

tation of the law advanced by the Petitioner, to have considered the benefit not only to the neighbouring properties, but to the citizens generally; and this view has been enforced with great energy and ability, as well by reference to the law itself, as by reference to the history of the law which is of the most complicated kind; and it was even said by the Petitioners' counsel that the locality of this improvement was very slightly, if at all, benefited, the matter being one which interested the whole city; and that if the commissioners had conceived that they had a real discretion to exercise they would have thrown two-thirds, or three-fourths of the cost upon the city itself, instead of proceeding upon the assumption that two-thirds were to be borne by the parties immediately interested in the neighbourhood of this particular improvement. Now the Court finds itself somewhat embarrassed in this case, which from first to last appears to be one of an extraordinary description. It must be remembered that it is not an action to set aside a by-law, nor yet to set aside a resolution; but only to set aside an assessment roll.

What, if there is no assessment roll produced? Yet assuredly there is none. It was said there were admissions: so there are; but hardly sufficient to cover this. There is no document, and there is no admission showing precisely and entirely what this assessment roll was; and there is nothing either to show exactly what was the resolution of the council, which was the authority for making this assessment. There is verbal and other evidence, no doubt, from which information on these points may be had to a certain extent; but as to this part of the case, the petition itself, even, is deficient and extremely general: it merely says:

"Que la dite cité de Montréal ayant fait amender sa charte par le Parlement de la province de Québec, a fait faire par trois commissaires en expropriation, savoir par MM. Hugh McLennan, G. Pallasco, et Joël Leduc, tous trois de la cité de Montréal, un nouveau rôle de cotisation pour répartir sur les personnes que les dits commissaires jugeraient être intéressées dans la dite amé-
"lioration les deux tiers du coût d'icelle, le-

"quel rôle est entré en force le 24 novembre 1881."

In the absence of the roll itself, this part of the petition sufficiently shows that what it required the commissioners to do was to apportion two-thirds of the cost among those benefited. There is no other proof whatever of what the scope of the resolution was, so that whether they acted within their powers, or beyond their powers cannot be determined by the terms of the resolution itself; but it seems to have been taken for granted that the resolution, and the judgment of the Court of Review gave powers in conformity with the law which is to be found in sub-section 4 of the 4th section of the Act of 1879, which I have already recited. Both parties seem to have acquiesced in this mode of proceeding; and the answer of the Corporation to this petition being merely general, a long *enquête* was had, and amongst other things the commissioners themselves were brought up as witnesses, and examined to explain their proceedings. I may say at once that I should be disposed to reject this testimony as inadmissible: but I will not go into that now, because the defendants who objected to it at the *enquête*, do not move to reject it now; and for the further reason that being before me, in the absence of motion to reject, I have read it; and I do not consider that it can affect the case, on the merits one way or the other. The law meant either that the commissioners were to do as they did, or it meant that they were to proceed otherwise, and in the sense contended for by the plaintiff. In the first case there would, of course, be an end of the matter: in the second, their reasons good or bad are of no consequence; it is with their conclusions that we are concerned; and if the law says that they are to do one thing, and they have disregarded it, and have done another thing, there would, of course, be "illegality" under the 12th section of the Act of 1879. So the whole case at the hearing was confined to discussing what were the powers of the Corporation with respect to such expropriations, and how they had been exercised in the present case.

Now, whatever may have been the precise terms of the authority or resolution of coun-