J. ALEXANDER STEVENSON, *et al.* (PETITIONERS)..... } APPELLANTS; 1897

*Feb. 25.

AND

THE CITY OF MONTREAL.....RESPONDENT;

AND

RICHARD WHITE .....MIS-EN-CAUSE.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Appeal—Jurisdiction—Expropriation of lands—Assessments—Local improvements—Future rights—Title to lands and tenements—R. S. C. c. 135, s. 29 (b); 56 V. c. 29, s. 1 (D).

A by-law was passsed for the widening of a portion of a street up to a certain homologated line, and for the necessary expropriations therefor. Assessments for the expropriations for certain years having been made whereby proprietors of a part of the street were relieved from contributing any proportion to the cost, thereby increasing the burden of assessment on the properties actually assessed, the owners of these properties brought an action to set aside the assessments. The Court of Queen's Bench affirmed a judgment dismissing the action. On an application for leave to appeal :

Held, that as the effect of the judgment sought to be appealed from would be to increase the burden of assessment not only for the expropriations then made, but also for expropriations which would have to be made in the future, the judgment was one from which an appeal would lie, the matter in controversy coming within the meaning of the words "and other matters or things where the rights in future might be bound," contained in subsec. (*b*) of sec. 29 Supreme and Exchequer Courts Act, as amended by 56 Vict. ch. 29, sec. 1.

1897

STEVENSON v. THE CITY OF MONTREAL.

MOTION before a judge in chambers, pursuant to section 46 of "The Supreme and Exchequer Courts Act," to have the security approved on an appeal from the judgment of the Court of Queen's Bench for Lower Canada (appeal side), rendered on the 17th day of December, 1896.

A sufficient statement of the facts as shown upon the application is given in the judgment of Mr. Justice Sedgewick now reported.

Weir in support of the motion.

J. A. Ritchie, contra.

SEDGEWICK J.—The facts out of which this case arose may be briefly stated as follows:

Stanley street, in the city of Montreal, runs in a northerly and southerly direction and extends from Osborne street to the confines of Mount Royal Park, being intersected at right angles by Osborne, Dorchester, St. Catherine and Sherbrooke streets. From Sherbrooke street to its northerly limit it extends for a distance of 585 feet. Prior to the proceedings which gave rise to this action it had been determined by the corporation of the city that that portion of this street between Sherbrooke and St. Catherine streets, which was then of the width of 30 feet, should be widened to an additional width of 20 feet, or to 50 feet in all, and a by-law was passed fixing a line 20 feet back from the original line of the street, up to which the properties upon said street should be expropriated for the purpose of carrying out the intended widening of the street. Thereupon a part of the property on this homologated line between Sherbrooke and St. Catherine streets was expropriated and an assessment roll prepared by which the cost of the widening, so far as the expropriation in question was concerned, was cast

upon all the immoveable property situated, not only between St. Catherine and Sherbrooke streets, but also to the north of Sherbrooke street; in other words, the burden of the cost was distributed over the properties on Stanley street from St. Catherine street to the extreme northerly limit of Stanley street. This assessment roll was attacked by Mr. Richard White, a proprietor of an immoveable on that part of Stanley street to the north of Sherbrooke street, who claimed that his property should not be assessed for the widening of Stanley street, because the upper part of Stanley street, as that part north of Sherbrooke street may be called, was, as he alleged, a private and not a public street. This contestation proceeded to judgment, and in June, 1894, the Superior Court maintained the contentions of Mr. White, and quashed the assessment roll.

Further expropriations to carry out the proposed widening of Stanley street, between St. Catherine and Sherbrooke streets, were then proceeded with in the years 1891, 1892 and 1893, and assessment rolls were prepared by which the whole cost of these expropriations was thrown upon the proprietors on Stanley street, between St. Catherine and Sherbrooke streets, and no part of the cost upon Mr. White or other proprietors on Stanley street north of Sherbrooke street.

Thereupon Messrs. Stevenson, Greene and Graham, who seek to appeal in this case, filed petitions asking to have these various assessment rolls set aside on the ground that their assessments were considerably augmented by the improper release of the property on Stanley street north of Sherbrooke street from any portion of the assessment. Mr. White was brought into the case to defend his interests. He contended, among other things, that that part of Stanley street north of Sherbrooke street could not be subjected to

1897

STEVENSON v. THE CITY OF MONTREAL.

Sedgewick J.

any part of the burden of the assessment, first, because the judgment of June, 1894, was *res judicata*, and binding on the petitioners, and settled this point; and secondly, because if not now a private street, it, by agreement with the corporation, was made a public street only on condition that the properties on that part of the street should not be liable to bear any part of the cost of widening the street.

The petitioners joined issue on these pleas, and the case came before the court below for judgment, and the Superior Court held, first, that the judgment of June, 1894, in the action between Mr. White and the city of Montreal, was *res judicata*, and established the fact that the portion of the street north of Sherbrooke was a private street, and therefore not liable to assessment, and secondly, even if that point had not been settled by the judgment, the petitioners had failed to prove that the street was not a private street. This judgment was up held by the Court of Queen's Bench for Lower Canada, and from this latter judgment the petitioners now seek to appeal.

The application in the first instance came before the registrar, who decided that in view of the importance of the case, and in view of the fact, which was mentioned to him by counsel, that several of the judges of the Court of Queen's Bench for Lower Canada had decided to refuse leave to appeal to this court, he ought to refer the application to the judge on the rota, and it therefore came before me in the ordinary course, and I heard counsel for the various parties interested.

After giving the matter careful consideration, I have come to the conclusion that the security should be allowed and the parties permitted to prosecute their appeal before this court. The only question to be determined on this applicatipn is as to whether the case is one coming within section 29 (*b*) of the Supreme

1897

STEVENSON v. THE CITY OF MONTREAL.

Sedgewick J.

and Exchequer Courts Act, which now reads as follows:

No appeal shall lie under this Act from any judgment rendered in the province of Quebec in any action, suit, cause, matter or other judicial proceeding wherein the matter in controversy does not amount to the sum or value of $2,000, unless such matter, if less than that amount—

(*b*) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents and other matters or things where the rights in future might be bound.

And narrowing the question to be decided still further, it is, whether the appeal is one which comes within the words of this section "and other matters or things where the rights in future might be bound."

It is true that Mr. Weir, for the appellants, contended that this matter was one which "relates . . . to . . . title to lands or tenements," but I think no question of title within the meaning of this section is involved, and that the sole question is as to whether any future rights within the meaning of the last clause of the section, might be bound by this judgment.

Many cases were cited to me bearing upon the construction of this statute, but there is one which is not easily to be distinguished from the present case, *Les Ecclésiastiques de St. Sulpice* v. *The City of Montreal* (1). I do not think that any of the later cases impair the effect of this case, which, moreover, was decided before the alteration in the statute which changed the words "such like matters or things," as originally used in the section, to "other matters or things." The effect of the change has been to widen and not restrict the scope of the section. The section as it now stands has been considered in several cases, particularly *Chamberland* v. *Fortier* (2), and *O'Dell* v. *Gregory* (3). In the

(1) 16 Can. S. C. R. 399.
(2) 23 Can. S. C. R. 371.
(3) 24 Can. S. C. R. 661.

1897

STEVENSON v. THE CITY OF MONTREAL.

Sedgewick J.

latter case the only point decided was that the statute as amended does not apply to personal rights. The rights questioned in the present case are certainly not personal rights, but, if not real rights, are at least analogous to real rights, and therefore, in my opinion, within the contemplation of the statute. The question is whether certain properties on Stanley street shall bear a greater or lesser burden of taxation, not only as the result of the expropriations which have already been made, but as the result of expropriations to be hereafter made for the purpose of carrying out the widening of Stanley street to the full width of the homologated line. This appeal will settle the liability of the properties of these petitioners, not only as regards the assessments already made, but the liability of such properties for assessments to be made in the future as the result of further expropriations upon the basis of the homologation. That further expropriations are contemplated as necessary, and will be made, and further assessments imposed similar to those in question herein, is established beyond dispute by the papers which have been put in on the application before me.

Upon consideration of all the cases bearing upon the subject, I have come to the conclusion that this appeal comes within the effect of s.s. (*b*) of s. 29, as it now stands, and that the application should be allowed. I therefore allow it with costs fixed at the sum of $25 to the appellants.

The order will go *nunc pro tunc* as of the 26th day of January last, when the application was first heard before the registrar.

Motion allowed with costs.

Solicitors for the appellants: *Weir & Hibbard.*

Solicitors for the respondent: *Roy & Ethier.*