

## ROYAL TRUST Co. v. CITY OF MONTREAL.

CAN.

*Supreme Court of Canada, Sir Charles Fitzpatrick, C.J., Davies, Idington, Anglin and Brodeur, J.J. October 8, 1918.*

S. C.

## 1. EXPROPRIATION (§ III C — 135) — COMPENSATION — ACTUAL VALUE — HOMOLOGATION OF PLAN — DEDUCTION FOR.

Commissioners in fixing the owner's compensation in expropriation proceedings are not entitled to make any deduction from the actual value of the land taken, in respect of the burden imposed upon it by the confirmation or homologation of a plan.

## 2. ESTOPPEL (§ III E — 70) — EXPROPRIATION PROCEEDINGS — IRREGULARITIES — PROSECUTING CLAIM BEFORE BOARD.

In expropriation proceedings the conduct and action of the expropriated party in appointing his commissioners and prosecuting his claim before the board estops him, after the award has been made from attacking it on the ground of alleged irregularities anterior to the notice of expropriation.

APPEAL from the judgment of the Court of King's Bench, appeal side (1917), 26 Que. K.B. 557, reversing the judgment of the Superior Court, District of Montreal, by which the plaintiff's action was maintained.

Statement.

The action was taken to set aside and have declared illegal and null proceedings which had been taken by the City of Montreal by way of expropriation for opening or extending Sherbrooke street in the east end of the city and also to set aside the award of the arbitrators in so far as it affected certain lots of land required for the opening of that street and owned by the appellant in trust for the estate of one Charles Sheppard. Affirmed.

*Lafleur, K.C., and A. Chase-Casgrain, K.C., for appellant; Atwater, K.C., and Jarry, K.C., for respondent.*

FITZPATRICK, C.J.:—The substantial question in this appeal is what were the rights of the appellant in the land expropriated and for which it had a claim to be indemnified.

Fitzpatrick, C.J.

The lots in question were within the homologated street lines shewn on a plan prepared by the city and confirmed by the court in 1887 as being included in land required for an extension of Sherbrooke street.

The proprietor of land expropriated is entitled to be compensated by payment of the value of the land taken, and s. 421 of the city charter provides, *inter alia*:—

Indemnity, in case of expropriation, shall include the *actual value* of the immovable, part of immovable or servitude expropriated and the damages resulting from the expropriation; but, when fixing the indemnity to be paid, the commissioners may take into consideration the increased value of the immovables from which is to be detached the portion to be expropriated and offset the same by the inconvenience, loss or damages resulting from the expropriation.