

Bench at Montreal in the case of *Morrison et al. v. The City of Montreal*.

Present:—Sir JAMES W. COLVILLE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, Sir ROBERT P. COLLIER.

Their Lordships are called upon in this appeal to reverse two judgments of the Court of Queen's Bench at Quebec with reference to the amount of compensation to be paid by the respondents, the Corporation of the City of Montreal, to the appellants, as proprietors of certain lands expropriated for the purpose of forming a park, to be called Mount Royal Park.

It appears that, by an Act of the Colonial Legislature, 27 and 28 Vict., cap. 60, the Corporation were authorized to make very extensive improvements in the City of Montreal, and for that purpose to take lands compulsorily. By the preamble it was recited that the then existing law of expropriation led to great delays, and by section 13 a new mode of assessing compensation was provided.

By that section it was enacted that in case the Corporation should not be able to come to an amicable arrangement with the persons interested in the ground or real property required to be taken, as the price or compensation to be paid for the same, the Superior Court of Lower Canada for the district of Montreal, or a Judge thereof, should appoint three competent and disinterested persons as commissioners to fix and determine the price or compensation to be allowed for such land or real property, and that the Court or Judge should fix the day on which the commissioners should commence their operations, and also the day on which they should make their report.

By sub-section 5 of that section, the Commissioners, before proceeding, were to be duly sworn, and they were vested with the same powers and entrusted with the same duties as were conferred by the laws in force in Lower Canada upon experts in reference to appraisements, one of those duties being to view the property to be appraised.

By sub-section 7 it was enacted that it should be the duty of the Commissioners to diligently proceed to appraise and determine the amount of the price, indemnity or compensation which they should deem reasonable, and they were thereby authorized and required to hear the parties and to examine and interrogate their

witnesses, as well as the members of the Council and the witnesses of the Corporation; but it was declared that the said examination and interrogatories should be made *viva voce* and not in writing, and consequently should not form part of the report to be made by the said Commissioners. The section then provided that if, in the discharge of the duties devolving upon the Commissioners, there should occur a difference of opinion between them, the decision of two of the Commissioners should have the same force and effect as if all the said Commissioners had concurred therein.

Sub-section 12 was as follows:—

"On the day fixed in and by the judgment appointing the said Commissioners, the Corporation of the said city, by their attorney or counsel, shall submit to the said Superior Court, or to one of the Judges thereof respectively, the report containing the appraisal of the said Commissioners, for the purpose of being confirmed and homologated to all intents and purposes; and the said Court or Judge, as the case may be, upon being satisfied that the proceedings and formalities hereinbefore provided for have been observed, shall pronounce the confirmation and homologation of the said report, which shall be final as regards all parties interested, and consequently not open to any appeal."

That sub-section was afterwards amended by the 35 Vict., cap. 32, sec. 7, which contained, amongst other things, the following words:—

"Sub-section 12 of clause 13 of the Act 27th and 28th Victoria, chapter 60, is amended by adding at the end of the said clause the following words, to wit: 'for the purposes of the expropriation;' but in case of error upon the amount of the indemnity only on the part of the Commissioners, the party expropriated, his heirs and assigns, and the said Corporation, may proceed by direct action in the ordinary manner to obtain the augmentation or reduction of the indemnity, as the case may be, and the party expropriated shall institute such action within fifteen days after the homologation of the report of the said Commissioners, and if upon such action the plaintiffs succeed, the Corporation shall deposit in Court the amount of the condemnation to be paid to the party or parties entitled thereto."

By the 32 Vict., cap. 70 (Quebec Statutes) power was given to the Corporation to form a park, to be called "Mount Royal Park," and by section 20 it was enacted that all the land required for the park should be deemed to be within the city, and that all the powers of expropriation possessed by the Corporation of Montreal should extend to it. By section 23, however, an alteration was made as to the mode of appointing the Commissioners to value the property to be expropriated, and it was enacted