56, 1932

# In the Privy Council.

No. 83 of 1931.



## ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CORPORATION OF THE CITY OF MONTREAL ... ... ... ... ... (*Defendant*) *Appellant*,

AND

MONTREAL INDUSTRIAL LAND COMPANY LIMITED ... ... ... ... ... (*Plaintiff*) *Respondent*.



# JOINT APPENDIX.

# INDEX.

# In the Privy Council.

No. 83 of 1931.

## ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CORPORATION OF THE CITY OF MONTREAL ... ... ... ... ... (*Defendant*) *Appellant*,

AND

MONTREAL INDUSTRIAL LAND COMPANY LIMITED ... ... ... ... ... (*Plaintiff*) *Respondent*.

# JOINT APPENDIX.

Appendix.

No. 1.
62 Vict., Cap. 58, secs. 453-455.

**No. 1.**

**Statutes of Quebec, 62 Vict., Chapter 58.**

An Act to revise and consolidate the charter of the City of Montreal.

[Assented to 10th March, 1899.]

* * * * * * *

§3.—*Assessments for Sidewalks, Drains and Sewers.*

**453.** It shall be lawful for the council to order, by resolution, the construction of sidewalks, made of any durable and permanent materials, other than wood, in any street, square or place in the city, and that the cost of such construction be defrayed out of the city funds, to an extent not exceeding one-half of such cost, and the remainder thereof to be apportioned upon the land situated on the side of such street, square or place on which such sidewalk is constructed.

Appendix.

No. 1.
62 Vict., Cap. 58, secs. 453–455 —*continued.*

Such apportionment shall be made in proportion to the frontage of such land; provided that no such resolution shall be adopted until after the cost of such construction shall be established by a report to be made to the council by the city-surveyor, and provided also that a notice specifying the nature and cost of such construction be sent by registered mail to each of the proprietors liable to contribute as their names may appear on the then existing assessment and valuation roll.

If the majority in number and in value of the proprietors of the lands subject to contribution for the construction of a sidewalk, shall within fifteen days after the date of such notice, file, with the city-surveyor, an objection in writing to such construction, he shall report accordingly to the council, and in such case the said sidewalk shall not be made.

**454.** The apportionment of the costs of construction of a permanent sidewalk as aforesaid shall be made by the city-surveyor in accordance with the terms of article 450.

The provisions of the said article shall also apply to the assessment in cases of construction of drains made under and by virtue of any by-law authorised in accordance with the provisions of this charter.

§4.—*Pavements.*

**455.** No paving of any street, lane or highway shall be laid or constructed, unless asked for by the majority of the proprietors in number and value, whose properties abut thereon; and the cost of such paving shall be paid as follows:—One-half by the city, and the other half by all the proprietors whose properties abut on the street, lane or highway so paved; subject, however, to the provisions contained in articles 453 and 454; but the council may, by vote of two-thirds of its members, decide to pave any street or highway in the manner it may judge proper, and to pay for the same out of the revenues of the city in accordance with the provisions of this act.

* * * * * * *

---

## No. 2.

No. 2.
8 Ed. VII, Cap. 85, sec. 14.

## Statutes of Quebec, 8 Edward VII (1908), chapter 85.

An Act to amend the charter of the city of Montreal, with respect to general administration.

[Assented to 25th April, 1908.]

* * * * * * *

**14.** Article 455 of the act 62 Victoria, chapter 58 is repealed.

---

## No. 3.

## Statutes of Quebec, 1 Geo. V (1910), Chapter 48.

An Act to amend the charter of the city of Montreal.

[Assented to 4th June, 1910.]

Sec. **1.**

* * * * * * *

*i.* The following territories shall be annexed to the city and shall form a ward under the name of " Longue Pointe Ward."

1. The town of Longue Pointe with its territorial limits as defined by its charter.

From and after the date of the annexation, the assets and liabilities of the town of Longue Pointe shall form part of the assets and liabilities of the city of Montreal, and the said city shall succeed to the rights and obligations of the town of Longue Pointe.

The permanent officers and employees of the town of Longue Pointe shall become permanent officers and employees of the city of Montreal, and shall continue in office during the pleasure of the city.

The salary of the secretary-treasurer, P. Z. Guy, as employee of the city of Montreal, shall be at least fifteen hundred dollars.

The city of Montreal shall, so far as possible, maintain a collection office within the limits of Longue Pointe Ward.

Lands or parts of lands under cultivation in Longue Pointe Ward shall not be valued at more than one hundred dollars an arpent for ten years from the date of the annexation, or so long, during such period of ten years, as such lands or parts of lands have not been sub-divided into building lots and withdrawn from cultivation.

The above valuation shall include the houses, barns, stables, and other buildings used in connection with cultivation ; the horses, cattle, other live stock, and the poultry belonging to the farm ; the carriages and summer and winter vehicles and agricultural implements of all kinds, and all other moveables forming part of a farmer's ordinary outfit. During such ten years farmers shall have the right to keep manure on their farms for the use thereof, provided it is not placed nearer than one hundred feet from any dwelling.

The city of Montreal shall build waterworks in Longue Pointe Ward, in conformity with the plan made by Raoul Lacroix, dated the 18th January, 1909, and with specifications made by the said Lacroix dated the 15th May, 1909, which plans and specifications form part of the archives of the town of Longue Pointe.

The part of the waterworks shown on the plan in red lines and described in by-law No. 13 of the town of Longue Pointe, a certified extract whereof containing such description has been delivered to the city of Montreal, shall be built by the city of Montreal within one year from the sanction of this act.

The city of Montreal shall expend for such purpose three hundred thousand dollars.

Appendix.

No. 3.
1 Geo. V., Cap. 48, sec. 1 para (*i*) and sec. 2
—*continued.*

Water shall be supplied to the inhabitants of the said ward upon the same conditions as it is supplied to the inhabitants of the city of Montreal, except that farmers may make use thereof, free of charge, for six head of live stock on their farms, and if there are more than six, they shall pay fifty cents a head for each additional head.

The city shall build the waterworks in the other parts of the town of Longue Pointe when the demand therefor is such as to ensure at least five per cent. interest on the cost of the work to be done.

The city of Montreal shall, within six months from the sanction of this act, macadamize the highway commonly called " Notre-Dame street." The said road shall be macadamized across the whole breadth thereof and from the western to the eastern boundaries of the town of Longue Pointe, including the portion of the road which crosses the property belonging to the Reverend Sisters of Charity of Providence.

The city of Montreal shall, within six months, open and macadamize Vinet and Sherbrooke streets from the western to the eastern limits of the town of Longue Pointe, including the lands of the St. Jean de Dieu hospital, belonging to the Sisters of Charity of Providence. Vinet street shall, on the north side, run alongside the tramway called the "Terminal railway," and shall be fifty feet wide in conformity with the plan of the said town confirmed by the Superior Court on the 19th May, 1908.

Sherbrooke street shall be one hundred feet wide, and shall be situated at the place marked on the said plan, except that, in crossing the lands of the St. Jean de Dieu hospital, it shall go to one side and pass to the northwest of the depression of the land where the intake of the hospital waterworks is situated.

* * * * * * *

Sec. **2.** At the first election after the annexations enacted in section 1 of this act, or at any subsequent election until the electoral list has been made according to the city charter, the electors having the right to vote in any municipality therein mentioned shall have the right to vote in the ward formed by such municipality according to the electoral municipal list in force at the time of the annexation of such municipality and, if there is no electoral list, according to the valuation roll in force.

The City Clerk may subdivide each of the wards into polling districts according to article 52 of the charter.

The amount to be reimbursed to the city by the proprietors according to the provisions of the charter is included in the amounts voted for works to be done by the city in the territory annexed.

From the day of the sanction of this act the provisions of the charter of the city of Montreal respecting the rate of the real estate tax shall apply notwithstanding any law to the contrary to the territory annexed by this act.

Notwithstanding any by-laws adopted by the corporations of the municipalities annexed by this law, the interest and sinking funds of loans levied by means of a special estate tax, assessed generally on all taxable real estate in the municipality shall in future be paid out of the funds of

the city. This provision shall not apply to the payment for sewers which are not main sewers, permanent sidewalks and for all other works which are usually at the expense of the proprietors, but shall apply to balance of the loan of $12,000, contracted by the corporation of the village of Beaurivage for the construction of sewers.

The contracts passed by the corporation of the town of Emard and the village of Rosemont respectively with the Municipal Paving Company of Canada are null, as well as all contracts for permanent works passed subsequent to the 30th April, 1910, by the municipal council of each of the municipalities annexed by this act. Nevertheless, every legal contract made in fulfilment of valid by-laws previously adopted by such council shall have full force and effect. All new nominations of employees as well as all increases of salary voted by any of the said councils after April 30th, 1910, are likewise null.

* * * * * * *

## No. 4.



### Statutes of Quebec, 1 Geo. V (1911), Chapter 60.

An Act to amend the charter of the city of Montreal.

[Assented to 14th March, 1911.]

* * * * * * *

**25.** The following article is inserted in the act 62 Victoria, chapter 58, as article 455 :—

" 455. 1. Notwithstanding any law to the contrary, when the city of Montreal shall decide and order the paving of any street, lane, highway, square or public place, wholly or partly, with permanent materials other than wood and macadam ; the total cost of such paving shall be paid by the proprietors of immoveables, bordering on such street, lane, highway, square or public place.

" 2. A roll shall be prepared for such purpose by the city surveyor, and the total cost of such paving shall be apportioned among such proprietors proportionately to the frontage of their properties as shown on the valuation roll, independently of the buildings thereon erected.

" 3. The city surveyor shall give notice of the day when the proprietors bound to pay such special assessment, may examine such apportionment and submit their objections before the roll is completed and put in force. Such notice shall be published during eight days in a French and in an English newspaper.

" 4. The surveyor shall hear and summarily decide all objections that may be made and there shall be no appeal from his decision.

Appendix.

No. 4.
1. Geo. V, Cap. 60, sec. 25
—*continued.*

" 5. The amount due under such apportionment shall be collected from the said proprietors and recoverable in the same manner as other taxes and assessments on immoveables.

" 6. Any riparian proprietor may pay the amount of his special assessments by yearly instalments sufficient to pay off the amount for which he is liable, in forty years with interest at five per cent. per annum.

" 7. When a street, highway, square or public place is over fifty feet wide, the costs of paving the excess shall be wholly payable by the city.

" 8. When the city shall order the remaking, wholly or partly, of the permanent pavements made before the 14th day of March, 1911, in any street, lane, highway, square or public place or part thereof, the cost of such remaking shall be apportioned among and collected from the proprietors of riparian immoveables on such street, lane, highway, square or public place or part thereof by means of a roll drawn up in the manner above prescribed.

" 9. The pavements to be made or re-made as aforesaid shall be maintained, repaired or renewed in future by the city for ever."

* * * * * * *

---

No. 5.
3 Geo. V, Cap. 54, secs. 29 and 48.

## No. 5.

## Statutes of Quebec, 3 Geo. V (1912), Chapter 54.

An Act to amend the charter of the city of Montreal.

[Assented to 21st December, 1912.]

* * * * * * *

**29.** Article 455 of the act 62 Victoria, chapter 58, as enacted by the act 1 George V (2nd session), chapter 60, section 25, is replaced by the following :—

" 455. 1. Notwithstanding any law to the contrary, when the board of commissioners shall decide and order by resolution the paving of any street, lane, highway, square or public place, wholly or partly, with permanent materials declared to be such by the said board ; the total cost of such paving including the intersection of lanes shall be paid by the proprietors of immoveables situate on such streets, lanes, highways, squares or public place or part thereof, with the exception, however, of the paving of the intersections of streets which shall be paid by the city out of the loans fund.

" 2. A roll shall be prepared for such purpose by the city surveyor, and the cost of such paving shall be apportioned among such proprietors proportionately to the depth or width of their immoveables as shown on the valuation roll.

" 3. The city surveyor shall give notice of the day when the proprietors bound to pay such special assessment, may examine such apportionment, and submit their objections before the roll is completed and put in force. Such notice shall be published during eight days in a French and in an English newspaper.

" 4. The surveyor shall hear and summarily decide all objections that may be made and there shall be no appeal from his decision. The roll shall then be signed by him and shall thereupon come into force.

" 5. The amount due under such apportionment shall be collected from the said proprietors and recoverable in the same manner as other taxes and assessments on immoveables.

" 6. Any riparian proprietor may pay the amount of his special assessments by yearly instalments sufficient to pay off the amount for which he is liable, in ten years with interest at five per cent. per annum.

" 7. When a street, highway, square or public place is over fifty feet wide, the cost of paving the excess shall be wholly paid by the city and charged to the loans fund.

" 8. When the board of commissioners shall decide and order by resolution the remaking, wholly or partly, of the permanent pavements made before the 14th day of March, 1911, in any street, lane, highway, square or public place or part thereof, the costs of such total or partial remaking shall be apportioned among and collected from the proprietors of riparian immoveables, on such street, lane, highway, square or public place or part thereof in the manner above prescribed.

" 9. The pavements to be made or re-made as aforesaid shall be maintained, repaired or renewed in future by the city for ever.

" 10. The rolls made under article 455 of the act 1 George V (2nd session) chapter 60, section 25, are valid and the city is authorised to make the other rolls for the paving done, begun or ordered under the latter act, in accordance with the provisions of this article."

* * * * * * *

**48.** Without otherwise amending the charter of the city, the latter shall have until the 1st January 1915 to complete the works it has undertaken to do by the act 1 George V (1st session) chapter 48, article 1, paragraph *e*, sections 6, 7 and 8; by paragraph *f*; paragraph *g*; paragraph *h*, sub-paragraphs 8, 9, 10 and 11; paragraph *i*, sub-paragraphs I, II and III; paragraph *j*, sub-paragraphs I and II; paragraph *k*, sub-paragraphs 1, 7 and 8; and paragraph *l*; and, until such date, no judicial proceeding by mandamus or otherwise shall be taken or maintained against the city to compel it to execute the said works.

* * * * * * *

Appendix.

No. 6.
4 Geo. V, Cap. 73, secs. 26 and 27.

## No. 6.

## Statutes of Quebec, 4 Geo. V (1914), Chapter 73.

An Act to amend the charter of the city of Montreal.

[Assented to 19th February, 1914.]

* * * * * * *

**26.** Article 455 of the act 62 Victoria, chapter 58, as enacted by the act 1 George V (2nd Session), chapter 60, section 25 ; and replaced by the act 3 George V, chapter 54, section 29 ; is replaced by the following :—

" 455. The city may, by a resolution of the board of commissioners approved by the majority of all the members of the council, charge the proprietors the whole or a portion of the cost of permanent pavement, or of pavements which it declares to be permanent, which shall be laid or re-laid in future. To that end it may, by such resolution, impose a tax on each property in front of which such pavement shall be laid or re-laid, either at the rate of a uniform price per square yard of pavement contained in half the width of the street in front of such property, or at the rate of a fixed uniform sum per foot of frontage. Such tax shall be levied and apportioned by means of a roll made out in accordance with the procedure laid down in article 460, and articles 456, 457a and 460 shall apply to such rolls. Or it may, by a resolution passed in the same manner, annually impose a special tax on all immoveable properties situate in the city, based on the valuation of the said properties as shown on the valuation roll. Such tax shall be entered in the annual general roll of assessments on immoveable properties."

**27.** The cost of permanent pavements laid or renewed since the 14th March, 1911, and which have been charged to the proprietors, shall be charged against the loan funds now available or which may be available during the next fiscal year, and the city shall be held to refund to the proprietors, without interest, the whole of the amounts paid by them.

* * * * * * *

---

No. 7.
5 Geo. V. Cap. 89, Sec. 20.

## No. 7.

## Statutes of Quebec, 5 Geo. V (1915), Chapter 89.

An Act to amend the charter of the City of Montreal.

[Assented to 5th March, 1915.]

* * * * * * *

**20.** The city shall not be held in virtue of a writ of *mandamus* or any other judicial process to fulfil, before the 1st January, 1917, the obligations imposed upon it by the act 1 George V (1st session), chapter 46, section 1.

This provision shall not affect cases pending on the first February, 1915.

* * * * * * *

---

## No. 8.

No. 8.
8 Geo. V, Cap. 84, sec. 53.

### Statutes of Quebec, 8 Geo. V (1918), Chapter 84.

An Act to amend the charter of the City of Montreal.

[Assented to 9th February, 1918.]

* * * * * * *

**53.** The city cannot be compelled by *mandamus* or any other judicial proceeding to discharge, before the first of January, 1920, the obligations imposed upon it by the act 1 George V (1st session), chapter 48, section 1. This provision shall apply to cases now pending as well as to those in which the city has already been condemned to discharge any portion of the said obligations, but the said city shall be bound to pay the costs in such cases.

* * * * * * *

---

## No. 9.

No. 9.
10 Geo. V, Cap. 86, sec. 14.

### Statutes of Quebec, 10 Geo, V (1920), Chapter 86.

An Act to amend the charter of the City of Montreal.

[Assented to 14th February, 1920.]

* * * * * * *

**14.** The city cannot be compelled by *mandamus* or other judicial proceeding to fulfil, before the first of May, 1921, the obligations imposed upon it by the act 1 George V (1st session), chapter 48, section 1. This provision shall apply to cases now pending, as well as to cases in which the city has already been condemned to carry out any portion of the said obligations, and the city shall be bound to pay the costs in such cases.

* * * * * * *

---

## No. 10.

No. 10.
11 Geo. V, Cap. 111, sec. 10.

### Statutes of Quebec, 11 Geo. V (1921), Chapter 111.

An Act to amend the charter of the City of Montreal.

[Assented to 19th March, 1921.]

* * * * * * *

**10.** The city shall not be compelled by *mandamus* or other legal procedure to fulfil before the first of May, 1925, the obligations imposed upon it by the act 1 George V (1st session), chapter 48, section 1, except those provided for by sub-paragraph 7 of paragraph *k* of the said section.

* * * * * * *

---

Appendix.

No. 11.
18 Geo. V, Cap. 97, sec. 15.

## No. 11.

## Statutes of Quebec, 18 Geo. V (1928), Chapter 97.

An Act to amend the charter of the City of Montreal.

[Assented to 22nd March, 1928.]

* * * * * * *

**15.** Article 455 of the act 62 Victoria, chapter 58, as enacted by the act 1 George V (1911), chapter 60, section 25, and replaced by the acts 3 George V, chapter 54, section 29, and 4 George V, chapter 73, section 26, is again replaced by the following :—

" 455.—1. Notwithstanding the provisions of article 455 of the act 62 Victoria, chapter 58, as enacted by the act 1 George V (1911), chapter 60, section 25, and replaced by the acts 3 George V, chapter 54, section 29, and 4 George V, chapter 73, section 26, the cost of pavings laid since the 1st of January, 1919, and that of pavings to be laid hereafter on public places, streets or lanes, shall be charged to the bordering proprietors at the uniform price of five dollars per square yard, payable cash or in twenty annual instalments, according to the number of frontage feet of the immoveables belonging to them. In such charge of five dollars per square yard are included all paving accessories, and more particularly the levelling, gullies, curb, removal and re-erection of poles, hydrants, *et cætera*.

" The amount which each bordering proprietor shall be held to pay for shall be determined by multiplying the number of feet of frontage of the piece of land belonging to him by one-half of the number of feet of the average width of the street or part of street paved, as described in each resolution of the council.

" 2. The tax of five dollars per square yard shall not be exigible as regards :—

" *a.* the excess of paving over and above forty feet in width ;

" *b.* the paving of street intersections and the paving opposite lanes appearing on the municipal valuation rolls as exempt from taxation ;

" *c.* the cost of pavings to be laid or relaid in future when the bordering proprietors have already been called upon to pay the cost of a paving previously laid ;

" *d.* the immoveables situated at the corner of two streets as to the pavings laid alongside the depth of the lot, up to fifty per cent. of such depth, such exemption not to exceed, however, fifty feet. That part of a lot having the greatest extent in length shall be considered as the depth thereof. In the case of lots of the same dimension fronting on two streets, the exemption shall only be granted when both streets are paved ;

" *e.* the pavings laid between the 1st of January, 1919, and the 1st of January, 1928, the cost whereof is less than that fixed by this act, and the rolls whereof are in force, but they shall be paid, in

each case, according to law and the resolutions in force at the time of the homologation of the apportionment roll.

" 3. The total cost of paving shall include all sums spent by the city for the construction of the said paving, the interest and three per cent. for general administration expenses. The rolls shall be prepared accordingly under the provisions of the act and shall indicate the portion payable by bordering proprietors and the portion payable by the city.

" The portion payable by bordering proprietors shall include the cost of paving at the rate of five dollars per square yard and their quota of interest, which are included in the cost of paving under section 23 of the act 6 George V, chapter 44. The portion payable by the city shall include whatever cannot be charged to bordering proprietors.

" The portion payable by bordering proprietors and that payable by the city shall be charged to the working capital authorized by article 351b of the charter until reimbursement, as provided by this act.

" The quota of the cost of paving payable by the city, the construction of which has been ordered from the 1st of January, 1919, to the 1st of January, 1928, shall be paid by an annual special and mobile tax imposed and levied on all immoveables in the city. The rate of such tax shall be fixed every year by the council on a report of the executive committee and such tax shall be entered on the annual real estate assessment roll and shall be sufficient to repay to the working capital the sums advanced to the city, within a delay not to exceed twenty years from the homologation of the original roll for rolls now in force, and, for pavings ordered before the 1st of January, 1928, the rolls of which were not made at the time of the homologation of the roll.

" 4. The rolls of apportionment of the cost of pavings which have been homologated since 1919 remain in force, but the treasurer is authorized to amend them so as to conform to the provisions of this act. Instalments already paid into the city shall be applied to the payment of the sums due under the amended rolls, provided, however, that the proprietors whose names appear on the assessment roll in force on the 1st of October, 1928, be credited with any surplus they are entitled to, as well as with the interest on the surplus which has been charged to them under the original rolls.

" If the tax claimed in virtue of the original rolls has been paid in full, the sums so paid shall be applied to the payment of the charges established by the amended rolls and the surplus, if any, shall be refunded without interest to those who appeared as proprietors on the 1st of October, 1928, on the valuation and assessment roll in force. Any refund which has not been effected within five years from the date of the correction of the roll shall be prescribed.

" 5. The refund of the sums paid shall be effected on production of the receipts delivered to the ratepayers, and, failing the production of such receipts, the executive committee is authorized to determine the procedure to be followed in order to safeguard the city against the risk of any amount being twice refunded.

" 6. For the payment of the cost of pavings ordered after the 1st of January, 1928, the procedure shall be as follows: in the month of

Appendix.

No. 11.
18 Geo. V, Cap. 97, sec. 15
—*continued.*

January in each year, or as soon as it can be done, the city treasurer shall prepare a statement of expenses incurred for the laying of the said pavings according to the rolls in force. The city shall provide for the payment of all excess in the cost of the pavings and, for that purpose, is authorized to pay such excess out of its revenues, if it deem advisable, or by means of an annual and mobile special real estate tax levied on all immoveables, according to their value as shown on the valuation roll for the preceding year, or again by the concurrent application of both these methods together. The rate of such tax shall be fixed each year by the executive committee, and the said tax shall be entered on the annual real estate assessment roll.

" 7. The provisions of this act shall only apply to public places, streets and lanes, and shall not apply to private lanes which may have been declared public lanes after the 1st of January, 1919, or which may hereafter be declared public lanes.

" 8. The council on a report of the executive committee is authorized to grant to any proprietor of an immoveable who, from the 1st of January, 1919, is called upon to pay the cost of a curb with a sidewalk, a reduction for said curb and to add the amount of such reduction to the special tax authorized by this act.

" 9. The city may add to the general special tax the cost or part of the cost of pavings which cannot be charged to bordering proprietors.

" 10. The city is authorized to settle, upon a report from the executive committee, approved by the council, in the manner it may deem most equitable, all cases which are not provided for by the law."

* * * * * * *

## No. 12.

## Formal Judgment—Desaulniers J.

No. 12.
Formal Judgment.
(Desaulniers J.),
16th June, 1930.
*Record, p.* 6.

Canada.
Province of Quebec.
District of Montreal.
No. 44483.

Superior Court.

The Montreal Industrial Land Company ... ... ... Plaintiff,

*vs.*

The City of Montreal ... ... ... ... ... ... Defendant.

On the 16th June, 1930.

Present : The Honourable Mr. Justice Desaulniers.

The Court, having heard the parties through their respective Counsel and also the witnesses on the merits of this case ; after having examined the record, the proceedings and exhibits filed and having deliberated on the whole :

On the 14th March, 1910, the Council of the Municipality of the Village of Longue-Pointe (the meeting having been convened by a special notice), adopted unanimously a resolution authorizing the annexation of that Municipality to the City of Montreal. The Council imposed certain conditions which were subsequently sanctioned by the Legislature, one of which conditions provided for the opening of Sherbrooke Street from the western to the eastern limits of the Town of Longue-Pointe.

The City of Montreal bound itself to open and macadamize Sherbrooke Street within a delay of six months. It was by the Act 1 George V, 1910, chapter 48, that the annexation was effected. On the 20th July, 1925, the City of Montreal, by its Council, adopted a resolution providing for the laying of a permanent pavement on Sherbrooke Street instead of macadamizing the street. By the provisions of this resolution, the cost of the permanent pavement was to be charged to property owners, amongst others, the Plaintiff in this case. For this purpose, a special tax was imposed by means of an assessment roll prepared in conformity with the provisions of law. The Plaintiff, the owner of a lot of land on Sherbrooke Street, as I have just said, protested verbally and in writing against the homologation of this assessment roll. It alleged, and it still alleges by its action, that, in virtue of the law annexing the Municipality of Longue-Pointe to the City of Montreal, the Defendant alone was liable for the cost of paving the said Sherbrooke Street. The Plaintiff speaks of pavement. In the resolution of the Council of the Town of Longue-Pointe and in the text of the Act which sanctioned it, mention is made only of macadamization.

There is an appreciable difference in the meaning, as will shortly be seen.

Appendix.

Translation of Judgments.

No. 12.
Formal Judgment. (Desaulniers J.), 16th June, 1930.
*Record p. 6*
*—continued.*

I should call attention at once to the fact that, at the date of the annexation, the cost of macadamizing streets was borne by the Defendant and, if the latter had fulfilled its obligation and caused Sherbrooke Street to be macadamized within the six months following the annexation, it would not have had the right to assess the cost against the owners of properties situated along Sherbrooke Street, but the City of Montreal caused this delay of six months to be extended by the following Statutes: 3 George V, Chapter 54, Section 48; 5 George V, Chapter 89, Section 20; 8 George V, Chapter 84, Section 53; 10 George V, Chapter 86, Section 14; 10 George V, Chapter 111, Section 10.

Notwithstanding the succeeding amendments adopted by the Legislature, authorizing the City to extend the delay for macadamizing Sherbrooke Street, I do not believe that the City could have forced the owners, and in this instance the Plaintiff, to pay the half or the whole of the cost of the works done on this street.

Despite the succeeding amendments to Article 455 of the Charter of the City preceded by the words " notwithstanding any law to the contrary," I am of the opinion that third parties were not affected by these amendments, because the Charter of the City is not a public law nor a general law, and because the rights of third parties, that is to say, the rights of the bordering proprietors on Sherbrooke Street, rights acquired in 1910, are not especially mentioned therein. But, it is no longer a question of macadamizing Sherbrooke Street, but rather of laying a permanent pavement under the provisions of Article 455 and its amendments. I am therefore of the opinion that the bordering proprietors who would have been exempted from paying the cost of macadamization are not exempt from paying the cost of permanent pavement. It has been represented to me that if the City of Montreal had macadamized Sherbrooke Street, in accordance with the obligation which it had assumed, the cost of making over the street at their expense would have been much lower for the Plaintiff and the other bordering proprietors who are in the same situation. This is possible, I am not certain of it, but there is no evidence to that effect in the record. The bordering proprietors should have advanced this argument when the resolution, the cancellation of which they are now asking, was adopted. It does not appear that they did so.

*Considering* that the Act of the Legislature annexing the Municipality of Longue-Pointe, adopted in 1910, imposed an obligation on the City of Montreal to macadamize Sherbrooke Street from the western to the eastern limits of the Town of Longue-Pointe.

*Considering* that the said Act speaks only of macadamization and not of permanent pavement: that, in consequence, the bordering proprietors are now obliged to pay, in conformity with the resolution of the Council, which the Plaintiff wrongfully asks to have set aside.

For these reasons doth dismiss the Plaintiff's action, with costs.

## No. 13.

## Reasons for Judgment.

Court of King's Bench

(Appeal Side).

(A) DORION J. : In pursuance with an agreement between the City of Montreal and the Town of Longue-Pointe, the latter was annexed to the City of Montreal by the Act 1 George V (1st Session), chapter 48, enacted in 1910. The territory thus annexed forms the Mercier Ward of the City of Montreal. This Statute confirms the agreement entered into between the two Cities and, *inter alia*, the following which will be found in Section 1 *i* :—

" The City of Montreal shall, within six months open and maca-
" damize Vinet and Sherbrooke Streets, from the western to the eastern
" limits of the Town of Longue-Pointe. . . ."

This delay of six months was extended from year to year until the 1st May, 1925, and nothing was done to open and macadamize Sherbrooke Street.

On the 20th July, 1925, the City enacted by resolution that a permanent pavement should be laid on Sherbrooke Street in the Mercier Ward and that the cost of this pavement should be charged to the bordering proprietors and paid by means of a special tax of $22.77 per foot of frontage, in accordance with the provisions of the City Charter which were then in force. The pavement was laid in the year 1926. The assessment roll prepared for the collection of the tax was homologated on the 13th December, 1928, but the rate of the tax was fixed at $5.00 per square yard, in accordance with an amendment to the City Charter, which had been sanctioned on the 22nd March, 1928 (18 George V, chapter 97, section 15). This Statute enacted, in effect, that paving done after the year 1919 would be charged to bordering proprietors on the basis of $5.00 per square yard. Consequently, in the assessment roll of December 13th, 1928, Plaintiff, which owns properties on Sherbrooke Street, in the Mercier Ward, is assessed in the sum of $5,258.88 for its share in the cost of this paving.

It attacks the resolution of the 20th July, 1925, and the assessment roll of the 13th December, 1928, for the following reasons :—

1. The clause of the Statute enacting the annexation of the Town of Longue-Pointe to the City of Montreal imposes an obligation on the City to macadamize Sherbrooke Street at its cost and not at the cost of the bordering proprietors.

With this point I agree. There was no law charging the cost of such works to the bordering proprietors and, even to-day, there is no law which makes such a provision. But they were obliged to contribute to such cost indirectly, as ratepayers of the City of Montreal contributing to taxes imposed for general expenses.

2. The Annexation Act not having imposed any paving work on the Plaintiff, the City, after having postponed indefinitely the execution of the works agreed upon and imposed upon it by law, had no right to change the

Appendix.

Translation of Judgments.

No. 13.
Reasons for Judgment.
(A) Dorion J.
*Record p. 9*
*—continued.*

object of its obligation and to transfer to the taxpayers, not only the cost of the macadam which, by agreement, was to be paid for by itself, but also the cost of the permanent pavement. The pavement is, in reality, merely a perfecting of the macadam, since the latter served as a base and foundation for the coatings which were superimposed on it to make the permanent pavement. The Plaintiff has cited a Statute which authorized the City to " lay macadam to . . . serve as a foundation for a future paving . . . " This Statute, 1925 Schedule " A," second to last paragraph, has been abrogated and does not affect the present case, but the Plaintiff invokes it as an argument to show that, if the City had fulfilled its obligations, the macadam laid by it would have diminished by so much the cost of the paving which is claimed from it to-day. It claims also that the Statutes subsequent to the annexation do not affect the Statute which brought it about in virtue of the principle *generalia specialibus non derogant.*

Defendant replies that the Town of Longue-Pointe, by its annexation to the City of Montreal, became subject to all the laws and by-laws governing the latter and that its inhabitants all became taxpayers of the City on the same footing as other taxpayers. The obligation to open Sherbrooke Street entailed necessarily the obligation to macadamize it, because all the streets of the City are macadamized. But that did not prevent the City from paving it, under the provisions of the Statutes by which it is governed. If the City had macadamized within the six months, or thereabouts, it could still have had it paved and could have forced the Plaintiff to contribute to the cost of paving to the same extent as taxpayers of other wards with respect to streets on which they own property and which have already been macadamized.

The Statute of 1928, chapter 97, fixes the contribution of bordering proprietors, taking into consideration the amounts previously expended by the City for macadam, because this macadam exists in general in all streets which have already been opened. It is for this reason, if indeed any thought was given to the matter, that this Statute which, in the drafting of Article 455 (Section 15 of the Statute) enumerates the Statutes which have been repealed (1899, 1911, 1912, 1914) does not mention the Annexation Act (1910) because this latter Act does not contain anything which differs in any way from the general conditions covering the opening and the paving of streets. It is for this reason also that, in this same clause 15 (Article 455) the macadam is not mentioned, as not being comprised in the price of paving : in ordinary conditions it already exists when the paving is done.

To sum up, the Plaintiff's contention is this : You have paved a macadamized street or one which should have been macadamized, you should, therefore, deduct the cost of the macadam from the tax which you are imposing for the cost of paving.

The City replies : What you are asking for, might be asked for by all the taxpayers of the City for exactly the same reasons, each time they are assessed to pay for the cost of any paving, but the law does not say anything of the kind, neither for them nor for yourself.

I am of the opinion that the Defendant's contention is well founded and I would confirm the judgment with costs.

No. 13.
Reasons for Judgment.

(B) TELLIER J.: The Plaintiff has in no way shown that it has a good right of action against the Defendant.

(B) Tellier J. *Record p.* 11.

The Superior Court has already dismissed its action. I would dismiss the appeal, with costs.

(D) BERNIER J.: This is an action to set aside a resolution adopted by the Council of the City of Montreal with reference to the cost of paving Sherbrooke Street in Mercier Ward; this resolution assesses the cost of paving against certain bordering proprietors on the said street and, in particular, against the Appellant. The latter alleges that, in accordance with the Statute annexing the Town of Longue-Pointe (now Mercier Ward in the City of Montreal), in which its immoveable property is situated, the City of Montreal should do this work at its own cost.

(D) Bernier J. *Record p.* 15.

The two questions raised in this case are the following :—

Is the Appellant required to pay for these works ? And is it not exempt from such payment, in view of the fact that, at the date of the annexation, no paving law existed ?

Several Statutes have been cited, each referring to works which the City of Montreal was authorized by law to do with respect to the pavement which it wished to lay in its streets. The Annexation Statute of the Town of Longue-Pointe stipulates that the City of Montreal obliges itself to open and macadamize this part of Sherbrooke Street within a delay of six months ; nevertheless, by various other Statutes, the delay of six months was extended, and this, over a period of several years.

Later, the City of Montreal decided to lay a permanent pavement instead of merely macadamizing the street. After having carefully studied the different Statutes which have been cited, I do not find anything to exempt the Appellant from the payment of these paving works.

Even supposing that the bordering proprietors on the street had been exempted from paying the cost of macadamization, they had not been exempted from paying the cost of the permanent paving which the City of Montreal had the right to lay.

If the City of Montreal had macadamized this part of Sherbrooke Street, as it had intended to do, it is possible that this macadamization would have made the cost of the permanent pavement much lower, as far as the Appellant is concerned ; this is quite possible, as is stated in the judgment of the Superior Court, but no evidence to this effect has been put in.

I would confirm the judgment and dismiss the appeal, with costs.

(E) GALIPEAULT J.: By the Act annexing the Town of Longue-Pointe (now the Mercier Ward of the Respondent-City) to the City of Montreal, 1 George V (1st session), chapter 48 (1910), the latter obliges itself to open and macadamize Vinet and Sherbrooke Streets within a delay of six months. There is no question but that this work was to be done at the expense of the City.

(E) Galipeault J. *Record p.* 16.

This is the interpretation which I give to the Act itself and it was the law in force at the time.

The legislation of 1928 (18 George V, chapter 97, section 15, amending

Appendix.

Translation of Judgments.

No. 13.
Reasons for Judgments.
(E) Galipeault J.
*Record p. 16*
*—continued.*

the charter) did not repeal the Act of 1910 providing, as already stated, for the annexation and for the conditions upon which such annexation was to be effected.

It is also clear that the City of Montreal, up to 1926, had done nothing to fulfil its obligations.

By successive legislation it had obtained an extension of delay. In 1925, by resolution, it enacted that a permanent pavement should be laid on Sherbrooke Street, payable by a special tax of $22.57 per foot of frontage, the tax to be imposed upon the bordering proprietors, of whom the Appellant was and still is one.

The assessment roll, however, was not prepared and homologated until 1928. It was then in conformity with the Act of 1928, already cited, which had settled once and for all the question of paving in the City of Montreal and this after several other proposals which apparently had not given satisfaction.

Going back to the year 1919, we find a general rule enacting that the bordering proprietors on each City street would have to pay $5.00 per square yard for permanent pavement, whether or not the streets had been opened or macadamized before this paving, the City apparently, or the taxpayers at large, being obliged in certain cases to contribute to the balance of the cost.

It is well known to everyone that macadamization is included, if I may so express myself, in a permanent pavement, you macadamize in order to arrive at the pavement. The macadam is only a foundation, a basis.

The Act of the Respondent 15 George V, chapter 92, schedule A, 1925, shows us clearly the difference between the two operations; this reads:—

> " The City is authorized to lay macadam on any street, lane or
> " public place, situated within its limits, to serve as foundation for a
> " future paving, and to have the cost thereof paid in accordance with
> " the provisions of this article, and the city is also authorized to cover
> " the macadam later on with a layer of asphalt in order to complete
> " the paving. . . ."

This statute has since been repealed but I am quoting it in illustration of my statement.

The Appellant attacked the resolution of the City of Montreal of the 20th of July, 1925, ordering the permanent pavement, and also the assessment roll of the 13th of December, 1928, which has been duly homologated and which taxes it, as bordering proprietor on Sherbrooke Street, for an amount of $5,258.88, representing its proportion on the basis of $5.00 per square yard.

To sum up, the Appellant says: We were exempted from the cost of opening and the cost of macadamizing the said street by the annexation Act of 1910 which is still in force. This work was to be done at your expense. The fact that, during sixteen years, you have deprived us of these improvements which you had obliged yourself to carry out at your expense and for our benefit, is no reason why the position should now be changed. You cannot invoke a general Act which does not affect us under the pretext that you are doing more than you are strictly obliged to do,—

that you are giving us much greater improvements which include the opening and the macadamizing of the street,—to charge us for the cost of these works. It is your business if you believe that in the public interest it is better to lay a permanent pavement than merely to do the macadamization and to substitute the former for the latter, but, at the least you should deduct from the total cost, from the amount charged to all ratepayers, an amount proportional to the cost of the works which you were obliged to do at your expense, which formed part of your obligations and from which we should benefit gratuitously.

Establish clearly, with reference to this figure of $5.00, the relative proportions between the cost of macadamization and the cost of permanent pavement and we shall pay the difference but you cannot go beyond this because we are protected by a special Act, that of 1910. Your resolution of 1925, or at least your assessment roll under which we are taxed as ratepayers to whom no exemption is granted, is illegal in as far as we are concerned and snould be set aside.

I believe that the Appellant is justified in its contention and that the reply of the Respondent which is to this effect: " If the City had macadamized Sherbrooke Street and if to-day, as it has ordered, it had decided to lay a permanent pavement, the Appellant, like the other ratepayers, would still be obliged to pay $5.00 per square yard," is far from being decisive and conclusive.

Such a reply would have been all very well if the City had, in fact, fulfilled its obligations. The Appellant would then have been on the same footing with all the other taxpayers and the exemption in their favour would have come to an end. But, the City did nothing, it has always been in the position of a debtor and it cannot treat the Appellant as if it owed the latter nothing at all. It cannot put the Appellant on a footing with the taxpayers at large who are not its creditors.

Again, the City cannot claim to have freed itself as against the Appellant, in saying: The work which I have done is preferable to and better than that which I was obliged to do.

The Appellant cannot object to a permanent pavement but it cannot be charged more than the excess cost over and above the improvements which had been promised.

To decide otherwise would, in my opinion, deprive the Appellant of a definite right and would permit the City of Montreal to repudiate an obligation which it should have fulfilled long ago. It would permit the City to enrich itself at the expense of the Appellant.

The learned Judge of the Superior Court seems to say that if, in this action, proof had been made of the cost of the macadam and of the cost of the permanent pavement, he could have allowed the conclusions of the action.

I believe that, in this case, which is an action to set aside an assessment roll, we do not have to decide anything touching the *quantum*. Moreover, the figure of $5.00, a price fixed for all the taxpayers, is fictitious and bears no real relation to the actual cost of the works. A proportion would have to be established. This proportion should be fixed by the City itself when

Appendix.

Translation of Judgments.

No. 13.
Reasons for Judgment.
(E) Galipeault J.
*Record p.* 16
—*continued.*

preparing its new roll and if the Appellant does not receive equitable treatment in this new roll, it would be able to complain.

I would reverse the judgment appealed from and maintain the conclusions of the action, with costs.

---

## No. 14.

### Reasons for Judgment in the Supreme Court of Canada.

No. 14.
Reasons for Judgment.
(B) Rinfret J.
*Record p.* 31.

(B) RINFRET J. : As a preliminary to the annexation of the Town of Longue-Pointe to the City of Montreal, in 1910, negotiations were entered into between representatives of the Council of each municipality and as a result of these negotiations the annexation was to be effected in accordance with certain conditions accepted by each of the parties.

One of these conditions was the following :—

" The City of Montreal shall, within six months, open and macada-
" mize Vinet and Sherbrooke Streets from the western to the eastern
" limits of the Town of Longue-Pointe."

This agreement was sanctioned by the Legislature, which passed an Act reproducing textually the terms of these conditions.

From this moment, the City of Montreal was subject to this obligation which it had assumed as consideration of the cession which had been made to it of the territory of the Town of Longue-Pointe. The approval of Parliament made the contract an absolutely valid one.

The meaning of this obligation is not open to doubt : it imposed upon the City of Montreal the obligation of opening and macadamizing Vinet and Sherbrooke Streets at its expense. In point of fact, it is difficult to imagine the case of a debtor who undertakes to fulfil certain works at the expense of his creditor. Such a situation would no longer imply the existence of a debt ; it would be, rather, work by contract. Moreover, the text of the condition and of the law has been understood to have this meaning.

This is the interpretation that was given to it by the Superior Court. It is also the interpretation of the three judges of the Court of Appeal who discussed this point, the two other judges of that Court having reached their conclusions as a result of a line of reasoning which has no bearing on this interpretation.

In this connection, Mr. Justice Dorion says :—

" 1. The clause of the statute enacting the annexation of the Town
" of Longue-Pointe to the City of Montreal imposes an obligation on
" the City to macadamize Sherbrooke Street at its cost and not at the
" cost of the bordering proprietors.

" With this point I agree. There was no law charging the cost of
" such works to the bordering proprietors and, even to-day, there is
" no law which makes such a provision. But they were obliged to
" contribute to such cost indirectly, as ratepayers of the City of Montreal
" contributing to taxes imposed for general expenses."

Then, Mr. Justice Howard :—

" The obligation to do the work was imposed upon the City by " the said statute and, since there is nothing in the statute to the " contrary, the general rule of law applies, namely that the City, as the " debtor of the obligation, must perform it at its own expense, which " in this case means that the cost of the work should be defrayed from " the funds provided by the general municipal taxation. The obligation " was complete in all respects, express and implied, and it so remained " until it was performed, unless altered or modified in the meantime " by the power that created it."

Finally, Mr. Justice Galipeault :—

" There is no question but that this work was to be done at the " expense of the City. This is the interpretation which I give to the " Act itself and it was the law in force at the time."

Moreover, at the hearing before this Court, when this point was raised by Mr. Geoffrion, Counsel for the Appellant, Counsel for the City declared that he did not contest this interpretation.

The obligation of the City of Montreal being thus defined, it followed that when, in order to execute its obligation, it should open and macadamize Vinet and Sherbrooke Streets, it would have to do this out of the general funds of the City and that the bordering proprietors of the former Town of Longue-Pointe, which had become the Mercier Ward of the City of Montreal, could not be called upon to contribute specially to this work ; but as Mr. Justice Dorion says :—

" were obliged to contribute to such cost indirectly, as ratepayers of " the City of Montreal contributing to taxes imposed for general " expenses."

This being so, before imposing, as a special charge upon certain owners of immoveables in the Mercier Ward, the cost of opening and of macadamizing Sherbrooke Street, and before imposing upon each immoveable property fronting on the works which would be executed, a special land tax, it was for the City of Montreal to show the Court that the formal conditions of the annexation had subsequently been set aside and that the City had been released from the obligation which it had expressly assumed.

This, in my opinion, the City is absolutely unable to establish.

It has invoked two reasons for evading its obligation :—

I.

The Act of 1928, in virtue of which " the cost of pavings laid since the " 1st of January, 1919, and that of pavings to be laid hereafter on public " places, streets or lanes, shall be charged to the bordering proprietors at " the uniform price of five dollars per square yard, payable cash or in twenty " annual instalments, according to the number of frontage feet of the " immoveables belonging to them."

By its origin as well as by its actual text, the sole object and effect of this Act is to settle the question of paving in general in the City of Montreal. This general law could not affect the special annexation Act. It does not

contain any special reference to this latter statute. It does not exclude it, certainly not in an express manner, nor even impliedly. It is a principle that a law of this nature cannot derogate from a special law. This principle is even stronger when it is a question of setting aside an obligation contracted in favour of one class of taxpayers, as in the present instance.

The City of Montreal has not been able to refer the Court to any text of law amending or abrogating the annexation Act of 1910. The only thing which was done was that the City, from time to time, extended the original delay of six months, within which the work had to be completed. This alone shows clearly that the City itself well understood that the obligation still subsisted. It asked only that time be granted it for the fulfilment of its obligation.

## II.

The second reason invoked by the City of Montreal is thus expressed in its factum :—

" We admit that there was an obligation imposed on the City of Montreal " to open and macadamize Sherbrooke Street but we maintain that this " obligation did not include the obligation of paving and, assuming that " in 1910, the City of Montreal had fulfilled its obligation to open and " macadamize Sherbrooke Street, there was nothing to prevent the City of " Montreal from paving Sherbrooke Street in 1925 and from having such " paving paid for by the bordering proprietors on the same footing as the " bordering proprietors of the other streets in Montreal. . . .

" Does the fact that the Respondent fulfilled its obligation arising out " of the annexation at the same time that it laid the paving change the " Appellant's position ?

" We submit that it does not change this position because the Respon- " dent is not charging the Appellant anything for the opening and " macadamizing of Sherbrooke Street but is only charging it for the paving " on the same footing as other proprietors."

It was, in reality, on this sole point that the City based its case at the hearing before this Court ; and this, moreover, was the argument which prevailed before the Superior Court and before the majority of the judges of the Court of Appeal.

The City thus takes the position that notwithstanding the annexation condition which it had accepted and notwithstanding the obligation which it had assumed, it could nevertheless repudiate its undertaking if it deemed it advisable to pave instead of to macadamize. This alleged substitution would permit it to evade the obligations of its contract.

The charter of the City of Montreal and the different statutes which we have cited do not contain any definition of the word " paving "—*pavage*. The record does not in any way justify the distinction upon which the City of Montreal has built up its argument on this point.

Article 455, as it read in the charter of 1911, hardly suggests that the word " paving "—*pavage*—is used when a street, lane, public road, square or public place is paved " with permanent materials other than wood and macadam." From this, it would result that " to macadamize " is to pave with " macadam."

To pave, in the sense in which it is alleged to be used in the Act of 1928, would mean something more than to macadamize, would imply the use of more durable and more expensive materials. Either one or the other would nevertheless be a form of paving; but the City would have done something more than it was obliged to do. For this reason, it would be entitled to charge not only the cost of this supplementary work but the total cost of the work. We must take it that a uniform price of $5.00 per square yard authorized by the general law of 1928 is the total amount which the City is entitled to claim from bordering proprietors. As against them this sum represents the whole cost of the work. The proprietors of Longue-Pointe, for whose benefit the stipulation of 1910 was inserted, would have to consider that the obligation had been executed, as far as they were concerned, although they had not received anything more than all the other property owners of the City of Montreal. The City would be declared to have been freed from its obligation without ever having fulfilled this obligation and this simply by alleging that it had done something else—something, moreover, for which it intended to recoup itself. It is impossible for us to accept this as a manner in which a contract may be fulfilled.

There is one thing which appears clearly both from the record and from the discussion, that is, that macadamization forms part of paving work. The City of Montreal admits this in its factum in the passage which we have cited above, when it says:—

> "Does the fact that the Respondent fulfilled its obligation arising "out of the annexation at the same time that it laid the paving, etc."

It claims then that in laying the paving it had fulfilled the obligation arising out of the annexation. But, while this obligation was to have been fulfilled at its expense, it now wishes to recoup itself from the beneficiaries. This is what it cannot be permitted to do; and the Appellant is well founded in claiming that the bordering proprietors of the Mercier Ward should receive a credit for that part of the work done on Sherbrooke Street which, in virtue of the conditions of the annexation, was to have been done without them being called upon to contribute thereto in a special and particular manner.

Now, the resolution of the 20th of July, 1925, and the assessment roll of which the Appellant complains charge the bordering proprietors of Sherbrooke Street, in the Mercier Ward, the maximum amount which the charter permits to be specially assessed against individual property owners in similar cases, without taking into account the rights of the property owners in this ward under the conditions of the annexation, and without giving them any credit for the work which, according to these conditions, was to be paid for by the taxpayers at large of the City of Montreal. Such proceedings constitute obviously a contravention of the formal obligation assumed by the City of Montreal and as such should be declared null, illegal and *ultra vires.*

It is possible that in the sums for which the Appellant is assessed there is a portion which it might have been called upon to pay in any event as being in excess of the cost of the work which had been stipulated in the annexation Act; but the assessment roll was homologated as it had been prepared; and we have no other alternative but to adopt the principle

already laid down by this Court in the case of *Montreal Light Heat & Power Consolidated* vs. *City of Westmount*, 1926, Can., S.C.R., page 515, at pages 521 and 522.

The objection was made that the Appellant is not mentioned by name in the annexation Act, the benefit of which it is claiming.

Every obligation presupposes a creditor. The Town of Longue-Pointe, when it was imposing the condition, cannot be presumed to have stipulated in its own favour since it would cease to exist in virtue of the very provision in which the condition was contained. The obligation cannot have been incurred by the City of Montreal in favour of a defunct municipality. On the other hand, the City of Montreal cannot claim—and, moreover, it does not claim, because this objection is not raised by it—that it had been freed from its obligation under the pretext that there was no person who could claim the execution thereof as against it.

The Counsel of the Town of Longue-Pointe stipulated in favour of its taxpayers. The annexation Act created rights in favour of a class of taxpayers of whom the Appellant is one (Civil Code, 982).

We can find in the Act itself two examples, even more striking than that of the clause concerning Vinet and Sherbrooke Streets, which show clearly that the stipulations inserted in the Act of 1910 may be invoked personally by the taxpayers of the former Town of Longue-Pointe.

One of these stipulations is that " lands or parts of land under cultivation " shall not be valued at more than $100.00 an arpent for ten years from the " date of the annexation." It is indisputable that if, notwithstanding this provision, the City of Montreal had attempted, within the ten years following the annexation, to value an arpent of land under cultivation in the Mercier Ward at more than $100.00, then, any owner of such land would have had the right to have the valuation set aside as having been made in contravention of this article of the law.

Another example : The Act stipulates that " water shall be supplied " upon the same conditions as it is supplied in Montreal except that farmers " may make use thereof free of charge for six head of livestock on their " farms, etc." There again it is obvious that if the City of Montreal had endeavoured to charge a water tax to one of the farmers of Mercier Ward for the six head of livestock of his farm for which a free right of service had been stipulated, such farmer would have had an individual and personal right to refuse to pay such tax, basing his refusal upon this condition of the annexation Act.

Consequently, the situation is exactly the same with respect to this obligation of the City of Montreal in virtue of which it is obliged to open and macadamize Vinet and Sherbrooke Streets at its expense. If, despite this obligation, it is now endeavouring to claim from the taxpayers of Mercier Ward a special share (over and above their contribution to the general fund of the City) for the opening and macadamizing of the streets in question, these taxpayers are entitled to rely on the stipulation which was made for their benefit and to invoke it in support of their refusal to pay the special tax for which they have been asked.

We consider that there is no doubt but that, in the absence of the

succeeding statutes by which the City of Montreal caused the delay, within which it was to perform the work mentioned in this condition, to be extended, the Appellant as a taxpayer, directly interested in the opening of Sherbrooke Street, could have forced the City, by way of *mandamus*, to open and macadamize this street. This is recognized by the different statutes by which the delay was extended. They contain the following dispositions : " and until such date, no judicial proceeding by *mandamus* or otherwise " shall be taken or maintained against the City to compel it to execute the " said works " (3 George V, chapter 54, section 48).

The interest of the Appellant, in common with the class of bordering proprietors directly interested, is certainly an interest distinct from that of the other taxpayers of the City of Montreal.

But, it should be noted, in any event, that the Appellant is not here asking for the specific execution of the obligation contracted by the City of Montreal. It contents itself in invoking its right as a ground for refusing to pay a tax assessed against it in contravention of this obligation.

It invokes the law which was passed for its benefit in order to repudiate a charge which is imposed upon it. In these circumstances, its legal position is perfectly clear.

I would therefore conclude that the appeal should be allowed ; and, reversing the judgment of the Superior Court, I should maintain the action of the Appellant, with costs.

(E) CANNON J. : The conditions of the annexation of the Town of Longue-Pointe to the City of Montreal by sub-paragraph 1 of Section 1 of Chapter 148 of the Act 1, George V, 1910, are to the effect that, at the date of the annexation, the assets and liabilities of the Town of Longue-Pointe would be consolidated with the assets and liabilities of the City of Montreal ; that the latter should be in all the rights and obligations of the Town of Longue-Pointe, and add :—

(E) Cannon J.
*Record p.* 41.

" The City of Montreal shall, within six months, open and macad-
" amize Sherbrooke and Vinet Streets from the western to the eastern
" limits of the Town of Longue-Pointe."

Once the annexation accomplished, the City of Montreal caused the delay, in which the work in question was to be done, to be extended ; and it was only in 1925, on the 20th July, that the City voted a credit of $94,380.00 for the paving of Sherbrooke Street between Duquesne and Desautels Streets, in Mercier Ward (formerly the Town of Longue-Pointe) and enacted that the cost of this paving should be charged to the owners of immoveables fronting on the paving.

The Appellant, in virtue of a special assessment roll, is called upon to pay $5,905.44 and $5,888.04, in conformity with the provisions of the Act 18 George V, chapter 97, section 15 :—

" The cost of pavings laid since the 1st of January, 1919, and that
" of pavings to be laid hereafter on public places, streets or lanes, shall
" be charged to the bordering proprietors at the uniform price of five
" dollars per square yard, payable cash or in twenty annual instalments,

" according to the number of frontage feet of the immoveables belonging " to them. In such charge of five dollars per square yard are included " all paving accessories, and more particularly the levelling, gullies, curb, " removal and re-erection of poles, hydrants, *et cætera.*

" The amount which each bordering proprietor shall be held to pay " for shall be determined by multiplying the number of feet of frontage " of the piece of land belonging to him by one-half of the number of " feet of the average width of the street or part of street paved, as " described in each resolution of the council."

The Appellant, by its action, asks that the assessment roll be set aside as illegal and *ultra vires*, as well as all the proceedings of the Respondent adopted for the purpose of charging to the bordering proprietors any portion of the paving work. The action alleges in substance that, in virtue of the Annexation Act, the Respondent alone is liable for the cost of paving.

The Superior Court, presided over by the Honourable Mr. Justice Desaulniers, dismissed the Appellant's action, with costs, and this judgment was confirmed by the Court of King's Bench, in appeal, on the 12th December, 1930, the Honourable Mr. Justice Howard and the Honourable Mr. Justice Galipeault dissenting.

The reasons for appeal are the following :—

1. In virtue of the Annexation Act of 1910, the City of Montreal was obliged, within six months, to open and macadamize Sherbrooke Street, at its own expense ;

2. This law has always remained in force, and the Act of 1928 did not have the effect of permitting the Respondent to charge the cost of the paving in question to the bordering proprietors ;

3. If the City has decided to pave instead of macadamize, it cannot get rid of its obligations in this way.

I and II.

Under the provisions already quoted, the City of Montreal was obliged, within a delay of six months, to open and macadamize Vinet and Sherbrooke Streets from the western to the eastern limits of the Town of Longue-Pointe. It is not stated that the City of Montreal must do this at its own expense. To arrive at this conclusion, we must refer to the general law covering paving in the City of Montreal at this date. Section 455 of the Charter of the City of Montreal, as revised by 62 Victoria, chapter 58, assessing the payment of the cost of paving against the City for one-half and against the bordering proprietors for the other half, had, at the date of the annexation, in 1910, been wholly abrogated by the Act 8, Edward VII, chapter 85, section 14, so that, at the date of the coming into force of the Act adding to the territory of the City of Montreal the immoveable property of the Appellant, it was the City alone which was obliged to pay this paving cost.

Whatever the Appellant may say, I see nothing in the above clause constituting, in its favour, an individual exemption from the tax imposed by law upon all taxpayers of the City of Montreal who are owners of immoveable property situated within its territory, whether old or new.

There is no special disposition concerning the properties of the Appellant and the clause in question does no more than fix delays for the exercise, at a specific place, of the general powers of the City of Montreal for the opening and paving of streets.

It seems to have been argued that, at the date of the annexation, it was the general intention that Sherbrooke Street should be opened and macadamized at the expense of the City of Montreal, but there is nothing to show that these expenses should be incurred by the taxpayers at large, to the exclusion of those parties interested, namely, the bordering proprietors.

On the contrary, the Appellant admits that, if the work had been done within the six months following the annexation, the cost would have been assessed against the taxpayers of the old and of the new territory forming part of the City.

It is, therefore, by relying upon the general paving law in force, at the date of the annexation, that the Appellant came to the conclusion that the paving provided for by the provision on which it is relying should have been paid out of the general funds of the City. The Legislature, at the request of the City of Montreal, including the taxpayers who are owners of immoveable property in Mercier Ward, in which the immoveables of the Appellant are situated, these taxpayers being then represented in the City Council, considered that it was in the general interest of the City to extend to the year 1925 the delay for carrying out the work in question.

Even as the Appellant has recourse to the general law in force, at the date of the annexation, to contend that the City alone should pay the cost, so is it only just and reasonable that recourse should be had to the general paving law in force, at the date of the preparation of the roll, to determine the rights of the parties in this case.

The Act 18, George V, chapter 97, section 15, decrees that the cost of paving laid since the 1st January, 1919, " shall be charged to the bordering proprietors at the uniform price of Five dollars per square yard."

The paving in question, ordered on the 1st May, 1926, was completed on the 22nd December of the same year, and the Appellant was, at that time, a bordering proprietor on the street in question. Obviously, to escape from the general law, it must prove that it has been exempted from paying its share of the assessment. Its name does not appear anywhere in the Statute in question. It does not enjoy any privilege placing it above the application of the provisions of the general paving law governing the territory, both old and new, of the City of Montreal.

Moreover, this Act of 1928 took care to enumerate, in the second paragraph of the new Article 455, exemptions for certain portions of the paving. This enumeration does not cover the immoveables of the Appellant and does not justify its contentions. Sub-paragraph 7 says :—

> " 7. The provisions of this act shall only apply to public places, " streets and lanes, and shall not apply to private lanes which may " have been declared public lanes after the 1st of January, 1919, or " which may hereafter be declared public lanes."

Appendix.

Translation of Judgments.

No. 14.
Reasons for Judgment.
(E) Cannon J.
*Record p. 41*
*—continued.*

Thus, there is no exception in favour of the streets with which we are concerned.

These considerations dispose, I believe, of the first two grounds of appeal. The Annexation Act of 1910 remained in force, but the general law, from which the clause invoked by the Appellant did not derogate, has been modified and is binding upon the Appellant as on all other proprietors of immoveable property in the City of Montreal who have been obliged to submit to the changes effected by the Legislature in the legal regime for the construction and payment of paving in the City of Montreal.

The Appellant has cited Article 299 of the Charter, permitting the City Council to make the amendment and put into force by-laws concerning the peace, order, good government and the general well-being of the City of Montreal and all matters which interest or affect, or which may interest or affect the City of Montreal, as a City and as a corporation, provided, however, that these by-laws be not incompatible with the laws of this Province or with the laws of Canada or contrary to the special provisions of its Charter.

As I have already stated, the by-law adopted is not contrary to any special provision of the Charter.

Moreover, Article 299A of 11 George V, chapter 112, Schedule B, section 27, renders the situation still more unfavourable for the Appellant by stipulating that " no enumeration or mention of the powers in this " charter shall have the effect of restricting or affecting the general powers " of the City conferred by Article 299 or by other provisions of the charter, " even as regards the matters so enumerated or mentioned." This provision sets aside the obligation of merely laying macadam and authorizes any more complete mode of paving which might be deemed advisable for the well-being of the City.

III.

The third ground invoked by the Appellant is that, in virtue of its right, acquired since 1910, not to pay the price of macadamization of the street on which its properties front, the City should have deducted the cost of macadamizing from that of the permanent and improved pavement.

On this point, the record contains nothing in support of this contention. The Statute does not give it any right, does not confer upon it any privilege in this respect. It has no more rights than other taxpayers and owners of immoveable property in the Town of Longue-Pointe at or since the annexation. The former territory of Longue-Pointe now forms part of the territory of the City of Montreal. The Annexation Act enacted a confusion of the reciprocal rights and obligations of the Town and of the City ; and even if the clause providing for the macadamizing creates an obligation on the City of Montreal, this obligation must be fulfilled at the expense of all the taxpayers, old or new, of the City, in accordance with the law then in force. If, in 1925, the City, instead of laying a complete pavement, had simply wished to macadamize the street, the Appellant and others interested would probably have protested that the City, in 1925, wished to force them to accept a macadam which would be insufficient for road needs at that date.

Some of my colleagues seem to consider that they are face to face with an intangible contract which constitutes the law between the parties in this case. I believe, with respect, that the action has for its sole basis the Statute of 1910, added to the Charter of the City of Montreal, which, according to the Appellant, would not be subject to any modification by the Legislature. We have no reason to go back of the Statute, because the Appellant invokes not a contract, but a law which assures to it a special advantage, namely, a pavement of macadam in front of its property at the expense of the City. In matters of administrative law, even if the rights of private individuals are affected, the Legislature is sovereign and can at its will change the basis of taxation. This has been done on many occasions with respect to paving in the City of Montreal. This Court has recognized and applied this principle in 1922 in the matter of *County of Lincoln and the Town of North Grimsby* v. *The Town of South Grimsby,* where the Chief Justice, Sir Louis Davies, and Idington, Duff, Anglin and Mignault JJ. laid down the principle which I wish to establish :—

" In 1882 the County of Lincoln owned the Queenstown and " Grimsby Road as county property but not as a ' County road.' In " that year the Township of Grimsby in said County was divided into " the municipalities of North and South Grimsby and the Act making " the partition provided that South Grimsby should not be liable to " pay any part of the cost of maintaining this road which was wholly " in North Grimsby. In 1917 the county, as authorized by the High- " ways Improvement Act, passed a by-law for the assumption of main " roads in order to form a system of county highways the Q. and G. " Road being included. South Grimsby, being called upon to pay its " share of the cost, brought action for a declaration that it was not " liable for such payment so far as it related to the said road.

" Held, reversing the judgment of the Appellate Division (48 Ont. " L.R. 211) that by the adoption of this system the character of the " Q. and G. Road and the nature of the control over its maintenance " was entirely changed and the exemption granted to South Grimsby " in 1882 in respect to it no longer existed."

This judgment was impliedly confirmed by the Privy Council, when it refused to allow an appeal on the 15th June, 1922.

In the present action, the Plaintiff's contentions may be summed up as follows : You have paved a macadamized street or one which should have been macadamized ; deduct the cost of macadam from the tax which you are imposing for the cost of paving. The Honourable Mr. Justice Howard and the Honourable Mr. Justice Galipeault accepted this contention in the Court of Appeal. With the Supreme Court, in the case cited above, I reply : The City and the Legislature have provided a special assessment for the payment of paving carried out in Montreal since 1919 in a better and more costly manner than the macadam provided for by the Act of 1910 ; this latter provision cannot apply, because the City has not merely macadamized, but has completely paved the street, in virtue of the provisions in force in 1925 and has assessed the cost, in accordance with the Act passed

in 1928, which has a retroactive effect to 1919, without making exception for the bordering taxpayers on Vinet and Sherbrooke Streets in the former Town of Longue-Pointe. In order to assure a paving which would be superior to macadam, the Legislature has changed the law for all and has put aside the antiquated conditions of the annexation of 1910, which provided only for macadam. The Appellant is invoking a less favourable and less explicit provision than the formal exception contained in the Annexation Act for South Grimsby.

A decision of the Court of Appeal of England, *The President and the Fellows of Sion College* vs. *City of London*, 1901, 1 K.B., 617, cited by the Honourable Mr. Justice Mignault, appears to me applicable to the present case, in which we are dealing with what might be called " a consolidated rate " providing for more than the simple macadam, with respect to which the Appellant claims that it is a creditor as against the Respondent. The Summary reads as follows :—

" Sect. 51 of 7 Geo. 3, c. 37, provides that certain lands in the " City of London, reclaimed from the Thames, should vest in the " adjoining owners ' free from all taxes and assessments whatsoever.'

" The City of London Sewers Act, 1848, authorized the collection " of a consolidated rate. Some of the objects to which the rate was " to be applied were of a kind for which rates were made at the time " of the passing of the Act of George III, but others were new. On " appeal against an assessment to the consolidated rate made on land " reclaimed under the Act of George III :—

" Held, that the exemption applied only to then existing taxes " and assessments, or others substituted for them, and that the con- " solidated rate, although it included some purposes for which rates " were made when the exemption was created, was substantially a new " assessment and was therefore not within the exemption."

I also cite A. L. Smith, Master of the Rolls :—

" The governing point in this case is what is the extent of the " exemption under the former Act. Do the words give exemption " from all rates whensoever made, or only from such rates and assess- " ments as were then in existence ? We are not left without authority " on this point, because, as it seems to me, in the cases cited to us a " judicial interpretation has been put on the words that we are con- " sidering. The result of the decisions in Williams *v.* Pritchard (4 T.R. " 2 ; 2 R.R. 310), Perchard *v.* Heywood (8 T.R. 468) and Rex *v.* London " Gas Light Co. (8 B. & C. 54) is that the Act only created an exemption " from taxes and assessments then in existence, and not from sub- " stantially new ones coming into existence at a later date. In my view " this consolidated rate is substantially new. I agree that in it are " some incidents which would appertain to the old rates in existence in " 1766, but I cannot look at the wide purposes of the consolidated rate " without seeing that it was substantially a new rate. Therefore, on " the authorities to which I have referred, the Appellants cannot bring

" themselves within the exemption, and the judgment of the Divisional " Court must be affirmed."

And paraphrasing Romer L.J. (p. 623) :—

" It has been suggested that a hardship on the Appellants and " others in like case will follow from such a conclusion ; but if so it is " created by the Act of (the Legislature), and it is not within our " province to alter the enactment."

This is, moreover, the principle which we applied on the 12th June, 1931, in the case of *Lanctot* vs. *La Municipalité de St-Constant* in giving effect, to the detriment of the Plaintiff, to the general law improving roads in the Province of Quebec. I therefore arrive easily at the conclusion that, in the present instance, we are not concerned with a derogation by a general law from a special law favouring the Appellant ; but we must apply to it, as the Superior Court and the Court of Appeal have done, the general law which is now in force and which has replaced that invoked by it with the object of continuing, to its profit, the method of paying for paving which existed in 1910. Unfortunately for it, the world, roads and the Charter of the City of Montreal have progressed since this period. The Appellant is governed by the Act of 1928 which applies to all owners of immoveable property subject to the exceptions set forth in the said Act.

The appeal should, therefore, be dismissed, with costs.

# In the Privy Council.

No. 83 of 1931.

*On Appeal from the Supreme Court of Canada.*

BETWEEN

THE CORPORATION OF THE CITY OF MONTREAL (*Defendant*) *Appellant,*

AND

MONTREAL INDUSTRIAL LAND COMPANY LIMITED (*Plaintiff*) *Respondent.*

# JOINT APPENDIX.

BLAKE & REDDEN,
17, Victoria Street,
S.W.1,
*for Appellant.*

LAWRENCE, JONES & CO.,
Lloyds Building,
Leadenhall Street,
E.C.3,
*for Respondent.*