

cases as the present, final and without appeal. In order to give grounds for attacking it, either highly improper conduct on the commissioners' part, or fraud, or the proceeding by the commissioners in making the award upon an improper principle, must be clearly shewn. The latter was the ground relied upon in this case.

The Court of King's Bench held that the award attacked should not be interfered with, and I think they were right in their conclusions.

The owner of land expropriated is undoubtedly entitled to be paid its actual value at the time of its expropriation; but it is the actual value of the land to him subject to any statutory charges upon it, and not the value to the person, corporation or company taking it that is to be awarded.

The City of Montreal had, in the year 1887, laid down on a plan the lines of a proposed extension of Sherbrooke St., one of the principal streets of Montreal, which extension ran through the property in question, and had the plan confirmed by a Judge of the Superior Court.

The law provided that after the homologation of these lines by the confirmation of the plan of the same, the city was freed from liability or damages "with respect to any building constructed or improvement, leases or contracts made by any person whatever upon any land or property after the confirmation."

An amendment, 7 Edw. VII. c. 63, s. 30, speaks of portions of vacant lots between homologated lines as being reserved for "public or municipal purposes."

In 1908 the Sheppard estate, of which the plaintiff is trustee, made a plan of subdivision of its land in the locality of the locus in question and made its plan to conform to the city plan so far as concerns the site of Sherbrooke St. Afterwards, in 1912, lots on the north-east side were sold to Larivière and Messier by the now appellant, and these lots are described in the deed as being bounded by Sherbrooke St.

When the commissioners made their award, upon what principle should they have proceeded? Clearly, in my opinion, they should have awarded the actual value of the land to its owner and in finding that actual value they were bound to take into consideration the fact of the proposed extension of Sherbrooke St. and the homologation, and confirmation of the lines of that street through

CAN.

S. C.

ROYAL
TRUST CO.
v.
CITY OF
MONTREAL.

Davies, J.