

CAN.
S. C.
ROYAL
TRUST Co.
v.
CITY OF
MONTREAL.
Anglin, J.

for homologation and its consequences with the apparent object of preventing changes in the condition of the property affected which would increase the burden of the expropriating municipality that it should. But on this aspect of the case it is not necessary now to express a definite opinion.

Solely on the ground that the evidence does not clearly establish that the award of 25c. a square foot was such a gross under-valuation of the appellants' property as would warrant a finding that the commissioners in making it must have been influenced by improper considerations, and *a fortiori*, that it has not been so plainly demonstrated that the Court of King's Bench erred in reaching that conclusion that a reversal of its judgment would be justified (*Demers v. Montreal Steam Laundry Co.* (1897), 27 Can. S.C.R. 537, I would dismiss this appeal.

Brodeur, J.

BRODEUR, J.:—The chief question that presents itself in this case is whether the expropriation commissioners in determining the amount of the compensation based it on an erroneous principle. The property expropriated was formerly a part of a vacant lot; and in 1887 the City of Montreal, under the authority of its charter, decided to extend Sherbrooke St. across this lot. It has indicated this extension on the official plan, and has had it confirmed by the Superior Court. Under those proceedings the projected street became a public way (s. 411 of the charter).

Another provision of the charter declares, however, that the city is not compelled on account of the confirmation of the plan, to open the street; nor is it compelled to make compensation or pay damages because of such confirmation (s. 417). This provision is certainly contrary to the ordinary principles of law. Indeed, the Civil Code (art. 407) says that no one can be compelled to give up his property except on being previously paid a just indemnity. Now, we have here an owner of property in the city of Montreal who sees a street laid out on his land. He could no longer sell it without making known the line to which it is subject (*Ménard v. Rambeau* (1888), 20 Rev. Leg. (O.S.) 448; *Sirey*, 1871-1-48), neither could he claim compensation or damages for the buildings which he erects on it.

The city, however, could not demand taxes for the land covered by this homologated line (s. 419a of the charter). The owner, from the moment that a line is so laid, remains indeed the owner of the land which is the street location, but he cannot build there