

CANADIAN
L
LIBRARY
MONTREAL

No. 26 of 1931.

APPELLANT'S CASE.

In the Privy Council.

ON APPEAL
FROM THE COURT OF KING'S BENCH FOR THE PROVINCE
OF QUEBEC (APPEAL SIDE).

BETWEEN—

O. MARTINEAU & SONS, LIMITED
(Plaintiff) APPELLANT

— AND —

THE CITY OF MONTREAL (Defendant)

— AND —

THE ATTORNEY - GENERAL FOR THE
PROVINCE OF QUEBEC
(Intervenant) RESPONDENTS.

CASE FOR THE APPELLANT.

RECORD.

10 1. This is an appeal from a judgment of the Court of King's Bench (Appeal Side) for Quebec, dated December 12th, 1930, confirming a judgment of the Superior Court of Quebec, dated January the 2nd, 1930, dismissing the Plaintiff-Appellant's action brought against the Respondent, the City of Montreal, in nullity of an award rendered by the Mis-en-cause Adrien Beaudry, in his quality of President of the Quebec Public Service Commission, in a matter of expropriation, by the City-Respondent, of a certain quarry within the City limits, belonging to and actually worked by the Appellant.

20

p. 309.

p. 215.

2. According to the Charter of the City-Respondent, Article 429, as amended by 15 George V, chap. 92, Section 38 :—

“The President or Acting-President of the Quebec Public Service Commission shall ascertain the compensation to be paid to the proprietor whose building or land is to be expropriated, and determine, if need be, the rights of the city mentioned in the foregoing articles for the acquisition of the whole or part of the said buildings.”

“There shall be no appeal from the decision of the President or Acting-President of the Public Service Commission.”

and according to Article 421 of said Charter :—

10

“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.”

3. The Quebec Public Service Commission Act also provides that the Commission, which is composed of three members, appointed by the Lieutenant-Governor-in-Council, acting by its President, shall have jurisdiction on any question arising respecting expropriation by the City of Montreal, for any municipal purpose, including the fixing of the compensation. (Revised Statutes of the Province of Quebec, chap. 17, Article 4—Article 9 (paragraph 3) as amended by 17 George V, chap. 16, Section 1 and Article 28h (paragraph 9) as amended by 16 George V, chap. 16, Section 6). 20

4. In April 1927, the City-Respondent decided to proceed with the expropriation of certain immovables necessary for the continuation of the Rosemount Boulevard, from Chambord to Papineau Streets, amongst which immovables was a certain strip of land of over 550 feet in length by 266 feet in width across the centre of the Appellant's quarry. 30

5. The proceedings in expropriation for the ascertaining of the compensation to be paid to the Appellant were held accordingly before the President of the Quebec Public Service Commission who, after having heard the witnesses and the Counsel of both parties, fixed the indemnity payable to the Appellant, at the sum of \$118,709.80, detailed as follows :—

	\$2,036·30.	for 10,181·49 feet of land at 20c a foot, being the extreme South-Western part of said strip of land expropriated;	
	1,755·60	for 8,778 feet of land at 20c a foot, being the extreme North-Eastern part of the said strip of land expropriated;	
	7,204·00	for 144,080 feet of land at 5c a foot, being the intermediary part of said expropriated strip of land, that latter part forming more particularly part of the Appellant's worked quarry;	
10	35,000·00	for 350,000 tons of stone to be left unworked, at 10c a ton;	
	36,000·00	for the equipment, equivalent to \$81,586·45, present value of said equipment, less 45% of depreciation;	
	36,713·90	for the buildings; forming a total sum of	
	<hr/>		
	\$118,709·80	that sum, according to the award, including	p. 349.

20 the value of the land expropriated and worked as a quarry, as well as the damages resulting to the Appellant, in connection with the working of the said quarry, the President (mis-en-cause) coming necessarily to the conclusion, (as shown by the evidence) that the expropriation of said strip of land, across the centre of the Appellant's quarry, had the effect to put an end to the working of the quarry.

p. 54, l. 32.
p. 60, l. 42.
p. 101, l. 22.

30 6. The Appellant, having regard to the great disparity between the comparatively low amount allowed by the award and the high value of its expropriated property, especially as established by the evidence, considered that the mis-en-cause had evidently proceeded upon improper principles, and also disregarded Appellant's evidence, not only uncontradicted, but even implicitly confirmed by the Respondent, and instituted therefore the present action in nullity of the award.

7. The Plaintiff-Appellant raised, among others, two principal grounds in support of his action :—

FIRST: That the above mentioned sections 429 of the Charter of the City-Respondent and 28h (par. 9) of the Quebec Public Service Commission Act were unconstitutional and *ultra vires* of the provincial powers, because they attributed to

the Quebec Public Service Commission and its President, appointed as aforesaid by the Lieutenant-Governor-in-Council, a judicial power and judicial functions appertaining to the exclusive jurisdiction of a Judge of the Superior Court whose appointment, according to the British North America Act 1867, shall be made by the Governor-General of Canada;

SECOND: That in respect of the award, the value determined by the President of the Commission was not that which he was appointed to determine, inasmuch as an important part of the award was fixed upon an improper principle, and moreover inasmuch as the President of the Commission failed to allow to the Appellant, in way of compensation for damages, the value of a substantial quantity of stone to which the latter was entitled, according, it will be submitted, to uncontradicted evidence, the whole as hereunder more specifically alleged:—

(a) That in regard to the value of that part of the land expropriated, forming, as aforesaid, more particularly part of the worked quarry, the President of the Commission had erroneously fixed that value to the nominal sum of 5c a foot, whilst he should have allowed 20c a foot, according to evidence adduced by the City itself; 20

(b) That in respect to the amount of damages allowed for the equipment, the President of the Commission, instead of allowing a depreciation of 45% of the reproduction cost, erroneously allowed a depreciation of 45% of the present value of the equipment, contrary to the evidence given by the Respondent's expert itself;

(c) That in respect to the stone left above the then present ground of the quarry and susceptible of being worked out, the President of the Commission had fixed the value of said stone at 10c a ton only, being the value of the stone in place in a quarry not yet opened, instead of fixing the value to the present owner, the Appellant, viz.: the value for which the stone left unworked would have been sold for, if worked, less the cost of working; 30

(d) That the President of the Commission had allowed only 350,000 tons of stone susceptible of being worked out and left unworked to the then present ground of the quarry, whilst uncontradicted evidence gave 418,000 tons;

(e) That the President of the Commission had refused to allow any quantity of stone susceptible of being worked out, below the then actual level of the quarry, whilst according to evidence adduced, even by the Respondent itself, the quarry could be worked to at least twenty-five feet deeper. 40

8. With respect to the first point, the Attorney-General for the Province of Quebec filed an intervention and joined issue with the Plaintiff-Appellant. p. 21.

9. With respect to the second point, the City-Respondent answered in substance that the grounds raised by the Appellant were merely questions of facts finally decided by the Mis-en-cause, the President of the Quebec Public Service Commission, and that the Appellant's action was nothing but an indirect way of appealing from said decision. p. 12.

10 10. On the 2nd January, 1930, Mr. Justice Archer of the Superior Court dismissed the Plaintiff-Appellant's action. The learned Judge, upon the question of unconstitutionality, declared that the above-mentioned sections of the Charter of the City and of the Quebec Public Service Commission were enunciating mere rules of procedure and were not at all constituting the Commission as a tribunal; that the Quebec Public Service Commission was solely replacing the Board of Commissioners which previously acted as arbitrators for the fixing of the compensation, wrongly assuming, according to the Appellant's contention, that said Board of Commissioners had been legally constituted, and finally that the Commission was at all time under the control of the Superior Court. pp. 223-225.

11. The learned Judge, upon the merits of the award, after having recalled the principles already defined by the Privy Council for the annulment of an award, in a case of *Fraser vs. The City of Fraserville*, reported 1917, A.C. 187, page 194, and by the Supreme Court of Canada, in a case of *The Royal Trust vs. The City of Montreal*, reported 57, Supreme Court Reports, pages 357—358, and after having also quoted especially the following from the *American and British Encyclopædia of Law*, concerning the principles with regard to compensation for mines :— pp. 228-235.

30 “Where the land taken contains minerals, the measure of compensation “is the market value of the land with the minerals in it, and the profits of “the price or value of the minerals, if the minerals themselves had been “taken, will not be considered.

“Thus the number of tons of minerals that could be gotten from the “land and the value per ton of such minerals are not considered, but the “value of the land as mineral land.”

40 concluded that it seemed to him that the President of the Commission had followed these principles and that, in his opinion, no wrong principles had been applied.

pp. 312 & 313.

12. In the Court of King's Bench, Mr. Justice Dorion, in his reasons for judgment on the constitutional question, having first quoted Section 96 of the British North America Act, which enacts that the Governor-General shall appoint the Judges of the Superior, District and County Courts in each Province, concludes that the President of the Commission is not a District or a County Judge, as he has jurisdiction in the whole Province; that though it is difficult to say what is a Superior Court, applying however a distinction between superior and inferior Courts found in Halsbury (vol. 9 v. Courts, page 11, No. 7), the President of the Commission is not a Judge of the Superior Court, because he has no general judicial authority in the Province, his jurisdiction being limited to certain subject matters. The learned Judge admits however that this rule expressed by Halsbury is not without difficulty in its application. Mr. Justice Dorion concludes that the Public Service Commission is not a Court of Justice, but is simply created for administrative purposes, as the railway commission; that the question submitted to the President of the Commission in expropriation matters is not a legal dispute. 10

p. 314, l. 18.

13. With regard to the award, the learned Judge simply says that whatever may be the disparity between the amount allowed by the award and the value established by the evidence, the Court of Appeal has no jurisdiction as to question of facts, the question of facts in expropriation matters being out of the jurisdiction of the Courts. 20

CONSTITUTIONAL QUESTION.

14. The most material sections of the British North America Act, 1867, are as follows:—

(Sec. 92).

“In each Province the legislature may exclusively make laws in relation to matters coming within the Classes of Subjects next herein-after enumerated, that is to say” 30

14. “The administration of justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil matters in those Courts.”

(Sec. 96).

“The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.” 40

(Sec. 98).

“The Judges of the Courts of Quebec shall be selected from the Bar
“of that Province.”

(Sec. 99).

“The Judges of the Superior Courts shall hold office during good
“Behaviour, but shall be removable by the Governor-General on Address
“of the Senate and House of Commons.”

(Sec. 100).

10 “The Salaries, Allowances, and Pensions of the Judges of the
“Superior, District, and County Courts (except the Courts of Probate
“in Nova Scotia and New Brunswick), and of the Admiralty Courts in
“Cases where the Judges thereof are for the time being paid by salary,
“shall be fixed and provided by the Parliament of Canada.”

(Sec. 129).

20 “Except as otherwise provided by this Act, all Laws in force in
“Canada, Nova Scotia, or New Brunswick, at the Union, and all Courts
“of Civil and Criminal Jurisdiction, and all Legal Commissions, Powers,
“and Authorities, and all Officers, Judicial, Administrative, and
“Ministerial, existing therein, at the Union, shall continue in Ontario,
“Quebec, Nova Scotia, and New Brunswick respectively, as if the Union
“had not been made; subject nevertheless (except with respect to such
“as are enacted by or exist under Acts of the Parliament of Great Britain
“or of the Parliament of the United Kingdom of Great Britain and
“Ireland), to be repealed, abolished, or altered by the Parliament of
“Canada, or by the Legislature of the respective province, according to
“the Authority of the Parliament or of that Legislature under this Act.”

30 **15.** Before Confederation and during the Union of Upper and
Lower Canada, consequently at a time when there was no division
of powers and the same Authority had the whole administration
of justice, including the constitution of Courts and the appointment
of all the Judges, the City of Montreal was governed, relating to
expropriations, by the following enactments contained in an Act
27-28 Vict. chap. 60 :—

(Art. 11).

“The Council of the City of Montreal, shall have full power and
“authority to order, by resolutions, the opening, extending or widening
“of streets, etc.”

(Art. 13).

40 “In case the Council of the said city, after having resolved upon
“undertaking and carrying out any of the said works or improvements
“for which it has been necessary to acquire one or more lots of grounds

“or real property cannot come to an amicable arrangement
 “with the persons seized or possessed of or interested in
 “the said lots of ground or real property as regards the
 “price or compensation to be paid for the said lots of ground or real
 “property such price or compensation shall be fixed and
 “determined in the following manner, to wit:

(1) “The corporation of the said city, by its attorney or
 “counsel, shall give notice addressed to it will by and
 “through its attorney and counsel present on the day and hour
 “mentioned in the said notice, to the Superior Court of Lower 10
 “Canada, in and for the said District of Montreal, or to any of the
 “judges of the said Court in Chambers a petition
 “calling upon the said Court or any one of the Judges thereof
 “respectively to choose and nominate three competent and disinter-
 “ested persons to act as Commissioners to fix and determine the
 “price or compensation to be allowed for each and every such lot of
 “ground or real property, etc.”

(2) “The Court or Judge, as the case may be, to whom the
 “said petition shall have been presented, shall appoint three Com-
 “missioners as aforesaid and fix the day on which the said 20
 “Commissioners shall begin their operations and also the day on
 “which they shall make their report;”

(3) “The judgment embodying the said appointment shall be
 “served, with as little delay as possible, upon the said commissioners,
 “who shall be held to accept the said office and to perform the duties
 “thereof, under the penalty of a fine of one hundred dollars, which
 “it shall be competent for the said Superior Court to inflict upon
 “each of the said commissioners upon proof of his or their refusal
 “or neglect to perform the said duties;”

(7) “It shall be the duty of the said commissioners to 30
 “diligently proceed to appraise and determine the amount of the
 “price, indemnity or compensation which they shall deem just and
 “reasonable and the said commissioners are hereby
 “authorized and required to hear the parties and to examine and
 “interrogate their witnesses, as well as the members of the city
 “council and the witnesses of the said corporation ;
 “provided always that if in the discharge of the duties devolving on
 “the said commissioners by virtue of the present Act, there should
 “occur a difference of opinion between them as to the value of the
 “piece of land or real estate about to be expropriated, or upon any 40
 “other question within their province, the decision of two of the
 “said commissioners shall have the same force and effect as if all
 “the commissioners had concurred therein;”

(12) "On the day fixed in and by the judgment appointing
"the said commissioners, the corporation of the said city, by its
"attorney or counsel, shall submit to the said Superior Court or to
"one of the judges thereof respectively, the report containing the
"appraisement of the said commissioners, for the purpose of being
"confirmed and homologated to all intents and purposes; and the
"said Court or Judge, as the case may be, upon being satisfied that
"the proceedings and formalities hereinbefore provided for have
"been observed shall pronounce the confirmation and homologation
10 "of the said report which shall be final as regards all parties
"interested and consequently not open to any appeal."

16. After Confederation, the Charter of the City of Montreal was amended and revised by Statute 62 Vict. chap. 58, and by Article 429 of that Statute, the three Commissioners chosen by the Judges of the Superior Court, as aforesaid, according to the Statute 27—28 Vict., were replaced by a Board of Commissioners appointed by the Legislature of the Province of Quebec, said Article 429 reading as follows:—

20 "A board of expropriation commissioners shall be appointed for the
"purpose of ascertaining the compensation to be paid to the proprietor whose
"building or land is to be expropriated, and of determining, if need be, the
"rights of the city mentioned in the foregoing articles for the acquisition of
"the whole or part of the said buildings."

"Such board shall consist of one of the recorders of the city, who shall
"be the president and convener of the said board, two of the assessors of the
"city to be named by the council, and two other commissioners who shall be
"named by the Superior Court or a judge thereof upon a petition to that
"effect to be made by or on behalf of the city after notice given in the
"manner prescribed for the public notices. The two latter commissioners
30 "shall be appointed upon the exclusive suggestion of the parties interested,
"excluding the city."

"There shall be no appeal from the decision of such commissioners."
(4 Ed. VII, c. 49, s. 18).

Then, by Statute of Quebec, 15 George V, chap. 92, Section 38, the said Board of Commissioners was replaced by the President of the Quebec Public Service Commission, said article reading as follows:—

40 "The President or Acting President of the Quebec Public Service
"Commission shall ascertain the compensation to be paid to the proprietor
"whose building or land is to be expropriated and determine, if need be, the

“rights of the city mentioned in the foregoing articles for the acquisition of
“the whole or part of the said buildings.”

“There shall be no appeal from the decision of the President or Acting
“President of the Quebec Public Service Commission.”

17. Prior to Confederation, the Superior Court and the Circuit Court, as they still exist in the Province of Quebec, had been constituted by 12 Vict., chap. 38, and 20 Vict., chap. 411, as reproduced in the Consolidated Statutes of Lower Canada 1861, under Chap. 78 and 79, respectively entitled “An Act respecting the Superior Court” and “An Act respecting the Circuit Court” and Sections 1, 2, 3, 4, 7 and 8 of Chapter 78 and Sections 1, 2 and 5 of Chapter 79, ascribing the jurisdiction of said Courts as to territory as well as to subject matters, define implicitly what is a Superior Court and a Circuit Court, and consequently what was meant by the words “Judges of the Superior Court” in the British North America Act. 10

18. The Appellant will contend that the fixing of the compensation to be paid to the proprietor whose building or land is expropriated is not an administrative function, but a judicial function, which appertains to the exclusive jurisdiction of a Superior Court and of the Judges of said Court;—that only the authority who has the power to appoint Judges has at the same time power to authorize said Judges to delegate their functions either totally or partially;—that prior to Confederation and during the Union, as the same Authority was vested with the power for the constitution of Courts, as well as for the appointment of Judges of the Superior Court, it was within the province of said Authority to enact that a Judge of the Superior Court, appointed by said Authority, should delegate part of his judicial function and as enacted in the Statute 27—28 Vict. Cap 60, set out in paragraph 15 of this case, choose three competent persons to fix and determine the price and compensation to be allowed to the proprietor whose building or land was to be expropriated. 20 30

19. The Appellant will therefore contend that the legislature of the Province of Quebec, not being vested with the power to appoint Judges of the Superior Court, could not withdraw from the jurisdiction of a Judge of the Superior Court the power to delegate part of his functions, namely: the fixing of compensation in expropriation matters to persons of his own choice and delegate itself such power by appointing, as in the present instance, either a Board of Commissioners or the President of the Public Service Commission. 40

20. The Appellant will also contend that the learned Judge of the Superior Court erroneously found that the legislature of Quebec, by appointing the President of the Quebec Public Service Commission for the ascertaining of the compensation in expropriation cases, was enacting mere rules of procedure, as if the appointment of an arbitrator vested with judicial functions and whose decision is not appealable from, was equivalent to enacting mere rules of procedure.

21. The Appellant will contend that the learned Judge of the Superior Court wrongly found that because the Commission acts as
10 arbitrator and makes report to the Court, as do all arbitrators, quoting as example Article 411 and following of the Civil Code of Procedure of the Province of Quebec, the function of the said Commission was not that of a Court.

22. The Appellant will contend, for the reasons above mentioned, that the Code of Civil Procedure having been enacted before Confederation, it was then within the Province of the Union Government to authorize a Judge of the Superior Court to delegate part of his functions in certain specified cases as those mentioned in
20 Article 411 which reads as follows :—

“The Court, of its own motion, or upon application of either party, or
“the judge, upon the application of either party, may refer to the decision of
“arbitrators any case of dispute between relations concerning partitions or
“other matters of facts which it is difficult for the Court to appreciate and
“also any other case, if the parties consent to it.”

23. The Appellant will contend that since Confederation the legislature of the Province of Quebec could not amend that Article of the Civil Code of Procedure by withdrawing from the jurisdiction of the Superior Court the right to choose the arbitrators referred to
30 in said Article and by appointing said arbitrators to whom the Judges should refer such cases as those specified in said Article 411.

24. The Appellant will further contend that the Quebec Public Service Commission Act creates a Court and constitutes the members of the Commission a Court of Record giving said Court such powers that it is in fact a Superior Court and the Appellant will quote more particularly in support of his contention the following sections of said Quebec Public Service Commission Act :—(Revised Statutes of the Province of Quebec 1925, Chap. 17, Articles 4, 5, 10, 16, 19, 26, 28h, 40, 41, 43, 49, 52, 54, 55, 58, 62, 63).

25. The Appellant will then contend that the Quebec Public Service Commission being a Superior Court, the members of said Commission, as such members of a Superior Court, could not be appointed by the Lieutenant-Governor in Council.

26. The Appellant will also contend, for the reasons stated in the notes of Mr. Justice Perdue and of Mr. Justice Haggart, in a case of *Winnipeg Electric Railway v. City of Winnipeg*, reported: Dominion Law Reports, vol. 30, p. 159 and following, that the above recited Articles 429 of the Charter of the City of Montreal and 28h (par. 9) of the Quebec Public Service Commission Act are *ultra vires* of the powers of the provincial legislature under the British North America Act. 1867. 10

27. The Appellant will also contend that the learned Judge of the Superior Court erroneously found that the Commission was at all time under the control of the Superior Court, because with reference to the fixing of the compensation, though according to Article 439 of the Charter of the City, the said City shall submit to the Superior Court, or to one of the Judges thereof, the report of the Commission for confirmation and homologation, such Court or Judges shall confirm and homologate the said report, if the proceedings and formalities provided have been duly observed, and neither the Superior Court, nor any one of the Judges thereof, has any control upon the decision of the Commission, insofar as the merit of the award is concerned, except, as in the present instance, by direct action for the reasons above set forth. 20

MERITS OF THE AWARD.

28. The Appellant will submit, in the first place:—

That the President of the Commission, contrary to evidence adduced by the City-Respondent itself, erroneously fixed at the nominal sum of 5c a foot only the value of that part of the expropriated strip of land forming more particularly part of the Appellant's worked quarry, whilst on the one hand, notwithstanding the fact that according to the Valuation Roll of the City-Respondent, the whole strip of land expropriated was valued at 8c a foot, he had nevertheless allowed 20c a foot for the extreme parts of said expropriated strip of land, and when, on the other hand, however, Mr. Jules Crépeau, Director of the Municipal Services of the City-Respondent, had declared in his testimony that said City-Respondent had bought old unworked quarries within the City limits, for the purpose of filling them, at a price of even 30c a foot. 30

p. 327.

p. 167, l. 18.
p. 168, l. 9.
p. 168, l. 22.
p. 168, l. 35.

29. The Appellant will therefore submit that for that intermediary strip of land of an area of 144,080 feet, instead of allowing 5c. a foot, amounting to \$7,204.00, the President of the Commission should have allowed at least 20c a foot, amounting to \$28,816.00.

30. The Appellant will submit, in the second place, with reference to damages allowed for the equipment:—

That according to uncontradicted evidence, the President of the Commission should have allowed as depreciation, either 45% or 50% of the reproduction cost of said equipment, as admitted by City-Respondent's expert Boyle, or 10% of the present value, as established by expert Burnett.

p. 173, l. 9.
p. 195, l. 45.
p. 82, l. 42.

31. The Appellant will therefore submit that the President of the Commission, instead of erroneously allowing 45% on \$81,586.45, present value of the equipment equivalent to \$36,000, should have allowed at least 45% on reproduction cost, equivalent to \$52,746.00.

p. 348.

32. The Appellant will submit, in the third place:—

That the President of the Commission, instead of allowing 350,000 tons of stone susceptible of being worked out and left unworked at the then present ground of the quarry, should have allowed, as stated in the Appellant's uncontradicted evidence and even implicitly confirmed by Respondent's evidence, 418,000 tons of stone, thus making a difference of 68,000 tons at 10c a ton, equivalent to \$6,800.00

p. 348.
p. 106, l. 10.
p. 157, l. 2.
p. 180, l. 3.
p. 183, l. 40.

33. The Appellant will submit, in the fourth place:—

That the President of the Commission adopted a wrong principle by allowing only 10c a ton for the stone left unworked, instead of allowing 50c a ton which was the value to the owner;

p. 348.

That according to the evidence adduced by the Respondent's expert, the price of 10c a ton is the price for stone in place in a quarry not yet opened, whilst in the present case the stone left unworked for which compensation was allowed was stone in a quarry in operation, the value of which stone for the owner, according to uncontradicted evidence was 50c a ton net, *i.e.*, after having deducted the cost of working said stone.

p. 184, l. 28.
p. 186, l. 35.
p. 189, l. 24.
p. 56, l. 5.
p. 319.

The Appellant will therefore submit that the President of the Commission, instead of allowing 350,000 tons of stone left unworked at 10c. a ton, *i.e.* \$35,000.00, should have allowed 418,000 tons of stone left unworked at 50c. a ton, equivalent to \$209,000.00.

The Appellant will, in the fifth place, submit:—

That the President of the Commission wrongly refused to allow any quantity of stone susceptible of being worked out, below the then actual level of the quarry, whilst according to evidence adduced even by the Respondent itself, the quarry could be worked at least to twenty-five feet deeper;

That the working of the quarry twenty-five feet deeper would give at least one million tons of stone;

That one million tons of stone at 50c a ton would yield \$500,000 profits to the owner.

10

35. The Appellant will therefore submit that this Appeal should be allowed for the following among other

REASONS.

1. Because the Superior Court of Quebec, according to its Constitution, is the Court which has original civil jurisdiction throughout the Province, with full power and authority to take cognizance of, hear, try and determine, in the first instance and in due course of law, all civil pleas, causes and matters whatsoever, excepting those purely of admiralty jurisdiction, and excepting also those over which original jurisdiction is given to the Circuit Court. 20
2. Because the taking cognizance of, hearing, trying and determining causes and matters in expropriation, including the fixing of compensation, is a civil cause and matter within the exclusive jurisdiction of the Superior Court, not being a matter within the exceptions hereinabove enumerated.
3. Because only the judges of the Superior Court, duly appointed by the Governor-General of Canada, have 30 jurisdiction to take cognizance of, hear, try and determine all civil pleas, causes and matters, excepting those hereinabove enumerated.
4. Because only the Governor-General of Canada who is vested with the power to appoint judges of the Superior Court has the power to authorize said judges to part, either partly or totally, with their jurisdiction and delegate same to other persons.

p. 50, l. 32.
 p. 55, l. 35.
 p. 85, l. 15.
 p. 101, l. 8.
 p. 106, l. 37.
 p. 183, l. 1.
 p. 186, l. 37.
 p. 106, l. 46.
 p. 107, l. 1.

5. Because prior to Confederation, it was in virtue of an Act of the Union Government hereinabove recited, which Government was then vested with both the power to constitute Courts, and to appoint Superior Court judges, that the latter could delegate to arbitrators the power of ascertaining and fixing the compensation in expropriation matters concerning the City-Respondent.
- 10 6. Because since Confederation, though the legislative power to constitute Provincial courts is within the exclusive jurisdiction of the provincial legislature, yet the power to appoint Superior Court judges is still within the exclusive jurisdiction of the Governor-General of Canada, and a provincial legislature has not therefore the right to withdraw from judges of the Superior Court the power to choose persons as arbitrators, which power they have had in Quebec since the Union, and itself to appoint such arbitrators.
- 20 7. Because the Quebec Public Service Commission sitting in expropriation matters is a tribunal taking cognizance of, hearing, trying and determining a civil matter within the exclusive jurisdiction of the Superior Court and therefore, the members of the said Quebec Public Service Commission, appointed as aforesaid, by the Lieutenant-Governor in Council, are without jurisdiction for the hearing and trying said subject matters in expropriation.
- 30 8. Because Sections 429 of the Charter of the City-Respondent and 28h of the Quebec Public Service Commission Act are therefore *ultra vires* and unconstitutional.
9. Because the Provincial Legislatures have no power to authorize the appointment of Judges to Provincial Courts by virtue of Section 92 (14) of the British North America Act or otherwise.
- 40 10. Because the *Mis-en-cause*, the President of the Quebec Public Service Commission erroneously fixed at the nominal sum of 5c a foot the value of that part of the land expropriated, forming part of the Appellant's worked quarry.

11. Because the President of the Quebec Public Service Commission, in respect to the amount of damages allowed for the equipment, instead of allowing a depreciation of 45% of the reproduction cost, erroneously allowed a depreciation of 45% of the present value of the equipment.
12. Because the President of the Quebec Public Service Commission, in respect to the stone left above the then present ground of the quarry and susceptible of being worked out, adopting a wrong principle, fixed the value 10 of the said stone at 10c a ton only, being the value of the stone in place, in a quarry not yet opened, instead of fixing the value to the present owner, the Appellant, viz. : the value for which the stone left unworked would have been sold for, less the cost of working.
13. Because the President of the Quebec Public Service Commission allowed only 350,000 tons of stone susceptible of being worked out and left unworked to the then present ground of the quarry, whilst uncontradicted evidence gave 418,000 tons. 20
14. Because the President of the Quebec Public Service Commission refused to allow for any quantity of stone susceptible of being worked out, below the then actual level of the quarry, whilst according to evidence adduced even by the Respondent itself, the quarry could be worked at least to twenty-five feet deeper.

PAUL St. GERMAIN.

GEOFFREY LAWRENCE.

In the Privy Council.

ON APPEAL

FROM THE COURT OF KING'S BENCH FOR THE
PROVINCE OF QUEBEC (Appeal side).

BETWEEN—

O. MARTINEAU & SONS, LIMITED
(*Plaintiff*) Appellant

— AND —

THE CITY OF MONTREAL (*Defendant*)

— AND —

THE ATTORNEY - GENERAL FOR THE
PROVINCE OF QUEBEC
(*Intervenant*) Respondents.

CASE FOR THE APPELLANT.

LAWRENCE JONES & Co.,
Lloyds Building,
Leadenhall Street,
London, E.C.3