



In the Privy Council.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, FOR LOWER CANADA IN THE PROVINCE OF QUEBEC (APPEAL SIDE). 29504

BETWEEN

THE CITY OF MONTREAL, - - - - - *Appellants.*

AND

THE STANDARD LIGHT & POWER COMPANY, - - - *Respondents.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

No. OF RECORD.	DESCRIPTION OF DOCUMENTS.	DATE.	PAGE IN RECORD.
<i>In the Court of Queen's Bench.</i>			
1	Inscription in Appeal and Notice - - - - - dated	21st September, 1896	2
<i>In the Superior Court.</i>			
1A	Proceedings in the Superior Court - - - - - from	{ 11th Sept., 1896, to 21st Sept., 1896.	3
1B	Judgment of the Superior Court - - - - - rendered	21st September, 1896	4
2	Petition, (<i>Requête libellée</i>) and order - - - - - dated	11th September, 1896	6
3	Writ of Injunction and return - - - - - dated	11th September, 1896	10
4	Authentic copy of notification by Petitioners to Respondent (Dunton, N.P.) - - - - - dated <i>Petitioners' Exhibit No. 1, fyled with their Requête libellée</i> - - - - - on the	15th May, 1896	.
5	Authentic copy of notification, etc., at request of The Standard Light & Power Co. to the Corporation of the City of Montreal (Dunton, N.P.) - - - - - dated <i>Petitioners' Exhibit No. 2, fyled with their Requête libellée</i> - - - - - on the	11th September, 1896 24th August, 1896 11th September, 1896	11 13

No. OF RECORD.	DESCRIPTION OF DOCUMENTS.	DATE.	PAGE IN RECORD.
6	Copy of report by the Standard Light & Power Co. to the Honorable the Commissioners of Agriculture and Public Works of the Province - - - dated	22nd August, 1896	
	Petitioners' Exhibit No. 3, fyled with their <i>Requête libellée</i> - - - on the	11th September, 1896	14
7	Petition of the City of Montreal for an <i>interim</i> order to the Standard Light & Power Co. to suspend all works, and Affidavit - - - dated	12th September, 1896	15
8	Affidavit of E. G. McQuaide for the Standard Light & Power Co. - - - dated	14th September, 1896	17
9	Answer of the City of Montreal to the <i>Requête libellée</i> dated	16th September, 1896	18
10	Petitioners' Replication to the answer of Respondent the City of Montreal - - - dated	18th September, 1896	20
11	Acknowledgment of Commissioner of Agriculture of report of Standard Co. - - - dated	27th August, 1896	
	Petitioners' Exhibit No. 4 at Enquête - fyled	18th September, 1896	21
12	Acknowledgment by Secretary of Public Works of report of Standard Co. - - - dated	28th August, 1896	
	Petitioners' Exhibit No. 5 at Enquête - - fyled	18th September, 1896	21
13	Report from the Road Committee submitting the whole question of The Lachine Rapids Hydraulic & Land Company for the consideration of the Council presented Respondents' Exhibit R - - - fyled	15th September, 1896	
		18th September, 1896	22
14	Admission of parties - - - dated	17th September, 1896	23
15	Petitioners' articulation of facts - - - dated	21st September, 1896	24
16	Answer to Petitioners' articulation of facts - - - dated	21st September, 1896	25
17	Respondents' articulation of facts - - - dated	17th September, 1896	26
18	Petitioners' answer to Respondents' articulation of facts dated	21st September, 1896	27
19	Deposition of E. G. McQuaide, witness for the Standard Light & Power Co. - - - dated	17th September, 1896	28
<i>In the Court of Queen's Bench.</i>			
20	Appellants' case - - - dated	24th September, 1896	30
21	Respondents' case - - - dated	24th September, 1896	33
22	Motion de l'Appelante pour continuation d'ordre à la compagnie de suspendre travaux - - - dated	25th September, 1896	37
23	Consent of parties - - - dated	25th September, 1896	37
24	Proceedings in the Court of Queen's Bench - from	{ 21st Sept, 1896, to 3rd October, 1896	37
24a	Judgment of the Court of Queen's Bench rendered at Quebec on the	3rd October, 1896	38
25	Consent of parties - - - dated	2nd October, 1896	39
26	Motion for leave to appeal to Her Majesty's Privy Council and order allowing same - - - dated	3rd October, 1896	41
27	Bail Bond in appeal to Her Majesty's Privy Council dated	15th October, 1896	42
28	Consent of parties as to the Transcript Record - dated	24th February, 1897	43
29	<i>Fiat</i> for Transcript. - - - dated	23rd February, 1897	44
30	Index of all the papers comprising the original record. -	- - - -	45
31	Certificate of Clerk of Appeals. - - - -	- - - -	46
32	Certificate of Chief Justice. - - - -	- - - -	47
	Judges' reasons of the Superior Court.		
	HON. MR. JUSTICE TAIT. - - - -	- - - -	48
	Judges' reasons of the Court of Queen's Bench.		
	HON. SIR A. LACOSTE, KNIGHT, CHIEF JUSTICE. -	- - - -	56
	HON. MR. JUSTICE BOSSÉ. - - - -	- - - -	58
	HON. MR. JUSTICE BLANCHET. - - - -	- - - -	58
	HON. MR. JUSTICE HALL. - - - -	- - - -	58
	Consent of parties as to the Notes of Hon. Mr Justice Wurtele - - - - dated	17th March, 1897	59

In the Privy Council.

**ON APPEAL FROM THE COURT OF QUEEN'S
BENCH, FOR LOWER CANADA IN THE
PROVINCE OF QUEBEC
(APPEAL SIDE).**

BETWEEN

THE CITY OF MONTREAL, - - - - - *Appellants.*

AND

THE STANDARD LIGHT & POWER COMPANY, - - - *Respondents.*

RECORD OF PROCEEDINGS

TRANSCRIPT of Record and Proceedings in the Courts of the Province of RECORD.
Quebec for Lower Canada, appealed from, in a cause between

The City of Montreal,

Respondents, Appellants;

*In the
Court of
Queen's
Bench.*

and

The Standard Light and Power Company,

Petitioners, Respondents.

Canada, }
Province of Quebec. }

In the Court of Queen's Bench for the
Province of Quebec.

(Appeal Side.)

Transcript of all the Rules, Orders and Proceedings found in the Record and Register of Her Majesty's Court of Queen's Bench for the Province of Quebec, (Appeal Side), in the matter lately pending between The Standard Light and Power Company, Petitioners, and the City of Montreal, Respondents; transmitted to the Court of Queen's Bench upon the Appeal side thereof, in virtue of an inscription fyled by the said City of Montreal, and to be transmitted to Her Majesty in Her Privy Council on the Appeal of the said City of Montreal.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 1.
Inscription
in Appeal
and notice
dated 21st
September
1896.

Province de Québec, }
District de Montréal. }

INJONCTION.

Cour du Banc de la Reine.
(En Appel.)

No. 384.

La Cité de Montréal, corps politique, dûment incorporé par un acte de la Législature de cette Province, ayant son principal bureau d'affaires en les Cité et district de Montréal, (Intimée en Cour Inférieure,)

Appelante ;

et

10

“ *The Standard Light and Power Company*,” corps politique, dûment incorporé, ayant son principal bureau d'affaires en la dite Cité de Montréal, dans le dit district,

(Requérante en Cour Inférieure,)

Intimée.

Nous inscrivons cette cause, portant le numéro 2670 des dossiers de la Cour Supérieure de ce district, pour appel devant cette Honorable Cour du jugement rendu ce jour en icelle par l'Honorable M. M. Tait, juge en chef de la dite Cour Supérieure, et nous donnons avis à l'Intimée que l'Appelante, mercredi, le 23 septembre courant, à onze heures de l'avant-midi, au bureau du Protonotaire de la dite Cour Supérieure, fournira le cautionnement voulu et exigé par la loi. 20

Les cautions qu'elle offrira là et alors sont William Robb, Ecuier, Trésorier de la Cité de Montréal, et Olivier Dufresne, Ecuier, Auditeur et Contrôleur de la dite Cité, y résidant tous deux, lesquels justifieront de leur solvabilité s'ils en sont requis.

Montréal, 21 septembre 1896.

ROUER ROY,

L. J. ETHIER,

Avocats de l'Appelante.

Je, soussigné, François Thibault, résidant à Montréal, un des huissiers jurés de la Cour du Banc de la Reine, de la Province de Québec, exerçant dans et pour le District de Montréal, certifie par les présentes et fais rapport sous mon serment d'office à cette Honorable Cour, que le vingt-et-unième jour de septembre, mil huit cent quatre-vingt-seize, entre quatre et cinq heures de l'après-midi, j'ai signifié à MM. Smith & Markey, avocats de l'Intimée en cette cause, “ l'Inscription en appel et avis de cautionnement ” d'autre part, en parlant et laissant une vraie copie certifiée d'iceux à Monsieur Smith, l'un des dits avocats, à leur bureau d'affaires, dans la Cité et le District de Montréal. 30

Montréal, 21 septembre 1896.

FRS. THIBAULT.

Emol. \$1.00.

H. C. B. R.

(Endorsed.)

Inscription en Appel et avis de cautionnement.

Prod. 22 Sept., 1896.

(Paraphed.)

L.D.G., Dep. P.S.C.

40

A

Province de Québec, }
 District de Montréal. } Cour Supérieure pour la Province de Québec.
 No. 2670.

The Standard Light and Power Company, a body politic and corporate, duly incorporated, having its head office and chief place of business in the City and District of Montreal,

Requérante. No. 1A.
 Proceedings in the Superior Court from 11th to 21st September 1896.

and

10 The City of Montreal, a body politic and corporate, duly incorporated, having its head office and chief place of business in the City and District of Montreal,

Intimée.

Conformément à l'inscription en appel qui précède, et à laquelle sont annexés les documents concernant le cautionnement requis par la loi, le Protonotaire de la dite Cour Supérieure dans et pour le district de Montréal a l'honneur de transmettre au Greffier des Appels :

1. Une liste de tous les papiers composant le dossier en cette cause ;
 2. Une transcription de toutes les entrées faites en cette cause, dans les plu-
 - 20 mitifs de la dite Cour Supérieure et du jugement dont il est appel ;
 3. Le dossier en cette cause ;
- Le tout dûment certifié tel que requis par les articles 1121 et 1124 C. P. C.

The 11th September, 1896.

Messrs. Smith & Markey, advocates, appear for the Petitioners in this cause file a Petition (requête libellée) whereby they pray that the City of Montreal be served with a writ of injunction, for the reasons fully set forth in said requête libellée, also affidavits of W. McLea Walbank and J. P. Heffernan, and a certificate of service thereof and notice.

Present :

30 THE HON. MR. JUSTICE TAIT.

Writ of injunction ordered to issue, as prayed for by said Petitioners giving security to the extent of twenty thousand dollars for any costs or damages which the said Respondent may suffer by reason of the issue of such writ, said writ to be returnable the 16th Sept. instant.

A writ of injunction is issued against the said Respondent, made returnable on the 16th Sept. instant.

The 16th Sept., 1896.

Joseph A. Roy, one of the bailiffs of this Court, returns the said writ of injunction, also the petition (requête libellée), affidavits of W. McLea Walbank and J. P. Heffernan, and a certificate of service thereof.

40 The Petitioners file a list and three exhibits, marked Nos. one, two, three.

RECORD.

Le 14 septembre 1896.

In the Superior Court.
 L'intimée produit requête pour ordre provisoire enjoignant à la dite Compagnie "The Standard Light and Power Company" de suspendre ses travaux dans la rue St. Antoine jusqu'au jugement final sur la contestation de cette cause, ou du moins jusqu'au rapport du bref d'injonction en cette cause. Aussi l'affidavit de Percival W. St. George et avis ainsi qu'un certificat de signification d'iceux.

No. 1A.
 Proceedings in the Superior Court from 11th to 21st September 1896.
continued.

The Petitioners file affidavit of Earl Grant McQuaide.

Present :

THE HON. MR. JUSTICE TAIT.

10

Upon the Petition on behalf of Defendant praying for an *Interim* order to the Plaintiffs to suspend all works on St. Antoine Street pending the decision upon the writ of injunction herein issued, and after having heard the parties by their respective counsel, and seeing the affidavit filed.

It is ordered that the Plaintiffs suspend the works being performed by them until Tuesday, the 22nd September instant (1896), save that the Plaintiffs may complete the laying of *conduits* where the streets are already opened, and the hearing on the merits of the writ of injunction is hereby fixed for Friday next, the 18th September instant, at half-past ten of the clock in the forenoon ; costs reserved. (Art 1033r. C.C.P.)

20

Le 16 Septembre 1896.

L'Intimée produit réponse à la requête libellée de la Compagnie Requérante, les Requérants ayant reçu copie d'icelle.

The 18th September, 1896.

The Petitioners file replication to Respondent's answer herein filed, the latter having received copy thereof.

The Petitioners file a list and two exhibits, marked Nos. 4, 5, at enquête.

L'Intimée produit une liste d'exhibits à l'enquête et un exhibit marqué R.

The parties in this cause file admission, as to different points in the case. 30

The Petitioners file articulation of facts with a certificate of service thereof.

L'Intimée produit réponses aux articles de faits de la Requérante, cette dernière ayant reçu copie d'icelles.

L'Intimée produit articulations de faits, la Requérante ayant reçu copie d'icelles.

The Petitioners file answers to Respondent's article of facts and a certificate of service thereof.

The Petitioners file the deposition of Earl Grant McQuaide.

The 21st September, 1896.

At the final hearing on the merits.

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Present :

The Hon. MR. JUSTICE TAIT.

(In Chambers.)

Having heard the parties by their counsel on the merits of the writ of injunction in this cause issued ; examined the proceedings and deliberated ;

No. 1B.
 Judgment of the Superior Court rendered 21st September 1896.

Considering that Petitioners have proved the material allegations of their petition, and have particularly established : 1o. that they have been authorized by their charter to lay their wires and pipes underground, as the same may be necessary, and in as many streets, squares, lanes, highways and public places in and through the City of Montreal, for the purposes mentioned in section 5 of their charter, subject to the right of the Municipal Council of said City, if they deemed necessary to oversee and prescribe the manner in which such streets, etc, should be opened for the purpose of placing wires underground ; 2o. that they duly notified the Municipal Council of the City, of their intention to exercise the powers so conferred upon them, and duly required the said Council to prescribe the manner in which said streets, etc., were to be opened, which said Council neglected to do ; 3o. that said petitioners, upon attempting to exercise said powers, were prevented doing so by force employed by the Respondent ;

RECORD.

In the
Superior
Court.No. 1B.
Judgment of
the Superior
Court rendered
21st
September
1896.
continued.

Considering that Petitioners have established their right to have Respondent enjoined, as prayed for, and that the latter have failed to establish the material allegations of its answer ;

Considering, however, that it is desirable that Respondent should have a further opportunity to prescribe the manner in which said streets, etc., shall be opened ;

Do order and adjudge that the said writ of injunction in this cause issued, in so far as it enjoins Respondent to suspend all acts, proceedings, operations or works respecting the matters in dispute in this cause, shall remain suspended and without effect until six of the clock in the morning of the 29th day of September instant ; after which time the same shall come into full force and effect, and from and after said time and date, the said Respondent are forever ordered and enjoined to cease and desist from molesting or interfering with the contractors and employees of Petitioners, and from using force against Petitioners and their contractors and employees to prevent the laying of underground wires in the said City of Montreal, or to prevent the exercise by Petitioners of the rights acquired by them under and by virtue of the Acts 55 and 56 Vict., Chap. 77, and 56 Vic., Chap. 73, of the Legislature of Quebec, the whole subject to the provisions and penalties provided by law, with costs against Respondent, *distrains* to Messrs. Smith & Markey, Attorneys for Petitioners.

Le 22 septembre 1896.

L'Intimé produit inscription de cette cause à la Cour du Banc de la Reine, en appel du jugement qui précède, rendu par l'Hon. Juge Tait, le 21 septembre courant, et avis de cautionnement ainsi qu'un certificat de signification d'iceux.

Le 23 septembre 1896.

La dite Appelante produit le cautionnement requis pour le dit appel, et M. Olivier Dufresne devient caution.

Montréal, 24 septembre 1896.

GEO. W. KERNICK,
Deputy Pro. S.C.

RECORD.

SCHEDULE NO. 1.

In the
Superior
Court.
No. 2.
Petition
(*Requête
libellée*) and
order dated
11th Sep-
tember,
1896.

Canada,
Province of Quebec, }
District of Montreal. }

Superior Court.

No. 2.

The Standard Light & Power Company, a body politic
and corporate, duly incorporated, having its head
office and principal place of business in the City
and District of Montreal,

Petitioners ;

and

10

The City of Montreal, a body politic and corporate,
having its head office and principal place of busi-
ness in the City of Montreal aforesaid,

Respondents.

To any of the Honorable Justices of the said Court,

The petition (*requête libellée*) of the said Petitioners respectfully represents :

That your Petitioners were duly incorporated by the Act 55 and 56
Victoria, chapter 77, of the Legislature of the Province of Quebec, amended by
the Act 56 Victoria, chapter 73, for the purposes and with the powers in said
Act recited ;

That in and by section 5 of the said Act it is provided and enacted as fol- 20
lows : —“ The Company may manufacture and deal in electricity, gas and other
illuminants, and all appliances for the supplying of the same or connected there-
with, and may lay its wires and pipes underground, as the same may be neces-
sary, and in so many streets, squares, highways, lanes and public places as may
be deemed necessary, for the purpose of supplying electricity and gas for light,
power and heating, the whole, however, without doing any unnecessary damage,
and providing all proper facilities for free passage through the said streets,
squares, highways, lanes and public places while the works are in progress” ;

That in and by section 6 of said Act it is provided that “ the Municipal
Council in all cities, towns or incorporated villages, if they deem necessary, shall 30
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 surface of such streets shall in
all cases be put back into their original condition by the Company, at its own
cost, as near as possible” ;

That by section 18 of said Act it is provided that “ Before commencing the
laying of wires or pipes, or the erection of waterways, the Company shall make
a report to the Commissioners of Agriculture and Public Works of the Province,
of such works, and shall send a copy thereof to the Council of the Municipality
in which such works are so projected” ;

40

That your Petitioners have for some time been desirous of exercising the
rights thus conferred upon them of laying wires underground in the City of
Montreal, and frequently communicating with the City of Montreal on said
subject, and especially by the ministry of R. A. Dunton, Esq., Notary Public, on
the fifteenth day of May last past, notified and called upon the City of Montreal,
if it deemed it necessary, to prescribe the manner in which the streets in which

your Petitioners intended to lay wires underground should be opened, and duly communicated to said City of Montreal a list of the streets in which said underground wires should be laid ;

That ever since the month of March last past your Petitioners have been in communication with the City of Montreal and with the City Surveyor of said city upon the subject of said underground conduits ; but the said City of Montreal has never prescribed the manner in which said streets should be opened, nor has said City of Montreal deemed it necessary to interfere in any manner respecting the laying of said underground conduits ;

RECORD.
—
*In the
Superior
Court.*
—

No. 2.
Petition
(*Requête
libellée*) and
order dated

11th Sep-
tember,
1896.
continued.

10 That the City of Montreal made no objection whatever to the contemplated works, and the City Surveyor of said city, after carefully examining the same, reported that the cost of replacing all the streets to be opened by your petitioners for the laying of underground wires as aforesaid would be the sum of eighteen thousand dollars, and reported to the said city that your Petitioners should be requested to furnish security to the amount of said sum of eighteen thousand dollars, that the said streets of the City of Montreal would be replaced in as good condition as previous to the commencement of said works ;

20 That your Petitioners are not bound in any manner whatever to furnish the said security, but repeatedly declared their willingness to furnish security to the extent of said sum to the City of Montreal, and hereby declare their willingness to furnish security to the extent of said sum, or any sum of money which your Honor may see fit to determine ;

That in conformity with said section 18 of the said Act, your Petitioners, on or about the twenty-second day of August last past, made a report to the Honorable the Commissioners of Agriculture and Public Works of the Province of Quebec of the works which your petitioners contemplated doing in the City of Montreal, showing the streets wherein they proposed to lay wires underground, accompanied by a plan of the same ;

30 That on the twenty-fourth day of August last past your Petitioners, by the ministry of R. A. Dunton, Notary Public, served upon the City of Montreal a copy of said report, together with a copy of the plan thereto annexed, setting forth the nature and extent of said works, and calling upon the City of Montreal, if it deemed it necessary, to prescribe the manner in which such streets, roads and highways should be opened for the placing of wires underground, and notifying the said City of Montreal that in default of said city's prescribing the manner of opening said streets within the delay of ten days from the service of said report, your Petitioners would proceed with said works according to their said report, as appears on reference to copies of said notarial notifications and report herewith filed as Petitioners' Exhibits numbers one, two and three ;

40 That the said City of Montreal has not answered in any manner the said notification, nor prescribed the manner of opening the said streets, nor has the City of Montreal noticed the same in any manner whatsoever ;

That your Petitioners, relying upon their rights as hereinbefore alleged, have engaged experts in the City of New York and brought them to Montreal, and have engaged large numbers of men, and have commenced said works, observing all the care and precaution required by their act of incorporation ;

That the City of Montreal wantonly and without any right whatsoever, by its City Surveyor, by its police officers and other officials, acting in pursuance

RECORD.

In the
Superior
Court

No. 2.

Petition
(*Requête
libellée*) and
order dated
11th Sep-
tember,
1896.

continued.

of instructions given by the Council of said City, have interfered with the contractors and workmen in charge with said works for your Petitioners, and have used force to drive them from the streets, and the said City of Montreal, by its officials aforesaid, are now molesting and interfering with and intimidating the said contractors and employees engaged upon the said works for your Petitioners, and are using force to drive them from the streets, and preventing the exercise of their rights under said statutes, the whole to the great loss and damage and injury of your Petitioners ;

That on the tenth day of September instant the City Surveyor and the Chief of Police of said City, with a large force of police, forcibly drove away 10 and removed the men at work for your Petitioners ;

That your Petitioners had and have full right, power and authority to do the said works ;

That the City of Montreal is acting beyond its powers in so interfering with and molesting the contractors and employees of your Petitioners ;

That your Petitioners are under very heavy expenses, and every day's delay causes great and serious damage to them ;

Wherefore your Petitioners pray that the said City of Montreal be summoned to answer the premises, that the said City of Montreal be ordered and enjoined to cease forthwith and desist from molesting or interfering with the 20 contractors and employees of your Petitioners ; that the said City of Montreal be ordered and enjoined to cease forthwith the use of all force against your Petitioners and their contractors and employees, and that the said City of Montreal be ordered to cease all acts and proceedings had and taken by it against your Petitioners and their contractors and employees, to prevent the laying of the underground wires in the City of Montreal, and to prevent the exercise by your Petitioners of the rights acquired by them under and by virtue of the acts herein referred to, and that to this end a writ of injunction issue against the said City of Montreal ; the said injunction be made permanent, the whole subject to and under the pains and penalties provided by law with costs 30 *distracts* to the undersigned Attorneys.

Montreal, 11th September, 1896.

SMITH & MARKEY,

Attorneys for Petitioners.

WILLIAM MCLEA WALBANK, of the City and District of Montreal, Civil Engineer, being duly sworn, deposeth and saith :—

I am the Vice-President of the Standard Light and Power Company. Each and every the allegations of the foregoing Petition (*requête libellée*) is and are true and well founded in fact.

That the City Surveyor of the City of Montreal informed me that he had received absolute instructions to stop the said work of laying underground 40 wires, and would carry out said instructions by any force that might be necessary, and that such instructions were given to him by the City Council of the City of Montreal ;

That the Standard Light and Power Company have entered into contracts for the laying of said underground conduits, will amount to about one hundred thousand dollars, and the City of Montreal has interfered and is interfering by force to prevent said works from proceeding as alleged in foregoing petition.

That without the benefit of a writ of injunction, the Petitioners will suffer great and serious loss and damage. RECORD.

And I have signed,

W. McL. WALBANK.

Sworn before me at the City of Montreal, this eleventh day of September, 1896.

WM. BRUCE,
Dep. P.S.C.

*In the
Superior
Court.*

No. 2.
Petition
(*Requête
libellée*) and
order dated
11th Sep-
tember,
1896.

continued.

10 JOHN PATRICK HEFFERNAN, of the City and District of Montreal, Contractor, being duly sworn, deposeseth and saith:—

On the tenth day of September instant, I was employed as a Contractor to excavate to lay underground wires for the Standard Light and Power Company, the Petitioners herein, and was at work with my men at the corner of Mountain and St. Antoine Streets in the City of Montreal;

That I had commenced work on said street, necessary for the laying of the said underground wires when my men were ordered to desist and cease said work by a number of Policemen accompanied by the Chief of Police and City Surveyor of the City of Montreal;

20 That the policemen chased and drove away my men from the said work on the said street, and upon their returning to work the constables removed several of them by force and ordered them to cease said work under threats of force.

The policemen then and there informed me that they had received absolute orders to stop the work.

And I have signed,

J. P. HEFFERNAN.

Sworn before me at the City of Montreal, this eleventh day of September, 1896.

30 W. H. Cox,
*Commissioner Superior Court,
District of Montreal.*

To the said City of Montreal:—

Take notice of the foregoing petition *requête libellée* and that the same will be presented to one of the Honorable Justices of the said Court sitting in Chambers, at half past two o'clock in the afternoon on this eleventh day of September, and govern yourself accordingly.

Montreal; September 11th, 1896.

SMITH & MARKEY,
Attorneys for Petitioners.

40

Seeing the petition *requête libellée* this day presented to me by the said thereof, Petitioners and the affidavits and the exhibits produced in support

RECORD. let the writ of injunction issue as therein prayed for upon the said Petitioners giving security to the extent of twenty thousand dollars for any costs or damages which the said Respondents may suffer by reason of the issue of such writ, by a bond for said sum entered into by two securities, to wit, George Bull Burland, gentleman, and William McLea Walbank, Civil Engineer, both of the City and District of Montreal, the two sureties offered by said Petitioners, who shall justify as to their sufficiency upon oath, said writ to be returnable the

In the
Superior
Court.

No. 2.
Petition
(*Requête
libellée*) and
order dated
11th Sep-
tember,
1896.
continued.

sixteenth day of September instant.
Judges' Chambers, Montreal, 11th Sept., 1896.

M. M. TAIT, 10
J. S. C.

(Endorsed)

Petition *requête libellée* and Order. Fyled 11th Sept., 1896.

(Paraphed) L.D.G., *Dep. P.S.C.*

No. 3. Province of Quebec, }
Writ of District of Montreal, }
Injunction
and return
dated 11th
September,
1896.

Superior Court
for the Province of Quebec.

No. 2670.

WRIT OF INJUNCTION.

Original.

VICTORIA, by the grace of God, Queen of the United-Kingdom of Great 20
Britain and Ireland, Defender of the Faith, Empress of India.

To any of the bailiffs of our said Superior Court, acting in the district of
Montreal, GREETING.

We command you to enjoin The City of Montreal, a body politic and cor-
porate, having its head office in the City and District of Montreal, to appear before
our said Superior Court or one of the honorable judges thereof in the Court House,
in the City and District of Montreal, on the sixteenth day of September instant,
at eleven of the clock in the forenoon, to answer the demand of The Standard
Light and Power Company, a body politic and corporate, duly incorporated,
having its head office and chief place of business in the City and District of 30
Montreal, set forth in the hereto annexed petition, and to suspend all acts, pro-
ceedings, operations or works respecting the matters in dispute in the cause under
pain of all legal penalties.

And have there and then or before this writ and your proceedings thereon.

In witness whereof we have caused the seal of our said Superior Court to be
hereunto affixed, at Montreal, this eleventh day of September, in the year of Our
Lord one thousand eight hundred and ninety-six.

L. D. GAREAU,
Deputy Prothonotary.

(On the Back.)

This writ is issued on the affidavit of William McLea Walbank, Civil Engineer, and of John Patrick Heffernan, Contractor, both of Montreal, and on the order of the Hon. Mr. Justice Tait, one of the Judges of the said Superior Court for the Province of Quebec.

Montreal, 11th September, 1896.

L. D. GAREAU,

Deputy Prothonotary.

RECORD.

*In the
Superior
Court.*

No. 3.

Writ of Injunction and return dated 11th September, 1896.

continued.

I, the undersigned, residing in the City of Montreal, in the district of Montreal, one of the sworn bailiffs of the Superior Court of the Province of Quebec, duly admitted for the said district, do hereby certify under my oath of office that on the eleventh day of September, one thousand eight hundred and ninety-six, between the hours of four and five of the clock in the afternoon, I did serve on the Defendant the present writ and the petition, *requête libellée*, affidavits and notice, judge's order, thereto annexed, by leaving duly certified copies thereof with it, by speaking to and leaving the same with L. Olivier David, its City Clerk, in person, in said defendant's principal place of business in the City of Montreal.

Moreover, that the distance from my domicile to the place of such service is less than one mile, and from the Montreal Court House to the domicile of the said Defendant less than one mile.

Done at Montreal this eleventh September, 1896.

JOSEPH ROY,

B. S. C.

(Endorsed.)

Writ of Injunction and Petition. Original. Returned 16th September, 1896 (Paraphed) L. D. G. *Dep. P. S. C.*

SCHEDULE No. 3.

On this fifteenth day of May, one thousand eight hundred and ninety-six.

At the request of The Standard Light and Power Company, a body corporate, duly incorporated, having its head office and principal place of business in the City of Montreal,

I, Robert A. Dunton, the undersigned Notary Public for the Province of Quebec, residing and practising in the City of Montreal,

Personally went to the office in the City of Montreal of the Corporation of the City of Montreal, a body politic and corporate, where, being and speaking to L. O. David, Esquire, the Clerk of the said Corporation, I declared and made known to the said Corporation of the City of Montreal as follows:

That by the Acts incorporating said Standard Light and Power Company, the said Company is specially authorized to manufacture and deal in electricity gas and other illuminants and all appliances for supplying the same, and to lay its wires and pipes underground and in so many streets, squares, highways, lanes and public places as may be deemed necessary for the purpose of supplying electricity and gas for light, power and heating;

No. 4.

Authentic copy of Notification by Petitioners to Respondents (Dunton, N.P.) dated 15th September, 1896. Petr's Exh. No. 1.

RECORD. That by section six of the Act 55-56 Vic., Chap. 77, it is provided that the Municipal Council in all cities, towns and villages, if they deem necessary, shall have the right to oversee or prescribe the manner in which said streets, roads and highways shall be opened for the placing of conduits for wires underground;

In the Superior Court.
 No. 4.
 Authentic copy of No. 4.
 tification by No. 4.
 Petitioners to Respondents (Dunton N.P.) dated 15th May, 1896.
 Ptr's, Exh. No. 1.

That the said Company intends to exercise the power conferred upon it of placing conduits for underground wires for the purpose of conveying electricity or electrical power through or along the following streets within the limits of the City of Montreal, to wit: St. James Street West, Victoria Square, Fortification Lane, Notre Dame Street, St. Dominique Street, St. Charles Borromée Street, 10 St. Antoine Street, St. Monique Street, Latour Street, Jurors Street, Vitré Street, Dorchester Street, Atwater Avenue, St. Catherine Street, Bleury Street, Guy Street between Notre Dame and Ottawa Streets, Ottawa Street, Queen Street, Wellington Street, McGill Street, Beaver Hall Hill, Common Street and Commissioners Street;

Consequently I, the said Notary, at the request aforesaid, did and do hereby require, and call upon the said Corporation of the said City of Montreal to prescribe the manner in which said streets, roads, etc., shall be opened for the purposes aforesaid as required by Sec. 6 of the said Act 55 and 56 Victoria, Cap. 77, as amended by Act 56 Victoria, Cap. 73, of all which I require the said Corporation 20 of the City of Montreal to take notice and to govern itself accordingly.

And in order that the said Corporation of the City of Montreal may not have cause to pretend ignorance in the premises, I have served a copy of these presents upon it speaking as foresaid.

Thus notified at the City of Montreal, at the place and on the day and year first herein written, these presents bearing the number 13321 of the original minutes of said Mtre. Dunton, and I have signed in testimony of the premises after due reading hereof.

(Signed) R. A. DUNTON, N.P.

A true copy of the original hereof remaining of record in my office. 30

R. A. DUNTON, N.P.

(On the back.)

No. 13321, 15th May, 1896. Notification on request of the Standard Light and Power Company to the Corporation of the City of Montreal.

(Endorsed.)

Petitioners' Exhibit No. 1. Fyled, 11th September, 1896.

(Paraphed) L. D. G.,

Dep. P. C. S.

SCHEDULE No. 4.

RECORD.

On the twenty-fourth day of August, one thousand eight hundred and ninety-six,

At the request of the Standard Light and Power Company, a body corporate duly incorporated, having its head office and principal place of business in the City of Montreal,

I, Robert A. Dunton, the undersigned Notary Public for the Province of Quebec, residing and practising in the City of Montreal,

Personally went to the office in the City of Montreal of the Corporation of the City of Montreal, a body politic and corporate, where, being and speaking to L. O. David, Esquire, City Clerk,

I declared and made known to the said Corporation of the City of Montreal as follows :

That under and by virtue of the provisions of Act 55-56 Vic., Chap. 77, the said Standard Light and Power Company is empowered and entitled to lay its wires and pipes underground in so many streets, squares, highways, lanes and public places as may be deemed necessary for the purpose of supplying electricity and gas for light, power and heating ;

That the said Company, by the ministry of Mtre. Dunton, Notary, on the fifteenth day of May last (1896) notified the said City of Montreal of its intention to proceed to the work of laying its wires underground in the City of Montreal, and called upon and requested the said City, if it deemed it necessary, to prescribe the manner in which the streets, roads and highways of the City should be opened up for the purpose of placing its wires underground as aforesaid ;

That the City of Montreal has never answered the said request, nor prescribed the manner in which the streets mentioned in the said notification should be opened ;

That the said Company has delivered to the Commissioner of Agriculture and Public Works of the Province of Quebec a report of the works intended to be performed, as required by section 18 of said Act 55-56 Vic., chapter 77, and as required by said last mentioned section, the said Company has by the ministry of said notary delivered herewith a copy of the said report to the City of Montreal, and has complied with all the requirements of said Act ;

Wherefore I, the said Notary, at the request aforesaid and speaking as aforesaid, did and do hereby require and notify the said City of Montreal, within a delay of ten days from the service hereof, to prescribe the manner in which the streets, squares, lanes and public places mentioned in the said report to the Commissioner of Agriculture and Public Works, and the plan thereto annexed, shall be opened for the purpose of laying the wires of said Company underground. Failing which the said Company will proceed with the said work, taking all the precautions prescribed by law, and will lay its wires underground according to the report to said Commissioner of Agriculture and Public Works, without doing any unnecessary damage and providing all proper facilities for free passage through the said streets, squares, highways and public places while the works are in progress. Of all which I require the said City of Montreal to take notice and to govern itself accordingly, and in

*In the
Superior
Court.*

No. 5,
Authentic
copy of
Notification
by Petition-
ers to Res-
pondents
(Dunton,
N.P.) dated
24th Au-
gust, 1896.
Petr's Exh.
No. 2.

RECORD. order that the City of Montreal may not have cause to pretend ignorance in the premises, I have served a copy of these presents and a copy or duplicate of said report to the Commissioner of Agriculture and Public Works upon it, speaking as aforesaid.

Thus notified at the said City of Montreal, at the place and on the day and year first herein written, these presents bearing the number thirteen thousand six hundred and sixty-one of the original minutes of said Mtre. Dunton, and I have signed in testimony of the premises.

(Signed) R. A. DUNTON, N.P.

A true copy of the original hereof remaining of record in my office. 10

R. A. DUNTON, N.P.

(On the back.)

No. 13661. 24th August, 1896. Notification, etc, at request of The Standard Light and Power Company to the Corporation of the City of Montreal.

(Endorsed)

Petitioners Exhibit No. 2. Filed, 11th Sept., 1896.

(Paraphed) L. D. G.,
Dep. P. S. C.

SCHEDULE No. 5.

No. 6.
Copy of
Report by
Petitioners
to the Hon.
Commission-
ers of Agri-
culture and
Public works
of the Pro-
vince. Dated
22nd Au-
gust, 1896.
Petr's. Exh.
No. 3.

To the Honorable the Commissioner of Agriculture and to the Honorable the 20
Commissioner of Public Works of the Province of Quebec:

The Standard Light and Power Company, a body politic and corporate having its head office in the City and District of Montreal, has the honor to report that it proposes to construct the following works in the City of Montreal, viz: To lay underground conduits for electrical wires, according to Section 5 of their Charter (55-56 Vic, Chap. 77), and for this purpose will open the following streets:—

Mountain, from McCord to Osborne.

Osborne, from Mountain to Drummond.

Drummond, from Osborne to Sherbrooke,

St. Catherine, from Fort to Bleury

University, from St. Catherine to Milton.

St. Antoine, from Mountain to McGill.

McGill, from St. Antoine to Fortification Lane and through Fortification Lane to Champ de Mars.

St. James, from Mountain to Aqueduct.

Notre Dame, from Seigneurs to McGill, via St. Maurice.

The proposed conduits shall be of either wrought iron, cement, lined or terra cotta ducts, as will be decided upon hereafter. RECORD.

The Company will remove the paving of the streets, make excavations to proper depth, lay therein the conduits above mentioned, and repave the street, leaving, the same in as good or better condition than it was at first.

In the Superior Court.

No. 6.
Copy of Report by Petitioners to the Hon. Commissioners of Agriculture and Public works of the Province dated 22nd August, 1896. Petr's Exh. No. 3. *continued.*

The Company will do everything to provide for the maintenance of public travel for ingress to and egress from buildings, and comply with all rules and regulations of the civic officials having power in the matter. The work shall be pursued with all possible diligence; the Company shall conform to the by-laws, put up and maintain barriers and red lights as will be necessary to guard against accidents; construct man-holes of brick and cement and cast-iron covers, ventilated and drained, of the size and depth necessary to suit the conduits.

The whole is more fully shown on the plan hereunto annexed.

The object of laying the said conduits being to supply cheap light and power by electricity to the citizens of Montreal.

The present report is made in accordance with Section 18 of the Company's Charter (55-56 Vic., chap. 77).

Montreal, August 22nd, 1896.

(Signed) W. McLEA WALBANK,
V. P. and Managing Director.

20

[SEAL.]
Copy.

" E. CRAIG,
Secretary-Treasurer.

(Endorsed)

Petitioners' Exhibit No. 3, Fyled 11 Sept., 1896.
(Paraphed)

L. D. G.
Dep. P. S. C.

SCHEDULE No. 6.
COUR SUPERIEURE.

Province de Québec, }
District de Montréal. }

30 No. 2670.

The Standard Light and Power Company,

et

La Cité de Montréal,

No. 7.
Petition of the City of Montreal for an interim order to the Standard Light & Power Co. to suspend all works. Dated 12th September 1896.
Requérante;
Intimée.

A aucun des Honorables Juges de cette Cour, l'humble requête de l'Intimée en cette cause

Représente :

40 Que le bref d'injonction en cette cause a été signifié au bureau du Greffier de la dite Cité ce douze septembre 1896, et est rapportable le seize du courant ;

RECORD.

—
In the
Superior
Court.

No. 7.
Petition of
the City of
Montreal for
an interim
order to the
Standard
Light &
Power Co.
to suspend
all works.
Dated 12th
September,
1896.
continued.

Que les contracteurs et manœuvres de la dite Requérente se sont de suite mis à reprendre les travaux déjà commencés, font des excavations dans les rues, et notamment dans la rue St. Antoine, et bouleversent la dite rue de manière à causer des dommages considérables ; que la somme de vingt mille piastres que la dite Requérente a donnée en garantie est de beaucoup inférieure aux dommages réels qui pourront résulter de la continuation des dits travaux ;

Que d'après le droit commun et d'après sa charte, la Cité a sur les rues et les places publiques situées dans ses limites le contrôle absolu à titre de propriétaire, et elle a droit d'être maintenue dans cette possession sans trouble ni empêchement de la part de qui que ce soit ;

Que ce contrôle repose sur le droit de domaine éminent dont est revêtue la dite Cité sur ses voies publiques ;

Que par sa requête la dite Compagnie veut s'arroger, à la faveur de sa charte, le droit que possède ainsi la Cité,—laquelle fera voir en temps et lieu que l'interprétation de la dite charte par la Compagnie est erronée et mal fondée et que, sans le consentement et la permission de la dite Cité, la Compagnie ne peut justifier sa prise de possession des rues de la dite Cité ; or la Compagnie admet formellement qu'elle n'a pas obtenu tel consentement.

Que dans l'état de choses actuel il n'est que juste que la dite Compagnie suspende ses travaux, pour ne pas ajouter aux dommages déjà causés à la dite rue 20 St. Antoine, et qu'un ordre lui soit signifié à cet effet ;

Pourquoi la dite Cité conclut à ce qu'il plaise à Votre Honneur de prononcer une ordonnance provisoire, enjoignant à la dite Compagnie "The Standard Light and Power Company," de suspendre ses travaux dans la dite rue St. Antoine jusqu'au jugement final à être prononcé sur la contestation en cette cause, ou du moins jusqu'au rapport du bref d'injonction émané à la poursuite de la dite Compagnie :—la dite Cité se réservant tout recours ultérieur pour les dommages soufferts et à souffrir :—le tout avec dépens distraits aux soussignés.

Montréal, 12 septembre 1896.

ROUER ROY,
L. J. ETHIER,

30

Avocats de l'Intimée.

PERCIVAL W. ST. GEORGE, inspecteur de la Cité de Montréal, étant dument assermenté sur les Saints Evangiles, dépose et dit : que tous les faits allégués dans la requête ci-dessus sont vrais et bien fondés, et a signé, lecture faite.

Assermenté, pris et reconnu devant
moi à Montréal, district de Montréal, }
ce douze septembre 1896.

PERCIVAL W. ST. GEORGE.

JEAN B. VALLÉE,
Dép. P. C. S.

40

A MESSIEURS SMITH & MARKEY,
Avocats de la Compagnie Requérente.

MESSIEURS,

Prenez avis que lundi, le quatorze septembre courant, nous présenterons la requête ci-dessus à aucun des Honorables Juges de la Cour Supérieure, siégeant

en chambre au palais de justice de cette Cité, à onze heures de l'avant-midi, ou RECORD.
aussitôt que Conseil pourra être entendu.

Montréal, 12 septembre 1896.

ROUER ROY,
L. J. ETHIER.

Avocats de l'Intimée.

*In the
Superior
Court.*

No. 7.

Je soussigné, François Thibault, résidant à Montréal, un des huissiers jurés de la Cour Supérieure du Bas-Canada, exerçant dans et pour le District de Montréal, certifie par les présentes et fais rapport sous mon serment d'office à cette 10 Honorable Cour, que le douzième jour de septembre, mil huit cent-quatre-vingt-seize, entre six et sept heures de l'après-midi, j'ai signifié à MM. Smith et Markey, avocats de la Requérante en cette cause, les "requête, affidavit et avis," d'autre part, en parlant et laissant une vraie copie certifiée d'iceux à Monsieur Smith, l'un des dits avocats en personne, à son domicile, dans la Cité et le District de Montréal.

Petition of the City of Montreal for an interim order to the Standard Light & Power Co. to suspend all works, dated 12th September 1896.
continued.

Montréal, 12 septembre 1896.

FRS. THIBAULT,
H. C. S.

Requête de l'Intimée pour ordre provisoire et affidavit.— Avis pr. le 14 sept 20 1896, à 11h. a.m. Prod. 14 septembre 1896.

L. D. G.
Dép. P. C. S.

SCHEDULE NO. 7.

Province of Quebec, }
District of Montreal. }

Superior Court.

The Standard Light & Power Company,
and

Petitioners,

The City of Montreal,

Respondents.

No. 8.
Affidavit of Earl Grant McQuaide for the Standard Light & Power Co'y, dated 14th September, 1896.

Earl Grant McQuaide, of the City of New York, in the State of New York, 30 one of the United States of America, being duly sworn deposes and saith:—

That I am the Superintendent employed in overseeing the work of laying underground wires in the City of Montreal for the Standard Light & Power Company, the Petitioners.

That upwards of one-third of the conduits, pipes, etc., to be employed in said work has already arrived in the City of Montreal, and the remainder has left New York and is in transit to Montreal.

That there is scarcely sufficient time to perform the work to laying said underground wires before the frost sets in, when it will be impossible to do said work.

40 That any delay whatsoever even for one day at the present time would cause your Petitioners very serious loss.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 8.
 Affidavit of
 Earl Grant
 McQuaide
 for the Stan-
 dard Light
 & Power
 Co'y, dated
 14th Sep-
 tember,
 1896.
continued.

That the work has been delayed to the present time owing to the Respondents, the City of Montreal, not having prescribed the manner in which said streets should be opened as the said City was requested to do.

That if the writ of injunction granted in favor of the Petitioners herein be suspended, the Petitioners will suffer very heavy loss and damage.

And I have signed,

EARL GRANT MCQUAIDE.

Sworn to before me at
 the City of Montreal,
 this fourteenth day of
 September, 1896.

W. H. Cox,

*Commissioner Superior Court,
 District of Montreal.*

10

(Endorsed)

Affidavit for Petitioner. Prod. September 14, 1896.

(Paraphed) L. D. G., *Dep. P. S. C.*

No. 9.
 Answer of
 the City of
 Montréal to
 the *Requête*
libellée,
 dated 16th
 September,
 1896.

SCHEDULE NO. 8.

La Cité de Montréal, Intimée, sans admettre mais au contraire niant expressément et formellement toutes et chacune des allégations contenues en la 20 requête libellée de la Compagnie Requérente, excepté en autant qu'icelles peuvent être ci-après spécialement admises, pour réponse au bref d'injonction émané en cette cause et à l'ordonnance de l'Honorable Juge TAIT en date du onze septembre courant, dit :

Que dans la requête de la dite Compagnie aucun fait n'est allégué pour faire voir qu'elle ait droit à une injonction, et qu'en supposant même que ses allégations seraient vraies, elles ne seraient point suffisantes pour justifier ses conclusions ;

En vertu des lois qui régissent les corporations municipales, elles ont le domaine souverain et absolu des voies publiques et des parcs situés dans les 30 limites de leur juridiction ; l'Intimée, par les pouvoirs qui lui sont conférés par sa charte, exerce une juridiction exclusive, à titre de propriétaire, sur les rues, places publiques et propriétés municipales ; elle a même un droit absolu de les fermer et discontinuer, suivant qu'elle juge désirable dans l'intérêt des citoyens ;

Par l'acte 56 Victoria, chapitre 73, qui modifie son acte d'incorporation, 55-56 Victoria, chapitre 77, la Requérente n'a pas été revêtue d'une autorité supérieure à celle de la Cité, et l'on ne peut légalement présumer que la Législature a entendu subordonner la Cité, ses citoyens et le public en général, à une compagnie privée conduite dans l'intérêt seul de ses actionnaires ; et en effet la 40 Requérente est, par la section 6 de l'acte 56 Victoria, chapitre 73, tenue d'obtenir, avant le commencement de ses travaux, le consentement du conseil municipal

s'il le juge nécessaire, ce dernier ayant droit de surveillance sur les dits travaux, avec le droit en outre de prescrire la manière dont les rues seront ouvertes pour la pose des fils souterrains ;

Que cette dernière disposition démontre que la Compagnie n'est point recevable à entreprendre des travaux et bouleverser des rues pour la pose de fils souterrains sans le concours de l'Intimée ;

Que d'après son acte d'incorporation la Compagnie était tenue, avant de commencer ses travaux, de faire rapport aux Commissaires d'Agriculture et des Travaux Publics de la Province, désignant les travaux qu'elle entendait faire, et d'en envoyer une copie au conseil de la municipalité ; l'accomplissement de ces conditions était impératif et obligatoire pour la Compagnie avant de s'emparer des rues de l'Intimée ;

Que cependant ce n'est que le vingt-deux du mois d'août dernier (1896) que tel rapport a été fait aux Commissaires d'Agriculture et des Travaux Publics de la Province, des travaux que la Requérente entendait faire dans la dite Cité, avec désignation des rues où elle se proposait de placer ses conduites souterraines, et ce n'est que deux jours après, savoir le vingt-quatre août, que la Compagnie a fait son rapport à la Cité de Montréal ;

Que d'après sa charte l'Intimée ne devait avoir une assemblée régulière que le second lundi du mois de septembre, date à laquelle elle pouvait être saisie de la demande de la Requérente, puisque le Comité des Chemins n'avait pas encore fait de rapport au Conseil de la dite Cité, et la dite Cité n'était pas en mesure de se prononcer sur cette demande avant cette date ;

Que par conséquent l'action de la Requérente était prématurée ;

Que la dite Requérente s'est illégalement et malicieusement emparée des rues de la dite Cité dès le dix du mois de septembre courant, par conséquent à une époque où il n'avait pas été au pouvoir de la Ville de délibérer sur sa demande et de préparer les instructions nécessaires pour permettre à la dite Compagnie d'exercer les pouvoirs que lui conférait son acte d'incorporation, et les travaux qu'elle a ainsi faits dans la rue depuis cette époque constituent une usurpation injustifiable du droit de propriété de la dite Cité ;

Que même en supposant que la dite Cité aurait été en défaut pour ne s'être pas occupée plus tôt de la demande de la dite Compagnie, cette dernière n'était point recevable à s'emparer des rues de la Cité, sans s'adresser au Tribunal pour en obtenir l'autorité d'en agir ainsi, et en l'absence de tel ordre sa conduite, en s'emparant des dites rues et en les bouleversant, ne peut être justifiée ni en loi ni en raison ;

A cette causes l'Intimée conclut à ce que le bref d'injonction émané en cette cause et l'ordonnance qui s'en est suivie, en date du onze septembre courant, soient renvoyés (dissolved) et déclarés nuls et mis à néant, avec dépens distraits aux soussignés.

Montréal, 16 septembre, 1896.

Received copy, Sept. 17, 1896.

SMITH & MARKEY,

Attorneys for Petitioners.

(Signé)

ROUER ROY,

L. J. ETHIER,

Avocats de l'Intimée.

(Endorsed)

Réponses de l'Intimée. Prod. 16 Sept., 1896.

(Paraphed) L. D. G.

Dep. P. S. C.

RECORD.

*In the
Superior
Court*

No. 9.

Answer of
the City of
Montreal to
the Requête
libellée,
dated 16th
September,
1896.

continued.

RECORD.

SCHEDULE NO. 9.

In the
Superior
Court.

No. 10.
Petitioners'
Replication
to the
answer of
Respondent
the City of
Montreal,
dated 18th
September,
1896.

And the said Petitioners for replication to the answer of the Respondents herein fyled say :

That each and every the allegations of the said answer, save such as agree with the allegations of the *requête libellée* herein, is and are false and unfounded and specially denied.

That the Petitioners had and have all necessary right, power and authority under their acts of incorporation to perform the works which have been stopped by force by the Respondents herein.

That all the conditions and provisions of the Petitioners' charter have been fully complied with.

That the City exercises no sovereignty, domain or authority whatsoever except what it derives from the Legislature of the Province of Quebec, and the City of Montreal is subject in all respects to the Legislative authority and jurisdiction of the Legislature.

That the Petitioners' action is not premature.

That the Respondents have had ample opportunity to prescribe the manner in which the streets of the city should be opened, if they deemed it necessary to do so.

That the Respondents' answer is wholly unfounded in law, and sets up no legal justification for the Respondents' acts complained of herein, and which are sought to be restrained by the present proceedings.

Wherefore, the Petitioners pray that Respondents' said answer be hence dismissed, and that the Writ of Injunction issued herein be maintained and made permanent, with costs *distrails* to the undersigned Attorneys.

Montreal, September 18th, 1896.

Received copy,

ROUER ROY,
L. J. ETHIER,

for City.

SMITH & MARKEY,

Attorneys for Petitioners.

30

(Endorsed)

Replication. Fyled 18th September, 1896.

(Paraphed) L. A. B.,

Dep. P. S. C.

SCHEDULE No. 11.

RECORD.

Quebec 27th August, 1896.

Messrs. SMITH & MARKEY, *Advocates*,
Montreal.

*In the
Superior
Court.*

GENTLEMEN,

No. 11.
Acknow-
ledgement
of Comm. of
Agriculture
of Report of
Standard
Co'y. Dated
27th
August,
1896.
Ptr's Exh.
No. 4.

I am instructed by the Honorable the Commissioner of Agriculture to acknowledge receipt of the report of works to be undertaken by the Standard Light & Power Co. in the City of Montreal, and which you have forwarded according to the statute.

10

I have the honor to be
Your obedient servant,

A. SYLVESTRE,
Secr. Dept. Agric.

(Endorsed.)

Exhibit No 4 of the Petitioners fyled at Enquête. Fyled 18th September,
1896.

(Paraphed) L. A. B.
Dep. P.S.C.

SCHEDULE No. 12.

No. 12.
Acknow-
ledgement
of Secretary
of Public
Works of
Report of
Standard
Co'y. Dated
28th
August,
1896.
Ptr's Exh.
No. 5.

20

DEPARTMENT OF PUBLIC WORKS,
Quebec, 28th August, 1896.

W. M. WALBANK, ESQ.,
General Manager The Standard Light & Power Co.,
Montreal.

SIR,

I have the honor to acknowledge receipt of your letter of the 22nd instant, enclosing a "report (with plan) of works proposed to be undertaken in the City of Montreal by the Standard Light & Power Company, as required by Section 18 of their Charter 55-56 Vict., ch. 77."

30

I have the honor to be

Sir,
Your obedient servant,

ERNEST GAGNON,
Secretary.

(Endorsed.)

Exhibit No. 5 at Enquête of Petitioners. Fyled 18th September, 1896.

(Paraphed) L. A. B.
Dep. P.S.C.

RECORD.

SCHEDULE No. 14.

*In the
Superior
Court.*

To the CITY OF MONTREAL.

The Road Committee respectfully report:—

No. 13. That they think proper to submit to the Council the letters of the Lachine
Report from Hydraulic & Land Co., representing themselves as well as the Standard
the Road Light & Power Co., and the Citizens Light & Power Co., whose charters they
Committee submitting have obtained, that said Company having opened the streets without the con-
the whole question of sent of the City are now in litigation as to the powers of the City and their
The Lachine rights by their Charter.

Rapids Your Committee, therefore, beg leave to submit the whole question with 10
Hydraulic all documents to Your Honorable Body.

& Land Co'y The whole nevertheless respectfully submitted.

for the
considera-
tion of the
council.

Presented

15th

September,
1896.

Respondents

Exh. "R."

Committee Room, City Hall,

Montreal, 15th September, 1896.

(Signed) R. PRÉFONTAINE,
JOS. BRUNET,
R. TURNER,
T. KINSELLA,
G. RENAULT,

(In the margin).

20

This copy is hereby admitted as being a correct reproduction of the orig-
inal, and to be as valid as if it was duly certified by the Mayor of the City and
the City Clerk.

Montreal, 17th September, 1896.

ROUER ROY,
L. J. ETHIER,
Avocats de la Cité.

SMITH & MARKEY,
Attorneys for Petitioners.

(On the back.)

30

Report from the Road Committee submitting the whole question of the
Lachine Hydraulic & Land Co., for the consideration of the Council—Presented
15 September, 1896.

(Endorsed.)

Exhibit "R" de l'Intimée. Prod: 18 Septembre, 1896.

(Paraphed) L. A. B.
Dep. P.S.C.

SCHEDULE No. 15.

RECORD.

Canada :
Province of Quebec ;
District of Montreal. }

In the Superior Court for Lower Canada.

*In the
Superior
Court.*

Present : HON. MR. JUSTICE

No. 14.
Admission
of parties.
Dated 17th
September,
1896.

The Standard Light & Power Company,

Plaintiff;

and

The City of Montreal,

Defendant.

10* The parties herein, to save costs, admit the following:—

Firstly :—That the Petitioners, on the twenty-second day of August last, delivered to the Honorable the Commissioner of Agriculture and Public Works of the Province of Quebec the report, a copy of which is fyled as Petitioners' Exhibit Number Three, as appears on reference to the acknowledgments from the Commissioner of Agriculture and Public Works, herewith fyled as Petitioners' Exhibits Numbers Four and Five ;

Secondly :—That the Petitioners began the work of excavation for the purpose of laying underground wires on St. Antoine Street in the City of Montreal, about half-past two o'clock in the afternoon of Thursday, the tenth day of
20 September instant ;

Thirdly :—That the Petitioners and their contractors and employees were then and there stopped in said work, and prevented from prosecuting the same by the Chief of Police and City Surveyor of the City of Montreal aforesaid, accompanied by other Police officials and a number of constables of the City of Montreal, and the contractors and employees of the Petitioners were by force prevented from continuing said work ;

Fourthly :—That the said City Officials on the said tenth day of September, in so acting and preventing said work from going on, were acting under instructions from the Municipal Council of the said City of Montreal.

30 Montreal, 17th September, 1896.

W. G. PROCTOR,
Official Stenographer.

SMITH & MARKEY,
Attorneys for the Plaintiffs, Petitioners.

ROUER ROY,
L. J. ETHIER,
Attorneys for the Defendant.

(Endorsed.)

Admission. Fyled 18th September, 1896.

40

(Paraphed) L. A. B.

Dep. P.S.C.

RECORD.

SCHEDULE No. 16.

*In the
Superior
Court*Province of Quebec; }
District of Montreal. }

Superior Court.

No. 15.
Petitioners'
Articulation
of facts.
Dated 21st
September,
1896.

The Standard Light & Power Company,

Petitioners;

and

The City of Montreal,

Respondent.

Petitioners' Articulation of Facts.

1. Is it not true that your Petitioners were incorporated under the Act 55 and 56 Victoria, Chapter 77 of the Legislature of the Province of Quebec ? 10

2. Is it not true that Section 5 is in the terms set forth in the petition herein ?

3. Is it not true that in and by section 6 the City of Montreal has the right to oversee the works to be done by your Petitioners, if they deem it necessary ?

4. Is it not true that your Petitioners through R. A. Dunton, Notary Public, on the 15th day of May last past, requested the City of Montreal to prescribe the manner in which the works to be undertaken by your Petitioners were to be done if deemed necessary by the City ?

5. Is it not true that although frequently requested from the month of March last past to prescribe the manner in which the said works should be done, the said Respondents have neglected and refused so to do ? 20

6. Is it not true that on or about the twenty-second day of August last past, a report was made to the Commissioner of Agriculture and Public Works of the works your Petitioners contemplated doing, a copy of which is filed together with the petition herein ?

7. Is it not true that on or about the twenty-fourth day of August last past, your Petitioners again requested the City of Montreal to determine the manner in which the said works should be done, and also served upon the Respondents, the City of Montreal, a copy of the report above mentioned ?

8. Is it not true that the said City of Montreal have interfered and stopped your Petitioners from proceeding with the work as mentioned in the petition ? 30

Montreal, September 21st, 1896.

SMITH & MARKEY,
Attorneys for Petitioners.

(On the back.)

I, Joseph Roy, residing in the City of Montreal, one of the sworn Bailiffs of Her Majesty's Superior Court for the Province of Quebec, appointed and acting in and for the District of Montreal, do hereby certify and return under my oath of office that, on the twenty-first day of September, one thousand eight hundred and ninety-six, between the hours of ten and eleven o'clock in the forenoon, I did serve the within Petitioners articulations of facts upon Messrs. Roy & Ethier, 40

attorneys for the Respondent in this cause, by speaking to and leaving a true and certified copy thereof with a grown and reasonable person employed and in charge of their office in their office in the City of Montreal.

The distance from the Court House, in the City of Montreal, and from my domicile, to aforesaid place of service, is — mile, and that I did necessarily travel to effect said service, the distance of — mile.

Montreal, September 21st, 1896,

Fee, 30c.

JOSEPH ROY,
B. S. C.

RECORD:
In the
Superior
Court.

No. 15.
Petitioner's
Articulation
of facts.
Dated 21st
September,
1896.
continued.

10

(Endorsed.)

Petitioners articulation of facts, Prod. September 21, 1896.

(Paraphed) L. D. G.

Dep. P.S.C.

SCHEDULE No. 17.

Province de Québec ;
District de Montréal.

Cour Supérieure.

No. 2670.

The Standard Light & Power Company,

and

La Cité de Montréal,

Requérante;

Intimée.

Réponses aux articulations de faits de la Requérante.

- A la lière l'Intimée répond : Non.
- " 2ième " " : Non.
- " 3ième " " : Non.
- " 4ième " " : Non.
- " 5ième " " : Non.
- " 6ième " " : Non.
- " 7ième " " : Non.
- 30 " 8ième " " : Non.

Montréal, 21 septembre 1896.

ROUER ROY,
L. J. ETHIER,
Avocats de l'Intimée.

(Reçu copie.)

SMITH & MARKEY,
Avocats de la Requérante.

(Endorsed.)

40 Réponses aux articulations de faits de la Requérante. Prod. 22 Septembre,
1896. (Paraphed) L. D. G.

Dep. P.S.C.

RECORD.

SCHEDULE No. 18.

*In the
Superior
Court.*Province de Québec; }
District de Montréal. }

Cour Supérieure.

No. 17.
Respondent's
Articulation
of facts.
Dated 17th
September,
1896.

No. 2670.

The Standard Light and Power Company,

Requérante ;

and

La Cité de Montréal,

Intimée.

ARTICULATIONS DE FAITS DE L'INTIMÉE.

Nest-il pas vrai :

1. Que la Compagnie Requérante n'a fait son rapport à la Cité de Montréal que le vingt-quatre (24) août dernier (1896) ?
2. Qu'elle s'est malicieusement emparée des rues de la Cité dès le dix (10) de septembre courant, et qu'elle les a bouleversées ?
3. Qu'à cette époque le Comité des Chemins n'avait pas encore fait rapport au Conseil de la dite Cité, et que la dite Compagnie n'avait pas encore obtenu la permission d'en agir ainsi ?

Montréal, 17 septembre 1896.

(Reçu copie.)

SMITH & MARKEY,
*Avocats de la Requérante.*ROUER ROY,
L. J. ETHIER, 20
Avocats de l'Intimée.

(Endorsed.)

Articulation de faits de l'Intimée. Prod. 22 Septembre, 1896.

(Paraphed) L. D. G.
Dep. P.S.C.

SCHEDULE No. 19.

Province of Quebec ; }
 District of Montreal. }

Superior Court.

RECORD.

*In the
 Superior
 Court.*

No. 2670.

The Standard Light & Power Company,

Petitioners;

and

The City of Montreal,

Respondents.

No. 18.
 Petitioner's
 Answers to
 Respondent's
 Articulation
 of facts.
 Dated 21st
 September,
 1896.

Petitioners' answers to Respondents' Articulation of Facts.

- 10 To the first, Petitioners answer No.
 To the second, Petitioners answer No.
 To the third, Petitioners answer No.

Montreal, September 21st, 1896.

SMITH & MARKEY,
Attorneys for Petitioners.

(On the back.)

I, Joseph Roy, residing in the City of Montreal, one of the sworn Bailiffs of Her Majesty's Superior Court for the Province of Quebec, appointed and acting in and for the District of Montreal, do hereby certify and return under
 20 my oath of office that, on the twenty-first day of September, one thousand eight hundred and ninety-six, between the hours of four and five o'clock in the afternoon, I did serve the within Petitioners answers to Respondents' articulations of facts upon Messrs. Roy & Ethier, attorneys for the Respondents in this cause, by speaking to and leaving a true and certified copy thereof with a grown and reasonable person employed in charge of their office in their office in the City of Montreal.

The distance from the Court House, in the City of Montreal, and from my domicile, to aforesaid place of service, is _____ mile, and that I did
 30 necessarily travel to effect said service, the distance of _____

Montreal, 21st September, 1896.

JOSEPH ROY,
B. S. C.

Fee, 30c.

(Endorsed.)

Petitioners' answer to Respondent's Articulation of facts. Prod. September 21, 1896.

(Paraphed) L. D. G., Dep. P.S.C.

RECORD.

SCHEDULE No. 20.

*In the
Superior
Court.*

Canada :
Province of Quebec ;
District of Montreal. }
}

In the Superior Court for Lower Canada.

No. 19.
Deposition
of E. G.
McQuaide,
witness
for the
Standard
Light Power
Co'y. Dated
17th
September,
1896.

Present, Hon. Mr. Justice

The Standard Light & Power Company,

Plaintiffs;

vs.

The City of Montreal,

Defendant.

10

On this seventeenth day of September, in the year of our Lord one thousand eight and ninety-six, personally came and appeared:—E. G. McQUAIDE of the City of New York, in the State of New York, one of the United States of America, but presently of the City and District of Montreal, aged twenty-eight years, Superintendent of the National Conduit Manufacturing Company of New York, a witness produced on the part of the Plaintiffs, Petitioners, who, being duly sworn on the Holy Evangelists, depose and saith:—I am not related, allied or of kin to any of the parties in this case.

Examined by R. C. Smith, Esq., of Counsel for the Plaintiffs.

Q. You are employed in laying underground wires for the Standard Light & Power Company, are you not?

A. Yes.

Q. In what capacity?

A. As superintendent.

Q. What time will be required to complete the work of laying the underground wires?

A. Well, they are supposed to be completed by the fifteenth of November; but it is very difficult to do it even if we had started a week or two ago, because the weather at this time of the year is peculiar. You cannot work in cold weather, because it is impossible to mix concrete in a manner to satisfy any engineer who knows anything about it, or to mix the mortar that is used in the construction of our work.

Q. If the work be further delayed, can it be completed this year?

A. I cannot say positively unless we had a very good streak of weather. If we struck bad weather it would require a good deal of night work. We would have to work very hard, even if we had good weather, to complete the work by the fifteenth of November.

Q. Is your material here on the ground yet?

A. We have about one-third of it at the present time, and the other two-thirds are in transit, the last of it left Saturday last, and should be here in about ten days, by the middle of next week, but we have sufficient here to keep us going with our force until the other arrives.

Q. What will be the effect if this work be stopped now?

A. It will be a great deal of expense, such as duty on material that we will have to get and which we cannot keep till spring, and we have to carry foremen with us, we have foremen that we take everywhere we have work to do, and there is the lighting and watching on the street, and incidental expenses, such as stuff we bought, such as stone, sand, etc., that we have to throw away.

Q. There would be heavy damages if the works were stopped now?

A. The estimate would be very large, and the duties are very heavy,—in fact, all expenses are very heavy, and of course the expense is greater when you look at it in this way. If we could work now in the day time it would save night work, for which we have to pay time and a half, or perhaps double time here, as I am not familiar with wages here, but it makes doubly expensive labor.

Cross-examined by Mr. Roy, of Counsel for the Defendants.

Q. I suppose you are aware of all the streets where the conduits are to be placed under the present contract between the Company and the Contractor?

A. Yes.

Q. Could you say what is the extent or distance where the works will have to be made?

A. With a blue print of the work I could tell you the amount of excavation and the distance of lineal feet and the number of feet of pipe; but without that blue print I would be at a loss. I know the number of feet of pipe in the contract, but I do not know the exact number of lineal feet of street, but I would know that with the blue print; but, unfortunately, I have not got it with me.

Q. As I understand it, you are of opinion that all the work could be completed in two months?

A. With good weather it could be completed in two months with hard work, and worked rapidly; it could be completed in two months provided we had good weather.

Q. And that would be without being obliged to work at night?

A. In bad weather we would have to work at night of course; but if we had good weather and working day, we would just about get through, but we would have to work hard and have a very large number of men employed.

Q. Are you aware that in this City, and in this country, works are carried on in the streets even until the beginning of December?

A. I was not aware of that. I was told that the frost here became steady about the fifteenth of November. We have worked as late as the 1st of January, where the weather, at times, is as cold as it is here, but for one cold day there would be four or five warm days.

Q. (By Mr. Smith) That is further south?

A. Yes.

Q. It depends on the climate altogether?

A. Yes.

And further deponent saith not.

W. G. PROCTOR,
Official Stenographer.

RECORD.

*In the
Superior
Court.*

No. 19.

Deposition
of E. G.
McQuaide,
witness
for the
Standard
Light Power
Co'y. Dated
17th
September,
1896.

continued.

RECORD.

*In the
Superior
Court.*No. 19.
Deposition
of E. G.
McQuaide,
witness
for the
Standard
Light Power
Co'y. Dated
17th
September,
1896.
continued.

I, Walter John Gordon Proctor, of the City and District of Montreal, official stenographer, on the oath I have already taken, do depose and say :—

That the foregoing sheets numbered from one to five consecutively, being five folios in all, are and contain a true and faithful transcript of the evidence of the above named witness by me taken by means of stenography, the whole in manner and form as required by and according to law. And I have signed,

W. G. PROCTOR,
Official Stenographer.

(Endorsed.)

Deposition of E. G. McQuaide for Plaintiffs. Fyled 18th September, 1896. 10

(Paraphed. L. A. B.

Dep. P.S.C.

DOCUMENT IV.

INJONCTION

CANADA,
Province de Québec, }
District de Montréal.

Cour du Banc de la Reine, 20
(EN APPEL.)

No. 384.

La Cité de Montréal,

(Intimée en Cour Inférieure,)

APPELANTE ;

&

The Standard Light and Power Company, 30

(Requérante en Cour Inférieure,)

INTIMÉE.

FACTUM DE L'APPELANTE.

L'Appelante soutient respectueusement que ce jugement ou ordonnance est mal fondé. L'Intimée n'allègue dans sa requête aucun fait qui démontre qu'elle ait droit à une injonction ; et en supposant même que ses allégations seraient vraies, elles ne seraient point suffisantes pour justifier ses conclusions. 40

En vertu des lois qui régissent les corporations municipales, elles ont le domaine souverain et absolu des voies publiques et des parcs situés dans les limites de leur juridiction ; l'Appelante, par les pouvoirs qui lui sont conférés par sa charte, exerce une juridiction exclusive, à titre de propriétaire, sur les rues, places publiques et propriétés municipales ; elle a même un droit absolu de les fermer et discontinuer, suivant qu'elle juge désirable dans l'intérêt des citoyens.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 20.
Appellants'

Case,
dated 24th
September,
1896.
continued.

Par l'acte 56 Victoria, chapitre 73, qui modifie son acte d'incorporation, 55-56 Victoria, chapitre 77, l'Intimée n'a pas été revêtue d'une autorité supérieure à celle de la Cité, et l'on ne peut légalement présumer que la Législature a entendu subordonner la Cité, ses citoyens et le public en général, à une compagnie privée conduite dans l'intérêt seul de ses actionnaires ; et en effet l'Intimée est, par la section 6 de l'acte 56 Victoria, chapitre 73, tenue d'obtenir, avant le commencement de ses travaux, le consentement du conseil municipal s'il le juge nécessaire, ce dernier ayant droit de surveillance sur les dits travaux, avec le droit en outre de prescrire la manière dont les rues seront ouvertes pour la pose des fils souterrains. Cette dernière disposition fait voir que la Compagnie n'est point recevable à entreprendre des travaux et bouleverser les rues pour la pose des fils souterrains sans le concours de l'Appelante.

D'après son acte d'incorporation la Compagnie était tenue, avant de commencer ses travaux, de faire rapport aux Commissaires d'Agriculture et des Travaux Publics de la Province, désignant ceux qu'elle entendait faire, et d'en envoyer une copie au Conseil de la municipalité ;—l'accomplissement de ces conditions était impératif et obligatoire pour la Compagnie avant de s'emparer des rues de la Cité. Cependant, ce n'est que le vingt-deux (22) du mois d'août dernier (1896) que tel rapport a été fait aux Commissaires d'Agriculture et des Travaux Publics de la Province des travaux que l'Intimée entendait faire dans la dite Cité, avec désignation des rues où elle se proposait de placer ses conduites souterraines, et ce n'est que deux jours après, savoir, le vingt-quatre (24) août, que la Compagnie a fait son rapport à la Cité de Montréal.

D'après sa charte, l'Appelante ne devait avoir une assemblée régulière que le second lundi du mois de septembre, date à laquelle elle pouvait être saisie de la demande de l'Intimée, puisque le Comité des Chemins n'avait pas encore fait rapport au Conseil de la Cité, qui n'était pas en mesure de se prononcer sur telle demande avant cette date. Si l'on songe que le Conseil-de-Ville ne pouvait, d'après sa manière de procéder, déterminer la méthode à suivre pour la pose des conduites dans les rues de la ville qu'après avoir référé la demande de la Compagnie au département des Chemins, lequel devait obtenir un état de l'Inspecteur de la Cité et faire rapport du tout au Conseil, on verra que le délai qui s'est écoulé entre la signification du rapport de la Compagnie au Conseil et la séance régulière (qui ne pouvait avoir lieu que le quatorze (14) de septembre courant) était trop court pour permettre au dit Conseil de prendre une décision, et il suit de là que l'action de la Requérente était prématurée.

L'Appelante soumet que la Requérente s'est illégalement et malicieusement emparée des rues de la Cité dès le dix (10) du mois de septembre courant, à une époque où il n'avait pas été au pouvoir de la ville de délibérer sur sa demande et de préparer les instructions nécessaires ; en sorte que la Compagnie, en exécutant les travaux qu'elle a faits dans les rues, s'est rendue coupable d'une usurpation injustifiable du droit de propriété de la dite Cité. D'ailleurs, la Requé-

RECORD. rante a fait erreur en s'emparant des dites rues sur une simple demande au dit Conseil ; car pour avoir un tel droit elle était tenue de s'adresser au Tribunal, par voie de *mandamus* ou autrement, pour en obtenir l'autorisation d'ouvrir les rues, et en l'absence de telle autorisation, sa conduite, en bouleversant la voie publique, ne peut être justifiée ni en loi ni en raison.

In the
Court of
Queen's
Bench.

No. 20.
Appellants'
Case,
dated 24th
September
1896.
continued.

AUTORITÉS.

Par la section 4 de 52 Victoria, chapitre 79, la Cité a la propriété absolue de ses biens et effets, terres et dépendances, biens meubles et immeubles ; elle a le pouvoir de les donner, vendre, aliéner, transporter, louer et céder.

Par l'article 358 du Code Civil, une corporation peut exercer tous les droits 10 qui lui sont nécessaires pour atteindre le but de sa destination.

Re City of Ste. Cunégonde vs. Gougeon et al (Q.B.), HALL, J.—“ Under section “ 1 of the Town Corporations Act (4178 R.S.P.Q.), all its enactments are made “ applicable to the special charters of towns and cities, unless specially excluded, “ Section 439 of the Act (4612 R. S. P. Q.) not having been excluded from the “ charter of the City of Montreal, is therefore to be read as forming a part of “ it.”

La décision de la Cour d'Appel, dans la cause de “ La Ville de Sherbrooke ” (6 M. L. R., Q. B., p. 100), obligeant la Compagnie de Téléphone à demander permission pour placer ses poteaux dans les limites de la ville, confirme une fois 20 de plus le principe que les grandes cités, dans ce pays, ont le domaine souverain des voies publiques, des parcs et des propriétés personnelles situées dans les limites de leur juridiction.

Aux États-Unis c'est différent ; là les corporations municipales n'ont qu'une espèce de servitude dans les terrains affectés aux rues, les conseils municipaux sont de simples “ trustees ” ou fidéi-commissaires, et le domaine de la propriété appartient aux propriétaires riverains (*riparian proprietors*) et à la Législature ; c'est pour cette raison qu'on trouve un bon nombre d'autorités niant aux corporations municipales le droit de concéder l'usage exclusif des rues pour conduites à gaz ou autres. 30

La ville a le pouvoir de fermer toute rue et d'en défendre l'usage, 52 Vict., ch. 79, s. 140, ss. 42.

Voir décision du Conseil Privé *re Drummond vs. the Mayor*, —1 House of Lords, p. 400.

Rapp. Jud. de Q. (C. S.), vol. 6, p. 140 *et seq.* “ Montreal Gas Co. vs. Consumers Gas Co. of Montreal et Cité.—“ En droit commun, les compagnies commerciales constituées par acte du parlement ou par lettres patentes restent “ soumises au contrôle municipal, s'il n'est pas déclaré au statut constitutif “ qu'elles sont exemptes de ce contrôle ; les tribunaux ne sauraient les présumer exemptes ; ce ne serait pas alors expliquer le statut constituant ces com- 40 “ pagnies, mais en étendre illégalement les dispositions.”—pp. 147 et 148.

Hardcastle,—pp. 138, 207 et 510.

10 L. C. J., p. 393.

12 Withrow,—Iowa Rep.,—p. 246 *et seq.*

Voir aussi décision de l'Honorable Juge ARCHIBALD, 30 Mars 1896,—No. 2493, RECORD.
 Taylor *et al. vs. Cité.*—Non rapp., “by which it was decided that the City is the
 “absolute proprietor of the land constituting the streets of the City, etc.”

COOLEY,—On Constitutional Limitation,—p. 204.

“On Forfeitures,” see BEAUCHAMP,—Jurisprudence of Privy Council, p. 209.

HIGH,—On Injunction, p. 20, s. 22.—“An injunction being the strong arm
 “of equity should never be granted, except in a clear case of irreparable injury
 “and with a full conviction on the part of the Court of its urgent necessity.”

P. 24, s. 28.—s. 29.—“Where a positive statutory remedy exists for the
 .10 “redress of particular grievances, a Court of Equity will not interfere by
 “injunction and assume jurisdiction of the questions involved, etc.”

Pour ces raisons l'Appelante conclut à ce que le jugement ou ordonnance
 prononcé par son Honneur le Juge Tait le vingt-et-un septembre courant soit
 cassé et infirmé avec dépens.

Montréal, 24 septembre 1896.

ROUER ROY,
 L. J. ETHIER,
Avocats de l'Appelante.

(Endorsed)

20 Factum de l'Appelante, Prod. 25 sept. 1896.

(Paraphed) L. O.,
Dep. C. A.

DOCUMENT V.

No. —

The City of Montreal,

(Respondents in the Court below),

APPELLANTS ;

AND

The Standard Light and Power Company,

(Petitioners in the Court below),

RESPONDENTS.

No. 21,
 Respondents' Case,
 dated 24th
 September,
 1896.

30

RESPONDENTS' FACTUM.

The remarks of the Hon. Mr. Justice Tait, in rendering the judgment
 appealed from, are so comprehensive that Respondents are relieved of the ne-
 cessity of any extended review or argument of the case. These remarks are
 printed in full in Respondents' Appendix, and a repetition here of the authori-
 ties noted by the learned Judge would serve no purpose.

RECORD.

In the
Court of
Queen's
Bench.

No. 21.
Respondents' Case,
dated 24th
September,
1896.
continued.

The Appellants' first proposition was an assumption of " eminent domain " or sovereignty on all the streets, squares, etc. Respondents answer that the City of Montreal is merely the creature of the Legislature, endowed with such rights, attributes and prerogatives only as the Legislature has seen fit to confer upon it. The supremacy of the Legislature acting within the scope of its jurisdiction under the Constitutional Act cannot be doubted in view of the decision of the Privy Council in *Reg. vs. Hodge*, from which Mr. Justice Tait has quoted.

Under sub-sections 8, 10, 11 and 13 of Section 92 of the B.N.A. Act, it is clear that the Legislature of the Province of Quebec had power to grant the charter of the Respondents, and to confer the powers which they are seeking to exercise. That the Legislature has power to deal as it sees fit with the streets and highways of municipalities is a doctrine which seems to be universally accepted. In addition to the numerous authorities cited in the Hon. Judge's notes, Respondents would respectively refer to : —

Dillon on Municipal Corporations, Vol. I., page 40, Sec. 21 :—" Like other corporations, municipal corporations must be with us created by statute. They possess no powers or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them or by other statutes applicable to them."

Ibid, page 121, Sec. 71 :—" The Legislature, as the trustee for, and the representative of the general public, has full control over the *public property* and *public rights* of municipal corporations. Accordingly it may authorize a railroad company to occupy the streets of a city without its consent and without payment to it."

Dillon, Vol. II., page 776, Sec. 656 :—" Public streets, squares and commons, unless there be some special restriction, when the same are dedicated or acquired, are for public use, and the use is none the less for the public at large, as distinguished from the municipality, because they are situated within the limits of the latter, and because the Legislature has given the supervision, control and regulation of them to the local authorities. The Legislature of the State represents the public at large, and has, in the absence of special constitutional restraint, and subject (according to the weight of more recent judicial opinion) to the proper rights and easements of the abutting owners, full and paramount authority over all public ways and public places." " To the commonwealth here," says Chief Justice Gibson, " as to the King in England, belongs the franchise of every highway as a trustee for the public ; and streets regulated and repaired by the authority of a municipal corporation are as much highways as are rivers, railroads, canals, or public roads laid out by the authority of the Quarter Sessions."

Dillon, Vol. II., Sec. 657, page 780 :—" By virtue of its authority over public ways, the Legislature may authorize acts to be done in and upon them, or legalize obstructions therein which would otherwise be deemed nuisances. As familiar instances of this may be mentioned the authority to railway, water, telegraph and gas companies to use and occupy streets and highways for their respective purposes. And it may be observed that whatever the Legislature may authorize constitutionally to be done is of course lawful, and of such acts, done pursuant to the authority given, it cannot be predicated that they are nuisances ; if they were such without, they cease to be nuisances when having the sanction of a valid statute."

“As respects the public or municipalities, there is, in the absence of special RECORD.
 “constitutional restrictions, no limit upon the power of the Legislature as to
 “the uses to which streets may be devoted.”

Ibid, Sec. 691, page 821 :—“Lighting cities is so necessary for the safety
 “and convenience of the inhabitants, that the municipal authorities are usually
 “given powers more or less extensive in respect to it. The Legislature may
 “authorize the condemnation of property for such a purpose. In Great Britain
 “express legislative sanction is necessary to authorize the laying down of gas
 “pipes in the public highway ; and so in this country it is also considered that
 10 “the right to the use of the public streets of a city by a gas company for the
 “purpose of laying down its pipes is a franchise which can only be granted by
 “the Legislature, or some local or municipal authority empowered to confer it.”

—
*In the
 Court of
 Queen's
 Bench.*

—
 No. 21.
 Respon-
 dents' Case,
 dated 24th
 September,
 1896.
continued.

Dillon, Vol. II., Sec. 698, page 829 :—“Legislative authority directly
 “given or mediately conferred through proper municipal action is necessary to
 “authorize the use of streets for the posts and wires of a telegraph or telephone
 “company. If such posts be erected within the limits of a street or highway
 “without such sanction they are nuisances, but if the erection be thus authorized
 “they are not. Whatever power the Municipality may have on this subject
 “must be granted to it by the Legislature.”

20 Tiedeman on Municipal Corporations, Sec. 295 :—“In this country as in
 “England, Legislative authority, either express or necessarily implied, is
 “required, before gas pipes, or pipes for like purposes, can be laid in city streets
 “by private corporations and individuals—and the franchise may be granted
 “either directly by the Legislature or indirectly and the Municipality render
 “its charter powers.”

In *Regina vs. Train* (9 Cox C.C., on page 183), Compton, J., said :—“I think
 “it falls within that class of cases of *Rex vs. The Longton Gas Co.*, which we
 “took a great deal of pains in considering, where some pipes were laid in the
 “highway by a gas company, without the leave of the Act of Parliament, and
 30 “we held the company indictable for a nuisance. So when parties introduce
 “a new mode of conveyance which is not suitable to the old mode of a high
 “road, they must take the almost constitutional course of getting an Act of
 “Parliament by which they are put under such regulations as will protect the
 “public.”

In *Regina vs. The Longton Gas Co.* (6 Jurist N.S., part I., page 601), Lord
 Chief Justice Cockburn said :—“General convenience is greatly against
 “allowing private persons or companies, *without parliamentary powers*, to inter-
 “fere from time to time with the public streets. The making of such openings
 “from time to time for water, gas, sewerage, and other purposes, and the
 40 “opening of streets for repairs and alterations, are a serious inconvenience, even
 “when done under the restrictions which an Act of Parliament puts upon the
 “persons clothed with parliamentary authority so to act, and it would be
 “difficult to see how far the annoyance might extend if unauthorized dealings of
 “this nature with the highways were allowed. Is every private person to
 “be at liberty to open the street for laying down a pipe to any gas works, or to
 “any conduit of water or to any well or fountain in a market place? How
 “far is such right to extend? . . . On the contrary, a right as is here
 “claimed of interfering with the streets is never exercised except under the

RECORD. " authority of Acts of Parliament conferring special powers with great care and
" under proper control."

*In the
Court of
Queen's
Bench.*

No. 21.
Respon-
dents' Case,
Dated 24th
September,
1896.
continued.

It was argued, in the second place, by the Appellants, that the Legislature had not in any event granted the powers claimed by the Respondents. There is, however, nothing equivocal in the language of Section 5 of the Respondents' charter. If any authority were necessary upon so simple a matter of interpretation, it is to be found in *Reg. vs. Mohr* (2) Cartwright's cases, where Cross, J., on page 270 said: " By Section 3 the Company was authorized to construct, erect and maintain its line or lines along the line or lines of any public highway, streets, bridges, or waterworks, or other such places, or across or 10
" under any navigable waters, either wholly in Canada, or dividing Canada
" from any other country ; and by Section 4 the Company was authorized to
" purchase or lease any telephone lines in Canada or elsewhere. It is obvious
" that the Dominion Parliament did, by the charter in question, authorize the
" placing of poles in public streets, and consequently in Buade street, in the
" City of Quebec, the same as in any other street, on condition of conforming
" to the charter."

In that case it was held that the Dominion Parliament had no power to confer such rights because they concerned a local work or undertaking in the Province, and that the charter should have been granted by the Provincial 20
Legislature. The case is, therefore, a direct authority in Respondents' favor.

The distinction between this case and that of the Sherbrooke Telephone Association *vs.* the Corporation of Sherbrooke has been pointed out by the Hon. Mr. Justice Tait in his notes.

The interests of the public and the rights of supervision of the City of Montreal are safeguarded to an unusual degree in the Respondents' charter, and the opposition to the work by the city is a purely factious one.

The City's final contention was that Respondents had acted prematurely and had not given the City sufficient notice of the works. The notarial notification of May 15th is a conclusive answer to this. The City Surveyor examined 30
the plan of the works, and fixed \$18,000 as the amount necessary to replace all the streets to be opened by Respondents in good condition. This is alleged in the *Requête Libellée*, duly supported by affidavit, and, if untrue, should have been specially denied. The evidence shows the matter to be one of great urgency, and if the works be further delayed they cannot be done this year, and very heavy damages will result. The admission filed settles the facts. The City stopped the works by force, and in so doing exceeded its powers. Respondents made clear their right to an injunction, and the judgment granting it is in all respects correct. They therefore pray that it be confirmed with costs.

40

MONTREAL, September 24th, 1896.

SMITH & MARKEY,

Attorneys for Respondents.

(Endorsed)

Respondents' Factum. Filed 25th September, 1896.

(Paraphed) L. O., *Dep. P. A.*

DOCUMENT VI.

RECORD.

Canada:
Province de Québec, }
District de Montréal. }

Cour du Banc de la Reine,

*In the
Court of
Queen's
Bench.*

No. 384.

(En Appel.)

La Cité de Montréal,

et

The Standard Light and Power Company,

Appelante.

Intimée.

No. 22.
Motion de
l'Appelante
pour conti-
nuation
d'ordre à la
Cie. de sus-
pendre
travaux,
dated 25th
September,
1896.

10

Motion de la Cité : que l'ordre donné à la Compagnie Intimée par le Tri-
bunal de première instance, à l'effet de suspendre et arrêter tout ouvrage dans
les rues de la Cité, soit continué jusqu'à ce que cette Honorable Cour ait pro-
noncé sur le présent litige.

Montréal, 25 septembre 1896.

ROY & ETHIER,
Avocats de l'Appelante.

(Endorsed)

Motion de l'Appelante pour continuation d'ordre à la Compagnie de sus-
pendre travaux.

Fyled 25th Sept., 1896. Accordée

(Paraphed) *D. & J.*

DOCUMENT VII.

No. 23.
Consent of
parties,
dated 25th
September,
1896.

Province of Quebec, }
District of Montreal. }

In the Court of Queen's Bench,

(Appeal Side.)

The City of Montreal,

and

Appellant;

The Standard Light and Power Company,

Respondent.

30

The parties herein hereby consent that judgment be rendered herein
at Quebec at the next term of this Honorable Court sitting in the City of

RECORD. Quebec, on Saturday, the third day of October next, or any other day of said term.

*In the
Court of
Queen's
Bench.*

Montreal, 25th September, 1896.

ROY & ETHIER,
Attorneys for Appellant.
SMITH & MARKEY,
Attorneys for Respondent.

No. 23.
Consent of
parties,
dated 25th
September,
1896.
continued.

(Endorsed)

Consent that judgment be rendered at Quebec.
Fyled, 25th Sept., 1896.

(Paraphed) *D. & J.*

10

No. 24.
Proceedings
in the Court
of Queen's
Bench from
21st
September,
1896 to 3rd
October,
1896.

DOCUMENT VIII.

Transcript of the Proceedings had and entries made in the Register of the Court of Queen's Bench (Appeal side).

21st September, 1896.

Messrs. Rouer Roy and L. J. Ethier of Counsels for Appellant fyle an In-
scription in appeal.

24th September, 1896.

20

The Record is transmitted from the Superior Court to this Court.
Messrs. Rouer Roy and L. J. Ethier appear for Appellant.
Messrs. Smith & Markey appear for the Respondent.

Present :

L'Honorable SIR ALEXANDRE LACOSTE, Chevalier, Juge en Chef.
" M. le Juge BOSSÉ,
" " BLANCHET,
" " HALL,
" " WURTELE.

Mr. Rouer Roy, Procureur de l'Appelante, fait application pour que cette 30
cause soit entendue par privilège : Mr. Smith, Procureur de l'Intimée, y consent.
La Cour accorde la demande, et l'audition est fixée à demain à deux heures.

25 Septembre 1896.

The Appellant's case is fyled.
The Respondent's case is fyled.

Présents

L'Honorable SIR ALEXANDRE LACOSTE, Chevalier, Juge en Chef.

“ M. le Juge BOSSÉ,
 “ “ BLANCHET,
 “ “ HALL,
 “ “ WURTELE.

RECORD.

*In the
 Court of
 Queen's
 Bench.*

No. 24.

Proceedings
 in the Court
 of Queen's
 Bench from
 21st
 September,
 1896 to 3rd

Les parties ayant été entendues par leurs avocats, sur le mérite *curia advisare vult.*

10 Monsieur Ethier, avocat de l'Appelante, fait motion que l'ordre de suspension des travaux par l'Intimée, donné par la Cour Supérieure, soit continué, jusqu'à l'adjudication par cette Cour.

The Court of Our Lady The Queen, now here, having heard the parties by their Counsel respectively, on the motion of the said Appellant, the City of Montreal, praying that the Order given to the said Company Respondent by the Superior Court, Montreal, on the 21st September instant, to the effect of suspending and stopping all works in the streets of the City, be continued until this Honorable Court has adjudged this matter ;

20 Doth grant said motion of the said Appellant, the City of Montreal, and it is ordered that the order given by the said Superior Court on the 21st September instant be continued and stand in full force until this Court has given judgment in this Court.

October,
 1896.
continued.

DOCUMENT IX.

Monday, 3rd October, 1896.

No. 24A.
 Judgment
 of the Court
 of Queen's
 Bench
 rendered at
 Quebec on
 the 3rd
 October,
 1896.

Reçu ce jour de Québec, du Député Greffier des Appels, le jugement dans la cause No. 384, La Cité de Montréal, Appelante, and The Standard Light and Power Company, Intimée ; lequel a été rendu à Québec, suivant consentement des parties produit à cet effet, et est entré et enregistré, savoir ;

Canada :
 Province of Quebec,
 30 District of Montreal. } Court of Queen's Bench,

Appeal Side.

Quebec, Saturday, the third day of October, one thousand eight hundred and ninety-six.

Present :

The Honorable SIR ALEXANDRE LACOSTE, Knight, Chief Justice.

“ MR. JUSTICE BOSSÉ,
 “ MR. JUSTICE BLANCHET,
 “ MR. JUSTICE HALL,
 “ MR. JUSTICE WURTELE.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 24A.
Judgment
of the Court
of Queen's
Bench
rendered at
Quebec on
the 3rd
October,
1896.
continued.

The City of Montreal, a body politic and corporate, duly incorporated, having its head office and chief place of business in the City and District of Montreal (Respondent in the Court below),

Appellant ;

and

The Standard Light and Power Company, a body politic and corporate, duly incorporated, having its head office and chief place of business in the City and District of Montreal (Petitioner in the Court below, Respondent),

10

Respondent.

The Court of Our Lady the Queen, now here, having heard the Appellant and Respondent by their counsel respectively, examined as well the record and proceedings in the Court below, as the record in appeal, and mature deliberation on the whole being had ; considering that there is no error in the judgment appealed from, to wit, the judgment rendered by the Superior Court for the Province of Quebec, sitting at the City of Montreal in the District of Montreal on the twenty-first day of September, one thousand eight hundred and ninety-six ;

Doth affirm the same with costs to the Respondent against the said Appellant ;

And it is declared and adjudged that the provisional order enjoining the Respondent to suspend all acts, proceedings, operations and works respecting the matter in dispute in this cause pending the appeal is now dissolved, and that the Writ of Injunction in this cause issued is therefore from henceforth in full force and effect ;

And it is ordered that the record be remitted by the Clerk of Appeals in Quebec to the office of the Clerk of Appeals in Montreal, and by the Clerk of Appeals in Montreal to the Superior Court in the City and District of Montreal. 30

J. W.

DOCUMENT X.

RECORD.

There is filed at the appeal office at Quebec the following consent :—

Province of Quebec, }
District of Montreal. }

The Court of Queen's Bench.

(Appeal Side.)

The City of Montreal,

and

The Standard Light and Power Company,

Appellant.

*In the
Court of
Queen's
Bench.*

No. 25.
Consent of
parties,
dated 2nd
October,
1896.

Respondents.

10

Inasmuch as by the consent of the parties herein, judgment is to be rendered in the City of Quebec on the third day of October instant, in order to prevent delay, the parties hereby consent that any motion which either of the parties may see fit to present to the said Court for leave to Appeal, or respecting security, or any other order in the case, may be validly presented to the said Court sitting in Quebec, and that judgment may be rendered thereon, and that the same shall avail in every respect as though it had been presented and adjudicated upon in the City of Montreal.

Montreal, October 2nd, 1896.

ROY & ETHIER,
Attorneys for Appellant.
SMITH & MARKEY,
Attorneys for Respondent.

20

(Endorsed)

Consentement, produit ce 30 Octobre, 1896.

(Paraphed) P. G. R.,
Dep. C.A.

DOCUMENT XI.

30

Saturday, 3rd October, 1896.

No. 26.
Motion for
leave to
Appeal
to Her
Majesty's
Privy
Council,
dated 3rd
October,
1896.

Il est aussi présenté une motion de la part de l'Appelante, qu'il lui soit permis d'appeler à Sa Majesté, en son Conseil Privé, du jugement rendu ce jour par cette Cour.

La Cour accorde cette motion, et il est permis à la dite Appelante d'interjeter Appel du jugement rendu ce jour à Sa Majesté, en Son Conseil Privé, en par la dite Appelante, donnant dans le délai de six semaines, à compter de ce jour, le cautionnement requis par la loi, et à défaut, et le dit délai passé, ordonne que le dossier soit remis à la Cour de première instance sans ordre ultérieur ;

40 Reçu aussi ce jour, du Greffier des appels de Québec, une motion de l'Intimé, pour distraction de frais.

Cette motion est renvoyée à Montréal, pour être présentée le premier jour du terme prochain.

RECORD.

DOCUMENT XIII.

*In the
Court of
Queen's
Bench.*

Canada :
Province of Quebec. }

In the Court of Queen's Bench.

(Appeal Side.)

No. 384.

In a case between :

No. 27.
Bail Bond
in Appeal
to Her
Majesty's
Privy
Council,
dated 15th
October,
1896.

The City of Montreal, a body politic and corporate,
duly incorporated, having its head office and chief
place of business in the City and District of Montreal
(Respondent in the Court below),

Appellant ; 10

and

The Standard Light and Power Company, a body
politic and corporate, duly incorporated, having its head
office and chief place of business in the City and Dis-
trict of Montreal (Petitioner in the Court below),

Respondent.

Be it remembered that on the fifteenth day of October in the year of Our Lord, one thousand eight hundred and ninety-six, at the City of Montreal, before Me, the Honorable Mr. Justice Wurtele, one of its Justices of the Court of Queen's Bench for Lower Canada, came and appeared WILLIAM ROBB, Treas- 20
urer of the said City, residing at Montreal, who declares himself bound and liable unto and in favor of the said The Standard Light and Power Company, their heirs, assigns and representatives in the sum of two thousand dollars, current money of Canada, for costs, and in the sum of six hundred dollars said currency, to satisfy the costs to be made and levied of the several goods and chattels, lands and tenements of him the said William Robb, to the use of the said The Standard Light and Power Company, their heirs, assigns and representatives. Whereas judgment was rendered in the said cause in the Court of Queen's Bench on the third day of October, one thousand eight hundred and ninety-six, on the appeal instituted in this cause, and whereas the said the City of Montreal have 30
obtained leave to appeal therefrom to Her Majesty in Her Privy Council ; now the condition is such that if the said the City of Montreal do prosecute effectually the said appeal to Her Majesty, satisfy and pay unto the said The Standard Light and Power Company, their heirs, assigns and representatives, such costs as may be awarded unto them by Her Majesty in the event of the said judgment of the said Court of Queen's Bench being confirmed, then the present obligation shall be null and void, otherwise the same shall be and remain in full force and effect, and the said William Robb hath signed

W. ROBB.

40

Taken and acknowledged before Me, at the City of
Montreal the day and year first above written, the
said surety having first duly justified as to his solv-
ency. }

J. WURTELE,
J. Q. B.

The said William Robb being duly sworn doth depose and say, that he is worth the sum of two thousand six hundred dollars, current money of Canada, and upwards over and above all charges, hypothecs and incumbrances and over and above what would pay his just and lawful debts, and he hath signed.

RECORD.
In the
Court of
Queen's
Bench.

Sworn before Me, at Montreal, this fifteenth }
day of October, one thousand eight hundred }
and ninety-six. }

W. ROBB.

No. 27.
Bail Bond
in Appeal
to Her
Majesty's
Privy
Council,
dated 15th
October,
1896.
continued.

J. WURTELE,
J. Q. B.

10

(Endorsed)

Bail Bond in Appeal to Privy Council. Fyled 15th October, 1896.
(Paraphed) L. O.,

Dep. C. A.

DOCUMENT XIV.

Canada :
Province de Québec. }

Cour du Banc de la Reine,

No. 384.

(En Appel.)

La Cité de Montréal,

No. 28.
Consent of
parties as to
the printing
of the
transcript
record,
dated 24th
February.

Appelante ; 1896.

20

et

The Standard Light and Power Company,

Intimée.

Nous consentons que le Transcript en Appel à Sa Majesté en Son Conseil Privé soit imprimé à Montréal, et que les frais d'impression, de préparation et de sa transmission au Régistrare du dit Conseil Privé dans la dite cause soient taxés par le Greffier des Appels.

Montréal, 24 Février 1897.

ROY & ETHIER,
Avocats de l'Appelante.
SMITH & MARKEY,
Avocats de l'Intimée.

30

(Endorsed)

Consentement des parties. Produit 24 Février, 1897.
(Paraphed)

L. M.

Dép. G. A.

RECORD.

DOCUMENT XV.

*In the
Court of
Queen's
Bench.*

Canada:
Province de Québec, }
District de Montréal. }

Cour du Banc de la Reine,
(En Appel.)

No. 384.

No. 29.
Fiat for the
preparation
of the
transcript
record.
Dated 23rd
February,
1897.

La Cité de Montreal,

et

The Standard Light and Power Company.

Appelante ;

Intimée. 10

A Messieurs DUGGAN & JOSEPH,
Greffiers des Appels.

MESSIEURS,

Nous requérons la préparation du transcript sur l'appel en cette cause à Sa
Majesté, en son Conseil Privé,—le dit transcript à être imprimé à Montréal par
Messieurs John Lovell & Son.

Montréal, 23 Février 1897.

ROY & ETHIER,
Avocats de l'Appelante.

20

(Endorsed)

Fiat pour transcript. Prod. 24 Février, 1897.

L. M.
Dép. G. A.

INDEX OF ALL THE PAPERS COMPRISING THE ORIGINAL RECORD.

RECORD.

No.		PAGE
1	Inscription in Appeal and notice.	2
A	Transcript of the Superior Court.	3
B	Judgment of the Superior Court.	4
1	Petition <i>Requête libellée</i> , order and Writ of Injunction.	6
2	List of Petitioner's exhibits	Omitted
3	Petitioner's Exhibit No. 1	11
4	" " " 2	13
5	" " " 3	14
6	<i>Requête de l'Intimée pour ordre provisoire et affidavits et avis</i>	15
7	Affidavit of E. G. McQuaide for Petitioner	17
8	Réponse à requête libellée	18
9	Réplication	20
10	List of Exhibits filed at enquête by Petitioners	Omitted
11	Petitioner's Exhibit No 4	21
12	" " " 5	21
13	Respondent's List of Exhibits	Omitted
14	Respondent's Exhibit R	22
15	Admission	23
16	Petitioner's Articulations of Facts	24
17	Answers !	25
18	Articulation of Facts of Respondent's	26
19	Answers	27
20	Deposition of E. G. McQuaide for Petitioners	28
IN THE COURT OF QUEEN'S BENCH.		
II	Appellants' appearance	Omitted
III	Respondent's appearance	Omitted
IV	Appellant's case	30
V	Respondent's case	33
VI	Motion de l'Appellant pour continuation d'ordre à la Compagnie de suspendre travaux	37
VII	Consent of parties that judgment be rendered at Quebec	37
VIII	Proceedings in the Court of Queen's Bench	37
IX	Judgment of the Court of Queen's Bench	38
X	Consent of parties.	39
XI	Motion for leave to Appeal to Her Majesty's Privy Council and order granting same	41
XII	Notice for security	Omitted
XIII	Bail Bond	42
XIV	Consent of parties	43
XV	Fiat for Transcript	44

*In the
Court of
Queen's
Bench.*

No. 30.
Index of all
the papers
comprising
the original
Record.

RECORD. We, W. E. Duggan and Joseph Olivier Joseph, Q.C., Joint Clerk of Appeals
 of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify
 that the foregoing and present pages from page one to page forty-six of the
 foregoing Transcript Record contain true and faithful copies of all and every the
 original papers, documents, and principal proceedings, and of the Transcript of all
 the Rules, Orders, Proceedings and Judgments of Her Majesty's Superior Court
 for Lower Canada, sitting in the City of Montreal, in the Province of Quebec,
 transmitted to the Appeal Office in the said City of Montreal, as the Record
 of the said Superior Court, in the cause therein lately pending and determined,
 wherein The City of Montreal, Respondent in the Superior Court was 10
 Appellant in the Court of Queen's Bench (Appeal Side), and The Standard
 Light and Power Company, Petitioner in the said Superior Court, is Respondent
 in the said Court of Queen's Bench (Appeal Side), and also of all the proceed-
 ings and documents had and fyled in the said Court of Queen's Bench (Appeal
 Side), and of all and every the entries made in the Register of the said Court
 of Queen's Bench, and of the Judgment therein given on the Appeal instituted
 before the said Court of Queen's Bench by the said The City of Montreal.

No. 31.
 Certificate
 of Clerk of
 Appeals.

In faith and testimony whereof we have to these presents set and sub-
 scribed our signature and affixed the seal of the said Court of Queen's Bench
 (Appeal Side). 20

Given at the City of Montreal in that part of the Dominion of Canada
 called the Province of Quebec, this twenty-second day of March in the year of
 Our Lord one thousand eight hundred and ninety-seven.

DUGGAN & JOSEPH,
 Clerk of Appeals.

[SEAL.]

I, the undersigned Sir Alexander Lacoste, Knight, Chief Justice of the Court of Queen's Bench for Lower Canada, do hereby certify that the said William E. Duggan and Joseph Olivier Joseph, Q.C., are the joint Clerk of the Court of Queen's Bench, on the Appeal Side thereof, and that the signature "Duggan & Joseph" subscribed at the foot of each of the foregoing pages and of the certificate above written is their proper signature and handwriting.

RECORD
 ———
*In the
 Court of
 Queen's
 Bench.*

I do further certify that the said Duggan & Joseph as such Clerk are the keeper of the Record of the said Court, and the proper officer to certify the proceedings of the same (Appeal Side), and that the seal above set is the seal of the said Court on the Appeal Side, and was so affixed under the sanction of the Court.

No. 32.
 Certificate
 of Chief
 Justice.

In testimony whereof, I have hereunto set my hand and seal, at the City of Montreal, in the Province of Quebec, this twenty-second day of March in the year of Our Lord one thousand eight hundred and ninety-seven, and Her Majesty's Reign, the fifty-ninth.

A. LACOSTE,

Chief Justice, Queen's Bench, Province of Quebec

[SEAL.]

RECORD.

SUPERIOR COURT.

*In the
Superior
Court.*

NOTES OF HON. MR. JUSTICE TAIT.

Reasons of
the Hon.
Mr. Justice
Tait.

The question submitted for judicial decision in this case is one of importance, and not by any means of easy solution.

The argument of counsel was only concluded on Friday afternoon, so that with other duties to perform, and a Sunday intervening, I have not had very much time to devote to its consideration. I think, however, that in the interest of all concerned, it is desirable I should state now the conclusion to which I have arrived, after this somewhat short *délibéré*, because, in the first place, the case is an urgent one, at any rate from the Company's point of view, and in the 10 second place the Court of Appeal is now sitting, and the losing party may, with the assistance of the other, which I hope will be given, be able to bring judgment now to be given before that tribunal for its decision during this week. The following are the established facts of the case:—

By an Act of the Legislature of Quebec, passed in 1892, a company called the St. Henri Light and Power Company was incorporated.

Section 5 of the Act reads as follows:—"The Company may manufacture and deal in electricity, gas and other illuminants, and all appliances for the supplying of the same, or connected therewith, and may lay its wires and pipes underground, as the same may be necessary, and in so many streets, squares, 20 highways, lanes and public places as may be deemed necessary, for the purpose of supplying electricity and gas for light, power and heating, the whole, however, without doing any unnecessary damage, and providing all proper facilities for free passage through the said streets, squares, highways, lanes and public places while the works are in progress."

By section 6, the Company was authorized to erect above ground and above buildings, with the permission of the proprietor, all requisite constructions, including posts and all supports for conducting the wires, etc.

By section 7, it was further authorized to construct dams, locks, canals and waterways, etc., and to erect all constructions requisite to improve the water- 30 power and supply of water at rapids or other places on the stream; provided, however, that the Company shall be responsible for any damage arising from floods caused by such constructions, and that public or private property shall not be made use of without permission first obtained from the competent authorities and proprietors.

By section 18 the Company was directed, before commencing the laying of wires or pipes, or the erection of waterways, to make a report to the Commissioners of Agriculture and Public Works of the Province of such works, and to send a copy thereof to the council of the municipality in which such works are so projected.

Section 19 provides that the works and appliances of the Company shall, at all reasonable times, be subject to the inspection of the municipal authorities of the municipality within the bounds whereof they are situate, reasonable notice of such inspection being previously given to the Company.

Section 20 provides that while constructing any works, etc., the Company shall take all proper care that the passage of any street, etc., as far as may be,

shall be free and uninterrupted, and shall protect all such works, and replace the streets, etc., with due diligence, and repair any damage it has caused, and shall be responsible for any neglect in respect thereto.

By section 21, the Company is authorized to construct and maintain tramways, either upon the surface of the ground, or as elevated roads, from and to any point in any city, town or village in the Province, using as motive power, electricity, steam or other means of locomotion.

By section 23, the provisions (concerning expropriations) of the law respecting railways are incorporated in the act.

10 By section 25, the Company may only exercise the privileges conferred upon it by the present act, upon complying with the rules and regulations which exist or may be hereafter adopted by the municipal authorities on the subject.

In 1893 this Act was amended. The name of the Company was changed to that of the Standard Light and Power Company. Section 6 of the original act was amended, and it was enacted that "the Company may erect above all buildings, with the permission of the municipal council or proprietors, by paying any real damages if any there are, which they may suffer by reason thereof, and also erect above ground all necessary constructions, including
20 posts, etc.;" and said amended section also provides, that the municipal council in all cities, towns, etc., 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.

Section 23 of the original act was replaced by the following: "The provisions of the law respecting railways, being section 12 of chap. 3 of title II. of the Revised Statutes, are incorporated in this act."

Section 25 was entirely repealed and another section substituted in its place, the provisions of which are not material to this case.

30 On the 15th of May last the Company, by notarial act, in which sections 5 and 6 of their Charter are referred to, notified the city that it intended to exercise the power conferred upon it for placing conduits for the underground wires for the purpose of conveying electricity power through or along certain streets in the city therein enumerated, and calling upon the city to prescribe the manner in which said streets should be opened, as required by said section 6. No notice appears to have been paid to this protest.

40 On or about the 22nd August last, the Company, in accordance with section 18 of its Charter, forwarded a report to the Commissioners of Agriculture and Public Works of the Province, of the works it intended to do in the streets of Montreal, stating also the manner in which the conduits would be laid, the material they would be made of, and the provisions the Company would make for the protection of the public, etc., the whole of which they showed by a plan which they enclosed. This report was duly acknowledged by the Commissioners, and no objection was made thereto.

On the 24th August last the Company, by another notarial notification and protest, in which it referred to the protest of the 15th May, notified the City that it had delivered to the Commissioners the report above mentioned, and required the City, within a delay of ten days, to prescribe the manner in which the streets and other places mentioned in the said report and the plan hereto

RECORD.

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In the
Superior
Court.

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Reasons of
Hon.
Mr. Justice
Tait.
continued.

RECORD. annexed should be opened for the purpose of laying the wires of the Company underground, failing which the Company would proceed with the work, taking all the precautions prescribed by law, and would lay its wires underground according to the report to said Commissioners, without doing any unnecessary damage, and providing all proper facilities for free passage through the said streets while the works were in progress.

*In the
Superior
Court.*
Reasons of
the Hon.
Mr. Justice
Tait.
continued.

About sixteen days after the service of this notice, the Company, not having received any communication from the City, either approving or disapproving of their proceedings with the work, or the manner in which they proposed to do it, or asking for any delay, proceeded with the work of excavation for the purpose of laying their underground wires on St. Antoine street, being one of the streets mentioned in the report.

They were stopped by the Chief of Police and the City Surveyor, accompanied by police officials and a number of constables, all acting under instructions from the Municipal Council of the City, and were by force prevented from continuing the work.

Thereupon the petitioners applied for the issue of the present writ of injunction, setting up their Act of Incorporation, the protest served upon the City, and the other facts I have above alluded to, stating further that they were under very heavy expense, and every day's delay caused serious damage to them, and praying in effect that the City might be enjoined from interfering with the laying of the underground wires, or from preventing the exercise by petitioners of their rights under their Charter.

The writ was ordered to issue on the 11th inst., and subsequently, upon the application of the City, its writ was suspended until the 22nd inst., the petitioners, however, being allowed to fill up any excavations made up to that time.

On the 16th the City filed its answer to the petitioners, stating in effect that the petitioners did not show any right to an injunction; that the City was the absolute proprietor of the streets in the City, and had exclusive jurisdiction over them, having the right to open and close them as it might think proper; that the Company was not given rights superior to the City; that it cannot be legally presumed that the Legislature intended to subordinate the City, its citizens, and the public in general to a private company conducted in the sole interests of its shareholders; that in fact the Company was bound by its charter to obtain the consent of the City Council before commencing its works. It was, moreover, alleged that the action of the petitioners was premature, for reasons which I will state later.

To this answer the Company replied in effect that it had complied with all conditions of its charter; that its action was not premature; that the City had ample opportunity to prescribe the manner in which the street should be opened if it had deemed it necessary to do so.

Mr. McQuaide, of New York, the expert who is superintending the work on behalf of the Company, testifies that it should be completed by the 15th of November, as it is impossible to mix concrete satisfactorily in cold weather; that it will require very good weather and very hard work to complete the work by that time; that about one-third of the materials required is here at present and the other two-thirds in transit; that heavy damages would be suffered if the work was stopped at the present time.

A good deal was said during the course of the argument as to the City's absolute ownership of the streets. I have been referred to section 4 of the City Charter, which enumerates the general powers of the City, and amongst others, the right of acquiring, holding, and deposing of real estate. Also to section 140, and sub-sections 42 and 43 thereof, whereby the City is authorized to make by-laws to regulate the width, and all things concerning the streets, to close them and to prevent them being encumbered or encroached upon, etc. Also to sections 207 to 212 inclusive, which deal with streets and highways, and contain provisions relating to the effect to be given to plans of wards con-
10 firmed by the Superior Court respecting streets thereon shown, and claims for damages made for buildings and improvements made after such confirmation, and as to the City's power to open and widen streets, etc.

I was also referred to Article 4616 R. S. of Q., which enacts that the right to use as public highways all roads, streets and public highways within the limits of any city or town in this Province is vested in their respective municipal corporations, and that such corporations are bound to keep the same in repair, etc., and to Article 358 C.C., which authorized corporations to acquire, alienate and possess property.

Notwithstanding the argument put forward, based upon these provisions
20 of the law to show the absolute ownership of, and control over, the streets by the city, it was not claimed that it was *ultra vires* of the Quebec Legislature to grant to the Company the powers given in section 5 of its charter, nor did I understand it to be contended that the Legislature could not in express terms authorize a company to lay conduits in the streets of the City without its consent. It is, therefore, not necessary that I should enter into that question beyond saying that I think that under section 92, and sub-sections 8, 10, 11 and 13 of the B. N. A. Act, the Legislature would undoubtedly have such a right. The city corporation is itself a creation of the Legislature, and all its rights and privileges in its streets are derived from it. The jurisprudence of the Privy
30 Council, as well as of our own courts, appears to have put this beyond question, for instance, in the case of *Hodge vs. The Queen* (Law Rep., vol. 9, p. 132), their Lordships remark as follows:—"When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92, as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and
40 area the Local Legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect."

In *Township of Cleveland vs. The Township of Melbourne* (26 L.C.J., p. 1), Judge Ramsay, in delivering the judgment of the Court, remarked: "I don't think that any legislature has the right to deprive a person of his property,

RECORD. but by the theory of the constitution it has the power, in a word, it is assumed that the Legislature is the judge of the morality of its own jurisdiction." See also *Regina vs. Mohr*, 2 Cartwright, p. 257.

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In the
Superior
Court.

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Reasons of
the Hon.
Mr. Justice
Tait.
continued.

I may also say *en passant* that it is not the duty of the court to concern itself with the question whether it was expedient for the Legislature to pass any act which may be under consideration, nor where the language is plain, whether it may work injustice. This point was discussed and settled in the well-known case of *Lamb vs. The Commercial Corporations*, and more recently in the case of *Lamb vs. Fortier*.

As I understand, it, counsel have considered it important to make clear this point as to the absolute manner in which the streets are vested in the city, in order to contend that, under such circumstances, it is not to be easily presumed that the Legislature would authorize the Company to interfere with such vested rights in the manner it claims to be authorized to do by its charter, without the consent of the City. They argue that the language of the Act is not inconsistent with such consent being necessary, but, on the contrary, it is required both by express language and by implication.

I think that the learned counsel are quite correct in saying that the authority which the Company claim to exercise must be justified by plain and unambiguous language, but except that the words "with the consent of the municipal authorities" are not to be found in section 5, I do not see that the language can be much plainer than is found there. The only conditions attached to the authority there given to lay its pipes and wires underground as the same may be necessary, and in so many streets, etc., as may be deemed necessary, are that the Company shall not do any unnecessary damage, and shall provide free passage while the works are in progress. The Company is made the judge of the quantity of wires and pipes that may be required, and of the streets in which they are to be placed, and nothing whatever is said about the consent of the City being required.

It is argued, however, that the words, "erect above buildings with the permission of the Municipal Council or of the proprietors," in section 6, as amended by the Act of 1893, apply to the opening of streets for the placing of wires underground. I am unable to concur in this interpretation of the Act. As section 6 originally stood, the permission of the proprietor was required with regard to constructions above buildings. In the section as amended, not only the permission of the proprietors, but also the Municipal Council, is required when the Company desires to erect anything above buildings.

Looking at the two sections and the grammatical construction of them, I feel convinced that it was not the intention of the Legislature to make these words apply to the subsequent part of the amended section which deals with the opening of streets for the placing of wires underground. The only modification of section 5 by section 6 as amended is that, "the municipal council in all cities, 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 placing of wires underground, and that the surface of such streets shall in all cases be put back in their original condition by the Company at its own cost."

It is also contended that among the provisions of the Railway Act, incor-

porated into the Company's Charter, by section 23 as amended, there is a provision, namely, Art. 5170 of the R. S. of Q. which enacts that "the railways shall not be carried along an existing highway, but merely cross the same in the line of railway, unless leave has been obtained from the proper or municipal authority therefor."

RECORD.

In the
Superior
Court.

Reasons of
Hon. the
Mr. Justice.
Tait.

continued.

This section 23 is preceded by two sections authorizing the Company to construct tramways, and to cross, intersect, join and unite their tramways with any railway or other tramways, etc., and it appears to me that the provisions of the Railway Act are introduced in connection with these powers; moreover, I fail to see the applicability of this section to the present case, inasmuch as the Company are not here intending to "carry a tramway along an existing highway," but to lay their wires underground.

I think it is important to notice that in this Charter, the Company, as already seen, has to obtain the permission of the Municipal Council or of the proprietors before erecting constructions above buildings, and has also by section 7 to obtain the permission of the competent authorities and of the proprietors before making use of public or private property in connection with the construction of dams, locks, canals and other works referred to in Section 7, or in case of building a tramway.

It seems to me that if, under these circumstances, the Legislature had intended that the corporation should be bound to obtain the consent of the City to lay its pipes underground, it would have said so. "*Expressio uni est exclusio alterius.*"

I think also that the absolute repeal of section 25 is important as showing that the Legislature, instead of restricting the powers of the Company by the amended Act, has really extended them. This section provided that the Company "might only exercise the privileges conferred upon it by its charter upon complying with the rules and regulations which then existed, or might be thereafter adopted by the municipal authorities on the subject."

In repealing this clause, and amending section 6 as it did, the Legislature appears to have been desirous to free the Company from municipal control, except in so far as to give municipal councils, if they deemed it necessary, the right to oversee and prescribe the manner in which the streets should be opened for the placing of wires underground.

I have been referred to the case of the Corporation of the City of Sherbrooke vs. The Sherbrooke Telephone Association, which went to appeal, as a strong precedent against the Company. I do not find the cases analogous. In that case the Telephone Company held Letters Patent, which purported to be issued by the Lieut.-Governor-in-Council under the provisions of section 8 of 31 Vic., p. 25, now Article 4705 R. S. Q., in which power was granted to that Company "to construct, maintain and operate a line or lines of telephone through, under or along the streets, highways, bridges or water courses of towns, cities, or other incorporated or rural municipalities in said Province, where said Association shall at any time carry on its operations, provided the passage or traffic in said streets or highways shall not be impeded or interfered with."

Now, by said section 5, it was enacted that every company so incorporated might "acquire, hold, alienate and convey any real estate requisite for the carrying on of its undertaking."

RECORD. No authority whatever was given to issue letters patent in the language used in these issued to this Association.

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In the
Superior
Court.

—
Reasons of
the Hon.
Mr. Justice
Tait.

continued

Mr. Justice Brooks said that the case turned upon the legal issues fairly raised as to the right of the Lt.-Governor-in-Council to give the powers claimed, and as to the right to remedy by injunction, and he held *inter alia* that the Lt.-Governor-in-Council had no authority to grant such powers, and that the letters patent should not have extended or interpreted the word of the law.

The learned judge said: "No corporation can make use of the public streets and squares without authority from the Legislature." . . . Has the power, claimed by them, been granted in this case to Respondents? It has in 10 the words of the Letters Patent, but do they follow the words of the law? I take it that the Letters Patent go to this extent and no further. The Respondents are incorporated and have the powers mentioned in section 8. Why this was not cited, or rather recited, in the Letters Patent I know not; why the powers were defined, except in the words of the statute, I do not know.

One of the *considerants* of the judgment is that the "Respondents have failed to prove that by any act of the Legislature of the Province they had the right to enter in and upon the streets," etc., etc.

I think it is a fair conclusion to draw from the remarks of the learned Judge, that had the language used in the Letters Patent been used in an act 20 of the Quebec Legislature, his judgment might have been different.

The judgment was confirmed by the Court of Appeals upon the grounds taken by the first Court.

The power now claimed by this Company is much less extended, as it only covers laying wires underground, and this subject to the oversight and directions of the City Council.

I do not know of any precedent in point. It cannot be denied that the question is a difficult and doubtful one; but, looking at the Act as a whole, seeing that it came before the Legislature a second time, that it must then have considered the rights of municipalities as to underground work, for it protected 30 them by giving them the right to oversee and prescribe, etc., which would not have been necessary if their consent was required as a condition precedent, for in such case the municipalities could, without special authority, consent upon such terms and conditions as they might think proper to adopt, seeing also the distinction made as to permission between underground work and overground work, etc., I have come to the conclusion that if I say that the Company cannot proceed with the laying of the wires underground without the consent of the City, I am adding a condition which is not to be found in its charter, and which was not intended by the Legislature to be required.

It is said that the Company's remedy was by mandamus to compel the 4 City to prescribe the manner in which the streets should be opened for the placing of the wires.

It appears to me that such a writ can only issue to require it to do some specific act as being its legal duty. Here there is no obligation imposed upon it to oversee or prescribe the manner of doing the work, it has the right, "if it deems it necessary," to do so. Being a matter within its discretion, I don't see that such a writ would have afforded the Company any remedy.

I pass on now to consider the last point raised by the City, which is to the

effect, that the action is premature, the Company not having complied with the duties imposed upon it before it could commence its operation of laying its wires in the streets. The failure is said to consist in the Company not having allowed sufficient time to the City to prescribe the manner in which the streets should be opened for the placing of the wires underground. It is claimed that the copy of the report which the Company made to the Commissioners of Agriculture and Public Works, under section 18, was only sent to the city on the 24th of August, and that the demand contained in the protest of that date, that the City should, within ten days, prescribe the manner of opening streets, was wholly insufficient to allow the City Council to take the question into consideration, inasmuch as, by the Charter of the City, the regular meeting of the Council is only held once a month, on the second Monday; therefore the question could not be brought before it until the 14th of September, whereas the writ issued on the 11th. I do not think this point is well taken. The Company, as already stated, served a notarial demand upon the City on the 15th of May, requiring it to prescribe, if it deemed necessary, the manner of opening the streets, according to section 6 of the Company's charter. It appears to me that it would necessarily have been of importance for the Company to ascertain whether the City intended to prescribe the manner of opening the streets, and to know how they wished it to be done, before sending its report to the Commissioners, because necessarily the report to the Commissioners and the plan accompanying it would have been drawn in accordance with the instructions received from the City. Now, the Company waited from the 15th of May up to the 22nd of August before sending their report to the Commissioners. This gave, I think, the City ample time within which they could have prescribed the mode of opening the streets if they desired to do so. Notwithstanding, however, that the Company had done almost all that was required of it in sending this protest and a copy of their report and plan, they nevertheless gave the City, in their protest of the 24th of August, a further opportunity within ten days of prescribing the manner in which they wished the work to be done. On receipt of this, the City did not ask for any further extension of time, or make any reply whatever; they simply ignored it, and now complain that they could not give it attention because there was no regular meeting during that time. The charter of the City, however, contains ample provision for calling special meetings of the Council, by the Mayor or by five members of the Council, when and as often as may be deemed necessary. I do not think the excuse put forward by the City can avail it. I consider that the Company has made out its rights to have the writ of injunction declared permanent, but I think that I should give the City Council a further opportunity to exercise the right of prescribing the manner in which the streets shall be opened. I see no reason why the City Surveyor could not, in two or three days, furnish all necessary information to enable it to do so. I have already suspended the operation of the writ until to-morrow. I shall now further suspend its effect until 6 a.m. of the clock on Tuesday, the 29th instant, when it will have its full effect, unless my judgment is reversed in the meantime. I hope this delay will afford time for the Council to act, and also to get my judgment reviewed by a higher Court.

Costs against Respondents.

M. M. TAIT,
J. S. C.

RECORD.

*In the
Superior
Court.*

Reasons of
Hon.
Mr. Justice
Tait.

continued

RECORD.

*In the
Court of
Queen's
Bench.*

Reasons
of Hon.
Sir A.
Lacoste
Kt. Chief
Justice.

Court of Queen's Bench.

Appeal side.

JUDGES' REASONS.

Reasons of HONORABLE SIR ALEXANDRE LACOSTE, KNIGHT., CHIEF JUSTICE.

L'Appelante ne va pas jusqu'à prétendre que la Législature n'a pas le droit de permettre à une compagnie ou à un particulier de se servir de ses rues et d'y placer des tuyaux, conduites ou des fils électriques souterrains. Il me paraît trait illogique de dire que le pouvoir qui peut détruire la charte de la Cité n'aurait pas celui de la modifier soit directement et expressément, soit indirectement et implicitement, en accordant des pouvoirs similaires à des tiers et en leur permettant l'usage des rues pour certaines fins. Mais l'Appelante soutient qu'il n'est pas à présumer que la législature ait accordé, à une compagnie, créée dans un but de spéculation, le pouvoir de bouleverser, sans la permission de l'autorité municipale, les rues et les places publiques dont la propriété et le contrôle exclusif sont, dans l'intérêt du public, laissés aux corporations municipales, d'autant plus que l'exercice d'un tel pouvoir deviendrait une source d'inconvénients et de dangers pour le public. Cette proposition nous paraît juste; mais quand la volonté du législateur est clairement exprimée, nous ne devons pas discuter les motifs de la loi ni en empêcher l'exécution, par crainte des inconvénients et des dangers qui peuvent surgir.

La question se réduit donc à celle-ci : la charte de l'Intimée lui donne-t-elle le pouvoir de placer des fils électriques souterrains dans les chemins et rues sans avoir obtenu au préalable la permission de l'autorité municipale? Les termes de la charte sont absolus, sans restrictions. "La compagnie *pourra* placer ses fils électriques, etc." Il n'est pas question d'une autorisation préalable du conseil municipal. L'intention de la législature est rendue encore plus évidente par le fait qu'elle a défini et la nature et l'étendue du contrôle que le conseil municipal peut exercer sur les travaux de la Compagnie Intimée. Elle lui permet, s'il le juge à propos, de surveiller les travaux et de déterminer la manière dont ils seront faits. Par une clause de sa charte originaire, l'Intimée ne pouvait pas faire d'ouvrages en contravention aux règlements municipaux. Cette restriction a été enlevée par un amendement subséquent.

La volonté du législateur est donc claire, et nous devons lui obéir.

D'ailleurs, nous ne pouvons pas dire que cette loi est sans motif plausible, et qu'elle soit, à proprement parler, une diminution du droit de propriété et d'administration des chemins et rues conféré aux corporations municipales. Bien que la Compagnie Intimée soit créée dans un but de spéculation, son objet, l'éclairage, est une matière qui intéresse tous les citoyens. Le droit de propriété accordé aux corporations municipales n'est pas un droit absolu comme celui que possèdent les personnes, ce n'est pas le droit *d'uti* et *d'abusi*, mais un simple fidéi-commis pour le bénéfice du public. Il n'y a rien d'étonnant que la législature ait créé, dans l'intérêt de ce même public, un droit de la nature d'une servitude, comme, par exemple, elle le fait en permettant aux chemins de fer de traverser la voie publique. Le droit de propriété des corporations reste le même et leur contrôle administratif n'est pas affecté, seulement elles doivent tenir compte de la servitude établie par la loi.

L'Appelante nous a dit que le pouvoir de la Compagnie est en conflit avec celui qu'elle a de défendre de placer des fils souterrains et des conduites dans les rues. En assumant qu'il en soit ainsi, le moyen de concilier les deux lois n'est-il pas de dire que ce droit de défense ne s'appliquera pas à la Compagnie Intimée et que la charte de cette dernière fait exception à celle de la Cité ?

Le pouvoir accordé à la Compagnie, a-t on ajouté, est une simple capacité que la loi était tenue de mentionner, car les corporations n'ont d'autres pouvoirs que ceux que la loi leur donne, mais elle ne peut en user en contrevenant aux lois existantes et aux droits d'autrui. Le droit de faire une chose renferme l'exercice de ce droit dans sa plénitude ; tout ce qui y fait obstacle disparaît, bien que dans le mode de l'exercer les exigences de la loi doivent être observées. Ainsi, une corporation reçoit le pouvoir de prendre hypothèque. L'hypothèque ne vaudra qu'en autant que les formalités du contrat d'hypothèque auront été observées. Encore, le droit est accordé à une Compagnie de chemins de fer de passer sur des propriétés privées ; elle pourra le faire sans le consentement du propriétaire. Mais elle restera soumise au paiement préalable de l'indemnité. C'est-à-dire que tout ce qui est en contradiction avec l'exercice du droit disparaît, mais rien de plus. Dans l'espèce, si le droit de propriété de la Cité pouvait être assimilé à celui des personnes, elle pourrait réclamer une indemnité, mais, comme je l'ai dit, ce n'est qu'en fidéi-commis qu'elle détient.

L'Intimée ne requérait donc pas l'autorisation de l'Appelante pour l'exercice de son droit. Mais elle était tenue, aux termes de sa charte, de mettre l'Appelante en demeure d'exercer la surveillance que lui accorde la loi et d'indiquer la manière dont les travaux seraient faits. L'Appelante prétend qu'il n'y a pas eu une mise en demeure utile. Nous croyons que l'Intimée s'est conformée aux exigences de sa charte. Dès le 15 mai, l'Appelante a connu l'intention de l'Intimée. Si l'Appelante avait voulu indiquer une manière spéciale de faire les travaux, elle aurait pu le dire. S'il lui fallait un délai additionnel, la bonne foi exigeait qu'elle le demandât. D'ailleurs, encore aujourd'hui, elle peut, si elle le juge à propos, exercer son droit de surveillance.

A. LACOSTE,

Juge en Chef de la Cour du Banc de la Reine.

RECORD.

*In the
Court of
Queen's
Bench.*

Reasons.
of Hon.

Sir. A.

Lacoste.
Kt. Chief
Justice.

continued

*In the
Court of
Queen's
Bench.*

Reasons of
Hon. Mr.
Justice
Bossé.

I concur in the opinion expressed by the Court.

JOS. G. BOSSÉ,
J. Q. B.

Reasons of
Hon. Mr.
Justice
Blanchet.

I concur in the opinion expressed by the Court.

J. BLANCHET,
J. Q. B.

Reasons of
Hon. Mr.
Justice
Hall.

I concur in the opinion expressed by the Court.

ROBT. N. HALL,
J. Q. B.

The City of Montreal,

and

The Standard Light and Power Company,

Appellant; Consent of
parties as to
the Notes of
Hon. Mr.
Justice
Würtele.

Respondent.

The parties herein, having been unable up to the present to procure the notes of the Honorable Mr. Justice Würtele in rendering judgment in this cause in the Court of Queen's Bench, Appeal side, hereby consent that the abstract of the record be prepared and forwarded to England without such notes, the parties specially reserving the right to print and produce the said notes when obtained.

Montreal, March 17th, 1897.

SMITH & MARKEY,

Attorneys for Respondent.

ROY & ETHIER,

Attorneys for Appellant.

(Endorsed)

Consent of parties as to the notes of Honorable Mr. Justice Würtele.

Fyled 17th March, 1897.

(Paraphed)

L. M.

Dep. C. A.

On Appeal to H. M. Privy Council.

No.

C. Q. B.

Between

THE CITY OF MONTREAL,

Appellant;

AND

THE STANDARD LIGHT AND POWER
COMPANY,

Respondent.

RECORD OF PROCEEDINGS.