# In the Privy Council.

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

BETWEEN

THE CITY OF MONTREAL, - - - - *Appellant;*

AND

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

# RESPONDENT'S CASE.

RECORD.

1. This is an appeal from the Judgment of the Court of Queen's Bench for Lower Canada, Appeal Side, rendered on the Third day of October, eighteen hundred and ninety-six, confirming the Judgment of the Honourable Mr. Justice Tait, acting Chief Justice of the Superior Court in Chambers, on the twenty-first day of September, eighteen hundred and ninety-six. Mr. Justice Tait's judgment maintained a Writ of Injunction against the Appellant, but suspended its operation, until the twenty-ninth day of September. p. 39. p. 4, l. 40.

2. The Respondent's petition for a writ of injunction alleged that it was incorporated by the Act 55 and 56 Victoria, Chapter 77, of the Legislature of the Province of Quebec, amended by the Act 56 Victoria, Chapter 73, for the purposes and with the powers in said Act set forth. p. 6.

That by Section 5 of the said Act the Respondent was empowered among other things to lay its wires and pipes underground in so many streets, squares, highways, lanes and public places as might be deemed necessary for the purpose of supplying electricity and gas for light, power and heating; that by Section 6 of the Act it was provided that the Municipal Council in any City, Town or incorporated Village, if they deemed it necessary, should have the right to oversee and prescribe the manner in which such streets, roads and highways should be opened for the placing of wires underground; that by Section 18 of the Act it was provided that before commencing the laying of wires or pipes, or

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the erection of waterways, the Company should make a report to the Honourable the Commissioners of Agriculture and Public Works of the Province (to wit, two Provincial Cabinet Ministers,) of the projected works, and should send a copy thereof to the Council of the Municipality in which such works were so projected.

p. 6, l. 40. That the Company had for some time been desirous of exercising the rights thus conferred upon it of laying wires underground in the City of Montreal, and frequently communicated with the City of Montreal on the subject, and especially by the ministry of R. A. Dunton, Esq., Notary Public, on the fifteenth day of May then past, notified and called upon the City of Montreal, if it deemed it necessary, to prescribe the manner in which the streets in which the Company intended to lay wires underground, should be opened, duly communicating to the City a list of such streets.

p. 7, l. 4. That ever since the month of March preceding the Company had been in communication with the City of Montreal and with the City Surveyor thereof upon the subject of said underground conduits, but the City had never prescribed the manner in which the said streets should be opened, nor deemed it necessary to interfere in any manner respecting the laying of said underground conduits.

p. 7, l. 10. That the City of Montreal made no objection to the projected works although the City Surveyor had reported to the Council upon the same.

p. 7, l. 24. That the Company had complied with Section 18 of its Act of Incorporation and made a report to the Honourable the Commissioners of Agriculture and Public Works of the Province of Quebec, accompanied by a plan showing the streets wherein they proposed to lay wires underground.

p. 7, l. 29. That on the twenty-fourth day of August, the Company by the ministry of R. A. Dunton, Notary Public, served upon the City of Montreal a copy of the said report together with a copy of the plan thereto annexed, setting forth the nature and extent of said works and calling upon the City, if it deemed it necessary, to prescribe the manner in which such streets should be opened and further notified the City that in default of its prescribing the manner of opening the said streets, within a delay of ten days, the Company would proceed with the Works according to the said report.

p. 7, l. 40. That the City of Montreal did not answer the said notification in any manner.

p. 7, l 43. That the Company relying upon its rights had engaged experts in the City of New York and brought them to Montreal and engaged large numbers of men and had commenced said works observing all the care and precaution required by their Act of Incorporation.

p. 7, l. 47. That the City of Montreal wantonly and without right by its City Surveyor

and its Police Officers and other officials, acting in pursuance of instructions given by the Council of said City, had interfered with the contractors and workmen in charge of said works for the Company and had used force to drive them from the streets and that the City was then molesting the Company's contractors and employees and using force to drive them from the streets and was preventing the exercise of the Company's rights to their great loss and damage.

That the Company was under very heavy expenses and every day's delay caused very serious damage to it. p. 8, l. 16.

Therefore the Company prayed that the City of Montreal be enjoined to cease forthwith and desist from molesting the Company's contractors and employees and to cease the use of force against the Company to prevent the laying of wires underground in the City of Montreal and to prevent the exercise of the rights conferred on the Company by the Legislature. p. 8, l. 18.

3. The petition was supported by the affidavit of Mr. Walbank the Vice-President of the Company, deposing to the truth of the allegations of the petition and alleging that the Company had entered into contracts for the laying of said underground conduits, amounting to about One hundred thousand dollars. It was further supported by the affidavit of John Patrick Heffernan, contractor. p. 8, l. 34. p. 9, l. 10.

4. The petition was presented on the eleventh of September to the Honourable Mr. Justice Tait, who ordered the issue of the writ of injunction as prayed for, upon the Company giving security to the extent of twenty thousand dollars for any costs or damages which the City might suffer by reason of its issue. p. 10, l. 41.

5. The Honourable Mr. Justice Tait on the 14th September granted a provisional order prayed for by the City and enjoined the Company to suspend all its works until a decision upon the merits of the contestation. p. 15, l. 30.

6. The City of Montreal for answer to the Company's petition and to the writ of injunction issued, alleged its absolute and sovereign domain over all its streets and public highways and that the Company was not by virtue of its charter clothed with any authority superior to that of the City; and that it was not to be legally presumed that the Legislature intended to subordinate the City, its citizens and the public in general to a private Company conducted in the interest of its shareholders. p. 18, l. 19.

That in effect Section 6 of the Act required the Company before commencing its work to obtain the consent of the Municipal Council. p. 18, l. 40.

That it was only on the twenty-second of August that the Company had made a report to the Commissioners of Agriculture and Public Works of the Province, of the works contemplated and only upon the twenty-fourth of August that the Company had delivered its report to the City of Montreal. p. 19, l. 13.

p. 19, l. 19. That the City of Montreal would not have a regular meeting of Council before the second Monday in September.

p. 19, l. 21. That the Road Committee had not made a report to Council and that the City could not consider the matter before that date.

p. 19, l. 24. That the action of the Company was premature.

p. 19, l. 32. That in any event the Company should have applied to the Court to obtain authority before proceeding with its works.

p. 20. 7. The Company replied to this answer that it had complied with all the conditions and provisions of its charter and that the City exercised no sovereignty, domain or authority whatsoever, except what it derived from the Legislature of the Province of Quebec and that the City was subject in all respects to the Legislative authority and jurisdiction of the Legislature; that the City had had ample opportunity to prescribe the manner in which the streets of the City should be opened if they deemed it necessary so to do, and that the opposition to the work was purely factious.

p. 11, l. 28. 8. The notarial notification served upon the City on the fifteenth of May eighteen hundred and ninety-six at the instance of the Company referred to the Company's Act of Incorporation and the special power conferred by it
p. 12. to lay wires underground and also to the proviso in Section 6 of the Act, that the Municipal Council if it deemed it necessary had the right to oversee and prescribe the manner in which the said streets, roads and highways should be opened; declared that the Company intended to exercise the power thus conferred upon it of laying underground wires in the streets which it enumerated, and requested the City to prescribe the manner, etc.

9. No reply whatever was made by the City to this Notarial notification.

10. The City Surveyor reported upon the matter, but the Council took no action whatever.

pp. 13-14. 11. The Notarial notification of the twenty-fourth of August, which was produced as the Company's Exhibit Number Two again alleged the powers conferred upon the Company and specially referred to the Notarial Notification of the fifteenth of May. It tendered to the City of Montreal a copy of the report and plan delivered to the Honourable the Commissioners of Agriculture and Public Works and called upon the City if it deemed it necessary to prescribe the manner of opening the streets, within a delay of ten days, at the same time notifying the City that after that delay the Company would proceed with the work according to the report to the Honourable the Commissioners of Agriculture and Public Works, taking all the precaution prescribed by law and providing all proper facilities for free passage to the public while the works were in progress.

12. The facts were established by an admission fyled in the case by the parties, viz: p. 23.

(1.) That the Company had delivered a report of the Works to the Honourable the Commissioners of Agriculture and Public Works on the twenty-second of August eighteen hundred and ninety-six. l. 11.

(2.) That the Company began the work of excavation for the purpose of laying underground wires on St. Antoine Street at about half past two o'clock in the afternoon of the Tenth of September eighteen hundred and ninety-six. l. 17.

(3.) That the Company, its contractors and employees were then and there stopped in their said works and prevented from proceeding with the same by the officials of the City, who in so doing were acting under the instructions of the Municipal Council of the City. l. 21. l. 27.

13. The Appellant's contention was

(1). That it possessed an absolute proprietorship of its streets and that the Legislature could not be presumed to grant any power or authority which would interfere with the absolute control of the streets by the City;

(2). That Section 6 of the Company's Charter as amended required the Company to obtain the consent of the Municipal Council before beginning any such works;

(3). That the Company should have proceeded by writ of *Mandamus* against the City to compel it to prescribe the manner in which the streets should be opened and

(4). That the Company's action was premature as it had not given sufficient time to the City to prescribe the manner in which the works should be done. The City therefore contended that it had the right to prevent the works.

14. The Respondent contended that the intention of the Legislature was absolutely clear in conferring the powers it had upon the Company, and that while the most ample right of supervision was reserved to the City, the consent of the City to the undertaking of the Works was not required.

15. Under the Act 55 and 56 Victoria, Chapter 77, Section 5, the power is expressly granted to lay wires and pipes underground "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."

16. By Section 6 of the Act the Company was empowered to erect above ground and above buildings "with the permission of the proprietor" all requisite constructions including posts and supports etc., provided that the public should 55-56 Vic. cap. 77, s. 6.

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not be put to inconvenience in using the roads, provided also that the wires might be cut in case it should be necessary for the purpose of extinguishing fires, by order of the officer in charge of the fire brigade, without the Company being entitled to any compensation etc.

55-56 Vic. cap. 77, s. 25

17. Section 25 of the original Act of Incorporation read as follows.—"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."

18. By Section 1 of the amending Act 56 Victoria, Chapter 73, Section 6 of the original Act was replaced by the following:—

"6. The Company may

56 Vic. cap. 73, s. 1.

"Erect above buildings, with the permission of the Municipal Council or of "the proprietors, by paying such proprietors any real damage, if any there are, "which they may suffer by reason thereof, and also erect above ground, all ne- "cessary constructions, including posts and all supports for conducting wires and "electricity or other motor power along or across streets, public roads and high- "ways, or over any water-courses in the Province of Quebec, subject to the "provisions of Section 17 of this Act, and provided that the public shall not "be put to any inconvenience in using such streets, roads, highways or water- "courses, and that navigation shall not be interrupted, and also that the "municipal council in all cities, towns or incorporated villages, if they deem "necessary, shall have the right to oversee and prescribe the manner in which "such streets, roads and highways shall be opened for the erection of poles, or "for the placing of wires underground; and provided also, that the surfaces of "such streets shall in all cases be put back into their original condition by the "Company, at its own costs, as near as possible. And provided moreover, that "the wires may be cut by the order of the chief of the fire brigade, in case he "shall deem it necessary, for the purpose of extinguishing fires, in which case "the Company shall not be entitled to any compensation for the loss of such "wires; and in case the wires are so cut, the Company shall not be liable to its "customers for any interruption or non-execution of their contracts by reason "thereof."

56 Vic. cap. 73, s. 5.

19. By Section 5 of the Amending Act, Section 25 of the original Act, subjecting the privileges conferred upon the Company to municipal rules and regulations was entirely repealed.

20. The Respondent argued that so far from Section 6 as amended, requiring the consent of the Municipal Authorities before laying wires underground, it afforded very clear evidence of the intention of the Legislature that the City's consent should only be required for erections above buildings.

21. This view was strengthened by the various provisos forbidding the doing of any unnecessary damage, requiring the maintenance of free passage to

the public, requiring the replacement of the streets and roads in the same condition as before the works, reserving to the municipal authorities the right to prescribe the manner in which the streets should be opened, and under Section 19 specially, reserving to the municipal authorities, at all reasonable times, the right to inspect the works, "reasonable notice of such inspection being previously given to the Company," and finally by the total repeal of Section 25, which had made the exercise of the privileges conferred upon the Company dependent upon compliance with "the rules and regulations which exist or may be hereafter adopted by the municipal authorities on the subject."

22. In maintaining the injunction, the Honourable Mr. Justice Tait decided (1) That the Company had acquired under its charter the full authority and right to lay its wires underground in the City of Montreal, without first obtaining the consent of the City, but subject to the City's right to prescribe, to inspect, etc., (2) that the Company could not have proceeded by *Mandamus*, inasmuch as there was no legal duty cast upon the City to prescribe the manner in which the streets should be opened, and (3) that the Company had amply complied with the terms of its charter in the notice which it had given to the City. The learned Justice, however, exercising his discretion, under Article 1033 i. of the Code of Civil Procedure, in order that the City should have further opportunity to exercise the right of prescribing the manner in which the streets should be opened, suspended the operation of the Writ of Injunction for eight days. pp. 48-54. p. 54, l. 40. p. 54, l. 48. p. 55, l. 38.

23. The Court of Appeal continued the suspending order until the Judgment upon the Appeal, which was rendered on the third of October. p. 39, l. 1.

24. The Court of Appeal unanimously confirmed the Honourable Mr. Justice Tait's judgment, making the Writ of Injunction permanent, holding that the Statute incorporating the Company and the amending Statute were perfectly clear in their terms, and empowered the Company to do the works which it had undertaken, and that the Company had fulfilled all the conditions required by the Act; that the City had had since the fifteenth of May previous to prescribe the manner in which the streets should be opened, and that if it desired any further time, good faith required that it should have asked for it, and that the City, if it desired, could still exercise its right of surveillance. p. 40. pp. 56-57.

Respondent humbly submits that the Judgment of the Court of Queen's Bench, appeal side, was right and ought to be confirmed, and the appeal dismissed for the following among other

## REASONS:

1. Because under the Acts of the Legislature of the Province of Quebec, 55-56 Victoria, chapter 77 and 56 Victoria, chapter 73, the Company Respondent had full power, authority and right to lay its wires underground in the City of Montreal.

2. Because the Company Respondent complied with all the terms and conditions of the said Acts before beginning said works.

3. Because the City of Montreal, Appellant, without right or authority, and by force and violence, interfered to prevent the Company Respondent from exercising the powers conferred upon it by the Acts in question.

4. Because the Writ of Injunction in this case was properly issued.

5. Because the Judgment of the Honourable Mr. Justice Tait and the Judgment of the Court of Queen's Bench, appeal side, and the reasons given therefor, are right.

R. B. HALDANE.
R. C. SMITH.

# In the Privy Council.

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BETWEEN

THE CITY OF MONTREAL, - *Appellant;*

AND

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

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# RESPONDENT'S CASE.

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INGLE, HOLMES & SONS,
20, *Threadneedle St., E.C.*

THE CANADA ENGRAVING & LITHOGRAPHING COMPANY, LTD.
MONTREAL.