

such a review, the Court would, in either case, constitute itself an appellate tribunal.

The motion, therefore, fails and must be dismissed with costs.

BOYD, C.

DECEMBER 7TH, 1904.

TRIAL.

MACKENZIE v. CITY OF TORONTO.

Municipal Corporation—Waterworks—Right of Outsider to Water Supply—Contract—Easement—Discrimination.

Action for an injunction and a declaration of plaintiff's right to the continuation of a supply of water from defendant's waterworks for the house and grounds of plaintiff outside the limits of the city.

W. Laidlaw, K.C., and J. Bicknell, K.C., for plaintiff.

J. S. Fullerton, K.C., and W. Johnston, for defendants.

BOYD, C.—. . . The rights of plaintiff . . . are supposed to arise under the prosecution of the waterworks system belonging originally to the Yorkville waterworks and passed on by way of transfer to the municipality of Yorkville in 1875. Thereafter the by-law 316 (14th August, 1876), was passed, whereby it was enacted that the village should purchase land in the township of York wherein to establish or construct a reservoir and pay for land whereon the retaining basin was constructed . . . and to lay main pipes from the intersection of Cottingham street and Avenue road to the proposed reservoir. This work was carried through part of the McMaster property, which was procured or acquired in some way (not in evidence) for that purpose, and thereafter water for Yorkville was drawn from this new reservoir in the county of York, through an extension of the pipes from the limits of Yorkville to the new-acquired property. Mr. McMaster's house was supplied with water from the new extension main pipe, but in what way or under what arrangement (if any) is not disclosed. This work was done in the exercise of powers conferred upon the Yorkville Waterworks Co. by its incorporating statute.

The right to get water as claimed in this case depends upon the status of plaintiff deriving under his purchase of the McMaster land. It may be assumed that if the owner of the McMaster land at the time of the construction of the extension of the original waterworks in Yorkville (temp.