

Now it appears by the evidence and is matter not disputed by either party, that the works sought to be restrained are being carried on upon the public streets of the town of Maisonneuve, and consist in the digging of holes in the said streets, planting of posts therein, stringing of wires on such poles—all of which it is claimed is being done without right or authorization by the company defendant, and injures and impedes said streets, causing damage to said municipality, both by the obstruction of said streets, and by exposing it to claims in damages on the part of a rival company claiming a right to do these works.

Assuming this to be established, assuming the resolution granting the contract to the company defendant, and the contract itself to be null, the position of that company would then be that of a person unlawfully trespassing upon the public streets, placing obstructions thereon and carrying on work thereon which would probably amount to a public nuisance.

Has a rate-payer, as such merely, the right to restrain such assumed unlawful action on the part of the company? To whom belongs the right of action to restrain or remove obstructions upon property in the public domain, as in this case upon the public highway?

The question is not a new one in our jurisprudence. It has presented itself a number of times for decision, though not so far as the court has been able to ascertain, in cases where an injunction was applied for before the works were completed, but in cases where the demolition of works already done, and which were alleged to obstruct public highways, either roads or navigable rivers, was sought.

And it would seem safe to say that it has been uniformly decided that, save where the obstruction complained of, caused some special damage to the party complaining distinguishable from that suffered by the public generally, he had no right of action to abate the nuisance; that such action belonged to the public generally, and should be instituted by a public officer qualified to speak for the public generally, (who might be moved thereto by private persons acting as relators) or, under our municipal system, in the case of obstructions in roads, might also be taken by the municipality, which is declared proprietor of the roads, and is such for certain defined purposes.

Thus the Privy Council in the case of *Brown v. Guy* (14 L.C.R., p. 220) lays down the law of Lower Canada as to