

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The City of Montreal v. The Standard Light
and Power Company, from the Court of Queen's
Bench for the Province of Quebec; delivered
3rd August 1897.*

Present:

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

SIR HENRY STRONG.

[*Delivered by Lord Macnaghten.*]

On the 10th of September 1896 about half-past two o'clock in the afternoon workmen in the employ of the Respondent Company or their contractors broke up the surface of St. Antoine Street in the City of Montreal and began to excavate the soil for the purpose of laying underground wires along the street.

In the course of the same afternoon the City Surveyor and the Police officials acting as was admitted under instructions from the Municipal Council of the City interfered by force and compelled the men employed to abandon their operations.

On the following day the 11th of September the Respondents filed their petition in the Superior Court praying for an injunction to restrain the City from interfering with their contractors and workmen.

After some interlocutory proceedings Mr. Justice Tait granted an injunction on the 21st of September subject to a temporary suspension of the order.

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The City immediately appealed to the Court of Queen's Bench for Lower Canada.

The appeal came on to be heard on the 25th of September and on the 3rd of October the Court delivered an unanimous judgment dismissing the appeal with costs. From that decision the present appeal has been brought.

Their Lordships have before them the reasons of Tait J. and the opinions of Sir Alexr. Lacoste C.J. and Wurtele J. in which the other learned Judges concurred. They agree entirely in the conclusion at which the Provincial Courts arrived and the reasons assigned for that conclusion.

The Respondents were incorporated in 1892 under the name of The St. Henri Light and Power Company by the Act 55 & 56 Vict. ch. 77. It is only necessary to refer to four sections in this Act. Section 5 empowers the Company to manufacture and deal in electricity gas and other illuminants and proceeds to declare that the company "may lay its wires . . . underground " as the same may be necessary and in so many " streets squares highways lanes and public " places as may be deemed necessary for the " purposes 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."

Section 6 which has been replaced by a more elaborate enactment empowered the Company to erect posts and supports for conducting their wires overhead.

Section 18 which is still in force is in the following terms—

"18. Before commencing the laying of wires " or pipes or the erection of waterways the Com- " pany 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.”

Section 25 which is now repealed declared that
 “ 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.”

The Act of 1892 was shortly afterwards
 amended by the Act 56 Vict. cap. 73 which
 received the Royal Assent on the 27th of
 February 1893. By that Act the name of the
 Company was changed to the Standard Light
 and Power Company.

Section 25 of the Act of 1892 was repealed
 altogether and Section 6 was replaced by an
 enactment which contains a proviso in the
 following terms :—

“ The Municipal Council in all cities towns or
 “ incorporated villages if they deem necessary
 “ shall have the right to oversee and prescribe
 “ the manner in which . . . streets roads and
 “ highways shall be opened . . . for the placing
 “ of wires underground.”

The combined effect of the two Acts therefore
 is that having made the report required by
 Section 18 of the Act of 1892 and having sent a
 copy thereof to the Council of the Municipality
 in which the proposed works are projected
 the Company becomes entitled to lay its
 wires subject to the right of the Muni-
 cipal Council if they deem it necessary to
 oversee and prescribe the manner in which the
 streets are to be opened for the placing of the
 wires underground and subject of course to the
 general provisions enacted by the Legislature
 for the convenience and safety of the public.

On the 15th of May 1896 the Company sent
 to the Municipal Council a notification referring

to the right of supervision reserved to the municipality and intimating that they intended to exercise the powers conferred upon them for laying underground wires for the purpose of conveying electricity through or along certain streets in the City of Montreal including St. Antoine Street.

On the 22nd of August 1896 the Company duly made a Report to the Commissioners of Agriculture and of Public Works of the works they proposed to commence in the City of Montreal with a plan annexed and on the 24th of August they sent a copy of the Report and plan to the Municipal Council requiring them within ten days to prescribe the manner in which the streets mentioned in the Report were to be opened and stating that in case of default they would proceed with the works taking all due precautions and would lay their wires underground according to the Report without doing any unnecessary damage and providing all proper facilities for free passage while the works were in progress.

No notice whatever was taken of this communication and so on the 10th of September the works were commenced and then the proceedings took place which led to this litigation.

Their Lordships are unable to find any justification in law for the action of the Appellants. The language of the Legislature is too plain to leave room for argument. The Appellants indeed contend that it is hardly possible to conceive that the Legislature could have meant to confer such extraordinary powers upon a mere trading company as to authorize them at their will and pleasure to interfere with public streets the care of which is committed to the municipality and they suggest that Section 5 of the Act of 1892 may be construed as defining the objects of the Company and enabling them to lay down their wires provided they first obtain the consent of

the City. It is true that the section does not in express terms authorize the Company to open streets but that power is plainly involved in the authority given to them to lay their wires underground and it is impossible to read Section 25 of the Act of 1892 without seeing that Section 5 confers upon the Company powers and privileges which but for Section 25 they would have been at liberty to exercise without interference from any quarter.

Then it was argued that the Company were bound to give the municipality reasonable time for considering their plans and it was urged that a period of 10 days was much too short a notice for a great municipal body which must necessarily proceed in a somewhat leisurely fashion. Regular Councils it was said were only held once a month and although a special Council could be summoned at two days' notice the Respondents could hardly expect the Municipal Council of the City of Montreal to depart from their ordinary course for their convenience. There is however nothing to be found in the Act justifying the position taken up by the municipality and considering that as early as May the Company gave formal notice that they intended to exercise their powers although certainly the notice was not one which the Municipal Council were bound to recognise it is plain that provision might easily have been made for the emergency even if the Council could not bring themselves to summon a special meeting for such an occasion.

When it is urged on behalf of the municipality that the Legislature would not intentionally have put upon them the indignity of subordinating their authority to the ends and purposes of a trading company it may be replied that the Legislature does not seem to have anticipated any friction or jealousy between two bodies which

might be expected to work together for the benefit of the public. The amending Act which repeals Section 25 in the Act of 1892 expressly authorizes Municipal Corporations to take shares in the Company and aid the Company by bonus loans or advances or by guaranteeing the payment of bonds or by granting it such privileges and exemptions as the Council of any such Municipal Corporation might deem advisable.

Their Lordships are of opinion that the Respondents acted within their powers in opening St. Antoine Street that the Municipality were not justified in obstructing their works and that the injunction was properly granted.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellants will pay the costs of this Appeal.
