

# In the Privy Council.

No. 26 of 1934.

## ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

BETWEEN

O. MARTINEAU & FILS, LIMITED ... (*Plaintiff*) *Appellant*,

AND

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

AND

THE ATTORNEY-GENERAL FOR THE  
PROVINCE OF QUEBEC ... (*Intervener*) *Respondents*.

### CASE OF THE RESPONDENT

THE CITY OF MONTREAL.

1. This is an appeal from an unanimous judgment of the Court of King's Bench for the Province of Quebec (Appeal side) rendered on the 12th day of December, 1930, which confirmed the judgment of the Trial Court rendered on the 2nd day of January, 1930, and dismissed the Appellant's action, with costs. Record.  
p. 309.  
pp. 215-236.

2. The question at issue concerns an award rendered by the mis-en-cause Adrien Beaudry, in his capacity of President of the Public Service Commission, in regard to an expropriation of three lots of land and damages suffered to a quarry which was in operation at the time of the expropriation. p. 345.

3. The Appellant, by its action, asks, in so far as the present Respondent is concerned, that the award be quashed on the ground that the amount granted by the President of the Public Service Commission is so small, in regard to the proof made, that that fact by itself constitutes a grave injustice equivalent to an illegality. pp. 3-11.

Record.  
pp. 12-20.

4. The Respondent answers the action of Appellant by saying that there is no appeal from the award by Article 429 of the Charter of the City, 15 George V., chapter 92, section 38, and Article 58 of R.S.Q. 1925, chapter 17, Law of the Public Service Commission, and in fact the amount awarded to the Appellant was conform to the proof made before the President of the Public Service Commission.

p. 321.

5. On the 4th of April, 1927, the Council of the Respondent decided by resolution to proceed to the expropriation of the immoveables necessary to continue the Rosemount Boulevard from Chambord Street to Papineau Avenue. Thirty-two properties were affected by this expropriation. The sum of \$38,000.00 was voted for the acquisition of said properties. 10

p. 323.  
p. 4, l. 44.

6. On the 17th June, 1927, the Respondent presented to the Superior Court a petition for the expropriation of said properties and by judgment rendered on the same day, the hearing of those cases was referred to the Public Service Commission of Quebec for enquête and report, according to law. The immoveables of the Appellant bear in the petition and on the plan of expropriation the numbers 21, 22 and 23.

Ex. D. 2.

7. The Respondent filed in Court, with the petition, the plan of the expropriation.

p. 5, l. 14.

8. The enquête proceeded before the President of the Public Service Commission at the beginning of the month of August 1927. His report was deposited at the office of the clerk of the Respondent on the 22nd of August. The total amount of indemnities granted was fixed at the sum of \$219,172.08. Of that amount, the indemnities granted to the Appellant were fixed as follows : — 20

pp. 345-347.

No. 21	...	...	...	...	...	\$2036.30
No. 22	...	...	...	...	...	114917.90
No. 23	...	...	...	...	...	1755.60
						<u>118,709.80</u>

p. 347, l. 1.

9. The award mentioned, in so far as No. 22 was concerned, that : 30  
“ This sum includes the value of land expropriated and exploited as a quarry, also the damages suffered by the expropriation in regard to the said exploitation, as well for the land designated in this paragraph, as for that designated in paragraphs 21 and 23 of the said petition.”

p. 216, l. 25.

10. The award was homologated by judgment of the Superior Court on the 6th day of September 1927, less the numbers 21, 22 and 23 above mentioned, for the reason that an action was taken by the Appellant on the 3rd of September 1927.

p. 11, l. 10.

11. The Appellant attacks the award in so far as the present Respondent is concerned on the ground that the amount is so small that it is equivalent to an illegality. 40

12. Witnesses were heard before the Public Service Commission to fix the amount to be paid for the land and for the damages suffered by the Appellant. Record.  
p. 28 *et seq.*

13. After hearing those witnesses, the President of the Public Service Commission fixed the amount mentioned before.

14. It is submitted that the Court has no jurisdiction to intervene in a question of facts: *Fraser v. City of Fraserville* [1917] A.C. 187.

10 “ Their Lordships desire to add that it is plain, from the language  
“ of the statute making the award of arbitrators final and without  
“ appeal, that apart from evidence establishing that the arbitrators  
“ had exceeded their jurisdiction, their award could not be disputed.  
“ Their findings of fact and their findings of value, unless it be shown  
“ that the value is not that which they were appointed to determine,  
“ are free from challenge.”

15. The Supreme Court of Canada has given a decision in the same sense in the case of *Royal Trust Company* and *The City of Montreal*, 57 Supreme Court Reports, p. 352,

DAVIES J. :

20 “ The statute makes the award of the Commissioners, in such cases  
“ as the present, final and without appeal. In order to give grounds  
“ for attacking it, either highly improper conduct on the Commis-  
“ sioners’ part, or fraud, or the proceeding by the Commissioners in  
“ making the award upon an improper principle, must be clearly shown.”

ANGLIN J. :

30 “ There is no appeal from an award such as this. The statute  
“ expressly excludes it (section 429)—4 Ed. VII., ch. 49, sec. 18).  
“ Without entertaining an appeal an award may not be set aside solely  
“ because the court is of opinion that it is too high or too low—even  
“ very considerably so,—unless the disparity be so great that it is clear  
“ that the award must have been fraudulently made or that the arbi-  
“ trators must have been influenced by improper or illegal considera-  
“ tions. The Court of King’s Bench has held that neither of these  
“ grounds of invalidity has been established, and the clear case neces-  
“ sary to justify a reversal of its judgment, in my opinion, has not been  
“ made out.”

In the case of *Ogilvie v. City of Winnipeg*, Canadian Railway Cases, Vol. 33, p. 107; 36 Man. Rep., p. 430, the Court has decided :—

40 “ The clear principle to be deduced from all these cases notwith-  
“ standing the difference in the language used, is that upon the mere  
“ question of the quantum of damages awarded, the Appellate tribunal  
“ is not to substitute its own opinion for that of the arbitrator, unless  
“ there is such a decided preponderance of evidence against the arbi-  
“ trator’s finding as would be sufficient to induce an Appellate Court  
“ to reverse the decision of a subordinate tribunal. If he proceeded

“ upon a wrong principle, that is to say, if he has taken into consideration elements of damage which he should not have considered or has excluded from consideration matters which he should have considered, different considerations arise ; but where there is competent evidence both for and against the award the Court will not interfere with the arbitrator’s decision, unless, as Lord Buckmaster, L.C., has said in the *Ruddy* case, 21, C.R.C., at page 378, ‘ there is some good and special reason to throw doubt upon the soundness of his conclusions.’ ”

In the case of *Lacoste v. Cedars Rapids Manufacturing and Power Co.*, 1928, 2 D.L.R., p. 11, 4th paragraph, the Privy Council has decided :— 10

“ The law and practice of the Province of Quebec governing the procedure of the Court in such matters appears to be in all essentials the same as in this country. Although the appeal is a rehearing, a verdict of a jury or an award of an arbitrator acting within his jurisdiction is not in general set aside unless it is shown that the jury or the arbitrator proceeded on an erroneous view of the law, or that there was no evidence on which the verdict or the award could properly be arrived at, or that there was some manifest error leading to the result. There might also, of course, be some other matter in the conduct of the proceedings such as the wrongful admission or 20 rejection of evidence which might vitiate the result. But as a general rule the Court does not set aside a verdict or an award merely on the ground that it is against the weight of evidence. Of course, a verdict or an award may also be set aside on the ground of misconduct, in the popular sense of the word, on the part of the jury or the arbitrator, but nothing of this kind is alleged in the present case.”

16. The Respondent submits that the appeal should be dismissed and the judgment of the Court of King’s Bench for the Province of Quebec (Appeal side) dated the 12th day of December 1930 maintained for the following among other 30

### REASONS.

1. Because the Court has no jurisdiction on questions of fact.
2. Because the proof made is contradictory and the Court cannot intervene on questions of fact.
3. For the reasons mentioned in the judgment of the Superior Court.
4. For the reasons mentioned in the judgment of the learned Judges of the Court of King’s Bench.

GUILLAUME SAINT-PIERRE. 40

HONORÉ PARENT.

In the Privy Council.

No. 26 of 1936.

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*On Appeal from the Court of King's Bench for  
Province of Quebec (Appeal side).*

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O. MARTINEAU & FILS, LIMITED  
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THE PROVINCE OF QUEBEC  
*(Intervener) Respondent*

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CASE OF THE RESPONDENT  
THE CITY OF MONTREAL.

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