

ton per day when the tonnage was over 50 tons. The commutation was alleged to press with less severity upon the Montreal Elevating Company than upon petitioners, because while petitioners paid \$75 for the season upon their one elevator under 50 tons, the Montreal Elevating Company paid only \$900 upon their twelve elevators of over 50 tons, instead of about \$3,000, which would be due if the 1½ cent rate on tonnage were collected.

The Harbour Commissioners objected that under Art. 997 C. P., the proceeding should have been taken in Her Majesty's name, because it complained that a public board was violating the provisions of the Act by which it is governed.

MACKAY, J., made the following order:—  
"Having examined the petition presented to me and filed by petitioners on the 31st of May last past, praying that a writ of injunction do issue against the Harbour Commissioners of Montreal, ordering among other things the respondents to refrain from collecting, enforcing and levying certain commuted rates, tolls, dues and duties; and to suspend the levying of the so-called commuted duty of \$75 per season for each of the floating steam elevators used by the petitioners, or by the Montreal Elevating Company or others; seen the affidavits produced in support of the said petition, heard the parties by their counsel and deliberated;

I, the undersigned Judge, do refuse and reject the said petition with costs, for the following reasons, read at rendering of judgment, viz.:—For the Harbour dues, day by day charge is the rule of the statutes. From the oral argument of the petitioners before me (taken with their petition), it appears that their steam elevator is not a steamboat or vessel "plying between Montreal and any other place in the river St. Lawrence," and so commutation for the statutory harbor dues in respect of petitioners' said elevator is beyond the power of the defendants, and 40 cents a day (say the petitioners) was and is the only legal charge against petitioners for their elevator.

All that I see of action of the defendants is their letter of the 19th of May; they have not sued nor made the petitioners pay the \$75, nor have they seized any of the petitioners' property. I see no damage done to petitioners yet. No commutation can be forced upon them.

They do not allege tender of the day-by-day rate to defendants. If they fear trouble, they may day by day tender the respondents what they (petitioners) think right, and if more is insisted on, they may pay it under protest, and abundantly adequate remedy for getting back any amount of illegal charge exists by process ordinary, and there is no need for the special, extraordinary process of injunction, in such case. The petitioners' amount of interest is seen to be very small, if anything. If they remain during the season of trade in the Harbor this year, and have from the beginning of the season been in the harbour with their elevator, their legal dues would seem to be a sum, at 40 cents a day, which would exceed the \$75 referred to, and this would show the commutation offered advantageous in such a case, rather than hurtful to the petitioners.

But a portion of petitioners' complaint is that defendants are granting commutations to others, that seem to be at more favorable rates to them than is that commutation offered to petitioners, and the defendants, it is said, are thereby acting to the detriment of the revenue of the Harbor of Montreal in general. Against such action of defendants, or misconduct (if it be so) the petitioners are not the proper persons to complain, but the Attorney General, the defendants' trust not being of a private but public nature, nor do I see appreciable damage to petitioners in particular from such alleged misconduct, so this injunction ought not to go."

Petition rejected.

*Coursol, Girouard, Wurtele & Sexton*, for petitioners.

*Abbott, Tait, Wotherspoon & Abbott*, for Harbor Commissioners.

## COURT OF REVIEW.

MONTREAL, May 21, 1879.

SICOTTE, MACKAY, JETTE, JJ.

ROBERT et al., petitioners, v. BERTRAND, respondent.

[Rouville Election Case.]

*Election—Promise by Candidate to lay sidewalks.*

In this case the election of Mr. Bertrand as representative for the County of Rouville, in the Legislative Assembly of Quebec, on the 1st of May, 1878, was sought to be set aside.