

CAN.

S. C.

ROYAL
TRUST CO.
v.
CITY OF
MONTREAL.

Fitzpatrick, C.J.

they should have proceeded, as above indicated, are, however, so simple that I think it is clear they were not guided by these. No adequate explanation is forthcoming of the difference between the allowance for these and other lands taken; whilst one of the majority of the commissioners says that if he had taken the servitude into account he would have allowed only 15c. instead of 25c. per foot. A difference of only 10c. between the full value of lands and their value burdened with a servitude which, as the respondent's witnesses say, renders them absolutely valueless is inexplicable.

I do not wish to be understood as expressing now any opinion upon the amount of the compensation which the appellant is entitled to recover. The amount awarded may for reasons which I have not considered work out as a fair and proper compensation, but if so, it has worked out right rather by chance, and the appellant is entitled to have a more satisfactory consideration and regular determination of its claim.

The appeal should, therefore, in my opinion, be allowed, and the matter referred back to the commissioners to establish the actual value of the land expropriated the amount of which is to be awarded as indemnity to the appellant, but in view of the finding below and out of respect for the opinion of the majority here I do not enter a formal dissent.

Davies, J.

DAVIES, J.:—This is an appeal from the judgment of the court of King's Bench, Province of Quebec, reversing a judgment of the Superior Court Judge which declared certain expropriation proceedings in connection with the plaintiff's property and the award of the majority of the commissioners to be null and void.

The Court of King's Bench reversed that decision and dismissed the plaintiff's action, and against this judgment the present appeal was taken.

I agree fully with the Court of King's Bench that the alleged illegalities in the antecedent proceedings of the city and the commissioners cannot be invoked in this case on the grounds stated in the court below. The conduct and action of the present appellants in appointing their commissioners and prosecuting their claim before the board effectually estopped them after the award was made from attacking it on the ground of these alleged irregularities, anterior to the notice of expropriation.

The statute makes the award of the commissioners, in such