per cent of something.

MR. BEAULIEU: It is 25 per cent of 952,000 dollars which is not exactly 600,000 dollars so he puts in a rough figure.

LORD NORMAND: I think he has substituted 600,000 dollars for 952,000 dollars. That is to say, he is taking three-quarters of 952,000 dollars.

LORD REID: I do not think so. I think he is taking three-quarters of 800,000 dollars; that is line 39 on page 1,005.

LORD NORMAND: That may be it.

LORD PORTER: I follow all that except the 25 per cent. I cannot see what 25 per cent has to do with it.

LORD NORMAND: 600,000 dollars represents 75 per cent.

LORD PORTER: But that is not what he says.

MR. BEAULIEU: Then item 3. "Steel sash could have been used instead of bronze and good ordinary glass instead of vitreous plate. Item 'e': Bronze doors, etc. 225,000 dollars. Good steel doors - purely a guess 81,000 dollars. Excess cost of bronze 144,000 dollars. 5. Terrazzo floors could have been used instead of marble. Items 'i', 'j', 'k'. Those are items referred to in his report. "Marble floors 229,000 dollars. Terrazzo would cost 56,000 dollars. Excess cost of marble 173,000 dollars. 6. Marble walls could have been omitted. Items 'i', 'j', 'k': Marble walls and base 350,000 dollars. Plaster and plain base 40,000 dollars. Excess cost of marble 310,000 dollars. 7. Decorative cost in banking hall. Item 'l': Complete ornamentation 469,500 dollars. Ordinary construction 70,000 dollars. Excess cost of ornamentation 399,500 dollars.

"Mills and Desaulniers both accepted Perry's figures as to these increased costs.

"It is considered that 600,000 dollars is too great an allowance for extra ornamentation as such a saving would have resulted in a bare unattractive looking building on a prominent site which would undoubtedly affect its attractiveness to tenants and would not be in keeping with the design and appearance of other high class buildings in the City. 200,000 dollars would be an ample deduction under this heading".

LORD PORTER: If I was asked to guess as best I could what the meaning of it was I should have said that 25 per cent was a mistake for 75 per cent, and that on page 1,007 the learned judge is saying: I should not give 75 per cent, I should only give 25 per cent, which is 200,000 dollars.

LORD NORMAND: If that is so, is it not really that 840,000 dollars on page 1,005 and the 952,000 dollars are added together?

LORD PORTER: No, it will not work; I tried that. I think the mistake is that Mr. Perry gave 600,000 dollars and the learned judge gives 25 per cent, which is 200,000 dollars.

LORD NORMAND: On page 1,007 600,000 dollars is treated as the allowance for extra ornamentation which Mr. Perry wanted to deduct.

LORD PORTER: He says that will not do, that 200,000 dollars is enough, and 200,000 dollars is 25 per cent.

LORD NORMAND: 600,000 dollars is roughly 25 per cent of 1,800,000 dollars.

LORD PORTER: No, it is 25 per cent of a good deal more. Anyhow, that is as near as I can get it for the moment.

LORD ASQUITH: Does it come to this. If you had exactly the ornamentation in limestone it would have cost 805,000 dollars, but you ought not to have had all that, you ought to have had only one-quarter of it so that you spent 600,000 dollars too much. Is that right?

MR. BEAULIEU: Yes, my Lord. "These items total 3,548,500 dollars to which should be added the architect's fee of 5 per cent (177,425 dollars) in all 3,725,925 dollars. This amount of 3,725,925 dollars represents additional and extravagant cost incurred in constructing this monumental building instead of the usual type of fine quality first class building.

"The Board arrived at a total replacement value of the two properties of 16,777,558.69 dollars".

LORD PORTER: We have had this particular figure before and we shall not gain much by reading it again. We shall have to consider it.

LORD REID: If the Board have found that there was a waste of 3,700,000 dollars, which was unnecessary, it was an additional and extravagant cost, why is that figure not deducted in toto if you are seeking the replacement cost, because I should have thought that when you sought to replace the building you would have left out the extravagant expenditure?

MR. BEAULIEU: Our respectful submission is that when you speak

of replacement cost you must replace the building as it is and not an imaginary building built totally differently with limestone and so forth. Of course, there is some truth partly only in the proposition that some of this extravagant cost is not reflected in the commercial value, therefore, for that very reason, the assessors have combined together the commercial value and the reflected cost, making a first deduction precisely on account of the fact that these ornamentations were not totally reflected in the commercial value. To say that they are not reflected at all I think is a little excessive, because every one of the witnesses told us that granite will last longer than limestone, so much for the marble, and again granite requires less maintenance cost than limestone, particularly in our country. So our contention is that when we discuss replacement cost only, the replacement cost must be calculated on the building as it is, subject to this, that you consider, with regard to commercial value, what deduction should be made on account of the lost space.

LORD REID: Is that a rigid rule in Quebec? Does it mean if you are valuing something which is really a white elephant that nevertheless when you come to replacement cost you must take the whole cost of reproducing it with all its unnecessary features?

MR. BEAULIEU: Yes, that is our contention. Then you may add to the depreciation if it is necessary, and you may further deduct if you have to consider commercial value, because there are various kinds of buildings, but when we have a building which is owned and totally occupied by the owner we are not concerned with commercial value at all, so we take purely and simply the replacement cost and in that case, according to the circumstances, additional depreciation is taken care of.

Then I think we can go to page 1,010. "The difference between the reported cost of the building as stated by the Board (19,167,089.24 dollars) and by Vernot (19,108,375.54 dollars) is accounted for by the addition by the Board of an amount of 58,713.70 dollars spent on the construction of the building from April 1st, 1930, to December 1st, 1941.

"The Board has deducted an amount of 181,503.32 dollars as being the adjusted cost to index number 1939-40 (a deduction of less than 1 per cent). Vernot had adjusted this cost on a basis of 7.7 per cent and the court can see no reason for brushing aside this percentage as established by him and can find no logical explanation for the Board arriving at the negligible percentage adopted by it. The amount to be deducted on the basis of 7.7 to adjust the cost to 1941 figures is 1,475,865.87 dollars making the cost of the main building in 1941 of 17,691,223.37 dollars.

"An additional amount of 5 per cent was deducted by the Board as allowance for extra cost being for loss of time, delays and other inevitable inconveniences in an enterprise of that size. Consequently a further deduction of 884,561.17 dollars brings the cost to 16,806,662.20 dollars. A depreciation of 14 per cent should also be deducted leaving a replacement cost of 14,453,729.50 dollars".

LORD PORTER: What is the 14 per cent for?

MR. BEAULIEU: It was for physical depreciation.

LORD PORTER: After that, there is the ordinary allowance. Apart from that "Vernot allowed a depreciation of 25 per cent on the first two buildings and 18 per cent on the main building which

seems reasonable enough but of not sufficient importance to challenge the percentage of depreciation adopted by the Board". What does that mean?

MR. BEAULIEU: That means the Board adopted the figure of 14 per cent for depreciation which was found by the Board and that figure of 14 per cent for physical depreciation was not disputed in the other court.

LORD PORTER: I am not quite sure I follow that, because apparently Vernot gave an additional 25 per cent. For the 25 per cent apparently the Board of Revue substituted 14 per cent and if that is right, that is what it seems to say, I should have thought the difference between 25 per cent depreciation and 14 per cent depreciation was sufficient to raise passions at least, if not to make a difference in the figures.

MR. BEAULIEU: Vernot deducted 25 per cent only on the two first buildings. It is on the question of the three stage building.

LORD PORTER: Was the main expense on the third?

MR. BEAULIEU: The main expense was from 1930 to 1931, 6 millions and 9 millions and then about 2 millions up to 1941.

LORD PORTER: If you neglect 25 per cent and take 18 per cent, there is a considerable difference involved between an 18 per cent deduction and a 14 per cent deduction. What I do not follow, I am not taking any view about it, is what the learned judge means by saying was "of not sufficient importance to challenge the percentage of depreciation adopted by the Board".

MR. BEAULIEU: 25 per cent was not deducted from the entire building.

LORD PORTER: Leave your 25 per cent out altogether and leave nothing except 18 per cent. I should have thought the difference in depreciation between 18 per cent and 14 per cent in a building of this cost resulted in a very considerable sum, and what I do not follow is why the learned judge says that that is not "of sufficient importance to challenge the percentage of depreciation adopted by the Board".

MR. BEAULIEU: That is the learned judge's opinion.

LORD PORTER: If I am understanding the facts aright, I do not much mind otherwise, but have I got the facts right?

MR. BEAULIEU: My attention is called to page 10 of volume 1. Schedule "A" on page 10 is a statement of the amounts spent every year beginning with 1913. We see that the amounts spent in the first years were not very much, but in 1930 we have an amount of 6½ millions.

LORD PORTER: 1929 you may take. It really started in 1928, 3 million, 6 million and 3 million.

MR. BEAULIEU: 6 millions and 3 millions in two years. The 14 per cent is taken on the whole so that the largest expense was made only in 1930, that is to say, eleven years before the roll. That is the reason why they made an average and the Board of Revision said: We will take the average life of this building as being 14 years, because the largest amount was spent less than 14 years before. So they averaged the whole and said that the building should be considered as a building of 14 years of age, we take 1 per cent per year

making it 14 per cent.

LORD REID: Am I right in thinking that at line 27 Vernot, having allowed 25 per cent on the smaller expenditure on the first two buildings, and 18 per cent on the larger expenditure on the main building, is allowing something on the average in the nature of 20 per cent thereby.

MR. BEAULIEU: Approximately.

LORD REID: The judge is saying that the difference between 20 per cent and 14 per cent is, in their view, negligible, or at least they are not going to take it into account.

MR. BEAULIEU: That is what the Superior Court judge says; yes, my Lord.

LORD PORTER: That is what is puzzling me, because I should have thought that there was a considerable difference between an average of 20 and an average of 14, but that is apparently what he says.

MR. BEAULIEU: Then line 30: "However, both Vernot and the Board have refused to allow any depreciation on account of the additional costs for granite, monumental work etc. as explained by Perry and adopted by Mills and Desaulniers. In the Minnesota case above referred to and relied on by the City the replacement approach was based on a 2 per cent a year allowance for general depreciation and a further 25 per cent on account of its distinctive architecture. The court considers that in dealing with the replacement approach the extra cost of 3,725,925 dollars for the granite, ornamental stonework, bronze sash, bronze doors, etc., should also be taken as an important fact. Consequently an additional depreciation of 14 per cent should be allowed for this extra cost, that is, 2,352,932.70 dollars. This additional 14 per cent allowed for depreciation takes into consideration the index figure and the 5 per cent extra allowances which entered into the gross amount. This would bring the final replacement value of 12,100,796.80 dollars. To this amount of 12,100,796.62 dollars must be added 730,600 dollars the value of the land giving a total for the main building and land of 12,831,396.80 dollars."

LORD PORTER: We shall have to ask your opponents at some time this problem. What the learned judge is saying, as I gather, is that he takes off from the value 3 million odd dollars and then when he has taken it off he allows a depreciation in respect of it. How you could allow a depreciation in respect of something which, on your calculation, is not there, I do not at the moment comprehend.

MR. BEAULIEU: My submission is that the learned judge proceeded to make the deduction of 3 millions under the form of an additional depreciation of 14 per cent, because the 14 per cent depreciation allows, as he said in his remarks, for the index figure of 5 per cent extra allowance and exactly represents the 3 millions. The learned judge was trying to adopt what he thought were the principles of the Minnesota case. In the Minnesota case they were valuing a specially adapted building. It was adapted for the Federal Reserve Bank so they said we cannot consider the commercial value to such a bank, because if we had to find a tenant we would have to rebuild it almost entirely so we are going, first of all, to allow a physical depreciation of 2 per cent per year, 25 per cent; and besides that we are going to allow an additional 25 per cent to take care of the extra cost. I understand that the learned judge is proceeding in the same way. Instead of saying I am taking purely and simply the

3 millions of extra cost, he makes the same deduction but in the form of an additional depreciation which, if we consider the 7.7 additional, the 5 per cent extra allowance as a matter of fact results in the total depreciation of 3 millions.

LORD REID: Is that right, because I am comparing page 1,007, line 15, with page 1,010, line 42? On page 1,007 the excessive expenditure is given as 3,725,000 dollars, whereas the depreciation allowed by the learned judge on page 1,010 is 2,350,000 dollars.

MR. BEAULIEU: The difference between these figures results from the fact that the learned judge first deducted from the 3 millions the 14 per cent depreciation allowed by the Board as physical depreciation. He deducted that, first of all, from the 3 millions. Then he deducted the index cost of 7.7 because he maintained the index cost of Mr. Vernot, and then he deducted, as he says in his note, an additional 5 per cent. Making a computation of these three deductions, 14 per cent depreciation allowed by the Board for physical depreciation, then 3 millions, 7.7 for the difference of index cost, and 5 per cent for extra allowance, we come approximately, there might be a little difference in figures, to 2,725,000 dollars which was deducted; but even if the learned judge had not deducted the 14 per cent additional, he would have had to deduct nevertheless the 14 per cent physical depreciation allowed by the Board; he would have nevertheless had to deduct the 7.7 if he was adopting the figures of Mr. Vernot, because the Board did not admit that figure.

LORD REID: I cannot make the figures fit because if you take the three items and add them together they would seem to me to amount to something less than 1 million dollars cumulative, whereas the difference between 3,725,000 dollars and 2,350,000 dollars is 1,400,000 dollars. Where the extra 400,000 dollars has gone, for the moment I do not know.

MR. BEAULIEU: May I suggest that in his reasons for judgment Mr. Justice Galipeault of the Court of King's Bench discusses precisely that point, and he gives his figures and his explanation. I have tried to verify the figures but my arithmetic is very poor. At all events that is the only explanation I know of and it is given by Mr. Justice Galipeault in his reasons for judgment. At first sight it strikes one as being some mistake.

Then page 1,011: "In allowing this additional 14 per cent for depreciation the court has not taken into consideration the excess cost of the hospital auditorium, kitchen and cafeteria services and private elevators as they all form part of the special services enjoyed by the Sun Life although adding little to the actual value of the building. Vernot and the Board have not considered any allowance for cost of financing and if such allowance should be made it would be taken care of by the extra cost of these amenities".

Again, the learned judge apparently enters into the amenities in discussing the cost.

"In arriving at this amount of 12,831,396 dollars 80 cents, the Court has followed the calculations and accepted the figures of the Board, except that it has adopted the 7.7 percentage adopted by the assessor Vernot for adjusting the cost to the index number and has allowed an additional 14 per cent for depreciation for extra costs as already explained. There appears no reason for otherwise disturbing the valuation arrived at by the Board. Vernot and the Board do not agree on the depreciated replacement values arrived at by them.

"The heating plant assessment will not be disturbed. The assessment as detailed in the judgment speaks for itself, and the only criticism that could be offered would be as to the percentage allowed for depreciation. This percentage is not so much at variance with the evidence as to justify it being altered.

"The Court has carefully read the evidence and studied the record and can see no reason for adopting any one of the various methods adopted by the experts in arriving at their replacement valuations. None of them agree as to the approach or the method of making their calculations or as to the rate of depreciation to be allowed or as to what, if anything, should be allowed for obsolescence and functional disability. There does not appear to be any obsolescence which can be considered in dealing with the replacement value. The so-called functional disability has been taken into consideration in the commercial valuation. The Board has made a very comprehensive resume of the evidence of the various experts examined by the parties and of the various factors considered by them in arriving at their various valuations, and it is not necessary to again review the evidence.

"The commercial value of 7,028,623 dollars found by the Board must remain. It is less than the commercial value arrived at by the experts of the Sun Life and the City has not stressed any error in this valuation.

"The Board in arriving at a commercial value based its decision on a total gross revenue of 1,189,055 dollars 30 cents. This is made up of 768,255 dollars 56 cents charged by the company to itself for the space occupied by it and 420,789 dollars 74 cents as being the gross rental receipts from the tenants as admitted by the parties. These figures do not take into account a certain amount of free occupation as well as the unoccupied and unfinished space. The rental charged by the company to itself is more or less a book-keeping entry and does not necessarily reflect the actual commercial value of the space. The actual potential rental value of all the available rental space in the building as arrived at by Lobley and Simpson, which is approximately the same as the gross revenue on which the Board based the commercial value, justifies the commercial value established by the Board.

"Lobley, Simpson, Mills and Desaulniers all have made their own calculations as to the rental possibilities of the building as a whole, taking into consideration the occupied and unoccupied space and making their own estimates as to the rental value of all the space in the building. The total potential gross revenue has been estimated by Lobley at 1,108,000 dollars, by Simpson at 1,134,490 dollars, and by Mills and Desaulniers at 1,496,444 dollars 45 cents. Both the rental valuations of Lobley and Simpson are below the total gross revenue on which the Board based the commercial valuation. The Court attaches particular importance to the valuation arrived at by Lobley, who is the rentals administrator of Eastern Canada for the Wartime Prices and Trade Board, and has had a most extensive experience in real

estate matters. His method of arriving at his valuation is concise and clear. He stated that he assessed the Sun Life for the space it occupied in the building at rates which are in keeping with the rates that are paid for very substantial quantities of space in the same building by a similar character of tenants and at the highest rentals that could be secured at the present time by any first class tenants.

"It can be assumed that the Board in basing its decision as to the commercial value on the total gross revenue of 1,189,055 dollars 30 cents has followed the potential gross revenue as estimated by Lobley and Mills rather than what appears to the Court to be the excessive potential gross revenue of 1,496,444 dollars 45 cents estimated by Mills and Desaulniers. While Mills undoubtedly has had considerable experience in the rental field in the City of Montreal, his assessment of the space in the Sun Life does not appear warranted. He has adopted a formula known as the Sherdon Karkow formula to his own uses. He allots a much higher rate to the Sun Life than for similar space occupied by other tenants. He values the basement at 2 dollars 25 cents a square foot. He finds that 2 dollars 10 cents a square foot paid in the Royal Bank Building, built in the centre of the city on land valued at over 30 dollars a square foot justifies the basic rate of 1 dollar 95 cents applied to the equivalent area in the Sun Life Building. The whole tenor of his report would indicate that he has gone to the very extreme in all his valuations. He has assessed the land on which the building is erected at 844,000 dollars and that on which the power house is erected at 86,000 dollars. The land has been assessed by the City assessors at 730,000 dollars for the main office building and 74,100 for the other building, which valuations have been accepted as correct by the Sun Life and the City. He endeavoured to establish the replacement cost of a building without any qualifications as a builder or architect.

"Desaulniers, who collaborated with Mills, has approved of the methods adopted by him in arriving at his estimates, as well as the estimates themselves.

"The Sun Life has strenuously argued that any property replacement value should be approximately the same as the cost value and that the two should be correlated. In dealing with a property such as the Sun Life, the difference in the two values can be readily understood."

LORD PORTER: I do not follow what that means. It says that the "replacement value should be approximately the same as the cost value". That means that the replacement value should be the same as the letting value, does it not?

MR. BEAULIEU: My understanding is that the contention of the Sun Life was that the replacement value and commercial value should have been blended together on the basis of 50 per cent for each.

LORD PORTER: I can follow that. It is the phraseology that puzzles me in a lot of this. He says "The Sun Life has strenuously argued that any property replacement value should be approximately the same as the cost value", which means, as I follow it, that you would take what the commercial value is and then you would say that the cost value ought to be related to that, or that they ought to be very much the same. Having got them very much the same, you should correlate the two and then arrive at some result from the combined result. I do not know whether I have that right or not, but I am puzzled by the phrase "replacement value should be approximately the same as the cost value".

MR. BEAULIEU: My understanding is that the words "cost value" are a misprint. I think that it should be "commercial value".

LORD PORTER: Then that would mean their letting value. If that is so, it would seem to be said that you do not calculate replacement value on what it would cost to put up the building. I do not see on what that argument is based. I can understand that you have to take the commercial value not of a magnificent building like this but of an ordinary building; and, having got that, you should consider what the letting value is and then use some combination of the two figures to arrive at your result; but that is not quite what he says.

LORD ASQUITH: You might get an enormous disparity. In the case of a big building that is a white elephant, it would cost an enormous amount to replace it and yet you cannot let it at all.

MR. BEAULIEU: There must always be a slight difference between the replacement value based on capitalisation and earnings and the replacement cost value. That is the reason why it is blended together. It is so that what may be excessive in the replacement ----

LORD REID: What the Sun Life really did argue is not what is stated, but that the replacement value should be given approximately the same weight as the commercial value. Is not that what they said?

MR. BEAULIEU: Yes, my Lord; I understand that that was their argument. That is why I stated a moment ago that there must be a misprint. The argument is that the two elements of value should be wedded equally, so that one would be offset by the other.

LORD NORMAND: If one reads on, I think one will find what he means; but I think that something has gone wrong with lines 24 to 30.

MR. BEAULIEU: Yes, my Lord. At line 31 it is said: "The replacement value of a church might be 100,000 dollars and the commercial value practically nil: in a building designed and economically built for an office building the two values might be the same. In using the two different approaches, where the cost is high and the rental low a serious difference must ensue." That was the case for the Sun Life. "The Board has approached of the two approaches, but has adopted a peculiar method in its endeavour to correlate the two. After finding the replacement value of the two plants to be 16,777,557 dollars 69 cents and the commercial value 8,028,623 dollars, it has taken 82.3 of the replacement value and 17.7 of the commercial value and, totalling the two results, has found the real value of the two main buildings and the heating plant to be 15,051,997 dollars 7 cents, but has not disturbed the value arrived at by Vernot. Vernot reached his value by adding 90 per cent of the replacement value to 10 per cent of the commercial value.

"In 1940 the assessors of the City adopted a memorandum establishing a system for the assessment of large properties such as of office buildings, apartment houses, departmental stores, hotels, etc. Mr. Hulse, the chief assessor of the city, in his evidence refers to this memorandum."

LORD PORTER: We have had all this read right down to page 1016.

MR. BEAULIEU: There is a short passage that I should read on page 1016, at line 23: "The fourth category dealt with buildings such as hotels and theatres, etc., which in no way resemble the type of building under discussion. Mr. Vernot decided that 90 per cent of the replacement value and 10 per cent of the commercial value should be added together to arrive at the actual or real value of the property for assessment purposes."

LORD PORTER: We have read the next passage, have we not?

MR. BEAULIEU: Yes, my Lord; we have. It is the evidence of Mr. Vernot and his explanation.

LORD PORTER: And we have had the passage on page 1018, at line 36, following: "The Board in altering the percentage of replacement and commercial values as arrived at by the assessor" and so on. That is when they changed the 90 per cent to 10 per cent ratio to the 82.3 per cent to 17.7 per cent.

MR. BEAULIEU: I think that we can begin again at line 17, on page 1019, where it says: "The Court cannot follow the reasoning of either Vernot or the Board in arriving at their percentages. The Sun Life building was constructed for the housing of office workers and 50 per cent of the building is occupied by the company and the rental value can be easily computed. The criticisms of Lobley and Simpson as to Vernot's application of the 90 per cent - 10 per cent valuation would apply equally to the 82.3 per cent and 17.17 per cent valuation of the Board.

"Lobley said: 'The capitalised amount of the dependable future income of an office building is regarded by all authorities as the chief instrument for the measurement of value. Mr. Vernot has related it to an insignificant place, to wit, 10 per cent. He has attributed 90 per cent of the value to his so-called cost of reconstruction less depreciation and 10 per cent to the capitalised amount of the future income. Although it is recognised that the experience and judgment of the valuer play an important part in the use and employment of figures and calculations developed in the process of valuing, there should and must be elementary principles as well as theories behind all formulae. I cannot imagine any principle or theory from which the 90 to 10 formula has been developed. I listened most carefully to Mr. Vernot's evidence. He said that it was one of a series of formulae which had been agreed upon by a committee of assessors, but he gave no information to enlighten us as to the theories, principles or notions that were behind it. Unless or until these theories or principles are disclosed and explained to me, I find myself unable to comment on them, and to tell the truth I cannot help feeling that there is nothing behind them.

"What have you to say about a system of arriving at a valuation by two different methods and then weighing your final result 90 per cent at one end and 10 per cent at the other? I can see no advantage in doing that. Buildings have one value, whether they are occupied by the owner or by tenants. This is a commercial building. There is no space there that cannot be rented. It is absolutely a commercial building. It is not a one-purpose building like a church. The space which is occupied by the Sun Life can be used by others as it is now, or it can be used for office space. The cafeteria, if they did not want to use it as a cafeteria, could be rented for office space. Nothing makes it necessary to use it as a cafeteria. The banking hall, it might be hard to find a tenant for that. The building is a commercial building, and there is no reason why there should be a difference in value whether occupied by tenants or the owner. It has a market value. And the system of dividing it up taking a certain percentage according to whether it is occupied by the owner does not seem to be logical. If you applied that to one kind of building, you would apply it to another. If you had a couple of duplexes, one was rented and the other was occupied by the owner, how would it apply there?

"One other point as regards Mr. Vernot's testimony. He said if he was doing it over again it would reduce his return from 6 per cent to a lower figure. I cannot see any person

who is going to buy that building and receive only 3 or 3½ per cent on his investment. I cannot realise anyone taking this for less than 5 per cent. They might want more. That would be the least return.'

"The Court does not criticise the assessor for following the memorandum of 1940 concerning the assessment of certain large properties in order to arrive at a uniformity in the valuation of properties in the city which was intended as a guide. It does, however, question the percentages allotted by Vernot and the Board. The Court considers that both the replacement value and the commercial value should be considered and that each should be given equal consideration, to wit, the actual value should be 50 per cent of the replacement value plus 50 per cent of the commercial value. In the Sun Life Building the tenant situation cannot be 'considered only temporary and incidental'. While the Sun Life enjoys the full utility of the space occupied by it, it is not 'dependent on current rental conditions for the carrying charges on the balance'. The variance between the replacement value and the commercial value is such that the percentages adopted by Vernot and the Board appear to bring a distorted result.

"The following is a recapitulation showing how the final valuation has been arrived at by the Court: The total cost of the main building as declared December 1st, 1941, 20,686,587 dollars 62 cents: Less: cost of sidewalk, 70,335 dollars; cost of temporary partitions 233,712 dollars 38 cents; cost of demolishing, etc., 1,215,450 dollars; total 1,519,498 dollars 38 cents. Construction cost of the building 19,167,089 dollars 24 cents. To adjust cost to index No. 1939-40, 7.7. per cent, 1,475,865 dollars 87 cents. Cost of building in 1941, 17,691,223 dollars 37 cents; less 5 per cent allowance ----

LORD PORTER: You need not bother to read the figures. If you just say "so much", it will not convey anything less to our minds. What puzzles me on that page, if I might ask you about it now, is this. It says "Less 14 per cent depreciation for extra unnecessary costs". To what does that refer?

MR. BEAULIEU: That is the ornamental part of the building.

LORD PORTER: He gets the replacement value at 13,387,131 dollars and the commercial value at 752,062, and then takes 50 per cent of each.

MR. BEAULIEU: Yes, my Lord. There are three different figures between the Court and the Board. They are the index cost, the elimination of the ornamental part of the building, and then the percentage.

LORD PORTER: I do not think we need worry about the percentage, because that really arrives at the figure agreed between you. The 7,023,623 dollars is a figure common to both of you.

MR. BEAULIEU: Does your Lordship mean the depreciation?

LORD PORTER: No; the commercial value.

MR. BEAULIEU: That is agreed upon.

LORD PORTER: Very well. Then we get the 7,028,623 dollars on page 1022, so that the dispute is, firstly, as to the replacement value and, secondly, as to the proportions in which that should be correlated with the commercial value.

MR. BEAULIEU: Yes, my Lord. At line 11 the judgment continues:

"As already stated the Court agrees with the conclusions arrived at by the Board that these two immoveables should be grouped in one for the purpose of assessment, but finds that the complainant has established that the present assessment of a total sum of 14,276,000 dollars is excessive and for the reasons given has come to the conclusion that the assessments, considered and grouped as a single one, should total 10,207,877 dollars 40 cents, with costs of stenography and of transcription against the City and the cost of the present proceedings also against the City.

"In maintaining the appeal of the Sun Life as regards the valuation of its immoveable properties the Court has not disregarded three cases cited by the City dismissing appeals from decisions of the Board. The Court has not questioned the judgment of the Board except as regards the adjusted cost to the index number, the percentage allowed for depreciation and the percentage of replacement value and commercial value on which the final valuation was established. The Board has not accepted Vernot's figures on any of these items. As regards account No. 151039-L, being the assessment of the annual rental value on the roll August, 1942, the Court considers that this has been amply justified by the evidence of the experts examined by the Sun Life. As the present annual rental value assessment of the heating plant has been reduced to nil and annulled by the judgment of the Board and changes on the roll ordered, no comment on this point is necessary.

"Considering that for the reasons stated the Sun Life Assurance Company of Canada, appellant, has justified its appeal as regards the total assessment of its immoveables and has failed to justify its appeal as regards the assessment of the rental value. Doth maintain in part the appeal of the Sun Life Assurance Company of Canada, appellant, from the judgment of the Board of Revision of Valuations of the City of Montreal rendered on the 21st June, 1943, and Doth Order that account No. 140896 Sun Life Assurance Company of Canada, 1153 Metcalfe Street, St. George Ward, and account No. 140942 Sun Life Assurance Company of Canada, 1207 Mansfield Street, St. George Ward, be grouped as a single one and that the valuation of the lands and buildings be reduced to 10,207,877 dollars 40 cents".

LORD PORTER: I do not think we need really continue with that. That is just the summing-up. Where do we go now?

MR. BEAULIEU: There is then the judgment of the Court of King's Bench and the Reasons for Judgment of the various judges. The formal judgment is in French and also the Reasons for Judgment of ~~the~~ four of the learned judges. As I did not trust my ability to translate at first sight, a translation has been prepared, which I beg the Board's leave to read.

LORD PORTER: If you will give us a translation, it will probably simplify matters. If you read in the French, we can then follow it in English. If as we follow it there is anything we do not understand in the French, we can ask you about it.

MR. BEAULIEU: First of all, there is what we call the formal judgment of the Court of King's Bench at page 1026.

LORD PORTER: The first part is what one is accustomed to in French judgments, the explanation of the various grounds and a setting out of what has been taken into consideration and so forth. Do you think we ought to have that?

MR. BEAULIEU: The formal judgment is, of course, the resumé of all the reasons for the judgment.

- LORD PORTER: I was wondering whether we could not take the reasons.
- MR. BEAULIEU: Shall I simply read the reasons for judgment, my Lord?
- LORD PORTER: I should have thought that we might do that.
- MR. BEAULIEU: They commence on page 1032 with those of Mr. Justice Galipeault, the Chief Justice.
- LORD PORTER: We can go back to the formal judgment if we want to.
- MR. BEAULIEU: Mr. Justice Galipeault says: "Jusqu'ici, les parties litigantes ont provoqué" etc., etc. (reading to the words at line 15) "valeur économique on locative, soit de la valeur commerciale".
- LORD PORTER: Do you mean that "valeur économique" is what you call the commercial value?
- MR. BEAULIEU: Yes, my Lord. "Le mode d'évaluation qui fait la base" etc., etc. (reading to the words on page 1050, line 27) "de l'éclairage et des services en général".
- LORD PORTER: I find a little difficulty in following that. As I understand it, he is there criticising the rental value; but I thought that on the whole the capitalisation of the rental value by the City was less than the capitalisation by the company. I follow when he is saying that, when you are dealing with the capitalised value in the one case and the capitalised value in the other case, the fact that the building was not completed would make a difference; but I do not follow what that has to do with a more or less agreed figure as regards rental value.
- LORD OAKSEY: Was he not explaining the low valuation which had been put into the valuation list of the earlier years?
- LORD PORTER: I think that he probably was.
- LORD OAKSEY: And only doing that, I think.
- LORD PORTER: I suppose that he is doing that from the rental value; but he might have said that they were calculating on rental value at that time and, therefore, making them right.
- MR. BEAULIEU: The way in which, as I understand it, the learned judge tries to put it is to consider two aspects of the question. First he speaks of the increase in capital expenses for the continuation of the building. Then he says that the rental was increased. He considers both the effect of the capital expenses on the reproduction and the effect on the rental value, and he says that there is no reason why, these two elements of value having been greatly increased, the actual value should not have increased correspondingly. That is, as I understand it, the point that he is trying to make.

The learned judge then says: "Les rôles étant gelés depuis 1937" etc., etc. (reading to the words at end of judgment) "l'appel de la Compagnie Sun Life."

(Adjourned for a short time).

MR. BEAULIEU: My Lords, then we come to the judgment of Mr. Justice St-Germain: "Cet appel et ce contre appel sont d'un jugement de la Cour supérieure du district de Montreal" etc. reading to the words on page 1,053, line 9 "telle qu'amendée par la loi 5 George VI, chapter 73".

LORD PORTER: I think we have had that in English.

MR. BEAULIEU: Then page 1,054, line 27: "Comme on le voit, les membres du bureau de revision" etc. reading to the words on page 1,059, line 29 "and covered by the memorandum which I now quote". The memorandum has already been read, my Lord.

We can now proceed to page 1,061, line 37: "Il convenait, je crois, dès le début de ces notes" etc. reading to the words on page 1,068, line 31 "adopte la même méthode d'évaluation que l'estimateur".

LORD PORTER: I am right, am I not, in believing that the court hears the witnesses over again?

MR. BEAULIEU: No, my Lord, not in the Superior Court.

LORD PORTER: It only acts upon the evidence already given?

MR. BEAULIEU: Yes, my Lord, upon the record. "Après avoir lu et relu les témoignages des experts" etc. reading to the words at page 1,081, line 25 "et de la Cour supérieure qui s'élève à 1,471,344 dollars".

LORD PORTER: Before we pass from that, at what page do we get the year by year calculations? I thought that you said that the main construction was somewhere between 1927 and 1931. The criticism in this passage is that there are some other years and that they are not the chief years.

MR. SQUIBB: It is at page X of volume 1, my Lord.

LORD PORTER: That is what you said. You told us (and it is accurate) that the biggest expenditure is in those four years starting at 1928; it is rather over 14,000,000 dollars.

MR. BEAULIEU: The point made in this passage is that for every year they took the exact amount which was spent.

LORD PORTER: That is what he says, but he says that they took each year and he then goes on to say that Vernot made a mistake, because he took the principal years as being between the years 1927 to 1931. In fact those are the principal years. If you are taking the total cost about that time, as far as I can make it out it is about 14,000,000 dollars.

MR. BEAULIEU: Of course, it is not contested that the building was not built during 1927 to 1930.

LORD PORTER: No; but if you add the whole lot up you will find a great deal more was expended in those years than in all the other years put together.

MR. BEAULIEU: It is a fact.

LORD PORTER: Yes. If you are discussing what the percentage ought to be which you should allow, you must pay the greater attention to those years; and the fact that there are a certain number of inferior years where you do not expend so much - you will have to consider this at some time - hardly justifies a difference between the 7.7 and 1, or whatever it is.

MR. BEAULIEU: I think that we would be justified if we were proceeding by average to take the years during which the greatest expenditure was made; but there is one method which is more correct and accurate. We took every year -----

LORD PORTER: I cannot make out that you did take it every year. If you can convince me of that, I can understand it; but, if you are going to take it accurately, what you ought to take is the amount spent in a year. You say: How much did the amount spent in that year exceed another year, and take it in that way? I do not think that was done as at present advised; but it may be that you can show me that I am wrong.

MR. BEAULIEU: I cannot pass judgment on the accuracy of the figures, but there is a table prepared by the expert of the City where they, first of all, took the exact amounts spent year by year; secondly, they found out what was the index cost during that particular year; and then they adjusted the actual amount spent during the year during which it was spent with the index figure for 1941.

LORD PORTER: That is what this learned judge says.

MR. BEAULIEU: That is in accordance with the evidence.

LORD PORTER: But that seems to me to be subject to the criticism that he himself also says that the years 1927 to 1931 were really the expensive years and that the vast majority of the expense was incurred in those years. That may be wrong, but that is the prima facie view that the learned Judge's observation produces.

MR. BEAULIEU: May I refer your Lordships to volume 4 of the joint case. At page 680 there is the statement prepared by Mr. Cartier, of the Department of Statistics of the City. It shows how he proceeded. It is exhibit "D.1". You have, first of all, starting from the left, the index figures for every year as provided by the Federal Minister of Labour and that is adjusted to the prices current in that year in the City of Montreal. They took as a basis the statistics of the Federal Government and they adjusted it to the prices in the City of Montreal. Then we see that for the year 1913 the index figure is 72.4.

LORD PORTER: Of course, it was cheaper in 1913 than it became in 1941. I was trying to find the final result.

MR. BEAULIEU: In the third column you have the amount spent every year according to the admission; and then you have the amount of the deduction made on account of the difference in the index figure.

LORD PORTER: It is the gathering together of them all I want.

LORD OAKSEY: Surely that 106,000 dollars odd is the reduction of the 126,000 dollars odd by comparison of 72.4 and 109, is it not?

MR. BEAULIEU: Yes, my Lord; that is so. That is how it proceeds for every year.

LORD OAKSEY: That is mathematically accurate.

LORD PORTER: Yes; but I want to know how he reaches his general conclusion on it.

MR. BEAULIEU: All these figures are added on the last line of that page and it gives the difference between what was actually

what
 spent and it would cost if it had been spent in 1941. The difference is not given, but it is easy to compute. If we take the last figure on the right with the previous figure, we have a difference of 181,000 dollars odd. That is the way we proceed.

LORD PORTER: May I start at the beginning again? The base figure is 100, is it not?

MR. BEAULIEU: Yes.

LORD PORTER: And that is taken to be 1941, is it not?

LORD ASQUITH: No; it is 1936.

LORD PORTER: You calculate on that, do you not; and if so, why?

LORD OAKSEY: That is because the Government figures take that as being the zero.

LORD PORTER: But I thought we were going to compare 1941.

LORD OAKSEY: So they have, I think. They have compared all these figures, 72.4 and 69.5 and all the rest of them, with the figure for 1941 which is 109.

LORD PORTER: It was 1940.

LORD OAKSEY: 1940 was 109, was it not?

MR. BEAULIEU: Yes; 109 was adopted for the roll of 1941. It is not contested that in the year 1941 we adopted a figure more favourable to the company than is shown in the evidence; and it is not contradicted that in 1941 it was higher than during the last six months of 1939 and the first six months of 1940; so that on that point, as far as one can read the evidence, I do not think there is any contradiction.

LORD ASQUITH: Could you explain the third column. Let us take the first entry: 126,000 dollars odd in 1913. That was the amount of cash actually spent, was it not?

MR. BEAULIEU: Yes.

LORD ASQUITH: Then what is the next column?

MR. BEAULIEU: That is the deduction.

LORD ASQUITH: For what?

MR. BEAULIEU: The index figure of 72.4 of that year was lower than the normal, and so they made a deduction.

LORD ASQUITH: Let me put it in this way; The figure in the right hand column of all was, one would have thought, 126,000 dollars in terms of the prices of 1941. Is not that what it is meant to be? But how in that case 106,000 dollars in the intermediate column operates I cannot make out.

LORD NORMAND: Certain deductions had to be made.

LORD PORTER: I am not sure; it is pure guesswork. It may be that the 106,000 dollars is a comparison between 72.4 and 100 so as to bring it to the mean figure; and then it is put up again.

MR. BEAULIEU: Then, my Lords, there is some more additional information which is given to me about these figures. We must

take into consideration that they deducted the amounts spent which were deducted from the actual value; for instance, the part of the demolition and internal walls which were struck out. Of course, it is not all expended here, but the apparent discrepancy results from that fact that all that was deducted from the real value was taken off.

LORD PORTER: Let us for the moment take this first one. You have got the three figures. 126,000 dollars is the actual cost. You have got 106,000 dollars which, as I understand it, is the cost after deduction of the appropriate amounts. What is the 159,000 dollars? What is that and of which of the two former figures is that an index? I think that Lord Oaksey has given me the explanation. The final column is the appropriate increase on the net amount. I can follow that.

MR. BEAULIEU: These figures, of course, were not contradicted.

LORD PORTER: Do you mind telling me how he gets them together eventually? The total amount in Schedule "A" is the figure less walls. What does that mean? He gets so much for the walls which were pulled out?

MR. BEAULIEU: Yes; the walls and the demolished sidewalk and so forth.

LORD PORTER: That means the same apparently. There is nothing more to deduct.

LORD OAKSEY: The total of the third and fourth columns comes to the same as the total of the third column when the deductions have been made.

LORD PORTER: Those represent the only deductions made in that case.

LORD OAKSEY: Yes. Then the last column is the same figures written up because of the comparison between 109 and the various index figures.

LORD REID: Mr. Beaulieu, is it admitted that if this is the right way to do it, to make annual adjustment, this table on page 680 is accurate?

MR. BEAULIEU: There is no admission, my Lord.

LORD REID: Has it been challenged?

MR. BEAULIEU: There is no contradiction. The complainant took the position that it was immaterial.

LORD REID: Then why is it suggested that this is not the right way to do it?

MR. BEAULIEU: That is my difficulty.

LORD REID: Perhaps we had better wait until you come to that.

MR. BEAULIEU: I really do not know why the Superior Court did not accept that figure, because it is pure mathematics. The reason was clear. The Board thought it was a more accurate way to establish year by year the deduction or depreciation that should be made.

At page 1,081, line 30, the judgment continues:
 "Le second point sur lequel il y a divergence d'opinion" etc.
 reading to the words on page 1,083, line 16 "100 per cent au facteur valeur de remplacement comme facteur".

15

LORD PORTER: What he is complaining of is the taking off of certain factors when you are dealing with replacement value and saying that they ought not to be taken off there because they are being taken off in the commercial value. That is true no doubt; but then you get the difficulty, which you must always have in the case where you are taking off values, that the question of the accuracy and equitability of what you allow for one and the other must depend upon the proportions in which you have regard, on the one hand, to replacement value and, on the other hand, to commercial value. It would not be much use to say, for instance, in a building where only a portion is let and a portion is not let: Well, we will not take off anything for replacement value, because it is going to be shown in the commercial value (if you are allowed anything for commercial value). Therefore, the more influence you attribute to the commercial value the less are you giving relief in respect of excessive replacement value. Is that right?

MR. BEAULIEU: Of course, we do not object to additional depreciation on these ornamentations provided you consider only the replacement value, as it was done in the Minnesota case. There was only one approach in the Minnesota case.

LORD PORTER: The Minnesota case had no question of letting at all.

MR. BEAULIEU: In the Minnesota case, after having deducted what they call physical depreciation, they deducted an additional percentage for the ornamentation, because, as was said by the assessor in that case: Well, the taste of the ornamentation was somewhat doubtful. Some thought that it was beautiful and others thought it was not so beautiful. He said that having no other approach than production ~~of~~ cost ^{called} should add an additional depreciation, which might be ^{called} obsolescence, because if they did, this ornamentation might supply their obsolescence; but our complaint is that in the present case we deducted, first of all, a certain amount on account of commercial value resulting from the fact that all these ornamentations did not add anything to the rental value, so that that has been taken care of in the commercial value. If we do again make a further deduction, our respectful contention is that you should not do a thing twice on the same ground.

LORD PORTER: I follow that, if the final result were that you were taking the commercial value as the only consideration. I can follow it if you did not want a reduction in rental value and what they were taking was the replacement value; but, when you are combining the two, then the value of the argument must depend on the proportion to which you attach importance to one or other of those two factors. However, do not let us bother about it now. As far as I can see it, that is my difficulty with this criticism.

MR. BEAULIEU: Our submission is that, first of all, you must establish the replacement value as the building stands; otherwise it is imaginary. Then you must take the commercial value as it stands. We are not dealing with an expropriation case and we are not concerned with the commercial value later on from the commercial point of view or otherwise: it is a valuation for the purpose of taxation for three years.

LORD ASQUITH: It is quite clear that, if the building were replaced the fact that there was excessive ornamentation would have no relevance at all. What you have to restore is the actual building and not some cheaper equivalent. It is only possible to consider it if you are able to say that these

ornamentations are yielding no return.

MR. BEAULIEU: If there was no return, the commercial value would be lower than it is in this case.

LORD ASQUITH: It could not have any effect on commercial value.

LORD PORTER: I think that is, in terms, true; but the moment that you work these things out you find difficulty in calculating these things in the use of the building.

LORD REID: What is the theory behind replacement value? Is it that if the particular owner did not have this building it would be worth his while to build another one the same, although it was an expensive thing to do? Is that it?

MR. BEAULIEU: Yes; that is the foundation of replacement value, in my submission.

LORD REID: I can quite see that the owner might say: "It would be worth my while to put up a great deal of ornamentation, but not as much as all this; if I was doing it a second time I would still be, as I think someone said, proud, but I would not do all this." Would not that be a consideration for reducing the replacement value by the really unnecessary things?

MR. BEAULIEU: First of all, we would have to have some evidence that the Sun Life would do otherwise if it was building a new building. There is no evidence of that fact. The Sun Life is very proud of the building.

LORD REID: But some of the authorities go as far as to say that in every case you must take that identical figure, no matter how extravagant it is, when considering replacement. I was wondering whether that really is the rule or whether you need go quite as far as that.

MR. BEAULIEU: I respectfully submit that it is the correct rule; but the whole question is in the blending of the various factors. That requires, in my submission, expert knowledge; but we must, first of all, agree as to whether, when talking of replacement value, we have to take a building that we are going to replace as it is or take a building which is not the building actually in question, but an imaginary one. Then, of course, we come to an imaginary result. If we take that, then there remains the question in respect of which ----

LORD PORTER: That is what I want to get at. I think we had better have this out now. Is this what you are aiming at? Are you aiming at getting the value of this building and, when you are aiming at getting the value of the building, you say, or the experts say, that you should take various factors into consideration? The simple factor was the kind of factor which would be: For what price would a reasonable tenant take it? We get rid of our difficulties in dealing with a case where there is only one person who will take it, namely, the builder, by saying that he has to be taken as a problematical person.

MR. BEAULIEU: I know there is a decision in this country to that effect.

LORD PORTER: I want to know how far you differ from that kind of view in Canada. Primarily I should have thought that what you would want to know is what somebody would have paid for it,

just as we would ask in this country: What would somebody rent it at? You take the actual owner as one of the competitors in that respect. Then I should have thought that in Canada you would say: What would anybody pay for this building? One of the people you would take into consideration as a person who was up for it is the actual builder. You have to make up your mind as best you can what is the result. Am I right in saying that that is what the Canadian law has in mind when it asks the question: What is the value of the building for rating purposes?

MR. BEAULIEU: With respect, I would not agree with that, because I think it is not in accordance with our jurisprudence, although I think the result would be the same. When we are looking at the price a bidder would bid, we must consider another question: Would the owner be willing to accept the price? We have only one way to know that: it is the valuation made by the Sun Life itself; namely, the valuation on the roll that the value of the property was 16,000,000 dollars. Therefore, I conclude that, if the Sun Life was a bidder, it would go up to 16,000,000 dollars before letting the property go.

LORD PORTER: That is one method of dealing with it; but I am asking a different question from that. That is answering my question by giving a solution from deduction; but I want to know what principle you are asking us to apply under the Canadian jurisprudence in order to ascertain what the building is worth. What is the ultimate ground or basis upon which you are going to find your value.

MR. BEAULIEU: I would respectfully submit, that under our jurisprudence, we must, first of all, take into consideration every element of value, giving preference to elements of value based on facts such as the reproduction cost (that is a fact), such as an income value (that is a fact) and such as a market value, where there is in existence a market. Once you have one of the elements missing, such as market value, under our law, as I understand it, it is not advisable to imagine a market which does not exist, but we must purely and simply consider the remaining factors. I am speaking only from the point of view of a minister of taxation assessing buildings and land. As I understand it, it would not apply to an expropriation. When we are assessing a tangible thing such as a building or land, my submission would be that we must, first of all, give consideration to these three elements and, if one is missing, to the other two, subject to correction, if necessary.

LORD PORTER: In order that I might follow your argument and get it right, in that case there is no reason whatever for any deduction in respect of ornamentation or expensive fittings or anything of that kind. You say: "This is the building" and the replacement value you take is that building as it stands. Is that right?

MR. BEAULIEU: That would be right if it was a building owned and occupied by its owner completely. In that matter we would purely and simply consider what it cost to replace the same property at the time of the valuation.

LORD PORTER: I follow that answer. Let us take my next question. Suppose it is wholly let out, what do you do then?

MR. BEAULIEU: If there is no market value, then we cannot consider it.

LORD PORTER: No; but suppose it is wholly let out, in which case there must be some value to be obtained. Supposing it is wholly let to other people so that you have a revenue;

what do you do then?

MR. BEAULIEU: We take replacement cost.

LORD PORTER: No; you take replacement cost 50 per cent and revenue 50 per cent. Supposing the building has been built and is used purely in order to be let to other people so that you are looking to the revenue from it. As I understand what has been said in this case, what you take is that you consider 50 per cent replacement value and 50 per cent revenue. That is right, is it not?

MR. BEAULIEU: For commercial buildings; yes.

LORD PORTER: Then when you have it partially let and partially occupied, you find some sort of relation between the percentages from which you get your basic figure, as in this case they took 90 per cent.

MR. BEAULIEU: 90 per cent was taken purely and simply on account of the facts then existing. When they came to fix a percentage for the commercial value, Mr. Vernot looked at the space which was actually occupied by the tenants. He said: "Here is a building which I must assess according to two factors. So far as replacement value is concerned I, first of all, without any discussion, put 50 per cent". When it comes to commercial value, the question for him was on what basis he could fix a percentage. He took for his basis the space occupied by tenants and, finding that the space occupied by tenants was 40 per cent, he multiplied 40 per cent by the 50 per cent left; and 40 multiplied by 50 per cent is 20 per cent. Normally, he would have considered the commercial value on a basis of 20 per cent, but he went further. This is why the Board of Revision correct him. He thought that he could deduct another 10 per cent on account of the fact that the space occupied by the Sun Life was the best space of the building.

LORD PORTER: I do not know why the Board of Revision took 17½ per cent.

MR. BEAULIEU: They adopted another measure. They adopted the rentals actually received as compared with the rentals charged by the company in its books.

LORD PORTER: To itself. That was 17 per cent against 83 per cent. There are various problems we shall have to consider. One is what we ought to take as replacement value; secondly, whether it is accurate - of course, this may depend on a long series of decisions in your courts - to say that, where a building is wholly occupied, you ought to regard replacement as 50 per cent and revenue as 50 per cent; and from that, of course, one has to consider the various modifications of the 50-50 basis which take place. Those are the problems we have to consider, are they not, because obviously the Board cannot go into detail with regard to this, that or the other figure? It must get some general principle on which it has to act.

MR. BEAULIEU: I suggest that the memorandum lays down the general principle; and, of course, it is mentioned in the memorandum with all the circumstances that must be considered in each case.

LORD PORTER: I agree; but the question is how far we can consider the memorandum in its present form if it is a principle which ought to be followed.

MR. BEAULIEU: In my submission, the memorandum is in accordance

with our law. Of course, it is not a binding or a legal document.

LORD PORTER: That is what I mean. You say that it is in accordance with your practice and a practice which has existed so long that it has become in effect a legal document.

MR. BEAULIEU: That is our submission, my Lords.

(Adjourned till tomorrow morning at 10.30).