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

the plaintiff's lands as shewn on the plan of the same. In my judgment, the plaintiff had not a marketable title at the time of the expropriation. Such title as he had was one subject to the effect of the proposed extension of Sherbrooke St. and the confirmation of the plans thereof, in other words, subject to a statutory charge. The commissioners were obliged, in my judgment, to consider this in making their award. This statutory charge or "reservation for municipal purposes," or servitude, or whatever name you choose to give it was something which affected the value of the land and diminished its marketable value. It is true it may have raised, probably greatly raised, when adopted by the Sheppard estate in making their plan of the land in 1908, the value of the lands fronting on that proposed street, but with that we have nothing to do. The owners of these adjoining lands, in this instance the plaintiff itself, got the benefit of that increase, and no one complains or has a right to complain of that. But when they sold these adjoining lands at 60c. a foot, and then claimed to have allowed them the same price for the lands of the proposed street, the opening of which gave them the increased price they got for the adjoining lands, and contend that this was the principle on which the arbitrators should have acted they are going too far and advancing as a principle something I cannot for a moment accept. They claim properly all the increased price caused by the opening of the street to the adjoining lands and then contended that this increased price was that which should have guided the arbitrators in fixing the compensation for the street itself. As Cross, J., says: "It is simply resorting to the too common project of land speculators to get paid twice for the same thing."

Their title to the lands within the street boundaries was subject to the statutory charge or reservation I have referred to. It was not a marketable title such as that to the lands fronting on the street. It had to be valued as it stood at the time of the expropriation subject to the charge, and if that had been done by the arbitrators, I would have held it was rightly done. Cross, J., holds that the majority of the commissioners did take into consideration the effect of the homologated plan, the Sheppard estate subdivision plan and the description of the Larivière and Messier lots as bounded on the street, which consideration would, of course, tend to decrease the actual value of the street land.

If they did, from my point of view they were right, and there