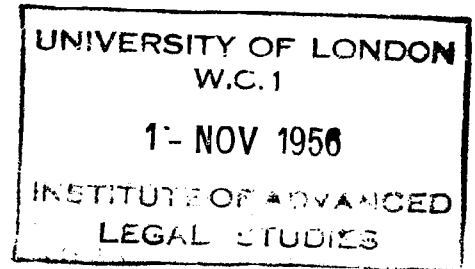


1897



In the Privy Council.

On Appeal from the Court of Queen's Bench for Lower 29505
Canada in the Province of Quebec (Appeal Side.)

BETWEEN

THE CITY OF MONTREAL - - *Appellants*

AND

THE STANDARD LIGHT AND
POWER COMPANY - - - *Respondents.*

CASE FOR THE APPELLANTS.

1. This is an Appeal from a Judgment of the Court of Queen's Bench for Lower Canada in the Province of Quebec (Appeal side), given on the 3rd of October, 1896, at the City of Quebec, the parties having consented that Judgment should be delivered there instead of at the City of Montreal, which Judgment affirmed a Judgment given by the Superior Court for the Province of Quebec, sitting at the City of Montreal, in the district of Montreal, on the 21st of September, 1896.

2. By such Judgment a perpetual injunction was granted against the Appellants, restraining them from interfering with the Respondents to prevent them laying underground wires in the City of Montreal. Record, p. 5.

3. The Appellants are the inhabitants and ratepayers of the City of Montreal, constituted a corporation or body politic by virtue of "Act 52 Vict., chap. 79, of the Legislature of Quebec," and Sec. 4191 of the "Revised Statutes of Quebec," and, acting through their Council, constitute the municipality or municipal authority for the City of Montreal.

4. The Appellants, as such corporation or body politic, have vested in them, by virtue of the said Act or otherwise, the absolute property in, or absolute dominion and control over, all roads, streets, public highways, and places within the limits of the City of Montreal, or at any rate the surface thereof, and such depth below such surface as is necessary for the purposes of 10 the Appellants as such municipal authority.

5. In addition, certain duties are imposed, and rights and powers vested in and conferred upon the Appellants either by the "Act 52 Vict., c. 79, of the Legislature of Quebec," or by the Articles of the "Revised Statutes of Quebec," which regulate the rights, powers and duties of towns, corporations, and municipalities such as the Appellants'.

6. Among such duties, rights, and powers are the following:—The power of accepting, taking, purchasing and holding lands and tenements, real and personal, movable and immovable estate, and of granting, selling, alienating, 20 assigning, leasing, and conveying the same. The right to use as public highways all roads, streets, and public highways within the limits of the City of Montreal. A duty to prevent the same or any of them being blocked up or obstructed in any way whatever. The power to close any street and to forbid its use, to prevent any street being encumbered or encroached upon, to make bye-laws, to regulate the width and all things concerning the streets, and the right generally to exercise all the powers vested in them or which are necessary for the accomplishment of the duties imposed upon them.

7. By Section 66 of the said Act, 52 Vict., c. 79, it is enacted that the Council of the Appellants shall meet once a month, that is to say, on the 30 second Monday in each month.

8. The Respondents are a trading company, constituted and governed by Acts 55 and 56 Vict., chap. 77, and 56 Vict., chap. 73, of the Legislature of the Province of Quebec, and established for the purpose of manufacturing and dealing in electricity, gas, and other illuminants for profit.

9. By Section 6 of the Act, 56 Vict., c. 73, it is provided that the Respondent Company may erect above buildings with the permission of the Municipal Councils or of the proprietors, by paying such proprietors any real damages, if any there are, which they may suffer by reason thereof, and also erect above ground all necessary constructions, including posts and all supports 40 for conducting wires and electricity or other motor power along or across streets, public roads and highways, or over any watercourses in the Province of

Quebec, subject to the provisions of Section 17 of the Act and provided that the public shall not be put to inconvenience in using such streets, roads, highways or watercourses, and that navigation shall not be interrupted, and also that the Municipal Council in all cities, towns, or incorporated villages, if they deem necessary, shall have the right to oversee and prescribe the manner in which such streets, roads, and highways shall be opened for the erection of poles or for the placing of wires underground, and provided also that the surfaces of such streets shall in all cases be put back into their original condition by the Company at its own costs as near as possible.

10 10. By Section 18 of the said Act, 55 & 56 Vict., c. 77, it is provided that the Respondent Company before commencing the laying of wires or pipes shall make a report to the Commissioners of Agriculture and Public Works, and send a copy thereof to the Council of the Municipality in which such works are projected.

11. On the 22nd of August, 1896, the Respondents made to the Commissioners of Agriculture and Public Works a report, a copy whereof is set out at p. 14 of the Record and numbered 5. Record, p. 14.

12. As appears by such report, all the works therein mentioned are within the Municipality of the Appellants, but no copy of such report was sent to the Council of such Municipality until the 24th of August, 1896, when a copy thereof was served upon the Appellants, together with a document or notice requiring them, within ten days from the service thereof, to prescribe the manner in which the streets, squares, lanes, and public places mentioned in the said report should be opened for the purpose of laying the wires of the Company underground. The service of such copy was the first notice or intimation received by the Appellants that the Respondents proposed to break up or open certain of the streets, roads, and highways mentioned in such copy. Record, p. 13.

13. The earliest date, subsequent to the 24th of August, at which, under the provisions hereinbefore mentioned, the Council of the Municipality could hold a sitting was Monday, the 14th of September, being the second Monday in the month. Even on such date such Council would not have been in a position to prescribe the manner in which such streets, squares, lanes, and public places should be opened, inasmuch as by its rules of business the matter would have had to be referred to the Road Committee, who would have had to obtain a report from the City Surveyor and report on the whole matter to the Council.

14. About 2.30 p.m. on the 10th day of September, 1896, without the consent or knowledge of the Appellants, and without the Municipal Council having prescribed or overseeing the manner in which the streets, roads, or highways in the said report mentioned should be opened, or having in any way intimated that they deemed such oversight or prescription unnecessary, which Record, p. 23.

in fact they did not, the Respondents broke up the surface of St. Antoine Street, in the City of Montreal, and commenced excavating the ground there for the purpose of laying underground wires along such street.

15. The City Surveyor and Police Officials, acting under instructions from the Municipal Council of the Appellants, having become aware of such proceedings, requested the Respondents to desist, and on their refusing interfered to prevent and did prevent the continuance of such breaking up and excavation of the said street, using no more force than was necessary.

Record, p. 6. 16. On the 11th of September, 1896, the Respondents filed a Petition or *Requête libellée* in the Superior Court for the Province of Quebec, District 10 of Montreal, praying for a Writ of Injunction to issue against the Appellants. A copy of such Petition or *Requête libellée* will be found at p. 6 of the Record.

Record, p. 9. Record, p. 10. 17. On the *ex parte* application of the Respondents, the Honourable Mr. Justice Tait ordered that a Writ of Injunction should issue as prayed in the said Petition or *Requête libellée*, returnable on September 16th, 1896, on security for damages being given as therein directed, and such Writ issued accordingly and was served on the Appellants.

18. The Respondents thereupon continued to break up and excavate the said St. Antoine Street, and other streets.

Record, p. 15. 19. The Appellants thereupon applied to the said Superior Court, by 20 Petition, for an Interim Order to the Respondents to suspend all works in St. Antoine Street, pending Final Judgment on the matter in dispute, or at least until the return of the said Writ of Injunction. A copy of the said Petition and of the evidence of Percival W. St. George, the City Surveyor, in support thereof will be found on p. 15 of the Record.

Record, p. 4. 20. On the 14th of September, 1896, the Honourable Mr. Justice Tait made an order that the Respondents should suspend the works being performed by them until Tuesday, the 22nd day of September, 1896, save that they might complete the laying of conduit pipes where the streets were already opened. 30

Record, p. 18. 21. On the 16th September, 1896, the Appellants filed their Answer to the Petition or *Requête libellée* of the Respondents. A copy of such Answer will be found at pp. 18-19 of the Record.

Record, p. 20. 22. On the 18th of September, 1896, the Respondents filed their Replication to the Answer of the Appellants.

Record, p. 23. 23. Certain facts were admitted between the parties. Such admissions are contained in a document signed by the Attorneys of the parties, a copy whereof will be found on p. 23 of the Record. Articulations of facts or

demands of admissions were made between the parties but no admissions were made thereon. Record,
pp. 24-27.

24. The final hearing on the merits of the said Writ of Injunction came on before Mr. Justice Tait on the 21st of September, 1896, when the learned Judge ordered and adjudged that the said Writ of Injunction, in so far as it enjoined the Appellants to suspend all acts, proceedings, operations, or works respecting the matters in dispute in the Cause, should remain suspended and without effect until six of the clock in the morning of the 29th day of September, 1896, after which time the same should come into full force and effect, and from and after the said time and date the said Appellants were for ever ordered and enjoined to cease and desist from molesting or interfering with the contractors and employées of the Respondents, and from using force against the Respondents and their contractors and employées to prevent the laying of underground wires in the said City of Montreal, or to prevent the exercise by the Respondents of the rights acquired by them under and by virtue of the Acts 55 and 56 Vict., c. 77, and 56 Vict., c. 73, the whole subject to the provisions and penalties provided by law, with costs against the Appellants. The reasons or notes of the learned Judge are set out at pages 48 to 55 of the Record. Record, p. 4.
Record,
pp. 48 to 55.

25. The Appellants on the 21st of September, 1896, appealed against the said Judgment to the Court of Queen's Bench for Lower Canada in the Province of Quebec (Appeal Side), and on the 25th of September, 1896, filed their Case, a copy of which is set out at pp. 30-33 of the Record. Record, p. 2.
Record,
pp. 30-33.

26. On the 25th of September, 1896, the Respondents filed their Case, a copy of which is set out at pp. 33-36 of the Record. Record,
pp. 33-36.

27. On the 25th of September, 1896, the said Appeal was heard, when the Court reserved Judgment, and on the Motion of the Appellants the Order hereinbefore mentioned ordering the Respondents to suspend all works was continued until Judgment should be delivered on such Appeal, and it was agreed between the parties that Judgment should be given at Quebec instead of at Montreal. Record,
pp. 37-39.
Record, p. 37.

28. On October 3rd, 1896, the Court of Queen's Bench (Appeal Side) delivered an unanimous Judgment dismissing the Appeal with costs, dissolving the Order enjoining the Respondents to suspend all works, and adjudging and declaring that the Writ of Injunction was from the date of such Judgment in full force and effect. Leave to Appeal was given on the usual terms, which have been complied with. Record, p. 39.
Record, p. 41.

29. The reasons given by the Honourable Sir Alexander Lacoste, Chief Justice, Mr. Justice Bossé, Mr. Justice Blanchet, and Mr. Justice Hall in support of such Judgment will be found at pp. 56, 57, and 58 of the Record. Record,
pp. 56-58.

Record, p. 59. Delay having occurred in obtaining the notes of Mr. Justice Würtele, the other member of the Court, by agreement of the parties the Abstract of the Record was prepared without them, the right being reserved to print and produce them when obtained.

30. The Appellants submit that the Judgments in the Superior Court and in the Court of Queen's Bench (Appeal Side) were erroneous, and should be reversed and Judgment entered for the Appellants, or the said Writ of Injunction dismissed with costs, for the following among other

REASONS.

1. That the property in the streets of the City of Montreal 10 being vested in the Appellants, the Respondents are not entitled to break up or interfere with such streets without their consent.
2. That if not the whole soil of such streets, the surface and so much below the surface as is necessary for the purposes of the Appellants is vested in them, and that the Respondents were wrongfully breaking up and interfering with the same when prevented by the Appellants.
3. That apart from the question of property the Appellants have absolute control and authority over such streets for 20 the purposes of their municipal functions and duties, and in the exercise thereof were justified in preventing the Respondents from breaking up and excavating such streets.
4. That the right to prevent the Respondents from so acting is necessary to enable the Appellants to carry out the duties imposed upon them.
5. That there is nothing in the Acts incorporating the Respondents which exempts them from the control of the Appellants with respect to the streets of the City of 30 Montreal.
6. That such Acts, including the provisions of the law relating to railways incorporated therewith, render the consent of the Appellants necessary before the Respondents can open or break up such streets, or lay wires along or under them.
7. That the Respondents are not entitled to open any such streets unless the manner in which it is done is prescribed and overseen by the Appellants, acting by their Municipal

Council, or unless and until they have definitely stated that they do not deem such prescription or supervision necessary.

8. That the Respondents had no right to dictate to the Appellants the period of ten days, or any other period, within which they should prescribe the manner in which the streets should be opened.
9. That at any rate such period of ten days was in the circumstances insufficient for the purpose.
10. That the copy of the Report to the Commissioners of Agriculture and Public Works not having been sent to the Appellants until the 24th of August, 1896, was in the circumstances no compliance, or only a colourable compliance, with the requirements of Section 18 of the Act 55 & 56 Vic., c. 77.
11. That no evidence was produced by the Respondents showing such urgency or irremediable injury as to justify the granting of an Injunction.
12. That the proper remedy, if any, of the Respondents was by Mandamus and not by Injunction.

EDWARD CLARKE.
J. R. PAGET.

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Respondents.

**CASE ON BEHALF OF THE
APPELLANTS.**

WILDE, MOORE & WIGSTON,
21, College Hill, E.C.,

Appellants' Solicitors.