

CAN.
S. C.
ROYAL
TRUST CO.
v.
CITY OF
MONTREAL.
Brodeur, J.

is some doubt in the evidence as to whether they took it into consideration or not. However, if we take the amount which has been granted as compensation, 25c. a foot, and the value, which appears to be admitted, of the adjoining lands, 60c. a foot, it seems evident to me that they should have taken into consideration, as it was their duty to do, the existence of such servitude. I concur, therefore, in the opinion expressed on this head by Cross J. For if I was certain that they had not taken account of this servitude I would then be of opinion that the award should be void, and that the case should be referred back to the arbitrators in order that it might be re-heard. But then this proceeding would probably be detrimental to the appellant, as the award might perhaps grant a less sum than what has been given. The appellant claims also, that the award should be set aside because certain antecedent proceedings were not quite regular; it alleges, for example, that the preliminary report, which should be made by the controller before the council decides to proceed to have the indemnity determined, was irregular, and that the resolution of the council was not carried by a majority of the members of the council, as the law requires.

It seems to me that the informality so claimed should have been raised *ab initio*. Besides, it is to be presumed that the appellant had every interest in the compensation being determined, for it had on its hands a piece of land which brought it in nothing, and consequently it would be desirous of the compensation being determined as soon as possible. It is too late for it, now that the award is given, to complain of proceedings in which it acquiesced by taking part itself and by submitting to their jurisdiction.

If the resolution of the council was illegal, nothing was then easier than to take the necessary proceedings to set it aside. It did not do so. I am of opinion that the appellant should observe with satisfaction that the city, after several years of waiting, was about to pay it for its land; and it is too late to-day to complain of that.

For these reasons the appeal should be dismissed with costs, and the provisions of the judgment of the Court of Appeal should be confirmed.

Appeal dismissed.