1900

*May 9, 10.

*Oct. 8.

THE CITY OF MONTREAL.....APPELLANT;

AND

ELZÉAR BÉLANGER AND OTHERS..RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, PROVINCE OF QUEBEC, APPEAL SIDE.

Municipal institution — Expropriation — Assessment—Local improvement —Rating in proportion to benefit—Trivial objections first taken in appeal—52 *V. c.* 79, *ss.* 209, 213, 243 (*Que.*)—54 *V. c.* 78, *s.* 2 (*Que.*) —55 *& 56 V. c.* 49 *s.* 22 (*Que.*)—57 *V. c.* 57 (*Que.*)

Where a statute for the widening of a street directs that part of the cost shall be paid by the owners of property bordering on the street, the apportionment of the tax should be made upon a consideration of the enhancement in value accruing to such properties respectively and the rate levied in proportion to the special benefit each parcel has derived from the local improvement.

Where an assessment roll covering over half a million dollars has been duly confirmed without objection on the part of a ratepayer that his property has been too highly assessed by a comparatively trivial amount, he cannot be permitted afterwards to urge that objection before the courts upon an application to have the assessment roll set aside.

Judgment appealed from, (Q. R. 9 Q. B. 142) reversed ; judgment of the Superior Court, (Q. R. 15 S. C. 43) restored ; Gwynne J. dissenting.

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and Girouard JJ.

1900

THE CITY OF MONTREAL v. BÉLANGER.

APPEAL from the judgment of the Court of Queen's Bench, Province of Quebec, appeal side (1), reversing the judgment of the Superior Court, District of Montreal (2), which dismissed the respondent's petition to set aside an assessment roll for the cost of widening a street in the City of Montreal.

Under the provisions of "The Charter of the City Montreal," the commissioners named in 1891 for the purposes of expropriations and assessments necessary for the widening of a portion of Notre-Dame Street reported, in April, 1892, as to expenses in connection with the works and their report was duly homologated by the court. In June, 1893, their assessment roll apportioning the cost of the improvement between the city and riparian proprietors was confirmed and deposited in the City Treasurer's Office for collection, all in conformity with 55 & 56 Vict. chap. 49, s. 22. In January, 1894, the Act 57 Vict. chap. 57, came into force providing that five-eights of the cost of this work should be borne by the city and the remaining three-eights by riparian owners to a depth of fifty feet. The commissioners, on a consideration of the special advantages accruing to and consequent increased values of the several properties in the area affected by the statute, made a new roll and imposed a larger portion of the three-eights of the cost, chargeable to owners, upon the properties on the north side of the street, than was imposed upon assessable properties situate on the south side which they considered to derive less benefit from the works.

The respondents, by petition to quash the assessment roll, contended that the commissioners had no right to impose a larger proportion of the cost on the north side, and that they had unjustly assessed Bélanger's property partly as an intermediate and partly as

(1) Q. R. 9 Q. B. 142. (2) Q. R. 15 S. C. 43.

1900

THE CITY OF MONTREAL v. BÉLANGER.

a corner lot, on account of the opening of Beaudry Street since the widening of Notre-Dame Street, thereby increasing the portion of the cost of the expropriation chargeable to his property under the new valuation by several hundred dollars.

The Superior Court, Gill J., dismissed the petition and this decision was reversed by the judgment appealed from.

Atwater Q.C. and *Ethier Q.C.* for the appellant. The fullest weight and importance must be given to the report of the commissioners in preference to the opinions of witnesses chosen by parties interested in matters of expropriation. The award of commissioners chosen on account of their fitness and integrity and given discretion as a statutory tribunal should receive the same favour as the verdict of a jury, which has viewed the locality and adjudged personally as to benefits accuring.

As to the objection of excessive assessment, the amount is only of a few hundred dollars on a roll covering over half a million dollars and too trivial to be noticed. At any rate the objection ought to have been taken on a contestation of the roll at the time it was under revision and comes too late on an application to quash. The following authorities are cited :— Angell on Highways (2 ed.) pp. 215-226 ; *In re William and Anthony Streets* (1) ; *In re John and Cherry Streets* (2) ; *In re Pearl Street* (3) ; *Morrison* v. *Mayor of Montreal* (4) ; *Lemoine* v. *City of Montreal* (5) ; *Benning* v. *Atlantic & Northwest Railway Co.* (6) ; *Atlantic & Northwest Railway Co.* v *Wood* (7).

Béique Q.C. for the respondents. The respondents object to the present roll, first, on the ground that both

(1) 19 Wend. 678.
(2) 19 Wend. 659.
(3) 19 Wend. 651.
(4) 3 App. Cas. 148.
(5) 23 Can. S. C. R. 390.
(6) 20 Can. S. C. R. 177.
(7) [1895] A. C. 257 ; Q. R. 2 ; Q. B. 335 ; 18 Legal News 140.

sides of the street should have been treated as one single territory, and each property taxed according to its proportionate assessed value; as was done by the first roll; and for the further reason, peculiar to Bélanger, that the value put upon his property for the purposes of the assessment should have been its value when the expropriation was made, unaffected by subsequent improvements such as the extension of Beaudry Street. The increase is illegal and unjust. The proceedings in connection with the improvement, constitute one single operation, and it required but one single valuation. The change in the situation of the property had nothing to do with the improvement to which the roll related, and was due to another improvement, to the cost of which Bélanger contributed; so that he is made to pay twice for the same thing. The valuation made for the first roll should not have been changed; it was not necessary to re-value the properties on which the assessment was to be levied.

The judgment of the court was delivered by:

TASCHEREAU J.—This is an appeal from a judgment of the Court of Queen's Bench granting the respondents' petition to quash an assessment roll relating to the expropriation required for the widening of Notre-Dame Street east in Montreal. The Supreme Court had dismissed it. The respondents' main ground of complaint against the said assessment roll is that it puts on the north side of the street upon which their lots are situated a larger proportion of the cost of this local improvement than on the south side of it.

After a minute consideration of the divers and much confused statutory enactments bearing on the question, I have come to the conclusion that the Superier Court was right in holding that the respondents' claim is unfounded and that the proprietors on the

1900

THE CITY OF MONTREAL v. BÉLANGER.

Taschereau J.

south side should not be taxed for this improvement at the same rate as those on the north side, when, it is not denied, they do not benefit from it at the same rate. The policy of taxation of this nature rests upon the enhancement of the value of the properties resulting from the local improvement that necessitated it, and there is nothing in this case to justify a departure from that fair and equitable policy. Cooley, on Taxation, 448-459.

The widening in question of Notre-Dame Street East was authorised in 1890 by 54 Vict. ch. 78, sec. 2, and the cost of it was by that Act to be levied and paid by the proprietors on each side of the street to a depth of fifty feet, one half by the city and one half by the said proprietors in accordance with sec. 243 of the charter of the city, 52 Vict. ch. 79. An amendment passed in 1892, 55 & 56 Vict. ch. 49, sec. 22, restricts that division of the cost of the improvement to a certain part of the street, without otherwise altering it, and authorises new assessment rolls to give effect to the said amendment. But by 57 Vict. ch. 57 the apportionment of the cost thereof was altered, and five-eighths are now to be paid by the city and the other three-eights by the proprietors on each side of the street. It is on this last enactment that the respondents base their contention that both sides of the street have to pay in the same proportion the cost of the improvement, though both sides are not improved in the same proportion.

I fail to see any foundation whatever to support the proposition that this last statute can be so construed. All that it does, and all that it purports to do, is to make the city pay five-eights instead of one half, without altering in any way the usual mode of assessing amongst the proprietors the three-eighths that are left to be paid by them, and to use the very words of sec.

243 of the charter, expressly extended to this work by the Act of 1890, "the rules regulating assessments in general." Now these rules are (by sec. 209 of the charter) that the city when it orders that the cost of a local improvement shall be paid in whole or in part by the parties interested shall be assessed upon their properties proportionately to the benefit that the improvement brings to them; secs. 209, 213. And says sec. 228:

> It shall be the duty of the commissioners to determine the proportion in which the proprietors * * * * shall be respectively assessed, and to assess and apportion, in such manner as to them may appear most reasonable and just, the compensation accorded by them for the land taken and the costs and expenses incurred in and about such expropriation * * * * upon all the immoveable properties declared to be benefited by such improvement * * * * taking into account the benefit to be derived from the improvement in the proportions so determined by the commissioners.

Now, why the benefit to be derived from the widening of Notre-Dame Street should not likewise be taken into account, and the north side be made to pay more than the south side if it benefits more from it, is what I entirely fail to see. In the absence of a clear and express enactment to support it, the respondents' proposition to the contrary cannot be countenanced. What has been declared by the legislature and all that has been so declared in the matter is that 50 feet of the properties on each side of the street are specially benefitted by this widening of the street, and that three-eighths of the cost thereof should be borne by the owners of the said properties, but there is nowhere to be found the enactment that the assessment of these three-eighths should be made regardless of the benefit that accrues to each of these properties from this improvement, or, what the respondents' contention amounts to, that the south side proprietors should pay more than the north side ones, for, as they benefit less than the north side, it is obvious that to make them

1900

THE CITY OF MONTREAL v. BÉLANGER.

Taschereau J.

pay at the same rate would be to make them pay more. Special benefits to the property assessed, that is benefits received by it in addition to those received by other properties liable to the assessment, is the true foundation upon which these local assessments rest; Dillon Mun. Corp. 761. Here, the legislature has declared what are the properties generally benefited by the widening of this street, and to what extent as between them and the corporation of the city the cost of it should be borne, but it has left with the assessors, as usual in such cases, to apportion the burden according to the benefit and to determine what part of that benefit each parcel of these properties actually and separately receives, and for that purpose, by sec. 3 of 57 Vict. ch. 57, the assessors are specially empowered to give effect to the alterations introduced by the Act. The fact that by the previous roll both sides of the street had been assessed at the same rate cannot affect the case. That roll having been set aside, the assessors had the right by the new roll to act as they did, if, as a fact, not open to review here, they found that the north side had benefited more than the south side from this improvement.

Another ground of complaint against this assessment roll is made by one of the respondents, Bélanger, based upon the fact that he is charged $381.60 more by this roll than he was by the preceding roll which was set aside by the legislature. He contends that the subsequent increase in value of his property should not have been taken into account by the new roll. The *considérants* of the judgment of the Court of Appeal do not notice this objection, and there is nothing in it. There is no evidence that the respondent urged this ground of complaint before the Board of Revisors; the assessment was duly confirmed by the statutory tribunal; and for him now to ask that a roll on a valuation

of over half a million dollars should be set aside because he is assessed $381 more than he thinks he ought to have been, seems to me a preposterous demand.

The appeal is allowed with costs and the judgment of the Superior Court restored.

GWYNNE J. (dissenting).—I entirely concur in the judgment of the court below to which I cannot usefully add anything. I must therefore dissent from the present judgment.

THE CHIEF JUSTICE was prevented by illness from taking part in the judgment.

Appeal allowed with costs.

Solicitors for the appellant: *Ethier & Archambault.*

Solicitors for the respondents: *Béïque, Lafontaine, Turgeon & Robertson.*