

60 of 1903

UNIVERSITY OF LONDON
W.C.1.
11 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

29369

In the Privy Council.

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

BETWEEN :

THE HON. THOMAS CHASE CASGRAIN,

(Respondent in the Court of Queen's Bench.)

APPELLANT IN THE PRIVY COUNCIL.

AND

THE ATLANTIC AND NORTH-WEST RAILWAY COMPANY,

(Appellants in the Court of Queen's Bench,)

RESPONDENT IN THE PRIVY COUNCIL.

AND

THE CITY OF MONTREAL, ----- INTERVENING PARTY.

RECORD OF PROCEEDINGS.

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In the Privy Council.

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

BETWEEN :

THE HONORABLE THOMAS CHASE CASGRAIN,

APPELLANT,

AND

THE ATLANTIC & NORTH-WEST RAILWAY CO'Y.

RESPONDENT.

RECORD OF PROCEEDINGS.

RECORD
 ———
In the
Court of
Queen's Bench
 ———

TRANSCRIPT of Records and Proceedings in the Courts of the Province of Quebec, appealed from, in a cause between :

THE ATLANTIC AND NORTH-WEST RAILWAY COMPANY,

Defendants,

APPELLANTS,

AND

THE HONORABLE ARTHUR TURCOTTE, Attorney General, 10

Petitioner,

AND

THE HONORABLE JOSEPH EMERY ROBIDOUX, ès qualité of Attorney General,

Petitioner par reprise d'instance,

20

AND

THE HONORABLE THOMAS CHASE CASGRAIN, ès-qualité of Attorney General,

Petitioner par reprise d'instance,

AND

THE CITY OF MONTREAL, 30

Intervening party,

RESPONDENTS.

Canada, }
 Province of Quebec. }

In the Court of Queen's Bench,
 (Appeal side.)

Transcript of all the rules, orders and proceedings found in the Record and Register of Her Majesty's Court of Queen's Bench for Lower Canada, in the Province of Quebec, appeal side, in the matter lately pending and wherein The Atlantic and North West Railway Company (Defendants in the Superior Court) were Appellants in the said Court of Queen's Bench (appeal side) and the Hon. Arthur Turcotte, Attorney General, Plaintiff and Petitioner in the said Superior 40

Court was Respondent in the said Court of Queen's Bench and the said Hon. Jos. E. Robidoux Petitioner *par reprise d'instance* and the City of Montreal, Intervening party, transmitted to the Court of Queen's Bench upon the Appeal side, in virtue of a writ of appeal sued out by the said The Atlantic and North West Railway Company, and to be transmitted to Her Majesty in Her Privy Council on the appeal of the said The Honorable Thomas Chase Casgrain.

RECORD.
—
*In the
Court of
Queen's Bench*
—

10

DOCUMENT II.

Canada, } VICTORIA, by the Grace of God, of the United King-
Province of Quebec. } dom of Great Britain and Ireland, Queen, Defender of
 } the Faith.

No. 1.
Writ of Ap-
peal, dated
5th June,
1891.

To the Chief Justice and Justices of Our Superior Court for Lower Canada,

20

Greeting :

Whereas, in the Plaint lately pending in Our Superior Court for Lower Canada, sitting in the City of Montreal, in the District of Montreal, before you, between The Honorable Arthur Turcotte, of the City and District of Quebec, in his capacity of Attorney General of the Province of Quebec, Plaintiff, and The Atlantic and North West Railway Company, a body politic and corporate, having its principal place of business in the City and District of Montreal, Defendant, and The Honorable Joseph Emery Robidoux, of the City and District of Montreal, in his quality of Attorney General of the Province of Quebec, Plain-
30 tiff, *par reprise d'instance*, and the City of Montreal, a body politic and corporate, having its principal office in Montreal, Intervenants.

They, the said The Atlantic and North West Railway Company, as by their complaint, (We are informed) are aggrieved by the final judgment of the sixteenth day of May last past (1891) therein given.—We, willing that the said judgment should be revised and examined by Our Court of Queen's Bench for Lower Canada, and full and speedy justice done in the premises, do command you, that you, or any of you, do send under your Signatures, and the Seal of Our Superior Court, all the original papers and proceedings in the Cause, and
40 a Transcript of all the Rules, Orders and Proceedings found in the record or register of Our said Superior Court, concerning the same, to Our said Court of Queen's Bench, that the Judges thereof may have them before them at their Court House, in Our City of Montreal, in Our Province of Quebec on Thursday the twenty-fifth day of June instant, that revising and examining the same, they may cause further to be done thereupon what of right, according to the laws and customs of Our said Province, is meet to be done.

In witness whereof, We have caused the Seal of Our said Court of Queen's Bench to be hereunto affixed.

RECORD. At Our City of Montreal, this fifth day of June, in the year of Our Lord, one thousand eight hundred and ninety-one, in the fifty-fourth year of Our Reign.

In the Court of Queen's Bench
 ABOYTS, CAMPBELL & MEREDITH,
 Attorneys for Appellants.

L. W. MARCHAND,
 Clerk of Appeals.

No. 1.
 Writ of Appeal, dated 5th June, 1889.
 —Continued.

(On the Back.)
 The Execution of this Writ appears by the Schedules hereunto annexed.
 Montreal, 10th September, 1891. 10

E. DESMARAIS,
 Dep. P.S.C.

(Endorsed.)

Writ of Appeal. Returnable the 25th day of March, 1891.
 Returned and fyled in the Appeal-Office, in the City of Montreal, this 10th day of September, 1891.

(Paraphed)

L. O., Dep. C.A.

20

In the Superior Court.

No. 2.
 Proceedings in the Superior Court, from the 14th February, 1889, to the 22nd June, 1891.

The 14th February 1889.
 Messrs. Barnard & Barnard appear for Honorable Arthur Turcotte in his quality of Attorney-General for the Province of Quebec and present a Petition praying that a writ of summons do issue against said Defendants under Article 997 of the Code of Civil Procedure ; 30
 Petition granted by his Honor Mr. Justice Mathieu.
 The Petitioner files list and Exhibit "A" in support of his Petition.

The 14th February 1889.

Present.

[In Chambers.]

The Honorable Mr. Justice MATHIEU.

Having seen the Petition this day presented on behalf of the Plaintiff and the affidavit in support thereof, I, the undersigned Judge, do grant the said petition and for the causes and reasons therein alleged, do order that a Writ of Summons under the Article 997 of the Code of Civil Procedure do issue in the present Case as prayed :

Mandons etc.

(Signed.)

M. MATHIEU.

J. C. S.

Messrs. Barnard & Barnard appear for the said Plaintiff and require a Writ of Summons against the said Defendants, in accordance with the foregoing order and make a deposit of two hundred dollars as security for costs.

A Writ of Summons is issued as required against said Defendants, returnable on the 19th February instant.

The 19th February 1889.

Joseph Sipling, one of the Bailiffs of this Court, returns the Writ of Summons in this cause, with the Petition and affidavit thereto annexed and a certificate of service.

The 19th February 1889.

Messrs. Abbotts, Campbell & Meredith appear for said Defendants and give notice thereof to said Plaintiff.

The 15th March 1889.

The Defendants file *Demurrer* and Pleas with notice to Plaintiff.

The 15th March, 1889.

20 The Defendants file list and Exhibits Nos. 1, 2, 3, 4, 5, 6, in support of Pleas.

The 16th of March 1889.

The Plaintiff files motion that the *demurrer* filed herein by said Defendants be rejected out of the record, etc., with notice to said Defendants.

PRESENT :

The Honorable Mr. Justice MATHIEU.

La Cour, parties ouïes sur la motion du demandeur pour faire renvoyer la *défense en droit* de la Défenderesse, Renvoie la dite motion.

30

The 18th March 1889.

The Plaintiff files replication to Defendants' *Demurrer*, with notice thereof.

The 18th March 1889.

The Plaintiff files *demurrer* to Defendants' first Plea, with certificate of Service.

The Defendants file their option that the present cause be tried at Enquête and Merits, with certificate of Service ;

40 The Plaintiff inscribes the present cause for hearing on *défense en droit* of Defendants on the 19th March instant, and gives notice thereof to Defendants.

The 22nd March 1889.

The Defendants file replication to Plaintiff's *demurrer* to Defendant's first plea, with notice thereof ;

The Plaintiff inscribes for hearing on Plaintiff's and Defendants *demurrers* for the 22nd of March instant and gives notice thereof to Defendants.

RECORD.

—
*In the
Superior
Court.*
—

No. 2.
Proceedings
in the
Superior
Court, from
4th of
February,
1889, to the
22nd June,
1891.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 2.
 Proceedings
 in the
 Superior
 Court, from
 the 14th of
 February,
 1889, to the
 22nd June,
 1891.

The 22nd March, 1889.

At the hearing upon Plaintiff's and Defendants' *Demurrers*.

PRESENT :

The Honorable Mr. Justice MATHIEU.

P. O. C. A. V.

The 29th March 1889.

PRESENT.

The Honorable Mr. Justice MATHIEU.

La Cour, après avoir entendu les parties par leurs procureurs tant sur la 10
 défense en droit de la Défenderesse que sur la réponse en droit du Demandeur,
 examiné la procédure et délibéré ;

Attendu que le Demandeur allègue dans sa requête, que jusqu'en l'année
 1887, il existait dans la Cité de Montréal, une rue publique appelée rue
 Blache, ou ruelle Blache, ayant sa sortie sur la rue de la Montagne et courant
 dans la direction de la rue Donegani et comme une continuation d'icelle, com-
 mençant vis-à-vis le numéro du cadastre 661 du quartier St. Antoine, et
 s'étendant jusqu'à la rue de la Montagne comme susdit ; que le terrain de cette 20
 rue avait été dédié à l'usage du public depuis un temps immémorial et qu'elle
 avait été reconnue et déclarée rue publique par un jugement de la Cour du
 Banc de la Reine du Bas-Canada, en appel, rendu à Montréal, le 9 Mars 1864,
 dans une cause intentée pour faire déclarer cette rue publique, dans laquelle
 Sarah Johnson et autres étaient Demandeurs et Joseph Archambault Défен-
 deur ; que dans l'année 1887 la Défenderesse a acquis par expropriation une
 lisière de terre bordant cette rue de chaque côté, et sous prétexte que tous les
 droits de servitudes en faveur des propriétaires adjacents à cette rue appar-
 tenaient à la Défenderesse seule, cette dernière a depuis la dite expropriation
 fermé cette rue, à son intersection avec la rue de la Montagne, rendant impos- 30
 sible au public tout accès à cette rue, à laquelle on ne pouvait communiquer
 autrement que par la rue de la Montagne ; que la fermeture de cette rue cause
 des dommages spéciaux à William Walker, manufacturier de la Cité de Mon-
 tréal, et aux autres propriétaires, dont les propriétés, avant la dite expropria-
 tion, bordaient la dite rue, vu que la dite expropriation fut faite avec l'entente
 formelle que les dites propriétés ne perdraient pas, en raison de la dite expro-
 priation, leur front sur une rue, et que par la fermeture de cette rue les pro-
 priétés du dit William Walker et des autres propriétaires qui avaient ci-devant
 leur front sur la dite rue Blache, n'ont plus maintenant de sortie en arrière
 d'icelle, ce qui cause au dit William Walker, des dommages au montant de 40
 \$5,000 ; que la fermeture de la dite rue est illégale et n'est pas autorisée par la
 loi, et tombe sous les dispositions de l'article 997 du Code de Procédure Civile ;
 que cette poursuite est prise à la sollicitation du dit William Walker et que la
 personne qui s'est portée caution d'indemniser le Gouvernement des frais à en-
 courir sur cette procédure est Thomas Darling, comptable de Montréal, et il
 conclut à ce qu'un bref de sommation émane, sous les dispositions du dit
 article 997 et les articles suivants du Code de Procédure Civile, et que la Dé-

fenderesse soit condamnée à ré-ouvrir cette rue, et à la tenir libre à l'usage du public, et à la remettre dans la même condition où elle était avant qu'elle l'ait fermée, et à ce qu'à défaut par la dite Défenderesse de ré-ouvrir la dite rue sous quinze jours de la signification du jugement à être rendu, elle soit ré-ouverte à ses frais ;

10 Attendu que la Défenderesse a, par une défense en droit, demandé le renvoi de la poursuite du Demandeur pour les raisons suivantes : parceque les articles 997 et suivants du Code de Procédure Civile n'autorisent pas la poursuite du Demandeur et que le Procureur-Général n'a pas, sous ces dispositions de la loi, le recours qu'il prétend exercer et ne peut obtenir que la Défenderesse soit condamnée à ré-ouvrir cette rue, ou la remettre dans la même condition où elle était auparavant ou à ce qu'elle soit ré-ouverte aux dépens de la Défenderesse ; parcequ'il appert à la dite requête que cette rue est située dans les limites de la Cité de Montréal ; qu'elle est une rue publique, et qu'il n'appert pas que la dite Cité soit partie à cette poursuite ou ait été requise ou ait refusé de prendre les moyens de faire ouvrir la rue ;

20 Attendu que la Défenderesse par un premier plaidoyer, après la défense en droit susdite, allégué que le Demandeur, dans sa capacité de Procureur-Général de la Province de Québec, n'a pas le droit de prendre les conclusions qu'il prend dans sa requête ; que la Défenderesse est un corps politique et a été incorporée par un Statut du Parlement de la Puissance du Canada et est sujette à la juridiction exclusive du Parlement de la Puissance du Canada et des officiers du Gouvernement de la Puissance du Canada, et que le Procureur-Général de la Province de Québec, n'a pas par la loi ou la constitution, le droit de prendre aucune poursuite contre la Défenderesse ;

30 Attendu que le Demandeur par une réponse en droit, a demandé le renvoi de ce dernier plaidoyer, alléguant que le fait qu'une corporation aurait été créée sous d'autres lois que celles de la Province de Québec, n'affecte pas le droit du Procureur-Général d'intervenir lorsque la Corporation exerce dans la Province, au détriment de ses habitants, aucun droit, privilège ou franchise qui ne lui appartiennent pas, ou qui ne lui sont pas accordés par la loi ;

Sur la défense en droit de la Défenderesse ;

Considérant que cette Cour sera mieux en position, lorsque la preuve sera faite, de décider si l'acte que le Demandeur reproche à la Défenderesse, tombe sous les dispositions de l'article 997 du Code de Procédure Civile ;

A ordonné et ordonne preuve avant faire droit sur la dite défense en droit, dépens réservés ;

Sur la dite réponse en droit du Demandeur ;

40 Considérant que le Procureur-Général, dans la Province de Québec, est spécialement chargé de voir à l'observation des lois, dans la dite Province, et que son action n'est pas limitée aux lois faites par la Province, mais à toutes les lois qui y sont en force, de quelqu'autorité qu'elles émanent ;

Considérant que les Corporations formées par le Parlement de la Puissance peuvent être poursuivies par le dit Procureur-Général, si elles enfreignent des dispositions de la loi, et causent quelques préjudices aux particuliers ou au public en général ;

RECORD

—
*In the
Superior
Court.*

—
No. 2.

Proceedings
in the Su-
perior Court,
from the 14th
February,
1889, to the
22nd June,
1891.

—Continued.

RECORD.

A maintenu et maintient la dite réponse en droit, et a renvoyé et renvoie le dit plaidoyer, avec dépeus, distraits à M. M. Barnard & Barnard, avocats du Demandeur.

—
In the
Superior
Court.

No. 2.

The 11th May 1889,
The Plaintiff files special answer to Defendants' second plea ; with certificate of service.

Proceedings
in the Su-
perior Court,
from the 14th
February,
1889, to the
22nd June,
1891.

The 27th May 1889.
The Defendants file special replication to Plaintiff's answer, with notice thereof. 10

The 10th June 1889.
The Plaintiff inscribes this cause for Enquête and Merits for the 11th June instant, deposits \$10 and gives notice thereof to Defendants.

—Continued.

The 8th July 1889.
The Defendants file their articulations of facts, with notice thereof.

20

The 10th September 1889.
ROUER ROY, Esquire, appears for the City of Montreal and presents a Petition praying that the said City of Montreal be permitted to intervene herein, with a certificate of service.

PRESENT :

The Honorable Mr. Justice DAVIDSON.

The Court, upon the Petition this day filed by the City of Montreal, doth permit the said City of Montreal to intervene in this cause for the purpose of watching the proceedings, taking such conclusions or making such declarations therein as they may be advised. 30

The 14th September 1889.
A certificate is filed of no return of service upon the parties of the order of the Judge of the 10th September instant.

The 16th September 1889.
The Defendants file motion that the Petition in Intervention herein filed by the City of Montreal be rejected from the record, with certificate of service upon the parties herein. 40

Present :

The Honorable Mr. Justice TAIT.

P. O. C. A. V.

The 17th September 1889.
The Defendants file Contestation of Intervention, with certificate of service.

The 23rd September 1889.
The Honorable Mr. Justice TAIT.

The Court, having heard the parties by their counsel upon the Defendants' motion to reject the Intervention, examined the proceedings and deliberated.

Doth reject the said motion, with costs.

The 25th September 1889.

The Intervenants file general answers to Defendants' pleas.

10

The 3rd October 1889.

The Defendants inscribe this cause for hearing upon contestation of Intervention, for the 4th October instant, with certificate of service.

The 4th October 1889.

Present :

The Honorable Mr. Justice MATHIEU.

P. O. C. A. V.

20

The 5th of October, 1889,

Present :

The Hon. Mr. Justice MATHIEU.

La Cour après avoir entendu les parties par leurs avocats, sur la contestation par la Défenderesse de l'Intervention produite par la Cité de Montréal, dans la présente instance, avoir examiné la procédure, les pièces au dossier et délibéré :

Attendu que le Demandeur, en sa qualité de Procureur-Général de la Province de Québec, allègue, dans sa requête que jusqu'en l'année 1887, une certaine rue ou ruelle, dans la Cité de Montréal, appelée rue Blache, existait comme rue publique ; que dans la dite année 1887, la Défenderesse a acquis, par expropriation, une lisière de terre faisant face à la dite ruelle de chaque côté d'icelle, et, prétendant que cette acquisition lui donnait le droit qu'avaient les propriétaires longeant cette ruelle, elle l'a fermée ; que la fermeture de cette ruelle est spécialement préjudiciable à William Walker, manufacturier, de la Cité de Montreal, et autres propriétaires dont les terrains, avant la dite expropriation bornaient la dite ruelle, vu que la dite expropriation fut faite, avec l'entente expresse que les terrains des dits propriétaires ne perdraient pas leur part sur la dite ruelle ; que la fermeture de cette ruelle empêche le public d'y circuler, et est une violation de la loi et soumet la Défenderesse aux procédures indiquées par l'Article 997, du Code de Procédure Civile ; que cette poursuite est prise à la réquisition du dit William Walker, et que la personne qui a fourni le cautionnement d'indemniser le gouvernement des frais à encourir sur

RECORD.

*In the
Superior
Court.*

No. 2.
Proceedings
in the
Superior
Court, from
4th of
February,
1889, to the
22nd June,
1891.

—Continued.

RECORD.

*In the
Superior
Court.*

No. 2.

Proceedings
in the Su-
perior Court,
from the 14th
February,
1889, to the
22nd June,
1891.

—Continued.

telle procédure est Thomas Darling, comptable, de la Cité de Montréal, et il conclut à ce que la Défenderesse soit condamnée à ré-ouvrir la dite ruelle pour l'usage du public, et à ce qu'à défaut par elle de ce faire, sous quinze jours de la signification du jugement à être rendu, elle soit réouverte aux dépens de la Défenderesse ;

Attendu que la Défenderesse a produit entr'autres plaidoyers, une défense en droit, demandant le renvoi de la dite poursuite, pour les raisons suivantes : parce qu'il appert à la dite requête, que la présente poursuite est prise sous les dispositions des articles 997 et suivants, du Code de Procédure Civile, et que ces articles n'autorisent pas la présente action, parce qu'il est allégué que la dite ruelle est située dans les limites de la Cité de Montréal, et qu'il n'appert pas que la dite Cité de Montréal, ait été appelée ou soit partie dans la dite poursuite ;

Attendu que le 10 Septembre dernier, la Cité de Montréal, a présentée à un juge de cette Cour, une requête alléguant qu'elle est intéressée dans la matière en question en cette cause, et qu'elle désire intervenir, dans le but de surveiller la procédure, et de prendre les conclusions qu'elle jugera à propos de prendre ;

Attendu que la Défenderesse a produit une contestation en fait, alléguant que la requête en intervention n'avait pas été signifiée dans les trois jours de sa présentation, et une autre contestation en droit de cette requête en intervention, en demandant le renvoi, pour les raisons suivantes : parceque la dite Cité de Montréal n'est pas intéressée dans cette poursuite qui est faite au nom de Sa Majesté, sous les dispositions de l'article 997, du Code de Procédure Civile ; parceque le Procureur Général représente le public, et qu'il n'y a pas lieu de faire représenter les individus par d'autres parties, et, parceque l'intervenante n'a pas le droit au bénéfice des dispositions spéciales du Code de Procédure, au sujet d'une poursuite de cette nature ;

Considérant que la dite requête pour permission d'intervenir a été signifiée avant sa présentation ;

Considérant que par l'article 154, du Code de Procédure Civile, toute personne intéressée dans l'issue d'un procès pendant à le droit d'y être partie, afin d'y faire valoir ses intérêts ;

Considérant que la Cité de Montréal, est spécialement chargée du maintien et de l'entretien des rues, dans la dite Cité, et que, partant, elle est intéressée dans l'issue de ce procès ;

Considérant qu'un particulier peut, lorsqu'il a intérêt, se joindre au souverain ou à ses représentants, pour une poursuite d'intérêt commun, et que, dans tous les cas, la Defenderesse ne peut, en excipant du droit du souverain, empêcher la Corporation de se joindre à la poursuite du Procureur-Général, et que l'objection que pourrait faire valoir le Procureur Général n'appartient pas à la Défenderesse.

A renvoyé et renvoie la dite Contestation de la dite requête en intervention, et déclare l'intervention de la dite Cité de Montréal admise avec dépens contre la Défenderesse.

(Vraie copie)

- The 12th October, 1889,
The City of Montreal file their *moyens d'intervention*, with a certificate of service upon Defendants Contestants.
- The 21st October, 1889.
The Intervenants file their articulations of facts, with notice thereof ;
- The 6th November, 1889.
The Defendants Contestants file answers to Intervenants articulation of 10 facts, with notice thereof.
- The 29th October, 1889.
The Intervenants inscribe the present cause for Enquête and Merits, upon Intervention for the 29th October, instant ; deposit \$10 for Stenography, and give notice thereof to Defendants-Contestants.
- The 20th January, 1890.
The Intervenants re-inscribe this cause for Enquête & Merits in 3rd division, upon Intervention for the 21st January, instant, and give notice 20 thereof, to Defendants Contesting.
- The 25th April, 1890.
The Intervenants file list and Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 at Enquête.
- The 1st May, 1890.
The Plaintiff files answers to Defendant's art. of facts, with notice thereof.
- 30 The Plaintiff files his art. of facts, with notice thereof.
The Defendants file answers to Plaintiff's art. of facts with notice thereof.
- *
- The parties file consent that the depositions taken and the Exhibits filed by the City of Montreal, on its Intervention, avail the Petitioner, as part of his evidence on the main action and *vice versa*, and the depositions taken and Exhibits filed by the Defendants, on said Intervention, serve also as part of said Defendant's evidence on the main action and *vice versa*.
- 49 The Plaintiff files list and Exhibits "A" "B" "C" "D" "E" "XX" "YY" and "ZZ" at Enquête.
- The 3rd May, 1890.
The Plaintiff declares his Enquête closed and gives notice to Defendants to proceed with their Enquête on the 7th May, instant.

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The 12th May, 1890.

The Intervenants declare their Enquête closed and give notice to Defendants to proceed with their Enquête on the 13th May, instant.

The 6th June, 1890.

The Defendants file motion that a rule *nisi* do issue against the witness Thomas Webb.

PRESENT :

Mr. Justice WURTELE.

Motion granted, rule *nisi* to issue, made returnable on the 10th instant. 10

A rule *nisi* is issued in accordance with foregoing order.

The 12th June, 1890.

Robert W. Larkin, one of the Bailiffs of this Court, returns the rule *nisi* issued herein, with a certificate of service.

The 7th July, 1890.

The Plaintiff inscribes the present cause for hearing on the merits and gives notice thereof to Defendants and to Intervenants, for the 8th July next. 20

The 10th July, 1890.

The Attorney-General, Hon. A. Turcotte, files special power of Attorney to C. A. Geoffrion, advocate, with notice to Messrs. Barnard & Barnard, to suspend all proceedings herein in the name of the Attorney-General.

The 30th July, 1890.

The Intervenants re-inscribe this cause for enquête and merits upon the Intervention for the 1st of August next, and give notice thereof.

The 31st July, 1890. 30

The Attorney-General, Hon. A. Turcotte, files a discontinuation of the present action without costs, praying *acte* thereof, with certificate of service.

The 8th August, 1890.

Messrs. Barnard & Barnard appear for William Walker and file a petition with affidavit, praying that a writ of *Mandamus* do issue commanding the Hon. A. Turcotte to withdraw his discontinuation of the present action, with certificate of service, with list and Exhibit No. 1. 40

Present :

The Honorable Mr. Justice de LORIMER,
P. O.

Let the Writ issue.

Messrs. Barnard & Barnard appear for the Petitioner, William Walker, and require a Writ of *Mandamus* to issue against said Attorney-General, Hon.

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A. Turcotte.

A Writ of *Mandamus* issueth against Hon. A. Turcotte, in his said quality, said writ returnable on the 22nd August instant.

The 18th August, 1890.

Messrs. Abbotts, Campbell & Meredith appear for the said Defendants upon the Writ of *Mandamus* and give notice thereof to Petitioner Walker.

The 22nd August, 1890.

10 Writ of *Mandamus* is returned with copy of Petition for *Mandamus* and a certificate of service; and also list and Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7.

Messrs. Geoffrion, Dorion & Allan appear for Hon. A. Turcotte upon said *Mandamus*, and give notice thereof to Petitioner Walker.

The 28th August, 1890.

Messrs. Barnard & Barnard appear for Petitioner Walker, and require a writ of Summons *en reprise d'instance* against Hon. J. E. Robidoux, in his quality of Attorney-General for the Province of Quebec.

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The 28th August, 1890.

A Writ of Summons *en reprise d'instance* against Hon. Joseph E. Robidoux is issued as asked for, said writ made returnable on the 1st September next.

The 1st September, 1890.

F. Fiorinaz, one of the Bailiffs of this Court, returns the writ *en reprise d'instance* in this cause, with the Petition thereto annexed, and a certificate of service.

30

C. A. Geoffrion, Ecuier, comparait pour l'Hon. Jos. E. Robidoux, en sa qualité de Procureur-Général, declare s'en rapporter à justice et en donne avis au requérant William Walker.

The 3rd September, 1890.

The Hon. A. Turcotte files plea to the action taken against him personally by Petitioner Walker, with certificate of service.

The 5th September, 1890.

45 The Petitioner, Willam Walker, files offer to discontinue his demand for costs personally against Hon. A. Turcotte, etc., with certificate of service.

The 5th September, 1890.

The Petitioner Walker, files motion that the plea filed herein by Hon. A. Turcotte upon Petition for *Mandamus* be rejected from the record, with certificate of service.

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PRESENT :

The Honorable Mr. Justice PAGNUELO.

P. O. . . . C. A. V.

The 6th September, 1890.

PRESENT :

The Honorable Mr. Justice PAGNUELO.

La cour ayant entendu les parties sur la motion du dit William Walker, pour faire rejeter le plaidoyer du Défendeur Turcotte comme produit irrégulièrement et après le délai fixé par la loi ;

Considerent que la bref de *Mandamus* contre l'Honorable A. Turcotte a été rapporté le 26 août ;

Que par ces conclusions le dit William Walker demande à ce que le dit A. Turcotte soit condamné aux frais personnellement ;

Que le même jour le dit A. Turcotte a comparu par procureur en son nom personnel et a dénoncé qu'il avait cessé d'agir comme Procureur-General ;

Que l'instance a été reprise par le nouveau Procureur-Général Robidoux, le 1er septembre courant ;

Que le 3 septembre le dit A. Turcotte a plaidé à la demande faite contre lui personnellement pour les frais ;

Considérant que les frais ne peuvent être accordés au Demondeur que s'il réussit sur la demande principale.

Que la procédure sur la demande principale a été suspendue par la dénonciation du changement d'état du dit A. Turcotte et que les délais n'ont commencé à courir que le 1er septembre, lors de la reprise d'instance par le nouveau Procureur-General ;

Qu'en conséquence le plaidoyer du dit A. Turcotte, produit le 3 septembre, l'a été en temps utile.

Vu l'art. 437, C. P. C.

Renvoie la motion avec dépens, distraits à Messrs. Geoffrion, Dorion & Allan. 30

The 12th September, 1890.

The Petitioner, William Walker, files general answer to Hon. A. Turcotte's plea, with certificate of service.

The Petitioner, William Walker, inscribes this cause for proof upon the *Mandamus*, and against the Defendant *par reprise d'instance* for the 12th September instant, and gives notice thereof to the parties.

The 12th September, 1890.

At the Enquête upon *Mandamus*, etc.

Present :

The Hon. Mr. Justice TAIT.

Andrew Urquhart sworn as stenographer ;

Andrew Allan do. do.

Hon. A. Turcotte sworn and examined by Petitioner Walker. Case con- 40

tinued to the 16th September instant.

The 2nd October 1890.

The Petitioner, William Walker, gives notice to Hon. A. Turcotte and to Hon. Jos. E. Robidoux, that he will proceed with his Enquête on this day.

The 2nd October, 1890.

The Petitioner, William Walker, incribes this cause for hearing on the merits of the *Reprise d'instance*, and the *Mandamus*, so far as the Hon. Jos. E. Robidoux is concerned, for the 3rd of October instant.

The City of Montreal, the Intervenants, inscribe the present cause for hearing upon the intervention for the 3rd October instant, and give notice thereof to the parties herein.

The 14th October, 1890.

At the hearing upon merits of *reprise d'instance* and of *Mandamus* :

Present :

The Honorable Mr. Justice MATHIEU,

P. O. C. A. V.

20 At the hearing upon Intervention :

Present :

The Honorable Mr. Justice MATHIEU.

P. O. C. A. V.

The 24th October, 1890.

The Plaintiff files list and Exhibits Aa, Ab, Ac, Ad, Ae, Af, Ag, Ah, Ai, Aj, Ak, at Enquête.

The 24th October, 1890.

The Petitioner files 3rd list and Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 at Enquête.

The parties file admissions that all the copies of deeds and other documents filed by the Defendants as their Exhibits are true copies of the originals of which they purport to be copies.

The 19th February, 1891.

The Petitioner Walker re-inscribes for Enquête and Merits on the *Mandamus* against Honorable A. Turcotte for the 20th February 1891, and gives notice thereof to said Honorable A. Turcotte.

49

The 17th March 1891.

The Petitioner Wm. Walker files motion that Honorable Jos. E. Robidoux be examined at Quebec as a witness in this cause ; with notice of said motion to the parties in this cause.

Present :

The Honorable Mr. Justice MATHIEU.

The Court, upon the motion filed to-day by the said Wm. Walker ;

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Inasmuch as the Honorable Joseph Emery Robidoux has been duly sub-pœnæd as witness in this cause and that considerable delay has already arisen and more must arise in the future on account of his inability to be examined in Montreal :—

Doth order that the said Honorable J. E. Robidoux be examined in the City of Quebec at the diligence of the said William Walker ; costs reserved.

The 8th March 1891.

The Defendants file list and Exhibits Nos. B3, B4, B5, A1, B2, A2, A3, A4 and A5 at Enquête.

The Defendants file list & Exhibits B6, B7, B8, B9 and B10 at Enquête. 10

The 17th March 1891.

The Petitioner Walker re-inscribes for Enquête and Merits upon *Mandamus* for the 17th March instant and gives notice thereof to the Parties in this cause.

The 19th March 1891.

At Enquête and Merits upon the *Mandamus*.

Present :

The Honorable Mr. Justice Mathieu. 20

M. Doherty sworn as stenographer.

Honorable A. Turcotte continues his deposition.

Petitioner files Exhibit B1.

C. A. Geoffrion sworn and examined by Petitioner.

Petitioner files Exhibits B2, B3.

R. T. Henneker sworn and examined by Petitioner.

Continued to the 20th March instant.

The 20th March 1891.

At Enquête and Merits upon *Mandamus*.

Present :

The Honorable Mr. Justice MATHIEU. 30

P. O. C. A. V.

The 28th March 1891.

Petitioner for *Mandamus* files list and Exhibits A1, A2, A3, A4, A5, A6 and A7 at Enquête.

Petitioner Walker files list and Exhibits B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12, at Enquête.

The Defendant Honorable A. Turcotte files admissions that Petitioner Walker's Exhibits 2, 3, 4, 6, B3, B9, B10, B11 and B12 are true copies of the several documents they purport to be copies of, and consents that said Petitioner's Exhibits B, B1, B2, B4, B5, B6, B7 and B8 be considered as proved.

The parties file admissions as to Exhibits from Aa to Ak of Petitioner Walker at Enquête.

The Petitioner files list and Exhibits A2, B2, B3, B4 and B5 at Enquête.

The Plaintiff files the depositions of Thos. G. Shaughnessey, John L. Brodie, James B. Cantin, Wm. B. Lambe, John M. M. Duff, John McDougall, Alex. G. Fowler, John M. M. Duff, Jos. Rielle, John M. M. Duff, James B. Cantin, Charles S. Campbell.

The Defendants file the depositions of Geo. B. Muir, Geo. Groves, Thos. Tinsley, Michel Laurent, James T. Dillon and Thos. Webb.

The Intervenants file the depositions of Percival W. St. George, Patrick O'Reilly, John Brophy, John Barlow, J. L. Brodie, René Beauset, P. W. St. George (recalled), Patrick O'Reilly (recalled), John Brophy (recalled), Wm. Walker, John Eaman, Wm. Darling, Ovide Mailloux, Thos. Darling, Stuart Howard, Chs. Lagassé, Herm. Dufaure, P. W. St. George, René Beauset.

The Petitioner files the depositions of C. A. Geoffrion, Honorable A. Turcotte, R. T. Henneker, Honorable A. Turcotte (recalled) and Honorable J. E. Robidoux.

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Le 16me jour de Mai 1891.

Présent :

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L'Hon. Juge MATHIEU.

La Cour, après avoir entendu les parties par leurs avocats sur le mérite de l'action et de l'intervention, examiné la procédure, les pièces produites et la preuve et délibéré :

Attendu que, le 14 février, 1889, sur présentation à un juge de cette Cour, d'une information libellée, contenant des conclusions demandant à ce qu'il soit ordonné à la dite Compagnie de chemin de fer de l'Atlantique et Nord-Ouest de réouvrir la rue Blache, un bref d'assignation a été autorisé, sous les dispositions des articles 997 et 998, du Code de Procédure Civile à la demande de l'Honorable Arthur Turcotte, alors Procureur Général de la Province de Québec, qui agissait à la sollicitation de William Walker, manufacturier de la Cité de Montréal, et que, le même jour, un bref d'assignation émana conformément à la dite autorisation :

Attendu que le dit Honorable Procureur Général allègue, dans sa requête et déclare que la ruelle Blache, dans la cité de Montréal, a toujours été ouverte au public, et reconnue comme rue publique jusqu'en l'année mil huit cent quatre-vingt-sept où la compagnie Défenderesse ayant exproprié la partie longeant la ruelle des terrains l'avoisinant, s'est crüe autorisée à fermer cette rue, et l'a de fait fermée, privant ainsi le surplus des propriétés ainsi expropriées de tout accès à la dite ruelle, et causant par là des dommages à William Walker, à la sollicitation duquel le bref a émané, au montant de cinq mille piastres (\$5,000) et demande à ce qu'il soit ordonné à la dite défenderesse de réouvrir la rue ;

Attendu que la dite défenderesse par une défense en droit soutient que le demandeur, èsqualité, n'a pas le droit sous l'article 997 du Code de Procédure Civile de demander qu'il soit ordonné à la défenderesse de réouvrir la ruelle Blache, et demandant aussi le renvoi de la poursuite du demandeur vu que ce

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Attendu que, par un autre plaidoyer, la dite défenderesse soutient que cette ruelle n'est pas une rue publique mais un chemin privé, sujet au droit de passage des propriétés contigues et que, par l'acquisition qu'elle a faite de la propriété contigue la longeant, elle est devenue propriétaire de la ruelle, et que les propriétaires des parties de terre qui ne se trouve plus à joindre la dite ruelle n'ont plus de droit de passage sur icelle et que, d'ailleurs, les dits demandeurs savaient lorsqu'ils ont vendu partie de ces terrains à la compagnie, que la ruelle devait être fermée ;

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Attendu que le dit demandeur èsqualité a répondu au dernier plaidoyer de la défenderesse que, lors de l'expropriation de partie des terrains avoisinants la dite ruelle, il a été entendu, comme cela apparaissait sur les plans de la dite défenderesse, que les dits propriétaires auraient accès à une rue qui devait prendre la place de la ruelle Blache, pour le reste de leurs propriétés, et que la défenderesse a souvent reconnu ce droit des propriétaires et que sa prétention au contraire émise maintenant est de mauvaise foi ;

Attendu que la dite défenderesse a répliqué à cette réponse que la sentence arbitrale, et l'acte de vente consenti par les propriétaires des terrains longeant cette rue, contiennent toutes les conventions des parties à cet égard et qu'il n'y 20 en a pas eu d'autres ;

Attendu que le dix septembre 1889, la cité de Montréal a été reçue partie intervenante en cette cause et que son intervention a été déclarée admise par jugement de cette Cour du cinq octobre suivant ;

Attendu que la cité dans ses moyens d'intervention, déclare qu'elle concourt dans les allegations du Procureur Général, et dans les conclusions par lui prises pour la réouverture de la rue Blache et allègue spécialement que depuis un temps immémorial, la dite rue Blache a été ouverte au public et reconnue comme rue publique dans le plan de la cité qui a été homologué en 1877 elle figure comme rue publique et qu'elle est la propriété de la cité ; et elle demande 30 que la défenderesse soit condamnée à réouvrir cette rue, et à lui payer \$20,000.00 de dommages ;

Attendu que par jugement de cette Cour en date du vingt-neuf avril mil huit cent quatre-vingt-neuf (1889), il a été ordonné preuve avant faire droit, sur la défense en droit plaidée par la dite défenderesse, comme sus-dit ;

Attendu que le dix juillet dernier L'Honorable Procureur Général Turcotte a produit au dossier une déclaration par laquelle il désavouait tous procédés pris par Messrs. Barnard & Barnard, en son nom, contrairement à ses intentions, et leur ordonnait de suspendre tous procédés en cette affaire, jusqu'à 40 nouvel ordre ;

Attendu que le 31 juillet dernier, le dit Honorable Procureur Général Turcotte, a produit une déclaration par laquelle il se désistait de l'action sans frais, et en demandait acte ;

Attendu que le huit août dernier, le dit Wm. Walker, à la sollicitation duquel la poursuite susdite avait été intentée, au nom de l'Honorable Procureur Général, obtint l'émanation d'un bref de *Mandamus* adressé au dit Hono-

nable Arthur Turcotte, alléguant que ce dernier s'était entendu avec la Défenderesse, pour frauder le dit Wm. Walker de ses justes droits, et qu'il ne pourrait, après avoir permis l'usage de son nom, discontinuer les procédés comme il l'avait fait, et demandant à ce qu'il soit ordonné au dit Honorable Arthur Turcotte, en sa qualité de Procureur Général, de retirer le dit désistement, et de permettre au dit William Walker de procéder avec la dite poursuite au nom du dit Procureur Général.

10 Attendu que le vingt-deux août dernier, le dit Honorable Arthur Turcotte a comparu personnellement, et a, en même temps, donné avis au dit William Walker qu'il avait cessé d'exercer les fonctions de Procureur Général.

Attendu que l'Honorable Joseph Eméry Robidoux, en sa qualité de Procureur Général, ayant été poursuivi en reprise d'instance par le dit William Walker, sur le bref de *Mandamus* ci-dessus mentionné, en autant qu'il s'agissait des conclusions prises contre le dit Honorable Arthur Turcotte en sa dite qualité de Procureur Général, a comparu le premier septembre dernier, et a déclaré s'en rapporter à justice ;

20 Attendu que le dit Honorable Arthur Turcotte a plaidé au dit bref de *Mandamus* qu'il n'est pas responsable personnellement, vu qu'il a agi en sa qualité de Procureur Général, et qu'il a agi de bonne foi et qu'il avait le droit de discontinuer les procédés, comme il l'a fait, après s'être assuré que ces procédés n'intéressaient pas le public, et que le dit William Walker, à la sollicitation duquel ces procédés avaient été pris, faisait valoir autrement ses droits contre la compagnie ;

Attendu que les parties ont consenti à ce que les exhibits et la preuve en cette cause leur servent également ;

Sur la demande en reprise d'instance contre l'Honorable Joseph Eméry Robidoux, en sa qualité de Procureur Général de la Province de Québec ;

30 Attendu que le premier septembre dernier le dit Honorable Joseph Eméry Robidoux a produit une déclaration qu'il s'en rapporte à justice, et qu'il a été entendu par son Procureur et Substitut lors de l'audition au mérite de cette cause ;

A déclaré et déclare la dite instance reprise, au nom du dit Honorable Joseph Eméry Robidoux, en sa dite qualité.

Sur le désaveu et le désistement de l'Honorable Procureur Général Turcotte et sur le *Mandamus*.

40 Attendu que, par l'article 997 du Code de Procédure Civile, il est décrété que lorsqu'une corporation assume quelque pouvoir qui ne lui appartient pas, ou ne lui est pas conféré par la loi, le Procureur Général doit poursuivre cette infraction, au nom de Sa Majesté, quand il y a lieu de croire que ces faits peuvent être établis dans un cas d'intérêt public général, mais que, dans tout autre cas, il n'est pas tenu de procéder, à moins qu'il ne lui soit donné un cautionnement suffisant d'indemniser le gouvernement des frais à encourir sur telle procédure et qu'alors l'information libellée doit mentionner les noms de la personne qui a sollicité la poursuite auprès du Procureur Général, et de celle qui s'est portée caution des frais ;

Considérant que, lorsque le Procureur Général a, sous la disposition du

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—Continued.

dit article, permis l'usage de son nom à une personne qui lui a fourni le cautionnement requis, il ne peut lui retirer cette autorisation sans la permission du tribunal devant lequel les procédures sont instituées ;

Considérant que la discontinuation dans le cas actuel ne paraît aucunement justifiée, et que, si le Procureur Général pouvait ainsi, après avoir autorisé la poursuite en son nom et laissé faire des dépenses considérables, retirer son autorisation, et faire tomber les procédures prises en son nom, il en résulterait une grave injustice, et que, dans le cas actuel, le Requéran Walker est bien fondé à demander le rejet de la discontinuation de sa poursuite au nom du Procureur Général.

Considérant, cependant, que le *Mandamus* n'était pas nécessaire pour forcer le Procureur Général à permettre la continuation de l'usage de son nom dans la dite poursuite et qu'il suffisait au dit requérant Walker de demander à cette Cour le rejet de la discontinuation et du désaveu du dit Procureur Général Turcotte ;

A rejeté et rejette le dit désaveu et la dite discontinuation ou désistement et les déclare non avendus et ordonne la continuation des procédures au nom du Procureur Général, et renvoi le dit bref de *Mandamus* sans frais sur la contestation de ce bref.

Sur la défense en droit faite par la défenderesse à la demande du dit Honorable Procureur Général ;

Considérant que, par le dit article 997, il est décrété que si une corporation assume quelque pouvoir qui ne lui appartient pas ou ne lui est pas conféré par la loi, le Procureur Général doit ou peut poursuivre cette infraction tel que mentionné au dit article ;

Considérant que la prétention du dit Honorable Procureur Général est que la Défenderesse a assumé le pouvoir de clore une rue qu'elle n'avait pas le droit de clore, et qu'elle a ainsi assumé un pouvoir qui ne lui est pas accordé par la loi ;

Considérant que la partie de la dite défense en droit soutenant que le Procureur Général ne pouvait procéder en l'absence de la Cité de Montréal, est devenu sans effet par l'intervention de la dite Cité :

A renvoyé et renvoie la dite défense en droit avec dépens ;

Sur le mérite de la demande principale et de la dite intervention.

Considérant qu'il a été prouvé que la ruelle Blache avait une largeur de 28 pieds, et formait un cul-de-sac, à partir de la rue LaMontagne jusque vis-à-vis l'immeuble portant le numéro 661 des plan et livre de renvoi officiels du quartier St. Antoine, de la Cité de Montréal, et que cette rue était entourée de clôtures, et que la Cité de Montréal y a fait des travaux, et notamment y a posé des trottoirs et tuyaux à l'eau, et que les propriétés longeant cette rue ou ruelle étaient désignées dans les titres comme bornées par cette rue ;

Considérant qu'il a, de plus, été jugé le 9 mars 1864, par la Cour d'Appel, dans une cause de Johnson et al., vs Archambault, que la dite ruelle est une rue publique ;

Considérant que la dite compagnie de chemin de fer ne paraît pas avoir été autorisée à clore la dite rue, comme elle l'a fait, et qu'il s'en suit que la dite

demande du demandeur et la dite intervention et les moyens d'intervention sont bien fondés quant à la demande de la dite Rue ;

Considérant que le dit demandeur ès qualité, ne pouvait dans cette instance recouvrer des dommages qui auraient été éprouvés par le requérant Walker, vu que ces dommages ne résultent pas de la fermeture de cette rue pour la partie du terrain qui appartient encore au requérant Walker, mais du défaut de la défenderesse d'exécuter une obligation que Walker prétend avoir été assumée de sa part d'avoir une rue plus large que la rue Blache ;

Considérant que la dite intervenante n'a éprouvé aucun dommage ;

- 10 A maintenu et maintient la dite demande et les dits moyens d'intervention, et condamne la dite compagnie défenderesse à réouvrir la dite rue, tel que ci-dessus désignée sous un délai de six mois, à compter de cette date, et à défaut par la dite défenderesse de réouvrir la dite rue, autorise la dite intervenante et le dit Requérant Walker à réouvrir la dite rue, aux frais, dépens, risques et périls de la dite défenderesse et condamne la dite défenderesse aux dépens de la demande et de l'intervention distraits aux avocats des parties, sauf toutefois les frais d'enquête, chaque partie payant ses frais d'enquête, vu qu'ils ont surtout été faits pour établir des dommages qui ne résultent pas des faits seuls de la fermeture de la rue, ou qui ne sont pas prouvés.

20

The 5th June, 1891.

The said Defendants file a writ in appeal of the foregoing final judgment and give notice of security.

The 22nd June, 1891.

The said Appellants give the security required on said appeal : (Edward Rawling & Robert Kerr become sureties).

Montreal, 10th September 1891.

E. DESMARAIS,

Dept. P.

30

SCHEDULE No. 3.

Québec, ce 4 Janvier 1889.

MM. BARNARD & BARNARD, Avocats, Montreal.

Messieurs,

- 40 J'ai l'honneur de vous autoriser à vous servir de mon nom officiel pour poursuivre la Compagnie du chemin de fer de l'Atlantique et du Nord Ouest au nom de William Walker pour les motifs énoncés dans la déclaration soumise, à condition que le poursuivant fasse un dépôt de deux cents piastres (\$200.00.) pour rendre le Gouvernement indemne des frais dans cette poursuite.

J'ai l'honneur d'être,

Messieurs,

Votre tout dévoué,

(Signé.)

ARTHUR TURCOTTE.

Procureur-Général.

RECORD.

In the
Superior
Court.

No. 2a.
Judgment
of the Super-
ior Court
rendered
16th May,
1891.

—Continued.

No. 3.
Letter of the
Att'y-Gen'l.
to M. M.
Barnard &
Barnard au-
thorizing the
use of his
name,
(Plaintiff's
Exhibit "A")
Dated Jan. 4,
1889.

RECORD

[CERTIFIÉ.]

*In the
Superior
Court.*

(Signé.) JOS. A. DEFOY,
Assistant Procureur-Général.

Copy filed by consent to replace lost original.

No. 3.
Letter of the
Att'y-Gen.
to M. M.
Barnard &
Barnard,
authorizing
the use of
his name.
(Pltff's Exh.
"A") Dated
4 Jan., 1889.
—Continued.

(Signed.)

BARNARD & BARNARD
For Petitioner.

(Signed.)

ABBOTTS, CAMPBELL & MEREDITH.
For Deft. 10.

(ENDORSED.)

Plaintiff's Exhibit A, with order for writ to issue. Fyled 14th Feb., 1889.

SCHEDULE NO. 5.

No. 4.
Writ of Sum-
mons and
Petition,
Dated 14th
February,
1889.

Province of Quebec,
District of Montreal.
Superior Court for Lower Canada.

VICTORIA, by the grace of God, of the 20-
United Kingdom of Great Britain and
Ireland, Queen, Defender of the Faith,
Empress of India.

No. 842

To any of the Bailiffs of the said Superior Court acting in the District of Montreal.

We command you to summon The Atlantic & North West Railway Com-
pany, a body politic and corporate having its principal place of business in the
City and District of Montreal, to be and appear before our said Superior Court,
in the Court House in the City and District of Montreal, the nineteenth day
of February instant or the next following judicial day, to answer the demand
of the Honorable Arthur Turcotte of the City and District of Quebec in his ca-
pacity of Attorney-General of the Province of Quebec, contained in the hereto
annexed declaration, and, have there and then, or before, this writ and your
proceedings thereon.

In Witness Whereof we have caused the Seal of our said Court to be
hereunto affixed, at Montreal, this fourteenth day of February in the year of
Our Lord one thousand eight hundred and eighty-nine.

(Signed.)

A. B. LONGPRÉ,

Prothonotary of the said Court.

Province of Quebec }
District of Montreal.}

In the Superior Court.

RECORD.

*In the
Superior
Court.*

No. 842.

The Honorable Arthur Turcotte,.....Plaintiff.

No. 4.
Writ of
Summons
and Petition,
dated 14th
Feb., 1889.
—Continued.

vs.

10 The Atlantic and North West Railway Company,.....Defendant.

To any one of the Honorable Judges of this Court :

The Petition of the Honorable Arthur Turcotte in his capacity of Attorney-
General of the Province of Quebec.

Respectfully represents :

That up to the year eighteen hundred and eighty-seven a certain street
or lane, in the City of Montreal, called Blache street, or Blache lane, having
its outlet on Mountain street, in the said City, and running in the direction
of Donegani street, and as a continuation thereof, the said street or lane
20 called Blache beginning opposite cadastral number six hundred and sixty-
one of St. Antoine Ward of the City of Montreal, and extending to
and having its outlet in Mountain street as aforesaid, existed as a public
street, the land constituting which had from time immemorial been dedicated
to the public as a thoroughfare and was public property and having been ac-
knowledged as and declared to be such by a certain judgment of the Court of
Queen's Bench for Lower Canada, appeal side, sitting at Montreal, rendered on
the ninth day of March eighteen hundred and sixty-four, in a certain cause in-
stituted for the purpose of having the said street declared to be public pro-
perty, and in which cause Dame Sarah Johnson and others were Plaintiffs and
30 Joseph Archambault was Defendant.

That in the said year eighteen hundred and eighty-seven, the said Com-
pany Defendant acquired by means of proceedings in expropriation the strip
of ground fronting on said lane on both sides thereof, and under pretext that
thereby all rights of servitude in favor of proprietors abutting on said street
had become vested in the said Company alone, the said Company Defendant
has since the said expropriation closed the said street at its intersection with
Mountain street aforesaid, and made all ingress and outgress impossible to
the public in general, there being no other outlet to said Blache lane than
Mountain street.

40 That the closing of said street is particularly damaging to William Walker,
manufacturer of the said City of Montreal, and to the other proprietors whose
properties formerly and before said expropriation abutted on said lane, inas-
much as the said expropriation was made on the distinct understanding that
the said properties would not by reason of the said expropriation lose their
frontage on a street, whereas by means of the closing of said Blache lane or
Blache street as aforesaid, the properties of the said William Walker and of

RECORD
In the
Superior
Court.

No. 4.
Writ of Sum-
mons and
Petition,
Dated 14th
Feb., 1889.
—Continued.

the other proprietors formerly fronting on said Blache lane or Blache street have no outlet whatever in rear, to their great and manifest damage, to wit to the damage to the said Walker of five thousand dollars.

That the closing of said street aforesaid by the said Company Defendant and the keeping of said street closed ever since, so as to deprive the public in general and the proprietors in the vicinity in particular of their right of using the same was and is illegal, and constitutes the exercise by the said Company Defendant of a power, franchise and privilege, which does not belong to it, or is not conferred upon it by law, and is a case governed by article 997 of the Code of Civil Procedure for Lower Canada.

That the present proceeding is taken at the request of the said William Walker, and that the person who has become security for the costs which may be incurred by reason hereof, is Thomas Darling of Montreal, Esquire, Accountant.

Wherefore your Petitioner prays that a Writ of Summons under said article of the Code and following articles do issue and that the said Company Defendant be condemned to re-open the said street and leave it free for public use, and restore the same to the condition it was in before the said Company Defendant closed the same as aforesaid, and that in default of the said Defendant re-opening the said street within fifteen days of the service upon it of the judgment to be rendered in this cause, that the same be re-opened at its expense, the whole with costs distracts to the undersigned Attorneys, the said Petitioner reserving to himself the right of taking such other and further conclusions in the premises as may become advisable.

Montreal, 28 December 1888.

(Signed.)

BARNARD & BARNARD,
Attorneys for Petitioner.

Thomas Darling of the City of Montreal, Esquire, Accountant, being duly sworn doth depose and say that he is one of the proprietors referred to in the above Petition as being equally damaged with the said William Walker by the closing of said Blache lane and that the facts stated in the above Petition are true.

And further deponent saith not and hath signed.

Sworn and acknowledged before me
at Montreal this thirteenth day of
February eighteen hundred and
eighty-nine.
(Signed,) G. A. CLEVELAND, N. P.
(Commissioner in the District of
Montreal for all Courts of Record
in Lower Canada.)

(Signed.) THOS. DARLING.

(ENDORSED.)

Petition by Plaintiff and affidavit for writ to issue, Filed 14th February, 1889. Granted, Mr. J. Mathieu. William Walker deposits the sum of two hundred dollars as security for costs, (Paraphed) W. B. Acct.

SCHEDULE No. 7.

RECORD.

Canada
Province of Quebec,
District of Montreal. }

Superior Court.

In the
Superior
Court

The Honorable Arthur Turcotte, Attorney General,.....Plaintiff.

vs.

The Atlantic and North-West Railway Company,.....Defendants.

and Pleas,
Filed 15th
March,
1889.

10

And the Defendants, for demurrer to the Plaintiff's action and demand, say :

That the allegations of the petition of the Honorable the Attorney-General, are insufficient in law to maintain the conclusions thereof.

1st Because it appears from the said petition that the present action is taken under the provisions of Article 997, of the Code of Civil Procedure and following articles, and because no such right of action as that sought to be enforced in the present cause is given under the said articles.

20 2nd Because the Attorney-General is not entitled under the said article 997, and following articles, to the remedies prayed for in and by his said petition.

3rd Because the Attorney General is not entitled by law to ask under the said articles of the Code, that the Defendants be condemned to re-open the street in question, or restore the same to the condition it was previously in, nor that the same be re-opened at the Defendants' expense.

30 4th Because it is alleged in the said petition that the street or lane known as Blache lane is situated within the limits of the municipality of the City of Montreal, and is a public street, and because it does not appear, nor is it alleged in the said petition, that the City of Montreal have been called into or made parties to the present suit, or have ever been called upon or have refused to take steps to re-open the said street.

5th Because the conclusions of the said petition do not flow from the allegations thereof.

Wherefore the Defendants pray, that the said action may be hence dismissed with costs distracts to the undersigned Attorneys.

Montreal, March 14th, 1889.

(Signed,) ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

40 * And without waiver of the foregoing demurrer, for further plea to the Plaintiff's action, the Defendants say :

1st That the Plaintiff, in his capacity of Attorney-General of the Province of Quebec, is not entitled to have or demand the conclusions asked for by his said petition.

2nd That the Defendants are a body politic and corporate, incorporated by a Statute of Parliament of the Dominion of Canada, and are subject to the

RECORD.

*In the
Superior**Demurrer
and Pleas,
Filed 15th
March, 1889.
—Continued.*

exclusive jurisdiction of the Dominion Parliament, and of the officers of the Government of the Dominion of Canada, and that the Attorney-General of the Province of Quebec, has no power or right by law or under the constitution, to take any proceeding whatsoever against the Defendants.

Wherefore the Defendants pray that the Plaintiff's action may be hence dismissed with costs.

Montreal, March 14th, 1889.

(Signed,) ABBOTTS, CAMPBELL & MEREDITH,
Attorney's for Defendants.

10

And without waiver of the foregoing plea for further plea to the Plaintiff's action and demand, Defendants say :

1st That all the allegations of the petition in this cause made and fyled, except in so far as they are hereinafter admitted to be true, are false and unfounded.

2nd That it is specially false that Blache lane referred to in the petition was ever a public street, or was ever used by the public as such, and the Defendants allege that the said lane was and has always been a private lane, serving as a means of communication to the properties abutting thereon, and that the only persons having any right in or using the said lane, were the pro- 20 prieters of the properties abutting thereon, having a common right of passage from their said properties to Mountain street.

3rd. That true it is, as alleged in the said petition, that the Defendants have acquired, by means of proceedings in expropriation, all those portions of the properties surrounding said lane, fronting and abutting thereon, and are now the proprietors and owners by good and valid titles of all the lands fronting and abutting upon the said lane, including that portion of the property of William Walker, mentioned in the said petition, abutting on the said lane ; and that neither the said William Walker, nor any of the adjoining proprietors now have any rights in, to or upon the lane in question, nor own any property 30 abutting thereon ; and that the said William Walker, and the other proprietors whose properties formerly and before the said expropriation abutted on the said lane, have received compensation from the Company Defendants for all damages of every kind and nature whatsoever caused to them by the building of the said Railway including the damage, if any, caused to them by the closing of the said lane, the whole as will appear by reference to copies of the deeds of sale from the said proprietors to the Railway Company herewith produced to form part hereof, the said proprietors being well aware when they sold, that the said lane would be closed by the Defendants. *

4th. That by the purchase of the properties aforesaid, the Defendants 40 have acquired the rights of servitude and passage over the said lane, of all persons who had any right or title therein or thereto, and had and have the right by law and power under their charter, and the Railway Act, to erect, build and maintain their railway thereon, and that the building and maintaining of the said railway, and the closing of the said lane was and is legal, and did not and does not constitute the exercise by the Defendants of any power, fran-

chise or privilege not belonging to them, or not conferred upon them by law. Wherefore the Defendants pray that the Plaintiff's action may be hence dismissed with costs.

Montreal, March 14th, 1889.

ABBOTTS, CAMPBELL & MEREDITH,

Rec'd. Copy.

Attorneys for Defendants.

BARNARD & BARNARD,

Attorneys for Plaintiff.

(ENDORSED.)

10

Demurrer and Pleas filed 15th March, 1889, (Paraphed,) A. B. L.

SCHEDULE No. 9.

Before :

Mtre William de M. Marler, the undersigned Public Notary for the Province of Quebec, residing at the city of Montreal.

Appeared :

William Walker, of the said city of Montreal, plumber and manufacturer, Who hath, by these presents, sold with legal warranty

20

Unto the Atlantic & North West Railway Company, a body corporate, duly incorporated, herein acting and accepting by Charles Drinkwater, of the said City of Montreal, the Secretary of the said company hereto present, and accepting, the following immoveable property, which is acquired by the said Railway Company for the purposes of their railway, namely,

DESCRIPTION.

30

A portion of that certain lot known and distinguished on the official plans and in the book of reference of the St. Antoine Ward, of the said city of Montreal, by the No. 661, and on the plan and book of reference of said Railway Company by the No. 29, said portion measuring 35 ft. in depth on the north-east side, and 38 ft. in depth on the south-west side, by a width of 27 ft., and containing nine hundred and eighty-five and a-half feet in superficies, the whole English measure and more or less, and with the buildings thereon erected, bounded at the north-west end by Blache Lane, at the south east end and on the north-east side by the remainder of the said lot number 661, and on the south west side by the said lot official number 662 of the said ward, as the said property now subsists with all its rights, members and appurtenances without exception or reserve of any kind on the part of the vendor, unless it be of the buildings on the said property, which the vendor reserves for himself and which will belong to him provided he removes the same before the first of July next, and failing his so doing before the said date, the same shall remain the property of the purchasers.

40

TITLE.

The vendor acquired the property as follows :

From Robert S. Auld and others by deed of sale passed before W. B. S.

RECORD.

In the Superior Court.

No. 5.

Demurrer and Pleas,

Filed 15th March, 1889.

—*Continued.*

No. 6.

Deed of Sale by William

Walker

to the

Atlantic and

N. W. Rail-

way Co'y.

Defendant's

Exhibit

No. 1,

Dated 23rd

June, 1887.

RECORD. Reddy, Notary, on the 16th of April, 1886, duly registered on the 19th of May following under No. 110,982.

In the
Superior
Court.

POSSESSION.

To have and hold the said property unto the said purchasers as their absolute property from this date and to take possession thereof forthwith.

VENDOR'S DECLARATION.

The vendor declared and covenanted :

1st. That said property is held under the tenure of *franc aleu roturier* in virtue of the deed of commutation passed before P. Lacombe, notary, on the 26th February 1847. 10

2d. That said property is free from all assessments and rates general or special to the date hereof and of all encumbrances, except that hereinafter released.

CONDITIONS.

This sale is thus made subject to the following conditions, to the fulfilment whereof the purchasers oblige themselves, namely :

1st. To pay the costs of this deed and its registration. 20

2d. To pay all assessments and rates which may hereafter be imposed upon the said property, including those for the current year.

PRICE.

This sale is thus made for the price of five thousand two hundred and fifty dollars which the purchasers have paid and the vendor acknowledges to have received in full payment, discharge and satisfaction, as well of the said land as of the damages caused to him and the remainder of his property by the exercise by the railway company of their powers and franchises thereon ; 30

And hereto intervened Dame Laura Georgina Brown, of the said City of Montreal, widow of the late James Rose, in his lifetime of the same place, merchant, the creditor named in a certain deed of obligation and hypothec upon the said sold property executed before W. B. S. Reddy, notary, on the 22nd May, 1885, and duly registered in the registry office for the registration division of Montreal West on the 24th of the same month under No. 111021, who, after taking communication of this deed, declared herself therewith content and released and discharged the above described and presently sold property of and from all claims or demands, privilege or hypothec thereon in her favor, reserving in full force without novation of any kind or derogation to rank and priority thereof her rights, privileges and hypothecs against the remainder of the vendor's property ; 40

And hereto also intervened Dame Annie Munro, wife of the vendor and duly authorized by him, who after taking communication of this deed declared herself therewith content, and renounced as well for self as for her children to all dower and right of dower, customary or covenanted, which she or her chil-

No. 6.
Deed of Sale
by William
Walker
to the
Atlantic and
N. W. Rail-
way Comp'y.
Defendant's
Exhibit
No. 1.
Dated 23rd
June, 1887.
—Continued.

dren may or might have or claim upon the said sold property.
Whereof Acte.

Thus done and passed at the City of Montreal on the 23rd day of June, 1887, and of record in the office of said Mtre Marler under No. 13251, and after due reading hereof the parties signed in the presence of said Notary.

(Signed) LAURA G. ROSE,
" WM. WALKER,
" ANNIE WALKER,
" C. DRINKWATER,
" W. de M. MARLER, N. P.

10

(ENDORSED.)

Sale by William Walker to the Atlantic and North-West Railway Company, dated 23rd June, 1887. Exh. No. 1, fyled by Defendant on the 15th March, 1889, (Paraphed) A. B. L.

RECOED.

*In the
Superior
Court.*

No. 6.
Deed of Sale
by William
Walker
to the
Atlantic and
N. W. Rail-
way Co.
Defendant's
Exhibit
No. 1.
Dated 23rd
June, 1887.
—*Continued.*

20

SCHEDULE No. 10.

Before William de M. Marler, the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal :

Appeared :

Michael M. Dowling, of the said city of Montreal, Gentleman : who hath by these presents sold with legal warranty :

30 Unto the Atlantic and North-west Railway Company, a body corporate, and accepting by Charles Drinkwater, of the said City of Montreal, the Secretary of the said Company, hereto present accepting, the following immovable property which is required by the Railway Company for the purposes of their railway, namely :

No. 7.
Deed of Sale
by
M. Dowling
to
Defendants.
Defendant's
Exhibit
No. 2.
Dated 6th
July, 1887.

DESCRIPTION.

40 An emplacement described as lot number thirty-two, on the location plan of that part of the railway of the said Railway Company, lying between Windsor street and the city limits, and more particularly as that part of lot number six hundred and sixty-five A (665 A) on the official plan and book of reference of the St. Antoine Ward, of the said city of Montreal, which is described as follows :

A lot of land measuring fifty-two feet in depth in the north-east side, and fifty-six feet two inches in depth on the south-west side by a width of forty-three feet eight inches, and containing two thousand three hundred and sixty-one

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 7.

Deed of Sale
 by M. Dow-
 ling to

Defendants,
 Defendant's
 Exhibit

No. 2.

Dated 6th
 July, 1887.

—Continued.

feet in superficies, the whole English measure, and more or less, and with the buildings thereon. Bounded at the north-west end by Blache Lane, at the south-east end by the remainder of said lot 665 A, on the north-east side by lot official number six hundred and sixty-five (665) of said ward, and on the south-west side by Mountain street. As the said property now subsists with all its rights, members and appurtenances, without exception or reserve of any kind, on the part of the vendor, who acquired the same from Jean Decarie, by deed of sale, passed before E. Guy, notary, on the 10th of March, 1851, registered 14th March, 1851, No. 9340.

POSSESSION.

10

To have and to hold the said property unto the purchasers as their absolute property from this date, with immediate possession.

VENDOR'S DECLARATION.

The vendor declared and covenanted :
 1st. That he is the absolute owner of the said property under the above title ;
 That the same is free from all encumbrances.
 2nd. That the said property is held under the tenure of *franc alev roturier* having been duly commuted by deed before E. Lafleur, notary, dated this day. 20

PRICE.

The present sale is thus made for and in consideration of the sum of four thousand seven hundred and fifty dollars, which the vendor acknowledges to have received from the purchasers at the execution hereof in full payment, as well of the value of the said property as of the damages suffered by the vendor by the exercise of the powers and franchises of the said Railway Company thereon, and as security to the said purchasers for the guarantee by the vendor of the title to the property hereby sold by the vendor, the vendor hath by these presents hypothecated to the extent of the sum of twenty-four hundred dollars, 30 the following property which he declares belongs to him and to be free and clear of all encumbrances, namely : official lot number two hundred and thirty on the plan and book of reference of the St. Louis Ward of the city of Montreal, with the buildings thereon.

Whereof Acte :

Executed at the city of Montreal, on the 6th day of July, 1887, and of record in the office of Mtre. Marler, under No. 13,300, and after due reading hereof the parties signed in the presence of said Notary.

(Signed,)

MICHAEL DOWLING,

“

C. DRINKWATER,

“

W. de M. MARLER, N.P. 40

(ENDORSED.)

No. 13300, 6th July, 1887. Sale by Michael Dowling to the Atlantic and North-West Railway Company. Defendant's Exhibit No. 2, Fyled 14th March, 1889, (Paraphed) A. B. L.

[SCHEDULE No. 11.]

RECORD.

Before Mtre. William de M. Marler, the undersigned public notary for the Province of Quebec, residing at the city of Montreal;

*In the
Superior
Court.*

Appeared :

10 Alexander Watt, master baker, residing in the city of Montreal, acting herein as well in his own name, and also for and in the name of and as the tutor duly appointed to Stewart Anderson Ashley Watt, his minor brother, and hereunto duly authorized by the Hon. Mr. Justice Loranger, one of the Judges of the Superior Court, in the district of Montreal, by an order granted by him bearing date the 25th day of June last, of which a copy is hereunto annexed for reference, Lawrence William Watt, of the said city of Montreal, master baker, acting herein as well in his own name as also for and in the name of Dame Ida Elizabeth Watt, wife of William Daniel McCallum, of Huntingdon, in the said province, merchant, duly separated as to property from him, under a power of attorney from her, authorized by her said husband, dated 21st July last, and hereunto annexed, signed *ne varietur* by the parties in presence of said notary, and Miss Kate Watt, spinster, of full age of majority, residing
20 at the city of Montreal.

No. 8.
Deed of Sale
by Alex.
Watt et al,
to
Defendants,
Dated 5th
August, 1887.
Defendant's
Exhibit
No. 3.

Who have by these presents sold with legal warranty :

Unto The Atlantic and North-West Railway Company, a body corporate duly incorporated, having their chief place of business in Montreal, herein represented and acting by Charles Drinkwater of the said City of Montreal, the secretary of the said Company, hereto present and accepting the following immovable property which is required by the said Railway Company for the purposes of their railway namely :

DESCRIPTION.

30

A lot of land known as lot number 27 on the location plan of that part of the railway, of the said Railway Company, lying between Windsor street and the city limits, and forming part of the lot known and distinguished on the official plan and book of reference of the St. Antoine Ward of the City of Montreal, as lot number six hundred and sixty, being of irregular figure measuring about eighty-six feet two inches in length, and containing two thousand two hundred and fifty-six feet in superficies, the whole English measure, and more or less, and with the buildings thereon erected. Bounded on the
40 north-west side by Blache lane, and partly by official lot number six hundred and fifty-five of said ward, on the south-east side by the remainder of the said lot number six hundred and sixty, and the north-east end by the said lot number six hundred and fifty-five, and at the south-west end by the lot official number six hundred and sixty-one of said ward, as the said property now subsists with all its rights, members and appurtenances without exception or reserve of any kind on the part of the vendors.

RECORD.

*In the
Superior
Court.*

No. 8.

Deed of Sale
by Alex.

Watt et al.,
to

Defendants.

Dated 6th
August, 1887.

Defts'. Ex.

No. 3.

—Continued.

TITLE.

The vendors acquired the property as legatees in ownership under the wills of their deceased father and mother who were in community of property, and who acquired the said property during the existence of the said community from George Groves by deed of sale passed before J. S. Hunter, Notary, on the 25th June, 1873, registered on the 2nd July, 1873, No. 73,552.

POSSESSION.

To have and to hold the said property unto the said purchasers as their **10** absolute property from this date and to take possession thereof forthwith.

VENDORS DECLARATION.

The vendors declared and covenanted :

1st. That said property is held under the tenure of *franc aleu roturier* in virtue of the deed of commutation passed before E. Moreau, Notary, on the sixteenth of March 1867.

2nd. That said property is free from all assessments and rates general or **20** special to the date hereof, and of all encumbrances except that hereinafter released.

3rd. That none of the vendors are married, except the said Ida Elizabeth Watt.

CONDITIONS.

This sale is thus made subject to the following conditions, to the fulfilment whereof the purchasers oblige themselves, namely.

1st. To pay cost of this deed and its registration. **30**

2d. To pay all assessments and rates which may hereafter be imposed upon the said property including those for the current year.

PRICE.

This sale is thus made for the price of two thousand two hundred and fifty dollars, which the purchasers have paid, and the vendors acknowledge to have received at the execution hereof in full payment, discharge and satisfaction, as well of the price of the said property as of the damages caused the vendors by the exercise of the said Railway Company of their powers and franchises thereon.

Whereof Acte. **40**

Thus done and passed at the City of Montreal, on the fifth day of August one thousand eight hundred and eighty-seven, and of record in the office of

the said Mtre. Marler, under No. 13,390, and after due reading hereof, the parties signed in the presence of said Notary.

(Signed,) MARION KATE WATT,
 " LAW. W. WATT,
 " ALEX. WATT,
 " C. DRINKWAVER,
 " W. DE M. MARLER, N. P.

10

(ENDORSED.)

No. 13390, 5th August, 1887, Sale by Alex. Watt, et al. to the Atlantic and North-West Railway Company, Defendant's Exhibit, No. 3, Fyled 15th March, 1889 (Paraphed,) A. B. L.

RECORD.
 —
In the Superior Court.
 —
 No. 8.
 Deed of Sale by Alex. Watt et al. to Defendants, Dated 6th August, 1887. Defts'. Ex. No. 3,
 —Continued.

20

SCHEDULE No. 12.

Before :

Mtre William de M. Marler the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal.

Appeared :

John Brennan of the city of Quebec, Hotel Manager, herein acting in his quality of Tutor to John James Brennan, minor child issue of his marriage with his deceased wife, Margaret Brennan, as such Tutor duly appointed on the advice of a family council held before the prothonotary of the Superior Court for Lower Canada, in the District of Montreal on the 25th of September, 1887, as appears by the Acte of tutorship homologated on that day and duly registered on the 28th of the same month under No. 99909 and hereunto duly authorized by the Honorable Mr. Justice Mathieu, one of the judges of the Superior Court in the said District by judgment rendered on the 18th November instant.

30

Who hath by these presents sold with legal warranty :

Unto :

The Atlantic and North West Railway Company, a body corporate, duly incorporated, having its place of business at the City of Montreal, herein acting by Charles Drinkwater of the City of Montreal, the secretary of the said company, herein present and accepting the following immoveable property namely :

40

No. 9.
 Deed of Sale by John Brennan, Tutor to Defendants, Dated 26th Nov., 1887. Defendant's Exhibit No. 4.

DESCRIPTION.

A part of that certain lot known on the official plan and in the book of reference of the St. Antoine Ward of the City of Montreal by the number six

RECORD. hundred and sixty-five and described on the location plan and in the book of reference of said railway by the number thirty-one, measuring forty-six feet two inches in depth on the north east side and fifty-two feet in depth on the south west side by a width of sixty-three feet four inches and containing three thousand one hundred and nine feet in superficies, the whole English measure and more or less. Bounded on the north end by Blache Lane, at the south-east end by the remainder of said lot No. 665, on the north-east side by official lot six hundred and sixty-two, the property of one Koester, and on the south-west side by official lot No. six hundred and sixty-five A, the property of Matthew Dowling, as the said property now subsists, with all its rights, members and appurtenances without exception or reserve of any kind on the part of the vendor. 10

—
In the
Superior
Court.

No. 9.

Deed of Sale
by John
Brennan,
Tutor to
Defendants,
Dated 26th
November,
1887,

Defendant's
Exhibit
No. 4.

—Continued.

TITLE.

The vendor acquired the said property in the manner set forth in the annexed abstract of title.

POSSESSION.

20

To have and to hold the said property unto the said purchasers as their absolute property from this date and to take possession thereof forthwith.

VENDOR'S DECLARATIONS.

The vendor declared and covenanted.

1st. That said property is held under tenure of *franc aleu roturier* in virtue of the deed of commutation passed before P. Lacombe, Notary, on the 15th April 1841, and the commutation paid. 30

2nd. That said property is free from all encumbrances and all the assessments and rates general or special to the date hereof :

CONDITIONS.

This sale is thus made subject to the following conditions, to the fulfilment whereof the purchasers oblige themselves, viz.

1st. To pay the costs of this deed and its registration.

2nd. To pay all assessments and rates which may hereafter be imposed upon the said property. 40

This sale is thus made for the price of two thousand one hundred and fifty-four dollars, which the purchasers have paid and the vendor acknowledged to have received at the execution hereof in full payment, discharge and satisfaction as well of the value of the said property as of the damages caused the vendor by the exercise of the said railway company of their powers and franchises thereon.

Whereof acte
 Thus done and passed at the City of Montreal, on the 26th day of November, 1887, and of record in the office of said Mtre. Marler, under No. 13744, and after due reading hereof the parties signed in the presence of said notary.

(Signed) JOHN BRENNAN,
 " C. DRINKWATER,
 " W. de M. MARLER,
 N. P.

RECORD.
 —
In the Superior Court.
 —
 No. 9.
 Deed of Sale by John Brennan, Tutor, to the Defendants, Dated 26th Nov. 1887, Defendants' Exh. No. 4.
 —Continued.

ABSTRACT.

10

Of the title of official lot No. 665 St. Antoine Ward, referred to in the deed of sale from John Brennan, es qualité, to the Atlantic and North West Railway Company, passed before the undersigned Notary this twenty-sixth day of November, 1887.

1st. This property was sold by the Montreal General Hospital to James Brennan by deed of sale passed before J. S. Hunter, Notary, on the 26th June, 1860.

20

2nd. The said James Brennan was in community of property with Dame Harriet Fletcher and died intestate, on the 17th December, 1869, leaving his three children as his heirs at law, namely Margaret, Thomas and Mary Ann, and by deed passed before C. F. Papineau, Notary, on the 15th July, 1870, registered on the 19th July, 1870, under the No. 58691, the said Margaret Brennan, Thomas Brennan and Mary Ann Brennan, sold to their mother Dame Harriet Fletcher all their rights in the property in question.

30

3rd. The said Dame Harriet Fletcher died 23rd July, 1873, after having executed her will before C. F. Papineau and colleague notaries, on the 16th July, 1870, registered on the 8th August, 1873, No. 74111, by which she bequeathed all her property to her children Margaret and Thomas Brennan. And in the partition of the said Dame Harriet Fletcher's succession passed before C. F. Papineau, notary, on the 8th August, 1873, registered 9th August, 1873, under No. 74140, the property in question was allotted to Dame Margaret Brennan.

4th. The said Dame Margaret Brennan died on the 12th September, 1877, after having executed a holograph will, dated 18th June, 1877, and duly passed on the 25th September, 1877, and registered on the 28th September, 1877, No. 99908, by which she bequeathed all her property to her child or children; only one child was born of said Margaret Brennan, namely, John James Brennan.

40

(Signed) JOHN BRENNAN,
 " C. DRINKWATER,
 " W. de M. MARLER,
 N.P.

(ENDORSED.)

No: 13744, 26th November, 1887, Sale by John Brennan, Tutor, to the Atlantic and North-West Railway Company, Defendant's Exhibit No. 4, Fyled, 15th March, 1889, (Paraphed) A.B.L.

SCHEDULE No. 13

RECORD
In the
Superior
Court.

No. 10.
Deed of Sale
by Henry
Ward and
Alex.
Gowdey, es
qual,
to
Defendants,
Dated 10th
March, 1888.
Defendants'
Exhibit
No 5.

Before :

Mtre William de M. Marler the undersigned Public Notary for the Province of Quebec residing at the City of Montreal.

Appeared :

Henry Ward and Alexander Gowdey both of the said City of Montreal, real estate agents and accountants acting herein in their quality of joint curators duly named and appointed by the Honourable Mr. Justice Taschereau, one of the Judges of the Superior Court in the District of Montreal, on the fifth day of July, eighteen hundred and eighty-seven, to the property abandoned by Edward C. Hughes of the city of Montreal, Cabinet Maker, an insolvent, as appears by the act of appointment dated that day and duly registered in the registry office for the Registration division of the Registration office of Montreal West on the 19th of January last under No 115090, with a notice registered on the same day under the No. 110591 describing the property affected thereby and in their said quality hereunto duly authorized by a judgment rendered by Mr. Justice Gill on the 23rd day of January 1888, of which a copy is hereunto annexed for reference. 10

Who have by these presents sold with legal warranty,

20

Unto :

The Atlantic and North West Railway Company a body corporate duly incorporated herein acting and accepting by Charles Drinkwater, of the said City of Montreal, the Secretary of the said Company, the following immoveable property which is required by the said railway company for the purposes of their railway, namely,

DESCRIPTION.

A portion of that certain lot of land known and distinguished on the official plan and book of reference of the St. Antoine Ward of the said City of Montreal as the north east half of lot number 661 and described as lot number 28 on the map or plan and book of reference of the said railway, said portion measuring thirty-one feet and ten inches in depth on the north east side and thirty-five feet in depth on the south west side, by a width of twenty-seven feet and containing nine hundred and two feet in superficies, the whole English measure and more or less, and with the buildings thereon erected. Bounded, at the north-west end, by Blache Lane, at the south-east end and on the south-west side by the remainder of said lot number 661 and on the north-east side by the lot official number six hundred and sixty of said ward. 30

As the property now subsists with all its rights, members and appurtenances without exception or reserve of any kind on the part of the vendors. 40

TITLE.

The vendors acquired said property in virtue of their appointment as joint curators to the property abandoned by the said Edward C. Hughes, who ac-

quired from Robert S. Auld et al., by deed of sale passed before C. R. W. Kittson, N. P., on the 2nd of May 1885, duly registered in the registry office for the registration division of Montreal west, on the twenty-eighth of December of the same year, under No. 111722.

RECORD.

In the Superior Court.

POSSESSION.

To have and to hold the said property unto the said purchasers as their
10 absolute property from this date and to take possession thereof forwith.

No. 10.
Alex. Gowdey
es qual.
to
Defendants,
Dated 10th
March, 1888,
Defendants'
Exh. No. 5.
—Continued.

VENDORS DECLARATION.

The vendors declared and covenanted.

1st. That said property is held *en franc aleu roturier* by deed of commutation passed before P. Lacombe and his colleague notaries, the 26th day of February 1847.

2nd That the said property is free and clear of all encumbrances and of all assessments and rates, general or special, to the date hereof.

20

CONDITIONS.

This sale is thus made subject to the following conditions to the fulfilment whereof the purchasers oblige themselves namely.

1st. To pay the cost of this deed and its registration.

2nd. To pay all assessments and rates which may hereafter be imposed upon the said property.

30

PRICE.

This sale is thus made for the price of six hundred and twenty-five dollars, which the purchasers have paid and the vendors acknowledged to have received in full payment, discharge and satisfaction, as well of the said land as of the damages caused by the exercise, by the Railway Company, of their powers and franchises thereon.

Whereof acte.

40 Done and passed at the City of Montreal, on the tenth day of March, eighteen hundred and eighty-eight, and of record in the office of said Mtre. Marler, under No. fourteen thousand and sixty-two, and after due reading hereof the parties signed in the presence of said Notary.

(Signed), HENRY WARD.
" ALEX GOWDEY.
" C. DRINKWATER.
" W. DE M. MARLER,
N.P.

RECORD.

(ENDORSED.)

*In the
Superior
Court.*

Dated 10th March, 1888, sale by Henry Ward and Alex. Gowdey, es qual. to the Atlantic and North West Railway Company, Defendant's Exhibit No. 5.

No. 10.
Deed of Sale
by Alex,
Gowdey es
qual, to
Defendants,
Dated 10th
March, 1888.
Defendant's
Exhibit
No. 5.
—Continued.

10

SCHEDULE No. 14.

No. 11.
Deed of Sale
by Geo. S.
Koester to
Defendants,
Dated 20th
May, 1887,
Defendants
Exh. No. 6.

Before :
William de M. Marler, the undersigned Public Notary, for the Province of Quebec, residing at the City of Montreal. 20
Appeared :
George S. Koester, of the said City of Montreal, restaurant proprietor.
Who hath by these presents sold with legal warranty unto The Atlantic & North-West Railway Company, a body corporate, duly incorporated, hereto present and accepting by Charles Drinkwater, the Secretary of the said Company, the following immoveable property, which is required by the said Railway Company for the purposes of their railway, viz.

DESCRIPTION.

30

A lot of land known and designated on the location plan and book of reference of that part of the said railway between Windsor Street, and the City limits, as number thirty and more particularly described as follows :—

A lot of land forming part of lot number six hundred and sixty two (662), on the official plan and book of reference of St. Antoine Ward, of the City of Montreal, and measuring thirty-eight feet in width at the north-east end and forty-six feet two inches at the south-west end by a length of sixty-two feet, and containing two thousand six hundred and nine feet in superficies, the whole English measure, more or less, with buildings thereon erected, bounded on the north-west side by Blache Lane, on the south-east side by the remainder of said official lot number six hundred and sixty-two (662), at the north-east end by official lot number six hundred and sixty-one, of said ward, and at the south-west end by the lot official number six hundred and sixty-five of said ward. As the said property now subsists with all its rights members and appurtenances without exception or reserve of any kind on the part of the vendor. 40

VENDORS' DECLARATION.

RECORD.

The vendor declared and covenanted :

1st. That said property is held under tenure of *franc alev roturier*, in virtue of the deed of commutation granted by the Ecclesiastics of the Seminary of St. Sulpice passed before Lafleur, Notary, on the 13th day of May, 1887.

2nd. That the said property belongs to him absolutely by inheritance from his father, Joseph Anthony Thomas Koester, who died on or about the 5th of November, 1860, leaving the said George Keoster, his only child as his universal legatee under his will before T. Doucet, Notary, and witnesses, dated 29th October, 1860, registered 18th November, 1884, No. 110,305, subject to his wife's usufruct during her lifetime. That his mother, Catherine Irish, died on or about the 31st May, 1873. That there were other children of the said marriage, but they all predeceased their father without issue.

3rd. That said property is free and clear of all encumbrances and of all assessments general or special to this date, excepting always the hypothecary claims hereinafter discharged.

4th. That he is unmarried.

*In the
Superior
Court.*

No. 11.
Deed of Sale
by Geo. S.
Koester to
Defendants,
Dated 20th
May, 1887,
Defendant's
Exhibit
No. 6.
—*Continued.*

20

POSSESSION.

To have and to hold the said property, unto the said purchasers as their absolute property from this date with immediate possession.

PRICE.

This sale is thus made for the price and sum of two thousand one hundred and fifty dollars, which the purchasers have at the execution hereof paid to the vendor and the latter acknowledges to have received in full payment, discharge and satisfaction, as well of the value of the said land as of the damages caused to him, or suffered by him, by reason of the exercise by the Railway Company of their franchises thereon.

INTERVENTION.

And to these presents intervened the Ecclesiastics of the Seminary of St. Sulpice of Montreal, a body corporate duly incorporated, herein acting by the Reverend Jean Baptiste Larue, Priest, one of them, their duly authorized Attorney.

Who after taking communication of this deed, acknowledges to have received from the said vendor, at the execution hereof, the sum of eighty-three dollars and thirty-three cents, on account of the amount due them under the above mentioned deed of commutation and in consideration thereof, declared to release and discharge the above described immoveable property from their hypothec and privilege thereon, under said deed of commutation, reserving without novation or derogation to the rank and priority thereof, their rights

RECORD remedies and recourse, against the remainder of the property affected thereby.
Whereof Acte.

In the Superior Court.
No. 11. Executed at Montreal on the 20th day of May, one thousand, eight hundred and eighty-seven, and of record in the office of the said Mtre. Marler, under number thirteen thousand one hundred and eighty-six, and after due reading hereof the parties signed in presence of said notary.

Deed of Sale by Geo. S. Koester to Defendants, Dated 20th May, 1887. Defendant's Exhibit No. 6. —Continued.

(Signed), GEO. S. KOESTER,
" J. B. LARUE, *Ptre. Proc.*,
" C. DRINKWATER,
" W. DE M. MARLER, *N. P.* 10

(ENDORSED.)

No. 13166. 20th May, 1887, Sale by Geo. S. Koester to the Atlantic and North-West Railway Company, Defendant's Exhibit, No. 6, Fyled 15th March 1889 (Paraphed) A. B. L.

20

SCHEDULE No. 15.

No. 12. Province of Quebec, }
Motion of Plaintiff to District of Montreal. } In the Superior Court.
reject demurrer. Fyled 16th March, 1889.

No. 842.

The Honorable Arthur Turcotte, Attorney-General.....Plaintiff.

30

vs

The Atlantic and North-West Railway Company.....Defendant.

Motion that the Defendant's Demurrer in this cause filed be rejected as irregular and illegal and tending to change the summary character of the proceedings in the matter, with costs, *distracts* to the undersigned.

Montreal, 15th March, 1889.

BARNARD & BARNARD,
Attorneys for Plaintiff. 40

To Messrs. ABBOTTS, CAMPBELL and MEREDITH,
Attorneys for Defendants.

GENTLEMEN :

Take notice that the foregoing motion will be presented at the Superior

Court, Montreal, in Chambers, on Saturday, the sixteenth instant, at half-past ten of the clock in the forenoon, or as soon as counsel can be heard.

Montreal, 15th March, 1889.

BARNARD & BARNARD,
Attorneys for Plaintiff.

Received notice for 16th instant, at 10.30 in chambers,

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

RECORD.

*In the
Superior
Court.*

No. 12.
Motion of
Pltff. to reject
Demurrer.
Fyled 16th
March, 1889.
—Continued.

10

(ENDORSED.)

Motion to reject Defendant's *Demurrer*, Fyled 16th March, 1889.
Motion renvoyée. M. M., J. S. C.

SCHEDULE NO. 16.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

20

No. 842.

The Honorable Arthur Turcotte, Attorney-General.....Plaintiff.

vs.

The Atlantic and North-West Railway Company.....Defendant.

30

The Plaintiff for general replication to Defendant's demurrer fyled in this cause saith :

That each, all and every one of the allegations, set forth and contained in Plaintiff's *requête libellée*, is and are sufficient in law.

Wherefore Plaintiff prays the dismissal of said demurrer with costs *distraits* to the undersigned.

Montreal, 18th March, 1889.

BARNARD & BARNARD,
Attorneys for Plaintiff.

Rec'd copy.

40

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

(ENDORSED.)

Plaintiff's *Replication* to Defendant's *Demurrer*, Fyled 18th March, 1889,
(Paraphed) A. B. L.

No 13.
Plaintiff's
Replication
to Defen-
dant's De-
murrer,
Fyled, 18th
March, 1889.

RECORD.

SCHEDULE No. 17.

In the
Superior
Court.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

No. 842.

No. 14.
Plaintiff's
Demurrer
to Defen-
dant's 1st.
Plea, Fyled,
18th. March,
1889.

The Honorable Arthur Turcotte, Attorney-General.....Plaintiff.

vs.

The Atlantic & North-West Railway Company.....Defendant.

10

And the said Attorney General for law answer to the plea firstly pleaded by the Defendant saith, that the allegations therein are unfounded in law.

Because the fact that a Corporation, has been created under other laws, than those of the Province of Quebec, does not impair or affect the right of the Attorney-General, to interfere when such Corporation exercises within the said Province, and to the detriment of the inhabitants therein any power franchise or privilege which does not belong to it, or is not conferred upon it by law.

20

Wherefore the said Attorney-General, prays that the said first plea, be hence dismissed with costs, *distrains* to the undersigned Attorneys.

Montreal, 20th March, 1889.

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

Plaintiffs *Demurrer* to Defendant's First Plea, Fyled 18th March, 1889, (Paraphed) J. B. V. Dep. P. S. C.

30

SCHEDULE No. 20.

No. 15.
Defendant's
Replication
to Plaintiff's
Demurrer
to 1st plea
Fyled, 22nd
March, 1889.

Canada, }
Province of Quebec, }
District of Montreal. }

Superior Court.

No. 842.

The Honorable Arthur Turcotte, Attorney General.....Plaintiff.

40

vs.

The Atlantic and North-West Railway Company.....Defendants

The Defendants, for Replication to Plaintiff's demurrer to first plea herein fyled say :

That all the allegations, matters and things set forth and contained in said Plaintiff's Demurrer are and each of them is false, untrue and unfounded in fact.

That all the allegations, matters and things set forth and contained in Defendant's said first plea, are and each of them is true and well founded in fact.

10 Wherefore the Defendants pray the dismissal of the Plaintiff's said demurrer to their first plea, with costs, and further pray, as in and by the conclusions of their said first plea they have already prayed.
Montreal, March 21st, 1889.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

Rec'd Copy,
BARNARD & BARNARD,
For Petitioner.

RECORD.
—
In the Superior Court.
—
No. 15.
Defendants' Replication to Plaintiffs' Demurrer to 1st Plea, Fyled, 22nd March, 1889.
—*Continued.*

(ENDORSED.)

20

Defendant's *Replication* to Plaintiff's *Demurrer* to First Plea, Fyled 22nd March 1889, (Paraphed) J. L., Dep. P. S. C.

SCHEDULE No. 22.

30 Province of Quebec, }
District of Montreal. }

In the Superior Court.

No. 16.
Special Answer to Defendant's 2nd Plea, Fyled, 11th May, 1889.

No. 842.

The Honorable Arthur Turcotte, Attorney-General.....Petitioner.

vs.

The Atlantic & North-West Railway Company.....Defendant

40 And the said Petitioner for special answer to the Defendants' second plea, denying expressly and specially, every specific allegation, in said plea not hereinafter expressly admitted saith.

That the expropriation referred to by the Defendants was made on the special understanding that the said William Walker and the other proprietors, who at the time of the said expropriation had a frontage on the said Blache lane, would after the said expropriation, have a frontage upon a new street, which

RECORD.

*In the
Superior
Court.*

No. 16.

Special

Answer to
Defendant's
2nd Plea,
Fyled 11th
May, 1889.
—Continued.

according to the plans, then and thereby the said Defendant exhibited to the arbitrators appointed to determine the indemnity, payable to the expropriated parties, which plans were copied of those fyled by the said Defendant, in the office of the clerk of the peace, according to law would be the continuation of the street now called Donegani Street, in which proposed new street, Blache lane would be incorporated as to a portion of it, and that the indemnity awarded to the said expropriated parties was fixed on that basis.

That after the said expropriation the Defendant, in violation of the conditions on which the said expropriation had been made, constructed their Railway, and the works connected therewith in accordance with new and different plans whereby the said expropriated parties now find themselves deprived of all access to a street on that side of their properties. And the said Petitioner further alleges that throughout the proceedings in connection with the said expropriation and ever since until the fyling of their said second plea the said Defendant hath repeatedly and formally admitted the said Blache lane was public property, which would not and could not in any manner be affected by expropriations, and that the present pretention of the Defendant that the said Blache lane was and is private property of which the said Defendant has become proprietor, by means of the said expropriations is unfounded and made in bad faith.

Wherefore, the said Plaintiff prays that the said second plea of the Defendant be hence dismissed with costs, *distrains* to the undersigned,
Montreal, 10th May, 1889.

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

Plaintiff's Special Answer to Defendant's Second Plea, Fyled May 11th, 1889, (Paraphed) A. B. L.

30

SCHEDULE No. 23.

Canada,
Province of Quebec,
District of Montreal.

Superior Court,

The Honorable Arthur Turcotte, Attorney-General,.....Petitioner.

40

AND

The Atlantic and North-West Railway Company,.....Defendants.

And the said Defendants, for special replication to the special answer of the said Petitioner, say :

No. 17.
Defendant's
Special Re-
plication, to
Plaintiff's
Special
Answer,
Fyled 27th
May, 1889.

That the allegations of the said special answer, except in so far as they accord with the allegations of the Defendant's plea, are false, and Defendants expressly deny each and every of them.

That is false that the expropriation referred to was made on any such special understanding as that alleged by the said petitioner, or that it was made upon any condition or agreement that Blache Lane or any portion of it, should be incorporated in any new street, or that the indemnity awarded to the expropriated parties was fixed in consequence of any such understanding or agreement.

10 That the allegations of the said special answer are illegal and unfounded in law, inasmuch as the authentic deeds passed between the said expropriated parties and the Company, and the awards of the arbitrators contained the whole of the said agreement, and the Petitioner cannot by law adduce proof to the contrary, except by proceedings in improbation.

That the conclusions of the said answer do not flow from the premises thereof.

And Defendants' expressed deny that they ever admitted that they ever admitted that Blache Lane referred to, was public property.

20 Wherefore, the Defendants' pray the dismissal of the said special answer, and further pray as in and by their plea, they have already prayed the whole with costs *distracts* to the undersigned Attorneys.

Montreal, May 23rd, 1889.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

(Rec'd. copy with waiver of service only.)

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

30 Special *Replication* to Answer of Petitioner, Fyled 27th May, 1889, (Paraphed) A. B. L.

SCHEDULE No. 25.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

40 The Honorable Arthur Turcotte, Attorney-General,.....Plaintiff.

vs.

The Atlantic & North-West Railway Company,.....Defendants.

Defendants' articulation of facts.

1st. Is it not true that the Plaintiff, in his capacity of Attorney-General,

RECORD.

In the
Superior
Court.

No. 17.
Defendants
Special Re-
plication to
Plaintiff's
Special An-
swer, Fyled
27th May,
1889.

—Continued.

No. 18.
Defendants'
Articulation
of facts,
Fyled 8th
July, 1889.

RECORD. of the Province of Quebec, is not entitled to have or demand the conclusions asked for by his said petition.

*In the
Superior
Court.*

No. 18.

Defendant's
Articulation
of Facts,
Filed, 8th
July, 1889.
—Continued.

2nd. Is it not true that the Defendants, are a body politic and corporate, incorporated by a Statute of the Parliament, of the Dominion of Canada, and are subject to the exclusive jurisdiction of the Dominion Parliament, and of the Officers of the Government of the Dominion of Canada.

3rd. Is it not true that the Attorney-General, of the Province of Quebec, has no power or right, by law or under the constitution to take any proceedings whatsoever, against the Defendants ?

4th. Is it not true, that it is specially false, that Blache Lane, referred to 10 in the petition was ever a public street, or was ever used by the public as such ?

5th. Is it not true, that the said lane was, and always has been a private lane, serving as a means of communication to the properties abutting thereon ?

6th. Is it not true that the only persons having any right in or using the said lane were the proprietors of the properties abutting thereon, having a common right of passage from their said properties to Mountain Street.

7th. Is it not true that the Defendants have acquired by means of Proceedings in expropriation, all those portions of the properties surrounding said lane, fronting and abutting thereon, and are now the proprietors and owners by 20 good and valid titles of all the lands fronting and abutting upon the said lane, including that portion of the property of William Walker mentioned in said petition abutting on the said lane ?

8th. Is it not true that neither the said William Walker nor any other of the adjoining proprietors now have any rights in to or upon the lane in question, nor upon any property abutting thereon ?

9th. Is it not true that the said William Walker and the other proprietors whose properties formerly and before the said expropriation, abutted on the said lane, have received compensation from the Company Defendants, for all damages of every kind and nature whatsoever, caused by them by the building 30 of the said railway, including the damage, if any, caused to them by the closing of the said lane ?

10th. Is it not true that the said proprietors were well aware when they sold, that the said lane would be closed by the defendants ?

11th. Is it not true that by the purchase of the property aforesaid, the defendants have acquired the rights of servitude and passage over the said lane, of all persons who had any right or title therein or thereto ?

12th. Is it not true that they had and have the right by law and power under their charter and Railway act to erect, build, and maintain their railway thereon ?

13th. Is it not true that the building and maintaining of the said railway and the closing of the said lane was and is legal, and did not and does not constitute the exercise by the defendants of any power, franchise, or privilege, 40 not belonging to them or not conferred on them by law ?

14th. Is it not true that it is false that the expropriation referred to was made on any such special understanding as that alleged by the said petitioner,

or that it was made on any condition or agreement that Blache lane or any portion of it should be incorporated in any new street, or that the indemnity awarded to the expropriated parties was fixed in consequence of any such understanding or agreement ?

15th. Is it not true that the allegations of the said special answer are illegal and unfounded in law, inasmuch as the authentic deeds passed between the said expropriated parties and the Company, and the awards of the arbitrators contained the whole of the said agreement ?

16th. Is it not true that the conclusions of the said answers do not flow from the premises thereof ?

17th. Is it not true that defendants have never admitted that Blache lane referred to was public property ?

18th. Is it not true that all the allegations of the Plaintiff's declaration are, and each of them is false, untrue, and unfounded in fact ?

19th. Is it not true that all and every one of the allegations, matters, and things in the defendants pleas are and each of them is true and well founded in fact ?

Montreal, June 24th, 1889.

20

ABBOTTS, CAMPBELL & MEREDITH,
Attorney's for Defendants.

Rec'd. Copy.

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

Defendants' articulation of facts filed 8th July, 1889, (Paraphed).

30

SCHEDULE No. 26.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

No. 842.

The Honorable A. Turcotte, Attorney-General,.....Petitioner.

vs.

40 The Atlantic & North-West Railway Company,.....Defendant.

AND

The City of Montreal,.....Petitioner.

To this Honorable Court, or any one of the Judges thereof, in Chambers.

RECORD.

In the
Superior
Court.

No. 18.
Defendants'
Articulation
of Facts.
Filed 8th
May, 1889.
—Continued.

No. 19.
Petition of
the City of
Montreal in
intervention
Filed 10th
September,
1889.

RECORD. The Petition of the City of Montreal, a body politic and corporate, having its principal office in Montreal,

—
*In the
Superior
Court.*
—

Respectfully represents :

That by the Petition in this cause, the said Attorney-General, alleges that the said Company Defendant, hath illegally closed Blache Lane, one of the public streets, of the City of Montreal, and pray that the said Company be condemned to re-open the same at its expense.

No. 19.
Petition of
the City of
Montreal in
intervention.
Fyled 10th
Sept., 1889.
—*Continued.*

That the said City of Montreal, being interested in the subject matter of the said petition, is desirous to intervene in this cause for the purpose of watching the proceedings, taking such conclusions or making such declarations therein as she may be advised. 10

Wherefore, your Petitioner prays that she may be permitted to intervene in this cause for the above purposes, the whole with costs to abide the result.
Montreal, 28th August, 1889.

ROUËR ROY,
Attorney for said Petitioner.

20

To MESSRS. BARNARD & BARNARD,
representing the Attorney-General.

To MESSRS. ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendant.

Gentlemen. :

30

Take notice of the above petition, and that the same will be presented on Tuesday, the tenth day of September next, at half past ten of the clock in the forenoon, to a Judge in Chambers.

Montreal, 28th August, 1889.

ROUËR ROY,
Attorney for said City.

40

(ENDORSED.)

Petition to intervene and notice fyled 10th September, 1889. Granted. C. P. D.

SCHEDULE No. 29.

RECORD

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

*In the
Superior
Court.*

No. 20.

Honorable A. Turcotte, Attorney-General.....Petitioner.

Contestation
of the Inter-
vention by
Defendants.
Fyled 17th
Sept., 1889.

AND

10

The Atlantic & North-West Railway Company.....Defendants.

AND

The City of Montreal,.....Petitioners in Intervention.

AND

20

The said Defendants.....Contestants.

And the said defendants, without admitting, but on the contrary denying that the said petitioners in intervention have taken the proper proceedings to intervene in the present cause, say :

That the petition in intervention, was not served upon the parties hereto, within the three days from the time of the presentation of the same, nor a certificate to that effect produced,

Wherefore the Defendants pray that the said petition in Intervention, be hence dismissed with costs *distracts* to the undersigned Attorneys.

30

Montreal, September 14th, 1889.

ABBOTTS, CAMPBELL & MEREDITH,

Attorneys for Contestants.

And the said Contestants, without waiver of the foregoing, for further contestation in Law, to the petition in intervention in this cause fyled, say :

That the said Petitioner in Intervention is not entitled to intervene in the present cause, for the following reasons :—

40 1st. Because the said Petitioners have no interest in the issue of the present cause.

2nd. Because the present proceedings are not in nature of a suit, but in the nature of a prosecution in Her Majesty's name, undertaken by the Attorney-General under Article 997 of Code of Civil Procedure, in the public interest.

3rd. Because the reasons alleged in the said petition are insufficient to entitle the Petitioners to the right to intervene.

RECORD.

*In the
Superior
Court.*

No. 20.
Contestation
of the Inter-
vention by
Defendants.
Fyled 17th
Sept., 1889.
—Continued.

4th. Because the Petitioners in the present cause cannot take any conclusions or pray for any modifications of the Judgment which may be rendered.

5th. Because by law the Attorney-General in the present proceedings represents the public, and no further representation is requisite or necessary for the purpose of protecting the rights of private individuals in the matter in question,

6th. Because by the Code of Civil Procedure, special delays are provided for the purpose of the said Procedure, and the Intervenants are not entitled in their private interest to avail themselves thereof. 10

Wherefore the Contestants pray that the said Petition in Intervention be hence dismissed with costs, *distrains* to the undersigned attorneys.

Montreal, September 14th, 1889.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Contestants.

(ENDORSED.)

Contestation of Defendants fyled 17th September, 1889. (Paraphed.)
I. L. Dept. P. S. C. 20

SCHEDULE No. 30.

No. 21.
Intervenants
general an-
swer to Deft's
Plea, Filed
25 Sept. 1889.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

30

The Honorable Arthur Turcotte, Attorney-General,.....Petitioner.

vs.

The Atlantic & North-West Railway Company,.....Defendant.

AND

The City of Montreal,.....Petitioning to Intervene. 40

AND

The said Defendant,.....Contesting the right to Intervene.

And the said City of Montreal, for general answer to the first plea, fyled by the said Defendant, contesting its right to intervene.

Saith :

That all, each and every, the allegations in said first plea are unfounded in fact :

Wherefore the said City prays the dismissal of said plea with costs.

Montreal, 23rd September, 1889.

10

ROUER ROY,
Atty's for said City.

And the City, for answer in law to the second plea of the said Defendant contesting its right to intervene, saith :

That all, the allegations in said plea are unfounded in law.

Because by law every person interested in a pending suit is entitled to be admitted a party thereto, in order to maintain his rights, and the proceedings of the Attorney-General in the present matter constituted suit before the Superior Court, and the City of Montreal is interested in the event thereof :

20

Because the Defendant contesting has no right or interest to object to the intervention of the City, on the ground that the proceedings in the suit of the Attorney General are summary, and that the Attorney General alone could object to the intervention on the ground that it might have the effect of prolonging the suit :

Wherefore the said City of Montreal prays that the said second plea of the Defendant may be hence dismissed with costs.

Montreal, 23rd September, 1889.

30

ROUER ROY,
Attorney for said City.

And the said City of Montreal for general answer to the second plea fyled by the said Defendant contesting its right to intervene, saith :

That all, each and every, the allegations in said second plea, are unfounded in fact :

Wherefore the said City prays the dismissal of said plea with costs.

Montreal, 23rd September, 1889.

40

ROUER ROY,
Attorney for said City.

(ENDORSED.)

General answer of the city to Defendants Pleas. Fyled 25th September, 1889. (Paraphed.) A. B. L.

RECORD.

*In the
Superior
Court.*

No. 21.
Intervenants
general
answer
to Deft's.
Plea, Fyled
25th Sept.,
1889.
—Continued.

RECORD
*In the
 Superior
 Court.*

SCHEDULE No. 32.

Province de Quebec, }
 District de Montréal. }

Cour Superieure.

No. 22.
 Moyens
 Intervention.
 Grounds for
 Intervention.
 Fyled Oct.
 12th, 1889.

No. 842.

L'Honorable Arthur Turcotte, Procureur-Général,.....Requérant.

vs.

10

La Compagnie de Chemin de Fer Atlantique et Nord-Ouest, ... Défenderesse.

vs.

La Cité de Montréal,.....Intervenante.

Et la dite Cité de Montréal pour *moyens d'intervention* déclare :

Qu'elle concourt dans les allégations du Procureur-Général, sur la présente instance, et dans les conclusions par lui prises pour obtenir la réouverture 20 de la rue, connue sous le nom de " Blache Lane."

Et d'abondant, l'intervenante allègue : Que la dite rue appartient à la Cité, a été à l'usage du public et a été reconnue comme propriété publique depuis un temps immémorial ;

Que notamment cette ruelle apparaît comme ouverte au public sur un plan fait pour la Cité, par John Adams, arpenteur militaire, (military surveyor), en l'année mil huit cent vingt-cinq, 1825 ;

Que dans les titres remontant à une époque d'au-delà de la période nécessaire pour la prescription la plus longue, cette rue est décrite par les membres de la famille Blache, de la propriété de laquelle famille la dite rue était un 30 démembrement comme constituant la continuation de la rue Lagauchetière ;

Qu'à une époque remontant à au-delà de cinquante ans, diverses ventes de terrains ont été faites par la famille Blache, lesquels terrains ont été décrits dans les actes de vente comme bornés en front par la dite rue Blache, sous le nom de Rue Lagauchetière, et en arrière par la rue St. Janvier, aujourd'hui Rue Osborne ;

Que les titres de James Baylis, propriétaire sur la rue Blache et sur la rue Osborne, dont la propriété est indiquée sur le plan exhibit "A," de la Défenderesse à l'enquête, sont de cette nature ;

Que pareillement les terrains possédés par Madame Savage, sur la rue 40 Osborne, et indiqués au même plan, sont décrits dans les actes les plus anciens comme ayant leur front sur la rue Blache ;

Que le huit Mars, mil huit cent soixante quatre, (8 Mars, 1864), dans la cause de *Johnson & Archambault*, la Cour du Banc de la Reine pour le Bas-Canada, siégeant en Appel, a expressément décidé que la dite rue était une rue publique, et que les actes produits dans la dite cause, montrent que la pro-

priété Archambault en question dans la dite cause, et indiquée au même plan sous les numéros vingt et six cent cinquante-cinq sous le nom de Francis Huston, était décrite dans les anciens actes comme ayant son front sur la rue Blache, de la même manière que les propriétés Baylis et Savage, sont décrites comme bornées en front par la rue Blache ;

10 Que les propriétés Dowling, Brennan, Koester, Walker, Hughes et Watt, indiquées au même plan, comme ayant leur front sur la rue St. Antoine, sont décrites dans les actes anciens et nouveaux, comme bornées par la ruelle Blache ou par la rue Blache, ou par une ruelle anonyme, mais que nul part ne se trouve une indication quelconque dans les actes que ces propriétés eussent un droit de servitude privée sur la dite rue : d'où il s'ensuit que leur droit de servitude sur la dite rue Blache découlait du caractère de propriété publique s'attachant à la dite rue ;

Que dans le plan de la Cité de Montréal, qui a été homologué suivant la loi en mil huit cent soixante et dix-sept (1877), la dite rue figure comme rue publique ;

20 Que le trente-un Décembre, mil huit cent quatre-vingt cinq, (1885), la dite Cité de Montréal, présente Intervenante, étant appelée à donner au dit William Walker son alignement en vue des bâtisses qu'il voulait ériger, a suivant la loi exproprié une partie du dit terrain du dit Walker, comme moyen de donner à la rue Blache, la largeur indiqué sur le dit plan homologué, et que les procédés de la dite Cité en expropriation ont été faits régulièrement et n'ont jamais été contestés.

Que la dite Compagnie Défenderesse est aujourd'hui en possession illégale et sans droit quelconque du terrain ainsi exproprié par la dite cité pour l'élargissement de la rue Blache, lequel terrain ainsi exproprié par la dite cité appartient incontestablement à la dite cité ;

30 Que finalement, dans les procédés en expropriation adoptés par la Compagnie Défenderesse elle-même, les terrains qu'elle a déclaré vouloir acquérir dans les alentours de la rue Blache sont tous décrits comme bornés par la rue Blache, et qu'il n'a jamais été question, dans les dits procédés de la dite compagnie en expropriation, qu'un droit de servitude privée sur la dite ruelle ou rue Blache existât en faveur des terrains que la dite Compagnie se proposait ainsi d'acquérir ;

Que la prétension de la dite Compagnie Défenderesse que, parce que la dit compagnie a acquis les terrains décrits comme bornés par la dite rue Blache, elle a acquis le terrain lui-même constituant la dite rue Blache, est absolument frivole ;

40 Que le fait de s'approprier une rue de la cité sans droit ni prétexte et de son autorité privée, de la fermer à l'usage du public, constitue de la part de la dite compagnie une nuisance publique et un attentat grave aux droits de la cité, et a causé des dommages à la dite cité au montant de vingt mille dollars (\$20,000.00) ;

Pourquoi la dite cité, partie Intervenante en cette cause en vertu d'un jugement de cette Cour, conclut en son propre nom à ce que la dite Compagnie Défenderesse soit condamnée à réouvrir la dite rue et à la restituer à l'usage

RECORD.

—
In the
Superior
Court.

—
No. 22.
Moyens
d'Interven-
tion. Grounds
for Interven-
tion. Filed
12 Oct. 1889.
—Continued.

RECORD.

*In the
Superior
Court.*

No. 22.

Moyens d'intervention.
Grounds for
Intervention,
Filed 12th
Oct., 1889.
—Continued.

du public, replaçant les choses dans l'état ou elles étaient alors que la dite Compagnie a pris illégalement possession de la dite rue, et à ce qu'à défaut par la Défenderesse de réouvrir la dite rue, sous quinze jours de la signification du jugement à intervenir, il soit permis à la dite cité de réouvrir la dite rue aux risques et dépens de la dite Compagnie Défenderesse,—se réservant son recours pour tous dommages à venir, à ce qu'en outre la dite Compagnie Défenderesse soit condamnée à payer à la dite Intervenante la somme de vingt mille dollars (\$20,000.00) pour dommages pour le passé, tant réels qu'exemplaires ;

Le tout avec dépens, y compris les frais d'exhibits et tous frais incidents de même nature, distraits au soussigné ;—la dite cité se réservant le droit de prendre des conclusions ultérieures, s'il y a lieu. 10

Montréal, 10 Octobre 1889.

ROUER ROY,
Avocat de l'Intervenante.

(Reçu copie)

BARNARD & BARNARD,
Avocats du Requéant.

(ENDORSED).

Moyens d'intervention, Prod., 12 octobre 1889. (Paraphed) A. B. L. 20

SCHEDULE No. 33.

No. 23.
Intervenant's
Articulation
of Facts.
Filed 21 Oct.
1889.

Canada,
Province de Québec, {
District de Montréal.

Cour Supérieure.

No. 842

30

L'Honorable Arthur Turcotte, Procureur-Général,..... Requéant.

vs.

La Compagnie de Chemin de Fer Atlantique & Nord-Ouest..... Défenderesse.

&

La Cité de Montréal..... Intervenante. 40

ARTICULATION DE FAITS DE L'INTERVENANTE.

N'est-il pas vrai :

1° Que la rue connue sous le nom de "*Blache Lane*" appartient à l'Inter-

venante et a été à l'usage du public et a été reconnue comme propriété publique depuis un temps immémorial ?

2° Que cette ruelle apparaît comme ouverte au public sur un plan fait pour la cité par John Adams, arpenteur militaire (military surveyor) en l'année mil huit cent vingt-cinq ?

3° Que dans le plan de la Cité de Montréal qui a été homologué en l'année mil huit cent soixante-dix-sept, la dite rue figure comme rue publique ?

4° Que la Compagnie Défenderesse est en possession illégale d'un terrain exproprié par l'Intervenante pour l'élargissement de la dite rue Blache ?

10 5° Que l'attentat commis par la Compagnie Défenderesse aux droits de la Cité de Montréal cause à cette dernière des dommages au montant de vingt mille dollars ?

Montréal, 21 Octobre 1889.

ROUER ROY,
Avocat de l'Intervenante.

(Reçu copie)
ABBOTTS, CAMPBELL & MEREDITH,
Avocats de la Défenderesse.

RECORD.

*In the
Superior
Court.*

No. 23.

Intervenants'
Articulation
of Facts.
Fyled 21st
Oct., 1889.
—Continued.

20

(ENDORSED).

Articulations de faits de l'Intervenante. Prod. 21 Oct. 1889. (Paraphed)
A. B. L.

SCHEDULE No. 34.

Canada,
Province of Quebec, }
30 District of Montreal. }

Superior Court.

Honorable Arthur Turcotte, Attorney-General,.....Plaintiff.

vs.

The Atlantic & North-West Railway Company,.....Defendants,

AND

40 The City of Montreal,.....Intervenants.

AND

The Atlantic & North West Ry. Co.....Contestants

Contestant's answers to Intervenants Articulations of Facts.
To the first, no.

No. 24.
Defendants'
answers to
Intervenants
Articulation
of Facts.
Fyled 16 Nov.
1889.

RECORD.

*In the
Superior
Court.*

No. 24.

Defendants'
Answers to
Intervenants'
Articulation
of Facts.
Filed 16th
Nov. 1889.
—Continued.

To the second, no.
" " third, no.
" " fourth, no.
" " fifth, no.
Montreal, Nov. 5th 1889.

ABBOTTS, CAMPBELL & MEREDITH,
Attys. for Contestants.

(Rec'd Copy)

ROUER ROY,
for City.

10

(ENDORSED)

Contestants answers to Intervenants articulation of facts, Filed 6 Nov.
1889. (Paraphed) A. B. L.

20

30

40

SCHEDULE No. 38.

RECORD.

*In the
Superior
Court.*

No. 25.

Plan of the
grounds
comprised
between
Mountain
and Bisson
streets.

Intervenants'
Exhibit No. 1
Filed, 24th
April, 1890.

(ENDORSED.)

Exhibit No. 1. Filed by Intervenant. Filed 7 March, 1890. Prod. 24
1890. (Paraphed). A. B. L.

SCHEDULE No 38

STREET

MOUNTAIN

STREET

BISSON

Area = 5,065 feet.

Area = 6,9563 feet

657-5
E Maseley + Ayer
7,500 feet

657-9A

657-6
657-7

657-9
657-10
657-11

657-12

658
Dame L.E. Fraser.
Wife of J.G. Savage

F. Huston.
655.

650.
Eliz. M. Naughton
Wife of R. Adam.

Chas Dupuis.

Julia Dupuis.
Wife of F.X. Payette

Joe Bauden.
652.

MST O'Connell
655

660.
Est Alex Watt.

652.

649

C.S. Rodier
649

Wm Williams.
648

647

1543.

1544

1545.

663-A *
Matthew Dowling

665 *
Margaret Brennan
Wife of John Brennan

662 *
Dame Catherine Insh
widow of Anthony T Koester

661 *
William Walker

Edward C Hughes

R

SCHEDULE No. 38.

RECORD.

*In the
Superior
Court.*

No. 25.

Plan of the
grounds
comprised
between
Mountain
and Bisson
streets.

Intervenants
Exhibit No. 1
Filed, 24th
April, 1890.

(ENDORSED.)

Exhibit No. 1. Filed by Intervenant. Filed 7 March, 1890. Prod. 24
April, 1890. (Paraphed). A. B. L.

SCHEDULE No. 39.

RECORD

*In the
Superior
Court.*

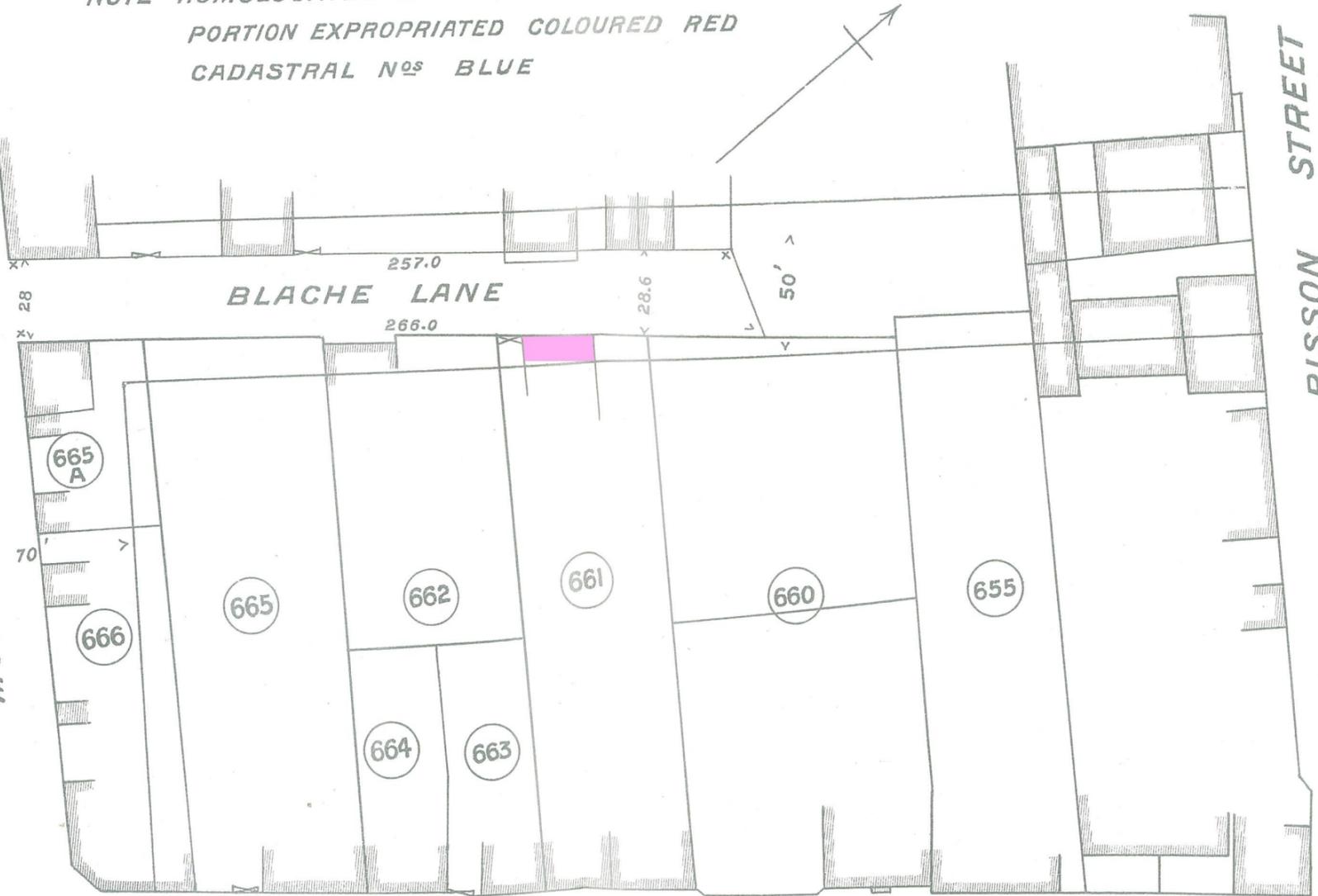
No. 26.
Plan of "Blanche Lane,"
Extract
from the
homologated
plan of St.
Antoine's
ward.
Intervenants
Exhibit No.
2 Filed, 24th
April, 1890.

(ENDORSED.)

Exhibit No. 2. Filed 7th March by Intervenant. Filed 7th March,
1890. Prod. 24 April, 1890. (Paraphed.) A. B. L.

NOTE - HOMOLOGATED LINES - RED
PORTION EXPROPRIATED COLOURED RED
CADASTRAL N^{os} BLUE

MOUNTAIN STREET



BISSON STREET

DONEGANI STREET

STREET

WINDSOR

PLAN OF BLACHE LANE
AS SHOWN ON THE HOMOLOGATED PLAN OF ST ANTOINE WARD
SCALE 50 FT TO ONE INCH E.M.

CITY SURVEYOR'S OFFICE
MONTREAL FEBRUARY 4TH 1890.
Reverend. W. G. Goyens
CITY SURVEYOR

ST ANTOINE STREET

RECORD.

*In the
Superior
Court.*

No. 26.

Plan of "Blanche Lane,"

Extract
from the
homologated
plan of St.
Antoine's
ward.Intervenants'
Exhibit No.2 Filed, 24th
April, 1890.

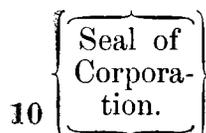
(ENDORSED.)

Exhibit No. 2. Filed 7th March by Intervenant. Filed 7th March, 1890. Prod. 24 April, 1890. (Paraphed.) A. B. L.

SCHEDULE No. 40.

William Walker, Esq.,
181 St. Antoine,
City.

Sir,



The City of Montreal.

By their undersigned Attorney and Counsel, hereby give notice that on Monday the Fifteenth day of February next, at eleven o'clock in the forenoon, or so soon as Counsel can be heard, at the Court House of this City they will, by and through their said Attorney and Counsel, present to the Superior Court, in and for the District of Montreal, in the Province of Quebec, sitting in term, a petition calling upon the said Court to choose and nominate in virtue of the Act of the Legislature, 37 Vic., chap. 51, and of the Acts 42-43 Vic., chap. 53, and 48 Vic., chap. 67, three competent and disinterested persons to act as

20 Commissioners, to fix and determine, in conformity with the said Acts, the price or compensation to be allowed for lots or pieces of ground or real property hereinafter mentioned or described, which the said Corporation of the City of Montreal have, by a resolution adopted on the Twenty-eighth day of December instant, determined to acquire for the purpose of widening the following streets, viz.:—Seigneurs, St. James, Mountain, Blache and St. Catherine Streets, respectively, as more fully detailed in the following descriptions and to perform such other duties as are imposed by law upon the said Commissioners:

6° A piece of land with no building thereon erected, bounded on the northeast side by a portion of lot cadastral No. 661, said side measuring about

30 8.8 feet; on the southeast side by a portion of lot cadastral No. 661, said side measuring about 27.4 feet; on the south-west side by a portion of lot cadastral No. 662, said side measuring about 9.6 feet, on the northwest side by Blache street, said side measuring about 27.4 feet, containing a superficial area of 252.1 square feet; the said piece of land being a part of the northwest portion of lot cadastral No. 661 on the official plan and book of reference for the St. Antoine Ward of the said City; the whole in accordance with a plan of the improvement deposited in the City Surveyor's office.

40

ROUER ROY,
Attorney for the Corporation of Montreal,
Montreal, 31st December, 1885.

(ENDORSED.)

Exhibit No. 3 du l'Intervenante à l'enquête. Prod 24, Avril 1890.
(Paraphed) A. B. L.

RECORD
*In the
Superior
Court.*

No. 27.
Notice of Ex-
propriation
addressed to
Wm. Walker,
re Seigneurs,
St. James,
Mountain
Blache and
St. Catherine
streets.
Dated 31st
Dec'r. 1885

RECORD

SCHEDULE. No. 41.

*In the
Superior
Court.*

CORPORATION OF MONTREAL.

City Surveyor's Office.

No 28.

Alignments
given to Wm.
Walker on
the 29th Sept
1885,
with the Plea
thereto an-
nexed, Intr.
Exh. No. 4.
Fyled 24th
April, 1890.

I the undersigned, hereby certify, that on the Fifteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five, at the instance and requisition of William Walker I did repair to a certain lot of ground, being No. 661 of the Cadastre and Book of reference for the St. Antoine Ward 10 of this City, belonging to William Walker, situate on the south-east side of Blache or lane, to determine the line of Blache lane or street aforesaid, and also the new line as shewn upon the homologated plan of the said Ward of this City, when, after examination and being in presence of I traced and marked the alignments as follows, viz. ;—1st. As to the actual line of said street. A line drawn along old fence on south-east side of Blache lane from its present eastern extremity to a point or lane fences in the division line of lots Cadastral 66I and 662, this line of fence being of very old standing. 2nd. As to the line per homologated plan :—A line drawn from a point eleven feet and two tenths of a foot to south-east on house on east corner of the lane and Mountain street 20 in a point on west side of Bisson street one hundred and ninety-two feet north of west corner of St. Antoine and Bisson streets ; this line takes from lot Cadastral No. 661 the portion which is not enclosed, and which has a depth of nine feet and six-tenths of a foot (9.6) on the west line of the lot by a frontage eastward of twenty-seven feet and four-tenths of a foot, at the east end of which the depth taken measures eight feet and eight-tenths of a foot (8.8;) containing an area of two hundred and fifty-two feet and one-tenth of a foot superficial measure, the whole English measure.

PERCIVAL W. ST. GEORGE,

City Surveyor.

30.

City Surveyor's Office, City Hall,
Montreal, December 29, 1885.

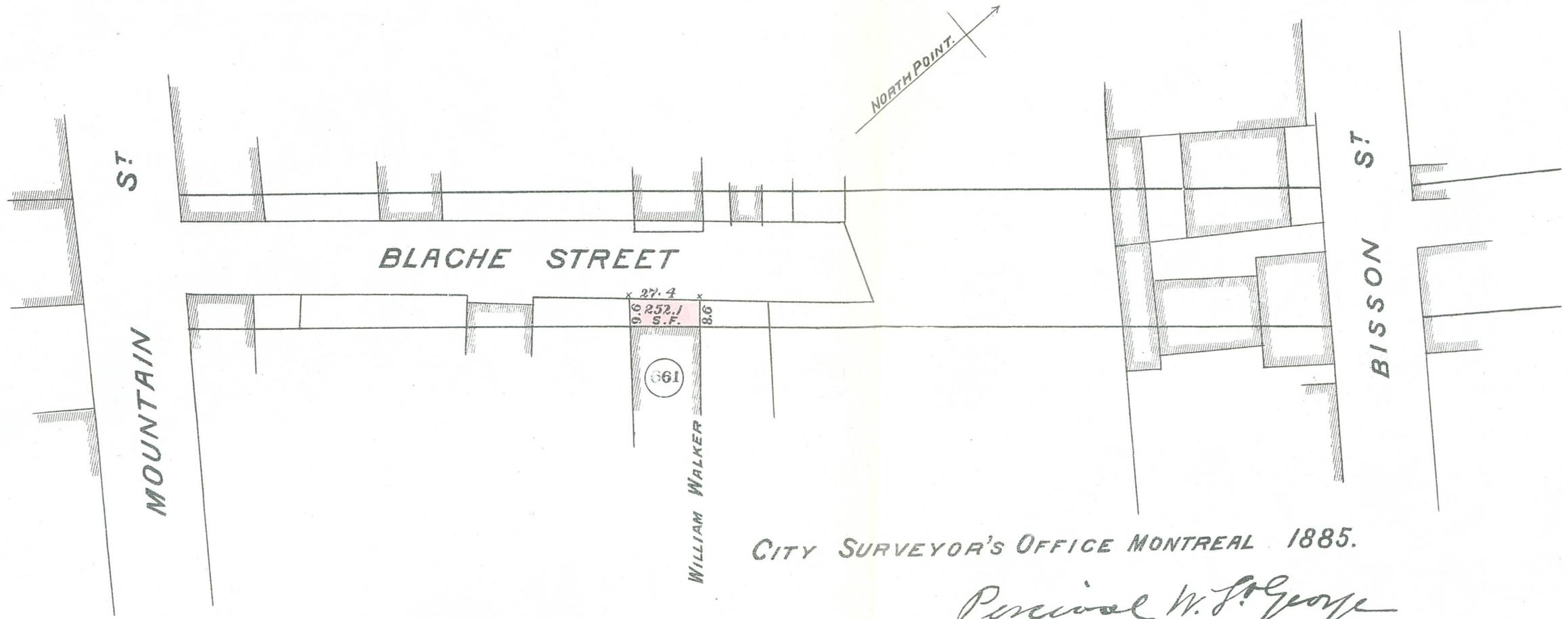
RECORD.

*In the
Superior
Court.*

No. 28.
Alignments
given to Wm.
Walker, on
the 29th
Sept., 1885,
with the
Plea thereto
annexed.
Intervenants'
Exhibit No.
4 Filed, 24th
April, 1890.

(ENDORSED.)

Exh. No. 4, de l'Intervenante à l'Enquête Prod. 24 avril, 1890.
(Paraphed.) A. B. L.



CITY SURVEYOR'S OFFICE MONTREAL 1885.

Percival W. St. George
 City Surveyor

(Signed)

SCALE 50 FEET TO ONE INCH E.M.

RECORD.

*In the
Superior
Court.*

No. 28.

Alignments
given to Wm.
Walker, on
the 29th
Sept., 1885,
with the
Plea thereto
annexed.
Intervenants'
Exhibit No.
4 Fyled, 24th
April, 1890.

(ENDORSED.)

Exh. No. 4, de l'Intervenante à l'Enquête Prod. 24 avril, 1890.
(Paraphed.) A. B. L.

SCHEDULE No. 42.

Province of Quebec {
District of Montreal, {

Superior Court

Exparte

L'Honorable Arthur Turcotte,..... Req't.

AND

10 The Atlantic & North-West Railway Company.....Defendants.

AND

The City of MontrealIntervenants.

The parties consent that the Intervening party shall file the record of proceedings in the Quinquennial Expropriation of 1885, for the purpose of widening Sanguinet, St. James, Mountain and Blache streets, and that, the said proceedings in as much as they refer to Blache street serve as on Exhibit

20 No. 5 in the present cause, amongst other of said proceedings being the notices, assessment rolls, judgments, etc.
Montreal, 7th March. 1890.

ROUER ROY,
For City.

BARNARD & BARNARD,
For Attorney General.

ABBOTTS JAMPBELL & MEREDITH,
Attorneys for Defendants.

(ENDORSED.)

30 Consent to file record of proceedings on Quinquennial Expropriation for 1885, as Intr. Party's, Exhibit No 5 at Enquête, fyled 24 April. 1890. (Paraphed.) A. B. L.

SCHEDULE No. 43.

Province de Québec, }
District de Montréal, }

Cour Supérieure.

40

Le quinzième jour de Février, mil huit cent quatre vingt-six,
Présent :
L'Hon. Juge Caron.

Ex-parte

La Cité de Montréal, corps politique et dument incorporé, ayant son prin-

RECORD.

*In the
Superior
Court.*

No. 29.
Consent to the production of the proceedings in the Quinquennial Expropriation of 1885, for the above mentioned streets. Int. Exh. No. 5. Fyled 24th April, 1890.

No. 30.
Copy of Judgment appointing Commissioners *re* City *vs.* Seigneurs & other streets. Dated 15th Feb. 1886. Intr. Exh. No. 6. Fyled 24th April, 1890.

RECORD. cipal bureau ou établissement d'affaires en la Cité et district de Montréal.

*In the
Superior
Court.*

Requérante en Expropriation

et

No. 30.

Rues des Seigneurs, St. Jacques, Lamontagne, Blache et St. Cathérine.

Copy of
Judgment
appointing
Commission-
ers *re* City *vs*
Seigneurs
and other
streets,
Dated 15th
February,
1886. Intr's
Exh. Fyled
24th April,
1890,
—*Continued.*

La Cour vu la requête de la dite Cité de Montréal, faite et présentée ce jour, exposant, que par résolution du Conseil de la dite Cité, passée le vingt-huitième jour de Décembre dernier, il a été décidé d'élargir les rues des 10
Seigneurs, St. Jacques, La Montagne, Blache et Ste Catherine respectivement, tel qu'il est plus amplement détaillé par le plan produit, et d'acquérir à cet effet les terrains ou immeubles ci-après désignés, savoir :

1° Un terrain sans bâtisses, sus-érigée borné du côté nord-ouest, par la rue Dorchester, le dit côté mesurant environ 25.6 pieds, du côté sud-ouest, par la rue des Seigneurs, le dit côté mesurant environ 300.5 pieds; du côté sud-est par la rue des Seigneurs, le dit côté mesurant environ 23.4 pieds; du côté nord-est par le résidu du lot du cadastre, No. 1621, le dit côté mesurant environ 304.7 pieds; contenant une superficie d'environ, 7413.7 20
pieds carrés, le dit terrain étant la partie sud-ouest du lot du cadastre, No. 1621, sur les plans et livre de renvoi officiels pour le quartier Saint Antoine de cette cité, le tout suivant le plan de l'amélioration, déposé dans le bureau de l'Inspecteur de la cité.

2° Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 109, le dit côté mesurant environ 14.0 pieds; du côté sud-ouest par la rue Fulford, le dit côté mesurant environ 17.8 pieds; du côté nord-ouest par la rue Saint Jacques, le dit côté mesurant environ 30.0 30
pieds du côté sud-est par le résidu du lot du cadastre No. 108, le dit côté mesurant environ 30.25 pieds, contenant une superficie d'environ 510.8 pieds carrés, le dit terrain étant la partie nord-ouest du lot du cadastre No. 108 sur les plan et livre de renvoi officiels pour le quartier Saint Antoine de cette cité le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

3° Un terrain sans bâtisse sus-érigée borné du côté nord-ouest par le rue Osborne, le dit côté mesurant environ 33.0 pieds; du côté sud-ouest par la rue La Montagne, le dit côté mesurant environ 120.0 pieds; du côté sud-est par partie du lot du cadastre No. 657 le dit côté mesurant environ 33.0 pieds, du côté nord-est par partie du lot du cadastre No. 657, le dit côté mesurant environ 120.0 pieds; contenant une superficie d'environ 3960.0 40
pieds carrés, le dit terrain étant partie de la portion sud-ouest du lot du cadastre No. 657 sur les plan et livre de renvoi officiels pour le quartier Saint Antoine de cette cité, le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

4° Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 271, le dit côté mesurant environ 28.4 pieds; du côté sud-est par le résidu du lot du cadastre No. 272, le dit côté mesurant environ 44.0 pieds; du côté sud-ouest par une partie du lot du cadastre No. 273, le

dit côté mesurant environ 27.95 pieds ; du côté nord-ouest par la rue Saint Jacques, le dit côté mesurant environ 44.15 pieds, contenant une superficie d'environ 1241.81 pieds carrés ; le dit terrain étant la partie nord-ouest du lot du cadastre No. 272 sur les plan et livre de renvoi officiels pour le quartier Saint Antoine de cette cité ; le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

10 5° Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 597 le dit côté mesurant environ 32.6 pieds ; du côté sud-est par la rue Osborne, le dit côté mesurant environ 31.67 pieds ; du côté sud-ouest par la rue LaMontagne, le dit côté mesurant environ 31.0 pieds, du côté nord-ouest par une partie du lot du cadastre No 597, le dit côté mesurant environ 31.67 pieds ; contenant une superficie d'environ 1007. 1 pieds carrés ; le dit terrain étant une partie de la portion sud-ouest du lot du cadastre No. 597 sur les plan et livre de renvoi officiels pour le quartier St. Antoine de cette cité, le tout suivant le plan de l'amélioration déposé dans le bureau de l'inspecteur de la cité.

20 6° Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 661, le dit côté mesurant environ 8. 8 pieds, du côté sud-est par une partie du lot du cadastre No. 661 le dit côté mesurant environ 27. 4 pieds ; du côté sud-ouest par une partie du lot du cadastre No. 662, le dit côté mesurant environ 96 pieds ; du côté nord-ouest par la rue Blache, le dit côté mesurant environ 27. 4 pieds ; contenant une superficie d'environ 252. 1 pieds carrés, le dit terrain étant une partie de la portion nord-ouest du lot du cadastre No. 661 sur les plan et livre de renvoi officiels pour le quartier Saint Antoine de cette cité ; le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

30 7° Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 915, le dit côté mesurant environ 6.25 pieds ; du côté sud-ouest par la rue St. Jacques, et le lot du cadastre No. 915, le dit côté mesurant environ 0.0 pieds ; du côté sud-est par la rue St. Jacques, le dit côté mesurant environ 50. 7 pieds ; du côté nord-ouest par une partie du lot du cadastre No. 915, le dit côté mesurant environ 50. 7 pieds contenant une superficie d'environ 158. 4 pieds carrés ; le dit terrain étant partie de la portion sud-est du lot du cadastre No. 915 sur les plan et livre de renvoi officiels pour le quartier St. Antoine de cette cité ; le tout suivant le plan de l'amélioration déposé dans le bureau de l'inspecteur de la cité.

40 8. Un terrain sans bâtisse sus-érigée borné du côté nord-est par une partie du lot du cadastre No. 1679, le dit côté mesurant environ 9.0 pieds ; du côté sud-est par la rue Sainte Catherine, le dit côté mesurant environ 24.1 pieds ; du côté sud-ouest par une partie du lot du cadastre No. 1678, le dit côté mesurant environ 9.0 pieds ; du côté nord-ouest par une partie du lot du cadastre No. 1679, le dit côté mesurant environ 24.1 pieds ; contenant une superficie d'environ 216.9 pieds carrés ; le dit terrain étant une partie de la portion sud-est du lot du cadastre No. 1679 sur les plan et livre de renvoi officiels pour le quartier Saint-Antoine de cette cité ; le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

9° Un terrain sans bâtisse sus-érigée borné du côté nord-est, par la rue

RECORD.

*In the
Superior
Court.*

No. 30.
Copy of
Judgment
appointing
Commission-
ers *re* City *vs*
Seigneurs
and other
streets,
Dated 15th
Feb., 1886.
Intr's Exhib.
No. 6.
Fyled 24th
April, 1890.
—Continued.

RECORD.

*In the
Superior
Court.*

No. 30.
Copy of
Judgment
appointing
Commission-
ers *re* City *vs.*
Seigneurs &
other streets,
Dated 15th
Feb., 1886.
Intr. Exh. No.
6, Filed 24th
April, 1890.
—*Continued.*

Saint Jacques, le dit côté mesurant environ 20.0 pieds, du côté sud-ouest par la ruelle Saint David, le dit côté mesurant environ 2.65 pieds ; du côté nord-ouest par une partie du lot du cadastre No. 952, le dit côté mesurant environ 48.78 pieds ; du côté sud-est par la rue St. Jacques, le dit côté mesurant environ 48.78 pieds contenant une superficie d'environ 113.70 pieds carrés ; le dit terrain étant la partie sud-est du lot du cadastre No. 952 sur les plan et livre de renvoi officiels pour le quartier St. Antoine de cette cité ; le tout suivant le plan de l'amélioration déposé dans le bureau de l'Inspecteur de la cité.

Toutes les dimension ci-dessus *sont en pieds et décimals anglais.*

Qu'en vertu de la 37me Vict. chap. 5 de la Législature de Québec, et des actes 42-43 Vict., chap. 53, et 48 Vict., chap. 67 il est devenu nécessaire de faire choisir et nommer par cette cour trois personnes capables et désintéressées pour agir en qualité de commissaires pour fixer et déterminer, conformément aux dits actes, les prix et compensation à être accordés pour les lots ou morceaux de terre ci-dessus mentionnés, et procéder à la cotisation, suivant la loi.

Que les avis exigés par les dits statuts ont été donnés et les autres formalités prescrites par la loi et les dits statuts dûment accomplies, et demandant, la dite requérante que tels commissaires soient maintenant nommés pour les fins sus énoncés ; Accorde la dite requête et, en conséquence, nomme par les présentes Adolphe Gravel, Sévère Rivard, et John Stirling Écuers, tous trois de la dite Cité de Montréal, comme tels dits commissaires, pour déterminer les prix et compensation à être accordés pour l'acquisition des dits terrains, ou immeubles, pour les fins susdites, et procéder à la cotisation suivant la loi ; et ordonne et enjoint aux dits commissaires de commencer leurs opérations le cinq mars prochain, et de faire rapport de leurs procédés le ou avant le seize d'avril prochain.

(Vraie Copie.)

HONEY & GENDRON,

P. S. C. 30

(ENDORSED.)

Copie de jugement produit le 9 mars, 1886, (Paraphed.) H. & G., P.S.C. A. B. L. Exh. No. 6, de l'Intervenante, à l'enquête. Prod., 24 avril, 1890. (Paraphed.) A. B. L.

No. 31.
Copy of
judgt. ap-
pointing
Charles Ha-
gar instead of
John Sterling
dated 12th
March 1886.
(Intr's Exh.
No. 6 1/2)

SCHEDULE NO. 43 1/2.

Province de Québec,
District de Montréal.)

Cour Supérieure.

Le douzième jour de Mars, mil huit cent quatre vingt-six.

Présent :

L'HON. MR. LE JUGE MATHIEU.

Ex-parte.

La Cité de Montréal, Requérente en expropriation,

et

10 Rues des Seigneurs, St. Jacques, Lamontagne, Blache et Ste Catherine,

La Cour vu la Requête de la Cité de Montréal, corps politique et dument incorporé, ayant son principal bureau ou établissement d'affaires, en la Cité et District de Montréal, faite et produite ce jour, exposant ;

Que, par jugement rendu par cette Cour, le quinziesme de février dernier, trois personnes ont été choisies comme commissaires, pour déterminer les prix et compensation d'être accordés pour l'acquisition des terrains ou immeubles réclamés par la corporation pour la présente expropriation, et procéder à la cotisation suivant la loi ; Qu'un des dits commissaires, savoir John Stirling, 20 ne peut agir comme tel, parce qu'il n'a pas la qualification requise par la 37ème, Vict. chapitre 51 section 176 s.s 4. en ce sens qu'il est intéressé dans la présente expropriation, et concluant la dite Requérente à ce qu'il soit nommé par cette Cour une personne capable, et désintéressée pour remplacer le dit John Stirling, pour les fins susdites, avoir examiné la procédure les documents produits, et délibéré :

Accorde la dite Requête et nommes, par les présentes, Charles Hagar, Ecuier, de la ville de Montréal, pour agir comme tel commissaire, conjointement avec Adolphe Gravel et Sévère Rivard déjà nommés, déterminer les prix et compensation à être accordés pour l'acquisition des terrains ou immeubles 30 réclamés pour la dite expropriation, et procéder à la cotisation suivant la loi. Et ordonne, et enjoint aux dits trois commissaires de commencer leurs opérations le dix-huit de Mars courant, à trois heures de l'après midi, à l'Hotel de ville, de cette Cité.

(Vraie copie).

HONEY & GENDRON,

P.C.S.

40

(ENDORSED.)

Copie de jugement pour remplacer John Stirling, produit 18 mars, 1886, (Paraphed) H. & G. P.S.C. Exhibit No. 6½ de l'Intervenant à l'enquête. Produit 24 April, 1890, (Paraphed) A.B.L.

RECORD.

*In the
Superior
Court.*

No. 31.
Copy of
Judgment
appointing
Chas. Hagar
instead of
John Sterling
Dated 12th
March, 1886.
Intr's. Exh.
No. 6½.
—Continued.

SCHEDULE No. 44.

RECORD.

*In the
Superior
Court.*

Province of Quebec, }
District of Montreal. }

Superior Court for Lower Canada.

Ex parte.

La Cité de Montréal.....Requérante.

et

Rues des Seigneurs St. Jacques, Lamontagne, Blache and Ste. Catherine.

No. 32.
Extract from
the valuation
report of the
commission-
ers. Intr.Exh.
No. 7, filed
24 April,
1890.

The undersigned Commissioners, appointed to fix and determine the price, 10
compensation, and indemnity to be allowed for certain lots of ground and real
property which the City of Montreal have resolved to acquire to carry out the
above improvements, hereby report, that they have completed their proceedings
of appraisement and determined the price, compensation or indemnity for such
lots of ground and real property about to be expropriated and hereinafter
described as follows, to wit :—

6. A piece of land with no building thereon erected bounded on the north-
east side by a portion of lot cadastral No. 661, said side measuring about 8.8
feet ; on the south-east side by a portion of lot cadastral No 661, said side
measuring about 27.4 feet ; on the south-west side by a portion of lot cadastral 20
No. 662, said side measuring about 9.6 feet ; on the north-west side by Blache
street, said side measuring about 27.4 feet ; containing a superficial area of
about 252.1 square feet, the said piece of land being a part of the north-west
portion of lot cadastral No. 661 on the official plan and book of reference for
the St. Antoine Ward of the said City, and being, as far as the said Commis-
sioners could ascertain the property of William Walker the sum of sixty-
three dollars (\$63.00.) All the dimensions mentioned in this report being in
English feet and decimals.

And such is the appraisement they have unanimously fixed and determined.

In witness whereof they have hereunto affixed their signatures. 30

Commissioners Room, }
City Hall, Montreal, }
this fifth day of April, }
One thousand eight }
hundred and eighty- }
six. }

(Signed), I. A. GRAVEL,
“ CHAS. HAGAR,
“ S. RIVARD.

I the undersigned Prothonotary of the Superior Court for the Province of
Quebec, acting in the District of Montreal do hereby certify the foregoing to
be a true extract taken from the Report of the Commissioners made and filed
in the above matter as to lot number six therein described, the whole of record 40
in my office.

Montreal, 24th April, 1890.

JEAN B. VALLÉE,
Deputy P. S. C.

(ENDORSED.)

Extract of Report of Commissioners. Exhibit No. 7, de l'Intervenante à
l'enquête. Produit 24 Avril, 1890, (Paraphed,) A. B. L.

SCHEDULE No. 45.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 33
 Extract from
 the plan
 made by
 John Adams,
 showing dis-
 tinctly all
 public and
 private pro-
 perty in the
 City.

Intervenants'
 Exhibit No.
 8 Fyled, 24th
 April, 1890.

(ENDORSED.)

Exh. No. 8, de l'Intervenante à l'Enquête Prod. 24 avril, 1890.
 (Paraphed.) A. B. L.

CITY SURVEYOR'S OFFICE

MONTREAL, MARCH 8th, 1890.

True copy of a portion of Map of the City and suburbs of Montreal Exhibiting distinctly every property public and private, the course of the Water Works, the River in front of the City and the Lachine Canal from its junction with the Port to the distance of $1\frac{1}{2}$ miles above.

Constructed from a New Survey 1825 by

JOHN ADAMS,

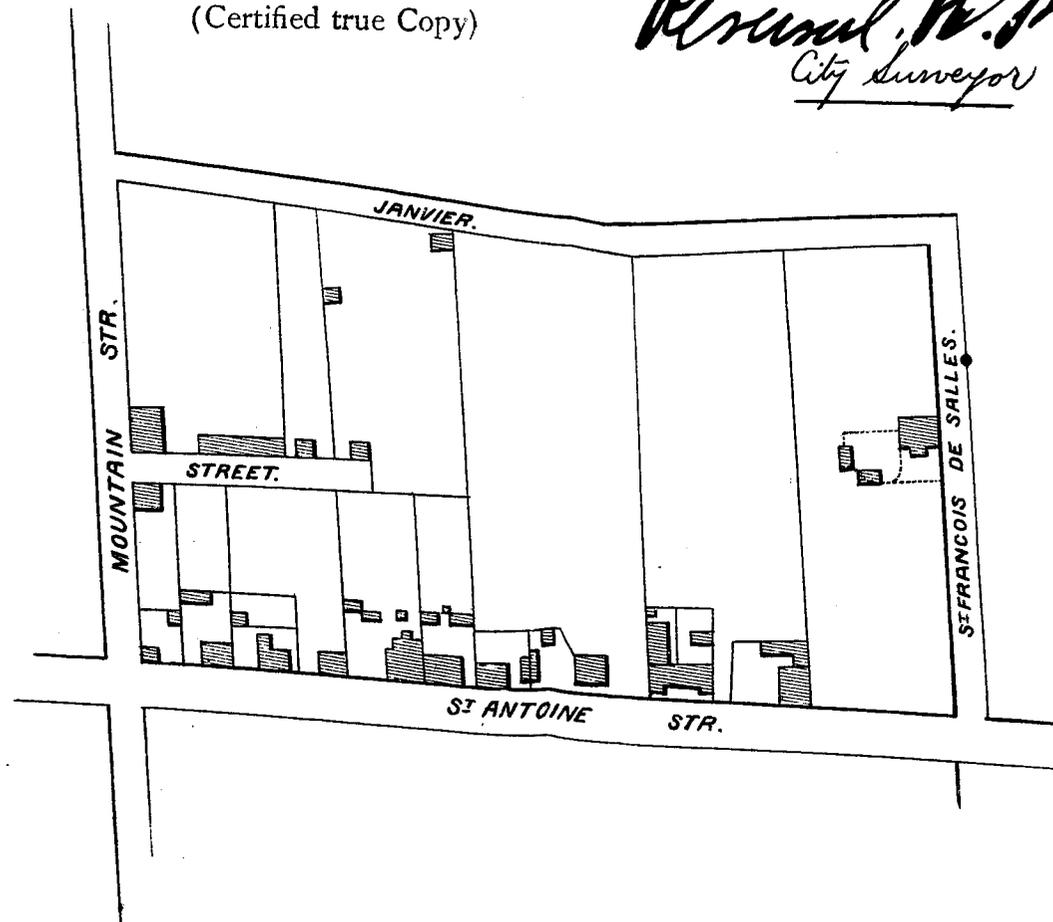
H. P. Royal Military Surveyor and Draughtsman.

(Signed) PERCIVAL ST. GEORGE,

City Surveyor.

(Certified true Copy)

Percival St. George
City Surveyor



SCHEDULE No. 45.

RECORD.

*In the
Superior
Court.*

No. 33.

Extract from
the plan
made by
John Adams,
showing dis-
tinctly all
public and
private pro-
perty in the
City.

Intervenants
Exhibit No.
8 Filed, 24th
April, 1890.

(ENDORSED.)

Exh. No. 8, de l'Intervenante à l'Enquête Prod. 24 avril, 1890.
(Paraphed.) A. B. I.

SCHEDULE No. 46.

CITY SURVEYOR'S ANNUAL REPORT., 1869.

Blash Lane—Footpaths repaired; 78 lineal feet of new footpath and 21 lineal feet of new crossing put down—at a cost of \$16.97.

Certified true extract of City Surveyor's Annual Report of 1869.

PERCIVAL W. ST. GEORGE,

City Surveyor.

10

(ENDORSED.)

Exhibit No. 9. Fyled 24 April, 1890. (Paraphed). A. B. L.

RECORD.

*In the
Superior
Court.*

No. 34.

Extract from
the Annual
Report of the
City
Surveyor,
for the year
1869. Int.
Exh. No. 9,
Dated 24th
April, 1890.

20

SCHEDULE No. 47.

Montreal, 2nd May 1889.

The Chairman of the Road Committee.

Dear Sir :

In the month of November, 1888, a protest was served upon the Corporation on account of the closing of Blache Lane, proprietors interested are seriously injured by the closing of the lane and the bad faith of the Atlantic and North West Railway Company in depriving the proprietors of entrance from the rear after having obtained the properties expropriated upon the promise by a plan produced by the Railway Company before the arbitrators, showing that we were to have a rear entrance from a street fifty feet wide being a continuation of Donagani street, through to Mountain street, the injury done to me is particularly grave because of the interruption to the work of my factory. So far we have not learned that any action has been taken by the Corporation upon the protest above referred to. I therefore respectfully appeal to you to have the matter attended to without delay.

Mr. Ethier stated to one of the proprietors that a petitory action, in the name of the Corporation against the Company to have Blache Lane reopened, would be a simple and expeditious proceeding, if you are in a position to cause some remedy of that character to be applied at an early date, you would be acting in the interests of justice, and would confer a favor on myself and the other proprietors.

I am yours respectfully,

WM. WALKER.

No. 35.
Letter of Wm
Walker to the
Chairman of
the Road
Committee,
Dated 2nd
May, 1889,
with the
opinion of the
City
Attorney.
Dated 17th
July, 1889.
Intr. Exh.
No. 10, Filed
24th April,
1890.

RECORD.

*In the
Superior
Court.*

No. 35.

Letter of Wm
Walkerto the
Chairman of
the Road
Committee
Dated 2nd
May, 1889,
with the

opinion of the
City
Attorney.
Dated 17th
July, 1889.
Intr. Exh.
No. 10, Filed
24th April,
1890.

—Continued.



DEPARTEMENT EN LOI.

Montréal 17 Juillet 1889.

Au Président et aux membres du comité des chemins

Re Ruelle Blache.—Lettre de M. Walker.

10

Messieurs,

La Compagnie de chemin de fer connue sous le nom de "The Atlantic and North West Railway Company" s'étant emparée sans titre ni autorisation de la ruelle Blache, située entre les rues La Montagne et Bisson, pour l'exploitation de son chemin enlevant par là aux propriétaires riverains leur droit d'entrée et de sortie sur la dite ruelle, Mr. Walker, l'un de ces derniers, demande à la ville d'intervenir afin de reprendre possession de cette rue et de la remettre dans la même état qu'elle était auparavant, à l'usage du public.

20

D'après les informations obtenues tant du département des chemins que des intéressés je constate que cette ruelle apparaît comme ouverte au public sur un plan fait par John Adams (*military surveyor*) en 1825 : elle s'étend depuis la rue Bisson sur une largeur d'environ 28 pieds, elle figure de plus sur le plan du quartier St. Antoine qui a été homologué en 1877 avec une largeur projetée de 50 pieds.

Le plaignant aurait été exproprié suivant cette homologation Quinquennial, et il ne paraît pas d'après le plan avoir d'autre sortie que sur cette ruelle ; d'un autre côté, la Compagnie reconnaît qu'elle en a pris possession sans titre et sans expropriation il y a même un procès pendant devant la Cour, entre 30 cette dernière et le Procureur-Général à se sujet.

Il n'en faut pas d'avantage, je crois, pour établir que la ville est en possession ouverte et publique de la dite ruelle de temps immémorial, et que son intention a toujours été d'en faire une voie publique formant partie du plan homologué. Dans ces circonstances je suis d'opinion que la ville devait protester la dite compagnie de cesser ses empiètements sur la dite ruelle, et à moins d'un arrangement à l'effet de garantir aux intéressés leurs droits acquis, la question pourrait être décidée par les tribunaux.

Je suis informé que l'action qui est pendante à la Cour Supérieure entre le Procureur-Général et la dite compagnie est à l'enquête et sera probablement 40 jugée dans le cours de l'automne.

J'ai l'honneur d'être, Messieurs, votre très humble et obéissant serviteur.

ROUER ROY,

Avocat de la cité.

par L. G. E.

N. B. D'ailleurs la Cour d'appel a déjà décidé, le 9 mars 1864 que cette ruelle était une rue publique depuis avant 1834. V° 8. L. C. J. p. 317—*re* Johnson & Archambault.

R. R.

par L. G. E.

(Certified.)

A. GOSSELIN,
Ass. City Clerk.

J. GRENIER,
Mayor.



(ENDORSED.)

Letter of William Walker and opinion of City Attorney. Exh. No. 10 de l'Intervenante à l'enquête. Prod. 24 avril 1890. (Paraphed) A. B. L.

RECORD.

*In the
Superior
Court.*

No. 35.

Letter of Wm Walkerto the Chairman of the Road Committee. Dated 2nd May, 1889. with the opinion of the City

Attorney. Dated 17th July, 1889.

Intr. Exh. No. 10. Filed 24th April, 1890.

—*Continued.*

10

20

30

40

SCHEDULE No. 48.

RECORD.

*In the
Superior
Court.*

No. 36.
Extract from
the plan of
the City of
Montreal,
made by
Louis Char-
land, Insp.
des Chemins
du Bas-Ca-
nada. 1801.
Intervenants
Exhibit No.
11 Fyled,
24th April,
1890.

(ENDORSED.)

Exhibit No. 11. Fyled by Intervenant. Fyled 7 March, 1890. Prod. 24
April, 1890. (Paraphed). A. B. L.

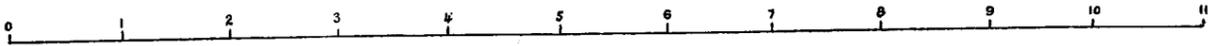
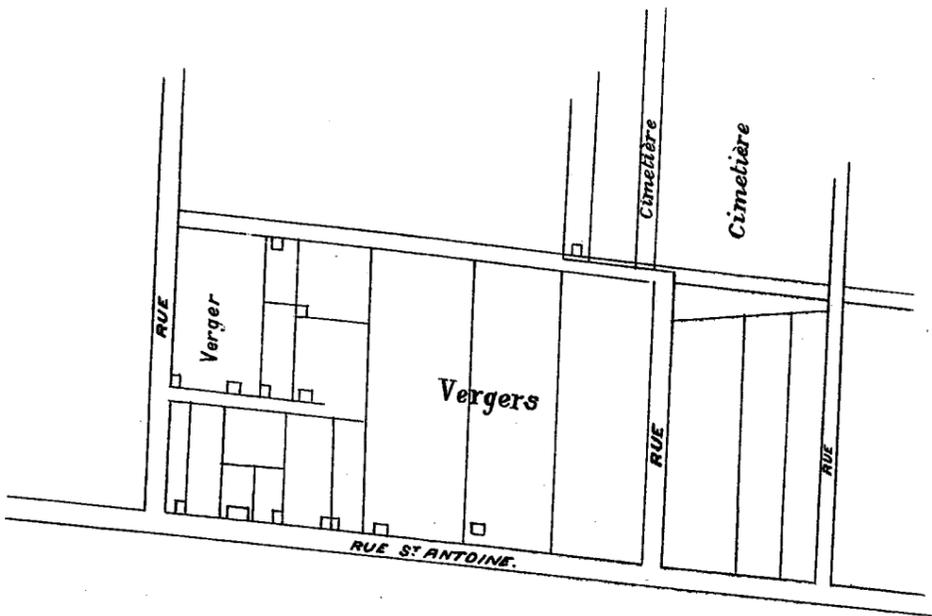
CITY SURVEYOR'S OFFICE

MONTREAL, MARCH 12th, 1890.

True Copy of a portion of—Plan de la ville et Cité de Montréal,
Made by LOUIS CHARLAND,
Inspecteur des Chemins du Bas-Canada, 1801.

(Certified true Copy)

Perceval W. St. George
City Surveyor



— Échelle de onze arpents —

SCHEDULE No. 48.

RECORD.

*In the
Superior
Court.*

No. 36.

Extract from
the plan of
the City of
Montreal,
made by
Louis Char-
land, " Insp.
des Chemins
du Bas-Ca-
nada. 1801.
Intervenants'
Exhibit No.
11 Fyled,
24 th April,
1890.

(ENDORSED.)

Exhibit No. 11. Fyled by Intervenant. Fyled 7 March, 1890. Prod. 24
April, 1890. (Paraphed). A. B. L.

SCHEDULE No. 49,

SUBJECT : . . BLACHE LANE.

City Surveyor's Office,

Montreal, Jan. 27th, 1890.

No. 37.
 Letter of John
 R. Barlow to
 P. W. St.
 George City
 Surveyor,
 Dated 27th
 Jan., 1890.
 Int. Exh.
 No. 12.

10 PERCIVAL W. ST. GEORGE, Surveyor,
 F. B. LAVALLÉE, Deputy “
 ALFRED BRITAIN, Assistant “

P. W. ST. GEORGE, Esq.,
 City Surveyor,

Sir :

In conformity with your instructions I have gone carefully through the annual reports of the City Surveyor's from 1840 to 1888, and find the lane in question is only mentioned once, viz. : in 1869, during which year 78 lineal feet of sidewalk, and 20 lineal feet of crossing was constructed at a total cost of
 20 \$16.97,

The homologated line was given to William Walker on the 15th April, 1885, and Procès Verbal given August 12th, 1885, at which date he had erected a house on Blache Lane.

Blache Lane was a cul-de-sac, and was homologated on the 27th March, 1887 “as part of St. Antoine Ward” to be widened to a width of fifty feet (50) and extended eastwards to Bisson street, where it would be opposite the proposed extension of Donegani street, and the two uniting were to form one street under the name of Donegani street extending from Windsor street to Mountain street.

30 There is a lane shown on a plan made by Louis Charland, dated 1801, which is in the place shown on the homologated plan as being occupied by Blache Lane, but there is no name on the plan ; the same applies to a plan made by John Adams in 1825.

It has no sewer in it.

I am Sir,

Your obedient servant.

JOHN R. BARLOW.

Examined.

40

PERCIVAL W. ST. GEORGE,
 City Surveyor.

(ENDORSED)

Exh. No. 12 de l'Intervenante à l'enquête
 Fyled 24 April, 1890.
 (Paraphed) A. B. L.

SCHEDULE No. 50.

No. 38.
Letter of
Thos Darling
to Michel
Laurent,
Chairman,
of the Road
Committee,
Dated 21st
Feb., 1889.

(Copy.)

Montreal, 21st February 1889.

M. LAURENT, Esq.,
Chairman Road Committee.

Dear Sir :

Between two and three months ago a protest was served upon the Corporation at the instance of proprietors, in the vicinity of Mountain street, regarding the closing of Blache Lane by the Atlantic & North West Railway Company. 10
The protest was, I understand referred to the Road Committee. On applying at the office and to yourself I was informed that the protest would be dealt with by the Road Committee without delay. So far I have not observed that that has been done. As one of the proprietors injured by the action of the Railway Company I naturally feel aggrieved by the delay, and will feel obliged by your letting me know whether anything has been done in the matter by the Road Committee, and if not when the subject will be dealt with and the protest reported upon.

Yours truly,

(Signed), THOS. DARLING.

(Certified.)

20



A. GOSSELIN,
Asst. City Clerk.

J. GRENIER,
Mayor.

(Copy.)

No. 38a.
Letter of
John Brophy
to P. W. St.
George,
Dated 1st
April, 1889,
Int. Exh.
No. 13.

Expropriation of part of the property of W. Walker on Blache Lane.

City Surveyor's Office,

30

Montreal, April 1st, 1889.

PERCIVAL W. ST. GEORGE, Esq.,
City Surveyor.

Sir :

The portion of land tinted Red on the plan and being portion of lot cadastral No. 661, St. Antoine Ward, owned by W. Walker, Esq., situated on Blache Lane, was expropriated by the City under the Quinquennial Law of expropriation in the year 1885.

I remain your obedient Servant,

(Signed.) JOHN BROPHY.

40

(Certified.)



A. GOSSELIN,
Asst. City Clerk.

J. GRENIER,
Mayor.

(ENDORSED.)

Blache street. Letters of Thos. Darling and John Brophy. Exhibit No. 13, de l'Intervenante, à enquête. Produit 24 Avril, 1890. (Paraphed.) A. B. L.

SCHEDULE No. 51.

10 (Copy.)

30 St. John St.

Montreal, August 9th, 1889.

R. PREFONTAINE, Esq.,

Chairman of the Road Committee.

Walker vs. Atlantic & North West Railway Company.

20

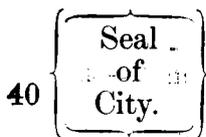
I understand from the City Attorney that he has reported to your Committee regarding the closing of Blache Lane, but that his report has not yet been dealt with. On the 23rd July I wrote the City Clerk, enclosing a copy of the pleadings in the case, so that it might be seen that the Defendants declare that the City does not complain of the closing of Blache Lane, and in that way a difficulty is raised against the Plaintiff, which should not fairly exist. I therefore requested that the City should intervene in the proceedings for the purpose of overcoming the difficulty in question. I understand from the City Attorney that he is favorable to such a course, and that should you see your way to recommend its adoption the intervention would probably be fyled at once. Under these circumstances I will feel extremely obliged if you will have the report of the City Attorney dealt with at an early date, he will then be in a position to report to the City Clerk upon my letter above referred to.

Yours truly,

(Signed.) THOS. DARLING.

(Certified.)

J. GRENIER,
Mayor.



A. GOSSELIN,
Asst. City Clerk.

(ENDORSED.)

Blache Street. Letter of Thos. Darling. Exhibit No. 14, de l'Intervenante à l'enquête. Produit, 24 Avril, 1890. (Paraphed.) A. B. L.

No. 39.
Letter of Thos. Darling to R. Préfontaine, Chairman of the Road Committee. Dated 9 Aug. 1889 Int. Exh No. 14.

RECORD.

SCHEDULE No. 52.

*In the
Superior
Court.*

(Copy.)

The Canadian Pacific Railway Co.

5th April, 1889.

No. 40.
Letter of W. C. Van Horne to the City Clerk, acknowledging receipt of the resolution of the Road Committee with reference to the Atl. & N. W. Ry. bridge across Mountain st. and the closing of Blache st., dated 5th April, 1889. Intr. Exh. No. 15.

CHARLES GLACKMEYER, Esq.,
City Clerk, Montreal.

Dear Sir :

I beg to acknowledge the receipt of your communication of the 4th instant transmitting the resolution of the Road Committee with reference to the Atlantic & North-West bridge across Mountain Street, and the closing of Blache Street, in this City, and requesting a written guarantee, indemnifying the Company from all claims in connection therewith. 10

The matter will have prompt attention.

Yours truly,

(Signed),

W. C. VAN HORNE.

(Certified.)

J. GRENIER,
Mayor

20



A. GOSSELIN,
Asst. City Clerk.

(ENDORSED.)

Blache street. Letter of W. C. Van Horne, acknowledging receipt of minute of Road Committee. Exh. No. 15, de l'Intervenante à l'enquête. Prod. 24 Avril, 1890. (Paraped.) A. B. L. 30

No. 41.
Extract of minutes of a meeting of the Road Committee held on the 20th March, 1889.

SCHEDULE No. 53.

(Copy.)

EXTRACT of the minutes of a meeting of the Road Committee, Held on the 20th March, 1889. 40

A letter from Mr. Thos. Darling, protesting against the closing of Blache street, by the Atlantic & North-West Railway Company, was submitted and referred to the City Surveyor, for a report.

(Certified.)

CHAS. GLACKMEYER,
City Clerk.

EXTRACT of the minutes of a meeting of the Road Committee held on the 3rd April, 1889.

The letter of Mr. T. Darling on the closing of Blache street by the Atlantic & North West Railway Company, was submitted with a plan, and it was

Resolved :

That the Atlantic & North West Railway Company be requested to redeem the promise made by Mr. Henneker the Solicitor to furnish the City with a written guarantee whereby said Company would bind themselves to indemnify the City for all claims, actions, etc., which may arise from the construction of their bridge across Mountain street and the closing of Blache street.

(Certified.)

CHAS. GLACKMEYER,
City Clerk.

EXTRACT of the minutes of a meeting of the Road Committee held on the 15th April, 1889.

20 A letter from the Atlantic & North West Railway Company in reference to the closing of Blache street, was submitted and ordered to be filed.

(Certified.)

CHAS. GLACKMEYER,
City Clerk.

EXTRACT of the minutes of a meeting of the Road Committee held on the 8th May, 1889.

30 A letter from Wm. Walker, in reference to the closing of Blache street, by the Atlantic & North West Railway Company, was submitted, and it was Resolved :

That the letter of Mr. Wm. Walker in reference to the closing of Blache street be referred to the City Attorney for his opinion.

(Certified.)

CHAS. GLACKMEYER,
City Clerk.

EXTRACT of the minutes of a meeting of the Road Committee held on the 14th August, 1889.

40 Letters from Messrs. Wm. Walker and Thos. Darling, on the closing of Blache street by the Atlantic and North West Railway Company, were submitted with the opinion of the City Attorney and it was.

Resolved ;

That the City Attorney be instructed to protest the Atlantic and North West Railway Company in reclosing of Blache street, and intervene on behalf

RECORD.

*In the
Superior
Court.*

No. 41, a.
Extract of the minutes of a meeting of said Committee, dated 3rd April, 1889.

No. 41, b.
Extract of the minutes of a meeting of said Committee, dated 15th April, 1889.

No. 41, c.
Extract of the minutes of a meeting of said Committee, dated 8th May, 1889.

No. 41, d.
Extract of the minutes of a meeting of Road Committee, dated 14th Aug. 1889.
Intr. Exh.
No. 16.
—Continued.

RECORD. of the City in the case now pending before the Court—Walker vs. Atlantic and North West Railway Company.

In the Superior Court.

(Certified)

CHAS. GLACKMEYER,
City Clerk.

No. 41, d.
Extract of the minutes of a meeting of Road Committee, dated 14th Aug. 1888. Intr. Exh. No. 17

(ENDORSED)

Exh. No. 16, de l'Intervenante à l'enquête. Produit 24 Avril, 1890. (Paraphed.) A. B. L. 10.

SCHEDULE, No. 54.

On motion of Alderman Laurent seconded by Alderman Wilson it was on division.

Resolved : 20.

That said report be adopted less that part which refers to the closing of Bisson street, which is left over for further consideration.

(Certified)

J. GRENIER,
Mayor.



A. GOSSELIN,
Asst. City Clerk.

No. 42, 43, & 43 a
Report of the Road Committee recommending that the Atl. & N. W. Ry. Co. be permitted to cross the streets and close Bisson streets, etc., dated 1st & 8th Februar 1889. Intr v Exh. No. 17.
—Continued.

To the City of Montreal,

The Road Committee :—Respectfully Report :

30.

(Copy.)

On the accompanying letter from the Atlantic & North-West Railway Company, asking the City to approve of their plans to cross the streets leading to their station in Windsor street, and also asking to be permitted to close Bisson street, from Donegani street to Osborne street.

Your Committee having carefully examined said plans, have come to the conclusion that the application of the Company should be granted provided they alter their plans, so as to cross Mountain and Guy streets, with a single span, instead of a pier in the middle of said streets, as said piers would obstruct the streets. 40.

Your committee therefore recommend that it be resolved to approve of the plans of the Atlantic and North-West Railway Company, (hereto annexed), shewing the manner the Company purpose to cross the streets, leading to their station in Windsor street, on condition that Mountain and Guy streets, be crossed by means of a single span and not by piers as shown on said plans.

Your Committee further recommend that the Atlantic and North-West Railway Company, be allowed to close Bisson Street, between Donegani street and Osborne street, on condition that they cede to the City, gratuitously the land required for the opening of Donegani street, from its present terminus to Bisson street, and also that the company, sign an agreement by which they will assume the responsibility of any and all damages that may be claimed and proved in consequence of the closing of said Bisson street.

The whole nevertheless respectfully submitted.

10

(Signed,)

M. LAURENT,
M. MALONE,
DANL. WILSON,
WILLIAM KENNEDY,
R. PREFONTAINE.

Committee Room, City Hall)
Montreal, 8th February, 1888. }

Atlantic & North West Railway Company,

20

Montreal, February 1st, 1888.

(Copy.)

To the Honorable City Council of Montreal.

Gentlemen,

I am instructed to submit for the approval of your Honorable body, the plans showing the manner in which the Atlantic and North West Railway Company propose to cross the streets, with their tracks, leading to its station on Windsor street.

30

The arches allow ample headway at all the streets except Bisson, where the clear headway on one side is only nine feet. This street is used but very little, and if closed between Donegani and Osborne streets would cause little or no inconvenience to the public, and would enable the Company to improve the character and appearance of its work.

The Company therefore petitions your Honorable Body to favorably consider a proposition to close that portion of Bisson street above mentioned; the Company to protect the City against all claims for damages resulting from the said closing.

I have the honor to be,

Gentlemen,

Your obedient servant,

(Signed.) C. DRINKWATER, Secretary.

40

(Certified.)

J. GRENIER,
Mayor.



A. GOSSELIN,
Asst. City Clerk.

RECORD.

*In the
Superior
Court.*

No. 42, 43, &
43 a.

Report of the
Road Com-
mitteerecom-
mending that
the Atl. & N.
W. Ry. Co.
be permitted
to cross the
streets and
close Bisson
streets, etc.,
dated 1st &
8th February
1889. Intr.
Exh. No. 17.
—Continued.

(On the Back.)

RECORD.

*In the
Superior
Court.*Nos. 42, 43, &
43 a.Report of the
Road Com-
mittee recom-
mending that
the At. & N.
W. Ry. Co. be
permitted to
cross the
streets and
close Bisson
street, etc.,
Dated 1st &
8th February
1889. Intr.
Exh. No. 17.

Report from the Road Committee recommending the Atlantic and North-West Railway Co. be permitted to cross the streets leading to their station by means of bridges, and also that they be permitted to close Bisson street on certain conditions. Presented 13th February, 1888, next. Party adopted 20th Feb. 1888.

Entered W, 2 pages, 69 & 70, and page 543 of Vol. 2 of Report.

(ENDORSED)

10.

Exh. No. 17, de l'Intervenante à l'enquête, Prod. 24 Avril, 1890 (Paraphed.)
A. B. L.

20.

SCHEDULE No. 55.

No. 44.
Extract from
the minutes
of the City
Council. Spe-
cial meeting
the 20th Feb.
1888. Intr.
Exh., No. 18.
—Continued.

EXTRACT from minutes of Council, special meeting, Twentieth of February,
One thousand eight hundred and eighty-eight.

The order of the day being read to consider a report from the Road Com-
mittee on the application of the Atlantic and North West Railway Company to
be permitted to cross the streets leading to their station by means of bridges,
etc., the following report was brought up and read.

To the City of Montreal.

30.

The Road Committee respectfully report.

On the accompanying letter from the Atlantic and North West Railway
Company asking the City to approve of their plan to cross the street leading to
their station in Windsor street, and also asking to be permitted to close Bisson
street from Donegani street to Osborne street.

Your Committee having carefully examined said plans have come to the
conclusion that the application of the Company should be granted provided
they alter their plans so as to cross Mountain and Guy streets be crossed by 40,
means of a single span and not by piers as shewn on said plans.

Your Committee further recommend that the Atlantic and North West
Railway Company be allowed to close Bisson street between Donagani street
and Osborne street on condition that they sede gratuitously to the lane required
for the opening of Donagani street, and also that the Company sign an agreement
by which they will assume the responsibility of any and all damages that may
be claimed and prove in consequence of the closing of said Bisson street.

Committee Room }
 City Hall }
 Montreal, Feb. 8 1888. }

Respectfully submitted
 (Signed) M. LAURENT,
 " M. MALONE,
 " D. WILSON.
 " WM. KENNEDY,
 " R. PRÉFONTAINE.

RECORD.

*In the
 Superior
 Court.*

No. 44.

Extract from
 the minutes
 of the City
 Council. Spe-
 cial meeting
 the 20th Feb.

1888,

Intr. Exh.,
 No. 18.

Moved by Alderman Laurent,
 Seconded by Alderman Wilson
 That said reports be adopted less that parts which refers to the closing of
 10 Bisson street which is left over for further consideration.
 Moved in amendment by Aldermen Préfontaine
 Seconded by Alderman Dubuc.

That the report of the said Committee now before the Council be referred
 back to Committee with instruction to take into consideration the petitions and
 protests against closing up of Bisson street.

And the question being put on said amendment the Council divided Yeas—
 Gauthier, Griffin, V. Grenier, Dupuis, Boisseau, Perrault, Préfontaine, Dubuc
 ————8 Nays, Tansey, Morris, P. Kennedy, Cunningham, McBride, Malone,
 Archibald, Farewell, Lee, Villeneuve, Martineau, Wilson, Hamelin, Dufresne,
 20 Holland, Mount, White, Stevenson, Donavan, Laurent———20. So it passed
 negative.

The question being then put on the main motion, it was carried on the
 same division and resolved accordly.

(Certified)

CHAS. GLACKMEYER,
 City Clerk.

(On the Back.)

Extract from the minutes of Council. Special meeting, Monday, 20th Feb-
 30 ruary, 1888.

(ENDORSED.)

Exh. No. 18, de l'Intr. à l'enquête. Prod. 24 avril, 1890. (Paraphed.) A. B. L.



RECORD.

*In the
Superior
Court.*

No. 45.
Declaration
Requisition
and protest
at the request
of Wm.
Walker and
others upon
and against
the City of
Montreal
Kittson N. P.
Dated 5th
Inter Exh.
No. 19.
—Continued.

SCHEDULE No. 56.

On this fifth day of the month of December, in the year of Our Lord, one thousand eight hundred and eighty-eight. 10

At the request of William Walker, Zotique Leroux, Alexander Watt, John Eaman, Patrick Martin, Alphonse Leroux, John H. Lamothe, Robert Adams George Barrington & Sons, Thomas Darling, Joseph Cusson, John Brennan, George S. Koester, Pierre Dansereau, George McGarvey, Hermenegilde Dufort, M. G. Edson, Estate C. Mélancon by Joseph Mélancon, Executor, Pierre N. Mailloux, Ovide Mailloux, George Smith, James O'Gilyy and George Childs, all of the said city of Montreal and all owners of real estate situate in the localities and vicinity thereof affected by the matters hereinafter referred to.

I, George R. W. Kittson, the undersigned Notary duly commissioned and sworn practising in the city of Montreal, in the District of Montreal, personally went to the City Hall being the office and usual place of business in the said city of Montreal, of the city of Montreal, a body politic and corporate, where being and speaking to Charles Glackmeyer, Esquire, City Clerk, I said and declared as follows: 20

That the Atlantic and North West Railway Company in erecting their bridge or viaduct over Mountain street in the said city of Montreal, have placed the piers or supports thereof upon said street, thereby causing a serious impediment to the traffic passing through said street and furthermore said Railway Company have taken possession of that certain street running from said Mountain street Eastwards and known as Blache Lane, which is and as has been for some years past a public street, and have completely blocked up the same thereby depriving the said *requérants* and the public of the use of said street. 30

That the action on the part of the said Railway Company in erecting the piers or supports to said bridge or viaduct upon said Mountain street and also in taking possession of said Blache Lane, blocking up the same and preventing the use thereof by the public and by said *requérants* has caused great injury to real property situate in the locality and has caused and is still causing to said *requérants* and others great and serious loss, injury and damage. That said Railway Company have no right to use said Mountain street for the purpose above mentioned nor to block up said Blache Lane, and the said city of Montreal is bound to see that said streets as well as all other public streets be used and kept open as public streets and that the same are in no wise impeded, obstructed or blocked up. 40

Wherefore I, the said Notary, at the request aforesaid and speaking as aforesaid do hereby call upon and require the said The City of Montreal to imme-

diately and within forty-eight hours from the service hereof to remove or cause to be removed the impediment and obstruction so erected or placed by said Railway Company upon said Mountain street, and also within said delay to open or cause to be opened said Blache Lane at the exit upon the highway out of the same by said Railway Company, notifying The City of Montreal that failing so to do the said *requérants* will hold as they and each of them do hereby hold the said The City of Montreal, the said The Atlantic and North West Railway and all others concerned, liable for all costs, loss, injury and damage which they the said *requérants* and each of them have already suffered and may hereafter suffer in the premises, and that they the said *requérants* will take such further proceedings as they shall be advised or may deem proper in the premises.

And I, the said Notary at the request of aforesaid and speaking as aforesaid, have protested, and by these presents do most solemnly protest against the said The City of Montreal and all others whom the same doth, shall, or may in any way concern, for all costs, losses, damages, detriment, injury and hurts already suffered, and which may be hereafter in any way suffered, and for all and whatsoever else may or ought to be protested for or against, for and in consequence of the premises and all and every the causes and reasons above mentioned or incidental thereto.

And I have served a duly certified copy hereof upon the said The City of Montreal for signification speaking as aforesaid.

Thus done and protested at the City of Montreal at the place and on the day, month and year first above written these presents bearing the number eight thousand and nineteen of the original deeds of record in my office and I have signed in testimony of the premises.

(Signed) GEO. R. W. KITTSOON,
N. P.

A true copy of the original minute remaining of record in my office.

GEO. R. W. KITTSOON,
N. P.

(On the Back) No. 8019, 5 Decr. 1888. Declaration; requisition and protest at the request of Wm. Walker et al., upon and against The City of Montreal

(ENDORSED)

Exh. No. 19 de l'Intervenante à l'enquête. Prod. 24 Avril 1890. (Paraphed)
A. B. L.

40

RECORD.

*In the
Superior
Court.*

No 45.

Declaration,
Requisition
and protest
at the request
of Wm.

Walker and
others upon
and against
the City of
Montreal,

Kittson, N.P.
Dated 5th
Intr. Exh.,
No. 19.

—Continued.

RECORD.

*In the
Superior
Court.*

SCHEDULE No. 57.

No. 46.
Extract from
Assessment
Roll for
Widening of
Blache street,
Dated 16th
August, 1886.
Intr. Exh.
No. 20.

Extract from Assessment Roll for Street Improvements.

For widening of Blache street.

10

| PROPRIETOR. | STREET. | WARD. | CAD. NO. | SUB-DIV. | ASSESSMENT. |
|-----------------------------|---------|-------|----------|----------|-------------|
| | | | | | \$ c. |
| James Baylis..... | Blache | 5 | 657 | 8 | 27 52 |
| do | do | 5 | 657 | 10 | 4 63 |
| do | do | 5 | 657 | 11. | 5 72 |
| do | do | 5 | 657 | 12 | 5 72 |
| Thomas Tinsley..... | do | 5 | 658 | | 14 44 |
| Est. Thomas O'Connell..... | do | 5 | 659 | | 8 17 |
| do do | do | 5 | 655 | | 8 99 |
| Est. Alexander Watt..... | do | 5 | 660 | | 11 45 |
| A. C. Hughes..... | do | 5 | 661 | Part, | 7 39 |
| William Walker | do | 5 | 661 | " | 7 39 |
| Catherine Irish..... | do | 5 | 662 | | 16 78 |
| (Widow of A. T. Koester.) } | | | | | |
| Margaret Brennan..... | do | 5 | 665 | | 17 57 |
| (Wife of James Brennan.) } | | | | | |
| Michael Dowling | do | 5 | 665 | A. | 11 71 |
| | | | | | \$147 48 |

20

30

Commissioners' Room, City Hall,
Montreal, this sixteenth day of
August, one thousand eight
hundred and eighty-six.

(Signed)

J. A. GRAVEL.
CHAS. HAGAR.
S. RIVARD.
Commissioners.



Certified correct.)

J. GRENIER, *Mayor.*
CHS. GLACKMEYER, *City Clerk.*

40

(Endorsed, Exh. No. 20, de l'Intv. à l'Enquête, prod. 24 Avril 1890 (Paraphed)
A. B. L.

SCHEDULE No. 58.

EXTRACT.

Rapport annuel du surintendant de l'aqueduc de Montréal pour l'année finissant le 13 janvier 1863.

Lequel rapport est accompagné d'un appendice dont la cédule 2 indique les tuyaux Bornes-fontaines et Robinets posés et le nombre de maison approvisionnées d'eau dans la cité de Montréal jusqu'à janvier 1863 et aux pages 22 et 23, les rues ou le quartier St, Antoine sont mentionnées et entr'autres la ruelle Blache comme suit ; Longueur du principal tuyaux en pieds (plomb) 200. Nombre de Robinets ($2\frac{1}{2}$ pouces) un. Maisons approvisionnées 5 (cinq).

(ENDORSED).

Exh. No. 21 de l'Intervenante à l'enquête, produit 24 Avril 1890

RECORD

*In the
Superior
Court.*

No. 47.

Extract of Report of the Superintendent of the Water Works for the year ending 31st Jan'y, 1863. Intr. Exh. No. 21.

20

SCHEDULE No. 59.

Third Division.

No. 497.

Ex Parte.

The City of Montreal.....Petitioner to homologate Plans.

AND

Dame E. M. Childs, *et al.*.....Contestant.

The 23rd of March, 1877.

This *délibéré* is upon Petition to homologate Plans.
P. O. C. A. V.

Present :

Mr. JUSTICE RAINVILLE.

Judgment, 27th March, 1877.

Requête accordée et plan homologué. Opposition renvoyée sans frais.
Paraphé, L. H. C.

Dép. P. C. S.

(True Copy.)

JEAN B. VALLÉE,

Dép. Prothonotary.

No. 48.
Copy of Order of Court for advisement on Judgment homologating the plan of St. Antoine Ward. Dated 27th March, 1877. Intrs. Exh. No. 22.

30

40

(ENDORSED.)

RECORD.

*In the
Superior
Court.*

Copy of délibéré on Homologation of Plan. Exh. No. 22, de l'Intr. à l'Enquête, Prod. 24 Avril, 1890, (Paraphed) A. B. L.

No. 49.

Accounts (6)
of Water
Rates, Muni-
cipal and
School ass'ts.
paid by Wm.
Walker for
the No. 18 of
Blache st., In-
trs. Exh. No.
23. Fyled 24
April, 1890.

SCHEDULE No. 60.

Accounts paid by Wm. Walker as follows; 10

Folio 571
City Treasurer's Office.

William Walker,
To the City of Montreal, Dr. For twelve months' supply of water, ending
the 1st May 1887 as follows :
As Lessee or occupant of shop office store No. 18 Blache Lane \$15.00

| | |
|-----------------|---------|
| Amt. of account | \$15.00 |
| Disc 5% | 75 20 |
| | \$14.25 |

Paid Aug 12 1886
Montreal City Treas-
urer's Office,
J. Rourke.

30

Folio 573

Wm. Walker,
To the City of Montreal, Dr. 1887. For the undernoted personal taxes.
No. 18 Blache street, St. Antoine Ward. Business duty on rental \$320 @ 7½%

| | |
|------|---------|
| | \$24.00 |
| Disc | 72 |

\$23.28 40

Montreal
Paid
Sep. 20 1887.
City
Treasurer's Office

W. LESAGE..

No. 51214

City Treasurers office.

RECORD

Wm. Walker,

To the City of Montreal, Dr. 1886. For assessments in St. Antoine Ward for the year commencing May 1st 1886.

In the Superior Court.

| | | |
|---------------------------|---|-----------------|
| Street No. 18 Blache Lane | Value } one per cent 4000. } on value } 40. | City School Tax |
|---------------------------|---|-----------------|

No. 49. Accounts (6) of Water Rates, Municipal and School asst's. paid by Wm. Walker for the No. 18 of Blache st., Intrs. Exh, No. 23, Fyled 24th April, 1890. —Continued.

10

Disc.

8.
\$48.00
1.44
\$46.56

Montreal
Paid
Sep. 28 1886
City
Treasurer's Office

J. G. COTÉ,
JAMES F. D. BLACK,
City Treasurer.

20

No. 51246

City Treasurer's Office.

William Walker,

To the City of Montreal, Dr. 1887. For assessments in St. Antoine Ward for year commencing May 1st. 1887.

| Cadaster | | Value | 1% on | City | Total. |
|---------------|-------------------------|---------|-------|------------|--------|
| No. | No. 18 Blache Lane | \$5000 | value | School tax | |
| Pt-661 | | | 50. | 10. | \$60. |
| St. W. Pt-661 | No. 177 St. Antoine St. | \$4000. | 40. | 8. | 48. |
| | | | | | \$108. |

30

\$108.00
18.00

Disc. 90.00
2.70

\$87.30

40

Montreal,
Paid
Sept 30 1887.
City
Treasurer's Office.

F. X. C.

JAMES D. BLACK,
City Treasurer.

RECORD. Wm. Walker,

Folio 573

City Treasurer's Office.

*In the
Superior
Court.*

To the City of Montreal, Dr. For twelve months' supply of water, ending the 1st May 1888 as follows :

No. 49.
Accounts (6)
of Water
Rates, Muni-
cipal and
School asst's.
paid by Wm.
Walker for
the No. 18 of
Blache st.,
Intrs. Exh.
No. 23. Fyled
24th April,
1890.
—Continued.

As Lessee or occupant of dwelling No. 18 Blache Lane \$15.00.

| | |
|-------------|---------|
| Amt. of a/c | \$15.00 |
| Disc. 5% | .75 |

\$14.25 10

Montreal,
Paid
Aug. 12, 1887,
City
Treasurer's Office.

R. CHARLAND.

20

Folio 571

1886.

Wm. Walker,

To The City of Montreal, Dr.

For the undernoted personal taxes. No. 18 Blache Lane, St. Antoine Ward. Business duty on rental 320. @ 7½%

| | |
|-------|----------------|
| | \$24.00 |
| Disc. | 72 |
| | <u>\$23.28</u> |

30

Montreal,
Paid
Sept. 28th, 1886.
City
Treasurer's Office.

R. CHARLAND.

40

(ENDORSED.)

Exhibit No. 23 de l'Intervente à l'Enquête prod. 24 Avril, 1890, (Paraphed), A. B. L.

SCHEDULE No. 61.

In the Superior Court.

The Honorable Arthur Turcotte.....*es qual*, Plaintiff.

vs.

10 The Atlantic and North-West Railway Company.....Defendant.

Plaintiff's answer to Defendants articulation of Facts.

Articulation No. 1. The Plaintiff answers, no.

- 20 " " 2. " " " no.
- " " 3. " " " no.
- " " 4. " " " no.
- " " 5. " " " no.
- " " 6. " " " no.
- " " 7. " " " no.
- " " 8. " " " no.
- " " 9. " " " no.
- " " 10. " " " no.
- " " 11. " " " no.
- " " 12. " " " no.
- " " 13. " " " no.
- " " 14. " " " no.
- " " 15. " " " no.
- " " 16. " " " no.
- " " 17. " " " no.
- 30 " " 18. " " " no.
- " " 19. " " " no.

Montreal, March 31st, 1890.

BARNARD & BARNARD,
Attorneys for Plaintiff.

Rec'd. copy.

40 ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

(ENDORSED.)

Plaintiff's answer to Defendant's articulation of facts. Fyled 1st May, 1890.

RECORD.

*In the
Superior
Court.*

No. 50.
Plaintiff's answer to Deft's,
Articulation
of facts, fyled
1st May, 1890

SCHEDULE No. 62.

RECORD.

*In the
Superior
Court.*

Province of Quebec, }
District of Montreal. }

In the Superior Court.

No. 842.

No. 51.
Plaintiff's
Petitioners
articulation of
facts. Fyled
1st May, 1890

Honorable A. Turcotte.....*es equal*, Plaintiff.

10

vs.

The Atlantic & North-West Railway Company.....Defendants

PLAINTIFF PETITIONER'S ARTICULATION OF FACTS.

ARTICULATION 1st. Is it not true that up to the year eighteen hundred and eighty-seven a certain street or lane called Blache street described in Plaintiff's Petition existed as a public street, and that the property constituting the same had been dedicated to the public from time immemorial?

ARTICULATION 2nd. Is it not true that said Blache street was declared to be a public street by Judgment of the Court of Queen's Bench for Lower Canada (Appeal side) rendered on the ninth day of March, eighteen hundred and sixty-four, in a certain cause wherein Dame Sarah Johnson and *al* were Plaintiffs and Joseph Archambault was Defendant? 20

ARTICULATION 3rd. Is it not true that in the said year eighteen hundred and eighty-seven the Company Defendant acquired by means of proceedings in expropriation the strip of ground fronting on said lane on both sides thereof, and that the said Company under pretext that all rights of servitude in favor of proprietors abutting on said street became vested in said Company alone, has since the said expropriation closed the said street at its intersection with Mountain street and made all ingress and outgress impossible to the public in general. 30

ARTICULATION 4th. Is it not true that the closing of said street is particularly damaging to William Walker of the City of Montreal, manufacturer, and to the other proprietors whose properties formerly and before the said expropriation abutted on said Lane.

ARTICULATION 5th. Is it not true that the said expropriation was made on the distinct understanding that the said properties would not by reason of said expropriation lose their frontage on a street, and that the said Walker and other proprietors formerly fronting on Blache street have in consequence of the closing of said street no outlet whatever in rear to their great and manifest damage. 40

ARTICULATION 6th. Is it not true that the said Walker suffers damage to the extent of at least four thousand dollars in consequence of his said property having no outlet in the rear, which damage is exclusive of the damage done to the buildings thereon.

ARTICULATION 7th. Is it not true that the present proceedings is taken at the

request of the said William Walker, and that the person who has become security for the costs which may be incurred by reason hereof, is Thomas Darling, of Montreal, Esquire, accountant.
Montreal, March 29th, 1890.

BARNARD & BARNARD,
Plaintiff's Attorneys.

Rec'd Copy.
ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

10

(ENDORSED).

Plaintiff Petitioners' Articulation of Facts. Fyled 1st. May, 1890.

RECORD.

In the
Superior
Court.

No. 51.
Plaintiff's
Petitioner,
Articulation
of facts.
Fyled 1st
May, 1890.
—Continued.

SCHEDULE No. 62½.

20 Province of Quebec, }
District of Montreal. }

In the Superior Court.

The Honorable Arthur Turcotte.....*es qual*, Plaintiff.

vs.

The Atlantic and North-West Railway Company.....Defendants.

No. 52.
Defendants
Answers to
Plaintiff Pe-
titioners'
articulation
of facts.
Fyled 13th
March, 1891.

Defendants answers to Plaintiff Petitioner's Articulation of Facts.

30 To the first, no.
To the second, no.
To the third, no.
To the fourth, no.
To the fifth, no.
To the sixth, no.
To the seventh, no.
Montreal, March 13th, 1891.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

40 Rec'd. copy.
BARNARD & BARNARD.
For Petitioner.

(ENDORSED.)

Defdts. Answers to Plaintiff Petitioner's Articulation of Facts. Fyled
14th March, 1891.

SCHEDULE No. 63.

RECORD.

In the
Superior
Court.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

No. 53.
Consent of
parties as to
depositions
and Exhibits.
Dated 14th
April, 1890.

Hon. A. Turcotte.....*es qual*, Petitioner.

vs.

Atlantic & North-West Railway Company.....Defendant.

AND

10

The City of Montreal,.....Intervening Party.

The parties consent that the depositions taken and the Exhibits filed by the City of Montreal on its intervention in this cause avail the Petitioner as part of his evidence on the main action and *vice versa*, and the depositions taken and Exhibits filed by the Defendants on said Intervention serve also as part of the said Defendants' evidence on the main action and *vice versa*.

Montreal, April 14th, 1890.

BARNARD & BARNARD,
Attorneys for Petitioner.

20

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

ROUER ROY,
Attorney for City.

(ENDORSED.)

Consent. Fyled 1st May, 1890. (Paraphed). A. B. L.

30

40

SCHEDULE No. 65.

RECORD

*In the
Superior
Court.*

No. 54.

Blue print
copy of plan
of proposed
bridges over
Guy, Aque-
duct, etc.,
streets, for
the Atlantic
and North-
West Rail-
way Comp'y,
annexed to
application
by Company
and Defend-
ant to the
City of Mont-
real. Dated
1st Feb.,
1888.
(Plaintiff-
Petitioner's
Exh. "A 1."
Fyled May
1st, 1890.

(On the back)

True Copy by consent of plan annexed to application by company Defen-
dant dated the first February, 1888 to the City Council of Montreal to be
allowed to cross streets.

BARNARD & BARNARD,
Attys. for Petitioner's
ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

(ENDORSED.)

Petitioners Exhibit "A 1" at enquête, fyled 1st May, 1890.

RECORD

*In the
Superior
Court.*

No. 54.

Blue print
copy of plan
of proposed
bridges over
Guy, Aque-
duct, etc.,
streets, for
the Atlantic
and North-
West Rail-
way Comp'y,
annexed to
application
by Company
and Defend-
ant to the
City of Mont-
real. Dated
1st Feb.,
1888.
(Plaintiff-
Petitioner's
Exh. "A 1."
Fyled May
1st, 1890.

(On the back)

True Copy by consent of plan annexed to application by company Defen-
dant dated the first February, 1888 to the City Council of Montreal to be
allowed to cross streets.

BARNARD & BARNARD,
Attys. for Petitioner's
ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

(ENDORSED.)

Petitioners Exhibit "A 1" at enquête, fyled 1st May, 1890.

SCHEDULE No. 66.

RECORD.
*In the
Superior
Court.*

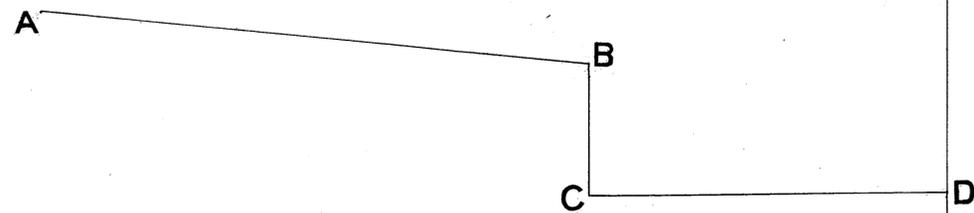
No. 55.
Canadian
Pacific Rail-
way plan
showing new
station
building an-
nexed to
above men-
tioned appli-
cation (Plain-
tiff -petition-
er's Exhibit
" B 1." Fyled
1st May,
1890.

(ENDORSED.)

Petitioner's Exhibit B1 at Enquête. Fyled 1st May, 1890.

CANADIAN PACIFIC RAILWAY
PLAN SHEWING NEW STATION BUILDINGS

Scale 20 feet to one inch



OSBORNE STREET

STREET

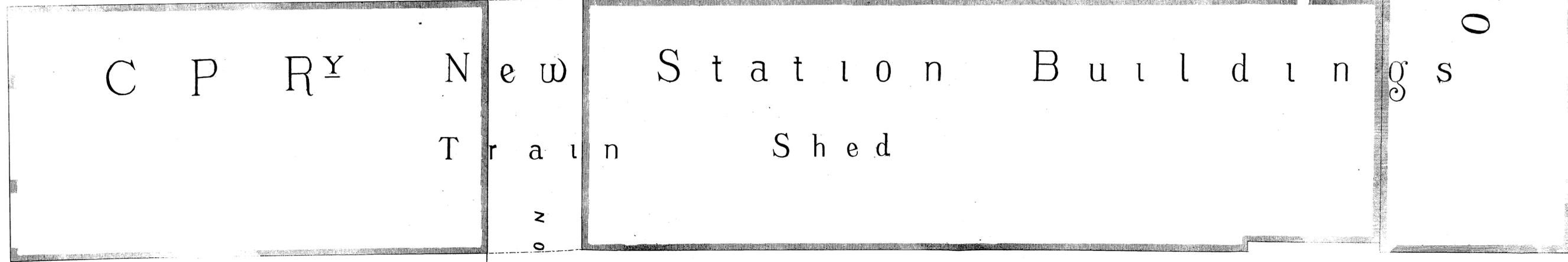
LANE

LANE

Offices

STREET

WINDSOR



C P RY New Station Buildings

Train Shed

DONEGANI STREET

BISSON

F E

SCHEDULE No. 66.

RECORD.

*In the
Superior
Court.*

No. 55.

Canadian
Pacific Rail-
way plan
showing new
station
building an-
nexed to
above men-
tioned appli-
cation (Plain
tiff -petition-
er's Exhibit
" B 1." Fyled
1st May,
1890.

(ENDORSED.)

Petitioner's Exhibit B1 at Enquête. Fyled 1st May, 1890.

SCHEDULE No. 67.

RECORD.

*In the
Superior
Court.*

No. 56.

Copy of blue
print plan
fyled by the
Atlantic and
North-West
Railway.
(Plan of part
of Montreal
station yard,
St. Antoine
Ward, show-
ing (color
red) land to be
expropriated
fyled by the
Company
Defendant,
in office of
the Clerk of
the Peace at
Montreal, on
the 31st Jan.,
1888. Plain-
tiff Petition-
ers' Exhibit
"C 1," fyled
1st May,
1890.

(ENDORSED.)

Petitioner's Exhibit C1 at Enquête. Fyled 1st May, 1890.

Argyle Avenue

Sane

Aqueduct Street

St Antoine Street

Mountain Street

Bisson Street

Donegani Street

We hereby certify that the piece of property colored Red on this Plan and described in the Book of Reference is required by the Atlantic and North West Railway Company in the City of Montreal, in addition to the property described in the Plan and Book of Reference previously approved by the Hon. Minister of Railways.

(Signed) THOS. G. SHAUGHNESSY,
A Director of the A. and N. W. Ry. Co.

(Signed) P. ALEX. PETERSON,
Engineer A. and N. W. Ry. Co.

No. 1
Land to be expropriated
Area = 8390 feet

| | | | | | | |
|---------|---------|--------|--------|--------|--------|--------|
| 1545-11 | 1545-10 | 1545-9 | 1545-8 | 1545-3 | 1545-2 | 1545-1 |
|---------|---------|--------|--------|--------|--------|--------|

1544

1544

145'0"

146'0"

30'0"

66'0"

HOMOLOGATED STREET LINE

HOMOLOGATED STREET LINE

(Signed) H. Irwin
P.L.S.

Atlantic and North West Railway
Plan of part of Montreal Station Yard
St Antoine Ward
Shewing (colored Red) Land to be expropriated

Montreal, 26th January 1888

Scale - 20 feet to an inch Eng. Mea.

Note - official Numbers thus 1544
The tracks shown in dotted lines
will become available when the lot
to be expropriated is acquired

Train

Shed

Examined and certified, as required by section 7 of the Railway Act.
(Signed) T. TRUDEAU,
Deputy of the Minister of Railways and Canals.
OTTAWA, 27th JANUARY, 1888.
(Signed) P. ALEX. PETERSON,
Engineer.

(Signed) P. Alex. Peterson
Engineer

PEACE OFFICE.
Filed this 31st January, 1888.
(Signed) L. W. SICOTTE,
Clerk of the Peace.
A true copy of the original plan deposited in at this office at the
above mentioned date.

PEACE OFFICE
MONTREAL, APRIL 25th 1888.
(Signed) L. W. SICOTTE,
Clerk of the Peace.

SCHEDULE No. 67.

RECORD.

*In the
Superior
Court.*

No. 56.

Copy of blue
print plan
fyled by the
Atlantic and
North-West
Railway.

(Plan of part
of Montreal
station yard,
St. Antoine
Ward, show-
ing (color
red) land to be
expropriated
fyled by the
Company
Defendant,
in office of
the Clerk of
the Peace at
Montreal, on
the 31st Jan.,
1888. Plain-
tiff Petition-
ers' Exhibit
"C 1," fyled
1st May,
1890.

(ENDORSED.)

Petitioner's Exhibit C1 at Enquête. Fyled 1st May, 1890.

SCHEDULE No. 68.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

RECORD

In the
Superior
Court.

In the Matter of

The Atlantic and North-West Railway Company,

10

AND

William Walker.....Proprietor.

To William Walker, Esquire, of the City of Montreal,

District of Montreal.....Proprietor.

No. 57.
Notice and
certificate o
Surveyor
served by
Company
upon Wm.
Walker,
Plaintiffs,
Petitioners
(Exhibit D1
Filed 1st.
May, 1890.

20 Take notice, that a part of a certain lot of land and premises in your poss-
ession known and distinguished on the official plan and book of reference fo the
St. Antoine Ward, in the City of Montreal, as the south-west half of lot num-
ber six hundred and sixty-one, described as lot No. Twenty-nine on the map or
plan of book of reference of the said railway, is required from you by the
Atlantic and North-West Railway Company, for the purposes of their Railway
and will be taken under the provisions of the Consolidated Railway Act, 1879,
and the amendments thereto; viz.: that part of said Lot No. 661, described as
30 follows: A lot of land measuring thirty-five feet (35) in depth, on the north-east
side, and thirty-eight feet (38) in depth on the south-west side by a width of
twenty-seven feet (27); and containing nine hundred and eighty-five and one
half feet (985½) in superficies; the whole English measure, more or less, and
with the buildings thereon erected; bounded at the north-west end by Blache
Lane, at the south-east end and on the north-east side by the remainder of said
lot number 661, and on the south-west side by lot official number six hundred
and sixty-two (662) of said Ward.

That the said Atlantic and North-West Railway Company are ready and
willing and hereby offer to pay the sum of twenty-seven hundred and fifty dol-
lars as a compensation for the said land and for all damages caused to you by
the exercise of their franchises thereon.

40 That in the event of you not accepting this offer, the Atlantic and North-
West Railway Company hereby nominate and appoint James Cantin to be their
arbitrator for the purpose of ascertaining the compensation to be paid to
you for the said land and damages, in accordance with the Consolidated
Railway Act 1879, and the amendments thereto.

Montreal, 2nd March, 1887.

C. DRINKWATER,

Secretary Atlantic and North West Ry. Co.

RECORD.

*In the
Superior
Court.*

No. 57.
Notice and
certificate of
Surveyor
served by
Company
upon Wm.
Walker,
Plaintiffs'
Petitioners
Exhibit (D1)
Filed 1st.
May, 1890.

I, Joseph Reille, of the City of Montreal, in the District of Montreal, a sworn Surveyor of the Province of Quebec, do hereby certify :

1. That I am disinterested in the matter within referred to.
2. That the land lastly within described is required for the Atlantic & North-West Railway.
3. That I know the lot of land and premises in question and the amount of damages likely to arise from the exercise of the powers of the said Railway Company thereon.

4. That the sum offered by the Atlantic & North West Railway Company in the within notice, is a fair compensation for the same, and for all damages as aforesaid. 10

Dated at Montreal, the 2nd day of March, 1887.

JOS. RIELLE,
P. L. S.

(On the Back.)

The Atlantic & North-West Ry. Co., Proceedings for expropriation in the matter of William Walker. Notice and Certificate of Surveyor, Endorsed Petitioners Exh, "D1" at Enquête. Filed 1st May, 1890, Paraphed, J.L. Dep. P.S.C. 20

SCHEDULE NO. 69.

30

No. 58.
Notice and
certificate of
Surveyors
served by
Company
Defendant,
upon Edward
C. Hughes.
Dated 2nd
March, 1887.
Plaintiff's
Petitioners,
Exh. E 1.

Province of Quebec, }
District of Montreal. }

In the matter of The Atlantic & North-West Railway Company,

AND

Edward C. Hughes.....Proprietor.

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To Edward C. Hughes of the City of Montreal, District of Montreal,
Proprietor.

Take notice, that a part of a certain lot of land and premises in your possession known and distinguished on the Official plan and book of Reference of the St. Antoine Ward in the City of Montreal, as the North-east half of lot number six hundred and sixty-one described as lot No. seventy-eight on the

map or plan and book of Reference of the said Railway, is required from you by the Atlantic & North-west Railway Company for the purposes of their Railway, and will be taken under the provisions of the Consolidated Railway Act 1879, and the amendments thereto; viz.: That part of said lot No. 661 described as follows: A lot of land measuring thirty-one feet ten inches (31 feet 10 inches) in depth on the South-west side by a width of twenty-seven feet (27 feet) and containing nine hundred and two feet (902 feet) in superficies, the whole English measure, more or less, and with the buildings thereon erected, bounded at the North-west end and by Blache lane, at the South-east end and on the South-west side by the remainder of said lot number 661, and on the North-east side by the lot Official number six hundred and sixty (660) of said Ward.

That the said Atlantic & North-West Railway are ready and willing and hereby offer to pay the sum of five hundred and forty dollars as a compensation for the said land and for all damages caused to you by the exercise of their franchises thereon.

That in the event of your not accepting this offer, The Atlantic & North-West Railway Company hereby nominate and appoint James Cantin to be their Arbitrator for the purpose of ascertaining the compensation to be paid to you for the said land damages in accordance with the Consolidated Railway Act 1879, and the amendments thereto.

Montreal, 2nd March, 1887.

(Signed.) C. DRINKWATER,
Secretary Atlantic & North-West Ry. Co.

Admitted to be a true Copy.

ABBOTTS, CAMPBELL & MEREDITH,
Attorney's for Defendants.

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

Petitioners Exhibit at Enquête "E," Fyled 1st May, 1890 (Paraphed),
J.L. Dep. P.S.C.

SCHEDULE No. 70.

In the matter of
The Atlantic and North West Railway Company
and
The estate of Alexander Watt, Proprietor.

MINUTES OF MEETINGS OF ARBITRATORS.

The Atlantic and North West Railway Company, having notified Alexander Watt, representing the estate of Alexander Watt by notice dated the second day of March 1887.

RECORD.

In the
Superior
Court.

No. 58.
Notice and certificate of Surveyers served by Company Defendant, upon Edward C. Hughes. Dated 2nd March, 1887. Petitioners, Exh. E1.

No. 59.
Book of minutes of meetings of Arbitrators, in Expropriation in re Atlantic & N. W. Ry. Co. & estate Alex. Watt, proprietor, (Plff. Petitioners Exh. xx, Fyled 1st May, 1890.

RECORD.

*In the
Superior
Court.*

No. 59.

Book of
Minutes of
meetings of
Arbitrators
in Expropria-
tion in *re At-
& N. W. Ry.
Co. & estate
Alex. Watt,
proprietor.
(Plff. Peti-
tioner's Exh.
xx) Fyled ■
1st May,
1890.—Continued.*

That a part of a certain lot of land and premises in your possession known and distinguished on the official plan and book of reference of the St. Antoine Ward in the City of Montreal as the lot number six hundred and sixty (660) described as lot No. twenty-seven on the map or plan and book of reference of the said railway is required from you by the Atlantic and North West Railway Company for the purposes of the railway and will be taken under the provisions of the Consolidated Railway Act 1879. And the amendments thereto, viz : That part of said lot No. 660 describes as follows : a lot of land of irregular figure measuring about eighty-six feet two inches (86.2) in length and containing two thousand two hundred and fifty-six feet (2256) in superficies the whole 10.
english measure none or less and with the buildings thereon erected bounded on the North-West side partly by Blache Lane and partly by lot official number six hundred and fifty-five (655) of said Ward on the South-East side by the remainder of said lot number 660, at the North-East end by said lot number 665, and at the South-West end by lot official number six hundred and sixty-one (661) of said Ward.

That the said Atlantic and North West Railway Company are ready and willing and hereby offer to pay the sum of thirteen hundred and fifty dollars as a compensation for the said land and for all damages cause to you by the exercise of their franchises thereon.

That in the event of your not accepting this offer the Atlantic & North-
West Railway Co., hereby nominate and appoint James Cantin, to be their
Arbitrator, for the purposes of ascertaining the compensation to be paid to you
for the said land and damages in accordance with the consolidated Railway,
Act 1879, and the Amendments thereto. 20.

Within ten days after the service upon him of said notices to wit : on the ninth day of March, A. D. 1887, Alexander Watt, (representing the Estate of Alexander Watt), did by the ministry of George R. Lighthall, Esquire Notary, notify the Atlantic & North-West Railway Company, that he would not accept the sum offered to him for said land and damages and that he had nominated 30.
and appointed Jno. M. M. Duff, of the City of Montreal, Public accountant, and Estate Agent, as his arbitrator to determine and ascertain the amount of compensation, to be paid by the Atlantic & North-West Railway Company aforesaid, for said land and damages.

On the twelfth day of March, A. D, 1887, said arbitrators met viz : James Cantin, and John M. M. Duff, and having been duly sworn before a Justice of the Peace, for the District of Montreal, they considered how they should proceed to ascertain the proper amount of compensation. After discussion the meeting was adjourned.

The meeting was held at the office of Jno. M. M. Duff, No. 118, St. James 40.
Street.

JAMES CANTIN,
J. M. M. DUFF.

On the Fourteenth day of March, A.D. 1887, the Arbitrators met.
Present :—James Cantin, and John M. M. Duff, and the appointment of a

third Arbitrator was discussed.

The property to be taken from Alexander Watt (representing the Estate Alexander Watt) was visited and examined by the Arbitrators.

The meeting was then adjourned to allow each Arbitrator to prepare a list of names of persons who might be suitable as third Arbitrator, and from which lists one might be selected and agreed upon.

The meeting was held at the office of John M. M. Duff, No. 118 St. James street, and was adjourned to the premises of Alex. Watt for examination.

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JAMES CANTIN,
J. M. M. DUFF.

On the eighteenth day of March, A.D. 1887, the Arbitrators met. Present:—James Cantin and John M. M. Duff.

Place of meeting, office of Jno. M. M. Duff, No. 118 St. James street, Montreal.

Mr. Cantin proposed that following from which to select one as a third Arbitrator, viz. :—

20

J. CRADOCK SIMPSON,
HENRY HOGAN,
WM. MCLEA WALBANK,

And MR. DUFF proposed the following, viz. :

WM. S. EVANS,
ANDRÉ MONTRAIT,
ALEX. C. HUTCHESON,
WILLIAM KENNEDY.

After discussion the meeting was adjourned.

30

JAMES CANTIN,
J. M. M. DUFF.

On the nineteenth day of March, A. D. 1887, the arbitrators met at the Office of John M. M. Duff, No. 118 St James Street, and there were present James Cantin and Jno. M. M. Duff.

After discussion, it was agreed to appoint John McDougall, of Messrs. McDougall, Logie & Co., or William Robb, City Auditor, as the third Arbitrator.

40

The meeting was then adjourned to meet at the same place, on the twenty-first day of March, A. D. 1887, at ten of the clock in the forenoon.

JAMES CANTIN,
J. M. M. DUFF.

On the twenty-first day of March, A. D. 1887, the Arbitrators, met at the

RECORD.

*In the
Superior
Court.*

No. 59.

Book of minutes of meetings of Arbitrators in Expropriation in *re* Atl. & N. W. Ry Co. & Estate Alex. Watt, proprietor. (Plff. Petitioner's Exh. xx.) Fyled 1st May, 1890.

RECORD.

*In the
Superior
Court.*

Office of John M. M. Duff, No. 118, St. James Street, Montreal, at ten of the clock in the forenoon and there were present John M. M. Duff and James Cantin.

After discussion it was agreed, to appoint John McDougall. of McDougall, Logie & Co., as third Arbitrator.

JAMES CANTIN,
J. M. M. DUFF.

No. 59,
Book of
minutes of
Arbitrators
in Expropriation
in *re* Atl.
& N. W. Ry.
Co., & Estate
Alex. Watt,
proprietor,
(Pltff. Petition-
er's Exh.
XX). Fyled
1st May,
1890.

—Continued.

10

On the twenty-third day of March, A. D. 1887, the Arbitrators, James Cantin and John M. M. Duff, met at the office of the latter, No. 118 St. James street, in the city of Montreal.

And the appointment of John McDougall as third Arbitrator was made and executed in duplicate in writing in presence of two witnesses, one copy being kept by Mr. James Cantin, and one copy sent to John McDougall by John M. M. Duff.

JAMES CANTIN,
J. M. M. DUFF.

20

On the first day of April, A.D. 1887, a meeting of Arbitrators was held at 118 St. James Street, Montreal, at three o'clock in the afternoon, and there were present James Cantin and John M. M. Duff. but as Mr. John McDougall did not attend, and it was ascertained by communicating with his office that he was out of town the meeting was adjourned; it having been agreed that the award shall be made on or before the first day of June next.

JAMES CANTIN,
J. M. M. DUFF.

30

A meeting of arbitrators was held at No. 365 Mountain street, on Tuesday the twelfth day of April, A.D. 1887, at ten of the clock in the afternoon, and there were present James Cantin, John M. M. Duff, and John McDougall; also Alex. Watt as representing the estate of Alexander Watt the proprietor.

After hearing the statements and explanations of Mr. Alexander Watt, the arbitrators discussed the whole matter very carefully, and having taken into consideration the increased value that may be given by reason of the construction of the railway, as well as all the other matters incidental to the subject, it was decided unanimously that the compensation to be paid by the Atlantic & North-West Railway Company to the representatives of the estate of the late Alexander Watt; for the land to be taken, is the sum of eighteen hundred and four dollars and eighty cents, and for damage to the remainder of the property, by reason of the depth left being so small from the new line to the permanent buildings, which are already existing, on the land, and which are solidly built and arranged so that they cannot be altered without considerable expense

40

and damage, as to preclude the possibility of building on it for any purpose except for sheds or stables ; by reason of removal of fences, and by reason of a large quantity of valuable fruit trees and currant bushes being destroyed, a further sum of twelve hundred dollars, thus making a total sum of three thousand and four dollars and eighty cents to be paid as compensation for land to be taken and damages to be caused.

JAMES CANTIN,
J. M. M. DUFF,
JOHN McDOUGALL.

10

(ENDORSED.)

Atlantic & North-West Railway Co., and Alexander Watt, (representing estate of Alexander Watt, proprietor), Exhibit xx, fyled by Petitioner 1st May, 1890.

RECORD.

*In the
Superior
Court.*

No. 59.
Book of
minutes of
meetings of
Arbitrators
in expropria-
tion in *re* Atl.
& N.W. Ry.
Co. & Estate
Alex. Watt,
proprietor.
(Plff's. Peti-
tioner's Exh.
xx,) Fyled
1st May,
1890.

20

SCHEDULE No. 71.

In the matter of

The Atlantic & North-West Railway Co.,

and

Edward C. Hughs, proprietor.

30

MINUTES OF MEETINGS OF ARBITRATORS.

The Atlantic and North-West Railway Co., having notified Edward E. Hughs, by notice dated the second day of March, 1887.

40 That a part of a certain lot of land and premises, in your possession known and distinguished, on the official plan and book of reference, of the St. Antoine Ward, in the City of Montreal, as the north-east half of lot six hundred and sixty-one, described as lot No. twenty-eight, on the map or plan and book of reference of the said railway is required from you by The Atlantic & North-West Railway Company for the purposes of their railway, and will be taken under the provisions of the consolidated Railway Act. 1879, and the Amendments thereto viz : that part of said lot No. 661, described as follows, a lot of land measuring thirty-one feet ten inches (31.10), in depth on the north-east side and thirty-five feet (35), in depth on the south-west side by a width of twenty-seven feet (27), and containing nine hundred and two feet (902), in superficies the whole English measure, more or less, and with the buildings thereon erected, bounded at the north-west end, by Blache Lane, at the south-east end and on the south-west side, by the remainder of said lot number 66

No. 60.
Book of
minutes of
meetings of
arbitrators in
expropria-
tion *in re*
Atlantic and
N. W. Rail-
way, and E.
C. Hughs,
proprietor.
Plaintiff-
Petitioners'
Exh. YY,
fyled 1st May
1890.

RECORD

—
*In the
 Superior
 Court.*
 —

No. 60.
 Book of
 minutes of
 arbitrators in
 expropria-
 tion *in re*
 Atlantic and
 N. W. Rail-
 way, and E.
 C. Hughs,
 proprietor.
 Plaintiff-
 Petitioners'
 Exh. YY,
 filed 1st May
 1890.
 —Continued.

And on the north-east side, by the lot official number, six hundred and sixty (660), of said ward. That the said Atlantic & North-West Railway Company, are ready and willing and hereby offer to pay the sum of five hundred and forty dollars, as a compensation, for the said land and for all damages caused to you by the exercise of their franchises thereon.

That in the event of your not accepting this offer, The Atlantic & North-West Railway Company hereby nominate and appoint James Cantin, to be their Arbitrator, for the purpose of ascertaining the compensation to be paid to you for the said land and damages in accordance with the Consolidated Railway Act. 1879, and the amendments thereto.

Within ten days after the service upon him of said notice, to wit, on the twelfth day of March, A. D. 1887, Edward C. Hughs did by the ministry of William B. S. Reddy, Esquire, Notary, notify the Atlantic and North-West Railway Company that he would not accept the sum offered to him for said land and damages, and that he had nominated and appointed Jno. M. M. Duff of the City of Montreal, Public Accountant and Estate Agent as his arbitrator to determine and ascertain the amount of compensation to be paid by the Atlantic and North-West Railway Company aforesaid for said land and damages. 10

On the twelfth day of March, A.D. 1887, said arbitrators met, viz. : James Cantin and John M. M. Duff, having been duly sworn before a Justice of the Peace for the District of Montreal, they considered how they should proceed to ascertain the proper amount of said compensation. After discussion the meeting was adjourned. 20

The meeting was held at the office of Jno. M. M. Duff, No. 118 St. James street.

JAMES CANTIN,
 J. M. M. DUFF.

On the fourteenth day of March, A.D. 1887, the arbitrators met. Present : James Cantin and John M. M. Duff, and the appointment of a third arbitrator was discussed. 30

The property to be taken from Edward C. Hughs was visited and examined by the arbitrators.

The meeting was then adjourned to allow each arbitrator to prepare a list of names of persons who might be suitable as third arbitrator, and from which lists one might be selected and agreed upon.

The meeting was held at the office of John M. M. Duff, No. 118 St. James street, and was adjourned to the premises of Edward E. Hughs for examination. 40

JAMES CANTIN,
 J. M. M. DUFF.

On the eighteenth day of March, A.D. 1887, the arbitrators met. Present : James Cantin and John M. M. Duff.

Place of meeting, office of Jno. M. M. Duff, No. 118 St. James street, Montreal.

Mr. Cantin proposed the following from which to select one as a third arbitrator, viz. :

J. CRADOCK SIMPSON,
HENRY HOGAN,
W. MCLEA, WALBANK.

And Mr. DUFF proposed the following, viz :

WILLIAM S. EVANS,
ANDRÉ MONTRAIT,
ALEX. C. HUTCHESON,
WILLIAM KENNEDY.

After discussion the meeting was adjourned.

JAMES CANTIN,
J. M. M. DUFF.

On the nineteenth day of March, A.D. 1887, the arbitrators met, at the Office of John M. M. Duff, No. 118 St. James Street, and there were present James Cantin, and John M. M. Duff.

After discussion it was agreed to appoint John McDougall, of Messrs. McDougall, Logie & Co., or William Robb, City Auditor, as the third Arbitrator. The meeting was then adjourned to meet at the same place on the twenty-first day of March, A.D. at ten of the clock in the forenoon.

JAMES CANTIN,
J. M. M. DUFF,

On the twenty-first day of March, A.D. 1889, the arbitrators met, at the Office of John M. M. Duff, No. 118 St James Street, Montreal, at ten of the clock in the forenoon and there were present John M. M. Duff and James Cantin.

After discussion it was agreed to appoint John McDougall, of McDougall, Logie & Co., as third Arbitrator.

JAMES CANTIN,
J. M. M. DUFF.

On the twenty-third day of March, A. D. 1887, the Arbitrators, James Cantin and John M. M. Duff, met at the office of the latter, No. 118 St. James street, in the City of Montreal.

And the appointment of John McDougall as third Arbitrator was made and executed in duplicate in writing, in presence of two witnesses, one copy being kept by Mr. James Cantin, and one copy sent to Mr. John McDougall by John M. M. Duff.

JAMES CANTIN,
J. M. M. DUFF.

RECORD.

*In the
Superior
Court.*

No. 60.
Book of
Minutes of
meetings of
Arbitrators
in Expropria-
tion in *re* Atl.
& N. W. Ry.
Co., and E. C.
Hughes,
proprietor.
Plaintiff-
Petitioner's
Exh. YY,
Fyled 1st.
May, 1890.
—*Continued.*

RECORD.

*In the
Superior
Court.*

No. 60.
Book of
Minutes of
meetings of
Arbitrators
in Expropria-
tion in *re* Atl.
& N. W. Ry.
Co., and E. C.
Hughes,
proprietor.
Plaintiff-
Petitioner's
Exh. YY,
Fyled 1st.
May, 1890.
—Continued.

On the first day of April, A. D. 1887, a meeting of Arbitrators was held at No. 118 St. James street, Montreal, at three o'clock in the afternoon, and there were present James Cantin and John M. M. Duff, but as Mr. John McDougall did not attend, and it was ascertained by communicating with his office that he was out of town, the meeting was adjourned, it having been agreed that the award shall be made on or before the first day of June next.

JAMES CANTIN,
J. M. M. DUFF.

10

A meeting of arbitrators was held at No. 365, Mountain street, on Tuesday the twelfth day of April, A.D. 1887, at nine of the clock in the afternoon and there were present thereat :

James Cantin,
John M. M. Duff, and
John McDougall ;

Also Mr. Edward C. Hughes, the proprietor.

After hearing the statements and explanations of Mr. Hughes, the arbitrators discussed the whole matter very carefully, and it was decided unanimously after having taken into consideration the increased value that may be given by reason of the construction of the railway, as well as all the other matters incidental to the subject, that the amount of compensation to be paid by the Atlantic and North-West Railway Company to Edward C. Hughes for the land to be taken and for damages to be caused is the sum of seven hundred and sixty dollars ; with the condition that said Edward C. Hughes is to remove the fence from its present position and re-erect it at the new line at his own cost and charges whenever the said new line is properly marked for him to follow ; also that the entrance to his premises in rear from *Blache lane* must not be impeded or obstructed in any way during the construction of the railway, or during the time that the street in rear of the property is being changed.

JAMES CANTIN,
J. M. M. DUFF,
JOHN McDOUGALL.

(ENDORSED.)

Exhibit Y.Y., fyled by Petr. Fyled 1st May, 1890.

40

SCHEDULE No. 72.

In the matter of
The Atlantic & North-West Railway Company.

and

William Walker, Proprietor.

RECORD.

—
*In the
Superior
Court.*
—

No. 61.

Book of
minutes of
meetings of
arbitrators in
Expropria-
tion in *re* At-
lantic & N.W.
Railway Co.,
and Wm.
Walker, pro-
prietor (Plff.
petitioners,
Exh. ZZ.
Filed 1st
May, 1890.

10

MINUTES OF MEETINGS OF ARBITRATORS.

The Atlantic and North West Railway Company, having notified William Walker, by noticed dated the second day of March A.D. 1887.

20

“That a part of a certain lot of land and premises in your possession known and distinguished on the official plan and book of reference of the St. Antoine Ward in the City of Montreal as the South-west half of lot number six hundred and sixty-one, described as lot No. twenty-nine on the map or plan and book of reference of the said railway, is required from you by the Atlantic and North West Railway Company, for the purposes of their railway and will be taken under the provisions of the Consolidated Railway Act 1879, and the amendments thereto; viz, that part of said lot No. 661, described as follows;

“A lot of land measuring thirty-five feet (35) in depth on the north-east side and thirty-eight feet in depth on the south-west side by a width of twenty-seven feet (27); and containing nine hundred and eighty-five and one half feet (985½) in superficies, the whole English measure more or less, and with the buildings thereon erected; bounded at the north-west end by Blache Lane, at the south-east end and on the north-east side by the remainder of said lot number 661, and on the south-west side by the lot official number six hundred and sixty-two (662) of said ward.

30

That the said Atlantic and North West Railway Company were ready and willing and offered to pay the sum of twenty-seven hundred and fifty dollars as a compensation for the said land and for all damages caused by the exercise of their franchises thereon.

And that in the event of said offer not being accepted, the Atlantic and North West Railway Company aforesaid did thereby nominate and appoint James Cantin to be their arbitrator for the purpose of ascertaining the compensation to be paid for said land and damages, in accordance with the Consolidated Railway Act 1879, and the amendments thereto.

40

Within ten days after the service upon him of said notice, to wit on the tenth day of March A.D. 1887. William Walker did by the ministry of William B. S. Reddy Esquire, Notary, notify the Atlantic and North West Railway Company that he would not accept the sum offered to him for said land and damages, and that he had nominated and appointed John M. M. Duff of the City of Montreal, public accountant and estate agent as his arbitrator to determine and ascertain the amount of compensation to be paid by the Atlantic and North West Railway Company aforesaid for said land and damages.

RECORD.

*In the
Superior
Court.*

No. 61.

Book of
minutes of
meetings of
Arbitrators,
in Expropri-
ation in *re*
Atlantic &
N. W. Ry.
and William
Walker (Plff-
petitioner's
Exh. ZZ.)
Fyled 1st
May, 1890.

—*Continued.*

On the twelfth day of March, A.D. 1887, said arbitrators met, viz : James Cantin and John M. M. Duff, and having been duly sworn before a Justice of the Peace for the District of Montreal, they considered how they should proceed to ascertain the proper amount of said compensation. After discussion the meeting was adjourned. The meeting was held at the office of John M. M. Duff, No. 118 St. James Street.

JAMES CANTIN,
J. M. M. DUFF,

On the fourteenth day of March, A.D. 1887, the arbitrators met, present, James Cantin and John M. M. Duff, and the appointment of a third arbitrator, was discussed. 10

The property to be taken from William Walker, was visited and examined by the arbitrators. The meeting was then adjourned to allow each arbitrator to prepare a list of names of persons, who might be suitable as third arbitrator, and from which lists one might be selected and agreed upon.

The meeting was held at the Office of John M. M. Duff, No. 118 St. James Street, and was adjourned to the premises of William Walker, for the examination.

JAMES CANTIN,
J. M. M. DUFF.

20

On the eighteenth day of March, A.D. 1887, the arbitrators met, present James Cantin and John M. M. Duff, place of meeting, office of John M. M. Duff, No. 118 St. James Street, Montreal.

M. Cantin proposed the following, from whom to select one as a third arbitrator, viz :

J. CRADOCK SIMPSON,
H. HOGAN,
W. MCLEA WALBANK.

30

And Mr. Duff proposed the following viz :

WILLIAM S. EVANS,
ANDRÉ MONTRAIT,
ALEX C. HUTCHINSON,
WILLIAM KENNEDY.

After discussion the meeting was adjourned.

JAMES CANTIN,
J. M. M. DUFF.

40

On the nineteenth day of March, A. D. 1887, the arbitrators met at the office of John M. M. Duff, No. 118 St. James street, and there were present James Cantin and John M. M. Duff.

After discussion, it was agreed to appoint John McDougall, of Messrs. McDougall, Logie & Co., or William Robb, City Auditor, as the third

arbitrator.

The meeting was then adjourned to meet at the same place on the 21st day of March, A. D., 1887, at ten of the clock in the forenoon.

JAMES CANTIN,
J. M. M. DUFF.

10 On the twenty-first day of March, A. D., 1887, the arbitrators met at the office of John M. M. Duff, No. 118 St. James street, Montreal, at ten of the clock in the forenoon, and there were present John M. M. Duff and James Cantin, after consideration and discussion it was agreed to appoint John McDougall, of McDougall Logie & Co., as third arbitrator.

JAMES CANTIN,
J. M. M. DUFF.

20 On the twenty-third day of March A. D. 1887, the arbitrators James Cantin and John M. M. Duff, met at the office of the latter, No. 118 St. James St. in the City of Montreal. And the appointment of John MacDougall as third arbitrator was made and executed in duplicate in writing in presence of two witnesses ; one copy being kept by Mr. Jas. Cantin and one copy sent to Mr. John McDougall by Mr. John M. M Duff.

JAMES CANTIN,
J. M. M. DUFF.

30 On the first day of April A. D. 1887. a meeting of arbitrators was held at No. 118 St. James street, Montreal at three o'clock in the afternoon and there were present James Cantin and John M. M. Duff, but as M. John McDougall did not attend, and it was ascertained by communicating with this office that he was out of town, the meeting was adjourned ; it having been agreed that the award shall be made on or before this first day of June next.

J. M. M. DUFF,
JAMES CANTIN.

40 On the sixth day of April, A.D. 1887, there was a meeting of the arbitrators, at the house of John McDougall, the third arbitrator, of No. 365 Mountain Street, in the City of Montreal, at eight of the clock in the afternoon, and there were present James Cantin, John M. M. Duff and John McDougall.

Mr. John McDougall produced his copy of appointment, with his affidavit together with a certificate that he had been duly sworn to act, endorsed thereon.

William Walker the proprietor, was also present.

After examining plans and documentary evidence, which was produced,

RECORD.

—
*In the
Superior
Court.*

—
No. 61.
Book of
minutes of
meetings of
Arbitrators,
in Expropri-
ation in *re*
Atlantic &
N. W. Ry.
and William
Walker (Plff
petitioner's
Exh. ZZ,)
Fyled 1st
May, 1890.
—*Continued.*

RECORD.

*In the
Superior
Court.*

No. 61.

Book of
minutes of
meetings of
arbitrators in
Expropriation
in *re* Atlantic
& N.W. Railway
Co., and Wm.
Walker, proprietor
(Plff. petitioners,
Exh. ZZ.
Fyled 1st
May, 1890.
—Continued.

and after long and careful consideration and discussion, and having taken into consideration the increased value, that may be given by reason of the construction of the railway, it was decided that the value of the land to be taken is one dollar per square foot, Mr. Cantin dissenting it being understood that the portion of land which has been expropriated by the City, for Blache Lane, is not part of the land to be taken from Mr. Walker, by the Atlantic & North-West Railway Company and if Mr. Walker, has not yet been paid for the portion of land aforesaid which was expropriated by the City, for Blache Lane, then he is at liberty, and he has still the right to demand and receive such payment from 10 the City, thus making the amount to be paid for land, to be taken by the Atlantic & North-West Railway Company, from said William Walker, the sum of seven hundred and forty dollars. The meeting was then adjourned till Tuesday, the twelfth day of April, A.D. 1887, to meet at No. 365 Mountain Street, at eight o'clock p.m.

JAMES CANTIN,
J. M. M. DUFF,
JOHN McDOUGALL.

Pursuant to adjournment, the arbitrators re-assembled on Tuesday the twelfth day of April, A. D. 1887, at eight of the clock in the afternoon at the 20 residence of John McDougall, No. 365 Mountain street, in the City of Montreal, and there were present, James Cantin, John M. M. Duff, and John McDougall; also William Walker, the proprietor, was present and heard on his own behalf.

After hearing all the statements of Mr. Walker, and examining the matter carefully and having discussed it fully; and having taken into consideration the increased value that may be given by reason of the construction of the railway, it was decided that amount necessary to be given as compensation for the removal of the building and machinery is three thousand four hundred dollars, all the old materials of the building to be the property of Mr. William 30 Walker, but he is to remove them at his own expense; and that the amount that should be paid, as compensation for damage to business by interruption and loss of trade, by increased expense owing to being obliged to carry on part of his operations els where, and loss from stoppage entirely for a time of the factory, which was only started in working order about one year ago, with machinery, building and plant, all new and complete, is two thousand five hundred dollars (\$2,500.00). Thus making the total amount to be paid to William Walker for compensation for land and damages, and having taken into consideration the increased value that may be given by reason of the construction of the railway, the sum of six thousand six hundred and forty dollars. 40

JAMES CANTIN,
J. M. M. DUFF,
JOHN McDOUGALL.

(ENDORSED)

Exhibit ZZ, fyled by the Reqt., 1st May, 1890, (Paraphed) P. G.

Dep. P. S. C.

SCHEDULE No. 78.

RECORD.

Province of Quebec, }
District of Montreal. }

Superior Court.

*In the
Superior
Court.*

Honorable Arthur Turcotte, Esqual,.....Plaintiff.

vs.

The Atlantic & North-West Railway Company.....Defendant.

10

AND

The City of Montreal.....Intervenant.

No. 62.
Special pow-
ers of Atty.,
by Hon. A.
Turcotte,
Atty.-Gen'l.
for the Prov.
of Quebec,
to C. A.
Geoffrion,
Advocate,
Q. C., and
Notice to
MM. Barnard
& Barnard,
Dated 9th
July, 1890.

I, Arthur Turcotte, Attorney-General for the Province of Quebec, hereby give special power of Attorney to Christophe Alphonse Geoffrion, advocate, Queen's Council, to act for me and in my name, for the purpose of intervening in the present case and disavowing all and any proceedings taken by Messrs. Barnard & Barnard, or any other Advocate, in the present case contrary to my instructions, and I hereby authorize the said Christophe Alphonse Geoffrion, to notify and instruct, in my behalf, the said Barnard & Barnard to suspend all proceedings in the present matter until further orders. And if such instructions are not obeyed and if said Barnard & Barnard, still persist in going on with the proceedings in the said matter, to disavow the same according to law.

Dated at Quebec, this ninth day of July, 1890.

ARTHUR TURCOTTE,
Atty. Gen'l.

30 Province de Québec, }
District de Montréal. }

Cour Supérieure.

L'Honorable Arthur Turcotte, *es-qualité*,.....Demandeur.

vs.

La Compagnie du Chemin de fer Atlantique et Nord-Ouest,....Défenderesse.

et

40 La Cité de Montreal,.....Intervenante.

A Messieurs Barnard & Barnard, avocats de William Walker, procédant au nom du Procureur-Général, dans la présente cause.

Messieurs :—

Avis vous est donné de suspendre tous procédés en cette affaire au nom du Procureur-Général, jusqu'à ce que j'aie eu communication du dossier, pour

RECORD. ensuite donner telles instructions que je croirai convenable dans l'intérêt public.

In the Superior Court.
 Montréal, 7 Juillet, 1890.

ARTHUR TURCOTTE,
 Procureur Général.
 par C. A. GEOFFRION,
 C.R.

No. 62.
 Special powers of duty by Hon. A. Turcotte, Atty-Oen'l for the Province of Quebec to C. A. Geoffrion, Adv. Q. C., and Notice to M. M. Barnard & Barnard, Dated 9th Jnly, 1890.
 —Continued.

(ENDORSED.)

Avis à MM. Barnard & Barnard, et procuration spéciale à C. A. Geoffrion, Prod. 10 juillet, 1890.
 (Paraphed), J.L. Dép. P.C.S.

10

SCHEDULE No. 80.

20

No. 63.
 Discontinuance of Action by the Attorney General. Fyled 31st July, 1890.

Province of Quebec, }
 District of Montreal. }

In the Superior Court.

No. 842.

The Honorable Arthur Turcotte.....Attorney General, Petitioner.

30

vs.

The Atlantic North-West Railway Company.....Defendants.

AND

The City of Montreal.....Intervenants.

Arthur Turcotte, the said Petitioner hereby discontinues the present action without costs, and prays acte of this, his said discontinuance.
 Three Rivers, July 31st, 1890.

ARTHUR TURCOTTE,
Attorney-General.

40

(ENDORSED.)

Discontinuance. Fyled 31st July, 1890. (Paraphed) J. B. V.
Dep. P. S. C.

SCHEDULE No. 81.

RECORD.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

*In the
Superior
Court.*

No. 842

No. 64.

The Honorable Arthur Turcotte, Attorney-General.....Petitioner.

Petition of
Wm. Walker
for a Writ of
Mandamus.
Fyled 8th
Aug., 1890.

vs.

10 The Atlantic & North-West Railway Company.....Defendant.

AND

The City of Montreal.....Intervening Party.

To this Honorable Court :

The Petition of William Walker, of Montreal, manufacturer, Respectfully sheweth :

20 That your Petitioner is the relator in this matter, having been duly authorized by the said Attorney-General to prosecute herein in his name, and having complied with all the conditions required by law for doing so effectually, and the case is now ready for hearing, as well upon the said Petition of the said Attorney-General as upon the Intervention of the said city of Montreal, the conclusions of which are identical, the whole as appears by the proceedings of Record in this cause.

That as alleged in the said Petition of the Attorney-General, the expropriation therein mentioned was made upon the express understanding that after the expropriation your Petitioner's immovable property would continue to abut **30** in rear on a street.

And your Petitioner now further alleges that the intention before and at the time of the expropriation was to slightly alter the line of Blache Lane as traced on the homologated plan of the City to which, alteration the City of Montreal did not object, its consent to that effect having been practically secured, the plan being to continue Donagani so as to connect with Mountain street thus giving effect to the homologated plan of the City of Montreal.

That this plan if carried out would have given your Petitioner an improved access from Mountain street to the rear of his said property, the new street which was to be fifty feet wide being, without detriment to the public interest **40** but on the contrary to the great advantage thereof, substituted to the said Blache Lane as then existing with a width of only twenty-eight feet.

That in view of the said plan which was duly submitted to them and formed part of the Record in expropriation, the expropriation Commissioners awarded your Petitioner as indemnity for the ground taken less than it was instrinsically worth for the reason that the ground not taken would be improved in value by the new street.

That after the expropriation your Petitioner pulled down the portion of

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 64.

Petition of
 Wm. Walker
 for a Writ of
mandamus.

Fyled 8th
 Aug., 1890.

—Continued.

his factory which formerly fronted on Blache Lane and proceeded at once and openly to rebuild the same on the proposed new line of the street, as, at the time of the said expropriation it was in the contemplation of all parties he should do, the whole at an expense to him exceeding five thousand dollars and for several months had the peaceable enjoyment of an improved access to Mountain street, all which was done with the knowledge and acquiescence of the Defendant.

That the said Defendant afterwards fraudulently relying on the fact that in the final transfer to the said company of the land expropriated the condition that the remainder of the property of your Petitioner would front on the proposed improved street had not been inserted, the omission being the result of the fraudulent *manœuvres* of the Defendant, erected the trestle work of their railway in such a manner that it touches the wall of your Petitioner's factory, pressing against it and not only making his doors and windows useless, but making all access to Mountain street impossible, ruining his property, and causing damage to him exceeding eight thousand dollars. 10

That thereupon your Petitioner proceeded in the name of the Attorney General as aforesaid to compel the said Company Defendants to reopen Blache Lane, this being the most natural and appropriate means in the interests of the public as well as in the interest of the private proprietors of forcing the said company to carry out the understanding upon which said expropriation had been really made. 20

That subsequently the said Defendant Company instituted an action before, this Court which action is still pending, whereby your Petitioner was called upon to close the windows of his factory and to remove the cornices and other portions of the same which projected over the property acquired by the Defendant Company by means of the said expropriation, the said company alleging that your Petitioner was exercising servitude not belonging to him and thus bringing up for judicial adjudication the nature and incidents of its title.

That in consequent your Petitioner was compelled, in self defence, to plead to the said action and to recite the facts herein above recited, and to conclude that the title of the said Company Defendant should be annulled as having been obtained by fraud and error ; 30

That while the said legal proceedings were pending both on the said petition of the Attorney-General and the said action and after the said City of Montreal had intervened and issue had been joined on the *moyens* of its intervention and the evidence in the whole matter had been in great part adduced before this Court, the said Company Defendant entered into negotiation with your Petitioner and the other proprietors similarly situated and whose properties formerly fronting on Blache Lane had been in part expropriated on the same understanding, with the view of devising means whereby some amicable settlement of the difficulty could be secured, which would be acceptable to the public as well as to the private parties interested, and that in the course of said negotiation various modes and plan of settlement were discussed and carefully examined and among others the plan of making the street originally proposed but on a different line as also the plan of fully indemnifying your Petitioner either by making a new award establishing the indemnity he was entitled to under 40

existing circumstances or of expropriating the whole of his property from the St. Antoine street line to the rear.

10 That while the said negotiations were proceeding it being uncertain which modes of settlement would finally be adopted it became necessary to prevent the prescription of your Petitioner's rights to bring an action claiming damages on the basis of the award already made being set aside ; your Petitioner not being willing to run the risk of relying on the declaration of the said Company through its agents that it would not plead prescription ;

20 That the said action of damages was brought with the full acquiescence of the said Defendant Company as to its regularity and propriety under the circumstances the said Defendant Company having intimated that before the negotiations for a settlement would terminate in a satisfactory manner to all parties, a decision of the Court should be obtained as to whether the existing award of the expropriation arbitrators was valid or invalid and by consent of all parties the said action for damages, together with the said action *négative* were practically consolidated with the petition in the name of the Attorney-General it being agreed that the three cases after enquête closed should be heard at the same time by the Honorable Mr. Justice Mathieu ;

30 That the said Company Defendant have since unjustly and fraudulently conspired with the Honorable Arthur Turcotte the said Attorney-General to injure and oppress your Petitioner in the premises and deprive him of his just rights, and that the said Arthur Turcotte in pursuance of the said conspiracy is now corruptly lending his official name and influence to the Defendant Company with the view of obtaining by illegal means the discontinuance of the proceedings in this cause taken in the name of the Attorney-General by your Petitioner in his capacity of relator as aforesaid and indirectly the withdrawal of the Intervention of the City of Montreal, which the Defendant Company openly asserts must follow as the necessary consequence of the discontinuance by the Attorney-General of the proceedings in this matter, a pretention utterly 40 unfounded but which exorbitant as it is shews the object of the conspiracy so entered into ;

That in pursuance of the said conspiracy, and corrupt and oppressive agreement entered into between the said Attorney-General and the said Company Defendant, they, the said Attorney-General and the said Defendant Company well knowing that all the facts alleged by your Petitioner as relator in this cause as aforesaid have been established in evidence beyond all doubt have acted in concert for several months past to prevent your Petitioner from obtaining a final hearing on the merits of this matter, obstructing the progress of the case by various vexatious and frivolous proceedings having no other object but 40 to fraudulently obtain delay, the Attorney General employing the attorneys *ad litem* and the Counsel of the Defendant Company to take such dilatory proceedings in his official name and affixing his signature to various documents prepared by them on that behalf.

That on the first day of August instant in pursuance of the said corrupt and scandalous conspiracy the said Arthur Turcotte professing to act in his official capacity of Attorney General has asked to be allowed to produce and file before this Honorable Court a certain document bearing his signature pur-

RECORD.

In the
Superior
Court.

No. 64.

Petition of
Wm. Walker
for a Writ of
mandamus.
Filed 8th
Aug., 1890.
—Continued.

RECORD.

*In the
Superior
Court.*

No. 64.

Petition of
Wm. Walker
for a Writ of
mandamus.
Filed 8th
Aug., 1890.
—Continued.

porting to be a discontinuance of the proceedings instituted by your Petitioner as relator as aforesaid without costs, meaning that the said Arthur Turcotte claims no costs against the said Defendant Company, and seeks to prevent your Petitioner not only from obtaining the remedy prayed for by him as relator but to throw upon your Petitioner arbitrarily and tyrannically the costs by him legitimately incurred in this matter which costs, in consequence of the bad faith of the Defendant Company in creating innumerable difficulties in the course of the proceedings are exceptionally heavy and the matter is now pending before this Honorable Court whether the said discontinuance shall be received and given effect to. And your Petitioner alleges that the said Arthur Turcotte even if he could legally and under any circumstances do so, without the consent of your Petitioner has no valid cause or excuse for discontinuing the present proceedings and that the reason given by him in a certain document herewith produced, addressed to your Petitioner's Attorneys bearing date the thirty-first day of July last bearing the signature of the said Arthur Turcotte and purporting to have been signed at Three Rivers on the date aforesaid constitute no valid cause or excuse, which document is in the following terms, to wit:—

Three Rivers, July 31st, 1890.

MESSRS. BARNARD & BARNARD,

Advocates,

No. 180 St. James Street,

Montreal.

Gentlemen,

“ I have the honor to state that I have now ascertained that Mr. William Walker at whose solicitation and request legal proceedings have been instituted in my name, as authorized by my letter of the 4th January, 1889, addressed to your firm, against the Atlantic and North-West Railway Company to compel the opening of Blache Lane has adopted another method of obtaining redress by instituting an action in his own name in the Superior Court for damages against the said Company for closing the said Lane and that his example has been followed by Mr. Darling and all the other proprietors whose land formerly abutted on said land ;

“ Careful inquiry has satisfied me that aside from the interest of these gentlemen there is no public general interest which requires the reopening of this Lane. The private relator at whose request I instituted the prosecution above mentioned, having chosen along with the parties interested with him to resolve his remedy to have the Lane re-opened into an action to recover the damages caused him by its being closed, I must refuse to allow my name to be further used in this prosecution which is now being evidently pushed solely with the object of forcing the payment of the damages sought to be recovered in the private suits.

“ I therefore have the honor to request you will forthwith discontinue the prosecution instituted in my name under the Number 842 in the Superior Court, and to proceed no further therewith.”

I have the honor to be, Sir,

Your obedient Servant,

(Signed) ARTHUR TURCOTTE, Attorney General.

That the reasons in the above document which are the only reasons by him ever given to justify his conduct are illegal on their face and fraudulent and frivolous. Your Petitioner alleging that ever since he began to conspire with the Defendant as aforesaid the said Arthur Turcotte has given your Petitioner no opportunity whatever of being heard before him as to the existence of any reason which would justify a discontinuance by the Attorney General in this matter.

10 That the present case is one in which the Attorney-General is bound by law, to prosecute at the relation of any citizen of the City of Montreal, even if such citizen suffer no special damages either by the closing of a public street, or the obstacles, thrown in the way of the carrying out of the homologated plan of the City or both;

That the private interests of your Petitioner in so far as he has suffered special damage in the premises, whether such damage be settled amicably or in consequence of a judgment of the Court against the Defendant, has and can have legally no influence under any circumstances, on the action of the Attorney-General and his duty under the Statute to prosecute.

20 That on the other hand should the Defendant be condemned to restore Blache Lane, to its former condition and the judgment should be executed according to its terms, the claim of your Petitioner against the Defendant, would in no respect be affected, and he would be entitled to the full amount by him claimed by his action of damages;

That even if the Defendant should carry out the original understanding of altering with the consent of the City of Montreal, the line of Blache Lane, so as to make your Petitioner's property abut on a street, fifty feet wide, your Petitioner's claim for damages against the Defendant would be reduced but would not destroyed.

30 And finally even if the Attorney-General ever had a discretion, which your Petitioner denies, he has exercised such discretion and he cannot now discontinue the proceedings to the detriment and injury of your petitioner as to costs and otherwise, especially after the City of Montreal, has intervened to join in the demand that Blache Lane should be re-opened in the public interest.

40 That in order to have the question properly and finally determined as to whether your Petitioner as relator as aforesaid has the sole control of the proceedings by him adopted in the name of the Attorney-General, as aforesaid or whether the Attorney-General, can interfere, at all events whether he can interfere under the circumstances of the present case it is necessary that the said Arthur Turcotte, be impleaded as well in his personal as in his official capacity, with the view that your Petitioner may obtain an order of this Honorable Court, to compel the said Arthur Turcotte, to withdraw the said discontinuance and to allow your said Petitioner to proceed without further hindrance or obstruction to obtain a hearing on the merits of this matter and also with the view that your Petitioner may obtain a condemnation against the said Arthur Turcotte, personally for contempt of Court, your Petitioner reserving his recourse against the said Arthur Turcotte by an ordinary action for the damages by him caused to your Petitioner in the premises, which damages your Petitioner alleges amount to

RECORD.

*In the
Superior
Court.*

No 64.

Petition of
Wm. Walker
for a Writ of
mandamus.
Filed 8th
Aug., 1890.
—*Continued.*

RECORD. the sum of five thousand dollars.

*In the
Superior
Court.*

No. 64.
Petition of
Wm. Walker
for a Writ of
mandamus.
Filed 8th
Aug. 1890.
—Continued.

Wherefore your Petitioner prays that a Writ of *Mandamus* do issue in this cause, commending the said Arthur Turcotte in his capacity of Attorney-General, to withdraw the said discontinuance, and allow your Petitioner to proceed without further hindrance or obstruction to obtain a final hearing on the merits of the original Petition in this matter by your Petitioner as relater as aforesaid, and to proceed to obtain a final judgment therein, the whole with costs against the said Arthur Turcotte personally, unless the said Arthur Turcotte do show cause to the contrary on the day fixed in the annexed Writ of *Mandamus* and Summons.

Montreal, Aug. 6th, 1890.

10

BARNARD & BARNARD,
Attorneys for Petitioner.

Thomas Darling, of the City and District of Montreal, accountant, being duly sworn, doth depose and say, that the facts set forth in the said above and annexed petition are true, and further deponent saith not and hath signed.

Sworn before me at Montreal,
this seventh day of August, eighteen }
hundred and ninety.

THOS. DARLING,

20

THEO. DOUCET,
Commissioner of the Superior Court,
District of Montreal.

To

MESSRS. ABBOTTS, CAMPBELL & MEREDITH,
Attorneys of the Defendant, and

ROUER ROY, ESQ.,
Attorney for Intervening Party.

30

Gentlemen :

Take notice of the above Petition, and that on Friday the eighth day of August, instant, the same shall be presented to the Superior Court of Lower Canada, sitting in matters of Rerogative Writ, in and for the District of Montreal, at half-past ten of the clock in the forenoon, or as soon as Counsel can be heard.

Montreal, Aug. 7th, 1890.

BARNARD & BARNARD,
Attorneys for Petitioner.

40

(ENDORSED)

Petition for a Writ of *Mandamus*, fyled 8th Aug., 1890. P.O. Let the Writ issue Hon. J. DeLorimier.
(Paraphed J.B.V. Dep. P.S.C.)

SCHEDULE, No. 83.

Three Rivers July 31st, 1890.

Messrs Barnard & Barnard,
 Advocates,
 No. 180 St. James Street,
 Montreal.

RECORD.

*In the
 Superior
 Court.*

No. 65,
 Letter of the
 Hon. A.
 Turcotte,
 Atty. Gen.
 to M. M.
 Barnard &
 Barnard,
 (Petr's Wm.
 Walker for
 Exh. No. 1),
 Dated 31st
 July, 1890.

10 Gentlemen,

I have the honor to state that I have now ascertained that Mr. William Walker, at whose solicitation and request legal proceedings have been instituted in my name, and authorized by my letter of 4th January 1889 addressed to your firm, against the Atlantic and North West Railway Company to compel the opening of Blache Lane, has adopted another method of obtaining redress by instituting an action in his own name in the Superior Court for damages against the said Company for closing the said lane and that his example has been followed by Mr. Darling and all the other proprietors whose land formerly abutted on said land.

20

Careful enquiry have satisfied me that aside from the interest of these gentlemen, there is no public interest which requires the re-opening of this lane. The private relator, at whose request I instituted the prosecution above mentioned, having chosen, along with the parties interested with him, to resolve his remedy, to have the lane re-open into an action to recover the damages cause him by its being closed, I must refuse to allow my name to be further used in this prosecution which is now being evidently pushed solely with the object of forcing the payment of the damages sought to be recovered in the private suits.

30 I therefore have the honor to request that you will forthwith discontinue the prosecution instituted in my name under the number 842 in the Superior Court, and to proceed no further therewith.

I have the honor to be,

Sir,

Your obedient servant,

ARTHUR TURCOTTE,
 Attorney-General.

(ENDORSED.)

40

Petr's Wm. Walker Exh. No. 1 Fyled 8th Augt. 1890.
 (Paraphed) G. H. K. Dep. P. S. C.

RECORD.

SCHEDULE No. 86.

*In the
Superior
Court.*

Province of Quebec,
District of Montreal,
Superior Court
of the
Province of Quebec.

Victoria, by the Grace of God, Queen of the
United Kingdom of Great Britain and Ireland.
Defender of the Faith, Empress of India.

No. 66.
Petition of
Wm. Walker
for a Writ of
Mandamus.
and writ of
Mandamus
Fyled 22nd
Aug., 1890.

To any of the Bailiffs of our said Superior Court, duly appointed for the 10
District of Quebec.

Greeting :

We command you to summon The Honorable Arthur Turcotte of the City
and District of Three Rivers, Attorney General of the Province of Quebec to
be and appear before our said Superior Court, in the Court House, in the City
and District of Montreal, on the twenty-second day of August instant, to answer
the demand of William Walker of the City and District of Montreal, Manu-
facturer, contained in the hereto annexed petition in accordance with the order
thereon.

And have, there and then or before, this Writ and your proceedings 20
thereon.

In witness whereof we have caused the seal of our said Superior
{ Seal. } Court to be hereunto affixed, at Montreal, this eighth day of August in
the year of Our Lord one thousand eight hundred and ninety.

E. DESMARAIS,

Deputy Prothonotary of the said Superior Court.

This Writ is issued on the order of this date of the said Superior Court for
Lower Canada sitting the Hon, Mr. Justice de Lorimier and on the affidavit of
Thomas Darling.

Montreal, 8th August, 1890.

E. DESMARAIS,

D. P. S. C.

30

MEMORANDUM.

Petition for
Writ of
Mandamus.
See No. 64.

Copy of Petition for a Writ of *Mandamus*. Fyled 22nd Augt. 1890. Al- 40
ready printed. See No. 64.

(ENDORSED).

Petition for a Writ of *Mandamus*, (copy). Fyled August 22nd, 1890.
(Paraphed) G. H. K.

Dep. P. S. C.

SCHEDULE No. 88.

City Clerk's Office,
City Hall,
Montreal, 13 Aug. 1890.

Sir :

I have the honor to transmit to you herewith an extract from the minutes
10 of a meeting of the Road Committee held on the 25 June, 1890.

I have the honor to be,

Sir,

Your most obedient servant,

A. GOSSELIN,

Asst. City Clerk.

EXTRACT : From the minutes of a meeting of the Road Committee, held on
the 25th June, 1890.

Mr. Henneker, solicitor for the Canadian Pacific Railway Co., appeared
20 before the Committee, and asked the City to stay proceedings in the matter of
Blache Street, until September next, as the company had opened proceedings
towards a settlement with the interested parties, and it was
Resolved :

That the City Attorney be Instructed to take no further proceedings in
the case of Blache Street, until further notice.

(Certified.)

N. A. HURTEAU,

Act. Mayor.

A. GOSSELIN,

Asst. City Clerk.

30

(ENDORSED.)

William Walker, Exh. No. 1, Fyled 22nd August, 1890.
(Paraphed), G.H.K. Dep. P.S.C.

SCHEDULE No. 89.

MEMORANDUM,

40 Notice by Attorney-General Turcotte, represented by Mr. C. A. Geoffrion,
to Messrs. Barnard & Barnard, already copied previously, to appear here : see
No. 62.

(ENDORSED.)

Avis du Demandeur à M.M. Barnard & Barnard de discontinuer les pro-
cédures dans la présente cause (copie) Wm. Walker Exh. No. 2. Fyled 22nd.
Augt. 1892.

(Paraphed), G. H. K. Dep. P. S. C.

RECORD.

*In the
Superior
Court.*

No. 67.
Resolution of
Road Com-
mittee of the
City Council
of Montreal.
Dated, 25th
June, 1890,
Wm Walker's
Exh. No. 1.

No. 68.
Notice by
Attorney-
General Tur-
cotte, repre-
sented by Mr.
Geoffrion to
Messrs.
Barnard &
Barnard.
Wm Walker's
Exh. No. 2.
(Already
printed see
No. 12.)
Fyled 22nd
Aug. 1890.

Montreal, 9th July, 1890.

RECORD.

*In the
Superior
Court.*

The Honorable Arthur Turcotte, Attorney-General.....Petitioner.

AND

No. 69.
Letter of M
M Barnard
& Barnard to
Atty.-Gen.
Turcotte.
(Wm. Walker
Exh. No. 3.
Dated 9th
July, 1890.

The Atlantic & North-West Railway Co.....Defendant.

AND

The City of Montreal,Intervening Party.

10

Sir,
We enclose the notice received by us yesterday from Mr. Geoffrion in your name. From your letter to him of a recent date, which he has shewn us, it would seem that you have been informed that the proceedings taken in your name in this cause are of a vexatious character. It would appear further from Mr. Geoffrion's explanations in open Court, as you read the law it is in your discretion to revoke the authorization you have given.

Under the circumstances we beg to say that every allegation in the Petition the form of which was approved by you has been established in evidence beyond all doubt, and that if we have not obtained a judgment long ere this, it is owing to a systematic resort on the part of the Defendant to every species of dilatory proceedings with the sole view of interfering with the ordinary course of justice.

20

With respect to the alleged discretion on the part of the Attorney-General to revoke the authorization given by him under art. 997, of the C. P. C. after all the legal conditions have been complied with, we respectfully but earnestly submit that no such discretion exists as the law stands, and further, that even if the law admitted of a doubt, which it does not, to revoke the authorization at this stage would simply be, in our view of the facts, an act of gross injustice without a shadow of excuse.

30

Mr. Geoffrion is the senior Counsel of the Defendant, and it is fair to presume that any information you have received concerning the vexatious character of the proceedings comes from the Defendant, a source which you will admit affords no special guarantee of sincerity and impartiality.

That we should not have been communicated with by you directly, before you decided that it was necessary that you should occasion delay and further complications in the case by examining the Record, seems to be a very unusual proceeding. It is a course, at any rate, against which, in self-respect, we feel bound to enter a distinct protest.

40

We have the honor to be,

Sir,

Your obedient humble servants

BARNARD & BARNARD,

The Honorable A. Turcotte,

Advocates,

Attorney-General,

Quebec.

(ENDORSED)

Exhibit du Demandeur. Prod., 15 Juillet 1890. William Walker's Exh.
 No. 3. Fyled 22nd Augt. 1890 (Paraphed) G. H. K. Dep. P. C. S.

RECORD.

In the
 Superior
 Court.

No. 70.
 Special
 power of
 Atty. by the
 Hon. A.
 Turcotte,
 Atty.-Gen.,
 to C. A.
 Geoffrion,
 Q. C., Wm.
 Walker's
 Exh. No. 4.
 Fyled 22 Aug
 1890,

10

SCHEDULE No. 91.

MEMORANDUM.

Special power of Attorney by the Honorable A. Turcotte, Attorney General to C. A. Geoffrion Q. C. Dated 9th July 1890.
 Wm. Walker's Exhibit No. 4. (already printed, see No. 63.)
 To appear here.

(ENDORSED.)

20

Procuration spéciale passée à C. A. Geoffrion (copie) Wm. Walker. Exh.
 No. 4. Fyled 22nd Aug., 1890. (Paraphed). G. H. K., Dep. P. C. S.

SCHEDULE No. 92.

30



City Clerk's Office.

(City Hall,

Montreal, 14 August 1890.

No. 71.
 Resolution of
 the Road
 Committee.
 Wm. Walker
 (Exh. No. 5.
 Dated 9th
 July, 1890.

40 Sir,

I have the honor to transmit to you herewith an extract from the minutes of a Meeting of the Road Committee held on the 9th July 1890.

I have the honor to be,

Sir,

Your most obdt. servant.

A. GOSSELIN,

Asst. City Clerk.

RECORD.

EXTRACT : From the minutes of a meeting of the Road Committee, held on the 9th July, 1890.

In the Superior Court.

Resolved :

That the City Attorney be instructed to delay proceedings in the case of Blache Street, until the first of August, next.

(Certified.)

N. A. HURTEAU,
Acting Mayor.

A. GOSSELIN,
Asst. City Clerk.

10

No. 71
Resolution of
the Road
Committee
Wm. Walker
(Exh. No. 5.)
Dated 9th
1890.

(ENDORSED.)

--Continued.

William Walker, Exhibit No. 5, Fyled 22nd Aug., 1890.
(Paraphed G.H.K. Dep. P.S.C.)

20

SCHEDULE NO. 93.

MEMORANDUM.

No. 72.
Copy of Dis-
continuation
of action by
the Atty-Gen.
Dated 31st
July, 1890.
W. Walker's
Exh. No. 6,
(already
printed. See
No. 63.)

Copy of Discontinuation of action by the Attorney General.
Wm Walker's Exhibit No. 6, already printed. See No. 63.
To appear here : Dated 31st July, 1890.

30

(ENDORSED.)

Discontinuation. Fyled Aug. 1890. (Copy.) Wm. Walker's Exh. No. 6.
Fyled 22nd Aug., 1890. (Paraphed.) G. H. K., Dep. P. S. C.

40

SCHEDULE No. 94.

RECORD.

Province de Québec, }
District de Montréal. }

Cour Supérieure

In the
Superior
Court.

L'Hon. Arthur Turcotte,.....Requérant.

No. 73.

vs.

10 La Compagnie de Chemin de fer Nord-Ouest et Atlantique,....Défenderesse.

Appearance
of M. M.
Geoffrion,
Dorion and
Allan, for the
Defendant,
Arthur Tur-
cotte, and
notice. Fyled
22nd Aug.
1890.

ET

La Cité de Montréal,.....Intervenante.

ET

William Walker,.....Requérant pour *mandamus*.

ET

20 L'Hon. Arthur Turcotte,.....Défendeur.

Nous comparaissons pour le Défendeur Arthur Turcotte, en sa qualité individuelle et en autant que des conclusions sont adoptées contre lui personnellement ; et nous donnons de plus avis au dit William Walker que le dit Arthur Turcotte a cessé d'exercer les fonctions de Procureur Général.

Montréal, 22 Août 1890.

GEOFFRION, DORION & ALLAN,
Avocats du dit Défendeur Arthur Turcotte.

30

(ENDORSED)

Comparution par l'Hon. Arthur Turcotte et avis. Prod., 22 Août 1890.
(Paraphed) G. H. K. Dep. P. C. S.

SCHEDULE No. 96.

40

Province of Quebec,
District of Montreal,
Superior Court
of the Province of Quebec. }

Victoria, by the Grace of God, Queen of the
United-Kingdom of Great Britain and Ireland,
Defender of the Faith, Empress of India.

No. 74.
Writ for
Reprise d'Ins-
tance against
the Hon. Jos.
E. Robidoux,
Atty. Gen.,
& Petition of
Wm Walker,
for such
reprise d'Ins-
tance. Fyled
1st Sept.,
1890.

To any of the bailiffs of our said Superior Court, duly appointed for the district of Montreal.

RECORD.

In the Superior Court.

No. 74.

Writ for Reprised Instance against the Hon. Jos. E. Robidoux, Att'y-Gen'l, & Petition of Wm. Walker for such Reprise d'Instance. Fyled 1st Sept. 1890. —Continued.

We command you to summon the Honorable Joseph Emery Robidoux of the city and district of Montreal in his quality of Attorney General, of the Province of Quebec, Defendant par reprise d'instance, to be and appear before our said Superior Court, in the Court House, in the city and district of Montreal, on the first day of September next to answer the demand of William Walker, of the city and district of Montreal, manufacturer, Petitioner for Mandamus

AND

The Honorable Arthur Turcotte, of the city and district of Three-Rivers, Attorney General of the Province of Quebec, Defendant on the Writ of Mandamus contained in the hereto annexed declaration on petition for Mandamus. 10

And have there and then or before, this writ and your proceedings thereon. In witness thereof we have caused the seal of our said Superior Court to be hereunto affixed at Montreal, this twenty-eighth day of August in the year of Our Lord one thousand eight hundred and ninety.



G. H. KERNICK, Dep. Prothonotary of the said Superior Court. 20

Canada, Province of Quebec, District of Montreal.

In the Superior Court.

The Honorable Arthur Turcotte, Attorney-General.....Petitioner.

vs.

The Atlantic and North-West Railway Company.....Defendant. 30

AND

The City of Montreal.....Intervening Party.

AND

William Walker.....Petitioner for a Mandamus.

AND

The said Honorable Arthur Turcotte....Defendant on the Writ of Mandamus. 40

To this Honorable Court :

The Petition of the said William Walker respectfully sheweth :

That the Writ of Mandamus in this cause issued with the Petition thereunto annexed having been duly returned before this Court on the return day in said Writ mentioned, your Petitioner could not and cannot proceed thereon in so far as the conclusions against the said Turcotte in his official capacity are concerned,

inasmuch as in the interval between the issuing of the said Writ of *Mandamus* and the return thereof, the said Turcotte has ceased to hold the office of Attorney-General of this Province, having been replaced by the Honorable Joseph Emery Robidoux, who now holds the said office of Attorney-General.

That it is necessary that the said present Attorney General be called in with the view that the discontinuation fyled by the said Arthur Turcotte may be set aside and the original proceedings in the name of the said Honorable Arthur Turcotte be continued in the name of the said Honorable Joseph Emery Robidoux.

10 Wherefore your Petitioner prays that a Writ do issue ordering the said Honorable Joseph Emery Robidoux, to appear in this cause.

That it be declared that the discontinuation fyled by the said Arthur Turcotte is illegal, null and void, and that the same be set aside and that it be further declared that the original proceedings in this cause instituted by the said Arthur Turcotte as Attorney General shall go on and be continued until final Judgment has been obtained, to wit, in the name of the said Honorable Joseph Emery Robidoux represented by the undersigned, the whole without costs against the said Honorable Joseph Emery Robidoux unless he contest any portion of the present conclusions.

20 Montreal, August 1890.

BARNARD & BARNARD,
Attorneys for Petitioner,
William Walker.

(ENDORSED.)

Petition of Wm. Walker and Writ. Fyled September 1st, 1890. (Paraphed). G. H. K. Dep. P. S. C.

30

SCHEDULE No. 98.

Province de Québec }
District de Montréal, }

Cour Supérieure.

40 L'Honorable Arthur Turcotte, Requéant.

vs.

The Atlantic and North-West Railway Company, Défenderesse.

ET

La Cité de Montréal, Intervenante.

RECORD.

In the Superior Court.

No. 74.

Writ for *Reprise d'Instance* against the Hon. Jos E. Robidoux, Atty. General and Petition of Wm. Walker for such *Reprise d'instance*. Fyled 1st Sept, 1890. —*Continued.*

No. 75.
Plea of Hon. A. Turcotte upon *mandamus*. Fyled, 3 Sept. 1890.

RECORD.

ET

*In the
Superior
Court.*

William Walker,.....Requérant pour *mandamus*

ET

No. 75.
Plea of Hon.
A. Turcotte
upon *Manda-
mus* Fyled
Sept. 3, 1890.

L'Hon. A. Turcotte,.....Défendeur.

ET

L'Hon. J. E. Robidoux.....Défendeur par reprise d'instance.

10

Le Défendeur Arthur Turcotte, déclarant se défendre contre les conclusions prises par le Requérant William Walker, contre lui personnellement dit :—

1° Le Défendeur a agi dans toutes les circonstances alléguées dans la Requête, en sa qualité de Procureur-Général, et ne peut pas être recherché personnellement pour les actes faits dans les limites de ses fonctions.

2° Le Défendeur avait le droit de donner des instructions aux Avocats, conduisant les procédures instituées en son nom, et sur le refus des dits Avocats il avait le droit, comme il l'a fait, de discontinuer les dites procédures.

3° Le procureur-général avait discrétion pour accorder ou refuser son *fiat* permettant l'usage de son nom en la présente instance, et il avait la même discrétion pour retirer la dite permission s'il était convaincu que les dites procédures ainsi commencées en son nom étaient vexatoire dès leur origine ou l'étaient devenues depuis le commencement de l'instance.

4° Le Défendeur, avant de signer la discontinuation dont il s'agit en cette cause, s'est assuré que les procédures n'étaient pas prise et n'étaient pas continuées dans l'intérêt public mais simplement dans l'intérêt privé du Requérant qui en même temps faisait valoir et fait encore valoir contre la compagnie de chemin de fer Atlantic et Nord Ouest, les droits et actions qu'il prétend exercer par l'entremise du procureur général.

5° Le procureur-général ne relève pas de la juridiction des tribunaux civils dans l'exercice de la discrétion plus haut mentionnée mais seulement de celle du Parlement.

6° Le Défendeur dans tous les cas, a agi de bonne foi et dans les limites de ses fonctions ; et quand même il aurait dans l'exercice des dites fonctions il ne peut pas être tenu personnellement responsables des conséquences de telle erreur dans laquelle il aurait pu tomber.

7° Le Requérant Walker est mal fondé dans ces conclusions pour une condamnation personnelle contre le Défendeur quant aux frais de la dite *instance* pour *Mandamus*.

A ces causes le dit Défendeur Arthur Turcotte conclut au renvoi des conclusions du Requérant Walker, demandant une condamnation personnelle contre lui pour les frais, le tout avec dépens distraits aux soussignés.

Montréal 2 Septembre, 1890.

GEOFFRION, DORION & ALLAN,

Avocats du Défendeur A. TURCOTTE.

(ENDORSED.)

Plaidoyer. Prod. 3 Sept., 1890.
(Paraphed), G.H.K. Dép. P.C.S.

RECORD.

*In the
Superior
Court.*

No. 75.
Plea of Hon.
A. Turcotte
upon *Manda-
mus*. Fyled
Sept. 3, 1890.
—*Continued.*

10

SCHEDULE No. 99.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

842.

20 Hon. Arthur Turcotte, *es qualité*.....Petitioner.

vs.

The Atlantic & North-West Railway Co.....Defendant.

AND

The City of Montreal.....Intervening Party.

AND

William Walker,.....Petitioner for *Mandamus*.

30

AND

The Honorable Arthur Turcotte.....Defendant on *Mandamus*

To Messrs. Geoffrion, Dorion & Allan, Attorney for Hon. A. Turcotte.

Gentlemen,

You are hereby notified that William Walker offers to discontinue his demand for costs personally against the Honorable Arthur Turcotte made in the Petition for a Writ of *mandamus* in this cause and also his allegations charging the said Honorable Arthur Turcotte with fraud and the declaration 40 that the said Walker reserves his right to proceed in damages against the said Honorable Arthur Turcotte the whole provided the said Arthur Turcotte on his part do declare that he will consider the said withdrawal as ending the matter so that the said allegations against the said Honorable Arthur Turcotte shall be considered as never having been made.

Montreal, September 2nd, 1890.

BARNARD & BARNARD,
Attorneys for Petitioner Wm. Walker.

No. 76.
Offer to de-
sist from part
of conclusions
of petition for
Mandamus.
Fyled, 5th
Sept. 1890.

(ENDORSED.)

RECORD.

In the Superior Court.

No. 77. General answer to Hon. A. Turcotte's Plea. Fyled 12 Sept. 1890.

Offer to desist from part of conclusions of Petition for *Mandamus*. Fyled Sept. 5th, 1890. (Paraphed) J. L. Dep. P. S. C.

SCHEDULE No. 101.

In the Superior Court.

10

Province of Quebec, } District of Montreal. }

Honorable Arthur Turcotte.....*es qual*, Petitioner.

vs.

The Atlantic and North-West Railway Company.....Defendant.

AND

The City of Montreal,.....Intervening party. 20

AND

William Walker,.....Petitioner for *Mandamus*.

AND

Hon. Arthur Turcotte,.....Deft. on *Mandamus*.

AND

30

Hon. Joseph Robidoux, Petitioner and Deft. on *Mandamus* for *reprise d'instance*.

And the said Petitioner William Walker, for general answer to the plea filed by the Honorable Arthur Turcotte in this cause saith :

That each and every the allegations, matters and things therein contained and set forth are and each of them is false and untrue.

Wherefore the said Petitioner prays that the said plea may be hence dismissed with costs, *distracts* to the undersigned.

Montreal, September 9th, 1890.

BARNARD & BARNARD Attorneys for William Walker.

40

(ENDORSED.)

Petitioner's Wm. Walker, general answer to Hon. A. Turcotte's plea. Fyled Sept., 12th, 1890.

(Paraphed,) H. & G. P.S.C.

SCHEDULE No. 107.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 78.

Deed of Sale
 by Louis
 Blache to
 J. B. Renaud.
 (J. Belle, N.P.)
 Dated 18th
 March, 1857.
 Plff's. Exh.,
 A.A.

Pardevant les Notaires Publics, pour cette partie de la Province du Canada qui constituait ci-devant la Province du Bas-Canada, residans en la ville de Montréal, soussignés.—Furent présents Mr. Louis Blache gentilhomme, Dame Tharsil Blache, épouse de Mr. William Scott Devenport, gentilhomme et de lui pour ce présent, autorisée à l'effet qui suit ; Dame Flavie Blache, veuve de feu George Hypolite Zéphirin Cadieux, en son vivant, Ecuier, Notaire, Wolfred Nelson, Ecuier, médecin, et Dame Marie Angélique Dubois veuve en première noces de feu Ovide Paradis, et actuellement épouse de Mr. James Dease, 10 gentilhomme, et de lui, pour ce présent autorisée à l'effet qui suit, tous les sus nommés résidants en la dite Cité de Montréal dans le district de Montréal.

Lesquels ont reconnu et confessés par ces présentes, avoir vendu cédé, quitté, transporté, et délaissé, dès maintenant et à toujours, et ont promis et promettent chacun à son égard garantir de tous troubles, dons, douaires, dettes pothèques, évictions, substitutions, aliénations et autres empêchements généralement quelconques, à Jean Baptiste Renaud, Ecuier, marchand de la cité de Québec, dans le district de Québec, à ce présent et acceptant, acquéreur pour lui ses hoirs et ayant cause savoir :—Un lot de terre ou emplacement situé au 20 Faubourg St. Antoine, en la dite cité de Montréal, de la contenance de deux cent quatre-vingt onze pieds, mesure anglaise de front, sur cent quatre vingt-pieds, même mesure de profondeur dans la ligne latérale du côté nord-ouest, et cent soixante-douze pieds, même mesure dans la ligne latérale du côté sud-est, le tout plus ou moins, sans garantie de mesure précise et tel que ce lot de terre ou emplacement se trouve renfermé dans les limites qui suivent, borné en front par la rue La Montagne, derrière par les représentants de feu John Trimm, au sud-est par la continuation de la rue Lagauchetière et au nord-ouest par la rue St Janvier, avec une maison en pierre à deux étages, deux écuries et une remise en bois dessus construites ; le dit lot ou emplacement en grande partie complanté d'arbres fruitiers.

30 Nous soussignés, certifions que ce qui précède est un vrai extrait tiré de la minute d'un acte intitulé. "Vente par Mr. Louis Blache et autres, à Jean-Baptiste Renaud, Ecuier, la dite minute passée devant feu Mtre J. Belle, en son vivant Notaire Public du Bas-Canada, en date du dix-huit mars mil huit cent cinquante-sept, à Montréal, sous le No. 16305, trouvé dans le Notariat du dit Mtre J. Belle, Notaire lequel Notariat est déposé dans les Archives de la dite Cour Supérieure et desquels Archives nous sommes dépositaires.

Montréal, ce vingt-deuxième jour de janvier mil huit cent quatre-vingt-dix.

J. E. CHAMPOUX,

Dép. P. C. S.

40

(On the Back)

No. 16305, 18 mars 1857, Acte de vente par Louis Blache et al., à Jean-Baptiste Renaud. (Copie) J. Belle, N. P.

(ENDORSED.)

Plaintiff's Exh. AA at enquête. Fyled 24th Oct. 1890.

(Paraphed) J. L. Dep. P. S. C.

SCHEDULE No. 108.

RECORD.

*In the
Superior
Court.*

No. 79.

Deed of Sale
from J. B.
Renaud to
James Baylis,
(Hunter N.P.)
Plff. Exh.
A b.
Filed 24th
Oct. 1890.

On this day, the seventeenth of May, in the year of our Lord one thousand eight hundred and sixty-four. Before us the undersigned Public Notaries duly commissioned and sworn in and for that part of the Province of Canada heretofore constituting the Province of Lower Canada, residing in the City of Montreal, in the said Province.

Personally came and appeared, Jean Baptiste Renaud, of the City of Quebec and Province aforesaid, Esquire, merchant, who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over, and by these presents doth bargain sell, assign, transfer and make over with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, to James Baylis, of said City of Montreal, Esquire, merchant, party to these presents, and accepting thereof for himself, his heirs and assigns, and legal representatives, the lot of land which is described in the deed thereof to the now vendor; hereinafter mentioned in the French language as follows, to wit :

“ Un lot de terre ou emplacement situé au Faubourg St. Antoine, en la dite cité de Montréal, de la contenance de deux cent quatre vingt-onze pieds, mesure Anglaise, de front, sur cent quatre-vingt pieds, même mesure, de profondeur, dans le ligne latérale du côté nord-ouest, et cent soixante-douze pieds même mesure dans la ligne latérale du côté sud-est, le tout plus ou moins, sans garantie de mesure précise et tel que ce lot de terre ou emplacement se trouve renfermé dans les limites qui suivent, borné en front par la rue La Montagne, derrière par les représentans de feu, John Trim, au sud-est, par la continuation de la rue Lagauchetière, et au nord-ouest par la rue St. Janvier, avec une maison en pierre à deux étages, deux écuries et une remise en bois dessus construites.”

With all and every the members and appurtenances thereunto belonging of all which the said purchaser declares to have a perfect knowledge, as having seen and viewed the same, and therewith he is content and satisfied. Which said vendor is lawfully seized thereof by virtue of a good and sufficient title the same having been acquired by deed of sale from Mr. Louis Blache and others, bearing date and executed before Mtre J. Belle and his colleague Notaries Public, the eighteenth day of March, one thousand eight hundred and fifty-seven.

The aforesaid hereby bargained and sold lot, piece and parcel of land and premises being held under the tenure of *franc aleu roturier*, the same having been commuted by *acte* of commutation, bearing date and passed before P. Lacombe and his colleague Notaries Public, the first day of February, one thousand eight hundred and fifty-eight.

To have, hold, use and enjoy the aforesaid bargained and sold lot of land, buildings and premises, with their rights, numbers, buildings and appurtenances unto the said James Baylis, his heirs and assigns as his and their own proper freehold forever, by virtue of these presents, and to enter upon and take possession of the same forthwith.

The present bargain and sale is made in manner as aforesaid for and in

consideration, of the price or sum of twelve thousand dollars current money of the said Province of Canada, part whereof, that is to pay the sum of one thousand dollars, paid at the execution of these presents the receipt whereof the said vendor doth hereby acknowledge whereof quit, and as to the balance or remaining sum of eleven thousand dollars, the said purchasers doth hereby promise, bind and oblige himself, his heirs and assigns to well and truly pay or cause to be paid to the said vendor his heirs or assigns as follows; in and by eleven equal proportions or sums of one thousand dollars, the first payment whereof will be due on the twelfth day of May next, (1865), with interest on the said sum of eleven thousand dollars, or on such part thereof as shall remain due and unpaid at the rate of seven *per centum per annum*, payable the said interest annually at the time of payment of each of said instalments respectively, the first of which said instalments will become due and be payable on the twelfth day of May, one thousand eight hundred and sixty-five, and thus to continue annually, as aforesaid, until the full payment of the said principal sum and interest.

The present sale is further made subject to existing leases, the rents whereof to be paid to and received by the said purchaser from the first of May instant at his own risk and charges.

20 And for the security of the due and faithful payment of the said balance of consideration, money and interest at the times and in the manner aforesaid, the hereby bargained and sold lot of land buildings and premises are by these presents specially and by privilege of *Baillieur de fonds* mortgaged and hypothecated.

30 And in consideration of the premises the said vendor both hereby transfer and set over to the said purchaser all rights of property, claim, title, interest, demand, seizin, possession and other rights whatsoever which the said vendor can have, demand or pretend in or upon the aforesaid hereby bargained and sold lot piece or parcel of land and premises of which he hereby divests himself in favor of the said purchaser, his heirs and assigns consenting and agreeing that the said purchaser be and remained seized and invested with the full and entire possession thereof and for that purpose doth hereby constitute the bearer of these presents his Attorney, to whom he gives all necessary power and authority to that effect for thus, etc.

40 And it is hereby agreed by and between the said parties hereto that should the said James Baylis sell parts of the aforesaid hereby bargained and sold premises the said Jean Baptiste Renaud will and he hereby binds himself to accept from such purchaser the consideration money so payable by said purchaser and shall release and discharge such portion or portions from the hypothecque in his favor created by these presents, on receiving the consideration money from such purchasers and discharge such portion from the balance of the *baillieur de fonds* claim created by this deed.

And for the execution of these presents the said parties have made election of domicile at their ordinary places of abode above mentioned where &c.

Done and Passed at the said City of Montreal in the office of James Stewart Hunter one of said Notaries under the number nine thousand nine hundred and forty-five, and signed by the said parties hereto with and in the

RECORD.

—
In the
Superior
Court.

No. 79.

Deed of Sale
from J. B.Renaud to
James Baylis,
(Hunter N.P.)

Plff. Exh.

A b.

Filed 24th
Oct., 1890.

—Continued.

RECORD. presence of us said Notaries also hereunto subscribing these presents having been first duly read.

In the Superior Court.

(Signed.) J. B. RENAUD,
JAS. BAYLIS,
J. S. HUNTER, N. P.

No. 79. (Signed.) J. J. GIBB, N. P.

Deed of Sale from J. B. Renaud to James Baylis, (Hunter N.P.) Plff. Exh. A b. Fyled 24th Oct., 1890. —Continued.

True copy of the minute-remaining of record in the office of James Stewart Hunter, a Notary Public, compared and collated by the undersigned Herbert Story Hunter a Notary Public for the Province of Quebec residing in the City of Montreal, assignee of the minutes, repertory and index of the said James Stewart Hunter in virtue of an order of His Honor the Lieutenant Governor of the Province of Quebec in Council, dated the 7th day of February, 1885.
H. S. HUNTER, N. P. 10

(On the Back.)

No. 9945. 17th May, 1864.

Deed of sale from Jean B. Renaud, Esq., to James Baylis, Esq. (Copy 4.)

(ENDORSED.)

20

Plff. Exh. Ab. at Enquête. Fyled 24th, Oct. 1890. (Paraphed).
J. L., Dep. P.S.C.

SCHEDULE NO. 109.

30

No. 80. Extract of Judgt. rendered by the Superior Court, Montreal, re Grantham vs. Tayloretal. Dated 26th. Feb., 1867, Plff. Exh. Ac.

Province of Quebec, }
District of Montreal. }

Superior Court for Lower Canada.

The twenty-sixth day of February one thousand eight hundred and sixty-seven.

PRESENT :—THE HONORABLE MR. JUSTICE BERTHELOT.

James Grantham, of the City of Montreal, in the District of Montreal, tabacconist,

Plaintiff. 40

vs.

Isaac Taylor, laborer, and Harriet Trim, his wife, and Thomas Tinsley, laborer, and Charlotte Trim his wife, all of the City and District of Montreal,

Defendants.

AND

Cynthia Gilbert, wife of Charles S. Burroughs, formerly of the City of Montreal, now of the village of Lachute, in the County of Argenteuil, in the District of Terrebonne, Esquire Advocate, duly separated as to property by her marriage contract, and by him duly authorized and assisted to the effect of her Intervention, and being a party thereto for that purpose,

Intervening Party.

10

AND

Isaac Taylor, laborer, and Harriet Trim, his wife, and Thomas Tinsley, laborer, and Charlotte Trim, his wife, all of the City and District of Montreal.

Opposants.

AND

The said Cynthia Gilbert and Charles S. Burroughs,

Contesting opposition

20

AND

The said Isaac Taylor, laborer, and Harriet Trim, his wife, and Thomas Tinsley, laborer, and Charlotte Trim, all of the City and District of Montreal.

Opposants.

AND

Said Cynthia Gilbert and Charles S. Burroughs,

Contesting.

30

The Court having seen its judgment of twenty-fifth day of June, one thousand eight hundred and sixty-four, ordering that the usufructuary possession and enjoyment of the properties described in the said judgment, and in the public notices of the sale thereof, by licitation such usufructuary possession, and enjoyment to cease upon the death of the last of the three following persons; to wit: Harriet Trim and Charlotte Trim, two of the Defendants, and Mary Ann Trim, wife of Thomas Brooks, whose interests are represented by the said Intervening party, the description of the said properties bring as

40 " follows to wit: 3° a lot of land lying and being in the St. Antoine suburbs, " in the said City of Montreal, containing fifty-two feet front by a depth of " two hundred and seventy-eight feet, which said lot increases in width, until " it reaches Janvier Street, where it measures one hundred and eighty-six feet, " the said lot bounded in front by Blache Street, and in rear, by Janvier " Street, on one side by J. B. Renaud and Mr. Scott, and on the other side " partly by Mr. Doyle and partly by Mr. Archambault, with a wooden building " thereon erected.

RECORD

*In the
Superior
Court.*

No. 80.

Extract of
Judgt. ren-
dered by the
Sup. Court,
re Grant vs.
Taylor et al.
Dated 26th
Feb. 1867.
Plt. Exh. A c
— *Continued.*

RECORD.

*In the
Superior
Court.*

True Extract of judgment rendered the 26th February, 1867.

E. DESMARAIS.

Deputy P. S. C.

(ENDORSED.)

No. 80.
Extract of
Judgt. rendered by the
Sup. Court
re *Grantvs*
Taylor et al.
Dated 26th
Feb., 1867.
Plff. Exh. A*c*.
— *Continued.*

Extract of judgment, Petitioners Exhibit A*c*, at Enquête, Fyled 24th
Oct. 1890.
(Paraphed), J. L. Dep. P. S. C.

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SCHEDULE No. 110.

No. 81.
Deed of Sale
by M. J. Her-
vieux, wife of
Robert Greig,
to Jos Ar-
chambault
(Montreuil
N. P.) Dated
4 Decr. 1844.
Plff's Exh. 4d

Pardevant les Notaires Publics de la ci-devant Province du Bas-Canada
faisant partie de la Province de Canada, residant en la cité de Montreal, sous-
signés.

20

Fut présente Dame Marie Jeanne Hervieux, résidant à Montréal, épouse
de Robert G. Greig, Ecuier, résidant au même lieu ici présent et de lui bien et
dument autorisée pour l'effet des présentes ;

Laquelle a reconnu et confessé par ces présentes avoir vendu, cédé, quitté,
transporté et délaissé dès maintenant et a toujours, et promis et promet garan-
tir de tous troubles, dons douaires, dettes hypothèques, évictions, substitutions,
aliénations, et autres empêchements généralement quelconques, à Joseph Ar-
chambault peintre de la dite ville de Montréal à ce présent et acceptant acqué-
reur pour lui ses hoirs et ayant cause à l'avenir, savoir :

Un lot de terre ou emplacement situé en la dite ville de Montréal, de la
contenance de trente-deux pieds de front sur trente-huit pieds six pouces de pro-
fondeur dans une ligne et trente et un pieds et six pouces de profondeur dans
l'autre ligne, et trente-sept pieds et quatre pouces de largeur dans la profon-
deur, le tout plus ou moins sans garantie de mesure précise, tel que tout se
trouve actuellement enelos, borné en front par la rue Blache par derrière et
d'un côté par Mr. Zeigler et de l'autre côté par les héritiers John Trim avec
une maison en bois dessus construite.

30

Ainsi que, le tout se poursuit, comporte et étant de toutes parts, circon-
stances et dépendances, que le dit acquéreur dit bien savoir et connaître pour
l'avoir vu et visité, dont il se dit content et satisfait.

40

Mouant le dit lot de terre en la censive de la Seigneurie de Montréal et
envers le domaine d'icelle, chargé de tels cens et rentes qu'il peut devoir, quitte
et nette néanmoins de tous arrérages des dits cens et rentes, du passé jusqu'à
ce jour.

Pour du lot de terre et dépendances, jouir user, faire et disposer par le
dit acquéreur ses hoirs et ayant cause, en toute propriété en vertu des pré-
sentes, à commencer la jouissance avant cette date.

Cette vente session, transport et délaissement ainsi fait à la charge des dits cens et rentes et droits seigneuriaux de l'avenir seulement et en outre pour et moyennant le prix et somme de cent vingt-cinq livres cours actuel de cette Province.

Laquelle dite somme du consentement de la dite venderesse demeure affectée, obligée et hypothéquée sur le dit lot de terre à constitution de rente à raison de six pour cent par année, formant annuellement la somme de sept livres et dix chelins cours actuel payable à la dite venderesse ou à son ordre ou représentants légitimes tous les ans et dont le premier paiement sera dû et échü dans un an à compter de la St. Michel dernière et de là continuer à pareille date chaque année en suivant jusqu'au remboursement du capital, qui sera loisible au dit acquéreur ses hoirs et ayant causes de faire en un seul ou plusieurs paiements dont le moindre ne pourra être que de dix livres dit cours, et l'intérêt diminuera en conséquence. Convenu entre les dites parties que dans le cas ou le dit acquéreur venderait à autres personnes le dit terrain et dépendances ou aucune partie, la dite venderesse ou ses représentants auront le droit d'exiger à demande du dit acquéreur les hoirs et ayant causes le capital et les intérêts alors dus en vertu des présentes à peine, etc.

2) Et pour sureté et garantie de tout ce que dessus de la part du dit acquéreur, le dit lot de terre et dépendances sont spécialement hypothéqués.

Et au moyen de tout ce que dessus exprimé la dite venderesse a cédé et transporté au dit acquéreur ses hoirs et ayant cause, tous droits de propriété fonds, très fonds, noms, raisons, saisine, possessions et autres choses généralement quelconques qu'elle pourrait avoir demandée ou prétendre en ou sur ce que dessus vendu, dont et du tout elle s'est démis et désaïssi pour en vêtir le dit acquéreur ses hoirs, et ayant cause, consentant qu'il en soit saisi et mis en possession par et ainsi qu'il appartiendra, Constituant à cette fin pour procureur le porteur des présentes, lui donnant pouvoir de se faire; Car ainsi, etc.

3) Et pour l'exécution des présentes, et de leur dépendances, les dites parties ont élu leurs domiciles aux lieux sus-mentionnés auxquels lieux, etc. Nonobstant etc. Promettant, etc. Obligeant, etc. Renonçant, etc.

Fait et passé en l'étude de A. Montreuil à Montréal l'an mil huit cent quarante-quatre le quatrième jour du mois de juillet après-midi et ont les dits vendeurs signé avec nous dits Notaires, le dit acquéreur ayant déclaré ne le savoir faire de ce enquis lecture faite.

| | |
|---------|------------------------|
| (Signé) | MARIE JEANNE HERVIEUX, |
| " | R. G. GREIG, |
| " | JOS. X. ARCHAMBAULT, |
| " | GEO. BRISLEY, N. P. |
| " | A. MONTREUIL, N. P. |

40

Vraie copie de la minute des présentes restée en mon étude.

A. MONTREUIL, N. P.

(On the Back)

No. 428. 4th Decr. 1844.

No. 81.
Deed of Sale
by M. G.
Hervieux
wife of Robert
Greig, to Jos
Archambault
(Montreuil N.
P.) Dated
Dec. 4, 1844,
Plff's. Exh.
4 d.
—Continued.

RECORD.

Vente par Dame M. J. Hervieux, épouse de Robert G. Greig. Ecr., à Jos. Archambault. 4me copie. A. Montreuil, N. P.

*In the
Superior
Court.*

(ENDORSED)

No. 81.
Deed of Sale
by M. G.
Hervieux,
wife of Robert
Greig to Jos
Archambault
(Montreuil N.
P.) Dated
Dec. 4, 1844
Plff's. Exh.
4 d.
—Continued.

Plff's Exh. A.d at enquête. Fyled 24 Oct 1890.
(Paraphed) J. L. Dep. P. S. C.

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SCHEDULE NO. 111.

No. 82.
Deed of Sale
from Michael
Babcock and
Alexander
Henderson,
Trustees for
the benefit of
the creditors
of Wm. B.
Lambe, to
John Gordon
MacKenzie,
(Griffin, N.P.)
Dated 22nd
Aug. 1866.
Plff. Exh. A.e.

On the twenty-second day of August in the year of our Lord one thousand eight hundred and sixty-six before the undersigned Public Notaries, duly commis- 20
sioned and sworn, in and for the portion of the Province of Canada heretofore
constituting the Province of Lower Canada, residing and practising in the City
of Montreal, in the said Province.

Personally came and appeared, Michael Babcock, of the said City of
Montreal, manufacturer, and Alexander Henderson, of the same place, gentle-
men in their capacities, Trustees for the benefit of the creditors of William B.
Lamb, of the said City of Montreal, Esquire, Advocate, under and by virtue of
a certain assignment (in trust) from the said William B. Lamb to the said
Trustees bearing date the sixteenth day of January, one thousand eight 30
hundred and sixty-four, and made and passed before C. F. Papineau and his
colleague Notaries Public, who in their said capacities did, and hereby do
bargain, sell, assign, transfer and make over, with warranty so far as their own
acts and deeds are concerned against all gifts, dowers, mortgages, substitutions,
alienations and other hindrances whatsoever, to John Gordon Mackenzie, of
the same place, Esquire, party to these presents, and accepting thereof, for
himself his heirs and assigns;

That certain lot of ground situate in the Saint Antoine Ward and suburbs of
the said City of Montreal, containing eighty feet, french measure in front more
or less, by one hundred and eighty feet same measure, more or less in depth 40
with a stone house and other buildings thereon erected, bounded in front by
the main street of the said suburb, in the rear partly by a projected street, and
partly by Pierre Hervieux or representatives, on one side to the North-east by
the said Pierre Hervieux, or representatives, and on the other side by Antoine
Larocque or representatives with all and every the members and appurtenances
thereunto belonging, of all which the said purchaser declares that he has a
perfect knowledge, as having seen and viewed the same, and therewith he is
content and satisfied, which said vendors are lawfully seized thereof, by virtue

of a good and sufficient title, the same having been acquired from the said William B. Lambe under the aforesaid assignment and transfer in trust, and the said William Lambe having inherited the same under and by virtue of the last will and testament of his father the late James Henry Lambe, made and passed before George _____ his colleague Notaries on the Fourth day of November, one thousand eight hundred and forty-eight. The aforesaid lot of ground and premises hereby bargained and sold depending and holding of the seigniori of the Island of Montreal and subject to the payment of such *cens et reuts* towards the domain thereof as may be legally due and owing thereto, but which the said parties cannot at present ascertain, free and clean however of all arrears of *cens et rentes* up to the day of date hereof, and of every other charge, further and incumbrance as the said Vendors now hereby declare.

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To have, hold, use and enjoy, the aforesaid bargained and sold lot of ground, house and premises, with their rights, members and appurtenances, unto the said purchaser, his heirs and assigns, as his and their own proper freehold forever, by virtue of these presents, and to enter upon and take possession of the aforesaid lot of ground house and premises on the death of Dame Sarah Johnson, widow of the said James Henry Lambe, she having the usufruct and life enjoyment of the same, by virtue of the said will. The present bargain and sale is made in manner as aforesaid, for and in consideration of the price or sum of five thousand dollars, current money of the said Province of Canada, the whole paid at and before execution of these presents, the receipt of which the said vendors do hereby acknowledge, whereof quit, etc.

20

And at the making and passing of these presents personally came and intervened and became a party hereto, the said William B. Lambe, who declared to have taken due and sufficient communication of these presents, and doth hereby approve, ratify and confirm the same in all particulars, in as full and ample manner as if he had been the vendor thereof, and signed the same, and also at the making and passing of these presents also personally appeared Dame Margaret Jones Morris, of the said city of Montreal, wife of the said William B. Lambe, and by him hereunto duly authorized, and having taken due communication of the following bargain and sale, declared herself to be content therewith, and accordingly she the said Dame Margaret Jones Morris, duly authorized as aforesaid doth hereby, for herself and her children, born and to be born, renounce to all dower and right of dower, whether customary or conventional, and all other matrimonial rights, whatsoever, in or upon the hereinbefore bargained and sold lot of ground, house and premises, Whereof acte, etc., etc.

30

And in consideration of the premises, the said vendors do hereby transfer and set over to the said purchaser all rights of property, claim, title, interest, demand, seizing, possession and other rights whatsoever, which the said vendors can have, demand or pretend into, or upon the aforesaid bargained and sold lot of land and premises, of which they hereby divest themselves in favor of the said purchaser, his heirs and assigns consenting and agreeing that the said purchaser be and remain seized and invested with the full and entire possession thereof, and for that purpose hereby constitutes the bearer of these presents

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RECORD.

—
In the
Superior
Court.

—
No. 82.
Deed of Sale
from Michael
Babcock and
Alexander
Henderson,
trustees for
the benefit of
the creditors
of Wm. B.
Lambe to
John Gordon
MacKenzie,
(Griffin, N.P.)
Dated 22nd
Aug., 1866,
Plff. Ex. Az.

RECORD. their attorney, to whom they give all necessary power and authority to that effect for thus, etc.

In the Superior Court.

No. 82.
Deed of Sale from Michael Babcock and Alexander Henderson, trustees, for the benefit of the creditors of Wm. B. Lambe, to John Gordon MacKenzie. (Griffin, N.P.) Dated 22nd Aug., 1866. Plff. Exh. Aæ.

And for the execution of these present, and of every the premises, the said parties have elected their domicile at the place above mentioned, where, &c., notwithstanding, promising, &c., obliging, etc., renouncing, etc.

Done and passed at the said city of Montreal, in the office of John Carr Griffin, one of the said Notaries, where these presents are to remain of record under the number twenty-six thousand eight hundred and seventy-seven, on the day, month and year first above written, in the afternoon, and signed by the said parties with us the said Notaries, after being duly read.

(Signed) MICHAEL BABCOCK,
" ALEX. HENDERSON,
" W. B. LAMBE,
" MARGARET J. MORRIS,
" J. G. MACKENZIE,
" JOHN C. GRIFFIN, N. P.

(Signed) J. H. MEYER, N. P.

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A true copy of the original minutes remaining of record in my office,.

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JOHN C. GRIFFIN, N. P.

(On the Back.)

No. 26877. 22nd August, 1866. Deed of sale from Michael Babcock and Alex. Henderson, Trustees, for the benefit of the creditors of William B. Lambe, Esq., to John Gordon MacKenzie, Esq. (2 copy.)

(ENDORSED.)

Plaintiff's Exh. Aæ at Enquête. Filed 24th Oct., 1890. (Paraphed) J. L.

Dep. P. S. C. 30

SCHEDULE NO. 112.

Pardevant les Notaires Publics, de la Province du Bas Canada, résidants dans le District de Montréal, soussignés :

No. 83.
Deed of Sale by Augustin Larocque dit Lebrun, et uxor, to Louis Russell (Chevalier de Lorimier, N. P.) Dated, 9th Feb., 1834. Plff. Exh. Af.

Furent présentes, Augustin Larocque dit Lebrun, aubergiste, demeurant au Faubourg St. Antoine, de la Cité de Montréal, et Marie Louise Rapidieux dit Lamer, son épouse, qu'il autorise bien et duement à l'effet des présentes.

Les quels ont volontairement reconnu et confessé par ces présentes avoir 40
vendu, cédé, quitté, transporté et délaissé, dès maintenant et à toujours et ont promis et promettent sous la voie solidaire, renonçant aux bénéfices de droit et l'hypothèque de tous leurs biens présents et avenir, garantir de tous troubles, dons, douaires, dettes, hypothèques, évictions, substitutions, aliénations et tous autres empêchements généralement quelconques, à Sieur Louis Russell, marchand épicier, demeurant en la Cité de Montréal, à ce présent et acceptant acquéreur pour lui ses hoirs et ayant cause à l'avenir.

Un emplacement, de figure irrégulière situé au Faubourg St. Antoine, en la dite Cité de Montréal, tenant pardevant à la rue St. Antoine, par derrière à une rue, d'un côté au nommé Miller, ou ses représentants, d'autre côté partie au représentants de Marguerite Dubois, et partie à Andrew White, représentant Demoiselles Péladeau, contenant le dit emplacement quarante-huit pieds et neuf pouces de largeur sur le devant, sur un arpent de profondeur, dans la ligne joignant les représentants Miller, et quarante-huit pieds de profondeur, dans la ligne joignant les représentants de Marguerite Dubois, et au bout des dits quarante-huit pieds de profondeur, le dit emplacement se trouve avoir
 10 soixante et deux pieds plus large que sur le devant et dans la ligne joignant le dit Andrew White, il contient quatre-vingt dix-neuf pieds et demi de profondeur, tel qu'il est maintenant cloturé, sans aucune garantie de mesure précise, sur lequel emplacement se trouve une maison en bois et une écurie.

Nous soussigné certifions que ce qui précède est un vrai extrait tiré de la minute d'un acte intitulé, "vente par Augustin Larocque dit Lebrun, et *uxor* à Mons. Ls. Russell, la dite minute passée devant feu Mtre. Chevalier de Lorimier en son vivant, Notaire Public, du Bas-Canada, en date du dix-neuf de Février, mil huit cent trente-quatre, à Montréal, sous le No. 1069, trouvée dans le
 20 Notariat du dit Mtre. Chevalier de Lorimier, lequel Notariat, est déposé dans les archives de la dite Cour Supérieure, et des quels archives, nous sommes dépositaires.

Montréal, ce vingt-deuxième jour de Janvier, mil huit cent quatre-vingt dix.

J. E. CHAMPOUX,
 Député P.C.S.

(On the Back.)

30 No. 1069, 19 Feb., 1834.

Acte de vente par Augustin Larocque dit Lebrun, et *uxor*, à Sieur Louis Russell. Copie, (Chevalier de Lorimier).

(ENDORSED.)

Plff's Exh. A.f. at Enquête, Fyled 24th Oct., 1890.
 (Paraphed), J.L. Dep. P.S.C.

40

RECORD.

*In the
 Superior
 Court.*

No. 83
 Deed of Sale
 by Augustin
 Larocque dit
 Lebrun et
uxor, to Louis
 Russell (Che-
 valier de Lo-
 rimier, N. P.)
 Dated, 9th
 Feb. 1824.
 Plff's Ex. A.f.
 ---Continued.

SCHEDULE No. 113.

RECORD.

*In the
Superior
Court.*

No. 84.
Deed of Sale
from Maria
A. Rasco to
John McGre-
gor, (Labadie
N. P.) Dated
26th Feb.,
1847.
Plff. Exh.
Ag.

Before the undersigned Public Notaries duly commissioned and sworn in and for that part of the Province of Canada, heretofore constituting the Province of Lower Canada residing in the City of Montreal, personally appeared: Miss Marie Angelique, known under the name of Miss Marie Angelique Rasco, residing in the said City of Montreal, Spinster, *filie majeure et usante de ses droits*.

Who acknowledged and confessed to have bargained, sold, assigned, transferred and made over by these presents doth bargain, sell, assign, transfer, and make over, from henceforth and forever, with promise of warranty (guarantee) against all gifts, dowers, mortgages, substitutions, alienations, disturbances, (troubles) and other hindrances whatsoever, to Mr. John McGregor residing in the parish of Montreal, near the Mountain, Gardener, here present and accepting thereof, for himself his heirs and assigns, that is to say:

A certain lot of ground or emplacement situated, lying and being in the St. Antoine suburb of the said City of Montreal, containing about fifty feet in front, English measure, on the St. Antoine street and fifty feet only on the rear, also English measure, by all the depth which may be found from the level of the said St. Antoine street to an anonymous street, the whole more or less without any guarantee whatsoever of precise measurement, but as the same is now enclosed, bounded in front by St. Antoine street aforesaid in rear by the said an anonymous street on one side by Henry Lambe, Esquire, and on the other side by the representatives of the late George Koester, with two wooden houses and other buildings thereon erected, the gable end of which said house and the fences in the lines are *mitoyens* with the neighbors.

With all and every the members and appurtenances thereunto belonging, all of which the said purchaser declares to have a perfect knowledge, as having seen and viewed the same previous hereto and therewith he is content and satisfied, without any reservation of any part or portion, of the aforesaid bargained and sold premises, on the part of the said Vendor who is lawfully seized thereof, in virtue of good and sufficient title deeds thereof, as having acquired the same from Mr. Lewis Russell by deed of sale made and executed before J. A. Labadie, one of the undersigned Public Notaries and his colleague bearing date the 29th August, 1846, an authentic copy of which, and a copy in due form of the title deed of sale from Augustin Larocque dit Lebrun and his wife to the said Mr. Lewis Russell passed before Chevalier de Lorimier, Notary, dated the 19th February, 1834, were presently delivered by the said Vendor unto the said Purchaser who doth hereby acknowledge the receipt thereof, and of which gift, etc.

The aforesaid hereby bargained and sold lot of ground or emplacement and premises are held *à titre de Franc aleu Roturier* as having been commuted by the seigniors of Montreal according to law.

And further the aforesaid lot of ground or emplacement and premises are free and clear of all and every other charge, burthen, and incumbrance either of dower, gift mortgages, debt or other hindrance generally whatsoever as the said vendor now hereby declares.

To have, hold, use and enjoy the aforesaid lot of ground or emplacement and premises herein before sold and transferred or mentioned and intended so to be, with all and every their rights, members and appurtenances unto the said purchaser, his heirs and assigns as in and their own proper freehold for ever by virtue of these presents, and to enter upon and take possession of the aforesaid lot of ground or emplacement, and premises, on the first day of May next ensuing but the said purchaser shall be entitled to receive on the said first day of May next of and from Mrs. Roy, one the tenants now occupying the said premises the sum of eight pounds and fifteen shillings currency, being for one
 10 quarter rent which shall become due up to the said first day of May next.

The present bargain and sale is so made in manner aforesaid for and in consideration of the sum of eleven hundred pounds, currency on account and in part payment whereof the said vendor, doth hereby acknowledge to have duly received of and from the said purchaser, at the passing hereof the sum of six hundred pounds, said currency with which she is content and satisfied, and of and from which she doth hereby acquit, release and former discharge and exonerate the said purchaser and all others.

And as to the balance to with five hundred pounds said currency the said purchaser doth hereby bind and oblige himself the same well and truly to pay or
 20 cause to be paid as follows ;

1° To Mr. Lewis Russell of the City of Montreal, Trader or to his lawful representatives to the discharge *en l'acquit* of the said vendor, the sum of three hundred and seventy-five pounds currency aforesaid in three equal instalments of one hundred and twenty-five pounds each, the first of which instalments will become due and payable on the first day of May one thousand eight hundred and forty-eight, the second instalment on the first day of May one thousand eight hundred and forty-nine and the third and last instalment on the first day of May one thousand eight hundred and fifty with interest on the said sum of three hundred and seventy-five pounds said currency to be computed from the first
 30 day of May next payable when each of the above instalments become due.

2° And as to the sum of one hundred and twenty-five pounds said currency, being the balance of the said consideration money of this sale the said purchaser binds and obliges himself to well and truly pay or cause the same to be paid to the said vendor, or to her lawful representatives, on the first day of May, one thousand eight hundred and fifty-one, also with interest thereon, to be computed from the first day of May next, payable yearly, and every year on the first day of May, till the actual payment of the said sum of one hundred and twenty-five pounds, with liberty unto the said purchaser and his lawful representatives to
 40 effect the payment of the said balance of five hundred pounds currency aforesaid, at any time previous and before the periods hereinbefore limited, and in discharge thereof, by such portions as he or they may please, provided such portions be not less than the paid sum of one hundred and twenty-five pounds said currency, in which case the interest shall diminish in proportion of the payments effected.

And whereas the houses and buildings erected on the above bargained and sold lot of ground or emplacement, are insured at the office of the Fire Pro-

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 84.
 Deed of Sale
 from Maria
 A. Rasco to
 John McGre-
 gor, (Labadie
 N. P.) Dated
 26th Feb.
 1847.
 Plff's. Exh.
 Ag.

RECORD.

*In the
Superior
Court.*

No. 84.

Deed of Sale
from Maria
A. Rosco, to
John McGre-
gor, (Labadie
N. P.) Dated
26th Feb.,
1847.
Plff. Exh.
A.g.

tection Insurance Company, established in the city of Montreal, aforesaid, against loss or damage by fire, to the amount of five hundred pounds said currency for one year from the first day of February instant, as will more fully appear on reference to the policy affected by the aforesaid Insurance Company, to the said vendor, on the first day of the present month of February, under No. 3427. Therefore, and in consequence of the present sale, she the said vendor doth hereby put, place, substitute and subrogate the said purchaser in all and every her rights, claims, demands and privileges arising in her favor from the said Insurance, in case any part of the said houses and buildings should happen to sustain any damage or injury by fire from the date hereof, unto the first day of February one thousand, eight hundred and forty-eight. 10

This transfer is made subject to and at the charge by the said purchaser to conform himself to the conditions specified in the said policy, of which the said purchaser doth hereby declare to have a perfect knowledge.

And further that the said houses and buildings shall be at the risk of the said purchaser from the date hereof notwithstanding that he shall not enter upon and take possession of the same before the first day of May next as herein above mentioned.

And for security whereof the said Purchaser doth hereby specially and particularly bind, mortgage and hypothecate (hypothèque) the hereby granted, bargained and sold lot of ground or emplacement and premises. 20

And in consideration of the premises, the said Vendor doth hereby transfer and set over to the purchaser all rights of property, claim, title, interest, demand, seizin, possession, and other right, whatsoever, which the said Vendor can have, demand, or pretend in or upon the aforesaid hereby bargained and sold lot of ground and premises of which she hereby diverts herself in favor of the said Purchaser, his heirs and assigns, consenting and agreeing, that the said Purchaser be and remained seized and invested with the full and entire possession thereof, as of right, and for that purpose hereby constituting the bearer of these presents her Attorney to whom all necessary power and authority to that effect is hereby given and granted. 30

For this etc., and for the execution of these presents and of every the premises the said parties have elected their domicile, at their and each of their respective places of residences above mentioned. Where, etc. Notwithstanding, etc. Promising, etc. Obliging, etc. Removing, etc.

Done and passed at the said City of Montreal in the dwelling and residence of the said Vendor, on the twenty-sixth day of the month of February, in the year of our Lord one thousand eight hundred and forty seven in the afternoon and the said parties have signed with us said Notaries these presents having been first duly read according to law. 40

(Signed) MARIE ANGÉLIQUE RASCO,
" JOHN MCGREGOR,
" O. MORIN, N. P.,
" J. A. LABADIE, N. P.

A true copy of the original hereof remaining of Record in the office of

Joseph Augustin LaBadie in his life time Notary Public for the heretofore Province of Lower Canada, now in Province of Quebec, residing in the City and District of Montreal, compared by Joseph Evariste Odilon LaBadie undersigned Notary Public for the Province of Quebec residing in the City of Montreal, assignee (cessionnaire) of the original deeds or minutes repertoire and index of said late Joseph Augustin LaBadie in virtue of a decree arrêté of his Honor the Lieutenant Governor of the Province of Quebec, in Council **10** lated thirtieth day of June, eighteen hundred and eighty-six.

At Montreal this thirty-first day of December, one thousand eight hundred and eighty-seven.

J. E. O. LABADIE, N. P.

(On the Back).

No. 10,161. 26th February, 1847.

20 Deed of sale from Marie Angelique Rasco to Mr. John McGregor. 2 copy

(ENDORSED.)

Plff's. Exh. A.g. at enquête. Fyled 24th Oct., 1890. (Paraphed).
J. L. Dep. P. S. C.

SCHEDULE No. 114.

30



On this second day of the month of May, in the year of Our Lord, one thousand eight hundred and eighty-five.

Before me George R. W. Kittson, the undersigned Notary Public, duly admitted and sworn, residing and practising in the City of Montreal, in the District of Montreal and Province of Quebec.

40 Appeared, Robert Stephen Auld, Esq., Dame Mary Ann Auld, wife of Duncan Davidson, manufacturers agent, and from her said husband, separated as to property under and in virtue of the contract of marriage passed between them and executed before J. S. Hunter, Notary Public, the fourteenth day of September, eighteen hundred and seventy-eight, and Registered the twentieth day of the same month under No. 101564, G. H. R., Dame Jessie Auld, wife of Robert Andrews McGillis, merchant, and from her said husband separated as to property, under and in virtue of the contract of marriage, passed between

RECORD.

*In the
Superior
Court.*

No. 84.
Deed of Sale
from Maria
A. Rasco to
John McGre-
gor (Labadie,
N.P.) Dated
26th Feb.
1847. Plff s
Exh. A.g.

No. 85.
Deed of Sale
from Robert
S. Auld to
Edw. C.
Hughes.
(Kittson, N.
P.) Dated 2nd
May, 1885.
(Plff's Exh.
A. H.)

RECORD.

*In the
Superior
Court.*

No. 85.

Deed of Sale
from Robert
S. Auld to
Edw. C.
Hughes, (Kitt-
son, N. P.)
Dated 2nd
May, 1885.
Plff's. Exh.
A. H.

them executed before said J. S. Hunter, Notary Public, the twentieth day of October, eighteen hundred and eighty, and Dame Jane Maxwell Auld, wife separated as to property of William Alexander Baker, clerk, under and by virtue of the contract of marriage, passed between them executed before the said J. S. Hunter, Notary Public, the nineteenth day of November, eighteen hundred and eighty-one, and Registered the twenty-ninth day of the same month, under No. 106,348, G. H. R. the Dame Mary Ann Auld, Dame Jessie Auld and Dame Jane Maxwell Auld, being hereunto and for all purposes hereof duly and severally authorized by their said respective husbands, they the said Duncan Davidson, Robert Andrews McGillis and William Alexander Baker, being parties hereto for the purpose of authorizing their said respective wives to the effect hereof, all of the said City of Montreal. 10

Which said Robert Stephen Auld, Dame Mary Ann Auld authorized by her said husband as aforesaid, Dame Jessie Auld authorized by her said husband as aforesaid, and Dame Jane Maxwell Auld authorized by her said husband as aforesaid acknowledged and confessed to have bargained, sold, assigned and conveyed and do hereby bargain, sell, assign and convey, with warranty jointly and severally against all gifts, dowers, hypothecs, encumbrances and causes of trouble and eviction generally whatsoever, to *Edward Cartwright Hughes*, of the said City of Montreal, cabinet-maker hereto present and accepting hereof as purchasers for himself his heirs and assigns, the following immovable property to wit 20

DESCRIPTION.

That certain piece or parcel of land situate in the St. Antoine Ward of the said City of Montreal forming the North-east part or portion of the lot of land known and designated upon the official plan and Book of Reference of said St. Antoine Ward as number six hundred and sixty-one (661), containing said piece or parcel of land or portion of lot twenty-eight feet one inch in width in front, twenty-seven feet two inches in width at a distance or depth of fifty feet from the front line of said lot, and a like width of twenty-seven feet two inches in width in rear, by one hundred and ninety-three feet four inches in depth on the North-east side line and one hundred and ninety-three feet six inches in depth on the South-west side line, and containing a total superficies of five thousand two hundred and eighty-five feet, English measure, but without warranty as to precise measure, and bounded said piece or parcel of land or portion of lot in front to the South-east by St. Antoine street on one side to the North-east by lot number six hundred and sixty (660) upon said official plan and Book of Reference, in rear to the North-west by Blache lane, and to the other side to the South-west by the remaining portion of said lot number six hundred and sixty-one (No. 661) sold this day by said Vendors to William Walker by Deed of Sale passed before W. B. S. Reddy, Notary Public, with the buildings thereon erected, the whole of said piece or parcel of land or portion of lot hereby sold is shewn colored green upon the plan of said property made by Joseph Rielle, Provincial Land Surveyor, hereto annexed to form part hereof and signed for identification by the parties hereto and undersigned Notary. 40

With all each and every the rights, members, appurtenances and accessories thereto belonging or attaching, of all which said purchaser declares to have a perfect knowledge as having seen and viewed the same and therewith is content and satisfied.

RECORD.

In the
Superior
Court.

TITLES.

The said vendors are seized with said sold price or parcel of land and premises as follows :

No. 85.
Deed of Sale
from Robert
S. Auld to
Edw. C.
Hughes, (Kit-
son, N. P.)
Dated 2nd
May, 1885.
Plff's Exh.
A. H.

—Continued.

10 The said dame Mary Ann Auld, Dame Jessie Auld and Dame Jane Maxwell Auld, acquired each one undivided fourth part in and to said parcel of land and premises by deed of sale to them granted by the said Robert Stephen Auld, passed before J. S. Hunter, Notary Public, the 6th day of February, eighteen hundred and eighty-two. Registered under the No. 106682, G. H. R.

The said Robert Stephen Auld acquired the whole of said lot under the partage made by and between him and his brothers and sisters, passed before J. S. Hunter, Notary Public, the third day of February, eighteen hundred and eighty-two, Registered under No. 106672, G. H. R., and also by Deed of Sale to him granted by John Auld, *et al.*, passed before said J. S. Hunter, Notary Public, the same day, (3rd February, 1892), and Registered under No. 106678, G. H. R.

20 The said lot formed part of the estate of the late John McGregor, and Mary Ann Carr, his wife : the former of whom died intestate, leaving as his sole heir at law his daughter, the late Mary Ann McGregor, in her life time wife of the late John Auld, the latter, to wit, the said Dame Mary Ann McGregor and John Auld, being the mother and father of said vendors, and the said Dame Mary Ann Carr, by her will dated the fifth day of February, eighteen hundred and fifty-three, probated at Montreal, the 14th March, 1853, leaving the whole of her estate in full and absolute property to her grand children issue of the marriage of the said late Mary Ann McGregor and John Auld, of which marriage said vendors were issue.

30 The said late John McGregor acquired said lot from Miss Marie Angelique or Rasco, by Deed of Sale passed before J. A. LaBadie and colleague notaries, the twenty-sixth day of February, eighteen hundred and forty-seven, Registered under No. 4195. G. H. R.

TENURE.

The aforesaid hereby bargained and sold piece of land and premises is held *en franc aleu roturier* by Deed of Commutation passed before P. Lacombe, and colleague Notaries, the twenty-sixth day of February, eighteen hundred and forty-seven.

40

POSSESSION.

To have and to hold, use, enjoy and dispose of said sold piece or parcel of land and premises with all each and every the rights, members, and appurtenances and accessories thereto belonging or attaching unto said purchaser, his heirs and assigns as his and their own absolute property in virtue hereof he the said purchaser being now in actual possession thereof.

Consideration and terms of payment the present bargain and sale has been

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 85.
 Deed of Sale
 from Robert
 S. Auld to
 Edw. C.
 Hughes.
 (Kittson, N.
 P.) Dated 2nd
 May, 1885.
 (Plff's. Exh.
 A. H.)

made for and in consideration of the price or sum of three thousand one hundred and fifty dollars. \$3,150.00 currency of Canada, which the said purchaser hereby promises, binds and obliges himself, his heirs and assigns to pay to the said Vendors, the said Robert Stephen Auld, Dame Mary Anne Auld, Dame Jessie Auld and Dame Jane Maxwell Auld, in equal shares and proportions, one-fourth thereof to each of them, and their respective heirs and assigns, in ten years from the first day of May instant 1885, with interest thereon at the rate of six per centum per annum to be accounted from said lastly mentioned date payable quarterly on the first day of August, November, February and May in each year until payment of the principal, the first payment of which interest will fall due and be payable on the first day of August next, and from thence to continue to make a like payment each following quarter at the dates above mentioned until payment of said consideration price and it is understood and specially agreed that should said purchaser his heirs or assigns be at any time in default or arrear for or in respect to any two of said interest instalments that then in such case, and without any notice or other formality whatever on the part of said Vendors, said purchase price or such portion thereof as shall then remain unpaid shall immediately become due and exigible and the remaining term for the payment thereof as aforesaid shall become lapsed and ended. 10

And it is agreed that said purchaser, his heirs and assigns shall have the right of paying off said consideration price at any time before the expiration of said term of ten years, either in one sum or by instalments of not less than five hundred dollars each one-fourth thereof to each of said Vendors, their respective heirs and assigns provided that he said purchaser, his heirs or assigns gives to the said Vendors or to their Attorney at least three months previous to any such payment in whole or in part as aforesaid, notice in writing of such his or their intention, it being expressly stipulated that without such previous notice said Vendors shall not be bound to accept payment, either in whole or in part of said consideration price, before the expiration of said term of ten years above mentioned. 20

And it is understood that in the event of any payment or payments being made in deduction of said purchase price, the interest above stipulated shall be proportionately reduced from and after the date of such payment or payments respectively. The said purchaser agrees and obliges himself to improve within five years from the date hereof, to the extent and value of at least *three thousand dollars*, said sold property either by erecting new premises thereon or by improving, altering or repairing the buildings, presently thereon, and it is agreed that in the event of said purchaser his heirs or assigns failing to so improve said premises within said delay, or at his said purchaser's option to pay to said vendors, in equal proportions, the sum of one thousand five hundred dollars in deduction of said purchase price within said period of five years from the date hereof, then and in such case and without any notice, *mis en demeure* or other formality whatsoever, on the part of said vendors, the whole of the purchase price above mentioned, or such portion thereof as shall then remain unpaid, together with all accrued interest thereon shall immediately become due and exigible, and shall be forthwith paid notwithstanding anything to the contrary herein contained. 30

And for securing the payment of said consideration price and interest at aforesaid the property, piece or parcel of land and premises above described and sold is hereby and shall remain affected in favor of said vendors by privilege of vendor hereby expressly reserved by them thereon.

And said vendors in consideration of the premises have assigned, transferred and made over and do hereby assign, transfer and make over unto said purchaser his heirs and assigns, all rights of property, claim, title, interest, seizin, possession and demand which they and each of them may have or pretend in to or upon said sold property and premises, subject, however to the reserve of said privilege of vendor.

And whereas said purchaser is the lessee of said premises hereby sold, it is understood and agreed that his obligations as such lessee shall continue up to the first day of May next, up to which date he shall continue to pay the rent presently payable by him.

POWER OF ATTORNEY.

And the said Robert Stephen Auld, Dame Mary Ann Auld, authorized as aforesaid, Dame Jessie Auld, authorized as aforesaid, and Dame Jane Maxwell Auld, authorized as aforesaid, have severally constituted and they and each of them do and doth hereby constitute the said Duncan Davidson, as their true and lawful attorney and the true and lawful attorney of each of them to receive payment from the said purchaser his heirs or assigns, of said consideration price or of any amount or amounts (not being less than five hundred dollars each) in deduction thereof, as well as all interest to accrue thereon, and for them said vendors and each of them to grant sign and execute all necessary receipts, acquittances and discharges in and about the premises as fully and with the same effect as if the said vendors and the said Duncan Davidson, Robert Andrews McGillis and William Alexander Baker, as authorizing their said respective wives had signed same, and hereby severally confirming and ratifying and agreeing to ratify and confirm all and whatsoever their said Attorney shall do in virtue of these presents.

And the said purchaser as further security in case of fire obliges himself to insure the buildings on said property, and keep same constantly insured to the full insurable value thereof, and also to insure and keep constantly insured any buildings which may hereafter be erected upon said parcel of land, for an amount equal to the one-half of the claim of said vendors and to transfer the policy or policies of such insurance to said vendors, failing so to do, said vendors to have the right of insuring such buildings in their own name, and at the costs of said purchaser his heirs or assigns, and for securing the repayment to the said vendors of any sum or sums which they may expend in effecting such insurance the property above sold is further affected and mortgaged in their favor to the sum and to the extent of fifty dollars.

And for the enregistration hereof wheresoever necessary full power and authority to that effect is hereby given and granted to the bearer of an authentic copy hereof.

Thus done and passed at the said City of Montreal in the office of the said undersigned Notary under the number six thousand three hundred and one of

RECORD.

*In the
Superior
Court.*

No. 85.
Deed of Sale
from Robert
S. Auld to
Edw. C.
Hughes.
(Kittson, N.
P.) Dated 2nd
May, 1885.
(Plff's. Exh.
A. H.)
—Continued.

RECORD. his original minutes, and after due reading said parties have signed with and in the presence of said undersigned notary.

In the Superior Court.

No. 85.
Deed of Sale from Robert S. Auld to Edw. C. Hughes. (Kittson, N. P.) Dated 2nd May, 1885. (Plff's Exh. A. H.)
—Continued.

| | | |
|----------|---------------------|-------|
| (Signed) | R. S. AULD, | |
| " | M. A. DAVISON, | |
| " | DUNCAN DAVISON, | |
| " | JANE M. BAKER, | |
| " | W. A. BAKER, | |
| " | JESSIE MCGILLIS, | |
| " | R. A. MCGILLIS, | |
| " | E. C. HUGHES, | 10 |
| " | GEO. R. W. KITTSON. | N. P. |

A true copy of the original hereof remaining of record in my office.
GEO. R. W. KITTSON, N. P.

(On the Back)

(On the margin).

No. 6301. 2nd May, 1885. Deed of Sale and conveyance from Robert S. Auld, Esq., *et al.* To Mr. Edward C. Hughes. 20

I certify that this document was entered at full length in the Registry Office for the Registration Division of Montreal West in Reg. B. vol. 224, Page 241, at twelve o'clock at noon on the 28th day of December, eighteen hundred and eighty-five under the number one hundred and eleven thousand seven hundred and twenty-two.

G. H. RYLAND,
Registrar.

(ENDORSED.) 30

Plaintiff's Exh. A. H. at Enquête. Fyled 24th Oct., 1890. (Paraphed.)
J. L. Dep. P. S. C.

No. 86.
Deed of Sale from Margaret Sweeney to the Revd, James Somerville (Dourcet, N. P.) Dated March 1833. (Plff's. Exh.)
A. g

SCHEDULE No. 115.

On the second day of the month of March, in the year of Our Lord one thousand eight hundred and thirty-three. 40

Before the undersigned Public Notaries and duly commissioned and sworn, in and for the Province of Lower-Canada, residing in the City of Montreal, in the said Province :

Personally appeared : Mrs. Margaret Sweeney, of the City of Montreal widow of the late Samuel White, in his lifetime of the same place Inn-keeper

Who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over and by these presents doth bargain sell, assign, transfer and make over, from henceforth and forever, with promise of warranty, against all gifts, dowers, mortgages substitutions, alienations and other hindrances, whatsoever, to the Reverend James Sommerville of the same place, Presbyterian Minister, Mr. Alex Dewar of Montreal, Merchant his attorney party to these presents, and accepting thereof for the said Reverend Jas. Somerville his heirs and assigns forever that is to say, a lot of ground situated in the said City of Montreal, St Antoine Suburb, containing sixty-feet and more if to be found, in front by one arpent or thereabouts in depth, the whole more or less joining in front to the main street of the Saint Antoine Suburb, in the rear to a lane on one side by Paschal Lemieux or his representatives and on the other side to Paul Decarry or his representatives with a stone house one story high, a stable built with wood and other buildings thereon erected. With all and every the members and appurtenances thereto belonging, of which the said purchaser declare to have a perfect knowledge, as having seen and viewed the same and with which he is content and satisfied, to the vendor belonging, 1st as having purchased the same together with the late Samuel White her husband by deed passed before Thos. Bedouin and colleague Notaries the 3rd November 1885 and by the said Samuel White's last will and testament received by G. D. Arnoldi the nineteenth of February one thousand eight hundred and thirty-two, copy of which deeds have been delivered to the purchaser. The aforesaid hereby bargained and sold premises, depending and holding of the Seigniority of Montreal, and subject to the payment of such *Cens et Rentes* towards the domain thereof, as may be legally due and owing thereto, however, being free and clear of all arrears of *Cens et Rentes*, up to the day of the date hereof.

To have, hold, use and enjoy the aforesaid bargained and sold premises, with their rights, members, and appurtenances, unto the said purchaser his heirs and assigns as his their own proper freehold forever, by virtue of these presents, and to take possession of the aforesaid lot of land and premises on the first day of May next.

The present bargain and sale is made in manner as aforesaid subject only to such Seigniorial rights as may in future arise and become due thereon, and for and in consideration of the sum of seven hundred pounds currency which sum the purchaser binds himself to pay to the Vendors as soon as the said purchaser shall have been able to obtain from the Court of King's Bench for the District of Montreal a sentence of ratification of the present sale. Which this obligation however in the part of the purchaser to pay to the Vendor the sum of three hundred pounds currency on the first of May next notwithstanding such letters of ratification shall not have been obtained, by the Vendor giving security that in case of opposition of that otherwise the said letters shall not be granted on account of the acts of the Vendor that the said sum of three hundred pounds will be refunded.

For security whereof the said purchaser hath bound and hypothecated all and singular, his real property, present and future, without any exception or reserve, and especially with the privilege of *bailleur de fond*, the premise hereby sold and conveyed.

RECORD.

In the
Superior
Court.

No. 86.
Deed of Sale
from Margaret
Sweeney
to the Rev.
James Som-
erville
(Doucet N.P.)
Dated March
1833 Plff's
Exh. A.g.
—Continued.

RECORD.

*In the
Superior
Court.*

No. 86.

Deed of Sale
from Margare
ret Sweeney
to the Rev.

James Som
erville.

(Dated
March, 1883.

Plff's. Exh.

A g.
—Continued.

And in consideration of the premises, the said vendor do hereby transfer and set over to the said purchaser, all rights of property, claim, title, interest, demand, seizin, possession, and other rights whatsoever, which the said vendor, can have, demand or pretend, in or upon the aforesaid hereby bargained and sold lot of land and premises of which he hereby divests himself in favor of the said purchaser, his heirs and assigns, consenting and agreeing that the said purchaser be and remain seized and invested with the full and entire possession thereof as of right for that purpose, hereby constituting the bearer of these presents their attorney, to whom they give all necessary power and authority to that effect, for thus, etc. 10

And for the execution of these presents, and of every, the premises, the said parties have elected their domicile at the place above mentioned. Where, etc., notwithstanding, etc., promising, etc., renouncing, etc.

Done and passed at the city of Montreal, on the day, month, and year first before written, in the afternoon, and the parties have signed, with us the said notaries, these presents having been first duly read in their presence.

(Signed,) MRS. WHITE SWEENEY,
" J. SOMERVILLE, by his attorney,
" A. LEWAR, 20
" P. LACOMBE, N. P.
" N. B. DOUCET, N. P.

Certified to be a true copy of the original found in the notarial records of N. B. Doucet, Notary Public of Lower Canada, the said Notarial records deposited in the Archives of the Superior Court, in the District of Montreal.

Montreal, this twenty-fourth day of January, one thousand eight hundred and ninety.

J. E. CHAMPOUX,
Deputy P. S. C. 30

(On the Back)

No. 20285. 2 Mars, 1833. Vente par Margaret Sweeney au Rev. James Somerville. Copy.

(ENDORSED).

Plff. Exh. A. J., at Enquête. Fyled 24th Oct., 1890. (Paraphed) J. L.,
Dep. P. S. C.

SCHEDULE No. 116.



RECORD.

*In the
Superior
Court.*

No. 87.
Deed of Sale
from Louis
Russel to
George Koes-
ter, (Gibb, N.
P.) Dated
30th March,
1842. Plff's.
Exh. A*i*.

On the thirtieth day of March in the year of Our Lord one thousand eight hundred and forty-two. Before the undersigned Public Notaries duly commissioned and sworn in and for that part of the Province of Canada heretofore constituting the Province of Lower Canada residing in the City of Montreal in the said Province.

Personally appeared Mr. Louis Russel of the said City of Montreal, wood merchant, and Dame Elizabeth Wilcock, his wife by him and duly and specially authorized for all and every the effects and purposes hereof, who acknowledge and confessed to have bargained, sold, assign, transferred and made over and by these presents do bargain, sell, assign, transfer and make over from henceforth and forever with promise of warranty against all gifts, dowers, mortgages, substitution, alienations and other heindrances whatsoever to Mr, Koes-
ter of the said City of Montreal, Grocer, party to these presents, and accepting thereof for himself and his heirs assigns and legal representatives.

A certain lot of ground or emplacement situate lying and fronting on St. Antoine street in the St. Antoine Suburb of the said City of Montreal, bounded in front by St. Antoine street aforesaid in rear by a projected street, on one side to the north-east by the said vendors and on the other side to the south-west by property belonging to the estate of the late Reverend Mr. Somerville, containing fifty-nine feet nine inches on the line of St. Antoine street, fifty-eight feet on the line of said projected street, and one hundred and eighty feet on each side line, with a wooden house, bakery and other buildings thereon erected and as laid down on a plan thereof, hereunto annexed, identified
by the signatures of the parties hereto and us said Notaries.

With all and every the members and appurtenances thereto belonging of which the said purchaser declares to have a perfect knowledge as having seen and viewed the same and with which he is content and satisfied without any reservation of any part or portion of the aforesaid bargained and sold premises on the part of the said vendors who are lawfully seized thereof by virtue of a good and sufficient title, as having acquired the same together with a larger extent of ground by two deeds of sale, one from Samuel Gerrard of the said City of Montreal, Esquire, in his capacity of Trustee to the estate of the late Honorable William Macgillivray bearing date and executed before Griffin and his colleague Notaries, the seventh of November one thousand eight hundred and thirty-five and the other from Augustin Larocque *dit* Lebrun and Marie Louise Rapidieux, his wife, bearing date and executed before deLorimier and colleague Notaries the nineteenth day of February one thousand eight hundred and thirty-four, copy of the former of which deeds of sale is now delivered to the said purchaser who acknowledges receipt therefor.

The aforesaid hereby bargained and sold premises depending and holding of the Seignory of Montreal and subject to the payment of such *cens et rentes*

RECORD.

—
*In the
 Superior
 Court.*

No. 87.

Deed of Sale
 from Louis
 Russell to

George
 Koester,
 (Gibb N. P.)

Dated
 30th March
 1842 Piff's
 Exh. A.g.

—*Continued.*

towards the domain thereof as may be legally due and owing thereto, the aforesaid premises however being free and clear of all arrears of *cens et rentes* and of and of every other charge burthen, mortgage and incumbrance whatsoever.

To have, hold, use and enjoy the aforesaid bargained and sold premises, with their rights, members and appurtenances unto the said purchaser and his heirs and assigns as his and their own proper freehold forever, by virtue of these presents and to enter upon and take possession of the aforesaid lot of ground or emplacement and premises on the first day of May now next ensuing.

The present bargain and sale is made in manner as aforesaid subject only 10
 to such Seigniorial rights as may in future arise and become due thereon, and for and in consideration of the sum of four hundred pounds, Halifax currency, part whereof, that is to say, three hundred pounds payable at and before the passing of these presents, the receipt whereof the said Louis Russel and Elizabeth Wilcock do hereby acknowledge, and thereof and therefrom do hold quit, release and discharge the said George Koester, his heirs and assigns for ever; and the balance or sum of one hundred pounds, the said George Koester doth hereby promise, bind and oblige himself and his heirs and assigns to pay or cause to be well and truly paid unto the said Louis Russel and Elizabeth Wilcock, his wife, their heirs and assigns, in one year from the date hereof. 20

For security whereof the hereby bargained and sold lot of ground or emplacement, house, bakery and premises are by these presents specially and by privilege mortgaged and hypothecated.

The present bargain and sale is made subject to a lease granted by the said Louis Russel to one Lawson for a portion of the said premises from the first day of May now next ensuing till the first day of May one thousand eight hundred and forty-three.

And in consideration of the premises the said vendors do hereby transfer and set over to the said purchasers all right of property, claim, title, interest, demand, seizin, possession and other rights whatsoever which the said vendors 30
 can have, demand, or pretend in or upon the aforesaid hereby bargained and sold lot of ground or emplacement and premises of which they hereby divest themselves in favor of the said purchaser, his heirs and assigns consenting and agreeing that his said purchaser be and remain seized and invested with the full and entire possession thereof as of right; and for that purpose hereby constituting the bearer of these presents, their Attorney to whom they give all power and authority to that effect.

And the said Elizabeth Wilcock authorized as aforesaid doth hereby remise release and forever relinquish unto the said George Koester his heirs executors administrators, and assigns all and all manner of dower *contumier ou* 40
préfix and right or title of dower which the said Elizabeth Wilcock might or of right ought to have or claim in to or out of the hereinbefore described and hereby sold lots of ground and premises and doth hereby to all interests and purposes release and discharge the said lot of ground and premises of and from all her legal stipulated or customary dower.—For thus, etc.

And for the execution of these presents and of every the premises the said parties have elected their domicile, at the place above mentioned. Where, &c.,

Notwithstanding, &c., Promising &c., Obliging, &c., Renouncing, &c.

Done and passed at the said City of Montreal in the office of I. J. Gibb, one of the said Notaries, on the day, month and year first before written in the afternoon, and signed by the said parties hereto with and in the presence of us said Notaries. These presents having been first duly read.

RECORD.

*In the
Superior
Court.*

(Signed.) L. RUSSELL.
 " ELIZABETH RUSSELL.
 " GEO. KOESTER.
 (Signed.) J. BELLE, N.P. " I. J. GIBB, N.P.

No. 87.
 Deed of Sale
 from Louis
 Russell to
 George Koester,
 (Gibb, N.
 P.) Dated
 30th March,
 1842. Plff s
 Exh. A.g.
 --Continued.

10

True copy of the Minutes remaining of record in the office of Isaac Jones Gibb, a Notary Public, compared and collated by the undersigned Herbert Story Hunter, a Notary Public for the Province of Quebec, residing in the City of Montreal, assignee of the Minutes, Repertory and Index of the said Isaac Jones Gibb, in virtue of an order of His Honor the Lieutenant-Governor of the Province of Quebec, in Council dated the 7th day of February, 1885.

H. S. HUNTER, N.P.

20

(On the Back.)

Deed of Sale from Mr. Ls. Russell and wife to Mr. Geo. Koester.

(ENDORSED.)

Plaintiff's Exhibit A.i., at Enquête. (Filed) 24th Oct., 1890. (Paraphed)
 J. L., Dep. P.

SCHEDULE No. 117.

30

Les quels ont par ces présentes volontairement cédé, donné, abandonné, quitté et transporté à titre de donation entrevifs en la meilleur forme que faire se peut, au dit Sieur Jean Descarries, futur époux, ce acceptant pour lui ses hoirs et ayant cause à l'avenir savoir : Un emplacement situé au Faubourg St. Antoine, dite Cité de Montréal, de la contenance de soixante pieds de front, sur quarante pieds de profondeur tenant devant à la rue La Montagne, derrière au Ministre Somerville, d'un côté, à une ruelle et de l'autre côté aux dits Sieur et Dame Descarries, donateurs, sur lequel est construite une maison en bois : ainsi que le dit emplacement se poursuit, comporte, et étend de toutes parts 40 circonstances et dépendances que le dit futur époux déclare bien savoir et connaître pour l'avoir vu et visité, dont il est content et satisfait, aux dits donateurs, le dit emplacement appartient par bons titres, à prendre possession du dit emplacement et dépendances par le dit futur époux, ainsi que du dit cheval, et autres effets ci-dessus énumérés dès cejourd'hui, sauf et excepté seulement de dix pieds de front sur les quarante pieds de profondeur d'icelui emplacement que le dit futur époux ne prendra possession qu'après le décès de Louise Barbe, épouse actuelle de Joseph Parant, qui en a la jouissance sa vie durante.

No. 88.
 Extract of
 the Marriage
 contract be-
 tween Jean
 Descarris &
 Marie Louise
 Lanthier
 (Chevalier de
 Lorimier, N.
 P.) Dated 23
 Nov. 1834.
 Plffs. Exh.
 A.k.

RECORD.

*In the
Superior
Cour.*

No 88.

Extract of
the Marriage
contract be-
tween Jean
Descarris &
Marie Louise
Lanthier
(Chevalier de
Lorimier, N.
P.) Dated 23
Nov. 1834.
Plff's. Eqh.
A. K.
—Continued.

Pour, par le dit Sieur futur époux, ses hoirs et ayant cause, jouir, user, faire et disposer du dit emplacement et dépendances comme de choses à lui, appartenant en pleine propriété et comme bon lui semblera, au moyen des présentes à en commencer la jouissance comme sus-dit.

Nous soussigné Protonotaire de la Cour Supérieure, pour le Bas-Canada, dans le District de Montréal, certifions que ce qui précède sont de vrais extraits tirés de la minute d'un acte intitulé, contrat de mariage de Sr. Jean Descarries et Delle Marie Lse. Lanthier, la dite minute passée devant feu Mtre. Chevalier de Lorimier, en son vivant Notaire Public du Bas-Canada, en date du vingt-trois de Novembre, mil huit cent trente-quatre, à Montréal, sous le No. 1392, trouvée dans le Notariat, du dit Mtre. Chevalier de Lorimier, lequel Notariat est déposé dans les archives de la dite Cour Supérieure, à Montréal, et desquels archives nous sommes dépositaires.

Montréal, ce dix huitième jour de Mars, mil huit cent quatre vingt-dix.

A. B. LONGPRÉ, P.

(On the Back.)

No. 1392, Extrait de contrat de mariage, entre Sr. Jean Descarries et Delle Marie Louise Lanthier, 23 Novembre, 1834. 20

(ENDORSED).

Plaintiff Exh. Ak. at Enquête, Fyled 24 Oct., 1890. (Paraphed), J. L. Dep., P. S. C.

SCHEDULE NO. 119.

No. 89.
No. 497 At-
lantic &
North-West
Railway
Company vs
Walker. De-
position of
James
Shaughnessy
for Wm.
Walker.
Dated 18th
March, 1890.
(Plff's Exh.
No. 1 at En-
quête).

On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Thomas G. Shaughnessy, Assistant President of the Canadian Pacific Railway, aged thirty-six years, and witness produce on the part of the Defendant, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. 30

Q. Have you found the plan referred to in your first examination?

A. Which plan do you mean?

Q. I think you call it a sketch or a tracing; it had been prepared by Mr. Howard, engineer, and given to Mr. Cantin.

A. No.

Q. Have you found it since your last examination?

A. No, I have not.

Q. You have not enquired for it either?

A. I think so; I think I asked Mr. Peterson, our engineer, but he did not appear to have it. 40

Q. Mr. Duff has explained that when that plan was first produced by Mr. Cantin he insisted that it should be signed by an official of the Company, and that it was signed and brought back signed, do you know anything about it?

A. No.

Q. You do not know what official of the Company would have signed it?

- A. No.
- Q. Nor you do not know if it was signed or not ?
- A. My impression is that it was not, but it may have been without my knowledge.
- Q. But at the time it was prepared and given to Mr. Cantin to negotiate with, it was considered a plan binding the Company ?
- A. It was a tracing prepared with a view of ascertaining the desidiuability of opening that street.
- 10 Q. The Company would consider itself bound by the plan made to open that street ?
- A. It would depend a good deal on the explanation made in connection with the plan.
- Q. You do not take back anything you have said in your former deposition, when you have said that the negotiations were on the basis of that plan, but that you found that the amount claimed was in excess and you considered yourself justified to abandon the plan ?
- A. Yes, that was practically the effect.
- Q. At the same time you stated that you never told them that you had abandoned the plan ?
- 20 A. Never told whom ?
- Q. Never told the expropriated parties that you had abandoned the plan ?
- A. I do not recollect that I had any negociations with the expropriated parties. I do not think that I had any conversation with them during the whole of the negociations.
- Q. Were these deeds signed by yourself, or were they signed by some other official of the company ?
- A. I do not think I signed them. The deeds are here.
- Q. For the ordinary course, would you be the official who would sign
- 30 them ?
- A. No.
- Q. In the ordinary course would you be the official who would give all the directions for acquiring the property in question ?
- A. Yes, I would look after that.
- Q. All negociations controlled by yourself would bind the Company ?
- A. Yes, unless there was some action of our Board disapproving of it.
- Q. But there was no action of your Board taken in this case disapproving of it ?
- 40 A. No.
- Q. Would you tell me as near as you can when that tracing or plan you now refer to, was prepared ?
- A. I should say it would be in eighteen hundred and eighty-seven ; in the beginning of eighteen hundred and eighty-seven. I am not quite sure as to the year. I should say in the spring of eighteen hundred and eighty-seven.
- Q. Before the negociations began for acquiring this property ?

RECORD.

*In the
Superior
Court.*

No. 89.
No. 497 At-
lantic &
North-West
Railway
Company *vs*
Walker De-
position of
James
Shaughnessy
for Wm.
Walker.
Dated 18th
March 1890.
(Pliff's Exh.
No. 1 at En-
quête.)
—*Continued.*

RECORD.

*In the
Superior
Court.*

No. 89.
No. 497 At-
lantic &
North West
Railway
Company vs
Walker,
Deposition of
Jas. Shaugh-
nessy for
Wm Walker.

Dated
18th March,
1890. Plff's
Exh. No. 1,
at Enquête.
—Continued.

A. I cannot say as to that; it may have been after.

Q. Mr. Rielle was the land surveyor who made the estimate according to law of the amount you offered for that?

A. Yes, he was the surveyor who made the estimate in all those cases.

Q. I want to know where the plan is upon which he made his calculations, on the consideration that the expropriated party would have the right of acquiescing in the valuation?

A. I do not think the plan was made at that time. I think he made the calculation on the official plan. I do not think there was any plan in his possession showing that street; it was on the official plan that he made his valuation. 10

Q. But my question is: Did you value an amount or fix an amount on the basis that these expropriated parties would lose the right of access, or that they would have the right of access, or even that they would have a better one?

A. I can only repeat my answer that my impression is that Mr. Rielle based his valuation on the official plan—the plan filed with the Clerk of the Peace—that being the only plan in our office to the best of my knowledge.

Q. I suppose you are prepared to admit that it would alter entirely that character of the valuation if made according to one basis or that other? 20

A. Yes; I should say it would. I should say that the damages would be greater if the property were to be used for tracks or the ordinary purposes of a railway, than if it was to be used as a highway road, to which the abutting proprietors would have access, and over which they would have the right of passage. I do not know that anybody was ever authorized to say to the proprietors that in the event of that street being opened they would have the use of that as if it were a public highway.

Q. There is a minute probably you know about it and it is not necessary to show it to you—there is a minute of the arbitrators which says that until the new street is substituted to the old it is well understood that the expropriated party would have free access to Mountain Street? 30

A. After the commencement of the trial I learned that some such minute had been made by the arbitrators. I never knew anything of it before, and I am not informed of the authority of the arbitrators to lay down any such stipulation.

Q. You take the responsibility of the Cantin plan having been exhibited to the proprietors?

A. Yes.

Q. And your act in doing so was well-known to the Board? No question was ever raised about it? 40

A. No, there was no question raised about that.

Q. And your original idea was to continue this street all the way to Mountain Street? That is the way it was presented to the proprietors?

A. No, that was not the original plan. The original plan was to utilize the property as it has been utilized—as it was shown on the plan filed with the Clerk of the Peace,

Q. Have you any doubt whatever, so far as the expropriated parties are concerned, that they distinctly understood that after the expropriation their properties would face, on the front, on the street which would be continued to Drummond Street ?

A. I have no doubt whatever of the fact that these people, if they found themselves entitled to such facilities, would have had provision made for them in their deeds to the Company ; and I know, and I so instructed Mr. Heneker, that if any such demand had been made in the deeds we would have declined to grant it, as we did not believe them entitled to it.

10 Q. And you believe that they did not understand and did not believe, that they would have their property fronting on a street to be a continuation of Drummond Street ?

A. I do not know what they may have understood or what their impression may have been, except as laid down in the written instrument between them and the Company.

Q. You do not admit of their trusting to the honesty of the Company ?

A. I do not know why I should be asked for an opinion on that point at all.

20 Q. In so far as Mr. Walker and, I believe, one or two others are concerned, I understand there was some dispute about the amount, and that this dispute was the cause of your altering your disposition as to that street ? Was there any dispute about the amount with Mr. Brennan and Mr. Koester ?

A. I cannot say as to that.

Q. Is it not a fact that Mr. Brennan and Mr. Koester refused to accept your offer ?

A. I could not say as to that without referring to the documents.

Q. So far as the parties were concerned about whom there was no dispute as to the amount, there was no reason that you know of that would have justified you in refusing to consider that you had promised when you showed them the plan ?

30 A. Certainly not ; if I had made them any such promise when we closed our negotiations. We always carry out our promises as far as we are able.

Q. And you don't know whether, in the case of Brennan and Koester they accepted your own offer ?

A. I should say that they did not ; but I cannot make a definite reply.

Q. My question is this. In your first deposition you admitted that negotiations were carried on the basis of this tracing ?

A. Yes.

Q. And you say that when you found that the amount awarded was exorbitant you threatened to contest the award ?

40 A. No ; I do not know that I said the amount of the award was exorbitant. When we found these people were not willing to accept the street there, we determined to expropriate in the ordinary way. When we found that the amounts demanded were excessive, we determined to contest them, and they were reduced to arrange the thing amicably.

Q. In your deposition, you further said that afterwards when you came to contest the proceedings negotiations were carried on between you and Mr.

RECORD.

*In the
Superior
Court.*

No. 89.
No. 497 At-
lantic &
North-West
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Company vs
Walker De-
position of
James
Shaughnessy
for Wm.
Walker.
Dated 18th
March 1890.
(Pliff's Exh.
No. 1 at En-
quête.)
—Continued.

RECORD. Duff and Mr. Cantin and you arrived at an agreement about the figures ?

A. Yes.

*In the
Superior
Court.*

Q. And that in connection with these new figures there was nothing said about the tracing ?

A. That is my recollection of it.

No. 89.
No. 497 At-
lantic &
North-West
Railway
Company vs
Walker. De-
position of
James
Shaughnessy
for Wm.
Walker.
Dated 18th
March, 1890.
(Pliff's Exh.
No. 1 at En-
quête).
—Continued.

Q. And as the deeds do not make any mention in regard to the tracing you considered yourself free ?

A. Yes.

Q. You admit, do you not, that in the case of Brennan and Koester there was no umpire, and the amount was settled between your arbitrator and the other ; and both Brennan & Koester accepted the amount offered by your Arbitrator so there would have been no excuse for not carrying out the offer originally made as to the tracing ? 10

A. That is a conditional question. If our arbitrator was authorized to close the transaction with Messrs. Brennan and Koester with the understanding that a street was to be opened, and there was no change made in the arrangement between the parties subsequently, I should of course feel that there was an obligation on the part of the Company to carry out its terms ?

Q. I am not speaking of your arbitrator, but of yourself ?

A. The same thing would apply to myself, certainly.

Q. You admit that the negotiations were carried on under your instructions ; that each party was told that their property would be expropriated ; and that what would remain would front on this new street ? 20

A. I do not recollect that I said anything of that kind to those parties. I met Mr. Brennan, but I do not know that I had any conversation with the other parties.

Q. I am telling you that this is what you said in your first deposition as to what you stated to Mr. Cantin, so as to show these parties how the thing would be carried out ?

A. Yes.

Q. Therefore my question is not as to what your arbitrator did without your authority, but as to what you did yourself ? 30

A. Yes.

Q. In the case of Brennan and Koester, they would have been shown that plan and the amount they accepted would have been on the understanding of what this plan or tracing promised them ; and after all that, would you consider yourself bound to give them what you promised ?

A. This question has been answered before. I do not admit that any arrangement was finally made with Mr. Brennan or Mr. Koester, or any of these parties, on the basis of the tracing showing the street back of their property. 40

Q. I am not speaking of any final arrangement but of the beginning ?

A. There may have been negotiations in the beginning on the basis of that tracing.

Q. Do you deny that negotiations were opened by you or your Company on the understanding that the expropriations would be on the basis of that plan showing the property with a street in front ?

A. I cannot say from memory. I do not know personally whether this plan was shown to all the proprietors there or not ; it may have been shown to all, or to a portion of them. Such a plan was prepared and put into the hands of Mr. Cantin for negotiation, but I am unable personally to say to whom the plan may have been shown among the proprietors.

Q. Did you have an interview with Mr. Brennan about this very plan ?

A. I do not recollect about that plan. I recollect having a conversation
:10 with Mr. Brennan ; but whether that was in the earlier part of our negotiation, or later, I do not say.

Q. Mr. Brennan swears that first of all your assistant showed it to him, and then he saw you, and you explained how it was to be carried out ?

A. That may be : Mr. Brennan's memory may be better than my own ; but I do not recollect it.

In your first deposition you say : After the commencement of the negotiations, the property abutting on "Blache Lane," it was thought convenient to have the street extended from Windsor street to Mountain street on the other side, and a small tracing was made. We found, however, that the proprietors
:20 rather have the portion of their lots as have a street along the railway track. The idea of making a street was then abandoned.

Somewhere else you say that your vindication of the abandonment of the opening of the street from Bisson to Windsor street was that some of the proprietors did not want it ?

Q. Would you be prepared to say as much as that in the case of Brennan and Koester ?

A. Yes, I should say that that was the case when any of these matters were disposed of, because we could not promise the street to any one of the proprietors without giving it to them all. I should think that any final arrangement made there was made after the plan had been abandoned.

Q. The trouble is that you never allowed any body to suspect that you
:30 did not intend to give the street ?

A. I don't know, of course, what their suspicions may have been. I do not know what their suspicions were ; I did not charge myself with that.

Q. You said in your first deposition that while you may have had the idea in your head, you never told them.

A. If you want my conviction, I may state that I do not believe any one ever expected a street there ; their idea was to get as much money out of the Company as they could. They were all inclined to make light of putting a street there. They believed that for its own purposes the Company would be obliged to open a street there, and that consequently they would have the
:40 benefit of the street, notwithstanding that they got a large price for their land taken for the purpose of the railway.

Q. Are you aware that the arbitrators, in their minutes, had a note giving what they considered an indemnity for the land taken, on the ground that the rest of the property is benefited by the opening of the street ?

A. I explained before that I understand that the arbitrators made some such minute. I do not recollect what the minute is ; nor am I informed what authority the arbitrators had for any such minute. I only claim that there

RECORD.

*In the
Superior
Court.*

No. 89.
No. 497 Atlantic &
North-West
Railway
Company vs
Walker,
Deposition of
Jas. Shaughnessy for
Wm Walker.
Dated
18th March,
1890. Plff's
Exh. No. 1,
at Enquête.
—*Continue d.*

RECORD.

*In the
Superior
Court.*

No. 89,
No. 497 At-
lantic &
North-West
Railway
Company vs
Walker. De-
position of
James
Shaughnessy
for Wm.
Walker.
Dated 18th
March, 1890.
(Pliff's Exh.
No. 1 at En-
quête).
—Continued.

was no ground upon which they should have made it with a view of binding the Company.

Q. You admit that if the intention was, at the time of the award, that you should build your tresslework right alongside of Mr. Walker's building that the rest of his property would not be benefitted; and that the only theory of benefit to his property was that there would be a street? —In one case it might be a benefit and in the other it would be ruin.

A. That would be a subsequent argument. I do not know that I would admit that it would ruin the property of a manufacturer. I believe that he is a manufacturer. I think he did get damages from the arbitrators, by the reason that if that street had been opened by the City as a public highway, the award to Mr. Walker and any of the others would have been but a very small fraction of the amount awarded against the Company by the arbitrators. 10

Q. You are aware that by the deed of the Company with Mr. Walker he stipulated that the building which formerly fronted on Blache street would belong to him, so long as he removed it within a certain time.

A. I do not recollect it. The deed speaks for itself.

Q. Are you aware that by the deed it is stipulated that Mr. Walker will remain proprietor of the material of the old building, but that he would have to remove these materials by a certain time? 20

A. I have not made reference to the deed. The deed is there.

Q. In the deed of sale, he sells a certain portion of land with the old buildings on it, but stipulated with regard to this building which is on a piece of land you acquire that he would continue to remain proprietor of the building, but would be bound to remove it; are you aware of that?

A. No.

Q. Are you aware that on a certain day (which the clause mentions) he began rebuilding on the new line?

A. I take it for granted that he did. I see the new building there.

Q. You believe the new building is plumb on the line? 30

A. Yes.

Q. Do you believe that the building has doors and windows which do front on the street?

A. I noticed the new windows.

Q. Are you aware that until this action was taken, until quite recently, he had access to the place as before the expropriation? He had a servitude as before.

A. Yes, the whole place was open.

Q. You brought an action since to make him close his windows?

A. Yes, the windows looking over our property. Generally there is 40
very little objection made to windows overlooking railway property; but these windows overlook our passenger station, and some inconvenience might arise in the future from people getting upon our high-level from there.

Q. On what ground did you give him notice to close his windows if he was to have a street there?

A. As a rule we do not pay much attention to these things. Properties having windows overlooking railway grounds are less objectionable than in the

case of private property; and frequently we raise no objection. But these windows overlook our passenger shed and may be objectionable.

Q. You admit, do you not, that with that tresslework of yours all along his property, if you make him close his doors and windows, you ruin his building?

A. I do not know what the effect may be. We acquired that property for building the railway and we paid for it.

CROSS-EXAMINED.

10

Q. That plan or tracing was given to Mr. Cantin, I understand, really to enable them to settle the matter without going to arbitration?

A. Yes.

Q. And after that you told them you would go to arbitration?

A. Yes. I told him not to consider it on the basis that a street would be opened there.

Q. And, as a matter of fact, you did go to arbitration, and it was decided to expropriate?

A. Yes.

20

Q. As to opening this street back of Mr. Dowling's property, I understand that the Canadian Pacific Railway's line ran through his house and took away about half of his finest land?

A. Yes.

Q. Do you remember that you acquired a further strip of land from him, and under what circumstances was it?

A. In taking down the building on this property acquired from Mr. Dowling, the house was partly destroyed, and he made a claim against the Company for damages to the amount of six or seven hundred dollars; and the matter was finally disposed of by Mr. Dowling, transferring to the Company this piece of land or property and waiving his claim for three hundred dollars (\$300.)

30

Q. So the Company acquired the strip of land equal to the depth of the remaining portion of the house?

A. Yes, about that. It was a small piece of land.

Q. That property would have been fronting on this proposed new street if it had been opened?

A. Yes.

RE-EXAMINED.

40

Q. Did Mr. Cantin ever tell any one of the expropriated parties that there would be no street?

A. I do not know.

Q. Did Mr. Cantin, on the contrary, to your knowledge, give them to understand that they would have a street?

A. I do not know. He did not, after the abandonment of the plan.

Q. Do you believe that Mr. Cantin, acted honestly?

RECORD

*In the
Superior
Court.*

No. 89.

No. 497.

Atl. & N. W.

Ry. Co. vs.

Walker.

Deposition of

Jas. Shaugh-

nessy for

Wm. Walker.

Dated 18th

March 1890.

(Plff's Exh.

No. 1, at En-

quête).

—Continued.

RECORD.

*In the
Superior
Court.*No. 89.
Deed of Sale
from Margare
ret Sweeney
to the Rev.
James Som-
erville
(Doucet N.P.)
Dated March
1833 Plff's
Exh. A.g.
—Continued.

A. I do not believe that he would have acted otherwise.

Q. Do you think that you ought not to have given them a notice that they would have no street?

A. I do not think that.

Q. Have you any doubt that that if they had suspected you did not intend to carry out the plan, they would have bound you by putting a clause in the deeds?

A. I answered that before. I have no doubt that they did not expect a street there from the beginning. Their purpose was to secure the largest amount from the Company for the land taken for the railway.

Q. Is it your belief that they would have signed the deed if they had expected they would get no street?

A. I do not know about that. They may have expected to get a street, subsequently. The property was expropriated for a railway purposes and they may have expected that the Company would be obliged to have a street there. I do not know what they expected.

And further deponent saith not.

I, A. E. Phelan, of the City of Montreal, stenographer of the Superior Court, sworn in this cause, do depose and say, on the oath I have taken in this case, that the foregoing sheets numbered from one to seventeen, inclusively are and contain a true and faithful transcript of the evidence by me taken by means of stenography in this cause, according to law.

A. E. PHELAN,
Stenographer.

(ENDORSED.)

Deposition of Thos. Shaughnessy for Deft. Copy prod. 23rd Oct., 1890,
No. 1 at Enquête, filed Oct. 24th, 1890. (Paraphed) J. L., Dep. P. S. C.

30

No. 90.
No. 497.
Atl. & N. W.
Ry. Co. vs.
Walker.
Deposition of
W. C. Van-
Horne for
Wm. Walker.
Dated 18th
March 1890,
(Plff's Exh.
No. 3, at En-
quête).

SCHEDULE No. 120.

On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, William C. Van Horne, of the city and district of Montreal, railway manager, aged years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You are President of the Atlantic & North West Railway Company?

A. Not of the Atlantic & North West. Railway; I am only a Director in that railway.

Q. But you have the real control?

A. Yes.

Q. And you had the real control from the first?

A. Not from the inception of the Company, but for a number of years back.

Q. Are you aware of the circumstances connected with the expropriation of the property acquired by the Company which faces on what is called Blache street?

A. Yes, I am aware of them in a general way. I am aware in a general way of the whole transaction, and in some cases I am aware of the particulars.

10 Q. You are aware that Blache lane connected with Mountain street formerly?

A. I believe it did. I would have to look at the plan to refresh my memory.

Q. Will you tell me whether it is to your knowledge that when the expropriated parties were approached by the Company originally, for the purpose of acquiring what was required by the Company—that is, the land required for the railway—they were told that they would not suffer damage by loss of access to a street in rear, but, on the contrary, that they would be benefitted by the Company giving a new street which would afford a superior access to that
20 afforded by Blache street?

A. No, I do not know what was said to the parties. I was not present at any conversation with them. I only know that, in the first instance, when we were preparing our plans, I had a plan prepared showing the continuation of Donegani street for the purpose of getting to our station. We at first thought of making an extension of Donegani street as a private street, to enable us to get this access. It was to some extent a question of costs, and to some extent a question of necessity with us. We found very early that we could not get the property any cheaper by this proposed extension. The property holders, I am informed, did not seem to hold the street as of any value to themselves—not
30 sufficient anyway to induce them to modify their demands, and we then abandoned the plan. This abandonment occurred sometime before the arbitration. The abandonment of the plan was by my own order, and it was a final abandonment.

Q. Have you got that plan?

A. No, I have not. I have not seen the plan for a long time; not since its abandonment was ordered.

Q. Would that plan show the fifty feet street corresponding to the extension of Donegani street to Mountain street?

A. I do not remember as to the width of the street, but I think it was
40 the same as Donegani street was, so that the gates could turn rightly. There were to be gates there.

Q. Are you aware that the parties negotiated with were shown that plan and told that after the expropriation their property would front on the new street?

A. I am not aware of it.

Q. Have you any doubt that the award of the arbitrators was predicated as to the amount on the proposed opening of a street there?

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Horne for
Wm. Walker.
Dated 18th
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—Continued.

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No. 90.

No. 497.

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—Continued.

A. So far as my knowledge goes, it was quite the contrary. I am referring now to the final proceedings.

Q. Are you aware that the arbitrators stated that they gave less than the full value of the land expropriated on the ground that the land not expropriated would be benefitted?

A. I am not aware of that.

Q. Are you aware of the fact that it would be an impossibility for the land remaining, to be benefitted if there was no street there? That is, if you had the right to shut off access and build your railway along the lane?

A. This was not intended to be a public street in the first instance; it was presumed it would be an advantage for the parties to get light from that street, though evidently it would have been impossible to prevent the parties making use of that street for their own use. We thought in the first instance that this private street would be a sufficient advantage to the parties to enable them to make moderate demands for the land required for the railway; but we found we were mistaken in that respect. 10

Q. Are you aware of Mr. Walker, the defendant in this cause, putting up his building on this new line?

A. Yes, I saw the building when I went by, but I did not pay attention as to where it was going up.

Q. Would that be before or after the abandonment by the Company of the intention of having a street there? 20

A. It must have been long after.

Q. Long after the abandonment of the plan?

A. Yes, it must have been long after the abandonment of the plan that the building was put up there.

Q. And was it long after the putting up of this building that you decided to have that trestle work along this wall?

A. That was decided long before.

Q. Do you think Mr. Walker would have put up a building on a line that would have caused the obstruction of his windows and doors? 30

A. I noticed the building and I spoke to some of our people about it, and they told me he had no right to have windows there; and I objected to them on the ground that they looked upon our ground and people might get up on our tracks from there if they so desired; and I gave instructions to have these openings closed up.

Q. This building was put up in the autumn of eighteen hundred and eighty-seven?

A. I do not know when it was put up. I cannot say.

Q. Would you have a recollection of the time—that is, of the interval which elapsed between the notice of building and the serving of the protest to close those openings? 40

A. I do not know that any protest was served or notice given, even now. I remember walking through the yard with Mr. Shaughnessy and calling his attention to those buildings, and being told by him that the party had no right to have openings there, and that we could compel him to close them; and I told him we had better take proceedings to have the party close them—not

because of the lights, but because people might take advantage of these openings to get upon our high level.

Q. There was no notice given to Mr. Walker before this notarial protest?

A. I do not know. That would be a matter not coming under my notice.

Q. Are you aware that he not only put up his building on the line of the proposed street, but that he had access to Mountain street long after that, for the purpose of trade?

10 A. He may have got through that way.

Q. You never objected?

A. No, we are not hoggish that way. He may have got through; it was all open.

CROSS-EXAMINED.

Q. You say that to-day, the Canadian Pacific Railway Company have control of the Atlantic and North-West Railway?

A. Yes.

Q. And have had for some years?

A. Yes.

20 Q. As a matter of fact, this portion of the Atlantic and North-West Railway forms part of the Montreal and Quebec Railway?

A. Yes.

Q. And forms part of the Canadian Railway system?

A. Yes.

Q. And is now part of the same?

A. Yes.

And further deponent saith not.

30 I, A. E. Phelan, of the City of Montreal, stenographer of the Superior Court, for the District of Montreal, sworn in this cause, do depose and say on the oath I have taken in this cause:

That the foregoing sheets numbered from 1 to 7, inclusively, are and contain a true and faithful transcript of the evidence by me taken in this cause by means of stenography.

The whole in manner and form as required by and according to law.

And I have signed.

A. E. PHELAN,
Stenographer.

(True Copy by consent.)

BARNARD & BARNARD,
Atty's for Pet'r.

40 ABBOTTS, CAMPBELL & MEREDITH,
Atty's. for Deft.

(ENDORSED)

Deposition of Wm. C. Van Horne, for Defendant. Copy filed 23 Oct., 1890. No. 2, at Enquête filed 24 Oct., 1890.

J. L. Dep. P.S.C

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*In the
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No. 91.

No. 497.

Atl. & N. W.

Ry. Co. vs.

Walker.

Deposition of

W. H. Boon,

for William

Walker.

Dated 14th

March, 1890.

(Pliff's Exh.

No. 3 at

Enquête.

On this Fourteenth day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared, William Henry Boon, of the City of Montreal, contractor, aged fifty years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You are a contractor ?

10

A. Yes.

Q. You know Mr. Walker's property which used to front on Blache lane ?

A. Yes.

Q. You put it up ?

A. Yes.

Q. You put up the new building on the new line ?

A. Yes.

Q. In what condition was Blache lane when open ?

A. Very good.

Q. Like any ordinary street ?

20

A. Yes.

Q. It gave access from the property to Mountain street ?

A. Yes.

Q. How long did it take you to build the new building on the new line ?

A. It might be a couple of months I suppose.

Q. The wall, how far is it from the line ; is it close to the line or plumb on the line ?

A. That I could not say.

Q. Is it very close to the line ?

A. I suppose so.

30

Q. There are doors and windows ?

A. There are.

Q. Was it you, as a contractor, who got the line before you put up the building ?

A. No.

Q. Your building operations were witnessed by the employes of the company ?

A. I should think so.

Q. It was done so openly they could not but see it going on ?

A. Yes.

Q. When you put up the building was the line marked by pickets ?

40

A. I could not say.

Q. You do not remember ?

A. I do not remember. The line was marked, I believe, on the building before being taken down.

Q. Was there any change made in the grade of the space there in front of Walker's building. I am speaking of the new building ?

A. I think the grade has been raised.

Q. Don't you make a mistake ; was it not lowered twenty inches rather than raised ?

Objected to as illegal.

Question withdrawn.

Q. There was a change made in the level, who made that change ?

A. I could not tell you.

10 Q. It was not you ?

A. No.

Q. Nor Mr. Walker ?

A. I could not say.

Q. You do not know whether it was made by the employees of the Com-
pany ?

A. I do not.

Q. What would you say in a general way was the amount of damage
done to Mr. Walker's property by loss of access ?

A. I think it would be pretty nearly completely spoiled.

20

CROSS-EXAMINED BY H. ABBOTT, ESQ., Q. C. FOR DEFENDANTS.

Q. Did you build the foundation of Walker's building ?

A. No.

Q. What part did you build ?

A. The brickwork.

Q. You were not there when the building was pulled down ?

A. Part of the time.

Q. Did you see the marks on the building before it was pulled down to
show the line ?

A. I think I did.

30 Q. You cannot swear to that ?

A. I would not like to swear positively.

Q. Would you undertake to describe that mark to-day ?

A. I think it was an ordinary red mark on the wall.

Q. Was it an ordinary red mark ?

A. Such as you would make with a piece of chalk.

Q. A round mark, a cross or an arrow ?

A. I should say it was generally made with a sort of V.

Q. Do you undertake to swear you saw that mark on the old building
before it was taken down ?

40 A. I think I did.

Q. You cannot swear more than that ?

A. No.

Q. Where was this grade changed that you talk about ?

A. I say it has all been filled in now.

Q. When you say the grade has been raised, you mean the embankment
is twenty feet higher than the lane was ?

A. Yes.

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lantic &
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quête).
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Q. Did you understand Mr. Barnard's (Plaintiff's Counsel), question to apply to the building of the embankment when he asked you if the grade had been changed?

A. No; when the building was completed it was a very short time before it was filled up. I do not know anything about it.

Q. Yet, you undertook to swear, in answer to Mr. Barnard's question, that it had been raised?

A. I think it has been raised.

Q. You mean by that, the building of the railway upon the top of it?

A. Yes.

Q. How was your material handled into that property?

A. Through Blache lane.

Q. Were you ever in Blache lane before that?

A. Yes.

Q. When?

A. For two or three years continually, before that year.

Q. What business had you there?

A. I used to walk in there to Eaman's house.

Q. You assisted in building Mr. Walker's first building there?

A. I built the brickwork of the first factory.

Q. Are you sure Blache lane was not blocked?

A. Blocked up at the east end.

Q. Was there any part of the abutment, or pier, built across the Mountain street end when you were handling the material?

A. There was nothing on Mountain street when we were building.

Q. Was not part of the railway work built on Blache lane then?

A. No.

Q. Were the houses pulled down?

A. No. They might have been pulled down on the north side, I would not be certain.

Q. When was it you completed your part of the work on Mr. Walker's factory?

A. That I could not say.

Q. Cannot you give us any idea?

A. September or October, sometime coming on towards the fall of eighteen hundred and eighty-seven.

Q. Is the whole of the rear wall built in brick?

A. From the foundation up.

Q. I suppose your work did not complete the factory?

A. No.

Q. There was wood work besides that?

A. Yes, and stone work.

Q. Did they put stone work after brick work?

A. What was taken off the north end was put to the south end.

Q. Did you have anything to do with that portion?

A. I built the brickwork of that also.

Q. What was the amount of your contract?

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- A. I could not say, now.
- Q. Have you no idea—within a few hundred dollars ?
- A. It might have been one thousand dollars, the last alteration.
- Q. That covered all the brick work that was done on the building ?
- A. I think so.
- Q. Was it more or less than one thousand dollars ?
- A. Not less.

And further deponent saith not.

J. J. CROWLEY,

Official Stenographer.

10

I, James J. Crowley, of the City of Montreal, Official Stenographer, on the oath I have taken, depose and say :

That the foregoing streets, numbered from one to eight, consecutively, being eight folios in all, are and contain a true and faithful transcript of the evidence of the above-named witness, by me taken by means of stenography, the whole in manner and form as required by and according to law,

20

J. J. CROWLEY.

(True copy by consent.)

BARNARD & BARNARD.

Atty's for Pet'r.

ABBOTTS, CAMPBELL & MEREDITH.

Atty's for Deft.

30

(ENDORSED.)

Deposition of Wm. H. Boon, witness for Defendant Copy fyled 23rd Oct. 1890. No. 3 at Enquête Fyled. 24th Oct. 1890.

J. L. Dep. P.S.C.

40

SCHEDULE No. 122.

On this eighteenth day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared Pierre Charlebois, of the City of Montreal, general agent, aged thirty-six years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith:—I am not related, allied, or of kin to, or in the employ of any of the

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Ry. Co. vs.
Walker
Deposition of
~~Jas. Shough,~~
~~messy for~~
Pierre Char-
lebois for
Wm. Walker
Dated 18th
March 1890!
(Plff's Exh.
No. 4, at En-
quête).

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Atlantic &
North-West
Railway Co.
vs. Walker.

Deposition of
Pierre Char-

lebois for
Wm. Walker,

Dated 18th
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(Pliff's Exh.

No. 4, at
Enquête.)

—*Continued.*

parties in this cause ; I am not interested in the event of this suit.

Q. I believe you are in the employ of the Canadian Pacific Railway Company—meaning the Atlantic & North West Railway Company ?

A. Yes.

Q. And you have been so for how many years ?

A. Six or seven years—seven years, I think.

Q. And you were in their employ when the proceedings were initiated to expropriate the property of the Defendant in this cause ?

A. Yes, I was.

Q. What is the nature of your employment by the Company ?

A. General agent. 10

Q. And that would lead you to see the proprietors and try and make terms with them when property is to be obtained from them for the purposes of the railway ?

A. I think, to the best of my knowledge, that Mr. Heneker and I, we served the notices on the proprietors.

Q. In this particular case, when you tried to get the property from the proprietors, you did not know anything about negotiations that had taken place to get the property from the proprietor in this case ?

A. No.

Q. In connection with such papers as you served, did you see the plan 20 showing how the expropriation would be carried out ?

A. I do not remember ; I may have seen it, but I do not remember.

Q. You never saw the plan that Mr. Cantin refers to, showing the intention of having a fifty feet street on the property in question ?

A. I do not remember seeing that plan for a fifty feet street.

Q. Do you know enough of the property to be able to say whether, if there was a street fronting on the property after the expropriation, it would entirely alter the character of the property ?

A. I do not know the place and cannot say.

CROSS-EXAMINED.

Q. You have no recollection of any interview with Mr. Walker, the Defendant in this cause, previous to the acquisition of the property ? 30

A. I do not remember. I think I went to the store of the Defendant to serve the notice. I do not recollect the conversation.

Q. When you say that you are employed as general agent for the Company, you do not mean to say you are *the* general agent of the Company, empowered to act for them ? 40

A. No, I do not.

Q. This is merely a general designation of the office ; that is to say you take up the general agency in a general way, when required, for any purpose ?

A. Yes.

And further deponent saith not.

I, A. E. Phelan, of the City of Montreal, stenographer of the Superior Court for the District of Montreal, sworn in this cause, do depose and say on

the oath I have taken in this cause, that the foregoing sheets, numbered from one to three inclusively, are and contain a true and faithful transcript of the evidence by me taken by means of stenography in this cause; the whole in manner and form as required by and according to law, and I have signed.

A. E. PHELAN,
Stenographer.

True copy, by consent, Barnard & Barnard, Attys. for Petr., Abbots,
10 Campbell & Meredith, Attys. for Deft.

(ENDORSED)

Deposition of Pierre Charlebois for Defendant, copy prod. 23rd Oct., 1890,
No. 4 at Enquête. Fyled 24th Oct., 1899.
(Paraphed) J. L., Dep. P. S. C.

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20

SCHEDULE No.123

(CONTINUATION OF JOS. RIELLE'S DEPOSITION.)

And on this first day of April eighteen hundred and ninety personally ap-
peared the said witness, who continued his evidence as follows :

Q. I think you were ask the last time you were examined to look up
your notes taken when you awarded an amount of damages to the proprietors
of Blache Lane ; Will you state now whether you have seen those notes and
30 what information you can give on that matter ?

A. I have not been able to find the notes I referred to and I have nothing
to add to what I have already said.

Q. Do you remember whether any understanding or any conversation
took place between you and those proprietors as to their getting a new outlet
to replace the one they had by Blache Street ?

A, I have no recollection of any conversation between myself on the
subject, I do not think there was in fact.

Q. Between the Officers of the Company and the proprietors, are you
40 personally aware of any ?

A. I am not aware of any.

Q. I think that you fixed the amount of the award at sixty cents a foot,
could you remember what this was going to include ?

Witness :—What properties do you refer to ?

Counsel :—I think there were three or four.

A. I do not think they were all the same : I am not prepared to say.

Q. Take especially Mr. Hughes' property, do you know the amount of

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Walker.
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—Continued

the award for that property, or the valuation if you like ?

A. I have not got the amount with me.

Q. Do you remember the offer you made to Mr. Hughes before the expropriation took place ?

Witness. Do you refer to the amount tendered ?

Counsel. Yes.

A. I have not the figures here with me, they are all in the notices. On seeing the notices I see it is sixty cents a foot.

Q. I want to know as to the details of this sixty cents a foot, you have not got them ?

A. No.

Q. Could you give them from memory, the details of that item of sixty cents ?

A. I cannot say any more than what I have said already. The estimation was based on the assumption on my part that the property was to be left with an outlet at the rear similar to the one which existed at the time, an equal outlet.

Q. In your valuation you made of Mr. Hughes' properties and the others, did you consider Blache Street as a public street, or as a private street ?

A. I looked upon it as an ordinary outlet, as a lane, a ruelle.

Q. Would you have awarded more if that lane had been, in your estimation, a regular public street ?

A. If it had been a street sixty feet wide, if the rear of that property had fronted on a street sixty feet wide I would not have called it a lane, I would have called it a front, and in my opinion it would have more value if the street had been opened, and not a *cul de sac* as it was.

Q. Taking the same width as Blache lane, but for a regular street, in your opinion, would you have awarded more ?

A. I considered it was public to all intents and purposes, a man had a right to pass there, a right to ingress and egress.

Q. Do you consider also, the fact of depriving those proprietors of any means of ingress or egress would be a damage to them ?

A. Certainly it would.

Q. And in this case, the fact of closing Blache lane has it done any damage to the Proprietors or not, the closing of it by the Company ?

A. I consider it has deprived them of an advantage, namely, a rear entrance to their properties.

Q. As to the City, has the City in your estimation, suffered any damage by the closing of that street ?

A. That would depend naturally on the question whether the property has decreased or improved in value by the alterations, it is purely problematical ; if the property has been increased in value by the changes then the City is the gainer, if it has decreased in value then the City is the loser.

Q. Then in order to show the City does not suffer you must find an increase in value of properties by the lane being closed ?

A. In order to show the City a loser you must show the property has depreciated.

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- Q. To show the City does not suffer anything you must admit the properties have been increased in value ?
- A. Precisely.
- Q. You see by the homologated plan, exhibit, number two, that Donegani street was going to be continued from Windsor street, or Bisson street, up to Mountain street by the lines here ?
- A. I do not know that the plans shows that.
- Q. Since the closing of Blache lane, is it possible to continue again the same Donegani street up to Mountain street ?
- 10 A. It is quite possible by proceeding to expropriate.
- Q. That is to say by deviating from the lines that have been traced on this plan ?
- A. Of course, but you will allow me to rectify my first answer, I did not see that this plan shows the continuation of Donegani right up to Mountain street.
- Q. You have it there, it is nothing but the widening of Blache lane.
- Witness. Do you call that the lane ?
- Counsel. Yes.
- A. Then let my answer stay as it is, it could be done by expropriating,
- 20 as it was intended to do originally.
- Q. Expropriating in different places than those mentioned on this plan, by either deviating on the right or on the left ?
- A. Yes.
- Q. Would that expropriation be more expensive than the first one, the second expropriation you would have to make, would it be more expensive than the one projected by this plan ?
- A. It is very hard to say, that it is a question you need to consider on the ground, but in the first place you would have to expropriate some of the Canadian Pacific property and expropriate a fresh rear of the lots ; as to the
- 30 question whether it would cost more or less I could not say.
- Q. As far as the City is concerned, is it not a fact that the City would have to acquire more properties by the second expropriation than by the projected one here, assuming the City is the Proprietor of Blache lane ?
- A. Necessarily, if the City was the owner of the lane.

CROSS-EXAMINED

- Q. If I understand you right, when you made your estimation of the compensation you would pay to these proprietors, you considered they had a
- 40 right of ingress and egress by this Blache Lane, that that lane was to be filled up by the company, and they presumed the company would give them another similar lane ?
- A. That was my assumption.
- Q. In making that estimation, would it have made any difference to you whether the public had rights in that lane, or whether it was simply a private lane with rights of passage to the proprietors or occupants of houses on the lane ?

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— *Continued.*

A. None whatever, because the lane could not be looked upon as a public street.

Q. So you never considered that question as to whether it was a public street or a private lane?

A. No, the fact is I looked upon it as a lane like others in Montreal, they are virtually public, anybody can go in them.

Q. There are many private lanes, private property in which the public are not prevented from passing?

A. Yes.

Q. Nevertheless private lanes?

A. There may be private ownership in them, but they are virtually public.

Q. It was evident to you from the plans before you that the company's work would cover this particular portion called Blache lane?

A. It appeared so from the plan.

Q. You got no instructions from any officer of the company that they intended to open another lane or street there?

A. Never.

Q. You simply assumed that in your own mind?

A. I was asked to estimate the damage that would be suffered by each individual in the case in question, and I made my estimate without ever receiving any special instructions.

Q. You simply assumed that the company would give them another outlet than Blache Lane?

A. Yes.

Q. Supposing the company had opened a street through on the lines of Donegani, following the lines of Donegani street, would there have been any damage to these properties?

A. The properties would have been improved, I think, decidedly.

Q. In your estimate you allowed the proprietors damages besides the value of the land?

A. In the main I considered sixty cents a foot was a fair allowance for the value of the land and any inconvenience which would result to the proprietors.

Q. You do not pretend to say that the rear of these lots on Blache Lane, were worth sixty cents a foot?

A. No, I did not think they were worth more than forty cents at that time,

Q. Then you must have allowed twenty cents for damages?

A. I cannot say precisely. I had in my mind the value of the land, taken, and the inconvenience which would result to the proprietors.

Q. You allowed for both, how much, you do not remember exactly?

A. Yes.

Q. If the Company had put a street through there, you would not have allowed anything for inconvenience?

A. No.

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- Q. On the contrary you would have probably allowed less for the land, as being improved ?
- A. Yes.
- Q. For the sake of comparison how much do you consider the portions of those lots fronting on St. Antoine Street are worth, taking the depth of an ordinary building lot ?
- Witness : Now ?
- Counsel : Then ?
- 10 A. From sixty to sixty-five cents a foot.
- Q. What are worth to-day ?
- A. I suppose they would be worth to-day from seventy-five cents to a dollar.
- Q. As to the damage to the City from the taking of this property, I would understand from your evidence it would depend upon whether the taxes which the City collected are greater or less since the railway came there ?
- A. Necessarily, of course.
- 20 Q. It would depend on whether, taking the same area of land the City would receive a greater or lesser amount of taxes ?
- A. That is what I think.
- Q. Now, the damage to the proprietors you have spoken of, you say consists in the fact that they no longer have ingress or egress to the rear of the properties ?
- A. Yes.
- Q. That would refer only to cases where there was property left of a sufficient depth between St. Antoine Street and the railway ?
- A. Whatever the depth may be the property is always the better of having a rear entrance, especially if likely to be used for commercial purposes.
- 30 Q. It would affect only those properties which fronted on St. Antoine Street, and on the lane previously ?
- A. Of course.
- Q. The properties on the north side of the lane, where the Company acquired the whole depth would not be affected at all ?
- A. No.
- Q. Do you remember two dwelling houses on the lane ?
- A. There were two or three.
- Q. On the north side ?
- A. There was one on the south side too.
- 40 Q. You are aware, are you not, that these houses on the north side were taken by the railway including the properties on which they stood ?
- A. Precisely.

RE-EXAMINED.

- Q. Your offer of sixty cents you made to Hughes, was it accepted or not ?
- A. I believe it was not accepted, I believe they went to arbitration.

RECORD.

*In the
Superior
Court.*

No. 93.
No. 497.
Atl. & N. W.
Ry. Co. vs.
Walker.
Deposition of
Jos. Rielle
for William
Walker.
Dated 1st
April, 1890.
(Plff's Exh.
No. 5 at
Enquête.
—Continued.

RECORD.

*In the
Superior
Court.*

Q. It was not accepted, and they went to arbitration afterwards ?

A. Yes.

And further deponent saith not.

J. J. CROWLEY,
Official Stenographer.

No. 93.
No. 497.
Atl. & N.W.
Ry. Co. vs.
Walker.
Deposition of
Thomas
Rielle for
Wm. Walker.
Dated 1st
April 1890
(Plff's Exh.)
No. 5, at en-
quête.)
—Continued.

I, James Crowley, of the City of Montreal, on the oath I have taken, doth depose and say :—

That the foregoing sheets numbered from one to nine consecutively, being nine folios in all, are and contain a true and faithful transcript of the evidence of the above named witness, taken by me by means of stenography, the whole in manner and form as required by and according to law. 10

J. J. CROWLEY.

True copy by consent, Barnard & Barnard. Attys. for Petr. . Abbotts, Campbell & Meredith, Attys. for Deft.

(ENDORSED)

Deposition of Joseph Rielle for Plaintiff. Copy fyled 23rd Oct., 1890, No. 5, at Enquête, fyled 24th Oct., 1890. (Paraphed,) J. L., Dep. P. S. C. 20

SCHEDULE No. 124.

In the Superior Court.

Present ;—

The Honorable Mr. Justice Mathieu. 30

No. 94.
No. 497.
Atl. & N. W.
Ry Co. vs.
Walker.
Deposition of
Geo. Koester
for Walker..
Dated 14th
March, 1890
(Plff's. Exh
No. 6, at
Enquête.)

On this fourteenth day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared, George Koester, of the City of Montreal, Hotelkeeper, aged twenty-nine years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith : —I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You own one of the properties expropriated ?

A. I did. 40

Q. When you went to arbitration who was your arbitrator ?

A. Alderman Malone.

Q. Who was the arbitrator for the Company.

A. Mr. Cantin.

Q. They agreed together, as I understood, there was no umpire ?

A. No umpire.

Q. And you took the amount which both agreed on ?

A. Yes.
 Q. Immediately before the arbitration, or during the arbitration, was there a plan shewn you of the property after the expropriation ?

A. I am not sure, I think there was.

Q. You are sure you understood there was a plan ?

A. Yes.

Q. Will you tell us exactly how you understood the property would be after the expropriation ?

A. I was led to believe by Mr. Cantin there would be a street fifty feet wide built from Bisson to Mountain street.

10 Q. You had a building there before the expropriation ?

A. Yes.

Q. You had to remove it to the new line ?

A. Yes.

Q. When you removed your building which fronted on Blache lane to the new line, how far from the new line was it ?

A. About four to six feet to the new line.

Q. When you removed your building to the new line was it with the intention you should have a front on the street ?

20 A. If I had not thought that I would not have moved the building ?

Q. What difference would it have made—it would have spoiled your property entirely without a street ?

Objected to as leading.

Objection reserved.

A. Of course.

Q. When your building was on Blache street, did you rent it and for how much ?

A. Twelve dollars a month and I have had as much as fourteen dollars.

30 Q. You expected more on the new line ?

A. Yes.

Q. What difference would it have made in the price you would have asked for that property if you understood there would be no street ?

A. A great deal : I could not say exactly.

Q. You built a stone foundation to put your new building on ?

A. Yes.

Q. It cost you how much ?

A. About one hundred and sixty dollars.

40 Q. You never would have put a stone foundation if you had no expectation of a street ?

A. No.

Q. In what condition was the old Blache lane ?

A. I used to go there, monthly, for the rents, and it was very clean.

Q. It was as good as any other street in the City.

A. Yes ; very clean.

Q. How long did it take you to make alterations, removing the old building and putting it up ?

RECORD.

*In the
Superior
Court.*

No. 94.
No. 497.

Atlantic &
North-West
Railway Co.
vs. Walker.

Deposition of
Geo. Koester
for Walker.

Dated 14th
March, 1890.
Pliff's Exh.

No. 6, at
Enquête.

RECORD.

*In the
Superior
Court.*

No. 94.

No. 497.

Atl. & N.W.

Ry. Co. vs.

Walker.

Deposition of

Geo. Koester

for Wm Wal-

ker. Dated

14th March,

1890. Piff's

Exh. No. 5,

at Enquête.

—Continued.

A. About one month.

Q. Was it done openly, in such a way that everybody would notice it ?

A. Yes.

Q. The employes of the Company saw you doing it ?

A. Yes.

Q. They could not have helped themselves ?

A. There was a fence around—they had to see it.

Q. When you put up your new building had the new line been staked ?

A. I did not see the line, but of course there must have been a line there.

I saw Walker's property had been moved, and I moved back to the same line as he did.

Q. You did not see any stakes, on one side or the other ?

A. No ; I did not.

Q. You swear that you never would have thought of signing that deed had you known you would have no street ?

A. I would not like to say that. If I had got money enough I would have signed the deed of course, but not for that money.

10

CROSS-EXAMINED,

By H. Abbott, Esq., Q.C., for Defendant.

20

Q. You got notice of expropriation ?

A. Yes.

Q. That described the amount of your property that was to be taken by the railway ?

A. Yes.

Q. And you moved your house back to the line indicated by that notice of expropriation ?

A. Yes.

Q. The Railway Company allowed you to take away the old materials of your house ?

A. Yes.

Q. To use the old material ?

A. Yes.

Q. Did Mr. Cantin shew you a plan ?

A. I would not swear whether he did or not, but I am pretty sure he did, or he led me to understand, and so did Mr. Marler that there was to be a street fifty feet wide.

Q. Did he endeavor to make an arrangement ?

A. Yes.

Q. These negotiations fell through and you appointed an arbitrator ?

A. Yes.

Q. You named Mr. Malone as your arbitrator ?

A. Yes.

Q. Mr. Malone and Mr. Cantin agreed on the amount ?

A. Yes.

40

Q. You could indicate your property on the plan, I suppose?
 A. I think so. It is the lot number two hundred and sixty-two, the portion colored red, and marked thirty, is the part taken by the railway.
 Q. The house was put back?
 A. Yes, to where the shed is shewn.
 Q. You say you would not have removed your house; you mean you would not have left the Railway Company take it?
 A. If I had not thought there would be a street I would not have put it back. I might have got so much more by letting them take the house, the house would be no good to me unless I had a street.
 10 Q. Was there anyone living in the house?
 A. Yes, Mr. Hefferman.
 Q. Did you get rent from him?
 A. Yes.
 Q. Still you say the house was of no value for you?
 A. If there was no street.
 Q. You are still getting rent?
 A. I sold the property.
 Q. Who did you sell it to?
 20 A. Mr. Sauvageau.
 Q. Who occupies it now.
 A. I do not know. Mr. Hefferman occupied the house when it belonged to me.
 Q. How much did you sell it for?
 A. Fifty-five hundred, or fifty-three hundred.
 Q. That was after the Railway Company expropriated a piece?
 A. Yes.
 Q. Mr. Sauvageau has some one in that house now?
 A. He built on St Antoine St. property, and I believe he is living there
 30 Q. Do you know if anybody is living in the house now?
 A. I do not.
 Q. This sale was made after you rebuilt this old house?
 A. Yes.
 And further Deponent saith not.

RECORD.
 In the
 Superior
 Court.
 No. 94.
 No. 497 Atlantic & North-West Railway Company vs Walker. Deposition of Geo. Koester for Wm. Walker.
 Dated 14th March. 1890.
 (Plff's Exh. No. 6 at Enquête).
 —Continued.

J. J. CROWLEY,
Official Stenographer.

I, James J. Crowley, of the City of Montreal, Official Stenographer, on the oath I have taken, depose and say:—

40 That the foregoing sheets numbered from one to eight consecutively folios in all, are and contain a true and faithful transcript of the evidence of the above named witness by me taken by means of Stenography, the whole in manner and form as required by and according to law.

True copy by consent.

BARNARD & BARNARD,
 Attorneys for Plaintiff.

ABBOTTS, CAMPBELL & MEREDITH,
 Attorneys for Defendant.

(ENDORSED).

RECORD.

Deposition of Geo. Koester for Plaintiff. Copy. Fyled 23rd October, 1890. No. 6 at Enquête, fyled 24th October, 1890. J. L. Dep. P. S. C.

*In the
Superior
Court.*

No. 94.

No. 497.

Atlantic &
North-West
Railway Co.
vs. Walker.
Geo. Koester
for William
Walker.

Dated 14th
March, 1890.
(Plff's Exh.
No. 6, at
Enquête.

10

SCHEDULE No. 125.

In the Superior Court.

Present :—

The Honorable Mr. Justice Mathieu.

20

On this fourteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared John Brennan, of the City of Quebec, aged years, and witness produced on the part of the Defendant, who, being duly sworn, deposes and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. I believe you are tutor of your son, and your son is proprietor of one of the properties which was expropriated by the Atlantic & North-West Railway Company ? 30

A. I am tutor to the children by my late wife, Margaret Brennan, who was proprietor of that property.

Q. You received a notice that some portion of the property was required ?

A. Yes

Q. What was the amount they offered you ; I mean the amount offered at the time of the notice of expropriation ?

A. I have not got that paper, but I got a notice. I have not got it with me. Before I came here I knew there was going to be expropriation of the land. I think I was served with a notice in Quebec. 40

Q. You do not remember the amount, even if it was less than you finally got ?

A. I do not remember the amount offered. I suppose I have got it among my papers, but I have not brought it with me.

Q. After receiving notice that your property was required did you see the officials of the company and try to settle with them on the terms, and if so, will you simply tell me what passed ?

No. 95.
No. 497.
Atlantic &
North-West
Railway Co.
vs. Walker.
Deposition of
Jno. Brennan
for William
Walker.
Dated 14th
March, 1890.
(Plff's Exh.
No. 7, at
Enquête.
—Continued.

- A. I came here before the arbitration, and I went to Mr. Shaughnessey's office, in the Canadian Pacific Railway Company's offices, on the French Square, in the spring of eighty-seven, I think in the month of March, and I enquired for Mr. Shaughnessey. The gentleman in his office said he was away that day, but he expected him back the next day; I think that is what he said. In the course of conversation I told him what I called about, about the notice that the land was to be expropriated. He showed me the advantage I was going to derive from having a street put on the ground that was expropriated, instead of Blache lane; he showed me the plan there.
- 10 Q. That was the clerk?
- A. Yes, no doubt.
- Q. Before we describe the place did you see Mr. Shaughnessey after that?
- A. Yes, the next day.
- Q. Did he also refer to a plan?
- A. Yes.
- Q. And the plan the clerk had shown you the day before?
- A. Yes.
- Q. Will you tell us what the nature of the plan was, what did it show?
- 20 A. I cannot tell anything more about it than that the plan was there, and he promised to have a street in front of the property that was to be expropriated, between it and the railway.
- Q. It showed that after the expropriation your property would abut on a new street?
- A. Yes.
- Q. What was the width of that street?
- A. I would not be positive as to whether it was fifty or forty feet, but I think fifty feet.
- Q. Was it insisted upon that that street would be altogether a better
- 30 street than Blache lane.
- A. Yes, it was explained to me that that street would be opened up clear through.
- Q. It would connect Donegani street with Mountain street?
- A. Yes.
- Q. In particular, Mr. Brennan, I would like you to tell us whether it was put in the form, that not only would you not lose your frontage on the street, but you would have a better frontage on a better street?
- A. That I would have a good frontage in the rear on a good street; that I would have a good street in the rear of the property, parallel with St.
- 40 Antoine street.
- Q. After that what passed—you went to arbitration and named Mr. Duff as your arbitrator?
- A. Yes.
- Q. Mr. Cantin was the arbitrator of the Company?
- A. I do not remember who the other was.
- Q. The two together agreed upon an amount, what was the amount?
- A. The amount Mr. Duff wrote me that he got awarded, was two thou.

RECORD.

*In the
Superior
Court.*

No. 95.

No. 497.

Atlantic &
North-West
Railway Co.*vs.* Walker,
Deposition of
Jno. Brennan
for William
Walker.Dated 14th
March, 1890,
(Plff's. Exh.No. 7, at
Enquête.—*Continued.*

RECORD.

sand one hundred and fifty-four dollars.

Q. I understand you finally accepted it?

A. Yes.

Q. That was really the amount which the Company offered you after the arbitration, two thousand one hundred and fifty-four dollars, and you accepted it?

A. That is what I received from the Company after the arbitration.

Q. How long after that did you hear for the first time that there would be no street?

A. I think it was the following November-- I mean November, eighteen hundred and eighty-eight. 10

Q. When you first heard that there was to be no street, what did you do?

A. I came and saw Mr. Shaughnessy here.

Q. You did see him?

A. Yes, and told him about the conversation we had.

Q. Did you talk plainly to him?

A. Yes; I said he promised a street there.

Q. What satisfaction did you get?

A. He told me I might go legally to take redress, or have my legal re- 20
course.

Q. Did he convince you that you had been properly treated?

A. No.

Q. Did he give any excuse or explanation?

A. He did not at that time, that I remember, but he said, perhaps they might want more of the land by-and-bye.

Q. I understand that Mr. Shaughnessy had told you, after the expropriation, you could build a house on the new street?

A. Oh, certainly, he talked that; that it would be a good street.

Q. Will you tell us now what difference it would have made to you as 30
to the price you would have been willing to accept had you known there would be no street; would you have asked more, and how much more?

A. I would have asked a great deal more. I would not have been satisfied with less than great deal more-- three times as much, at least.

Q. Will you tell us whether you were well acquainted with Blache Lane before the expropriation?

A. Yes.

Q. In what condition was it?

A. It was a level, good narrow roadway or street, with houses on both sides, and it extended past two or three lots from Mountain street. 40

Q. Was there a sidewalk?

A. I think there was one on one side.

Q. Was it well graded?

A. Yes.

Q. And served for access to these properties in rear?

A. It was a good road, not broad, but half the width of an ordinary street; perhaps twenty to twenty-five feet wide.

No. 95.
No. 497.
Atlantic &
North-West
Railway Co.,
vs. Walker.
Deposition of
Jno. Brennan
Wm. Walker.
Dated 14th
March 1890
(Plff's Exh.)
No. 7, at en-
quête.)

CROSS-EXAMINED BY H. ABBOTT, ESQ., Q.C., FOR DEFENDANT.

RECORD

When you had the interview with Mr. Shaughnessy in the spring of eighteen hundred and eighty-seven you had not then named your arbitrator.

A. No.

Q. You were discussing with him trying to come to an amicable arrangement about the sale of your land?

10 A. That is what I want to see him for.

Q. That is what you discussed?

A. I went there to see what they would allow, and what was to be done about the settling of the matter; Of course I went away and left it to be arbitrate on.

Q. You went there for the purpose of discussing, and did discuss with Mr. Shaughnessy about how much you would sell your land for?

A. Yes.

Q. How was it it came to arbitration?

A. I was not satisfied with what they offered me.

20 Q. After Mr. Shaughnessy had explained to you he was willing to make a street there and pay a certain price for your land, you were not satisfied with that and you said you would leave it to arbitration?

A. That was the result.

Q. These negotiations fell through?

A. Not after the arbitration.

Q. Before the arbitration they fell through?

A. Yes.

Q. Instead of coming to an agreement you and Mr. Shaughnessy agreed to let it go in the usual course to arbitration?

A. Yes.

Q. How much did Mr. Shaughnessy offer you?

30 A. I do not remember that he offered me anything.

Q. How much did you agree to take?

A. I think I wanted a dollar and a quarter a foot. I have not got the offer he made me. I do not remember how much he offered.

Q. What was the area of the piece of land expropriated by the Company?

Witness.—The quantity of feet?

Counsel—Yes.

A. Three thousand one hundred and nine.

Q. So you wanted something over three thousand one hundred dollars, something like three thousand six hundred dollars, at the time you were dis-

40 cussing with Mr. Shaughnessy, when he offered you a street?

A. I think I had an idea of about a dollar and a quarter a foot damages and everything of that kind included,

Q. Mr. Shaughnessey refuse to pay you that?

A. He refused to pay me what I wanted, or I would not have gone to arbitration.

Q. Will you point out on this plan, Exhibit A 1 of Defendants, the property about which you were negotiating with Mr. Shaughnessey?

*In the
Superior
Court.*

No. 95

No. 497.

Atl. & N. W.

Ry. Co. vs.

Walker

Deposition of

Jno. Brennan

for Wm.

Walker.

Dated 14th

March 1890.

(Pliff's Exh.

No. 7 at En-

quête.)

—Continued.

- RECORD. A, It would be the rear portion of lot number six hundred and sixty-five, shown on the plan, the portion taken by the railway being colored red and marked number thirty-one.
- In the Superior Court.*
- No. 95. Q. You have no buildings on that lot fronting on Blache lane ?
- No. 497. A. None.
- Atl. & N. W. Ry. Co. vs. Walker. Q. When was it Mr. Duff wrote to you stating that the amount fixed by the arbitrators was two thousand one hundred and fifty-four dollars ?
- Deposition of Jno. Brennan for William Walker. A. In June.
- Dated 14th March, 1890. (Pliff's Exh. No. 7 at Enquête. —Continued.) Q. What date ?
- A. The third of June, eighteen hundred and eighty-seven
- Q. Will you please produce the letter which Mr. Duff wrote you ? 10
- A. I produce the letter, marked Defendants' Exhibit B 2.
- Q. Was it long after you signed your Deed you saw Mr. Shaughnessy the second time ?
- A. Not very long.
- Q. What do you mean by not very long ?
- A. I signed the deed in November, eighteen hundred and eighty-seven, I think, and it was within the next six months,
- Q. Not a shorter time than that ?
- A. I could not say positively now, but I do not think it was a shorter time than that. 20
- Q. Will you look at Defendants' exhibit number four and state whether that is a copy of the deed signed by you for the land in question ?
- A. I cannot state whether this is the deed : it is a copy of it, I suppose.
- Q. Look at the description of the property ?
- A. I may say with regard to this deed, I came here in a hurry.
- Q. That is not the question I am asking you, you can give an explanation afterwards if you wish. I ask you if that is the deed you signed, yes or no ?
- A. I could not say without seeing my signature to the deed I signed.
- Q. Read the deed, and state whether you have any doubt at all it is a copy of the deed you signed ?
- A. I did not read the deed I did sign. I trusted to the Notary. If I thought it was not provided there would be a street, I would not have signed 30 that deed. It was signed in a hurry in good faith. I have no doubt this is a copy of the deed.
- Q. It was about six months after signing, that you had the conversation with Mr. Shaughnessy you mention ?
- A. I think so.
- Q. You say Mr. Shaughnessy gave you no explanation at that time ; did he give you any explanation at any time, and if so, what ? 40
- A. I did not say he did not give me any explanation, he told me I might go to law.
- Q. Did he give you any other explanation at any time.
- A. Yes, this fall of eighteen hundred and eighty-nine, when I was up here. I went in to see him, because I had heard the Company had bought a piece of land belonging to the estate Dolan, between me and Mountain street, and I thought I might get that for an outlet to the land. Then we had some conversation,

and I told him what he had said in the first place, that he was going to give us a street on the expropriated land; he said then he wanted to give a street, buy land for a street outside of the expropriated land, but they wanted so much he let it drop.

Q. He wanted to know what you would sell for?

A. No, but he said he might want some of that land in the rear yet.

Q. Some of your land?

10

A. Yes.

Q. That is what you referred to before when you said he said he might want more of the land by-and-bye?

A. Yes, that was in the first place.

Q. Mr. Shaughnessey told you if he ever put a street there it would be outside of the expropriated land?

A. Now, when I remonstrated about it.

20

Q. Is it not a fact that at the first meeting you had with Mr. Shaughnessey in the spring of eighteen hundred and eighty-seven, when you asked him that price of one dollar and twenty-five cents, he told you that if you would not take less than that he would not give you a street at all, and you might go to arbitration?

A. There was nothing of that kind understood, he told me there was going to be a street all through.

Q. He told you to go to arbitration?

A. He showed me the place.

Q. After he discussed the matter he refused; he would not pay the amount you wanted and told you to go to arbitration?

A. I went to arbitration any way.

Q. Did he not tell you to go to arbitration?

A. I cannot swear he did. I supposed it was understood. I am not positive.

30

Q. How much did you value the whole of your property before the railway came at all, when it had Blache lane at rear?

A. I had no value set on it, but that property some years before was bargained for the whole lot at one dollar and twenty-five cents, that was some fifteen or sixteen years ago.

Q. About eighteen hundred and seventy-three, or eighteen hundred and seventy-four?

A. Eighteen hundred and seventy-five,

Q. About the time of the boom in land here?

A. I do not know about the boom.

40

Q. Do you pretend not to know there was a boom in Montreal between eighteen hundred and seventy-three and eighteen hundred and seventy-five.

A. I do not know the year, I thought it was eighteen hundred and seventy-six.

Q. You know the bottom fell out of the property after that for a while?

A. Yes, I believe so.

Q. That would be the whole lot, including the frontage on St. Antoine street with the buildings?

RECORD.

*In the
Superior
Court.*

No. 95.

No. 497.

Atlantic &
North-West
Railway Co.
vs. Walker.

Deposition of
Thos. Brennan for

Wm. Walker.

Dated 14th
March, 1890.

(Pliff's. Exh.

No. 7.

at Enquête.

RECORD.

*In the
Superior
Court.*No. 94.
No. 497.Atl. & N.W.
Ry. Co. vs.
Walker.Deposition of
Jno. Brennan
for Wm Wal-
ker. Dated
14th March,
1890. Plff's
Exh. No. 7,
at Enquête.
—Continued.

- A. Yes ; the buildings did not amount to much.
Q. Did you ever use that lane in rear, or did the occupants use it ?
A. No ; there is a gateway in front ; they did not require to use it.
Q. You did not use that lane ?
A. They never require to use it.
Q. Did you use it or not ?
A. I did not.

RE-EXAMINED.

- Q. Do you know the name of the assistant or clerk of Mr. Shaughnessey's 10
you mentioned in your deposition ?
A. No, I never saw him before.
Q. Could you describe him in any way ?
A. I would not know him if I saw him now.
Q. The plan that was shown you at that time, was it similar to B 1, that
is Donegani street extending all the way to Mountain street and a line across
Bisson street ?

A. Yes, I think so. It was only a short time before I was taxed on
Blache lane. The corporation collected a tax on Blache lane for widening or
something of that kind, and I was satisfied that street was going to be opened 20
to Donegani street, and after seeing the plan I was satisfied there was going
to be a street clear through alongside the railway,

RE-CROSS-EXAMINED,

Q. Do you swear that the plan shown to you by Mr. Shaughnessey's
clerk was the same as the plan exhibit B 1 ?

A. No, I do not, but the plan that was shown me showed there would
be a street between the railway and the ground that was not expropriated.
And further deponent saith not.

J. J. CROWLEY,
Official Stenographer. 30

I, James J. Crowley, of the City of Montreal, official stenographer, on the
oath I have taken, depose and say :

That the foregoing sheets numbered from one to eighteen consecutively,
being eighteen folios in all, are and contain a true and faithful transcript of the
evidence of the above-named witness, J. J. C., by me taken by means of steno-
graphy, the whole in manner and form as required by and according to law. 40

J. J. CROWLEY.

(True Copy by consent.)

BARNARD & BARNARD,
Atty's for Pet'r.

ABBOTTS, CAMPBELL & MEREDITH,
Atty's. for Deft.

(ENDORSED)

Deposition of John Brennan for Plaintiff. Copy fyled 23 Oct., 1890. No. 7, at enquête fyled 24 Oct., 1890.
(Paraphed.) J. L. Dep. P.S.C.

RECORD.

*In the
Superior
Court.*

No. 95.
No. 497 Atlantic &
North-West
Railway
Company *vs*
Walker De-
position of
Thos. Bren-
nan for
Wm. Walker
Dated 14th
March 1890
(Plff's Exh.
No. 7, at En-
quête).
—*Continued.*

10

SCHEDULE No. 126.

In the Superior Court.

Present :

20

THE HONORABLE MR JUSTICE MATHIEU.

On the first day of April, in the year of Our Lord, one thousand eight hundred and ninety, personally came and appeared James A. Ogilvy, of the City of Montreal, merchant, aged fifty-two years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You know Blache Street or Blache Lane ?

30

A. I did know it.

Q. You have known that place, I suppose, for many years ?

A. Since eighteen hundred and sixty-six, since I went to live there.

Q. You have been living close to that place ?

A. Since eighteen hundred and sixty-six I have.

Q. Do you know some of the proprietors there ?

A. Yes.

Q. Having properties fronting on Blache Street ?

A. Yes.

Q. Would you mention some of them ?

40

A. Mr. Houliston, of Three Rivers, now the Edson people, the corner lot there—it did not go up to Blache Lane, it only ran up to Torrance's, which fronted on Blache Lane.

Q. Since eighteen hundred and sixty-six that you have known that Street or Lane, is it to your personal knowledge that it has been open to the public ?

A. Certainly.

Q. What do you mean by being open to the public—will you explain

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No. 497.
Atl. & N.W.
Ry. Co. *vs*
Walker.
Deposition of
Jas. A. Ogil-
vy for Wm.
Walker.
Dated 1st
April. 1890.
(Plff's Exh.
No. 8, at en-
quête.)

RECORD. what you mean by that?

A. Anyone was at liberty to go in there. There were, I think, three houses fronting on the lane.

*In the
Superior
Court.*

Q. Was it possible for vehicles to pass on that Street?

A. Yes.

Q. And for pedestrians?

A. Yes.

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No. 497,
Atl. & N.W.
Ry. Co. vs.
Walker.

Q. Did you notice any sidewalks?

A. I think there was one on the south side, part of the way anyway, I do not think, as far as I can recollect, that there was any sidewalk on the north-side. I am just speaking from recollection now. 10

Deposition of
James A.
Ogilvy for
Wm. Walker.

Q. Do you know what has become of that Street now?

A. It has been taken up by the Railway.

Q. It was closed entirely by the railway?

A. Yes.

Dated 1st
April, 1890.
(Plffs Exh.
No. 8 at en-
quête.)

Q. Will you tell us whether the closing of that Street by the Company has done any damage to the proprietors, and also to the City; and, if so, to what extent?

—Continued.

A. I should think it has done damage to both: that is, unless the Railroad Company pays a tax equal to what that property would have paid, with tenement, or whether houses built on it. It has done damage to the proprietors. If I had a property fronting on St. Antoine Street, it would do me damage if I had no rear entrance—to what extent I cannot say. 20

Q. When you say it has caused damage to proprietors, you mean to each of them individually?

A. I do. In my estimation it has, I may not be an authority, but there is no doubt in my mind it has.

Q. Would you give more details as to the nature of the damages caused to proprietors and the City?

A. Well, there is no back entrance there and they have got to take the entrance off the front, that is a damage to the proprietor. They have got to have an entrance into the yard, therefore they will have much less frontage. As far as the City damage is concerned, I do not know anything about it, I should say the City assessors could answer that question, that is as to the revenue that would accrue. 30

Q. Assuming the City were the proprietors of that street would you consider damages done the City by the closing of the street?

A. Yes; unless the Company pay damages equal to what the tax would be on the property.

Q. Or any compensation?

A. Yes. 40

Q. I understand you have properties in the immediate vicinity of Blache street.

A. I have properties on the West side of Mountain street, corner of St. Antoine, I mean fronting a little lower down than where the street came out.

Q. Are you affected at all by the closing of Blache street or lane?

A. Had my property been tenement property I would not consider it affected, but as a business property, it would be worth three to five thousand dollars less.

Q. Now, with the present position of this street, it is impossible to go through with Donegani?

A. I do not know that it is impossible, it might be done yet, that is for such a man as the City Surveyor to say, that is a thing I cannot speak of very well.

10 Q. By what the plan shows since the closing of Blache lane, you would have to go through the Company's property to continue Donegani street?

A. I suppose some of the property would have to be taken from the Company. I cannot say, I am not engineer or surveyor enough to tell that, but I think there is a possibility, surely, of it being put through. It would make the lots on St. Antoine street not so very deep if they put it through now.

CROSS-EXAMINED.

20 Q. Is your property on Mountain street used as a business property or for dwellings?

A. As a business property.

Q. What kind of business property?

A. Dry goods.

Q. Does your shop or store immediately face Blache lane?

A. It would be a little below Blache lane, Blache lane would come out a little higher, but very little.

Q. Take the continuation of Donegani street through to Guy street, would it run through your property?

A. No; my property would be almost on the corner.

30 Q. You would not have a frontage on that street.

A. No.

Q. How does it affect your property?

A. It would affect it in this way, the corner lot would be more valuable if Blache lane was coming out there, my store facing there it would make it more prominent.

Q. Do you mean Blache lane as it was?

A. Even with the few people there I got money out of it.

Q. How many people lived there?

A. Only three families I think.

40 Q. You say that you know that this lane was a public lane, did you ever go in there yourself?

A. Yes; many times.

Q. Did you see people there?

A. Yes; I was there when Emous lived there.

Q. You went there to see them?

A. Yes.

Q. You were not in the habit of walking or driving there for pleasure?

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*In the
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Court.*

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Ry. Co. vs.
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Deposition of
James A. Olive
for Wm.
Walker.

Dated 1st
April, 1890.
(Plff's Exh.
No. 8, at en-
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RECORD.

*In the
Superior
Court.*

No. 96.
No. 497 At-
lantic &
North-West
Railway
Company *vs*
Walker.
Deposition of
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Ogilvie for
Wm. Walker.
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quête.)
— *Continued.*

A. No.

Q. It was not exactly a place for that?

A. No.

Q. What sort of a lane was it?

A. A blind alley, like Argyle avenue was for many a day.

Q. Did you ever know that lane to be used except by the people living on it and those who had business with them?

A. No, and I do not think it was.

Q. It was not a thoroughfare?

A. No, certainly not.

10

J. J. CROWLEY,
Official Stenographer.

I, James J. Crowley, of the City of Montreal, sworn stenographer in this case, being duly sworn, do depose and say:—

That the foregoing sheets, numbered from one to five, being five folios in all, are and contain a true and faithful transcript of the evidence of the above-named witness, taken by me by means of stenography, the whole in accordance with and as required by law.

20

Sworn, taken and acknowledged before me
at the City of Montreal this third day
of April, eighteen hundred and ninety.

J. J. CROWLEY.

W. G. PROCTOR,

Commissioner Superior Court, Lower Canada, District Montreal.

(True copy by consent.)

BARNARD & BARNARD,
for Petitioner.

30

ABBOTTS, CAMPBELL & MEREDITH,
for Defendant.

(ENDORSED.)

Deposition of James A. Ogilvie for Plaintiff. Copy. No. 8 at Enquête.
Filed 24th Oct., 1890. (Paraphed) J. L. Dep. P. S. C.

40

SCHEDULE NO. 127.

RECORD.

*In the
Superior
Court.*No. 97.
No. 497.
Atl. & N. W.
Ry. Co. vs.
Walker.
Deposition of
Patrick
O'Leary for
Wm. Walker
Dated 21st
March, 1890.
(Pliff's. Exh.
No. 9, at en-
quête.

On this twenty-first day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared: PATRICK O'LEARY, of the city and district of Montreal, Esquire, doctor of medicine, aged over forty years, witness produced by the Defendant, who being duly sworn deposesh as follows:—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

By Mr. Edmund Barnard, Q.C.:

10 Q. Are you acquainted with the property of Walker and Brennan, and the other properties expropriated on Blache lane?

A. Yes.

Q. Are you interested in property in the vicinity?

A. Well, I have my own property where I live on Saint-Antoine street, number two hundred and forty-three (243) near Aqueduct street, that is the nearest that I have. I have many more a little further on?

Q. Are you well acquainted with property in the locality generally?

A. Yes.

20 Q. Will you tell us whether the closing of Blache lane caused damage to the city as well as to the properties of the proprietors interested?

The Plaintiffs' counsel objects to this evidence in the Walker case as not in issue.

The objection is reserved.

A. Certainly. Provided the city did not receive the property value of the street that has been ceded.

Q. Would you be able to say if any damage was caused to the rear buildings of Mr. Walker, and the other parties expropriated, if they lost their access in rear?

30 The Railway Company's solicitor objects to this evidence in the Walker case as not in issue.

The objection is reserved by consent.

A. Certainly. Provided the city did not receive the property value of the street that has been ceded.

Q. Would you be able to say what if any damage was caused to the rear buildings of Walker, and the other parties expropriated, if they lost their access in rear?

The Company, Plaintiff's, Counsel objects to this question as an endeavor to contradict the terms of the award and written agreement, and as illegal.

The objection is reserved.

40 A. That depends on the depth of their lots. If they have ground enough to make double lots, and their access being on that street and the street is cut off it damages to a great extent—all these back lots and also all the front lots, especially those which have no entrance in front.

Q. Taking the rear, what would be the value of a lot in rear of eighty feet in depth fronting on the railway line, namely the projected street or Blache lane, per foot, if the lot had no access in rear?

A. You want me to put a value of so much a foot on these rear lots. That

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quête.

—Continued.

would depend on the size and the width of the street— that projected street, but of course if there is no access with any public street these lots are valueless if you cannot get out one way or the other. They have no real value—they taking the value from the other street, and it reduces the value of the whole lot. You cannot use it.

Q. Let us take the Hughes lot for one. One hundred and sixty feet (160 feet) is the depth?

A. Is it a double depth from Saint Antoine Street to the new line of one hundred and sixty feet.

Q. Supposing the Hughes lot was divided in two, making the rear lot of eighty feet in depth by thirty feet in front, what would be its value in that rear portion fronting on the new street, and if that new street was continued from Donegani street and extended to Mountain street?

A. Well, I cannot say to the exact amount, but I dare say it would be about one dollar a foot, because one lot on Bisson street was sold at two dollars and sixteen cents (\$2.16) from the hill and that is only two hundred and twenty-five feet from it; I think the Canadian Pacific Railway Company itself gave two dollars and sixteen cents a foot for it—that is on the hill, and I am putting that as it is so near the upper end at one half the price. I think it should fetch that.

Q. Was the Bisson street property built on. Was it vacant property?

A. Vacant property. It was not at all a favorable place. It was a hill. The hill was a disadvantage for the basements in building houses. These lots on the projected street would not be at a disadvantage, because it is level.

Q. So that a dollar a foot as I understand you to say would be the minimum value?

A. I would not take less at private sale. I might take less if obliged to sell at auction sale.

Q. And what is its real value assuming it has lost its access?

Q. With no entrance on Saint-Antoine street?

Q. Yes. It has none now?

A. You cannot do anything. Of course it is worth something to a man if he has some buildings to erect. It is always worth something. It has no marketable value. It is worth something but nobody will buy it. If you have no exit, it has no marketable value.

Q. Does your evidence apply to the other lots assuming them to be similarly situated to that of Hughes?

A. According to the depths of the lot. In making double lots, there would be a difference in value according to size.

Examined by Mr. Ethier, of counsel for the intervening party.

Q. You said a moment ago that this closing of Blache lane cause damage to the city of Montreal, if the city has not been paid. Assuming the city has not been paid, what amount would you fix approximately for damage to the city?

A. There is a calculation to be made to see how many houses could be built and what would be the capital required to build, and then capitalized the city revenue, and the city having one per cent the capital would be one per cent

every twenty feet. These double tenement houses rent, the lower ones thirteen to fourteen dollars a month, and the upper ones at from seventeen to eighteen dollars a month. You have to calculate how many feet it ts along, and capitalize the damages—one per cent damage to the city.

Q. So I understand the basis of the damage to the city would be the tax it derives when the street is built up ?

A. Yes. The calculation is very easy to be made.

10 Q. Have you an idea as to how many houses could be built on that street about ?

A. I am told you have cut away the end of it. Twenty feet double houses gives you about thirty dollars a month. It comes to a considerable amount. I calculated it for three hundred feet long. Provided it is all built on both sides, and provided everything is paid, it would bring at the least two thousand two hundred and fifty dollars a year (\$2,250) if the building on both sides were capitalized.

Q. That is what you make the damage to be to the city by the closing of that street ?

20 A. Yes. On said length of three hundred feet —double.

Q. Do you know for how long that street has been opened to the public ?

A. Well, I have been living and practising in the city these thirty-three years—thirty-three to thirty-five years, and I have been here ever since. I could not precise the number of years exactly, but I have attended patients there from twenty to twenty-five years ago.

Q. What was it then ?

A. Blache lane all the time.

Q. Could you pass their with vehicles ?

A. Certainly. I could turn round with my horse and carriage. There were two or three old houses there then.

Q. Did you notice any sidewalk ?

30 A. I could not be certain. I could not say so.

Q. Do you know in what state is that lane now ?

A. There is no street at all. I think the Canadian Pacific Railway passes over it.

Q. Is it the Canadian Pacific Railway, or the Atlantic and North-West Railway ?

A. We call it the Canadian Pacific Railway Company.

Q. It is the Railway Company any how, mentioned in this Act—that is the name used in this expropriation ?

40 A. Yes. We generally call it the Canadian Pacific Railway, although that is not the right name, as used in this expropriation.

Q. There is no street there now ?

A. No.

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Walker.

Dated 21st

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Enquête.

CROSS-EXAMINED UNDER RESERVE OF OBJECTIONS.

Q. Do you know of any revenue whatever that the City derived from that street ?

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A. There were three small houses erected on a lane extending from Mountain Street.

*In the
Superior
Court.*

Q. That is to say these houses were built on ground outside the line of the lane?

A. There was one built outside in the field, on the side of the lane, and one or two built on the lane.

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Q. What sort of houses were they, were they common houses, poor houses?

A. Yes. There was a carter living in one of them.

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North-West
Railway Co.,
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Q. How much revenue did the city get from them—a dollar a year? 10

A. I could not say.

Deposition of
Patrick
O'Leary for
Wm. Walker.

Q. In any event the city never got any revenue from that part of the lane fronting on Mountain street?

A. Well, all that I could say to-day was, there was two or three small houses which gave a few dollars—ten dollars perhaps. I could not say.

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March 1890
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quête.)

Q. Then how can you say that the city will suffer any damage in the present state of the lane—a damage of two thousand two hundred and fifty dollars a year, when immediately before the railway took possession it had no revenue at all?

A. If you understood my answer, you will see that I took it on the basis 20 if the lane was three hundred feet long and brick on both sides.

Q. But you say the city loses two thousand two hundred and fifty dollars (\$2,250)?

A. If the lane was built upon to the extent of three hundred feet—and in proportion.

Q. Then it was only assuming that if the city had taken possession of that lane, and sold it to an individual, he would have the right to use it, and had built upon it?

A. I mean to say that if the lane was open, and the property on each side was built upon—assuming twenty feet houses front, and two tenements each 30 twenty feet, it would cost that proportion.

Q. On both side of the lane?

A. I assuming the lane to be a small street with an opening at each end?

Q. So the damage is only based upon the assumption that the street is built upon?

A. Yes. If it is built upon.

Q. That assumption might not have been realized for fifty years or a century. If not built upon the city would get next to nothing?

A. That would depend on circumstances.

Q. Your assumption is purely hypothetical? 40

A. Yes. Just as I have explained.

Q. Do you pretend to assess the actual damage he has suffered.

A. No more than I have been saying by my answers.

Q. I mean the actual real damage?

A. Certainly it closes one street, and cuts off the chance of getting a revenue as mentioned in one of my answers.

Q. I mean the actual real damage?

A. Certainly it closes one street, and cuts off the chance of getting a revenue, as mentioned in one of my answers.

Q. Do you mean to say that the City of Montreal has lost any money by the railway passing there?

A. Certainly it has lost. I cannot mention any other amount. That depends on circumstances.

Q. There is no real damage?

A. I cannot say what it is. I have given you my answer.

Q. Then there is no real damage that you can speak of?

10 A. I say the City suffered damage, but I am not prepared to say more than my previous answers imply.

Q. What knowledge have you that this property on Bisson Street was purchased at two dollars and sixty cents a foot?

A. I have seen the papers mentioning the same, and the amount given, and I had the book-keeper of Mr. Rodier to give figures.

Q. Who was the gentleman who owned that property?

A. The Honorable Mr. Rodier, and Mr. Ebacher is his book-keeper, and I read that document.

20 Q. Was the amount paid merely for the value of the land or any other damage. Was any other damage paid for?

A. Yes. For the amount of the rent, and any other damage that would accrue from it.

Q. Would you consider it any material damage to property like that for a railway line to be running behind it—or behind a man's house?

A. Some do not like the noise and object a great deal. It is a question of sentiment. As for myself I do not mind it much.

Q. Do you think Mr. Rodier sold at two dollars and sixteen cents a foot irrespective of all damages?

30 A. What damage he suffered was included in that price, I would assume. I can only say what I have read and what I have seen and the facts that have come under my own notice.

Q. What is the value of that land without damages?

A. It is pretty hard to say.

Q. I want an answer?

A. I would take fifty cents off for sentimental damages, and allow a dollar and a half for damages.

Q. Do you think any property situated there was damaged at that time?

A. I could not tell you.

Q. Would you put that one dollar and a half as it stood?

40 A. Some lots on Osborne street, I was told, sold for one dollar and fifty cents, and two dollars, between Cathedral and Windsor streets.

Q. But at this point (Bisson street)?

A. I have no personal knowledge, more than Mr. Rodier's sale, I have on Osborne street.

Q. I ask you if you would buy land there at one dollar and fifty cents?

A. I think I might. Actually I believe I would. It is a vrey valuable place there.

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(Plff's. Exh.
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quête.
—Continued.

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—
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 —Continued.

Q. Especially when you know the Canadian Pacific Railway Company was going to expropriate there?

Q. No, I would not. On account of the Railway.

A. Do you say that you would, or that you would not give a higher price?

A. I told you that some people object on account of the Railway, but that I did not mind. I bought a property from this Company myself, and was told that the property was of no value, still I gave the full value asked. As for myself it makes no difference. Bisson street has disadvantages one way, 10 and it had some advantages in another way. As a speculation I would not give more on account of the Canadian Pacific passing there, and I would not give less— as a speculation. I may be a different man to others—there is my opinion. I do not think the Company has injured the place at all—on the contrary.

Q. The value of these rear lots which you spoke of on Blache Lane which fronted on Blache Lane, you say would have been destroyed, but only if there was no entrance on Saint Antoine Street?

A. If there was no inlet. If there was no entrance on St. Antoine Street, these lots would not be marketable, but if there was an entrance on St. Antoine Street they would be worth a little more in value. 20

Q. If you put the value of the entrance from St. Antoine Street, what would be your valuation?

A. That you would have to take into consideration—the breadth of the lot, and what would be the value of that that remained. It would be according to the purposes that a man would use it for. If for a factory or a livery stable it would be of some value, otherwise I would put no value for it except that it would diminish the value of the frontage. All we want when we construct houses is eighty feet depth, the rest we get no value out of it. If you take the frontage from St. Antoine Street, you get a dollar for the whole. If only seventy feet of depth on St. Antoine Street, is worth two dollars a foot. 30 This Blache Lane, being of less value than St. Antoine Street, that is why I said one dollar a foot.

Q. But if there was a frontage from St. Antoine street, what would be the value of them?

A. I could not say that. It would depend on the use you would have for the land.

Q. Would it not depend on the purpose for which the party would use the land?

A. I suppose so. But a street through there with a good entrance for the front lots would be of some value, and would save eight feet frontage on 40 Saint Antoine Street, with the railway in the position it is there it would not raise the worth of the land much. I say not much because a man would be calculating the area, and he would just pay one half for it. We do not want one hundred and sixty feet. It is a loss.

Q. Is that lot divided into two lots?

A. This lot is one hundred and sixty feet deep and divided by two it is eighty feet.

Q. Is it divided as it stands ?

A. I do not know.

Q. Is it one lot or two lots ?

A. No.

Q. Does it run right back, or is it cut in half ?

A. No, It is not cut in half.

Q. Therefore your valuation was made on the assumption that some day some person would cut in half. It makes one frontage where there should be two frontages ?

A. Yes.

10 Q. As the property now stands cut off in the rear without a frontage on St. Antoine street and the length of the lot as it is now, what do you value the back part at ?

A. It is the same question asked all the time only in a different form. I cannot answer better than I did before.

Q. What do you value the whole of it at ?

A. It depends upon circumstances—what you are going to use it for.

Q. I want to ascertain ; I want you to answer this question. I want to know as to whether you can say whether that property in the market is worth the same thing, and as to what it is worth irrespective of what is going to be placed on it. What it is worth in the market ?

A. I answered that several times and I refuse to say anything more about it.

Q. You say if somebody was going to put a property upon it it would alter its value ?

A. If I bought the property I would buy it to the depth of eighty feet. I would not buy the rest ; or in other words, I would give one-half the price for the whole.

Q. In other words, you would give one dollar a foot for the whole property.

30 A. I would give more than that. I would give two dollars a foot for the half, on seventy or eighty feet deep on St. Antoine street.

And further deponent saith not.

James Henry Browning, of the City and District of Montreal, one of the Stenographers in this cause, doth on the oath he has already taken, depose and say :—That the foregoing deposition, containing thirteen sheets in all, is a true and faithful copy of the evidence by me taken by means of Stenography of the above-named witnesses in this cause, the whole in manner and form as required by and according to law.

(Signed) JAMES HENRY BROWNING.

40

(True copy by consent.)

BARNARD & BARNARD,
Attorneys for Petitioner.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendant.

RECORD.

*In the
Superior
Court.*

No. 97.

No. 497.

Atl. & N. W.

Ry. Co. vs.

Walker.

Deposition of

Patrick

O'Leary for

Wm. Walker

Dated 21st

March, 1890.

(Plff's. Exh.

No. 9, at en-

quête.

—Continued.

RECORD.

(ENDORSED.)

*In the
Superior
Court.*

Deposition of Patrick O'Leary, Esq., M. D., witness for the Defendant.
Copy. Petitioner's Exhibit No. 9 at Enquête. Filed 24th October, 1890.
(Paraphed.) J. L., Dep. P. S. C.

No. 57.
No. 497.
Atlantic &
North-West
Railway Co.
vs. Walker.
Deposition of
Patrick
O'Leary for
Walker.
Dated 21st
March, 1890.
(Plff's Exh.
No. 9, at
Enquête.

10

SCHEDULE No. 128.

In the Superior Court.

Present :—

20

The Honorable Mr. Justice Mathieu.

On this first day of April, in the year of Our Lord one thousand eight hundred and ninety-one, personally came and appeared Thomas G. Shaughnessy, of the City of Montreal, Assistant Manager of the Canadian Pacific Railway, aged thirty-six years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

Q. You are aware that Mr. Rielle valued the property previous to the expropriation, for the purpose of giving the necessary notices to the parties ?

A. Most of them, yes.

Q. He received his instructions from you ?

A. I think as a rule he did.

Q. Where your instructions that he should value on the basis that the expropriated parties would not lose their access in the rear after the expropriation ?

A. I do not remember giving Rielle any instructions ; in fact, I do not remember instructing him in regard to any of these particular properties.

Q. Did you show Mr. Rielle the plan of the new street ?

A. I do not recollect. I do not recollect I had any conversation with Mr Rielle about these particular properties.

Q. Can you state absolutely you instructed Mr. Rielle to value on the basis of no access or access ?

A. I should not like to say positively I had no conversation with Mr. Rielle, but I feel confident I never gave him any such instructions.

30

40

No. 98.
No. 497.
Atlantic &
North-West
Railway Co
vs. Walker.
Deposition of
Thos. G.
Shaugh
nessy for
Wm. Walker,
Dated 1st
April 1890.
(Plff's Exh.
No. 10, at
Enquête.)
—Continued.

Q. Are you aware that Mr. Rielle did value on the basis that the expropriated parties would have an access in the rear after the expropriation, such as the access they had through Blache Lane before the expropriation ?

A. I am not. I might explain that Mr. Rielle very rarely came to me about the valuation he put on the properties, except some question arose on which he wanted information, and to the best of my belief he never made any such inquiry about the particular properties under consideration.

Q. At the time Mr. Rielle made his valuation your intention was there should be a street ?

10 A. I could not say as to that from memory. I do not know just when Mr. Rielle made his valuation ; I would have to refer to find out.

Q. In one word, are you prepared to swear that the valuation of Mr. Rielle on the basis that there would be a street was not authorized by you in any way ?

A. To the best of my belief it was not.

Q. And that you never heard of his valuing on that basis ?

A. I have no recollection of it. I have no recollection of having any conversation with Mr. Rielle or anybody else about it.

20 Q. This is the first time you have heard of his having valued on that basis ?

A. No, I cannot say that, because I heard it stated once before that it was alleged Mr. Rielle valued on that basis since the commencement of the case.

CROSS-EXAMINED.

Q. In fact you have no recollection of giving Mr. Rielle any special instructions in connection with these properties ?

30 A. No. As a matter of fact Mr. Rielle went on after the plans were fyled and made his valuations without consulting me. Once in a while a question came up, but not about those properties.

Q. As a rule the land Surveyor selected by you to make an estimate of the proper compensation to be given to proprietors requires no special instructions ?

40 A. He takes the official plan we file, goes over the properties and makes his estimate entirely independent of the Company. Once in a great while he would come to me if he thought the valuation he put unfair to the Company, he would say for some special reason he had given a valuation beyond the value of the property, but on the subject of valuations I had very few conversations with Mr. Rielle.

And further Deponent saith not.

J. J. CROWLEY,
Official Stenographer.

I, J. Crowley, of the City of Montreal, official Stenographer, on the oath I have taken depose and say :—That the foregoing sheets numbered from one to three consecutively, being three folios in all, are and contain a true and faithful transcript of the evidence of the above-named witness by me taken by

RECORD.

*In the
Superior
Court.*

No. 98

No. 497.

Atl. & N. W.

Ry. Co. vs.

Walker

Deposition of

Thomas G.

Shaughnessy

for Wm.

Walker.

Dated 1st

April, 1890.

(Plff's Exh.

No. 10 at En-

quête.)

—Continued.

RECORD. means of Stenography the whole according to law.

J. J. CROWLEY.

*In the
Superior
Court.*

(True copy by consent.)

BARNARD & BARNARD,
Attorneys for Petitioner.

No. 98.
No. 497.
Atlantic &
North-West
Railway Co
vs. Walker.
Deposition of
Thos. G. Shaugh-
nessy for
Wm. Walker,
Dated 1st
April 1890.
(Pliff's Exh.
No. 10, at
Enquête.)
— *Continued.*

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendant.

(ENDORSED.)

Deposition of T. G. Shaughnessy for Plaintiff. Copy. Prod. 23rd Oct., 1890. Petitioner's Exhibit No. 10 at Enquête. Fyled 24th Oct., 1890. (Paraphed.) J. L., Dep. P. S. C.

SCHEDULE No. 129.

20

In the Superior Court.

Present.—

The Honorable Mr. Justice Mathieu.

No. 99.
No. 497.
Atlantic &
North-West
Railway Co.
vs. Walker.
Deposition of
A. G. Fowler
for Wm.
Walker.
Dated 1st
April 1890
With a copy
of the Report
made by him
annexed to
Road Deposi-
tion. (Pliff's
Exh. No. 11.

Having been requested by the proprietors of the Brennan, Koester, Walker, Hughes and Watt lots, on St. Antoine street formerly fronting on Blache lane to give an opinion regarding the damages caused to those lots by reason of the construction of the Railway embankment, I report as follows :

Assuming as I am asked to do that the award of the arbitrators on the expropriation by the Railway Company of part of said lots, as they originally stood, was made on the understanding that a street fifty feet wide would after the expropriation form the northern boundary of said lots, I agree with the arbitrators that an increased value would have been given to the portion remaining of said lots by reason of said new street which would have been an improvement on the access in rear which Blache lane formerly afforded. On no other hypothesis could the construction of the Railway have increased the value of the remaining portion of the lots, justifying the reduction of the amount which the arbitrators would otherwise as appears by their minutes, have awarded for the portion expropriated.

As it is, the Railway embankment and trestle work being built up to the line of the northern boundary of the lots, the effect is to cause great and manifest damage to those properties in the front part of the lots facing on St. Antoine street, as well as in the rear.

These lots have still, after expropriation, a depth of about one hundred and sixty feet.

The arbitrators seem to have awarded one dollar a foot for the portion taken by the railway. While admitting that the valuation of the arbitrators in this respect is in conformity with that of many persons well competent to judge and possibly in conformity with actual transactions in the vicinity, or in localities similarly situated, as I am told it is, my own opinion would have been that the market value of the part taken was not more than seventy-five cents a foot.

10 But considering that in matters of Expropriation, the rule of law, as I understand, is to value the property taken on a liberal scale, twenty-five per cent. being the proportion added to the market value both in England and in France. I consider that the valuation of one dollar per foot is, under all the circumstances, a safe basis to go upon. As matters now stand, dividing what is left of the property into two parts, I am of opinion that the part in rear, say a lot depth of eighty feet deep from the northern boundary is not worth more than ten to twenty cents per foot. Putting the value at twenty-five cents would certainly appear the highest possible maximum, and it would be one which I would hardly feel justified to adopt. Therefore I value the rear lot as it stands

20 at present at an average of seventeen and one half cents per foot, and the consequent loss at eighty-two and one half cents a foot for the rear lot.

With regard to the value of the front portion of the lot, there seems to be little room for any difference of opinion that two dollars per foot would fairly represent the ordinary value of the property. The effect of the Railway embankment on that portion of the property by destroying all access from the rear, is to leave the property worth no more than one dollar, or at the highest estimate, one dollar and twenty five cents, or say an average loss of eighty-seven and a half cents, this decrease being caused principally, leaving out minor considerations, by the necessity of having passages of gateways made on the St. Antoine Street front, thus reducing the area for stores, and as a consequence, causing a reduced rental.

30 In the case of Mr. Walker, there is an additional claim on the railway. Before the expropriation, he built his factory in view of the access he had to Blache Lane, and in a manner to make the most of the advantages it afforded. By reason of the expropriation, he had to remove his part of building and machinery, so as to bring the whole building within the new boundary, for which he was unanimously allowed by the arbitrators three thousand four hundred dollars, with two thousand five hundred dollars additional for stoppage and loss of trade, which amounts seem to have been very moderate, and much below the actual damage suffered. Under the present altered circumstances, he would be compelled to close the windows of his new building, the trestle work of the

40 railway being close up to the building, and in one or more places, actually thrusting on the wall, endangering the building and blocking up all access had all light from the front on that side. Again the watershed from the embankment beyond the trestle work, runs down and enters the lower flat, causing damage in various ways, but principally by rusting iron and tin therein stocked.

The consequence is that the building is no longer fitted for the purposes for which he put it up, and his only alternative under all the existing circum-

RECORD.

*In the
Superior
Court.*

No. 99.
No. 497.

Atlantic &
North-West
Railway Co.
vs. Walker.
Deposition of
A. G. Fowler
for William
Walker.

Dated 1st
April, 1890.
With a copy
of the Report
made by him
annexed to
Road Depo-
sition (Plff's
Exh. No. 11.

—*Continued.*

RECORD

*In the
Superior
Court.*

No. 99.

Nc 497 At-
lantic &North West
RailwayCompany vs
Deposition of
A. G. Fowler
for William
Walker.Dated 1st
April, 1890.With a copy
of the Report
made by him
annexed toRoad Depo-
sition (Plff's
Exh. No. 11.

—Continued.

stances, is to give up the building and set up his factory in some other locality. The building, representing a value of five thousand dollars is damaged to the extent of seventy-five per cent at least, and two thousand dollars additional would be a very moderate indemnity for the stoppage of his trade, and the removal elsewhere, and which will be a little less than the amount originally allowed by the expropriators for changes to the building within the same lot and damages.

Finally I consider that for the reason already given the indemnity of six thousand five hundred dollars awarded by the expropriation arbitrators was rather too low that too high.

It seems it was reduced by the Railway to the extent of one thousand two hundred and fifty dollars, on a misapprehension, as I understand. At any rate, Mr. Walker, accepted the reduced amount for the sake of peace, and on the understanding that he was to have a street, fifty feet wide, and as the whole matter is now re-opened, Mr. Walker claims, and in my opinion his claim is a just one, that the one thousand two hundred and fifty dollars, deducted should be now allowed to him, and the same applies to the deductions made at the same time in the case of some of the other parties, if not all of them.

Montreal, December 20th., 1887.

(Signed),

ALEX FOWLER,

(True Copy.)

BARNARD & BARNARD,

Attys. for Plaintiff.

On the first day of April, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared ALEXANDER G. FOWLER, of the City of Montreal, architect, aged sixty-seven years, and witness produced on the part of the Plaintiff who, being duly sworn deposes and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; 30 I am not interested in the event of this suit.

Question. What is your occupation ?

Answer. Architect.

Q. Will you take communication of Plaintiff's Exhibit number three, and state whether it is true copy of the report that you have made and which has been mentioned in your deposition made on the seventh day of March instant ?

Objected to this question as illegal it not being competent for the witness to make evidence by the production of the report which is not ordered by the Court or part of the record in the case.

Objection maintained,

Q. Will you look at that report of yours which you made to refresh your memory and state what are the damages that have been caused to the Proprietors, say Messrs. Walker and Hughes of Blache lane, by the construction of the railway there, and consequently the closing of Blache lane ?

Objected to this evidence as illegal and as tending to contradict the award made by the arbitrators, and the authentic deed of sale passed by the proprietors to the Railway Company.

Objection reserved.

A. The damages are caused by the blocking up Blache lane on the supposition as I went, that there was a street to be fifty feet wide there, and the damages caused therefore is the decrease of the value of the property in the rear lots facing this new street that was to be. With regard to Mr. Walker his factory was built with a doorway into this street and he has none now, that is blocked up. These are some of the damages caused by the railway embankment.

10 Q. There is also, I suppose, the deprivation of ingress and egress for that property.

A. Yes, Mr. Walker's property specially suffered because his building was built for the purpose of getting egress or ingress from Blache lane, or the new street, and it is so built there is no means of getting into his property now.

Q. Could you give any figure as to the amount of damage he suffers?

A. As far as his business is concerned the building should be taken away from there altogether, because he has no access to it.

Q. What is the value of that building?

A. I consider the building is worth five thousand dollars, and to take it down and rebuild it somewhere else would be a loss of seventy-five per cent.

20 Q. Out of that amount of five thousand dollars?

A. Yes, and it is not a detailed estimate, it is simply an approximation.

Q. As to the City, is there any damage caused to the City by this closing of Blache lane?

A. If there was a street there, there would be houses, and these houses would bring a revenue to the City.

Q. Have you an idea as to the amount, an approximate amount as to what the City would lose?

A. No, I did not go into that particular.

30 Q. You said something about the damages to the lots fronting on Blache lane, what about the lots fronting on St. Antoine street?

A. I consider the lots fronting on St. Antoine street for stores, two dollars a foot, that is the back half the lot, providing always there was a back entrance.

Q. For the other lots you did not fix the amount—for lots on Blache lane on a fifty foot street?

A. I would say with a fifty foot street seventy-five cents a foot.

Q. Do you mean seventy-five cents more, or the full value?

A. Seventy-five cents a foot for the half, that is the half between St. Antoine street and Blache lane, for say eighty feet in depth.

40 Q. What difference would this bring on behalf of the proprietors, you say it would be worth seventy-five cents a foot, what was the value of it before?

A. I suppose forty cents.

Q. It would have increased to seventy-five cents a foot with a street of fifty feet?

A. Yes.

Q. What is the value of these properties with a back entrance and with the closing of Blache lane?

A. The back part of the lot where there is no entrance nor any access I

RECORD.

*In the
Superior
Court.*

No. 99,
Nc 497 At-
lantic &
North West
Railway
Company vs
Deposition of
A. G. Fowler
for William
Walker.

Dated 1st
April, 1890.
With a copy
of the Report
made by him
annexed to
Road Depo-
sition (Plff's
Exh. No. 11.
—Continued.

RECORD. consider from twelve to fifteen cents.

Q. The front lots, how much do you consider they are worth now?

A. Two dollars.

Q. I mean without the rear entrance, how much would they be worth?

A. They are not worth a dollar.

CROSS-EXAMINED.

No 99.
No. 99.
No. 497.
Atlantic &
North-West
Railway Co.
vs. Walker.
Deposition of
A. G. Fowler
for Wm.
Walker.
Dated 1st
April 1890
With a copy
of the Report
made by him
annexed to
Road Deposi-
tion. (Pliff's
Exh. No. 11.
—Continued.

Q. Do you know of any properties having been sold on St. Antoine street between Mountain and Bisson street at the price of two dollars a foot? 10

A. No.

Q. On any part of the street?

A. No, I have not heard of any sales being made in that neighborhood.

Q. What is the highest price you have known properties to fetch on St. Antoine street at a sale?

A. I do not know of any.

Q. Do you know of any near that neighborhood on which we could base a comparison?

A. There is Mr. Ogilvy's at the corner of Mountain and St. Antoine, four dollars. 20

Q. What does that mean?

A. Four dollars a foot.

Q. Does it mean it was sold or bought?

A. Sold at that.

Q. When?

A. It is some years ago.

Q. Can you tell us nearer than that. Was it one or two years ago?

A. More than two years.

Q. More than three years?

A. I altered the property after it was bought. I think it is three years since. 30

Q. That would be in the spring of eighteen hundred and eighty-seven?

A. Yes. My information I got from Mr. Ogilvy himself.

Q. All you know about it is what Mr. Ogilvy told you?

A. Yes.

Q. Was it he who bought it?

A. Yes.

Q. That lot had a frontage on both St. Antoine and Mountain Streets?

A. Yes.

Q. I thought you said a moment ago you knew of no sales in that neighborhood? 40

A. That is only hearsay.

Q. There were buildings on that property, I presume?

A. Yes.

Q. Stores?

A. Yes, we altered the old building into stores.

Q. How much property was there in that?

- A. I do not know.
- Q. You do not know what the total price paid was ?
- A. No.
- Q. Did that Railway Company take any part of that property of Ogilvy's ?
- A. No.
- Q. Are you quite sure ?
- A. Yes.
- Q. You are as sure of that as anything else you have sworn to in this examination ?
- 10 A. They took none of it.
- Q. You are aware that Mr. Walker, whom you have spoken of, received from the Railway Company five thousand two hundred and fifty dollars as indemnity ?
- A. I understand so.
- Q. You are aware, are you not, that that included some thousands of dollars for the removal of his building, moving back his building ?
- A. Yes.
- Q. And stoppage and loss of trade ?
- 20 A. Yes.
- Q. The rest was for the land taken ?
- A. Yes.
- Q. Is the sale of Ogilvy's property the only one you have heard of in that neighborhood ?
- A. Yes.
- Q. You are aware, I suppose, that the sale took place after the Railway Company had deposited its plan, and it was publicly known they would pass there ?
- A. I think it was before.
- 30 Q. You stated in the spring of eighteen hundred and eighty-seven ?
- A. Well, I am not aware of that.
- And further deponent saith not.

(Signed.)

J. J. CROWLEY,
Official Stenographer.

I, James J. Crowley of the City of Montreal, Official Stenographer, on the oath I have taken, depose and say that the forgoing sheets, numbered from one to seven consecutively, being seven folios in all, are and contain a true and faithfull transcript of the evidence of the above named witness, by me taken by means of Stenography ; the whole in manner and form as require by and according to law.

(True copy by consent)

ABBOTTS, CAMPBELL & MEREDITH,
Attys. for the Plaintiffs.

BARNARD & BARNARD,
Attys. for Petr.

(ENDORSED).

Deposition A. G. Fowler for Plaintiff. Copy. Petr. Exh. No. 11 at Enquête
Filed 24th Oct. 1890. (Paraphed) J. L. Dep. P. S. C.

RECORD.

*In the
Superior
Court.*

No. 99.

No. 497.

Atlantic &
North-West
Railway Co.
vs. Walker.

Deposition of
A. G. Fowler
for William
Walker.

Dated 1st

April, 1890.

With a copy
of the Report
made by him
annexed to

Road Depo-
sition (Plff's
Exh. No. 11,
—Continued.

SCHEDULE No. 130.

RECORD.

In the Superior Court.

Province of Quebec, } District of Montreal. }

In the Superior Court.

The Atlantic and North-West Railway Company,.....Plaintiff.

AND

William Walker,.....Defendant.

No. 100. Consent of parties that copies of all the depositions taken and of the Exhib. fyled in the case of Turcotte vs. Atl & N. W. Ry. Co. and the City of Montreal Int. party S. C. M., serve as part of the Evidence in the cause and vice versa, dated 4th April, 1890. (Plff's Exh. No. 12.)

The parties consent that the copies of all the depositions taken and of the exhibits fyled in the case of Honorable Arthur Turcotte, es qual., Petitioners, rs. The Atlantic and North-West Railway Company, Defendant, and the City of Montreal, Intervening Party, S. C. M., No. 842, serve as part of the evidence in this cause and vice versa.

Montreal, April, 4th, 1890.

(Signed)

ABBOTTS, CAMPBELL & MEREDITH, Attys. for Plaintiffs

BARNARD & BARNARD,

Attorneys for Defendants. 20

(True Copy)

G. H. KERNICK,

Deputy Prothonotary.

(ENDORSED)

Consent. Fyled 2nd May 1890.

(Paraphed) A.B.L. 12. Exh. No. Fyled 25th Oct. 1890. (Paraphed J. L.

Dep. P.C.S.

30

No. 101. Admission of parties that all the copies of deeds and other documents fyled by the defendants as their Exhibits are true copies of the originals of which they purport to be copies Dated 10th June 1890.

SCHEDULE No. 131.

Province of Quebec, } District of Montreal. }

In the Superior Court.

The Honorable Arthur Turcotte es qual.....Plaintiff.

vs.

The Atlantic & North West Railway Company.....Defendants, 40

AND

The City of Montreal.....Intervening Parties.

The parties to save costs admit :—

That all the copies of deeds and other documents produced and fyled by the Defendants as their Exhibits are true copies of the originals of which they purport to be copies.

Montreal, 10th June, 1890.

BARNARD & BARNARD,
Attorneys for Plaintiff.

ROUER ROY,
Attorney for Intervening Parties.

(ENDORSED)

10

Admission. Fyled 24th October, 1890. (Paraphed.) G. H. K., Dep.
P. S. C.

20

30

40

RECORD.

*In the
Superior
Court.*

No. 101.

Admissions of parties that all the Copies of Deeds and other Documents fyled by the Defts. as their Exh. are true copies of the originals of which they purport to be copies. Dated 10th June, 1890.

10

20

30

40

SCHEDULE No. 135.

RECORD.

*In the
Superior
Court.*

No. 102.
Extract from
plan fyled in
the office of
the Assessors
of Montreal
shewing the
lands of Atl.
& N. W. Ry.
coored red
and green for
the purpose
of assessment
Exh. B3 of
Defts. at En-
quête. Fyled
21st March
1891.

(ENDORSED.)

Exhibit B3. Fyled by Defendants at Enquête. Eyled 21st March 1891.
(Paraphed). E. B. P. P.

Extract from plan filed in the office of the Assessors of Montreal
 shewing the lands of the Atlantic and North West Railway Company,
 Colored Red and Green for the purpose of assessments.



RECORD.

*In the
Superior
Court.*

No. 102.

Extract from
plan fyled in
the office of
the Assessors
of Montreal
shewing the
lands of Atl.
& N. W. Ry.
coored red
and green for
the purpose
of assessment
Exh. B3 of
Defts. at En-
quête. Fyled
21st March
1891.

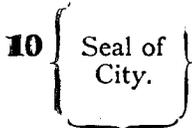
(ENDORSED.)

Exhibit B3. Fyled by Defendants at Enquête. Eyled 21st March 1891.
(Paraphed). E. B. P. P.

SCHEDULE No. 136.

(Letter Head.)

ROLL OF 1886.



CITY OF MONTREAL,

CITY HALL,.....189

| | | | |
|-------------------------------|-------------------------|-------------------|----------|
| Mountain and Blache Lane,.... | No. 657-8 | J. Baylis | \$4,000 |
| " " " | No. 657 10, 11, 12..... | ..... | 1,500 |
| " " " | — Savage..... | Part 658..... | 2,500 |
| " " " | Mrs. J. O'Connell..... | Sold to F. Huston | 750 |
| " " " | Wm. Walker..... | Pt. 661 | 4,000 |
| 20 " " " | Widow Koester. | 662 | 2,000 |
| " " " | Michael Dowling..... | Pt. 565a. | 3,000 |
| St. Antoine Street..... | Mrs. O'Connell..... | 655 | 5,000 |
| " " | do | 655 | 7,000 |
| " " | A. Watt..... | 660 | 13,000 |
| " " | Edward C. Hughes.... | Pt. 661 | 5,500 |
| " " | Wm. Walker..... | Pt. 661 | 2,509 |
| " " | Mrs. Koester. | 663 | 1,800 |
| " " | Pierre Mailloux. | 664 | 3,500 |
| " " | Mrs. Brennan..... | 665 | 6,000 |
| | | | \$62,050 |

30 I certify that the above is a true copy of the assessment rolls of the City of Montreal for the year 1886 with respect to the properties therein mentioned.

(ENDORSED).

Defendant's Exh. B.4. fyled 28th March, 1891. (Paraphed,) E. B., D. P.

RECORD.

*In the
Superior
Court.*

No. 104.
Statement
included in
General As-
sessment of
Railway Pro-
perty from
Windsor to
Mountain
Streets.
(Exh. No. B.
5 of Defts.
at Enquête.)

1889.

SCHEDULE No. 137.

CITY OF MONTREAL.

ASSESSORS' DEPARTMENT, CITY HALL.

10

| | | | |
|-------------------------|------------------------|----------------------|----------|
| Mountain Street..... | Dowling & Charlebois.. | Pt. of 665..... | \$ 300 |
| St. Antoine Street..... | Mrs. O'Connell..... | Pt. 655..... | 6,000 |
| " "..... | Estate Alex. Watt..... | Pt. 660..... | 13,000 |
| " "..... | T. Darling..... | Pt. 661..... | 5,000 |
| " "..... | W. Walker..... | Pt. 661..... | 10,000 |
| " "..... | F. Sauvageau..... | 663 pt. 662..... | 6,000 |
| " "..... | A. N. Mailloux..... | 664..... | 3,500 |
| " "..... | Mrs. Brennan..... | Pt. 665..... | 6,000 |
| | | | <hr/> |
| | | | \$39,800 |
| "..... | C. P. R..... | 63969 feet, 75 cts.. | 47,909 |
| | | | <hr/> |
| | | | \$87,709 |

20

I certify that the above is a true copy of the assessment rolls of the City of Montreal with respect to the properties therein mentioned, with the exception of the last item for the year 1889.

GEORGE B. MUIR,

Assessor.

30

(ENDORSED.)

Defendant's Exh. No. B.5. filed 28th March, 1891. (Paraphed,) E. B.,
Dep. P.

40

SCHEDULE No. 135.

RECORD.

*In the
Superior
Court.*

No. 105.
Location
plan of the
Company
Defts. Exh.
A1 of Defts.
at Enquête.
Fyled 25th
July 1891.

(ENDORSED.)

Exhibit A1. Fyled by Defendants. Eyled 25th July 1891.
(Paraphed). F. B. P. P.

A. and N. W. RAILWAY LOCATION PLAN

Shewing colored Red the lands required for Railway purposes from Windsor street in the City of Montreal, to the South Western limits of said City.

SCALE : 50 FEET TO ONE INCH.—(ENGLISH MEASURE.)

Filed FEBRUARY 2th, 1887.

(Signed) SCHILLER & SICOTTE,
Clerks of the Peace.

Examined and certified as required by sect. 8 Cons. Railway Act, 1879.

(Signed) T. TRUDEAU,
Deputy of the Minister of Railways and Canals.

OTTAWA, FEBRUARY 2nd, 1887.

Note cadastral numbers in Black Lines 656.
Note consecutive numbers in Blue Lines No. 26.
A True Copy of the original hereof remaining of record in my
(Signed) JOSEPH RIELLE,
Provincial Land Surveyor.
(Signed) P. ALEX. PETERSON,
Chief Engineer.
MONTREAL, JANUARY 28th, 1887.

I hereby certify this plan to be a True Copy of the plan filed
in my office as clerk of the Peace on the 12th day of February 1887,
and containing the heading shewn on said plan.
MONTREAL, MARCH 14th, 1890.

(Signed) L. W. SICOTTE,
Clerk of the Peace.

DRUMMOND STREET

STANLEY STREET

STREET

St George's
Church

OSBORNE

STREET

MOUNTAIN STREET

MOUNTAIN STREET

N° 32-B



Est. E.V. Moseley
Edward F. Moseley
and Albert A. Ayer
657-6

James Baylis
N° 26 657-8

N° 32-A BLACHE LANE

N° 32 N° 31 N° 30

665-A 665 662

Matthew Doyling
Margaret Brennan
wife of John Brennan

Dame Catherine Inish
widow of Anthony T. Koester

William Walker
Edward C. Hughes

Estate Alexander Watt
Mrs Thomas O'Connell

LANE 657-9A

N° 22 N° 24

658 N° 21

Charles S. Rodier

Dame Lilias Fraser
wife of John G. Savage

Francis Huston
N° 20

Elizabeth M^{rs} Naughton
wife of Robert Adams

Charles Dupuis
Julie Dupuis
wife of E. Payette

N° 18 Bauden.

Joseph 652

650

649

649

645 QQ LANE

Charles S. Rodier
N° 14

N° 13 648

William Williams

647

LANE

645

N° 1 Matthew Baxter
N° 2 John Palmer
N° 3 Estate Mills Williams
N° 4 Capt. William Duncan

655

645

645

645 P 645 O 645 N 645 M 645 L 645 M.M. 640

James Watt
N° 9

639 John Doherty
638 John Smardon
637-A John Bauden
637 J. Grady Simpson
Curator to W. C. Auld

640

645

LANE

645

645

BISSON STREET

N° 14 A

WINDSOR

ST

ANTOINE

STREET

RECORD.

SCHEDULE No. 135.

—
*In the
Superior
Court.*
—

No. 105.
Location
plan of the
Company
Defts. Exh.
A1 of Defts.
at Enquête
Fyled 25th
July 1891.

(ENDORSED.)

Exhibit A1. Fyled by Defendants. Eyled 25th July 1891.
(Paraphed). E. B. P. P.

SCHEDULE No. 139.

(Letter Head).

10 JOHN M. M. DUFF,
Accountant and Insurance Ad-
justor,
Commissioner for
New Brunswick, Quebec, Ontario
Manitoba and the States of
New York, Pennsylvania, Mas-
sachusetts, Maine,
Vermont and Illinois.

ISSUER OF MARRIAGE LICENSES.

118 St. James St., P. O. Box 527.
Montreal, 3rd June, 1889.
Bell Tel. 449.

JOHN BRENNAN, Esq., { *Re Atlantic & North*
St. Louis Hotel, { *West R. R. Co.*
Quebec. { *And J. J. Brennan et al.*
Proprietor.

20 Dear Sir:—

I have got your case closed at \$2,154.00; It is the best I could do, without getting you into a law suit, and I don't think you wanted any litigation over it. You had better send me your titles, and I will hand them to the Notary to get the deed drawn. So that you may get your money without delay.

I may possibly be in Quebec, but am not sure.

Yours truly,

J. M. M. DUFF.

30

(ENDORSED.)

Exhibit B.2. of Defendants. Fyled May 16th, 1890. Fyled 28th March, 1891.

(Paraphed) E. D. Dep. P.C.S.

40

RECORD.

SCHEDULE No. 140.

In the Superior Court.

BOOK OF REFERENCE to accompany Location Survey of Lands required for Railway purposes for the Atlantic & North West Railway, from Windsor Street, in the City of Montreal, to the South-Western limits of the said City.

No. 107.

Book of Reference to accompany Location Survey of Lands required for Company Defendants. (Exh. No. A. 2, of Defts. at Enquête.)

| Consecutive Number. | Official Number. | City of Montreal, St. Antoine Ward. | Reputed Owner. | Tenant if any. | Length of the Centre Line. | Width taken | Area in English feet. |
|---------------------|---|-------------------------------------|--|------------------------------|----------------------------|-------------|-----------------------|
| 23 | 657-9 | " | James Baylis..... | A lane in common .. | .. | Irregular | 710 |
| 24 | 657-10 | " | | | | | 5813 |
| | 657-11 | " | | | | | |
| | 657-12 | " | | | | | |
| 25 | 657-7 | " | Estate of E. Moseley... Edward F. Moseley.... and Albert A. Ayer.. | Buckingham and Harvey. | .. | " | 1600 |
| 26 | 657-8 | " | James Baylis..... | .... | .. | " | 4172 |
| 27 | 660 | " | Est. Alex. Watt..... | .... | .. | 86' 2" | 2256 |
| 28 | Part 661 | " | Edward C. Hughes..... | .... | .. | 27' | 902 |
| 29 | " 661 | " | William Walker..... | .... | .. | 27' | 985½ |
| 30 | 662 | " | { Dame Catherine Irish... widow A. T. Koester | John Hayvren. | .. | 62' | 2609 |
| 31 | 665 | " | { Margaret Brennan..... wife of John Brennan | .... | .. | 63' 4" | 3109 |
| 32 | 665a | " | { Patrick Enright..... Mrs. Blatchford..... Mrs. M. Kern..... | { Tenants..... | .. | 43' 8" | 2361 |
| 32a | .... | " | ..... | Blache Lane. | .. | | 30 |
| 32b | .... | " | Corporation of Montreal. | Mountain Street. | .. | | |
| 33 | 1543 | " | George Smith..... | .... | 62' | Irregular | 5171 |
| 34 | 1544 | " | Charles M. Johnston.... | .... | 88' | " | 2658 |
| 35 | 1546-8 1546-9 1546-17 1546-24 1546-25 | " | Estate John Torrance .. | S. S. Bain | 195' | " | 7267 |
| 35a | 1546 | " | Corporation of Montreal. | Aqueduct Street | 35'6' | | |

(Sgd.) P. ALEX. PETERSON,
Chief Engineer.

Montreal, 28th January, 1887.

I certify that the quantities contained in this Book of Reference are correct.
Montreal, 27th Jan'y, 1887.
(Sgd.) JOS. RIELLE,
P. L. S.

Examined and certified as required by section 8, Consol. Ry. Act, 1879.

(Signed,) **T. TRUDEAU,**
*Deputy of the Minister of Railways
and Canals.*

Ottawa, 2nd February, 1887.

Certified as a true extract of the Books of Reference, certified by the Minister of Railway at Ottawa and deposited with the Clerk of the Peace for District of Montreal, as appears thereon, on the 12th February, 1887.

10

L. W. SICOTTE,
Clerk of the Peace.

(ENDORSED.)

Defendant's Exhibit A.2. filed May 16th, 1890. (Paraphed) E. D., D.P.
Filed 28th March, 1891. (Paraphed) E. D., Dep. P.

RECORD.

*In the
Superior
Court.*

No. 107.
Book of Reference to accompany Location Survey of Lands required for Company Defendants (Exh. No. A. 2, of Dfdts at Enquête.)
— *Continued.*

SCHEDULE NO. 141.

(Letter Head.)

20



1884.

CITY OF MONTREAL.

ASSESSORS' DEPARTMENT, CITY HALL, 189 .

30

| | | | |
|-------------------------|-----------------------------|-----------------------|---------|
| Mountain Street..... | James Baylis..... | No. 657-8 | \$4,000 |
| " " | Michael Dowling | No. 665a | 4,000 |
| Blache Lane | James Baylis | 657, 10, 11, 12. | 1,500 |
| " " | Est. Thomas O'Connell. | 659 | 740 |
| " " | Mrs. T. J. Savage..... | 658 | 2,500 |
| " " | Mrs. Koester..... | 662 | 2,000 |
| St. Antoine Street..... | Est. Thomas O'Connell. | Part 655 | 5,000 |
| " " | " " | " " | 7,000 |
| " " | " Alex. Watt..... | 660 | 11,000 |
| " " | Robert S. Auld | 661 | 5,500 |
| " " | Mrs. Koester..... | 663 | 1,800 |
| " " | Pierre N. Mailloux..... | 664 | 3,500 |
| " " | Est. James Brennan.... | 665 | 6,000 |

No. 108.
Extract from Assessment Roll of Montreal for 1884, shewing valuation of properties abutting on B.ache Lane. (Exh. No. A. 3, of Dfdts. at Enquête.

40 I certify that the above is a true copy of the Assessment Rolls of the City of Montreal, for the year 1884 with respect to the properties therein mentioned.

G. B. MUIR,
Assessor.

CHS. GLACKMEYER,
City Clerk.

(ENDORSED.)

Exhibit A3.

SCHEDULE No. 142.

RECORD

In the
Superior
Court.



1885.

CITY OF MONTREAL.

ASSESSORS' DEPARTMENT CITY HALL.

No. 109.
Extract from
Assessment
Roll of
Montreal for
1885 shewing
valuation of
properties
abutting on
Blache Lane.
(Exh. No. A.
4, of Defts at
Enquête).

| | | | | |
|-------------------------|------------------------|---------------------|---------|----|
| Mountain Street..... | James Baylis..... | 657-8..... | \$4,000 | |
| " "..... | Michael Dowling..... | 665a..... | 3,000 | |
| Blache Street..... | James Baylis..... | 657, 10, 11, 12.... | 1,500 | |
| " "..... | Mrs. T. G. Savage..... | Part 658..... | 2,500 | |
| " "..... | Mrs. T. O'Connell..... | 657..... | 750 | 10 |
| " "..... | William Walker..... | Part 661..... | 3,500 | |
| " "..... | Mrs. Koester..... | 662..... | 2,000 | |
| St. Antoine Street..... | Est. Thomas O'Connell. | 665..... | 5,000 | |
| " "..... | " " "..... | 665..... | 7,000 | |
| " "..... | Alex. Watt..... | 663..... | 13,000 | |
| " "..... | Robert Auld..... | 661..... | 5,500 | |
| " "..... | William Walker..... | 661..... | 2,500 | |
| " "..... | Mrs. Koester..... | 663..... | 1,800 | |
| " "..... | Pierre Mailloux..... | 664..... | 3,500 | |
| " "..... | Mrs. Brennan..... | 665..... | 6,000 | |
| | | | | 20 |

I certify that the above is a true copy of the Assessment Rolls of the City of Montreal, for the year 1885, with respect to the properties therein mentioned.

G. B. MUIR,
Assessor.

CHS. GLACKMEYER,
City Clerk.

(ENDORSED.)

Exhibit A.4.

SCHEDULE No. 143.

30

CITY OF MONTREAL.

ASSESSORS' DEPARTMENT.

No. 110.
Extract from
Assessment
Roll of
Montreal
shewing valuation
of C. S.
Rodier's property,
Osborne St.,
during years
1889, 1885,
1886, 1884.
(Exh. No. A.
5, of Dfdts at
Enquête.)



| | | | | |
|---------------------|----------------------------------|---------------|----------|----|
| Osborne Street..... | Assessment for the year 1889. | | | |
| " "..... | C. S. Rodier..... | Part 669..... | \$16,000 | |
| " "..... | Assessment for the year 1886. | | | 40 |
| " "..... | C. S. Rodier..... | 669..... | 20,000 | |
| " "..... | Assessment for the year 1885. | | | |
| " "..... | C. S. Rodier..... | 669..... | 20,000 | |
| " "..... | Assessment for the year 1884. | | | |
| " "..... | C. S. Rodier..... | 669..... | 20,000 | |

I certify that the above is a true copy of the Assessment Rolls, of the City of Montreal, for the year 1889, 1886 1885 and 1884, with respect to the property therein mentioned.

G. B. MUIR,
Assessor.

CHS. GLACKMEYER,
City Clerk.

(ENDORSED.)

Exhibit A.5. Defendants Exhibits A.3, A.4, A.5, Fyled 28th March, 1891. (Paraphed) E. D. Dep. P. S. C.

10

RECORD.

In the Superior Court.

No. 110.
Extract from Assessment Roll of Montreal, shewing valuation of C. S. Rodier's property, Osborne St., during years 1889, 1886, 1885, 1884. (Exh. No. A. 5, of Dfdts at Enquête. — *Continued.*

20

SCHEDULE No. 145.

EXTRACT from the Assessment Rolls of the St. Antoine Ward of the City of Montreal concerning the property of Charles S. Rodier, for the year 1889, 1886, 1885 and 1884, situate in Osborne Street, in the said Ward.

30

| | | | |
|----------------|--------------------|----------------|----------|
| Year 1889..... | C. S. Rodier | Part 669. | \$16,000 |
| " 1886..... | C. S. Rodier | " 669 | 20,000 |
| " 1885..... | C. S. Rodier | " 669 | 20,000 |
| " 1884..... | C. S. Rodier | " 669 | 20,000 |

GEORGE B. MUIR,
Assessor.

CHS. GLACKMEYER,
City Clerk.

(ENDORSED.)

Deft's. Exh. B.6, Fyled 17th March, 1891. (Paraphed) E. B. Dep. P. S. C.

40

No. 111.
Certified Extract from Assessment Rolls of St. Antoine ward concerning Rodier's property for 1889, 1886, 1885 and 1884. (Exh. No. B.6. of Dfdts. at Enquête.)

SCHEDULE, No. 146.

RECORD.

In the Superior Court.

No. 112.
Certified Ex-tract from St. Antoine ward for 1884 (Exh. No. B. 7, of Dfdts. at Enquête.

EXTRACT from the Assessment Rolls of the St. Antoine Ward of the City of Montreal, for the year 1884.

| | | | | |
|-------------------------|------------------------|---------------------|---------|----|
| Mountain Street..... | James Baylis..... | 657-8..... | \$4,000 | |
| " "..... | Michael Dowling..... | 665a..... | 4,000 | |
| Blache Lane..... | James Baylis..... | 657, 10, 11, 12.... | 1,500 | |
| " "..... | Mrs. J. G. Savage..... | Part 658..... | 2,500 | |
| " "..... | Mrs. T. O'Connell..... | 659..... | 750 | |
| " "..... | Mrs. Koester..... | 661..... | 2,000 | |
| St. Antoine Street..... | Est. Thomas O'Connell. | 665..... | 5,000 | |
| " "..... | " "..... | 665..... | 7,000 | 10 |
| " "..... | Alex. Watt..... | 660..... | 11,000 | |
| " "..... | John Auld..... | 661..... | 5,500 | |
| " "..... | Mrs. Koester..... | 663..... | 1,800 | |
| " "..... | Pierre Mailloux..... | 664..... | 3,500 | |
| " "..... | Est. James Brennan.... | 665..... | 6,000 | |

GEORGE B. MUIR,
Assessor

CHS. GLACKMEYER,
City Clerk.

(ENDORSED.)

Defendant's Exh. B.7. fyled 17th March, 1891. (Paraphed) E. B., D. P. 20

SCHEDULE No. 147.

EXTRACT from the Assessment Roll of the St. Antoine Ward of the City of Montreal, for the year 1885.

No. 113.
Certified Ex-tract for 1885 (Exh. No. B. 8, of Dfdts. at Enquête.

| | | | | |
|-------------------------|------------------------|---------------------|---------|----|
| Mountain Street..... | James Baylis..... | 657-9..... | \$4,000 | |
| " "..... | Michael Dowling..... | 665a..... | 3,000 | |
| Blache Lane..... | James Baylis..... | 657, 10, 11, 12.... | 1,500 | 30 |
| " "..... | Mrs. J. G. Savage..... | Part 658..... | 2,500 | |
| " "..... | Mrs. T. O'Connell..... | 659..... | 750 | |
| " "..... | William Walker..... | Part 661..... | 3,500 | |
| " "..... | Mrs. Koester..... | 662..... | 2,000 | |
| St. Antoine Street..... | Est. Thomas O'Connell. | 665..... | 5,000 | |
| " "..... | " "..... | 665..... | 7,000 | |
| " "..... | Alex. Watt..... | 660..... | 13,000 | |
| " "..... | Robert Auld..... | Part 661..... | 5,500 | |
| " "..... | William Walker..... | " 661..... | 2,500 | |
| " "..... | Mrs. Koester..... | 663..... | 1,800 | 40 |
| " "..... | Pierre Mailloux..... | 664..... | 3,500 | |
| " "..... | Mrs. Brennan..... | 665..... | 6,000 | |

GEORGE B. MUIR,
Assessor.

CHS. GLACKMEYER,
City Clerk.

(ENDORSED)

Defendants' Exhibit B.8. Fyled 17th March, 1891. (Paraphed) E. B. D.P..

SCHEDULE No. 148.

EXTRACT from the Assessment Roll of the St. Antoine Ward of the City of Montreal, for the year 1886.

RECORD.
In the
Superior
Court.

| | | | | |
|----|-------------------------|------------------------|---------------------|---------|
| 10 | Mountain Street..... | James Baylis..... | 657-8..... | \$4,000 |
| | " "..... | Michael Dowling..... | 665a..... | 3,000 |
| | Blache Lane..... | James Baylis..... | 657, 10, 11, 12.... | 1,500 |
| | " "..... | Mrs. J. G. Savage..... | Part 658..... | 2,500 |
| | " "..... | Mrs. T. O'Connor..... | 659..... | 750 |
| | " "..... | William Walker..... | Part 661..... | 4,000 |
| | " "..... | Mrs. Koester..... | 662..... | 2,000 |
| | St. Antoine Street..... | Mrs. Thomas O'Connell | 655..... | 5,000 |
| | " "..... | " "..... | 655..... | 7,000 |
| | " "..... | Est. Alex. Watt..... | 660..... | 13,000 |
| | " "..... | Edward C. Hughes..... | Part 661..... | 5,500 |
| | " "..... | William Walker..... | 661..... | 2,500 |
| | " "..... | Mrs. Koester..... | 663..... | 1,800 |
| | " "..... | Pierre Mailloux..... | 664..... | 3,500 |
| | " "..... | Mrs. Brennan..... | 665..... | 6,000 |

No. 114.
Certified Ex-
tract for 1886
(Exh. No. B.
9, of Dfdts. at
Enquête.)

GEORGE B. MUIR,

Assessor.

CHS. GLACKMEYER.

City Clerk

(ENDORSED.)

Defendants' Exhibit B.9., filed 17th March, 1891. (Paraphed) E. B., D.P.

30

SCHEDULE No. 149.

EXTRACT from the Assessment Rolls of the St. Antoine Ward of the City of Montreal, for the year 1889.

No. 115.
Certified Ex-
tract for 1889
(Exh. No. B.
10 of Dfdts at
Enquête.

| | | | | |
|----|-------------------------|------------------------|--------------------|--------|
| 40 | Mountain Street..... | — Charlebois..... | Part 665 a..... | \$ 300 |
| | St. Antoine Street..... | Mrs. T. O'Connell..... | " 665..... | 5,000 |
| | " "..... | Estate Alex. Watt..... | " 660..... | 13,000 |
| | " "..... | Thomas Darling..... | " 661..... | 5,000 |
| | " "..... | William Walker..... | " 661..... | 10,000 |
| | " "..... | F. Sauvageau..... | 663 and part 662.. | 6,000 |
| | " "..... | Pierre Mailloux..... | 664..... | 3,500 |
| | " "..... | Mrs. Brennan..... | Part 665..... | 6,000 |

GEORGE B. MUIR,

Assessor.

CHS. GLACKMEYER,

City Clerk,

(ENDORSED.)

Defendants' Exhibit B.10. filed 17th March, 1891. (Paraphed) E. B., D.P.

RECORD.

*In the
Superior
Court.*

No. 116.

Copy of original petition in this cause submitted to Hon. Mr. Turcotte *es qual.* for his approval. (Exhibit A 1 of Petitioner for *mandamus*, printed in No. 4.)
26th March, 1891.

SCHEDULE No. 152.

MEMORANDUM.

Copy of original petition in this cause submitted to Honorable Arthur Turcotte, *es qual.*, for his approval. **10**
A true copy.
Already printed see No. 4.

20

SCHEDULE No. 153.

No. 117.
Copy of Letter by Messrs. Barnard & Barnard to Atty-Gen. Turcotte.
Dated 29th March, 1890.
Exh. A-2 of petition for *mandamus*, with deposition of Mr. J. E. Robidoux,

Hon. A. Turcotte,
Attorney General,
Quebec.

Dear Sir :

Would you kindly send us a copy of your letter to us of the 4th January last, authorizing us to bring suit in your name against the Atlantic & North West Railway Company. **30**

The original which was filed in Court has disappeared and we are anxious to complete the record.

Yours respectfully,
BARNARD & BARNARD.

A true copy.
J. E. ROBIDOUX,
Attorney General.

(ENDORSED).

40

Marked A2.

SCHEDULE No. 154.

Province de Québec, }
District de Montréal. }

Cour Supérieure.

RECORD

*In the
Superior
Court.*

842

L'Hon. Arthur Turcotte, es-qualité, Demandeur.

No. 118.
Copy of Letter by Attorney General Turcotte to Messrs. Barnard & Barnard, dated 7th July, 1890, (Exhibit A-3 of Petitioner for *mandamus* with deposition of Mr. J. E. Robidoux.)

10

vs.

La Compagnie du Chemin de Fer Atlantique et Nord-Ouest. . . . Défenderesse.

et

La Cité de Montréal, Intervenante.

A Messieurs Barnard & Barnard,
Avocats du Demandeur et procédant au nom du Procureur Général dans la présente cause.

20 Messieurs :

Avis vous est donné de suspendre tous procédés en cette affaire au nom du Procureur Général, jusqu'à ce que j'aie eu communication du dossier pour ensuite donner telles instructions que je croirai convenable dans l'intérêt public.

Montréal, 7 Juillet, 1890.

(Signé),

ARTHUR TURCOTTE,
Procureur Général,

par C. A. GEOFFRION, C.R.

30

(A true Copy.)

J. E. ROBIDOUX,
Atty. General.

(ENDORSED.)

Marked A.3.

No. 119
Copy of letter by Messrs Barnard & Barnard to Mr. Turcotte. Dated 9th July 1890. Exh. A 4 of Petitioner for *mandamus* with deposition of Mr. J. E. Robidoux). Already printed See No. 69.)

SCHEDULE No. 155.

40 Copy of letter by Messrs. Barnard & Barnard to Hon. A. Turcotte, dated 9th July, 1890. Exh. A4. Already printed, see No. 69.

RECORD.

SCHEDULE No. 156.

Telegram,

St. Martin Jct., 31st 1890.

*In the
Superior
Court.*Hon. A. Turcotte,
Procureur Général,
Trois-Rivières.No. 120.
Copy of
telegram by
Mr. Shaugh-
nessy to Mr.
Turcotte,
(Exhibit A-5
of Petitioner,
for *manda-
mus*, with
deposition of
Mr. J. E.
Robidoux.)Our solicitors on train arriving at nine this evening, going to see you he
will meet you at your house.

(Signed),

T. G. SHAUGHNESSY,

10

(A true Copy.)

J. E. ROBIDOUX,
Atty. General.

(ENDORSED.)

Marked A.5.

20

SCHUDULE No. 157.

No. 121.
Copy of letter
by Mr. Shaugh-
nessy to Mr.
Turcotte
dated 31st
July, 1890.
(Exh. A-6 of
Petitioner for
mandamus
with deposi-
tion of Mr. J.
E. Robidoux)

The Canadian Pacific Railway Company

Montreal, July, 31st, 1890.

Dear Mr. Turcotte,

I learn at the last moment that the Blache lane case is coming on to-mor-
row. I have asked Mr. Heneker to run down to Three Rivers with a view to
getting your signature to discontinue before court opens, and a letter to Mr.
Barnard. You understand our position thoroughly I think, if not Mr. Heneker
can explain it, and I hope you see nothing to interfere with granting the dis-
continuance.

Yours very truly,

T. G. SHAUGHNESSY.

Assistant President

Arthur Turcotte Esq.,
Attorney General,
Three Rivers Que.

A true Copy

J. E. ROBIDOUX,
Attorney General.

40

(ENDORSED)

Marked A6.

SCHEDULE No. 158

Montréal, 30, Octobre, 1890.

Mon cher Monsieur Robidoux,

Mr. Geoffrion voyant l'impossibilité de prendre votre témoignage à Montréal dans la cause de Turcotte et le chemin de fer a consenti à un jugement qui ordonne que votre témoignage soit pris à Québec.

J'ai cru que samedi ou dimanche vous pourriez trouver un moment libre et nous en finirions. Mr. Geoffrion sera représenté par un confrère à Québec et nous consentirons que votre témoignage pris samedi ou dimanche soit entré
10 comme de lundi.

Si cet arrangement vous convient vous m'obligerez en m'envoyant un télégramme à temps pour que je puisse partir demain soir.

Bien sincèrement à vous,
(Signé) EDM. BARNARD.

L'Hon. J. E. ROBIDOUX,
Procureur Général.
Québec.

A true Copy.

J. E. Robidoux.
Attorney General.

20

(ENDORSED.)

Petitions for Mandamus. Exhibits a1 a2. a3. a4. a5. a6. a7. with deposition of Mr. Robidoux. Fyled 28 march.
(Paraphed) E. D. Dep. P.S.C.

30

SCHEDULE No. 160.

Quebec, December 27th, 1888.

Dear Sirs ;

The Hon. the Attorney-General being absent, I have the honor to acknowledge receipt of your letter dated yesterday, which will be put into his consideration as soon as he returns.

Yours truly,
J. W. DUMONT,
Priv. Sec.

40 Messrs. BARNARD & BARNARD,
Advocates, Montreal.

(ENDORSED.)

Quebec, 27th Dec., 1888. J. W. Dumont, Cabinet du Procureur Général
P. Q., Marked B.

RECORD.

*In the
Superior
Court.*

No. 122.
Copy of letter
of Mr. Ed.
Barnard to
Mr. Robi-
doux dated
30th Oct.
1890. Exh.
A-7 of Petiti-
oner for *man-
damus* with
Deposition of
Mr. Robi-
doux.)

No. 123.
Letter from
J.W. Dumont
to M. M.
Barnard &
Barnard.
Dated 27th
Dec., 1888.
(Exhibit B,
of Petitioner
Walker.)

SCHEDULE No. 161.

RECORD.:

*In the
Superior
Court.*(Telegram.)
BARNARD & BARNARD,
Advocates, Montreal.

28th Dec., 1888.

No. 124.
Telegram
from

(From Quebec.)

A. Turcotte
to Barnard
& Barnard.
Dated 28th
Dec., 1888.
(Exhibit B 1,
of Petitioner
Walker.)Before granting permission I must be furnished with a copy or draft of the
declaration in the suit intended to be instituted by W. Walker, with the kind
of security to be given.ARTHUR TURCOTTE, 10
Attorney General.

(Endorsed). Marked B 1.

SCHEDULE No. 162.

20

No. 125.
Letter from
Edmund
Barnard to
H. Abbott.
Dated 7th
Jan'y, 1890.
(Exhibit B 2
of Petitioner
Walker.)BARNARD & BARNARD,
Barristers, Solicitors, &c.

99 St. James Street,

Montreal, 7th Jan., 1890.

My Dear Sirs :

I would thank you for a line by bearer stating whether you have
received my letter with Mr. Fowler's report, and whether I will hear from you
before the 13th.

Yours, very truly,

EDM. BARNARD. 30

H. ABBOTT, Esq.,
Q. C.I have sent in your letter and report to Mr. Shaughnessy and await his
reply.

H. ABBOTT, Jr.

Endorsed. Marked B 2.

40

SCHEDULE No. 163.

Barnard & Barnard
Barristers Solicitors &c.,
Commissioners.

Savings Bank Building
180 St James St.

RECORD

*In the
Superior
Court.*

Montreal, 2nd January 1890.

My Dear Sir,

In Re Blache Lane.

No. 125½
Letter from
Edmund
Barnard to
H. Abbott,
dated 2nd
Jany, 1890.
(Exh. B.3, of
Petitioner
Walker.)

10

I have intended for the last ten days to write to you but have been prevented by the press of business.

I now enclose Mr. A. G. Fowler's report on the indemnity my clients are in his opinion, entitled to the amount to carry interest from the time of the expropriation, since the claim if it exists at all, results from a debit.

20

Although I considered that the C. P. R. would deem it their interest to treat liberally with these claims of their settlement carried along with it the withdrawal both of the action of the Attorney General and the Intervention of the City in the matter of the re-opening of Blache Lane, I have made it a point that they should be careful not to claim anything but what they are strictly and legally entitled to and the result has been that they have left the matter intirely in my hands with full power to accept whatever amount I think reasonable. Under these circumstances I referred the question of indemnity to Mr. Fowler who is the most competent person I know in such matters. Should his estimate however be questioned it should be a simple matter for the Railway Company to choose some valuator of equal standing when two, if necessary, could name and empire, or if you prefer we could discuss the subject in a conciliatory spirit.

30

I will probably leave town on the 13th to be away some months, I believe I can just now obtain the consent of the City, whereupon the consent of the Attorney General would follow as a matter of course. On the other hand I know that if the matter is not settled amicably between us, some of the Donegani street proprietors will come in and add new complications to those already existing.

If the matter is amicably settled, I will expect my fees to be paid by the Railway Company.

As to the amount I am sure it will be easily settled between us.

In case no settlement is effected I will serve and return the actions which have been prepared for sometime.

40

We can then unite them all with the pending suits and Mr. Doherty in my absence will be prepared to argue them for me at the earliest possible moment which will suit your convenience.

Very truly yours,

(Signed)

EDM. BARNARD.

H. ABBOTT, Esq., Q.C.

(ENDORSED)—B-3.

RECORD.

SCHEDULE 164.

*In the
Superior
Court.*
Abbotts, Campbell &
Meredith,
Advocates, Solicitors,
etc.

Telephone No. 27,
No. 11, Hospital Street.

Montreal, Feb'y. 15th, 1890.

Re Blache Lane.

No. 126.
Letter from
H. Abbott to
Edmund
Barnard, dat-
ed 15th Feb.,
1890.

Dear Sir :

I have just received your letter of to-day's date, stating that you will insist upon going on in the Turcotte matter, as well as the Walker case, on Tuesday next.

(Exhibit B-4)
of Petitioner
Walker.

Having proposed to your son more than a week ago that the case should be continued until next term, and he having stated that he thought that would be the best thing to do, and that he would see you on the subject ; and having heard nothing since, I have made my arrangement in Court supposing that the case would not proceed ; and I will be engaged the whole of next week in the case of Ross vs. the C.P.R., which has been proceeding for some time past before Judge Davidson, and which cannot be postponed now.

Under these circumstances I will be compelled to resist any application on your part to proceed on Tuesday next, if you insist upon going on, as I stated to your son the other day, it seems to me that the only prospect of bringing the matter to an amicable settlement was to let the cases stand over until the March term, thus giving our respective clients an opportunity of fully considering the matter. You insisting upon proceeding on Tuesday will certainly not tend to facilitate a settlement.

Yours truly,

H. ABBOTT, Jr.

EDMUND BARNARD, Q. C., City.

(ENDORSED)—B-4.

30

SCHEDULE No. 165.

Département du Procureur Général.

Québec 10 Juillet 1890.

Messieurs.

J'ai reçu instructions de l'Honorable Monsieur le Procureur Général d'accuser réception de votre lettre en date du 9 du présent mois, au sujet de la cause de l'Hon. A. Turcotte es qualité et la compagnie du chemin de fer Atlan- 40
tique du Nord Ouest.

J'ai l'honneur d'être Monsieur,

Votre obéissant serviteur.

Jos. A. DEFOY,

Asst. Proc. Génl.

M. M. Barnard & Barnard, Avocats, Montréal.

(ENDORSED) B-5.

No. 127.
Letter from
J. A. Defoy
to Barnard &
Barnard.
Dated 10th
July 1890.
Exhibit B5
of Petitioner
Walker.)

SCHEDULE No. 166.

Cabinet du Procureur Général.
Province de Québec

Québec, 19 Décembre, 1890.

Monsieur Edmond Barnard, C.R.
Montréal.

RECORD

*In the
Superior
Court.*

No. 128.
Letter from
F. Gelinas to
Edmund
Barnard.
Dated 19th
Dec. 1890.
(Exh. B6 of
Petr. Walker.

10 Monsieur,

J'ai n'ai pû que ce matin demander à l'Honorable Procureur Général l'autorisation de vous expédier les documents, *in re* Atlantic and North West et la ruelle Blanche, que vous demandez à Mr. Tessier dans votre lettre du 6 de ce mois.

Après quelques recherches, nous avons constaté que la lettre de Mr. Henneker, que vous demandez, doit être celle que nous vous avons adressée, car nous n'en trouvons pas d'autre. Quant à la lettre de Mr. Geoffrion, comme elle est d'une nature tout à fait confidentielle, le Procureur Général a préféré ne pas s'en départir.

20

Je demeure Monsieur,
Votre humble serviteur.
FRED. GELINAS,
Secrétaire Particulier.

(ENDORSED B-6.)

SCHEDULE No. 167.

30 Geoffrion, Dorion & Allan.
Advocates.

Montreal, December 20th 1890.

Edmond Barnard Ec. C.R.

Cler Monsieur,

Je viens d'avoir communication de la lettre du Secrétaire Privé de l'Honorable Procureur Général Mr. Robidoux, dans laquelle on vous informe qu'une lettre écrite par moi au Procureur Général d'alors, en rapport avec cette affaire, est d'une nature confidentielle et que le Procureur Général ne croit pas pouvoir vous en donner communication ou vous en délivrer copie. Quant à moi personnellement, je n'ai aucune objection à ce que copie de cette lettre vous soit donnée. La nature confidentielle de ces documents intéresse mes clients, et eux seuls sont maîtres des informations que je leur donne.

40

Veillez me croire, Monsieur,
Votre tout dévoué.

C. A. GEOFFRION.

(ENDORSED B-7.)

No. 129.
Letter from
C. A. Geoffrion to Ed-
mund Barnard. Dated
20th Dec.
1890. (Exh.
B7 of Petr.
Walker.

SCHEDULE No. 168.

RECORD.

*In the
Superior
Court.*

Cabinet du Procureur Général.
Province de Québec.

Québec, 13 Mars, 1891.

No. 130.
Letter from
F. Gelinas to
Edmund
Barnard.
Dated 13th
March,
1891. (Exh.
B8 of Petr.
Walker.

Monsieur Edmond Barnard Avocat C.R.
Montréal.

Cher Mr. Barnard,

Sur réception de votre lettre, ce matin, je me suis mis en frais de chercher le dossier officiel de l'Atlantic et North Western etc., pour y trouver la lettre de Mr. Heneker et vous en expédier une copie certifié selon que vous me le demandiez, après avoir cherché inutilement pendant une couple d'heures, j'en suis arrivé à la conclusion que ce dossier n'est pas au département dans le moment. Il a dû être apporté par l'Honorable Mr. Robidoux à sa résidence privé ou à Montréal, et comme Mr. Robidoux est absent dans le moment pour au moins trois semaines, je crains bien qu'il me soit impossible de vous envoyer cette malheureuse lettre. 10

Je vous demande mille pardons, cher Mr. Barnard, de tout le trouble que vous cause cette lettre de Mr. Heneker et me souscris. 20

Votre tout dévoué serviteur,
FRED. GELINAS.

(ENDORSED.)

Petitioner Walker's Exh. B, B1, B2, B3, B4, B5, B6, B7, B8. Fyled 28th March, 1891. (Paraphed). E. D. Dep. P. S. C.

30

No. 131.
Copy of De-
claration re
No. 497, The
Atl. & N. W.
Ry. Co. vs.
Wm. Walker.
(Exh. B9 of
Petr. Walker.

SCHEDULE No. 169.

Canada,
Province of Quebec,
District of Montreal. }

In the Superior Court.

The Atlantic North-West Railway Company,.....Plaintiff. 40

vs.

William Walker,.....Defendant.

The Plaintiffs complain of the Defendant and declare :
That the said Plaintiffs are the owners and proprietors in possession of a part of that certain lot of land situate in the St. Antoine Ward of the City of

Montreal, and known and designated on the official plan and book of reference of the said ward by the number six hundred and sixty-one, which said lot of land was expropriated by the said railway company for the purpose of their Railway under and by virtue of the provisions of the Railway Act and the laws in such case made and provided, and became and was and is the property of the said Railway Company by virtue of the proceedings so taken, and by a deed of sale from the said Defendant, William Walker, to the said Railway Company passed before Marler, Notary Public on the twenty-third day of June, eighteen hundred and eighty-seven (1887). That the said part of the said lot so belonging to the said Railway Company is bounded on the south-east side by the

10 remaining portion of the said lot, the property of the said Defendant.
That the said Defendant has erected upon the said property certain buildings.

That the said buildings are so erected upon the portion of the said lot so belonging to the said Defendant that the outer face of the north-west gable wall is exactly upon the division line between the said property of the said Plaintiffs and the said property of the said Defendant.

That in and through the said north-west gable wall of the said buildings there are five windows, one door and one cellar window exercising a direct view over the property of the said Plaintiffs, within six feet.

20 That the sills of the said windows and the cornice at the top of the said wall—project and hang over the property of the Plaintiffs.

That the contiguity of the said premises and the said openings to the said property of the Plaintiffs are sources of danger to the Defendants property adjoining and expose said Defendants to damage.

30 That heretofore to wit on the twenty-eighth day of April eighteen hundred and eighty-nine the said Plaintiffs, acting by and through the ministry of Henry Fry, Notary Public, protested the said Defendant, and called upon him within one week from said date to close up the said openings in the said north-west gable wall of his said buildings and to remove the projections of the sills and cornices from the Plaintiff's property, and that failing his compliance with the said notarial demand, within the said delay, the said Plaintiffs would hold him in default and would take such action as they might be advised to cause the said encroachments to cease, and would hold him liable and responsible for all damages that the said Company Plaintiffs had suffered or might suffer in consequence but notwithstanding said Defendant fails and neglects to comply with said notarial demand and protest.

That the Plaintiffs paid for the said protest the sum of six 75/100 dollars.

40 That by reason of the premises the Plaintiffs have sustained damage in the sum of six 75/100 dollars and are liable to suffer further damage. Wherefore the Plaintiffs pray that the Defendant be adjudged and condemned within a time to be fixed by the judgment of the Honorable Court to close up the said five windows, one door and cellar window so exercising direct view over the property of the said Plaintiff and without their consent and to remove the sills of the said windows and the said wooden cornice and that in the event of his failure to do so, within such delay of this Honorable Court may fix, that the Court may order it to be done with such force as may be necessary at the expense of

RECORD.

—
*In the
Superior
Court.*
—

No. 131.
Copy of Declaration re
No. 497, The
Atl. & N. W.
Ry. Co. vs.
Wm. Walker,
(Exh. B9. of
Petr. Walker).
—Continued.

RECORD.
 In the
 Superior
 Court.

said Defendant and further that the Defendant be condemned to pay and satisfy to the Plaintiffs the sum of six 75/100 dollars, with costs including costs of exhibits *distracts* to the undersigned attorneys.

Montreal, May 23rd 1889.

(Signed) ABBOTTS, CAMPBELL & MEREDITH,
 Attys. for Plaintiff.

No. 131.
 Copy of Declaration re
 No. 497, The
 Atl. & N. W.
 Ry. Co. vs.
 Wm. Walker.
 (Exh. B9. of
 Petr. Walker.
 —Continued.

(True copy).

ABBOTTS, CAMPBELL & MEREDITH,
 Attys. for Plaintiffs.

(ENDORSED)

10

Declaration, Copy. Petitioner Walker's Exhibit B9. Fyled 28th March 1891.
 (Paraphed) E. D. Dep. P. S. C.

SCHEDULE No. 170.

20

No. 132.
 Copy of Plea
 re No. 497.
 Atl. & N.W.
 Ry. Co. vs.
 Wm. Walker.
 (Exh. B10 of
 Petr. Walker.

Province of Quebec, }
 District of Montreal. }

In the Superior Court.

The Atlantic & North West Railway Company.....Plaintiff.

vs.

William Walker.....Defendant

30

And the said defendant for plea to this action saith :

That the Defendant is entitled to ask as he now asks that the proceedings under the Railway Act mentioned by the Plaintiff whereby the Plaintiff became the owner of the lot of land described in the declaration should be annulled and set aside for fraud and error.

That by the plans filed by the said company according to law in the office of the clerk of the Peace before the expropriation and by a particular plan or tracing exhibited to the arbitrators at the time of the valuation of the indemnity to be awarded it appeared as was further represented verbally by the agents and employees of the Plaintiff and particularly by James B. Cantin their arbitrator on the expropriation proceeding of the said property that the Defendants property after the expropriation would have a frontage upon a new street fifth feet wide which the Plaintiff would open in continuation of Donegani street and which would connect with Mountain street.

That if the said Plaintiff had opened the said new street as agreed upon there would have been no occasion to bring the present action, as the defendant would have had the right of exercising the different servitudes now complained

of.

That the award of the arbitrators in the matter and the subsequent Deed of sale by the Defendant were made on the Distinct understanding on all sides and with the intention that the Plaintiffs should open the street in question.

That Plaintiff is now making it manifest that it does not intend to carry out its promises in the matter notwithstanding the repeated demand of the Defendant that it should do so, and in fact the present action establishes that it refuses to open said street,

10 That the amount awarded the Defendant ought to have been and would have been at least twice as high as it was, if it had been understood by the arbitrators that the Defendant was to lose all rights of access to his property from the rear and to be placed in the position in which the present demand if granted would place him.

20 Wherefore the Defendant prays that the said sale by him to the Plaintiff to wit before Marler Notary on the twenty third June, eighteen hundred and eighty seven and the award of the arbitrators on the twenty eighth of May previous be set aside as having been signed in error and obtained by the fraud of the Plaintiff the Defendant declaring his readiness to return the amount awarded to him and which he has received within twenty four hours of any declaration that the Plaintiff may make of their readiness to restore things to their former state, the Defendant further declaring his readiness to proceed to a new award without interfering with the possession by the Plaintiff of the property so long as the Defendant is not interfered with as to his servitudes on the property; and further the Defendant prays that the present action be dismissed with costs, including the costs of exhibits and other incidental expenses said costs *distracts* to the undersigned.

Montreal, 29th, June, 1889.

(Signed) BARNARD & BARNARD.
Attorneys for Deft.

30

And the said Defendant without waiver of the foregoing plea for defense *au fond en faits* to the present action expressly, specially and specifically denies each all and even the allegations, matters and things set forth and alleged by the said Plaintiff in his declaration in this cause fyled.

Wherefore Defendant prays that Plaintiff's said action may be hence dismissed with costs *distracts* to the undersigned attorneys.

Montreal, 29th, June 1889.

(Signed) BARNARD & BARNARD.
Attorneys for Deft.

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(ENDORSED.)

Defendants' Plea. Copy. Petitioner Walker's Exhibit B-10. Fyled 28th March, 1891.

(Paraphed) E.D. Dep. P.S.C.

RECORD.

In the
Superior
Court.

No. 132.
Copy of Plea
re No. 497,
Atl. & N.W.
Ry. Co. vs.
Wm. Walker.
Exh. B10 of
Petr. Walker).
—Continued.

SCHEDULE No. 171.

RECORD.

*In the
Superior
Court.*

Province of Quebec,
District
of
Montreal.

In the Superior Court.

No. 133.

Copy of De-
claration re
No. 1342
Atl. & N.W.
Ry. Co. vs.
Wm. Walker.
(Exh. B12 of
Petr. Walker.

William Walker.....Plaintiff

vs.

10

The Atlantic & North West Railway Company.....Defendant.

William Walker, of the City of Montreal, plumber, Plaintiff, complains of the Atlantic & North West Railway Company, a body politic and corporate having its principal office in the City of Montreal, Defendant, and declares :

That on the twenty-eighth day of May eighteen hundred and eighty-seven by Deed before Marler, Notary Public of Montreal, James B. Cantin, John M. M. Duff and John McDougall, fully described in said Deed, declared that the Defendant Company having notified the Plaintiff that they would require for the purposes of their Railway a portion of Cadastral lot six hundred and sixty-one St. Antoine Ward, City of Montreal, which lot belonged to the Plaintiff, said portion measuring the number of feet in said Deed mentioned with the buildings thereon erected, and the said Cantin, Duff and McDougall, were duly appointed arbitrators for the purpose of ascertaining the compensation to be paid Plaintiff for the said land and damages and were duly sworn as such arbitrators, and that they had awarded the said Plaintiff five thousand two hundred and fifty dollars as and for the value of the said land so required and for the damages suffered or to be suffered by the Plaintiff by the taking and using of the said land for the purposes of the said Company Defendant, which award was duly served on the Plaintiff.

30

That on the twenty-third day of June following, the Plaintiff in due course of law and for the purpose of giving effect to the said award gave the Company Defendant a Deed of Sale before the said Marler of the said land required as aforesaid, it being stipulated that the buildings erected on said land were not sold, but the purchaser on the contrary reserved them for himself and they would belong to him provided he removed the same before the first day of July following, which the Plaintiff alleges he did.

That the said proceedings in expropriation, the said award and the said Deed of Sale were made under the following circumstances : The Company Defendant had previously filed in the office of the Clerk of the Peace of the City of Montreal, according to law, the plans shewing the lands to be expropriated and by said plans and by a particular plan or tracing exhibited by the said Cantin the arbitrator specially chosen by the Company Defendant, on behalf of the said Defendant it was made to appear to the Plaintiff and to the other parties, his neighbors, whose position was similar, and it was further represented verbally by the officials servants and employees of the said Defendant to the Plaintiff and his said neighbors and to the said three arbitrators

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that the property remaining to the Plaintiff after the expropriation would not be deprived of a frontage such as the whole property had on Blache lane or street before the expropriation, but that on the contrary such property remaining to the Plaintiff after the expropriation would have a frontage much superior to that formerly afforded by Blache lane, to wit: that it would be bounded by and have access to and right of view and other servitudes upon a new street which the Defendants were to open and which would be fifty feet wide and would be the continuation of the existing street known as Donegani street which would be extended to Mountain street, said new street to take place of the proposed Donegani street as shewn on the homologated plan of the City of Montreal.

10

That upon the understanding the amount of the indemnity to Plaintiff was fixed by the said arbitrators, a minute being made by the arbitrators, dated the twelfth day of April, eighteen hundred and eighty-seven, and signed by all three of them, that the Plaintiff's entrance to his premises in rear must not be impeded or obstructed in any way during the construction of the railway, or during the time that the street in rear of the property were being changed, whereby the arbitrators meant that until the new proposed street, fifty feet

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wide were made available to the Plaintiff after the expropriation the entrance to his premises in rear from Blache lane should not be impeded or obstructed in any way.

That immediately after the signing of the said above recited Deed of Sale the Plaintiff pulled down that part of his building or factory which stood on the part expropriated, and made the alterations in his factory which were contemplated at the time the said arbitrators determined the amounts of indemnity which they awarded to him, and the said factory, after the alterations made, stood fronting on the line of the proposed new fifty-foot wide street, with windows looking out and doors and gateway opening on same, and the cornices projecting fourteen inches over the same, and from that time up to the twelfth day of March,

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eighteen hundred and eighty-eight the Plaintiff continued to have an entrance to his factory through Mountain street and Blache lane, and the expropriated portion of his and his neighbor's property, in the ordinary carrying on of his business as a plumber and large manufacturer, said alterations to his factory and building on the new line and servitudes exercised upon the same, being with the full knowledge and acquiescence of the said Company Defendant, through its official agents and employees generally.

40

That on the said twelfth day of March, eighteen hundred and eighty-eight, the Defendants having changed their plans, proceeded to erect their railway in such a manner that the trestle-work thereof actually pressed upon the wall of the factory fronting as aforesaid on the proposed new street, the whole notwithstanding the emphatic and repeated protests of the Plaintiff addressed to the Company Defendant through its officials and employees, said protests both written and verbal.

That by the said conduct of the Company Defendant, the Plaintiff has suffered damage in the manner and to the extent mentioned in the accompanying report of Alexander G. Fowler, architect, dated the twentieth day of December last, which report is herewith filed and which Plaintiff refers as

RECORD,

—
In the
Superior
Court.

—
No. 133.
Copy of Declaration re
No. 1342
Atl. & N.W.
Ry. Co. vs.
Wm. Walker.
(Exh. B12 of
Petr. Walker)
Continued.—

RECORD.
In the
Superior
Court.

No. 133.
Copy of De-
claration re
No. 1242
Atl. & N.W.
Ry. Co. vs.
Wm. Walker.
(Exh. B12 of
Petr. Walker)
Continued.—

forming part hereof.

That the rear lot referred to in said report contains two thousand two hundred and eighty-three feet, which are reduced in value by the acts of the Defendants, to the extent of eighty-two and one half cents a foot, equal to one thousand eight hundred and eighty-three dollars and forty seven cents (\$1883.47.) That the front lot contains an equal number of feet, which are reduced in value to the extent of eighty-seven and one half cents a foot, equal to one thousand nine hundred and ninety-seven dollars and sixty-two cents (\$1997.62.)

That the loss of Plaintiff on his factory, amounts to three thousand seven hundred and fifty dollars and that Plaintiff is further entitled to the sum of twelve hundred and fifty dollars, for the reasons mentioned in the said report making the total loss of Plaintiff, which he has suffered by the fraud and delit of the Company Defendant, eight thousand eight hundred and thirty-one dol- 10
lars and nine cents.

Wherefore the Plaintiff prays that as so far as necessary, the said award and Deed of Sale, may be declared to be vitiated by fraud on the part of the Company, Defendant and error on the part of the arbitrators and Plaintiff and, that the same be declared to have been made on the condition and understand- 20
ing that the property after expropriation should be bounded by a new street, fifty feet wide as aforesaid, and that the Company Defendant, be condemned to pay Plaintiff the said sum of eight thousand eight hundred and thirty-one dollars and nine cents, with interest from the said twelfth day of March, eighteen hundred and eighty-eight, the whole with costs including Exhibits and other incidental expenses *distracts* to the undersigned.

Montreal, February 3rd, 1890.

BARNARD & BARNARD,
Attorneys for Plaintiff.

(ENDORSED.)

30

Declaration. (copy.) Petitioner Walker's Exhibit B.11., Fyled 28th March, 1891.
(Paraphed), E. D. Dep. P.S.C.

SCHEDULE No. 172.

No. 134.
Copy of Plea
re No. 1342.
Wm. Walker
vs. The Atl.
& N.W. Ry.
Co. (Exh.
B12 of Petr.
Walker.)

Canada
Province of Quebec }
District of Montreal }

Superior Court

40

William Walker.....Plaintiff

vs.

The Atlantic & North West Railway Company.....Defendants .

And the said Defendants for plea to the Plaintiff's action and demand say :
That all the allegations, matter and things in the Plaintiff's declaration set forth and contained are false and the Defendants deny each and every of them, as expressly as if the same were denied seriatem.

Wherefore the Defendants hereby declaring their option that this cause be tried at enquête and merits, further pray the dismissal of the Plaintiff's action, with costs encloding costs of Exhibits, *distracts* to the undersigned attorneys.

Montreal, May, 13th 1890.

(Signed)

ABBOTTS CAMPBELL & MEREDITH.

Attorneys for Defendants.

10

And the said Defendants without waiver of the foregoing plea to the Plaintiff's action and demand say ;

That heretofore to wit on the _____ day of _____ the Defendants in virtue of the Power conferred upon them by their Charter notified the Plaintiff that they would require for the purposes of their railway the following immoveable property namely :—

20 A portion of that certain lot of land know and distinguished on the Official Plan and in the Book of Reference of the St. Antoine ward of the said City of Montreal by the number six hundred and sixty one and on the Plan and Book of Reference of said Railway Company by the number twenty nine, said portion measuring thirty five feet in depth on the north east side and thirty eight feet in depth on the South West side by a width of twenty seven feet and containing nine hundred and eighty five and a half feet in superficies the whole English Measure and more or less..

30 2° That the Defendants offered as compensation for the value of the said land and the damages suffered and to be suffered by reason of the taking thereof, and the exercise thereon of the franchises of the Railway Company, the sum of _____ dollars, which offer being refused, arbitrators were duly appointed as required by law, which said arbitrators having visited the property in question and obtained the necessary information, did on the twenty eighth day of May, eighteen hundred and eighty seven, rendered their award, whereby in effect they awarded to William Walker the sum of five thousand two hundred and fifty dollars as and for the value of the said land herein above described and the damages suffered or to be suffered by reason of the taking and using thereof for the purposes of the said Company, and the Defendants by virtue of the said award, became the absolute and unconditional owners of the said property.

40 3° That afterwards, to wit, on the twenty-third day of June, eighteen hundred and eighty-seven, the said Plaintiff did, by deed of Sale before W. de M. Marler, Notary Public, sell and convey the lot of land to the said Defendants for the said price of five thousand two hundred and fifty dollars in full payment satisfaction and discharge, as well of the said land as of all damages caused or to be caused by the exercise by the Railway Company Defendants, of their powers and franchises thoreon, and without any further or other conditions or stipulations, and without reserve of any rights of way, servitude or other

RECORD.
—
In the Superior Court.
—
No. 134.
Copy of Plea re No. 1342.
Wm. Walker vs. The Atl. & N.W. Ry. Co. (Exh. B12 of Petr. Walker.)
Continued.—

RECORD.

*In the
Superior
Court.*
No. 134.

Copy of Plea
re No. 1342.
Wm. Walker
vs. The Atl.
& N.W. Ry.
Co. (Exh.
B12 of Petr.
Walker.)
Continued.—

privileges by the vendors, either for themselves or in favor of the remainder of the said lot of land.

4° That by virtue of the premises and by law, the said Defendants became and were the absolute owners of the said lot of land, without the same being subject to any servitudes or rights of way of any kind or description whatsoever.

5° That by reason of the premises the said Plaintiff never had any right of action or claim for damages against the Defendant by reason of the matters and things in the Plaintiff's declaration set forth, or any right to any servitude in and upon said land.

Wherefore, the Defendants pray the dismissal of the Plaintiff's action with costs, *distracts*, to the undersigned attorneys. 10

Montreal, May 13th, 1890.

(Signed) ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

And the said Defendants without waiver of the foregoing pleas, for further pleas to Plaintiff's action and demand:—

1°. That no representations either verbally or otherwise were ever made by the officials, servants or employees of the Defendants, or by any person or persons authorized so to do, either to the said Plaintiff or to his neighbors, or to the arbitrators, that the property remaining to the Plaintiff after the expropriation would have any frontage or servitude or rights of any kind in or upon Blache lane or street, or any street or lane to be opened by the Defendants upon their own property, and that if any such representations were made by any person or persons there were made without any authorizations from the Defendant. 20

2° That if any negotiations took place with the object of purchasing either through expropriation proceedings, or otherwise the part of the property of the said Plaintiff, now belonging to the Defendants, and if any such maps or plan was shown to the Plaintiff, or to the said arbitrators, the same was shown with the sole object of showing a proposed arrangement of the land for the purpose of ascertaining the most advantageous arrangement that the Company Defendants could make with the said Plaintiff for the purchase of the said land, and the same was not finally purchased by them nor any sum fixed by the arbitrators for the compensation and damages upon the basis of the opening by the said Defendants of any such street, or the enjoyment by the said Plaintiff, of any rights or servitude in or upon the same, and if any such understanding or agreement ever existed, the same was waived and abandoned by the award of arbitrators, and by the Deed of Sale from the said Plaintiff to the Defendants, of the lot of land purchased by them. 30

3° That the Plaintiff has not sustained damage in the manner and form alleged in his declaration. 40

Wherefore the Defendants pray the dismissal of the Plaintiffs action with costs *distracts* to the undersigned Attorneys, including costs of Exhibits.

Montreal, May 13th, 1890.

(Signed,) ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendants.

And the said Defendants without waiver of the foregoing, for further plea to the Plaintiff's action say :—

That more than two years have elapsed since the right of action of the Plaintiff if any accrued, and the same was at the time of the institution of this action by law prescribed and extinguished.

And Defendants further say, that they are not guilty.

Wherefore the Defendants pray that it be adjudged that any right of action, of the Plaintiff, or his auteurs has been prescribed and extinguished by lapse of time and further pray that the said action be hence dismissed with costs, *distrains* to the undersigned.

10 Montreal, May 13th, 1890.
 (Signed), ABBOTTS, CAMPBELL & MEREDITH,
 Attys. of Defendants

(ENDORSED.)

Pleas. Copy. Petitioners Walker's Exhibit B.12, Fyled 28th March, 1891
 (Paraphed), E. D. Dep. P. S. C.

20

SCHEDULE NO. 173.

Province of Quebec, }
 District of Montreal. } Superior Court.

30 Hon. A. Turcotte *es qualite*..... Petitioner
vs.

Atlantic & North West Railway Company..... Defendant
 AND

City of Montreal..... Intervening Party
 AND

40 William Walker..... Petitioner for *Mandamus*
 AND

Arthur Turcotte..... Defendant

The said Defendant Turcotte to save costs admits :—

RECORD.

*In the
 Superior
 Court.*

No. 134.
 Copy of Plea
 re No. 1342.
 Wm. Walker
vs. The Atl.
 & N.W. Ry.
 Co. (Exh.
 B12 of Petr.
 Walker.)
Continued.—

No. 135.
 Admission of
 Deft. Tur-
 cotte that
 Petr's Wal-
 ker Exhs. 2,
 3, 4, 6. B3, B9,
 B10, B11, B12,
 are true co-
 pies of the se-
 veral docu-
 ments they
 purport to be
 copies of, and
 consent to
 said Petr's
 Exh. B, B1, B
 2 B4, B
 5, B6, B7, and
 B8, being con-
 sidered as
 proved.

RECORD.

*In the
Superior
Court.*

That Petitioner Walker's Exhibits 2, 3, 4, 6, B3, B9, and B10, B11, and B12, are true copies of the several copies of the several documents they purport to be copies of, and consents that said Petitioner's Exhibits B, B1, B2, B4, B5, B6, B7, and B8, be considered as proved.

Montreal, March 19th, 1891.

C. A. GEOFFRION,
Avocat du Defr.

(ENDORSED)

Admission and consent as to Petitioner Walker's Exhibits. Fyled 28th 10
March, 1891. (Paraphed). E. D., Dep. P. S. C.

No. 135.
Admission of
Deft. Tur-
cotte that
Petr. Walk-
er's Exhs. 2, 3,
4, 6, B3, B9,
B10, B11,
B12, are cop-
ies of the
several docu-
ments they
purport to be
copies of, and
consent to
said Petr.
Exh. B, B1,
B2, B4,
B5, B6, B7,
and B8, being
considered as
proved.
— *Continued.*

SCHEDULE NO. 174.

Province of Quebec, }
District of Montreal. }

In the Superior Court.

20

Hon A. Turcotte, *es qual.*, Plaintiff.....Petitioner.

AND

The Atlantic & North-West Railway Company.....Defendant.

AND

No. 136. Admission of Parties as to certain lots of land mentioned in Plff's Exhibits. The City of Montreal.....Intervening Party. 30

The Parties ts save costs admit :—

1°. That the property described in the Deed of Sale by Louis Blache *et al* to Jean B. Renaud, before J. Belle, N. P., dated the 18th March, 1857, and fyled as Petitioner's Exhibit at Enquête *Aa*, and in the Deed of Sale by Jean B. Renaud to James Baylis, before J. S. Hunter, dated the 17th May, 1864, and fyled as Petitioner's Exhibit *A-b* at Enquête, is the property belonging to the Atlantic & North-West Railway Company, known as subdivisons 7, 8, 9, 10, 11 and 12 of cadastral lot No. 657, St. Antoine Ward, Montreal.

2°. That the property described in the extract of judgment of the 26th, February, 1867, in confirmation of title *in re*. James Grantham *et al*. Plaintiffs, *rs*. Isaac Taylor *et al.*, Defendants, and Cynthia Gilbert *et al*, Oppo-
sants, fyled herewith as Petitioner's Exhibit *A-c*. is the property bought by the Company, Defendant, from Dame Lilius E. Fraser, known as cadastral lot, No. 658, St. Antoine Ward. 40

3°. That the Property described in the Deed of Sale by Dame M. J.

Hervieux, wife of Robert J. Greig, to Joseph Archambault, before A. Montreuil, N. P., dated the 4th December, 1844 and filed as Petitioner's Exhibit A-d is the property bought by the Atlantic & North West Railway Company from Francis Huston known as Cadastral lot 655 St. Antoine Ward Montreal.

4° That the property described in Deed of sale by Michael Babcock & Alexander Henderson Trustees for the creditors of Wm. B. Lamb, to John Gordon Mackenzie before Griffin N. P. dated the 22nd August 1866 and filed as Petitioner's Exhibit A-E is the property now belonging to the Estate Watt known as Cadastral lot 660 St Antoine Ward, Montreal.

10 5° That the north easterly portion of the property described in the Deed of sale by Augustin Larocque dit Lebrun to Louis Russell before Chevalier de Lorimier N. P. dated the 19th February 1834 and filed herewith as Petitioner's Exhibit A-f at Enquête and in the deed of sale by Miss Maria A. Rasco to John McGregor before J. A. Labadie, N. P., the 26th February, 1847, and fyled as Petitioner's Exhibit A-g, and in the Deed of Sale by Robert S. Auld, *et al.*, to Edward C. Hughes before George R. W. Kittson, N. P., the 22nd May 1885, and filed as Petitioner's Exhibit A-h, is the property belonging to Thomas Darling known as the north easterly portion of cadastral lot No. 661 St. Antoine Ward, Montreal

20 6° That the south Westerly part of the property described in the said Deeds of sale by Augustin Larocque dit Lebrun to Louis Russell and by Miss Marie A. Rasco to John McGregor is the property now belonging to William Walker, known as the south westerly portion of cadastral lot No. 661 St. Antoine Ward Montreal.

7° That the property described in the Deed of sale by Louis Russel et uxor to George Koester before Gibb, N. P. dated the 30th March 1842 fyled as Petitioner's Exhibit A-I at enquête is the property belonging to Felix Sauvageau known as Cadastral lots Nos. 662 and 663 St. Antoine Ward Montreal.

30 8° That the property described in the Deed of sale by Margaret Sweeney to Rev. James Sommerville before N. B. Doucet N. P. the 2nd March, 1833, filed as Petitioners Exhibit A-J at enquête is the property now belonging to John James Brennan known as lot No. 665 St. Antoine Ward Montreal.

9° That the property described in marriage and donation between Jean Descaries and Marie Louise Lanthier before Chevalier de Lorimier N. P. the 23rd November 1834 filed as Petitioner's Exhibit A at enquête is the property now known as cadastral lot No. 665 A-k St Antoine Ward Montreal.
Montreal, Oct. 23rd 1890.

ABBOTTS, CAMPBELL & MEREDITH,

Attys. for Defendants.

40

BARNARD & BARNARD,

Attys. for Petitioner.

(ENDORSED.)

Admission as to Petitioners Exhibits A-a to A-k at enquête. Fyled 24th Oct., 1890. J. L. Dep. P. S. C.

RECORD.

—
*In the
Superior
Court.*

—
No. 136.
Admission of
Parties to
certain lots of
land men-
tioned in
Plff's. Ex-
hibits.
— *Continued*

SCHEDULE No. 176.

RECORD.

*In the
Superior
Court.*

Province of Quebec, }
District of Montreal. }

Superior Court.

No. 137.

Sarah Johnson *et. al.*.....Plaintiffs

Declaration,
Sarah John-
son *vs.* Joseph
Archambault
S. C. M., No.
1897. 7th
1890. (Exh.
A2 of Petr.
at Enquête).

vs.

Joseph Archambault.....Defendant. 10

Sarah Johnson of the City and District of Montreal, widow of the late James Henry Lamb, in his lifetime of the said City and District, Esquire, and William Busby Lamb of the said City and District of Montreal, Advocate Plaintiffs, complain of Joseph Archambault, of the said City and District of Montreal, painter, Defendant, and declare :

That at Montreal, aforesaid on or about the seventh day of October, one thousand eight hundred and thirty-four, by Deed of Sale bearing date the seventeenth day of October, one thousand eight hundred and thirty-four, the Honorable Louis Gogy, Esquire, Sheriff of the District of Montreal, under and by virtue of a Writ of Execution at the suit of Margaret Young, widower of the late Gilbert Miller, against the lands and tenements of David Miller, and of his office, and in consideration of the sum of one hundred and three pounds, granted, bargained, sold and conveyed to the said James Henry Lamb, his heirs and assigns, a certain lot of ground and premises situate in the St. Antoine suburbs of the said City of Montreal, containing eighty feet french measure in front more or less by one hundred and eighty feet more or less by one hundred and eighty feet same measure more or less in depth, with a stone house and other buildings therein erected, bounded in front by the main street of the said suburbs, in rear partly by a projected street and partly by Pierre Heureux, Esquire, and on one side to the North-east by the said Pierre Heureux and on the other side by Antoine Larocque or representatives, subject to the conditions therein mentioned. To hold with their and every of their appurtenances unto the said James Henry Lamb, his heirs and assigns for ever, which said deed was registered in the Registry Office for the County of Montreal, (being the county in which the said house and premises are situate) on the seventeenth day of October, one thousand eight hundred and forty-four. 20

That under and by virtue of the foregoing Deed of Sale the said James Henry Lamb became entitled to and entered into possession of said house and premises, and a right of passage unto, into, over through and upon a certain lane, street or passage at the rear thereof, leading from the said house and premises into Mountain street in the City of Montreal, and so continued until the time of his death herein after mentioned. 30

That on the seventeenth day of October, one thousand eight hundred and thirty-four and for thirty years previously, thereto the said street, lane, or passage was and still is opening into Mountain Street, and extending from Mountain Street, to the property of the said Pierre Heureux, which street, lane, or passage, formed from time immemorial in part the rear bounding of 40

the property of the said Plaintiff, and had been in time immemorial in use by the proprietors of the several lots abutting on the said street, lane, or passage, and the public generally.

That the said street, lane, or passage, was intended to be continued to Bisson Street, running parallel to Mountain Street, but had remained unopened further than the property of the said Pierre Heueux, that there was on the seventeenth day of October, one thousand eight hundred and thirty-four, and for thirty years previously and is a gateway opening from the Plaintiffs premises into the said street, lane, or passage, which was used by the said James
 10 Henry Lamb, in his lifetime and after his death by the Plaintiffs as a passage from the premises of the said Plaintiff, into through over and upon the said street, lane, or passage to Mountain Street, aforesaid, and from thence back again into through over and upon the said street, lane, or passage, to the premises of the said Plaintiff. That the said street, lane, or passage was from time immemorial until the illegal interruption and occupation of the same by the Defendant for his private use freely used and enjoyed as of right by the said James Henry Lamb, and the several proprietors of lots abutting on the said street, lane, or passage and the public generally. That on or about the
 20 Month of March, one thousand eight hundred and fifty-two, the said Defendant illegally erected or caused to be erected across the said lane or street a wooden picket fence together with certain wooden buildings, workshops and tenements and planted within the said enclosure trees and shrubs thereby barring the said street, lane or passage, and occupying the same to the injury of the said James Henry Lamb and the Plaintiffs and thereby preventing all access to and egress from the property of the said James Henry Lamb, and the Plaintiffs through the said street, lane, or passage to Mountain Street, or elsewhere to the great injury of the said James Henry Lamb and the Plaintiff's and to the deterioration in value of said property.

That by agreement *sous seing privé* bearing date the first day of April one
 30 thousand eight hundred and fifty-two, and made between the said James Henry Lamb and Joseph Archambault (to wit the defendant) after reciting that the said Joseph Archambault (to wit the defendant) under pretence of excluding stray cattle from about his premises and for divers other similar reasons has had in opposition to the expressed will and declaration of the said James Henry Lamb, made and placed an open rail fence across that certain street or lane of about thirty feet in width opening into Mountain Street (being the same identical lane street or passage over which the said James Henry Lamb in his lifetime and the Plaintiffs after his death had and have a right of way) and had erected certain buildings therein to the prejudice of the rights of the said
 40 James Henry Lamb and to his great injury and detriment thereby preventing his free use of the said lane and exit from and entrance to his property therein by means of the same and of the gates therein opening as by right he hath. He the said Joseph Archambault (to wit the Defendant) in consideration that the said James Henry Lamb would not cause the said fence and premises to be immediately removed by the said Joseph Archambault (to wit the Defendant) but would allow the same to remain so long as the said James Henry Lamb his representatives or assigns should please, the said Joseph Archambault (to wit

RECORD!

In the
Superior
Court.

No. 137.
Declaration,
Sarah John
son vs. Joseph
Archambault
S. C. M., No.
1897, 7th
1860. (Exh.
A2 of Petr.
at Enquête).
— Continued.

RECORD.

*In the
Superior
Court.*

No. 137.

Declaration.
Sarah Johnson
vs. Joseph
Archambault
S. C. M., No.
1897. 7th,
1890. (Exh.
A2 of Petr.
at Enquête.)
—*Continued.*

the Defendant) for himself his heirs and assigns thereby expressly declared that he admitted the right of the said James Henry Lamb to enjoy the said lane free and unencumbered by any act work or erection of the said Joseph Archambault (to wit the defendant) his heirs or assigns and that he the said Archambault had only erected the said fence and premises for temporary use and was willing and promised and obliged himself his heirs and assigns to remove the same whenever there unto requested by the said James Henry Lamb his representatives or assigns under a penalty of one pound currency for each and every day which he the said Joseph Archambault his heirs or assigns should allow the said fence premises or any obstruction to remain on that part of the lane between the said properties after the request having been made as aforesaid to him his assigns or representatives. 10.

That afterwards, to wit at Montreal as aforesaid on or about the fourth day of November one thousand eight hundred and forty-eight the said James Henry Lamb by his last will and testament passed before George Weekes and colleague Notaries Public bearing dated the day and year last aforesaid devised unto Sarah Johnson his wife (to wit one of the Plaintiffs in this cause) the enjoyment during her life only of a certain lot of ground and premises known under the name of Miller's lot (to with the lot of ground and premises so sold by the said James Henry Lamb and comprised in the said deed of sale hereinbefore recited of the twenty-third day of September one thousand eight hundred and thirty-four. To hold use and enjoy the said lot of ground and premises with the appurtenances by the said Sarah Johnson his wife (to wit one of the said Plaintiffs) from the day of his said Testators death and during her natural life only and after her death by his son the said William Busby Lamb (to with the other Plaintiff in this cause) or his representative in perpetuity, and appointed Thomas Peck and the said Sarah Johnson and William Busby Lamb (to with the Plaintiff) executors thereof. 20.

That the said James Henry Lamb afterwards died, to wit on the twenty-sixth of February eighteen hundred and fifty-four without having altered or revoked the said will and immediately thereupon the said Sarah Johnson having accepted of the said *usufruct* entered into possession of the said house and premises and hath since continued and still continue to possess and enjoy the same. 30.

That the said Thomas Peck and Sarah Johnson having duly renounced the burden of the execution of the said Will, the same was proved in due form of law on or about the twenty-sixth day of May, one thousand eight hundred and fifty-four, and probate thereof granted to the said William Busby Lamb, who accepted the bequest made to him by the said Will.

That the said James Henry Lamb in his lifetime, and after his death, the said Plaintiff before and at the time of the committing of the grievances by the Defendant hereinafter mentioned was and were and from thence hitherto hath and been, and the Plaintiffs still are lawfully possessed of the said house and premises herein before mentioned with the appurtenances and by reason thereof and of the premises the said James Henry Lamb during his life and after his death the Plaintiff during all the time aforesaid ought to have had and the Plaintiff still of right ought to have a certain way from the said house and premises unto, into, through, over, and along the said certain lane, street or 40.

passage to wit : That certain lane, street, or passage to wit : That certain lane at the rear of the said house and premises and from thence unto and into a certain common or public highway called Mountain street in the said City of Montreal and so from thence back again from the said street called Mountain street unto, into, through, and along the said lane, street, or passage unto and into the said house and premises respectfully so in the possession the said Henry James Lamb during his life and after his death and now in the possession of Plaintiff for themselves and their servants on foot, with horses, carts, waggons and other carriages to go, return, pass and repass, every year and at all times of the year at their free will and pleasure as to the said house and premises with the appurtenances of the Plaintiff's belonging and appertaining. Yet the Defendant well knowing the premises but intending to injure the Plaintiff in that behalf and to deprive them of the use and benefit of their said way whilst the said James Henry Lamb in his life time and after his death the said Plaintiffs were so entitled and possessed as aforesaid to wit : On the seventeenth day of April one thousand eight hundred and fifty-two, and on divers other days and times between that day and the commencement of this suit wrongfully and unjustly placed and erected an open rail fence across the said street lane or passage so shewing into Mountain street, and also erected certain other buildings thereon and planted trees and shrubs thereon, and that the said fence stretches across the said lane parallel to and on a line with Mountain street from the property of the said Plaintiff to the property of the said Defendant, and erected other premises thereon and there wrongfully kept and continued the said fence and premises, trees and shrubs in the same way as aforesaid for a long time, to wit : from thenceforth hitherto and thereby during all the time aforesaid the said way was and is greatly obstructed and stopped up, and the said James Henry Lamb in his lifetime and after his death the Plaintiffs could not nor can they the said Plaintiffs enjoy the same, and the said James Henry Lamb during his lifetime was and the Plaintiffs since his death were and are deprived of the use and benefit thereof to the damage of the Plaintiffs of Sixty pounds currency, and the Plaintiffs saith that the said Defendant promised to remove the said obstructions, fences and other buildings, trees and shrubs, whenever thereunto required.

That on the second day of January one thousand eight hundred and sixty, and on divers other days and times the said Plaintiffs required the said Defendant to remove the said obstructions fences and other buildings trees and shrubs hereinbefore mentioned but the said Defendant not regarding his promises hath wholly neglected and refused and still doth neglect and refuse to remove the same.

Wherefore the Plaintiffs bring suit and pray that the Defendant may be summoned to be and appear before this Honorable Court to answer the premises and that for the causes aforesaid he may be adjudged and condemned to remove the said fence and other premises and trees and shrubs within such delay as the Honorable Court shall order and restore to the Plaintiff their said right of way into through over and upon the said street lane or passage from the house and premises to the said street called Mountain Street and from thence back again into through over and upon the said Street lane or pas-

RECORD.

*In the
Superior
Court.*

No. 137.
Declaration,
Sarah Johnson
vs. Joseph
Archambault
S. C. M., No.
1897, 7th,
1890. (Exh.
A2 of Petr.
at Enquête.)
—Continued.

RECORD

*In the
Superior
Court.*

No. 137.
Declaration,
Sarah John-
son *vs.* Joseph
Archambault
S. C. M., No.
1897. 7th,
1890. (Exh.
A2 of Petr.
at Envuête.)

sage to the said house and the Premises of the Plaintiffs and that the said Defendant may be adjudged and condemned to pay and satisfy to the Plaintiffs the sum of Sixty Pounds with interest thereon from service of process in this cause and the costs of suit *distrains* in favor of the undersigned attorneys.
Montreal, 25th, April, 1860.

TORRANCE & MORRIS,
Attorneys for Plaintiff.

(True Copy by Consent.)

BARNARD & BARNARD,
Attorneys for Petitioner.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Defendant.

10

(ENDORSED.)

Declaration A. Fyled 7th May, 1860.

SCHEDULE NO. 177.

20

No. 138.
Copy of
Judgment,
Johnson *et al.*
and Archam-
bault, C.Q.B.,
No. 25 Dated
9th Mch.
1864. (Exh.
B2, of Petr.
at Enquête).
—Continued.

Province of Quebec,
Lower Canada, to wit. }

Court of the Queen's Bench,
(APPEAL SIDE.)

Montreal, wednesday the ninth day of March, one thousand eight hundred and sixty-four.

Present :

| | |
|--|---------------|
| THE HONORABLE MR. CHIEF JUSTICE DUYAL, | } Assistants. |
| “ “ “ JUSTICE MEREDITH, | |
| “ “ “ “ MONDELET, | |
| “ “ “ “ BAGDELEY. | |

30

No. 25.

Sarah Johnson of the City and District of Montreal, widow of the late J. H. Lamb, in his lifetime of the said City and District, Esquire, and William Busby Lamb, of the said City and District of Montreal, Advocate.

(Plaintiffs in the Court below,)

40

Appellants.

AND

Joseph Archambault, of the said City and District of Montreal, painter,
(Defendant in the Court below,)

Respondent.

The Court of our Lady the Queen, now here, having heard the Appellants and Respondent by their counsel, respectively examined as well the Record, and proceedings, had in the Court below, as in the Court now here on this Appeal, seen the reasons produced by the said Appellant and the answers thereto and mature deliberation on the whole being had. Considering that the said street or lane called Rue Blache, mentioned and described in the declaration and pleadings in this cause filed, was a public street and throughfare on and for long previous to the seventeenth day of October one thousand eight hundred and thirty-four, date of the title of acquisition by the said late James Henry Lambe, of his house and premises in the said declaration mentioned and therein described, as butted and bounded by the said street, and was used by him the said James Henry Lambe, as such public street and throughfare, and by his representatives the said Appellants, Plaintiff's aforesaid possessors and proprietors of the said house and premises until the erection of the obstructions on the said street or throughfare, by the said Respondent, Defendant in the Court below, complained of by the said Appellants, considering that in the title of the said Respondent, produced and filed in this cause, his property therein mentioned, acquired by him thereby was butted and bounded in front in part by the said street, and did not extend beyond or into, or upon the said street. Considering that the said Respondent hath unlawfully made the obstruction aforesaid complained, of aforesaid against him by the said Appellants, without right or title by him so to do, by illegally erecting across the said street a wooden fence, and other buildings and tenements upon the said street, and by planting the same with trees and shrubs, considering that in the judgment of the Superior Court sitting at Montreal, on the thirtieth day of December, one thousand eight hundred and sixty-one, dismissing the action of the said Appellants, Plaintiffs aforesaid, there is error, doth reverse and set aside the said judgment and the Court proceeding to render the judgment which the Court below, ought to have rendered, doth maintain the said action of the said Appellants, Plaintiffs aforesaid and doth order and adjudge that the said Respondent, do within twenty days after the service upon him of this judgment, remove from the said street, the said fence and other buildings and the said trees and shrubs, and restore the said Appellants, Plaintiffs aforesaid their right of way to and the full and free use of the said street, or throughfare, from the house and premises aforesaid, unto through over and upon the said street called Mountain Street, and from thence back again through the said street or throughfare, to their said house and premises, failing which removal of the said obstructions and of the rendering and restoration, of the said right of way and use of the said street, that the said fence, other buildings, trees and shrubs, shall and may be removed as aforesaid by the said Appellants, Plaintiffs aforesaid, at the cost and expense, of the said Respondent, Defendant aforesaid, in due course of law, dismissing the demand of the said Appellants, for damages by them claimed in and by their said action, the whole with costs to the Appellants, against the Respondent, as well in the Court below, as in the Court of Appeal.

And the Record is ordered to be transmitted to the Court below.

And on motion of Messrs. Torrance & Morris, attorneys for the Appellants

RECORD.

—
In the
Superior
Court.

No. 138.

Copy of
Judgmenu,
Johnson *et al.*
and Archambault,
C.Q.B.,
No. 25 Dated
9th, March,
1864 (Exh.
B2, of Petr.
at Enquête.)
—Continued.

RECORD. the Court doth award them distraction of their costs on the present appeal in this Court.

In the Superior Court.
(True Copy by consent.)

BARNARD & BARNARD,
Attorneys for Petitioner.

ABBOTTS, CAMPBELL & MEREDITH,
Attys. for Defendant.

No. 138.
Copy of Judgment
Johnson *et al.*
and Archambault, C.Q.B.
No. 25. Dated 9th Mch. 1864. (Exh. B2, of Petr. at Enquête.)
Continued.—

(ENDORSED.)

Copy of Judgment.

10

SCHEDULE No. 178.

COURT OE QUEEN'S BENCH.

20

[APPEAL SIDE.]

In Appeal from the Superior Court, District of Montreal.

No. 139.
Appellant's Case, Johnson *et al* Archambault C.Q.B., No. 25. (Exh. B 8 of Petr. at enquête.

DISTRICT OF MONTREAL. }
PROVINCE OF CANADA. }

No 25.

30

SARAH JOHNSON ET AL.,

(Plaintiff in the Court below,)

APPELLANTS.

AND

JOSEPH ARCHAMBAULT,

(Defendant in the Court below,)

40

RESPONDENT.

FACTUM OF APPELLANT.

The Plaintiffs, Sarah Johnson and William Busby Lambe respectively the widow and heir-at-law of the said James Henry Lambe, complain of the dismissal

of the action which they had brought against the Defendant. The following is the judgment complained of. The 30th December, 1861.

RECORD.

—
In the
Superior
Court.

Present.—

The Honorable Mr. Justice Smith.

No. 139,
Appellant's
Case, John-
son *et al.* Ar-
chambault
C.Q.B., No. 25
(Exh. B8 of
Petr. at En-
quête.)
—Continued.

10 “The Court having heard the parties by their Counsel upon the merits of
“ this cause, examined the proceedings, proof of record, and deliberated, consi-
“ dering that the said Plaintiffs have failed to establish by legal and sufficient
“ evdience the existence of any title in the Plaintiffs, by reason of which the
“ said Plaintiffs can claim any right or title to use the street called the “ Rue
“ Blache” or to demand the demolition of the barn and building erected by the
“ said Defendant in the said street, as complained of in and by the said decla-
“ ration.

20 “ And further considering that the said Plaintiffs have failed to shew by
“ legal evidence that the said ‘Rue Blache’ is a public street or highway desti-
“ ned to the use of the public, by reason of which and by law the said Plaintiffs
“ can claim the right to use the said street, and to cause the removal of the
“ fence and buildings complained of by the said Plaintiff and have failed
“ to show any right in law by reason of which the said Plaintiffs can maintain
“ the conclusions of their said action, the Court doth dismiss the said action
“ with costs *distracts* in favor of Messieurs Dorion, Dorion & Senécal, the At-
“ torneys of the said Defendant.

30 The declaration of the Plaintiffs set out that on or about the 17th October
1834, the Honorable Louis Gogy, Esquire, Sheriff of the district of Montreal,
granted bargain and sold and conveyed to the said late James Henry Lambe,
his heirs, and assigns, “ a certain lot of ground and premises situate in the St.
“ Antoine Surburb of the City of Montreal, containing 80 feet, French mea-
“ sure, in front, more or less, by 180 feet, same measure, more or less in depth,
“ with a stone house and others building thereon erected, bounded in front by
“ the main street of the said surburbs, in rear partly by a projected street and
“ partly by Pierre Hervieux, Esquire, and on one side to the north-east by the
“ said Pierre Hervieux, and on the other side by Antoine Larocque or repre-
“ sentatives.”

40 That under and by virtue of the forgoing deed of sale the said James Hen-
ry Lambe became entitled to and entered into possession of said house and
premises and a right of passage unto, into, over, through and upon a certain
lane, street, or passage at the rear thereof, leading from the said house and
premises into Mountain street in the City of Montreal, and so continued until
the time of his death, &c.”

“That on the 17th October 1834, and for thirty years previously thereto,
the said stret, lane, or passage was and still is opening into Mountain street,
and extending from Mountain street to the property of the said Pierre Her-
vieux, which street, lane, or passage formed from time immemorial, in part the
rear boundary of the property of the said Plaintiffs, and has been from time
immemorial in use by the proprietors of the several lots abutting on the said

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street, lane, or passage, and the public generally.”

“That the said street, lane, or passage was intended to be continued to Bisson street running parallel to Mountain street, but had remained unopen further than the property of the said Pierre Hervieux. That there was, on the 17th October 1834, and for thirty years previously, and is, a gateway opening from the Plaintiffs' premises into the said street, lane, or passage, which was used by the said James Henry Lambe in his lifetime and after his death by the Plaintiffs as a passage from the premises of the said Plaintiffs, into, through over, and upon the said street, lane, or passage to Mountain street aforesaid, and from thence back again into, through, over, and upon the said street, lane, or passage to the premises of the said Plaintiffs. That the said street, lane, or passage was, from time immemorial until the illegal interruption and occupation of the same by the Defendant for his private use, freely used and enjoyed as of right by the said James Henry Lambe, and the several proprietors of lots abutting on the said street, lane, or passage, and the public generally. That in or about the month of March 1852, the said Defendant, illegally erected, or cause to be erected, across the said lane or street, a wooden picket fence, together with certain wooden buildings, workshops and tenements, and planted within the said enclosure trees and shrubs, thereby barring the said street, lane, or passage, and occupying the same to the injury of the said James Henry Lambe and the Plaintiffs, and thereby preventing all access to and egress from the property of the said James Henry Lambe and the Plaintiffs through the said street, lane, or passage to Mountain street or elsewhere, to the great injury of the said James Henry Lambe and the Plaintiffs, and to the deterioration in value of the said property.”

The Plaintiffs by their declaration further alleged an agreement *sous seing privé* of date 1st April, 1852, between the said James Henry Lambe and the Defendant, whereby the Defendant admitted to the said James Henry Lambe the rights of the latter in the said lane or street, as mentioned above, and promised to remove the obstructions placed there by him, on demand.

Allegation of the making of the will of the late said James Henry Lambe (4th November, 1848, whereby he devised to the Plaintiff, Sarah Johnson, the enjoyment, during her life, of the above lot of land and its rights and appurtenances, and after her death to his son, the Plaintiff, William Lambe, or representatives in perpetuity,

“That on the 26th February, 1854, the said James Henry Lambe died, without having altered his will, and the Plaintiff's accepted the bequests to them made.

“That the said James Henry Lambe in his lifetime, and after his death the said Plaintiff, before and at the time of the committing of the grievances by the Defendant hereinafter mentioned, was and were from thence hitherto hath and have been, and the Plaintiffs still are lawfully possessed of the said house and premises, hereinbefore mentioned, with the appurtenances, and by reason thereof and of the premises the said James Henry Lambe during his life and after his death, the Plaintiffs during all the time aforesaid ought to have had and the Plaintiffs still of right ought to have a certain way from the said house and premises unto, into, through, over, and along the said certain

lane, street, or passage, to wit, that certain lane at the rear of the said house and premises, and from thence unto and into a certain common or public highway called Mountain Street, in the said City of Montreal, and so from thence back again from the said street called Mountain Street, unto, into, through and along the said lane, street or passage unto and into the said house and premises respectively, so in the possession of the said James Henry Lambe during his life, and after his death and now in possession of Plaintiffs, for themselves and their servants on foot, and with horses, carts, waggons and other carriages to go, return, pass and repass, every year and at all times of the year at their free will and pleasure as to the said house and premises with the appurtenances of the Plaintiffs belonging and appertaining, yet the Defendant well knowing the premises, but intending to injure the Plaintiffs in that behalf, and to deprive them of the use and benefit of their said way, whilst the said James Henry Lambe in his lifetime, and after his death the said Plaintiffs were so entitled and possessed, as aforesaid, to wit, on the 17th day of April, one thousand eight hundred and fifty-two, and on divers other days and times, between that day and the commencement of this suit, wrongfully and unjustly placed and erected an open rail fence across the said street, lane, or passage so opening into Mountain Street, and also, erected certain other buildings thereon, and planted trees and shrubs thereon, and that the said fence stretches across the said lane parallel to and on a line with Mountain Street from the property of the said Plaintiffs to the property of the said Defendant, and erected other premises thereon, and these wrongfully kept, and continued the said fence and premises, trees and shrubs, in the same way as aforesaid for a long time, to wit, from thenceforth, hitherto, and thereby during all the time aforesaid the said way was and is greatly obstructed and stopped up, and the said James Henry Lambe in his lifetime and after his death the Plaintiffs could not nor can they the said Plaintiff's enjoy the same, and the said James Henry Lamb during his lifetime was and the Plaintiffs since his death were and are deprived of the use and benefit thereof to the damage of the Plaintiff of sixty pounds currency, and the Plaintiffs say that the said Defendant promised to remove the said obstructions, fences and other buildings, trees and shrubs whenever thereunto requested.

“That on the second day of January, one thousand eight hundred and sixty, and on divers other days and times the said Plaintiffs required the said Defendant to remove the said obstructions, fence, and other buildings, trees and shrubs hereinbefore mentioned, but the said Defendant, not regarding his promises, hath wholly neglected and refused, and still doth neglect and refuse to remove the same.

“Wherefore the Plaintiffs bring suit and pray that the Defendant may be summoned to be and appear before this Honorable Court to answer the premises, and that for the causes aforesaid he may be adjudged, and condemned to remove the same fence and other premises and trees and shrubs within such delay as this Honorable Court shall order, and restore to the Plaintiffs their said rights of way into, through, over, and upon the said street, lane, or passage from the said house and premises to the said street called Mountain street, and from thence back again into, through, over and upon the said street, lane, or passage to the said house and premises of the Plaintiffs, and that the said

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RECORD.

—
*In the
 Superior
 Court.*
 —

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Defendant may be adjudged and condemned to pay and satisfy to the Plaintiffs the said sum of sixty pounds with interest thereon from service of process in this cause, and costs of suit."

The Defendant met the action and *demande* of the Plaintiffs by an express denial of all the allegations of their declaration, and he further averred that the lane or passage mentioned in their declaration as opening upon Mountain street was a private lane for the use of the adjoining proprietors, that the said lane had never been established or acknowledged as a public street or road by any competent authority; that said lane bounded the land occupied by the Defendant, and was never opened further, and that the Defendant occupied and possessed the land in question for more than ten years publicly, and without any trouble as proprietor, and had there erected buildings which existed for many years, etc., etc. 10

The Plaintiffs filed three answers to the Defendant's plea. By a first answer they alleged, among other things, that the said street or lane had been from time immemorial and then was a public street, lane, or way, and that the Defendant had wrongfully and tortiously usurped the possession thereof, and was then a trespasser.

By a second answer the Plaintiffs avered "that the said lane or street was a public lane or street commonly called and known by the name of Blache Street, set apart to and consecrated as such by public use and immemorial usage as such; that the Defendant was estopped from maintaining that the said lane or street was a private way as he falsely pretended, inasmuch as by the *acte* or deed whereby he acquired the lot of land belonging to the said Defendant and abutting on the said lane whereon he has usurped as aforesaid, from one Dame Marie Jeanne Hervieux, residing in the City of Montreal, wife of Robert G. Greig, Esquire, residing at the same place, thereto present and duly authorized for the effects thereof, and passed before Montreuil and colleague, Notaries public, on the 4th July, 1844, at Montreal aforesaid, the said lot of land is therein described as bounded in front "*par la Rue Blache*," to wit, by the said lane or street as would more fully appear on reference to an authentic copy of said *acte* or deed of purchase produced with said answer of the Plaintiffs; that moreover the said street or lane was in fact a public street or lane on and over which the Plaintiffs had the right of passage at all times, and the citizens and the public had had and enjoyed the same as a public street or passage from time immemorial; and the Plaintiff *d'abondant* alleged that in the year 1801, and long prior thereto, the said lane was a public street or lane and had ever since continued to be such, and then was a public street or lane notwithstanding the usurpation thereof by the Defendant; that in fact on the map or plan of the City of Montreal, which was made in conformity with the statute in that behalf intituled an act to amend an act passed in the 36th year of the reign of His Majesty George the Third, intituled an act for making, repairing, and altering the highways and bridges within this Province, and for other purposes, and passed in the 39th year of the reign of His Majesty George III., by Louis Chartrand, Inspecteur des Chemins of the said city, and now of record, the said lane or street is therein laid down as being then a public lane or street by the name of the "*Rue Blache*," and that by reason thereof the Defendant and 20 30 40

all persons whatsoever had knowledge that the said lane or street was and is a public street, and were and are bound thereby, and that the said public street hath ever since continued to be and was in the year 1801, and long prior thereto, and is now a public street, notwithstanding the pretended possession and the said usurpation by the Defendant."

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10 The Appellants respectfully submit that the evidence abundantly established their demand. This evidence was of various kinds—plans of the city, title deeds, and testimony of witnesses. Two plans of the city are extant, forming part of the archives of the city, the one of date 1801, made by Louis Chartrand, under authority of 39 George III., cap. 5, § 26, 27, Rev. Stat. L. C. p. 361, the other made in 1825, and both of these plans exhibit the lane or passage in dispute, Blache Lane, as bounding the property of the Appellants in rear.

The witness *Mackenzie*, who proves these plans, states that according to the plan of 1801, Blache Lane should be at least 20 feet 8 inches longer than it is at present by the encroachment of the Defendant.

20 Two title deeds have also been produced by the Appellants. The first of these titles is the title deed of the property of the Appellants given by the Sheriff to their *auteur*, James Henry Lambe, in 1834, according to which the property is bounded in rear by a projected street, meaning "Blache lane." The second of these titles is the deed by which the Defendant acquired his land from Dame Mary Ann Greig *né* Hervieux, according to which his land is bounded in front by "La Rue Blache." This deed is filed in this cause on the 29th September, 1860, and bears date 4th July, 1844, (A. Montreuil, N.P.) By the evidence it appears that the Defendant has taken possession of that portion of Blache street, which separates his property from that of the Appellant.

30 The evidence of the witnesses fully establishes the case of the Appellants. *Henri Blache*, an old man of 68, has a distinct recollection of the *Rue Blache* since A.D. 1815, from which time he knows that the property of the Appellants was bounded in rear by "Rue Blache," and had an outlet upon the street, till a few years ago, when the Defendant blocked it up.

The testimony of *Brown*, *Fleming*, and *Koester* is in corroboration of this. During all this time *Blache Lane* was a public street, to which all persons had access without interruption, and it gave a right of ingress and egress to the property of the Plaintiffs in rear.

The Defendant contends that being in possession of the street, and having been in possession for 10 years, the Appellants cannot legally demand that he should abandon his possession.

40 In the first place the Appellants deny that the possession of the street by the Defendant had lasted 10 years before the institution of the present action. But even if the Defendant's possession had exceeded 10 years, nothing less than 30 years possession could have confirmed him in possession of the street so as to defeat the action of the Appellants. Nothing need be added to prove the exceeding bad faith of the Defendant, who, without right or title, (*vide* his deposition), and in a lawless spirit took possession of a public lane regardless of the rights of his neighbor; and the injury inflicted by the Defendant upon

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the Appellants in barring their property in rear and depriving them of the use of the street by which they were bounded is manifest.

1. PLANS.

Authentic plans, shewing size of street, render adverse possession of any portion thereof inoperative. Curasson's Actions Possessories, p. 202, n. 31.

2. POSSESSION.

Acts of possession and use acquire streets to the public. Troplong, Prescription, Tom. 1, n. 158, p. 234; n. 163, p. 241. Marcadé, Prescription, pp. 52, 53. Nouv. Den. vo., Chemin, Tom. 4, pp. 224-7, § III., n. 5., § V., nn. 1, 2, 4.

Acts of possession combined with plans and titles recognizing street, establish its existence as such street. Curasson, Id. p. 240, n. 47.

3. PRESUMPTIONS.

Use creates presumption of property being in City. Proudhon, Du domaine public, Tom. 2, p. 281, n. 564.

Fencing in of lots, leaving street out of bounds, is presumption of existence of street. Proudhon, Id., Tom. 2, p. 43, n. 353.

4. STREETS.

Are property of public. Proudhon Id., Tom. 2, p. 28, n. 346.

5. PRESCRIPTION.

Les voies, rues, places des villes et villages, sont imprescriptibles. Troplong, Pres. 1, p. 229, n. 156. Pothier, Prescription, n. 7, n. 191. 1. Bourgon, T- 22, § 4, n. 24, cap. 2. 2. Gr. Cout, pp. 498-9, n. 13.

On the other hand the city acquires a title by presumption to land in 30 years. 118th Art, Cout. de Paris. Although from the title deeds of the parties in the present case, the title of the city is made out apart from the prescription.

6. RIGHT OF ACTION.

The Roman law gave an interdict to the inhabitant deprived of the use of a street. Curasson, Id., p. 209.

To recover the use of a street or other public property, any individual can sue. Curasson, Id., p. 367, p. 369. Pardessus, Servitudes, 2, p. 312. 2. Bing. N. C. 281. Wilkes v. Hungerford Market Co.

7. DAMAGES.

No proof of actual or specific injury is requisite. 2. Starkie Ev., 317, 3rd edn. 2. East, 154, Pindar v. Wadsworth.

TORRANCE & MORRIS.

For Appellants.

Montreal, 30th June, 1862.

RECORD.

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Superior
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son *et al* Ar-
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EVIDENCE FOR THE PLAINTIFFS.

10

On this second day of May, in the year of Our Lord, one thousand eight hundred and sixty-one, personally came and appeared, Christian Julius Brown, of the City and district of Montreal, gentleman, aged sixty-four years, a witness produced on the part of the Plaintiffs, who, being duly sworn saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause: I am not interested in the event of this suit. I know the parties in this cause. I am a resident in the St. Antoine Suburbs, of the City of Montreal, and have been such resident for fully thirty years.

Being shewn and have been examined a deed of sale, fyled by the Plaintiffs
20 their exhibit number one, purporting to be a deed of sale, from Louis Gugy, Sheriff of the district of Montreal to James Henry Lambe, of date 17th October 1834, I declare that I know the the land therein as follows: "A certain lot of ground and premises, situate in the St. Antoine Suburbs of the said City of Montreal, containing eighty-feet French measure, in front more or less, by one hundred and eighty-feet, same measure, more or less, in depth, with a stone house and other buildings thereon erected, bounded in front by the Main street of the said Suburbs, in rear partly by a projected street, and partly by Pierre Hervieux, Esquire, and on one side to the north-east by the said Pierre Hervieux, and on the other side by Antoine Larocque or representatives." The said
30 property was in the possession of the said James Henry Lambe, as proprietor until his death, and was his residence. I was next door neighbour to the said James Henry Lambe, when he held such property from the year 1832. I was his neighbour for ten years. Since eighteen hundred and forty-two, I have lived in the said Main street, about two hundred yards further westward. I have often been in the street in rear of the said property of Mr. Lambe's above described (meaning the street mentioned in said description as a projected street.) There was a gateway leading into the said street from my garden, which street I was constantly using during these ten years. I remember perfectly also that the said property of Mr. Lambe's in rear, was bounded partly
40 by the said street, and that Mr. Lambe was in the habit of using the said street from the rear of his property aforesaid. I have noticed within the last few years that the said Joseph Archambault has put up a building in the said street in rear of Mr. Lambe's said property.

The further examination of this witness is postponed till to-morrow morning.

(Signed) C. JULIUS BROWN,

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*In the
Superior
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No. 139.
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son *et al* Ar-
chambault
C.Q.B., No.
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of Petr. at
enquête.
Continued.—

And further deponent saith not. This his deposition having been read over to him, he declares that it contains the truth, persists therein and hath signed.

(Signed) C. JULIUS BROWN,

Sworn and acknowledged at Enquête }
sittings the day and year, first }
above mentioned }

(Signed,) MONK, COFFIN & PAPINEAU,
P. S. C.

10

And on this fourth day of May, eighteen hundred and sixty-one, re-appeared the witness and his examination was continued as follows ;

Being shewn and having examined a pen and ink plan marked with the letters, h. h. produced by the Plaintiff this day, I declare that the upper portion of said plan marked with the letters "a, d, e, g," correctly represents the said projected street, I mean the street called the projected street, in the Deed of ieghteen hundred and thirty-four, first above mentioned as the said street was when I took up my abode in the house adjoining the said J. H. Lambe's property. 20
My house was on the east of Mr. Lambe's property, and the garden attached to my property had an outlet and gate at the middle point of the line "d, e," and said outlet I enjoyed on to the said street called as I have said above "a, d, e, g," during the time I occupied the said garden, that is to say, from eighteen hundred and thirty-two to eighteen hundred and forty-two, and during all this time the said street "a, d, e, g." was a public street, without any obstruction whatever in it and during this time, the said James Henry Lambe had an outlet on to said street at the point "e" which was just about the middle point of the back portion Mr. Lambe's lot, which is represented on the upper portion of said plan by the of 30
letters "f, w, r, x." On the upper portion of the said plan, the part represented by the letters "oo, pp, c, b," shews the property occupied by the Defendant Archambault.

The line marked "x, v," shews the front boundary of the property of the said James H. Lambe on Saint Antoine street, called in the Sheriff's Deed aforesaid, the Main Street. The line "e, w," shews the portion of the property of the said James H. Lambe, when it was bounded in rear by Pierre Hervieux, as mentioned in said Sheriff's Deed. I have within the last day or two, examined the said street "a, d, e, g," and I find that a considerable portion of it, namely, the portion marked "b, d, e, f," has been fenced in and enclosed so 40
as completely to deprive the property of the said J. H. Lambe of the outlet that it previously had on the said street, from the point f to e on the upper portion of said plan. The lower part of said plan namely, the part shewn by the letters "h, m, n, l," also shews the said street in rear of Mr. Lambe's property with the enclosure which I have just marked upon it, namely the part marked "i, m, n, k." which is the part of the street taken possession of by the Defendant, who has in this way added to his lot, a portion of the street marked

“*b, d, e, f.*” I have observed the said encroachment on the said street for several years past.

10 Being shewn and having examined the Deed of Sale, fyled by the Plaintiffs on the 29th September, 1860, from Mary Jane Greig to Joseph Archambault, and the description of the property therein given as follows: “Un lot de terre ou emplacement situé en la dite ville de Montréal, de la contenance de trente-deux pieds de front, sur trente-huit pieds six pouces de profondeur dans une ligne, et trente et un pieds et six pouces de profondeur dans l’autre ligne et trente-sept pieds et quatre pouces de largeur dans la profondeur, letout plus ou moins sans garantie de mesure précise, tel que le tout se trouve actuellement enclos borné en front par la rue Blache par derrière, et d’un côté par M. Zeigler, et d’autre côté par les héritiers John Trim, avec une maison en bois dessus construite.”

20 The “rue Blache” mentioned in the said description, is the said street mentioned above with letters *a, d, e, g,*” is the projected street mentioned in the Sheriff’s Deed to Mr. Lambe, and the adjoining property represented in the said description by Mr. Zeigler, is the garden which I occupied as mentioned above adjoining Mr. Lambe between 1832 and 1842, and mentioned in Mr. Lambe’s Deed as Pierre Hervieux. The said Zeigler, having married a daughter of the said Hervieux. The said Deed from Mary Jane Greig to Joseph Archambault, is a Deed of the property held by the said Archambault, and represented on the upper part of the said plan by the letters “*oo, pp, c, b,*” and from my knowledge of the locality I am certain that the said Deed to the Defendant comprises no portion of the land which I have spoken of above as marked on the said plan by the letters “*b, d, e, f.*” The line marked on said plan by the letters “*b, oo,*” shews the boundary line of the property of the Defendant where it is bounded par les héritiers John Trim.

The further examination of this witness is postponed.

30

(Signed,) C. JULIUS BROWN.

Sworn at Enquête sittings the day }
 and year, first above mentioned, }
 this continuation of the witness’s }
 deposition being taken and ac- }
 knowledged on the fourth day of }
 May, eighteen hundred and sixty- }
 one. }

40

(Signed,) MONK, COFFIN & PAPINEAU,
 P. S. C.

RECORD.

In the Superior Court.

No. 139. Appellant’s Case, Johnson *et al.* Archambault C.Q.B., No. 25 (Exh. B8 of Petr. at Enquête.)

—Continued.

RECORD. And on this tenth of May, the witness re-appeared, and his examination was continued as follows :

*In the
Superior
Court.*

CROSS-EXAMINED.

It was on the property belonging to the late Mr. Hervieux, that I lived from the year eighteen hundred and thirty-two, to the year eighteen hundred and forty-two. That property extended back of Mr. Lambe's property and I had not possession of the lot now occupied by the Defendant. It was then occupied by a French Canadian family. The gate I used to communicate in Blache Street, was a small door merely sufficient to allow persons to go through with a wheelbarrow. That of Mr. Lambe, was of the same kind. We never used it for the passage of vehicles or carriages. I am not aware that said Blache Street, was ever verbalized by the City authorities. I have not been in the said Blache Street except the other day since I ceased to occupy Mr. Hervieux's property, but I have seen it very often in passing through Mountain Street. I have observed for several years past that buildings were erected in front of the Defendant's house, but I cannot say how long. The said Blache Street has never been opened on the Hervieux property, more than it was when I occupied the same. 10

And further deponent saith not. This his deposition having been read over to him, he declares that it contains the truth, persist therein and hath signed. 20

(Signed) C. J. BROWN.

Sworn, taken and acknowledged at the
City of Montreal, this tenth day of
May, eighteen hundred and sixty
one.

(Signed) JOHN HONEY,
Depy. P. S. C.

30

L'an mil huit cent soixante dans le second jour de septembre, est comparu Henri Blache, bourgeois de la cité de Montréal, agé de soixante et huit ans, témoin produit par les demandeurs lequel après serment prêté dépose et dit : Je ne suis point intéressé dans l'évènement de ce procès : je ne suis ni parent, ni allié, ni au service, d'aucune des parties en cette cause, je connais les parties dans cette cause. Je suis résident dans le faubourg St. Antoine, de la cité de Montréal, et j'ai été tel résident pendant cinquante-cinq ans. 40

Ayant été montré, et ayant examiné un acte de vente filé par les Demandeurs, comme leur Exhibit Numéro un, étant un titre de vente de Louis Guky, Shérif du district de Montréal, à James Henry Lambe, daté 17 octobre 1834, je déclare que je connais la terre y décrite comme suit : " a certain lot of ground and premises situated in the St. Antoine suburbs, in the city of Mont-

real, containing eighty feet French measure in front more or less, by one hundred and eighty feet, same measure more or less in depth, with a stone house, and other buildings thereon erected, bounded in front by the Main Street of the said suburbs, in rear partly by a projected street, and partly by Pierre Hervieux, Esquire, and on one side, to the north-east, by the said Pierre Hervieux, and on the other side, by Antoine Larocque, or representatives." La dite propriété était dans la possession de M. James Henry Lambe, comme propriétaire jusqu'à sa mort, et était sa résidence. J'ai demeuré au coin de la rue Blache, qui est la même rue qu'on appelle "a projected street," dans la dite description, depuis à peu près l'année dix-huit cent quinze, pour plusieurs années après, et j'ai toujours resté dans le dit faubourg depuis, excepté trois années que j'ai resté à Lachine, et j'ai toujours bien connu la dite rue Blache depuis ce temps là. J'ai bien souvent été dans la dite rue Blache, derrière la dite propriété du dit James Henry Lambe. Il y avait une porte de cour qui conduisait dans la dite rue Blache, du jardin du dit Pierre Hervieux, et M. Hervieux faisait une partie de son charroyage dans la dite rue. La dite porte du dit Hervieux était sur la ligne "d. e." sur le plan H H ci-après mentionné et était au bout de la dite rue Blache. Je me rappelle aussi parfaitement que la dite propriété du dit James Henry Lambe en arrière, était borné en partie par la dite rue Blache, et qu'un nommé Millar qui était propriétaire de la dite propriété du dit James Henry Lambe, avant l'année mil huit cent trente-quatre, avait l'habitude de faire l'usage de la dite rue du derrière de la dite propriété,

M. Millar, allait et revenait par une porte de communication qu'il avait là de la dite rue dans son dit jardin. J'ai remarqué dans les dernières années que le dit Joseph Archambault, a construit un bâtiment dans la dite rue derrière dite propriété du dit Lambe.

Ayant été montré et ayant examiné un plan marqué avec les lettres "H H" produit par les Demandeurs le 4 mai dernier, je déclare que la partie supérieure du dit plan marqué avec les lettres "a, d, e, g," représente correctement la dite rue Blache, comme la dite rue se trouvait vers l'année dix-huit cent quinze, jusqu'au temps quand Archambault a pris possession de la dite rue, et pendant tout ce temps, la dite rue Blache était une rue publique, et pendant le dit temps, la dite propriété des dits Millar et Lambe, avait une sortie sur la dite rue Blache au point marqué "e" sur le dit plan.

Je ne me rappelle point si le dit point "e" était au milieu de la ligne en arrière de la propriété du dit Millar, mais je me rappelle bien que Millar toujours allait et revenait par une porte en arrière sur la dite rue Blache, et c'est la même propriété que M. Lambe a possédé depuis.

La dite propriété est représentée sur la portion supérieure du dit plan, par les lettres "f, w, r, x."

Sur la portion supérieure du dit plan, la partie représentée par les lettres "oo, pp, c, b," montre la propriété occupé par le Défendeur Archambault. La ligne marqué "x, r," représente le front de la propriété du dit James Henry Lambe, sur la rue Saint Antoine, appelée dans le dit titre du Shérif, "The Main Street." Je sais que le dit Archambault a pris possession de la dite rue Blache, vis-à-vis la propriété qu'il possède sur la dite rue Blache, marqué comme dessus par les lettres "oo, pp, c, b."

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La partie inférieure du dit plan, c'est-à-dire, la partie représentée par les lettres "h, m, n, l," aussi représente la dite rue en arrière de la dite propriété du dit Lambe, avec la partie enclose marquée avec les lettres "i, m, n, k," ce qui est la partie de la rue Blache maintenant possédée par le Défendeur, qui a de cette manière ajouté à son lot une portion de la rue Blache marquée "b, d, e, f."

Ayant été montré et ayant examiné le titre de vente filé par les Demandeurs le 29 septembre 1860, de Dame Mary Jane Greig à Joseph Archambault, et la description de la propriété y donnée comme suit. "Un lot de terre ou emplacement, situé en la dite ville de Montréal, de la contenance de trente-deux pieds de front sur trente-huit pieds six pouces de profondeur dans une ligne, et trente et un pieds et six pouces de profondeur dans l'autre ligne, et trente-sept pieds et quatre pouces de largeur dans la profondeur, le tout plus ou moins sans garantie de mesure précise, tel que le tout se trouve actuellement enclos, borné en front par la rue Blache, par derrière et d'un côté par M. Zeigler, et d'autre côté par les héritiers John Trim, avec une maison en bois dessus construite." "La rue Blache," mentionnée dans la dite description, est la même rue mentionnée ci-dessus avec les lettres "a, d, e, g," est la rue projetée mentionnée dans le titre du Shérif du dit Lambe, et la propriété voisine représentée dans la dite description par M. Zeigler, est le jardin joignant au dit Lambe, et mentionné dans le titre du dit Lambe comme Pierre Hervieux. Le dit Zeigler, s'est marié à une fille du dit Hervieux. 10

Le dit titre de la dite Mary Jane Greig à Joseph Archambault, est un titre de la propriété possédée par le dit Archambault, et représentée en la partie supérieure du dit plan par les lettres "oo, pp, c, b," et de ma connaissance des lieux dont je parle, je suis certain que le dit titre de la dite Mary Jane Greig au Défendeur ne comprend aucune portion de la terre dont j'ai parlé ci-dessus, comme marqué sur le dit plan par les lettres "b, e, d, f," la ligne marquée sur le dit plan par les lettres "b, oo," représente les limites de la propriété du dit Défendeur, où elle est bornée par les héritiers John Trim. 20

La continuation de l'examen du témoin est ajourné jusqu'à demain. 30

(Signé) HENRI BLACHE,

Taken and acknowledged at Enquête }
 sittings the day, month and }
 year, first above written.

(Signed) MONK COFFIN & PAPINEAU,
 P. S. C.

Et avenant ce troisième jour de septembre, le témoin recomparaît, at son examen est continué comme suit : 40

TRANSQUESTIONNÉ.

La propriété du Défendeur formait autrefois partie du terrain de Mr. Hervieux. La propriété de Mr. Lambe, appartenait à un nommé Millar. Je sais que Mr. Millar communiquait dans la dite rue Blache, par une porte qui donnait sur la dite rue. Cette porte était une porte ordinaire par laquelle pou-

avait passer une personne ou deux. Je n'ai jamais vu Mr. Lambe communiquer dans la dite rue Blache par cette porte. La dite rue Blache n'a jamais été ouverte plus loin que la propriété du Défendeur. Je ne puis pas dire depuis combien d'années le Défendeur a bâti devant sa maison. La dite rue Blache n'a jamais été verbalisée à ma connaissance. Autrefois il n'y avait que Mr. Hervieux, M. Trim et M. Millar, que je voyais passer par cette rue. Aucun des autres propriétaires de la rue St. Antoine, n'avaient porte de communication dans cette rue. La propriété de feu M. Trim, avoisine celle du Défendeur et des héritiers Hervieux. Lorsque j'ai demeuré dans la rue Blache, j'ai demeuré au coin nord de la rue "La Montagne," Je ne sais pas sur quelle propriété le terrain qui forme la rue Blache a été prise, mais j'ai toujours compris que c'était sur les propriétés du côté nord de la rue. C'était de ce côté que se trouvaient les propriétés de mon oncle Blache, dont la rue porte le nom. Mon oncle passait pour être le propriétaire de la rue, etc'est lui qui veillait à ce qu'elle ne fut pas obstruée.

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RÉ-EXAMINÉ.

Quahd j'ei dit dans mon transquestionnement que la dite rue Blache n'a jamais été ouverte plus loin que la propriété du Défendeur, je veux dire qu'elle était ouverte jusqu'à la propriété de M. Hervieux. La rue était ouverte devant toute la propriété d'Archambault. Elle était ouverte un peu plus loin que la propriété de Mr. Archambault, jusqu'à la propriété de Mr. Hervieux qui fait le bout de la rue.

Et le déposant ne dit rien de plus.

Et sa déposition lui ayant été lue, il déclare qu'elle contient la vérité, y persiste et a signé.

(Signé) HENRI BLACHE.

Cette continuation assermentée, prise et reconnue aux enquêtes le troisième jour de septembre mil huit cent soixante-et-un.

(Signé) MONK COFFIN & PAPINEAU,
P. S. C.

On this sixth day of September, in the year of Our Lord, one thousand eight hundred and sixty-one, personally came and appeared, William Henry McKenzie, of the City of Montreal, assistant city surveyor, aged thirty-eight years, a witness produced on the part of the Plaintiffs, who, being duly sworn, deposeseth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. I know William B. Lambe, one of the Plaintiffs in this cause. I am assistant surveyor of the Corporation of the City of Montreal.

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Being shewn and having examined a deed of sale, fyled by the Plaintiffs as their Exhibit number one, purputing to be a deed of sale from Louis Gudy, Sheriff of the district of Montreal, to James Henry Lambe, of date 17th October 1834, I declare that I know the land therein described as follows: "A certain lot of ground and premises situate in the St. Antoine Suburds of the said City of Montreal, containing eighty feet French measure, in front more or less by 180 same measure, more or less in depth, with a stone house, and other buildings thereon erected, bounded in front by the Main street of the said Suburbs, in rear partly by a projected street, and partly by Pierre Hervieux, Esquire, and on one side to the northeast by the said Pierre Hervieux, and on the other side by Antoine Larocque, or representatives."

I remember it being occupied by the late James Henry Lambe, mentioned in said deed, about the year eighteen hundred and thirty-seven, when I had frequently occasion to go to Mr. Lambe's house. I have been in the street in rear of the said property of Mr. Lambe's above described, meaning the street mentioned in said description as a projected street. I now produce a plan marked with the letters "A, A, A" lately prepared by me by measurements on the ground which shews the position of the said property of Mr. Lambe, and the said projected street, as they now are, and as they were at the time I made the said examination. The line edge in blue, marked with the letters "k,t,s,r" shews the said property of the said Lambe, and that part of the plan marked with the letters "h,i,k,l," shew the said projected street as it was at the time of my said examination the said projected street is commonly called "Blache Lane" and is so marked in my plan. At the time I made said plan, there was no outlet to the property of the said Lambe described above, in rear upon the said "Blache Lane," and the said Blache lane did not extend beyond a line traced in said plan marked with the letters "i,k," and the portion on said plan marked with the letters "i,o,n,k, and the said portion so enclose was in possession of the person occupying the house and premises on the north-west side of the line of the said street marked "i,o," that is to say the portion marked Archambault. When I made the said plan that is to say, in May last, Blache Lane aforesaid on its south-easterly side, namely, along the line "l,k," measured two hundred and eleven feet four inches, French measure. I have examined an old plan of the City of Montreal, in the possession of the said City, purporting to be made in the year eighteen hundred and one, by Louis Charland, inspector of roads for the said City, and I produce an exact copy marked with the letters B,B,B, of that portion of the said plan which exhibits St. Antoine Suburbs, and the said described property of said Lambe, and said projected street, called "Blache lane," on said last mentioned plan. Mr. Lambe's property is marked with the number sixty-five, and said Blache lane is shewn on said plan to bound the said property of the said Lambe, in rear about one half of the rear line, that is to say, about thirty feet of its boundary, from the point marked k on my plan A A A already produced by me. On the said plan of Louis Charland, the said blache lane measures two hundred and thirty-two feet French measure, on the south-easterly line.

The lot marked 71 on said plan, and the house on said lot appearing at the extremity of Blache lane, as shewn on my plan "A A A" in part by the letters

"*ss, tt, o, i,*" and the colored portion marked "wooden house," is the same house as is shewn on plan of said Charland lot 71, and which house I have marked on Charland's plan with the letter "A"; at least I believe it to be the same house, as it is a very old one.

From my examination of the plan of the said Louis Charland, and the measurements that I have made, I would say that Blache lane included the portion of land which I have marked on my plan "A, A, A," by the letters "*i, o, n, k,*" and I would say that Blache lane, at the time I made my plan "A, A, A," was some 30 feet shorter than it is shown to be on the plan of the

10 I also produce a tracing marked with the letters "C, C, C," taken from a map of the City of Montreal, constructed from a survey made in eighteen hundred and twenty-five, said map being in possession of the City of Montreal. I have marked said tracings with the letters "C, C, C," and the street marked on said tracing by the word "Street," nearly at right angles to Mountain street, is the same street which I have spoken of above as "Blache Street."

20 The lot marked on said plan as 65, is the lot of the said Lambe, as shewn on said tracing "C, C, C," there is an outlet from Mr. Lambe's said lot upon Blache lane, and the termination of Blache lane is about midway in rear of said lot 65, and according to the said map, made in eighteen hundred and twenty-five, the said Blache lane terminated by a fence at right angles to the middle point to Mr. Lambe's rear line.

Being shewn and having examined the deed fyled by the Plaintiff, on the twenty-ninth of September, eighteen hundred and sixty, purporting to be a sale before notaries by Mary Jane Greig to Joseph Archambault, and the description of the lot therein sold as follows: "Un lot de terre ou emplacement situé en la dite ville de Montréal de la " contenance de trente-deux pieds " de front sur trente huit pieds six pouces de profondeur dans une ligne, et trente- " deux pieds et six pouces de profondeur dans l'autre ligne, et trente-sept pieds " et quatre pouces de lar geur dans la profondeur, le tout plus ou moins sans " 30 " garantie de mesure précise tel que le tout se trouve actuellement enclos borné " in front par la rue Blache, par derrière et d'un coté par M. Zeigler, et d'autre " coté par les héritiers John Trim, avec une maison en bois dessus construite," the said description has reference to the same lot which is marked on my plan "A, A, A," by the letters "*ss, tt, o, i,*" and the word Archambault. According to said description, the termination of the said line on the south-eastern side is the line marked "*o, i,*" namely the north-western side of Blache lane, Mr. Lambe's said property being on the south-eastern side of Blache lane.

40 The further examination of this witness was adjourned till to-morrow, the 7th September instant.

On this seventh day of September instant, re-appeared the witness whose examination was continued as follows;

I have in court the original plan of the said Louis Charland. It forms portion of the archives of the Corporation of the City of Montreal, and it is intituled. "Plan de la ville et cité de Montreal, avec les projets d'accroissements dans l'étendue qui lui a été fixée par proclamation de son Excellence Alured Clarke, Ecuier, alors Lieutenant Gouverneur de cette Province, faite

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en conformité des 26ème et 27ème clauses d'un acte du Parlement Provincial, de la trente-neuvième année du règne de sa présente Majesté intitulé, "Acte qui amende un acte passé dans le trente-sixième année de règne de sa présente majesté intitulé, Acte pour faire réparer et changer les chemins et ponts, de cette Province et pour d'autres effets."

This title is the original title of said map placed there to all appearance at the time the map was made. The said original plan is used for reference at the present day by the Corporation of the City of Montreal. I have been in the City Surveyor's Office for the last twenty years.

CROSS-EXAMINED.

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There is no mark on Mr. Charland's plan, indicating that any fence existed terminating Blache lane. The fence that existed when I measured it, was not at right angles, I mean the fence shewn on the plan "A,A,A," by the letters "o, n." I cannot say whether it was a new fence or not, as I did not pay particular attention to it. I never was in Blache lane before I made my measurement last May. I may have been at the entry of said lane. The Corporation of the City of Montreal have done certain works in Blache lane. The foot-path has been laid down, and the street repaired, but I cannot tell to what extent, but the Corporation have expended money on it. This lane was never homologated as a public street. I believe it was four or five years ago that a foot-path was laid in Blache lane. The foot-path stops at Defendant's property. It could not go any further on account of the barrier and wooden shed built opposite to Defendant's house.

And further deponent saith not. This is his deposition having been read over to him, he declares that it contains the truth, persists therein and hath signed.

(Signed)

W. H. MCKENZIE.

Sworn, taken and acknowledged at Enquête }
sittings, this seventh day of September, }
eighteen hundred and sixty-one. }

30

(Signed) MONK COFFIN & PAPINEAU, P. S. C.

On this seventh day of September, in the year of Our Lord one thousand eight hundred and sixty-one, personally came and appeared, John Ramsay Fleming, of Aylmer, in the District of Ottawa, advocate, aged thirty-five years, as a witness produced on the part of the Plaintiffs, who being duly sworn, deposeth and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. I know the Plaintiffs in this cause. I know the property marked on a plan "A,A,A" fyled in this cause yesterday, said property shewn on said plan by the letters "t, s, r, k." I remember being on the said property in the year of the second cholera, that is to say eighteen hundred and thirty-four. I used frequently to go there to play with William B. Lambe, one of the Plaintiffs. I was there frequently at that time, and for some years after. At that time there

was a lane running from Mountain street to the rear, and behind the said property. I remember that the lane extended behind the said property forming part of its rear boundary, and to the best of my recollection the said Blache lane as marked on said plan included all the portion shewn on said plan by the letters "h, o, n, l," and included the portion marked on said plan by the letters "i, o, n, k." There was a gate in the rear of the said property opening on to the said lane giving egress and ingress from and to the said lot by Blache lane. I think I recollect Mr. Lambe enjoying said ingress and egress for five or six years from the time I have first spoken to namely the year 1834. During the time I remember Blache lane was a public lane to all intents and purposes
 10 through the whole of the extent shewn on said plan by the letters "h, o, n, l." The said lane was a public lane so far as I could judge, and every one came into it who pleased.

Being shewn and having examined the Notarial Deed, fyled by the Plaintiffs on the twenty-ninth September, 1860, purporting to be a sale from Mary Jane Greig to Joseph Archambault, and the description of the land therein mentioned, I declare that the south-easterly portion of said land is shewn on the said plan A, A, A, by the letters "ss, tt, o, i," and the word Archambault, and according to the description in said deed as I would understand it from my knowledge of the spot, the south-easterly bounds of the said
 20 lot where it is stated in said deed to be bounded by "rue Blache," is shewn on said plan by the line marked "i, o." In making this statement I take it for granted that the adjoining property spoken of as Mr. Zeigler's, is the same property as that formerly known as the Hervieux property. I remember an apparently old house on the north-westerly side of Blache lane a little nearer Mountain street than Mr. Lambe's gate, for I remember from Mr. Lambe's gate we looked diagonally to the door of the said house which was inhabited.

CROSS-EXAMINED.

I do not remember who lived in that house at the time I speak of. I think there was a fence between that house and the Hervieux property which property was
 30 occupied by M. Brown, meaning Julius Brown, bank clerk. I have not been in the back part of Blache lane for eight or ten years. The gate of which I have spoken, was not used so far as I know for passing vehicles or carriages. It opened into Mr. Lambe's garden. The Blache lane was not open through the Hervieux property, which was fenced to the best of my recollection as shewn on the plan by the letters "o, n." I think there was a gate in that portion of the fence communicating with the Hervieux property.

And further this deponent saith not. This his deposition having been read over to him, he declares that it contains the truth, persists therein and hath signed.

40

(Signed,) J. R. FLEMING.

Sworn, taken and acknowledged on
 this seventh day of September,
 in the year one thousand eight
 hundred and sixty-one, at En-
 quête sittings.

(Signed,)

MONK, COFFIN & PAPINEAU,

P. S. C.

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L'an mil huit cent soixante et un, le troisième jour d'octobre, est comparu, Joseph Archambault, le Défendeur dans cette cause, peintre, âgé de cinquante-neuf ans, témoin produit par lequel après serment prêté dépose et dit : Je ne suis ni au service, d'aucune des parties en cette cause. Je connais Monsieur William B. Lambe, je veux dire Monsieur Lambe que je vois devant moi, un des Demandeurs dans cette cause, et je connais aussi Madame Lambe, la veuve du feu James Henry Lambe. Je ne connaissais pas le dit William B. Lambe, avant la mort de son père. Madame Lambe susdite, j'ai connue avant la mort de son mari au moins plusieurs années. Je ne crois pas que j'aie jamais vu le Demandeur William B. Lambe, avant la mort de son père. J'ai pu l'avoir vu auparavant mais je ne le connaissais pas. Je ne me rappelle pas l'avoir vu auparavant. 10

Q. Pouvez-vous jurer que William B. Lambe que vous voyez devant vous, n'est pas entré chez vous plusieurs fois dans la vie de son père pour recevoir la rente que vous deviez à son père, nommément une rente que Madame Greig lui avait transportée.

R. Je n'ai pas mémoire de tout d'avoir vu le dit William B. Lambe dans les circonstances susdites. J'ai toujours porté la dite rente chez lui au meilleur de ma connaissance.

Q. N'avez-vous jamais remarqué le dit William B. Lambe chez son père, quand vous travailliez comme peintre chez son père ? 20

R. Je ne l'ai jamais reconnu comme son garçon. Je ne savais pas s'il était son garçon. Je ne me rappelle pas l'avoir vu dans la vie de son père.

Q. Etes vous certain que vous n'avez jamais vu le dit William B. Lambe avant sa majorité, quand il était enfant, à jouer dans la rue Blache, vis-à-vis votre maison ?

R. Je réponds comme j'ai déjà répondu, que je n'ai pas connu le dit William B. Lambe dans le dit temps. La dite rue était pleine de jeunes enfants que jouaient et je n'ai pas remarqué.

Q. Depuis combien d'années êtes-vous demeuré dans la rue Blache ? 30

R. Je ne suis pas capable de vous le dire, seize ou dix-sept ans. Je n'ai pas demeuré dans la dite rue avant de l'avoir acheté de Madame Greig.

Q. N'est-il pas vrai que le devant de votre maison et le terrain du devant a été changé depuis votre achat de Madame Greig ?

Oui, certainement, voyant que personne ne s'y opposait. j'ai mis le hantard, c'est dire vis-à-vis ma maison ; et je dis de plus que les gens du nord ont donné le terrain pour l'utilité des voisins de Messrs. Hervieux, Blache et Quin.

Quand vous dites que les gens du nord vous ont donné le terrain devant votre dite maison, de que est-ce que vous parlez quand vous dites les gens du nord ?

R. Je parle de ceux qui ont ouvert la dite rue, c'est-à-dire trente ou quarante ans. Je n'ai pas connu la dite rue Blache, avant mon dit achat, au moins je ne l'ai pas remarquée, mais les gens de cet endroit m'ont dit que la dite rue Blache est depuis longtemps ouverte, trente ou quarante ans ou plus longtemps. 40

Q. N'est-il pas vrai que quand vous avez acheté le terrain et la maison ou vous demeurez de Madame Greig, le dit terrain était borné en front par la

«dite rue Blache ?

R. Bien certain la dite rue était devant la porte. Je crois qu'il y a douze ou treize ans que j'ai mis le dit hangard vis-à-vis ma maison. Le dit hangard est mis contre la clôture de Monsieur Lambe, le Demandeur, au moins à une distance de six pouces à peu près. Je n'ai pas bâti le dit hangard moi même, c'est un nommé Décarie, Fanfan Décarie peut-être qu'il se nomme France, il est faiseur de clôture. Avant le dit hangard il y avait un hangard toujours dans le même endroit.

10 Q. Quand vous avez acheté le dit terrain de Madame Greig, y avait-il aucun hangard dans la dite rue Blache près de la dite clôture du dit Lambe.

R. Non, il n'y avait aucun hangard vis-à-vis notre maison.

Je comprends le plan qui m'est maintenant montré, marqué avec les lettres A,A,A, (filed the sixth of September last) et j'y remarque ma dite maison au bout de la dite rue Blache et le dit hangard. Et je crois le dit plan correct. Le dit hangard y est coloré en jaune. Et à présent la dite rue Blache est terminée par une clôture comme marqué sur le dit plan.

Q. Quand est-ce que la dite clôture a été mise dans la dite rue ?

R. Il peut y avoir dix ou onze ans. La dite clôture a été mise avant le
20 hangard qui y est à présent. Le présent hangard a été bâti il y a trois ou quatre ans. C'est moi qui avait fait bâtir tous les deux hangards, et aussi la dite clôture qui termine à présent la dite rue.

Q. Avant que la dite clôture ait été érigée, ou est-ce que la dite rue Blache se terminait.

R. La dite rue se terminait à l'autre bout de ma dite maison tel que vous le voyez sur le dit plan, excepté que la clôture dernièrement mentionné n'était pas tant à l'angle. Je crois que la dernière clôture dont je parle, était à peu près le milieu de la dite propriété de M. Lambe.

30 Quand j'ai acheté la dite propriété de Madame Greig, il y avait une petite porte de cour dans la clôture de M. Lambe, par laquelle il charroyait son fumier sur sa dite propriété de la dite rue Blache, et je lui ai fait défense de passer par là et il ne l'a plus fait. Il a continué à passer à pied, et il nous a apporté des prunes et des fleurs de sa dite propriété dans la dite maison.

40 Quand j'ai acheté la dite propriété de Madame Greig, il y avait aussi une petite porte de clôture de ouvrait de la dite rue Blache sur la propriété de Monsieur Hervieux. Cette clôture est marquée sur le dit plan "o. n." dans laquelle était la dite porte de clôture. La dite rue Blache était plus longue quand j'ai acheté la propriété de Madame Greig qu'elle ne l'est à présent. Je ne l'ai jamais mesurée, mais je crois qu'elle était au moins vingt pieds. peut-être trente pieds, et peut-être quarante pieds. La partie de la dite rue
Blache qui est vis-à-vis ma dite maison, est à peu près la quantité que la dite rue a diminué de longueur depuis mon dit achat de madame Greig.

Le poteau qui est au coin de la dite propriété de Monsieur Lambe, est à peu près au point où se termine la dite rue Blache, ou si ce n'est au point c'est à peu près au point. Je ne puis pas dire au juste.

Q. Quand vous avez premièrement bâti la clôture, est-ce que le feu James Henry Lambe ne vous a fait plainte de sa construction ?

R. Je dis non.

RECORD.

—
*In the
Superior
Court.*

—
No. 139.
Appellant's
case, Johnson
et al Archambault C. Q. B.
No. 25. (Exh.
B-8 of Petr.
at Enquête.)
—Continued.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 139.
 Appellant's
 case, Johnson
et al Archam-
 bault C. Q. B.
 No. 25, (Exh.
 B-8 of Petr.
 at Enquête.)
 — *Continued.*

Je n'ai pas parlé avec Monsieur Lambe sur ce sujet, je n'ai pas parlé avec son fils sur le même sujet. Après que le hangard était fini, (le dernier hangard) Monsieur Lambe a dit il fallait que je vais démancher le hangard. Feu James Henry Lambe n'a pas fait complainte de ma construction du hangard bâti en premier lieu.

Q. N'avez-vous pas eu aucun arrangement avec feu Monsieur Lambe, l'égard de votre occupation de cette partie de la rue ?

R. Non, je n'ai fait aucun arrangement, j'ai eu les mêmes droits que mes voisins du nord pour passer.

Q. Le feu James Henry Lambe, ne vous a-t-il pas dit qu'il protesterait 10
 contre vous si vous ne vouliez pas démolir la clôture et le hangard ?

R. Non.

Q. N'avez-vous pas promis de lui donner une convention en écriture, vous obligeant de démolir la clôture et le hangard sur la demande du feu Monsieur Lambe ou de ses héritiers, s'il ne prosterait contre l'érection d'aucune clôture ou bâtisse, ou vous empêcherait de boucher cette rue en aucune manière ?

R. Non.

Q. Ayant été montré et ayant examiné l'exhibit des Demandeurs numéro deux, est-ce que vous avez jamais vu le dit papier devant ce temps ici ?

R. Je ne l'ai jamais vu jusqu'à ce que M. Torrance me l'ait montré (M. 20
 Torrance, l'avocat des Demandeurs).

Q. Pouvez-vous jurer que feu James Henry Lambe, ne vous avait donné cette écriture pour être signée par vous ou par quelqu'un pour vous ?

R. Je dis que non.

Q. Pouvez-vous jurer que vous n'avez pas vous même donné cette écriture à William B. Lambe pour le remettre à son père ?

R. Je dis que non.

J'ai un fils âgé de trente cinq ans, il n'avait pas l'habitude de signer des écritures pour moi jusqu'aux trois ou quatre années passées. Il ne savait pas auparavant, mais à présent il peut écrire son nom l'ayant appris de sa femme. 30

Les Messieurs Koester étaient dans l'habitude de signer pour moi, quand j'ai eu occasion de faire signer des reçus ou des autres écritures. J'y suis allé quand je voulais faire faire ma signature. Je ne sais pas écrire.

Le Défendeur déclare qu'il n'a aucune transquestion à faire autrement.

Et le témoin ne dit rien de plus.

Sa déposition lui ayant été, il déclare qu'elle contient la vérité et déclare aussi qu'il ne peut pas signer.

Sworn, taken, and acknowledge at Enquête }
 sittings the day, month, and year first }
 above written.

(Signed) MONK COFFIN & PAPINEAU.

P. S. C.

40

On this, fourth day of October, in the year of Our Lord, one thousand eight hundred and sixty-one, personally came and appeared, George Koester, of the City and District of Montreal, grocer and trader, aged thirty-nine years,

a witness produced on the part of the plaintiffs, who being duly sworn, deposeseth and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. I know the parties in this cause. I am a resident in Saint Antoine Street, in the City of Montreal. I live at the corner of Saint Antoine Street and Mountain Street, a short distance below a street called Blache Street, which runs into Mountain Street. I was part proprietor of a lot in the said Blache Street for quite a number of years, which lot had descended to me along with the, other heirs of the late George Christian Koester. I should say that the said lot was acquired

10 by my late father, at least twenty-five years ago.

Being shewn and having examined a plan marked with the letters A A A A fyled by the Plaintiff on the sixth of September last, I declare that the same correctly represents the present position of Blache Street and the adjoining streets. The said lot of which I was part proprietor in Blache Lane or Blache Street, is situated on the southern side of Blache Lane aforesaid, and runs from the said Blache Lane to St. Antoine Street, about midway between Mountain Street, and the lot numbered on said plan as lot number sixty-five (65). The portion marked "Wooden Ho," just below the figures 211.4 in Blache Lane, was a portion of my said lot. I have often been in said Blache lane, and know

20 it perfectly well. I know that the section marked on said plan and designated by the letters "i, o, n, k," is now closed in by fences and the line marked "i, k," on the said plan is the present boundary of said Blache Lane, so far as the public have access to it. The fence "i k," is a fence which the Defendant has run across the said lane. I do not remember when he ran that fence across. I should say that the fence "i, k," is in the same line as the westernmost line of the property of the Plaintiffs shewn on said plan by the letters "k, R," at least if there is any deviation it is not above six or eight inches. There is no access at the present time from the said Blache lane unto the property of the said Plaintiffs. I remember the time when the said Blache lane was open as far as the line

30 shewn on the said plan by the letters "n, o," so that the portion marked "n, o, i, k," was a part of the street.

Question.—Do you remember any time when there was ingress and egress to the said property of the Plaintiffs from Blache lane, in the line shewn on said plan by the letters "k, l."

Answer.—Mr. Lambe had a small gate in the said line opening into Blache lane. The gate had been long there to my knowledge. I should call it an old gate from its looks. That gate cannot be used now in consequence of the blocking up of the street.

Horses and carts going into said Blache lane, and into the lots fronting on

40 said lane. Each proprietor has his gateway on said line. I remember the City Surveyor, some twenty years ago, or more, compelling my late father, then proprietor as I have mentioned above, on said Blache lane, to put back a house that he was erecting on his lot there. He compelled him to put it back on the ground that he was encroaching on said Blache lane on the ground that Blache lane belonged to the public. When my father bought his said lot on Blache lane, we could have driven a cart and horse up to the line shown on said plan by the letters "n, o." The Plaintiffs have been in possession of the lot shewn on said plan

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*In the
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Court.*

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bault C. Q. B.
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—Continued.

by the letters "*s, t, k, R,*" since the death of the late James Henry Lambe, the former proprietor. I have lived at the corner of Mountain street and St. Antoine street, at least thirty-six years.

Being shown and having examined the Deed of Sale fyled by the Plaintiffs on the 7th May, 1860, purporting to be a deed from the Sheriff to James Henry Lambe, I declare that I know the purchaser James Henry Lambe, mentioned in said Deed as the father of the Plaintiff William Busby Lambe. I knew the said James Henry Lambe, for many years, and also as living in the same property mentioned in said Deed of Sale. The expression "projected street," mentioned in said Deed of Sale, as the rear boudary of the property of the said James Henry Lambe, as reference to Blache lane mentioned above,

Before the Defendant ran his fence across said street in the line "*i, k,*" as shewn on said plan horses and carts could go up Blache lane to the fence "*n, o.*"

Being also shown and having examined the Deed of Sale from Mary Jane Greig to the Defendant fyled by the Plaintiffs as their exhibit number one, on the 29th September, 1860, I declare that the land therein mentioned is the land of the Defendant in said Blache lane, and that the expression "borné en front par la rue Blache," is shewn on said plan by the letters "*i, o,*" and the expression, "d'autre coté par les héritiers John Trim," is shewn on said plan by the letters "*s, s, i,*" and according to the description in said Deed, the Defendants' said property was bounded in front by the said Blache lane, namely, by the line "*i, o,*" as shewn on said plan.

CROSS-EXAMINED.

I do not think it is ten years since the Defendant put up the fence marked "*i, k,*" on the plan already referred to. I think the gate that Mr. Lambe had in the rear of his property opened on the garden of said Mr. Lambe. It was a small gate, not large enough to admit vehicles or carts, but large enough for a wheelbarrow. Before the fence "*i, k,*" was put up, we could go as far as the fence marked "*o, n,*" in the said Blache lane. The fence "*o, n,*" is about the middle of the rear of Mr. Lambe's property. I never saw any work done by the Corporation in that section of land enclosed in the lines "*i, k, n, o.*" The Corporation have brought the water into said Blache lane, as far as the Defendant's house about four or five years ago. There is no other house than mine on the south side of Blache lane, except Doolan's house at the corner of Blache lane and Mountain street, but the front of the house is on Mountain street. Mr. Auld, another proprietor on Blache lane, has a gate there. Mr. Brennan, another proprietor has no opening on Blache lane, at least I think not. I have no personal knowledge that the City Surveyor ordered my father to move back his house, but my mother always told me so. The house has been moved back about three feet from the line of the street. It was not on account of Mr. Blache that my father's house was moved back. I always understood that the City Surveyor, had come and measured the ground, and ordered the house to be moved back about three feet. The black line on said plan shews the fence as it stands on each side of our house, which is a few feet back from the street. I had very seldom occasion to go to the said Blache lane; when I went it wa-

either to draw the rent or attend to the property.

And further deponent saith not. This his deposition having been read to him, he declares that it contains the truth, persists therein and hath signed.

After reading my deposition, I declared that I wish the words "to the best of my belief" inserted after the word "lane" on the twenty-first line of the second page of my deposition.

(Signed) GEORGE KOESTER,

10 Sworn, taken and acknowledged the day, }
month and year, first above written. }

(Signed) MONK COFFIN & PAPINEAU,
P. S. C.

(On the back.)

Queen's Bench. In Appeal from the Superior Court. Sarah Johnson *et al* (Plaintiff in the Court below), Appellant, and Joseph Archambault (Defendant in the Court below), Respondent, Appellant's Case.

20 (ENDORSED.)

Petitioner's Exhibit, B3, with Deposition of Mr. Lamb. Fyled 28 Mars, 1891. (Paraphed.) E. D., Dep. P. S. C.

SCHEDULE No. 179.

30 Province du Canada }
District de Montréal. }

COUR DU BANC DE LA REINE.

[EN APPEL]

SARAH JOHNSON & AL.

(*Demandeurs en Cour Inférieure.*)

APPELANTS.

40

vs

JOSEPH ARCHAMBAULT,

(*Défendeur en Cour Inférieure.*)

INTIMÉ.

RECORD

In the Superior Court.

No. 139. Appellant's Case, Johnson *et al* Archambault C. Q. B., No. 25. (Exh. B-8 of Petr. at Enquête.) *Continued.*

No. 140. Respondent's Factum, Johnson *et al*, and Archambault, C. Q. B. No. 25. (Exh. B-4 of Petitioner at Enquête.)

*In the
Superior
Court.*

L'Intimé est en possession depuis plus de dix ans d'un terrain qui joint en arrière celui des Appelants dont le front est sur la rue St. Antoine en cette ville.

No. 140.
Respondant's
Factum,
Johnson *et al.*
and Archambault,
Q. C. B.
No. 25. (Exh.
B-4 of Petr.
at Enquête.)

Les Appelants prétendaient par leur action que partie du terrain possédé par l'Intimé faisait autrefois partie d'une rue ou passage qui communiquait de la propriété des dits Appelants à la rue La Montagne, laquelle rue ou passage bornait leur propriété en arrière, jusqu'au terrain de Pierre Hervieux, où elle était fermée ; que cette rue ou passage avait existé de temps immémorial comme rue ou chemin public, et avait toujours été à l'usage tant des propriétaires des lots adjacents que du public en général, jusqu'au temps où l'Intimé s'en était mis en possession ; que le dit Intimé s'était, vers l'année 1852, illégalement emparé de cette partie de la dite rue ou passage qui se trouvait vis-à-vis leur propriété, y avait fait des constructions et l'aurait enclos de manière à priver les Appelants de tous moyens de communication dans la dite rue et passage ; que tant en vertu de la loi, que par leurs titres, les Appelants avaient acquis le droit de passer dans la dite rue ou passage, et concluaient à ce que le dit Intimé fut condamné à enlever les constructions et clôtures par lui faites sur le dit terrain et à laisser les Appelants jouir paisiblement de la dite rue ou pas-
sage, et enfin à leur payer £60 de dommages. 10 20

L'Intimé a répondu à cette action en alléguant que la rue ou passage en question n'avait jamais été une voie publique, qu'il possédait ce terrain avec une plus grande étendue depuis au-delà de dix ans, et que les Appelants n'avaient aucun titres leur conférant le droit de passage qu'ils réclamaient.

La Cour Inférieure, après enquête, a maintenu les prétentions de l'Intimé et débouté l'action des Appelants.

Les Appelants n'ont pu produire aucun titre à cette rue ou passage, soit en leur faveur, soit en faveur du public.

Ils n'ont pas non plus établi en preuve que cette rue ou passage, particulièrement le terrain occupé par l'Intimé, ait jamais été la propriété du public ou que le public en ait jamais joui de manière à l'acquérir ; au contraire tout dans la preuve indique que c'était un passage privé ouvert seulement pour l'usage de l'intimé et de ses auteurs. 30

L'Intimé avait en conséquence le droit d'en fermer l'accès aux Appelants et le jugement dont est appel est conforme aux principes qui régissent cette matière.

Montréal, 14 Février 1862.

DORION, DORION & SENEAL, 40
Avocats de l'Intimé.

PROVINCE OF CANADA. }
DISTRICT OF MONTREAL. }

SUPERIOR COURT.

[For Lower Canada.]

No. 1797.

Present :—The Hon. M. Justice Badgley.

SARAH JOHNSON & AL.,

vs.

JOSEPH ARCHAMBAULT,

PLAINTIFFS.

DEFENDANT.

RECORD.

*In the
Superior
Court.*

No. 140.
Respondent's
Factum,
Johnson *et al.*
and Archam-
bault, C. Q. B.
No. 25, (Exh.
B-4 of Petr.
at Enquête.)
Continued.—

10

APPENDICE.

On this fourth day of November, in the year of Our Lord, one thousand eight hundred and sixty-one, personally came and appeared, Thomas Linslay, 20 of Montreal, roofer, aged about thirty years, a witness produced on the part of the Defendant, who, being duly sworn, deposes and saith : I am not related allied or of kin to or in the employ of any of the parties in this cause, I am not interested in the event of this suit. I know the parties in this cause, I know the property occupied by the Plaintiffs and described by the Plaintiffs in their declaration. I know also the property occupied by the Defendant in rear of the said Plaintiff's property. I own myself a lot of land adjoining partly to the Defendant, and partly to Mr. Zeigler, representatives the Heureux family, and on the other side by Mr. Renaud. In front of my house is a small lane usually called Blache's Lane, but this lane belongs as we always understood it to the proprie- 30 tors of lots on the west side thereof for the portion of it fronting their respective ots. It was never known as a public street. The said lane is opened as far as the Defendant's property. There is a fence running across the street from the division line of my property and that of Mr. Archambault as far as the rear of Mr. Lambe's property. The Defendant occupies the whole ground in front of his house up to Mr. Lambe's property, that is the Plaintiff's property. He so occupies this piece of land since he bought the property, but the fence has only been put up eight or ten years ago. Before the fence was put up there was an old shed in front of his house, which he used as his property. Since the Defendant has lived on said property the portion of land which lies between 40 his house and the Plaintiff's property has never been used as a public street or way. No one has even passed then to my knowledge. My house has got a gallery and stairs which project into the said lane for about six or eight feet. I have never been called upon to remove the said gallery and stairs. I have lived in that lane for twelve years at least. The property I occupied belonged to the Estate of the late John Quin.

RECORD.

CROSS-EXAMINED.

*In the
Superior
Court.*

No. 140.
Respondent's
Factum,
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at Enquête.)
—Continued.

My house in said Blache Lane is on the upper side. It is shewn on the plan marked "A A A" marked "wooden Ho" on the upper side of said Blache Lane as shewn on said plan. I understood that the land in Blache lane immediately in front of my house is my property, that is to say, the land running from my house to the lot on the opposite side of said Blache Lane; said lot shewn on said plan by the No. 67, and it was on this way that the Defendant claimed the land in the front of his house shown on said plan by the letters "O, N, K, I." I consider that I would have a right to run a fence across the said lane from my house. The effect of my running such a fence across the said lane would be to prevent Mr. Archambault getting out of his property through the said lane, but I cannot say that we have such a right, but we have always claimed it. There is a gateway nearly opposite my house in the said lane for the lot which is marked on the said plan as lot No. 67, possessed by Mr. Hall and adjoining Mr. Lambe, meaning one of the Plaintiffs. If I were to close up the said lane, it would interfere with the gateway in question. The present gate is a new one, but there was one there before the present one and the old one was there when I went to live in the lane. The occupants of the said lot adjoining Mr. Lambe's always took in their wood every Fall by the said gate and we never prevented. The reason I say the said lane is not a public street is that the proprietors of the adjoining lot have claimed it as their property. Old Mrs. Quinny mother-in-law, who is dead, always said it was private property until the corporation paid for it. Before Mr. Archambault ran his fence across the said lane there was nothing to prevent my going on foot on that part of the ground in front Mr. Archambault's house if I choose. There is a gateway at present on the rear of Mr. Lambe's property shewn on the said plan on the line marked "Q. N." and Mr. Lambe could come out upon Blache Lane by opening the gate that Mr. Archambault has in the fence which he runs across the streets eight or ten years ago. I have no personal knowledge of the said lane further back then about twelve years ago. I never knew of the Corporation re-opening said lane. All I know is that the Defendant put some planks to walk upon in said lane. I don't know whether Mr. Archambault did it himself but he caused it to be done for the accommodation of himself and his tenants. I can't say he paid for it or who paid for it. The wooden shed that Mr. Archambault has put up opposite his house was put up three or four years ago to the best of my recollection, but there was always an old shed there before that. I have no recollection of the late Mr. Lambe using the said gateway. I go out very early in the morning and come home in the evening, and he may have used it without my knowing.

And further this deponent saith not.

This his deposition having being read over to him declares that it contains the truth persists therein and hath signed.

On this fourth day of November in the year of our Lord, one thousand eight hundred and sixty-one, personally came and appeared, James Carpenter of Montreal, carpenter and joiner, aged about seventy-two years, a witness produced on the part of the Defendant, who being duly sworn, deposes and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. I know the parties in this cause, I know the property described in the plan "A A A" by the letters "I. K. N. O.," upon which is a wooden shed. The Defendant is in possession of this she land ground. I lived next to Defendant about fifteen years ago in the house then belonging to the widow Quinn. I remained there one year. I used to pass through Blache lane to go to Mountain street. At that time the fence at the end of the said Blache lane was about on the line "O. N.," on said plan but there was a building or shed on that portion of the lane which was opposite Mr. Archambault's house. The Defendant was not at that time living in his house but had tenants therein. This shed or building in front of his house was used by the said tenants. I can't say how long the fence on the line "I. K." has been erected; but it has been there some years. During the time I lived in said Blache lane with the widow Quinn, the said lane was considered to be private property. I remember a circumstance that occurred about fifteen years ago during the lifetime of the late Mrs. Quinn, Mr. Lambe was having some timber conveyed through the lane and the late Mrs. Quinn opposed him in his passage that saying that, portion of the lane in front of her house was her property. They brought Mr. Lambe to see about the affair and his remark was "you are not yet on Mrs. Quinn's ground drop the lumber where it is." I speak of the late Mr. Lambe. The timber was left there and remained there for two or three years. Mr. Lambe had a small wicket at the back of his garden by which he went in and out. This wicket is there still between the wooden shed and Mr. Zeigler's fence. During the time I lived there, Mr. Lambe was causing some manure to be taken in his garden by that wicket, and it was left out side the garden that is opposite the Defendant's house for some days, and Mrs. Quinn complained to the Defendant's. She sent word to the Defendant that if he did not get moved she would complain to the police as it was a disorder. I don't know if the Defendant spoke to Mr. Lambe but it was immediately removed. Mr. Lambe did not carry any more after that time to my knowledge.

CROSS-EXAMINED.

When I lived in Blache lane fifteen years ago, the portion of the said plan marked "I, E, N, K.," formed part of the said Blache lane. At that time the said lane terminated at Mr. Zeigler's fence shewn on said plan by the letters "O, N." The building or shed that was in said lane opposite Mr. Archambault's house was not nearly so big as it is now. I can't say whether the said old building was half the size of the wooden shed that is there now. The old one was not nearly so high, and I would rather say that it was less than only half the size of the one that is there now than say that it was more than half the size of the one that is there now. At present there is not more than a

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space of two or three feet between the North corner of the shed and the fence "O, N." When the dung that I have spoken of in my examination in chief was removed, it was taken by Mr. Lambe into his garden. I frequently saw Mr. Lambe and his people passing out of the gate in the rear of his lot into the said lane.

That was about fifteen years ago. I remember the dung that I have spoken about was offensive opposite Mrs. Quinn's. And further this deponent saith not.

This deposition having been read over to him, he declares that it contains the truth, persists therein, and declares he cannot sign his name. 10

L'an mil huit cent soixante-et-un le vingt-et-unième jour de novembre, est comparu Jean Baptiste Dubuc, Ecr., Inspecteur du département du feu de la cité de Montréal, âgé de vingt-et-un an et plus, témoin produit par le Défendeur, lequel après serment prêté et dit : Je ne suis point intéressé dans l'évènement de ce procès ; je ne suis ni parent ni allié, ni au service d'aucune des parties en cette cause, je connais le Défendeur, je ne connais pas les Demandeurs ; je connais la propriété désignée en la déclaration en cette cause ainsi que 20 la ruelle Blache qui va aboutir près de la profondeur du terrain des Demandeurs susmentionné. Dans le courant de janvier mil huit cent cinquante-neuf, j'ai été informé par un monsieur Porteous que quelqu'un bâtissait en bois sur la dite ruelle Blache contrairement aux règlements de la corporation. J'y fus et je vis que le Défendeur avait fait construire en face de sa maison et adossant à la propriété des dits Demandeurs. Cette bâtisse était en bois et était d'à peu près vingt-six pieds de longueur sur douze pieds de profondeur. La ruelle Blache se trouvait terminé à cet endroit par une clôture dans laquelle il y avait une barrière pour communiquer à la maison occupée par le Défendeur. J'ai notifié alors le Défendeur d'enlever cette bâtisse ou de la mettre en conformité avec 30 le règlement No. 222, qui défend les constructions en bois dans les limites de la ville. Le Défendeur ne s'étant pas conformé à cette notification, j'ai fait ma plainte au Recorder le vingt-huit janvier mil huit cent cinquante-neuf, et le Défendeur a été condamné sur sa confession de Jugement. Et le dit déposant ne dit rien de plus, la présente déposition lui étant lue, il dit qu'elle contient la vérité, y persiste et a signé.

(On the back.)

Hon. Mr. le Juge Aylwin, No. 25, Banc de La Reine, District de Montréal, Sarah Johnson et al, Demandeurs en Cour Inférieurs, Appelants, vs. 40 Joseph Archambault, Défendeur en Cour Inférieure, Intimé. Factum de l'intimé. Filé ce 28th Août, 1862.

(ENDORSED.)

Petitioners Exhibit B-4, with deposition of Mr. Lambe. Fyled 28th March, 1891. (Paraphed), E. D., Dep. P. S. C.

SCHEDULE No. 181.

RECORD.

*In the
Superior
Court.*No. 141.
Deposition of
Thos. C.
Shaughnessy
for Plff filed
3rd July 1890.

On this third day of July, in the year of Our Lord one thousand eight hundred and eighty-nine, personally came and appeared Thomas G. Shaughnessy, of the City of Montreal, Assistant-General manager of the Company Defendant, aged thirty-five years, witness produced by the Plaintiff, who, being duly sworn deposes as follows :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

I am acquainted with the facts of the expropriation of the properties which formerly had an outlet on Blache lane. William Walker was one of the proprietors expropriated ; the Company expropriated a portion of his property. James B. Cantin, I believe, was the Company's arbitrator, Mr. Duff, here present, was the proprietor's arbitrator, and Mr. McDougall the third arbitrator.

The Company Defendant has the originals of the plans now shown me annexed to the Petition of the Company to the City Council for authority to cross streets between Windsor and Guy streets. I will produce a copy of said plans.

The said plans differ from the homologated plan of the City of Montreal now shown me in this ; according to the plan prepared by the Company, a blue print of which is before me, Donegani street ends at the West side of Bisson street. West of Bisson street the line of the Company's station building and train shed is shown as a direct continuation of the line of the train shed. East of Bisson street, on the blue print of the Company's plan, there is nothing showing any continuation of Donegani street beyond Bisson.

It is not a fact that the plan now shown me is a portion of a larger plan in which Donegani street was continued to Mountain street. The plan in question, that is the blue plan of the Company, has no reference whatever to the continuation of Donegani street to Mountain street. The plan merely shows the location of the Company's buildings and the point at which they proposed to cross Bisson street with their train shed. The buildings as shown on the plan would cover a portion of Blache lane, that is the larger portion, I believe.

I have never thought that the expropriation of the properties above referred was made on the principle that said properties after the expropriation would have a frontage on the southwest line of Donegani street as shown on the blue plan. Originally there was no intention on the part of the Company, Defendant, to extend Donegani street beyond Bisson. After the Company commenced negotiations for the property abutting on Blache lane, it was thought that it might be convenient to have a street extending from Windsor to Mountain street on the south side of the station building, and a small tracing was made showing such street. We found, however, that proprietors instead of feeling that they would be benefitted by such a street, demanded quite as much for the rear portions of their lots as if they were intended to be used for railway tracks. The idea of making the street was then abandoned, previous, I think, to the receipt by the Company of the arbitrator's award. I think that we have not got that tracing. I think the only original or copy of it that was made was the one made for Mr. Cantin's use, who, previous to acting as arbitrator, had been conducting some ne-

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 —
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 — *Continued.*

gotiations for the Company with reference to these properties, Search has been made for it, but it has not been found. I have not asked Mr. Howard for it; he is not in the Company's employ. My recollection is that that tracing would show Donegani street continued as a narrower street from Bisson street to Mountain street. It would be, I believe, about forty feet in width west of Bisson street. I believe that that tracing would show the line of the expropriated parties as being on the south-west line of Donegani street as shown on the blue plan. The blue plan is not in conformity with the plan deposited by the Company with the Clerk of the Crown. On the latter plan Donegani street is shown as it existed, that is from Windsor street to a point about seventy-five feet east of Bisson street, that is to the line of the William's property, while the blue point shows that street opened as the Company intended to open it, and did open it, namely, at the east side of Bisson street. The blue print also shows the ground plan of the Company's buildings, which was not given in the plan fyled with the Clerk of the Peace. When the original plan was fyled with the Peace, no extension of Bisson street was contemplated by the Company. It was intended to use the southern portion of the property colored pink on the plan fyled with the Clerk of the Peace, of which Exhibit A1 is a copy of the portion of said plan from Windsor to Mountain street, as it has been used, namely, for track for suburban business. I have no recollection of hearing the extension of Donegani street mentioned until some time after the plan had been fyled with the Clerk of the Peace. 10

Beyond the Plan A1 and the other plans already promised by me, I will not undertake to produce copies of plans, which copies Plaintiff can get from the Clerk of the Peace.

It will be seen by reference to the plan that on both sides of their building the Company secured wide strips of land which they contemplated using for suburban tracks, sidings and the purposes of the Company. I have no recollection of the dates of the fyling of plans with the Clerk of the Peace, nor do I recollect any general right of way plan having been fyled, except that of which Exhibit A1 is a tracing in part. Subsequently I recollect that a plan was fyled of a small triangular piece of land belonging to Smith, which was thought the Company would require to reach the round house, but I believe the land was not expropriated and another piece that belonged to Johnson on the west side of Mountain street. 30

My conviction is that the abandonment of the idea of opening the street from Bisson to Mountain street took place before the Company was served with the arbitrator's award; the deeds clearly indicate that, and the Company in prosecuting its works since that time has acted upon that assumption. I can't say, whether the amount awarded the expropriated parties was predicated upon the fact that they were to have no street. 40

Defendants object to any testimony as to the basis of the award.
 Objection reserved.

I recollect receiving something from Mr. Walker, probably the letter produced as Plaintiff's Exhibit B1. If Exhibit B1 should not be an exact copy of the letter received, I will produce the original. I don't think on receipt of that

letter, or before, I made any enquiry of any body, concerning Mr. Walker's complaint, because the records showed the Company's rights in connection with the property.

I don't know that we ever gave the matter, whether Blache lane was or was not public property, special consideration, as our plan provided for the acquirement of all the property abutting on the lane, thus making it of no use to anyone except the Company. We never took any proceedings to expropriate Blache lane of itself: we went upon the theory that if we expropriated all the property abutting on Blache lane, we would thereby acquire Blache lane. We did not give any consideration to whether it was private or public. In the expropriation of Baylis' property which abutted on Blache lane I never heard of the question being raised. I was informed by the City Surveyor in August or September last, (1888) that a portion of Mr. Walker's property had been acquired by the city for use whenever Donegani street should be extended to Mountain, as per homologated plan. I know nothing about the expropriation proceedings by the City except what I have said. I was not familiar with the judgment of the Court of Appeals thirty or forty years ago, and did not know of any decision by that Court as to Blache lane being public property.

The company as far as I know had never any intention of getting over the difficulty of taking Blache lane by substituting another street.

CROSS-EXAMINED UNDER RESERVE OF OBJECTIONS.

As a matter of fact when the company filed the plan with the clerk of the Peace, Donegani street was not open as far as Bisson street. The company acquired the William's property and opened the street in the same way as they did the lane on the north side of the building near Bisson street. This was the object of giving communication from Windsor street to St. Antoine street and Osborne streets for our own convenience.

My recollection is that the opening of Donegani street was not used as an argument to reduce the figures in the Walker case, when I talked with the arbitrators as mentioned above. I have no knowledge that it was a condition on which the reduction was made. I have no recollection of having authorized Mr. Cantin to agree on behalf of the company that the street should be opened, as a consideration of a reduction of the award.

As a matter of fact we have found that we required the whole of the space coloured red on the plan. Subsequent to the acquirement of the properties coloured red in the plan I requested agents to ascertain for me the figures at which we could acquire another strip forty feet wide between Mountain and Bisson streets and adjoining the railway property on the south side.

How did the prices which proprietors asked compare with what they had agreed to take previously for the portions the railway had acquired.

Objected to by Plaintiff as not arising out of the examination in chief and as irrelevant and illegal.

Reserved.

I can't say as to that, but I recollect that their figures were very high on the latter occasion, representing I thought, the full value of the entire property.

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RE-EXAMINED.

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Continued.—

Previous to the arbitration, when Mr. Cantin went to negotiate with the proprietors as to the purchase of the properties, he was authorized to represent to them that the street would be opened to Mountain street. From that time until after the arbitration the company never notified the proprietors of any change in this plan; we saw no reason for doing so, after negotiation with the proprietors previous to the arbitration. I never attended any meeting of the arbitrators. I never theorize about matters of fact. I know nothing about the basis of the award finally served upon the company by a notary. I can't recollect the time at which it was decided not to make the street according to the tracing. 10

What I meant to have said above was that I knew the tracing was a basis of calculation while we were negotiating with the proprietors for the purchase of the property, but that I am unable to say to what extent, if any, or for what period of time it might have been used as a basis by the arbitrators after their appointment. I recollect seeing a copy of some memorandum signed by the arbitrators in the Hughes case which would seem to indicate that at one time they intended to use the opening of the street as a basis. I cannot say whether or not they subsequently did so, but there is nothing in their award to indicate that they did. 20

I recollect that the umpire Mr. MacDougall was disposed to award an amount in the Walker case which we considered excessive. Our arbitrator refused to sign. We learned that Mr. McDougall was a creditor of Mr. Walker's when the award was made and because of some informalities in the proceedings we felt convinced the awards could be set aside if rendered in accordance with the umpire's decision. Subsequently two of the arbitrators called on me and named a sum which they thought would be accepted by the proprietor, and I agreed that if that sum were awarded we should accept the award without contest. These two arbitrators were Messrs. Duff & Cantin. That amount was awarded. I don't recollect that the question of access was mentioned in the conversation I had with them. 30

I can't say as to whether the calculations of the arbitrators were based on the tracing I spoke of above, shewing the street prolonged to Mountain street or not. I know that said tracing was shewn till the negotiations ended, and regular expropriation proceedings become necessary, which proceedings the company decided to take when the negotiations fell through.

I don't recollect that the tracing I above spoke of shewing the street opened which was given to Mr. Cantin who had been negotiating for company, and was afterwards named arbitrator, was returned to the Company. I did not tell Mr. Thomas Darling in November last or at any other time, that the company had intended to open Donegani street, and that the refusal of permission by the City to close Bisson street made a difference or anything to that effect. 40

And further deponent saith not and this his deposition having been read to him he declares it contains the truth persists therein and hath signed.

THS. G. SHAUGHNESSY.

Sworn and acknowledged before me, at
 the City of Montreal, this third day
 of July, one thousand eight hundred
 and eighty-nine.

G. W. KERNICK,
 Dep. P. S. C.

(ENDORSED.)

Deposition of Thos. Shaughnessy, for Plaintiff. Fyled 11 July, 1890.

10

RECORD:

*In the
 Superior
 Court.*

No. 141.
 Deposition of
 Thos. C.
 Shaughnessy
 for Plff. fyled
 3rd July 1890.

SCHEDULE No. 182.

On this fifth day of July, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared John L. Brodie of Notre Dame de Grace, near Montreal, farmer, aged _____ years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in in this cause ; I am not interested in the event of this suit.

20

No. 142.
 Deposition of
 John L.
 Brodie for
 Plff. dated 15
 July, 1889.

Q. Mr. Brodie, you were the arbitrator for Mr. James Baylis in the expropriation of this property, bounded in the rear by Blache lane, which was taken by the company Defendant ?

A. Yes, I was the arbitrator in that case, but I don't consider it was in the rear ; Blache lane ran alongside of the property.

30

Q. Are you aware that Mr. Baylis, before the arbitration was appointed for that expropriation, made a claim for indemnity upon the ground that this Blache lane which bounded his property, that one-half of it was private property and that he ought to have compensation ?

A. Mr. Baylis claimed the value of half the lane before the arbitration, as he maintained that it was a private street and that he had a right to half of the lane.

Q. And, as his representative, you assented to that claim ?

A. Yes, for a certain time I did until I found out differently.

Q. Can you state what was the answer made to you as his representative by the Company to that claim.

40

Objected to this evidence as entirely illegal and irrelevant.

Objection reserved.

A. Mr. Campbell, advocate, representing the Company, and Mr. Cantin, arbitrator for the Company, maintained that it was a public street, and that Mr. Baylis had no right to claim any part of that public lane.

40

Q. Did they adlucce evidence before you for the purpose of establishing that fact ?

A. No, I discovered that the City had come in and assessed Mr. Baylis'

RECORD. property for some improvements to that lane, and I advised Mr. Baylis to withdraw his claim from the lane altogether, as I considered that when the City came in and assessed it, put a special assessment for improvements on that lane, it was, I considered, a public property.

*In the
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Court.*

Objected to all this evidence as entirely illegal.

Objection reserved.

No. 142.
Deposition of
John L.
Brodie for
Plff. dated 15
July, 1889.
— *Continued.*

Q. So you came to the conclusion that the pretensions of the Company upon that subject were well founded ?

A. Yes, I did, from the facts that I have just stated.

Q. And you are aware that they went upon that basis that Blache lane was public property and he could not claim any indemnity, and you could not give any ? 10

A. The amount claimed for Blache lane was not taken into consideration in the award that we gave, neither in Mr. Baylis' case nor in Mr. Savage's property adjoining.

Q. Are you aware that at the same time, or about the same time this arbitration or expropriation of Mr. Baylis' property was going on, there were expropriations also proceeding of the property of Mr. Walker, property that was bounded or butted on Blache lane also ?

A. Yes, I am aware that Mr. Cantin was the Company's arbitrator, and I spoke to him several times about the matter. 20

Q. Did he show you plans or tracing indicating the position in which this property would be after the railway was constructed ?

A. He showed me a tracing of a street to be put instead of Blache lane, about fifty feet wide, if I remember rightly, and he asked me if it would not diminish the damages to a certain extent to the property, and I said : "Certainly, if a street is put of that width instead of having the lane there, it would diminish the damage."

Q. It was the street which would be a continuation of Donegani street ?

A. Running parallel with the present depot. 30

Q. From Bisson street to Mountain street ?

A. Yes.

Q. And you both agreed then, he and you, that placing that street there would be the cause of a very considerable reduction in any damage suffered by Mr. Walker or any other proprietor to the property abutted on Blache lane ?

A. Yes, and I still maintain it would if that street had been put there.

Q. Do you remember the time when the award was made in the Walker case ?

A. I don't remember now, but it was in the spring of eighteen hundred and eighty-seven. 40

Q. Was it about the same time as your award in the Baylis case ?

A. It was before the award was rendered in the Baylis case.

Q. Do you know whether, or can you say, with regard to this conversation that you had with Mr. Cantin in which he showed you the tracings of a street that was going to be put there, how long it was before you made your award for instance ?

A. No, I have not a direct recollection of that, but it was between the

first of April and the first of June, because we had a large number of meetings in the Baylis case, and I did not take any particular note of the exact date when that conversation took place.

Q. But it was in eighteen hundred and eighty-seven?

A. Yes, it was in eighteen hundred and eighty-seven, between the first of April and the first of June.

CROSS-EXAMINED UNDER RESERVE OF OBJECTIONS.

10 Q. Were you arbitrator for any other proprietor whose property butted on Blache lane but Mr. Baylis?

A. Yes, for Dame Lylia Fraser, wife of J. J. Savage.

Q. It is on the north side?

A. Yes, on the north side.

Q. It was well known by all the proprietors on both side of the lane that the Company were going to build on the lane, take the site of the lane for their railway?

A. Well, I think the plan would indicate that.

20 Q. You say in the Baylis case a question of indemnifying him for one half of Blache Lane was brought up because the Company were going to take the whole of the lane?

A. Yes.

Q. It was well understood?

A. Yes, it was well understood thing, or else M. Baylis would not have made a claim for half of the lane, if his property was not going to be damaged.

Q. And from what Mr. Cantin showed you by the tracings it was entirely understood among the proprietors there, the Company were going to take any way the lane away?

30 A. Yes, to take away the lane, and furnish them with the wide street which was shown on the tracings.

Q. Would that street be of any use to property butting on the north side of the lane?

A. It would be of no use unless the Company gave a sub-way to get off the lane.

Q. And there was never any talk about such thing?

A. No, there was never any talk.

Y. So that making this street on the south side would not in any way have diminished the damage cause to property on the north side?

A. No.

40 Q. And whatever Mr. Cantin may have said to you or whatever representations he may have regarding that street, did not affect your award in the Baylis case?

A. No.

Q. Well, now, is it not a fact that Mr. Campbell, before the arbitrators, argued that Mr. Baylis' only rights in that lane were those of passage, a servitude in fact?

A. I don't remember. I remember that Mr. Campbell argued strongly

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that Mr. Baylis had no right to make a claim for any compensation for half of Blache lane as it was public property.

Q. Did he not admit that Mr. Baylis was entitled to compensation for taking off his frontage on the street and depriving him of access to that side of the property?

A. No, it is not just that. He maintained that he had a claim for compensation for the part taken away on Blache lane.

Q. In your award in the Baylis case, did you allow any damages for cutting off the frontage on this Blache lane?

A. No, there was nothing allowed in our award on that account, nothing whatever in our damages, because the lots that abutted on Blache lane were taken entirely by the Company. 10

Q. I see, they were taken entirely by the Company?

A. Yes, and the two lots abutting on Osborne street had their access from Osborne street.

Q. And they did not reach the back of the lane?

A. No, they did not reach the back of the lane.

Q. So once you decided that Mr. Baylis had no property in the lane, that matter was no longer a question I understand for the Board at all?

A. Not until we advised Mr. Baylis that it was a public lane and that he had no right to make any claim for it.

Q. And you founded your opinion on the fact that you discovered that the City had expropriated part of the property? 20

A. Yes, it was part of the property.

Q. And had assessed Mr. Baylis for improvements which were supposed to be made in that lane?

A. Yes.

Q. Did you ascertain the nature of the improvements?

A. No, but I know the amount that Mr. Baylis had paid, and I saw the receipt that he got for it.

Q. But you did not ascertain the nature of the improvements? 30

A. No, I did not ascertain in what was the nature of the improvements.

Q. Are you aware that Mr. Baylis had at one time protested against the City doing anything in that lane?

A. Not that I am aware of, It was never brought up in our deliberations.

Q. And you don't know of your own personal knowledge that the City ever made any improvements in that lane of any description?

A. Not of my own personal knowledge, only from the documents that I have seen. They must have come in and levied assessments? 40

Q. You saw the receipt for the assessments?

A. Yes, and I thought it was sufficient to convince me that the City had done so.

Q. I suppose you cannot give the date of your conversation with Mr. Cantin any nearer than you have done?

A. Well, we have had so many meetings together, that I could hardly give you the exact date when the conversation took place at which the tracings

were shown to me, but I know that it was during our deliberations in the Baylis matter.

Q. This plan that he showed you was not used in connection with the Baylis matter.

A. No ; it had nothing to do with the Baylis matter.

Q. And you cannot come any nearer than you have done, between the first of April and the first of June ?

A. I cannot say exactly. If I looked up my books and verified the statements I might come nearer, but I cannot now.

Q. Have you made entries in your books as to that ?

A. No, but I could see about the meetings we had in June and May.

Q. Do you think it might have been in the month of June ?

A. I cannot say. I give that margin between the first of April and the first of June.

And further the deponent saith not. And this is a true and correct transcript of shorthand notes of his deposition is taken by me at Enquête.

C. DE B. MACDONALD,

Stenographer,

20

(ENDORSED.)

Deposition of John L. Brodie, fyled by Plaintiff, 5th July, 1889.

SCHEDULE No. 183.

30 On this fifth day of July, in the year of Our Lord, one thousand eight hundred and eighty-nine, personally came and appeared, James B. Cantin, of the City of Montreal, agent, aged thirty-four years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and said : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

Q. Mr. Cantin, you know the parties in this cause ?

A. Yes.

Q. You know Mr. Walker and Mr. Baylis ?

A. Yes,

40 Q. You are aware of the circumstances of the expropriation of the properties abutting on Blache Lane, bounded by Blache Lane, for the purposes of the Atlantic & North-West Railway Company ?

A. I was representing the company as arbitrator.

Q. And you were such arbitrator in the expropriation of Mr. Walker's property ?

A. Yes.

Q. As well as Mr. Baylis' property, I think.

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Court.*

No. 142.

Deposition of

John L.

Brodie for

Plff. dated 15

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— *Continued.*

No. 143.

Deposition of

James B. Can-

tin for Pltff.

dated

5th July 1889.

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*In the
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No. 143.

Deposition of
James B.
Cantin, for
Plff. 5th July
1889.

—Continued.

A. Yes, all the properties there.

Q. Do you remember the question being raised before the arbitration in the matter of Mr. Baylis' expropriation as to whether or not Blache Lane, was a public street, or public property.

Objected to this question as illegal.

Objection reserved.

A. Well, I remember Mr. Baylis claiming half of Blache Lane in front of his property.

Q. Was that claim resisted?

A. I simply asked him to produce his deeds and we would deal with the matter. It was before the arbitration. It was when he requested me to come up and see him before the matter came up for arbitration. 10

Q. I am asking you whether, before the arbitration, such pretension was made on behalf of Mr. Baylis that he was entitled to compensation for Blache Lane?

A. Yes, It was not before the arbitrators, that is, not before the three. It was before two of the arbitrators.

Q. Was it at a sitting of the Board?

A. No.

Q. Which two arbitrators were present when such contention was made? 20

A. Mr. Brodie and myself.

Q. The Company, I believe, was represented before the Board of Arbitrators by Mr. Campbell as attorney?

A. Yes, but that matter did not come up at all when Mr. Campbell was there, if my memory is not at fault, and I don't think it is in this case. I think Mr. Baylis never brought that up before us when we were sitting there as a Board.

Q. Do you recollect whether Mr. Campbell, before that Board, before the two of you, or before the entire Board, argued in answer to Mr. Baylis' pretension that he would have no such right to Blache Lane, because Blache Lane, was public property? 30

A. No, I don't recollect it, because the matter did not come up, but I told Mr Baylis myself that it was a very simple matter if he had the right to half of Blache lane to produce his deeds, and he told me at the first meeting that he had, before the meeting that he had thought the matter over and made up his mind to abandon it.

Q. So you never heard Mr. Campbell say that or hear it in any way?

A. No, I never heard it and I don't believe Mr. Campbell had any knowledge of it

Q. You are quite positive of that? 40

A. Yes, I am quite positive about that. I may say that I had a paper from Mr. Baylis, which was were the claim that he made. I rememer it was just for half of Blache lane, but it was never fyled or anything of the kind, simply because Mr. Baylis said that he had thought the matter over and had made up his mind to abandon it.

Q. It was in the conversation which you and Mr. Baylis had upon the subject?

A. Yes, in Mr. Baylis' house, but not before the three arbitrators.

Q. At the time of that conversation was there anything said about Blache lane being public property. Did you say anything yourself in conversation to give Mr. Baylis cause to believe that Blache lane was public property and not his property?

A. Well, I saw Mr. St. George, the City Surveyor. I happened to meet him one day and I asked him if Blache lane was public property when that subject came up and he said that it was not.

Q. When was that?

10 A. Just about the time the thing was being discussed. It was the most natural thing for me to do. I met him and asked him the question.

Q. Then the question of being a public property was discussed, because when you met him you asked him whether it was public property or not?

A. I don't know whether it was discussed in any particular way. I know, of course, the subject did come up. It came up from time to time.

Q. Before the Board of Arbitrators?

A. Yes, it might have come up before them. I don't know whether it came up before them or not. I know I spoke to Mr. Walker once about it.

20 Q. At the time this subject was coming up and you spoke to Mr. Walker about it, and so forth, you were at that time Arbitrator for the Company for the expropriation of the property abutting on Blache lane, and was it in connection with anything else than these expropriations that you had cause to be present at any discussion as to whether Blache lane was or was not public property?

A. The only connection that Blache lane had in the matter, the only way Blache lane was discussed or spoken of was this, in connection with Mr. Baylis' claim for half of it.

Q. And then it was in connection with Mr. Baylis' claim for half of Blache lane that this discussion as to whether it was public property or not came up?

30 A. Yes, it was in that way.

Q. So there were discussions in connection with Mr. Baylis' claim as to whether or not Blache lane was public property?

A. Well, Mr. Baylis claimed it as his own.

Q. He claimed it as his property?

A. Yes.

Q. And you claimed it as public property?

A. I said "produce your deeds." I did say whether it was public or private property.

40 Q. What was the object, then, of the inquiry of Mr. St. George as to whether it was public or private property, if there was no discussion as to whether it was public or private property?

A. When Mr. Baylis claimed it, I did not know whether he had any claim to it or not or was able to substantiate his claim. I could not tell. I might have said, "very well, put in your deeds," or things of that sort. The thing did bother me a little. I thought over it a little, and I happened one day to meet Mr. St. George, and being a personal friend of his, I asked him if it was a public street, and he said "No." He spoke of the cadastral number or something of

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that sort.

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Q. Previous to asking Mr. St. George if Blache lane was a public street, did it occur to you that it was necessary for Mr. Baylis to prove that it was his private property? You must have had information that it was a public street before you went and asked Mr. St. George about it?

A. Yes.

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Q. Now, is it not a fact that this discussion as to whether Blache lane was a public street or not took place at this interview between yourself and Mr. Brodie, and at which you say Mr. Baylis was present, and that it was in consequence of the representation that it was a public street, and of Mr. Brodie stating that it was a public street, that Mr. Baylis declared that he abandoned his claim? 10

A. No; Mr. Baylis spoke of this, and we spoke of it from time to time. When Mr. Baylis spoke of this I said to him, "You produce your deeds and it will be all right."

Q. Can you give us an idea when it was or before whom this discussion took place as to whether Blache lane was a private property or not?

A. There was never any discussion.

Q. You just told me a moment ago that it came up before you and discussed?

A. It came up in conversation between me and Mr. Walker. for one. 20

Q. And it was in connection with Mr. Baylis' claim?

A. Yes.

Q. Then you conversed solely with Mr. Walker, and the matter was solely in connection with Mr. Baylis' claim?

A. No.

Q. You are saying now that you never spoke to Mr. Walker on the subject?

A. I am certain that I never spoke him lately about it, but I recollect speaking to him at one time.

Q. Had that matter any bearing upon Mr. Walker's property? 30

A. None whatever.

Q. But it bore upon the matter of Mr. Baylis, who was making the claim that it was his private property.

A. I don't think it had any serious bearing upon it, because I very soon began to see if Mr. Baylis had any claim to it he had the deed for it.

Q. One thing you were very ascertain of, is that if Mr. Baylis had the deed was not public property?

A. Yes.

Q. And you were equally certain that if it was public property Mr. Baylis had not a deed for it? 40

A. I don't know. That is a question for lawyers to decide.

Objected to his evidence as a matter of inference and hypothetical and not a question of fact.

Objection reserved by consent of the parties.

Q. Now, I want you to tell me how it could be that there were, as you have told us, conversations upon the subject as to whether or not Blache lane

was public property, and that these conversations should have been only with Mr. Walker ?

Objected to this question in as much as witness did not state these conversations were only with Mr. Walker.

Objection reserved.

A. I never stated that.

Q. You have no recollection of discussing the matter or conversing with anyone else except Mr. Walker upon the subject ?

A. I have told you that I spoke to Mr. St. George about it.

10 Q. You never spoke to Mr. Baylis upon the subject as to whether it was private or public property ?

A. Mr. Baylis claimed he had half of it and I told him I did not know whether he had any right to it or not, but that if he had it would be in his deeds, to produce them and it would be all right.

Q. You never hinted as to its being public property ?

A. No, I did not know whether it was public property or not.

20 Q. But the idea was running in your mind that it might be public property because you discussed it with Mr. Walker and because you asked the question of Mr. St. George, and yet you never hinted that to Mr. Baylis who was the man concerning whose claim the question had risen ?

A. I don't know. All I can say is that it simply came up that Mr. Baylis claimed half of it and I asked Mr. St. George if it was not a public street, if the lane did not belong to the City, and he said that it did not.

Q. What was your purpose in asking him that question ?

A. I did not know whom it belonged to and I told Mr. Baylis to produce his deeds.

Q. Did you tell Mr. Walker of this conversation that you had upon the subject that Blache lane was a public street ?

30 A. No, I did not tell Mr. Walker that, but Mr. Walker told me that there were other properties bounded by Blache lane in the rear.

Q. And you swear positively that you did not tell Mr. Walker at any time that Blache lane was a public street or was a public property ?

A. I am almost perfectly positive that I did not say that it was a public street or public property.

Q. Now, at the time this arbitration in regard to Mr. Walkers's expropriation was proceeding, you were in possession, I believe, at the time, of a plan or tracing showing the proposed arrangement of the properties to be expropriated by the Railway Company ?

A. Yes, I had one for my own private use ; it was for my own guidance.

40 Q. Where you authorized to show that tracing to the proprietors ?

A. I don't know that I was.

Q. You don't know whether you were or not ?

A. No, I got the tracing and used it.

Q. What use did you put it to ?

A. I used it principally for myself.

Q. Did you show it to anybody ?

A. Yes.

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- Q. To whom did you show it, to Mr. Walker ?
 A. I don't know whether Mr. Walker saw it or not, but it was used at
 the time of the arbitration at the meetings.
 Q. You showed it to Mr. Walker's arbitrator, I suppose ?
 A. Yes.
 Q. Mr. Duff was his arbitrator ?
 A. Yes, Mr. Duff was his arbitrator.
 Q. Who gave you this tracing ?
 A. I am not certain, but I think it was Mr. Howard.
 Q. And Mr. Howard gave it to you on behalf of the Company ? 10
 A. Certainly, I could not have got it otherwise.
 Q. Mr. Howard was then employed by the Company ?
 A. Yes.
 Q. And he gave you this tracing. Have you got it now, this tracing ?
 A. No, it is not in my possession now.
 Q. Do you know what has become of it ?
 A. Well, I am not positive what has become of it, I may have burnt it
 or I may have sent it back. I kept all my papers, and as soon as I was
 through with them I either destroyed them or left them where they were.
 Q. You had this tracing at the time the ward was made in Mr. Walker's 20
 case ?
 A. Yes, at the time the award was made I had it.
 Q. And that tracing showed a street fifty feet wide ?
 A. Remember it was at the time the first award was made you are
 speaking of.
 Q. Were there two awards made in Mr. Walker's case ?
 A. Yes.
 Q. What was the date of the last one ?
 A. I don't remember the date at all, I know the last award was made
 three weeks or something like that after the first one
 Q. Am I to understand that at the time of the last award you did not 30
 have the tracing ?
 A. No, I had it but it was not produced, or anything of the kind.
 Q. At the time the last award was made there was nothing further than
 that the last award was made upon the basis of a reduction of the first one ?
 A. It was a reduction of the first award.
 Q. When you speak of the first award and the second award, I suppose
 you don't mean that there were two separate awards finally made but that
 after the first award was made, the majority of the arbitrators had come to
 the conclusion to reduce the amount of the award ?
 A. Yes. 40
 Q. And it was the final award ?
 A. Yes.
 Q. That is what you mean when you speak of the two awards ?
 A. Yes.
 Q. Now, at the time the Arbitrators came to the conclusion, or the
 majority of them, as to the amount of what you call the first award, you then

had in your possession this tracing ?

A. Yes.

Q. And that the first amount was subsequently reduced to the amount which was set forth in the notarial award, which was accepted by the parties and agreed to ?

A. If I am not mistaken, there were two notarial awards. One was not signed ; I was requested to sign it, but I refused to do so.

Q. It was never completed, that first one ?

10 A. I don't know what you call completed, but the notary told me that the award could be made without me.

Q. But, at all events, after that first one was made, after the Arbitrators had come to the conclusion as to the amount of what you call this first award, whether notarial or not, some three weeks afterwards you made the final award ?

A. Yes, as near as I can remember.

Q. You took about three weeks to make it ?

A. Well, it is some time ago, and I don't remember the time exactly.

20 Q. In the interval you had interviews, I suppose, with the other proprietors, and the matter was discussed as to the amount of this award ?

A. They had interviews with me ; I did not interview them.

Q. You condescended to be interviewed by the other proprietors, upon the subject ?

A. Yes.

Q. At these interviews which took place, at which the question of the amount of the award was discussed, you had then in your possession this tracing showing the street ?

A. Yes, certainly, it was in my possession.

30 Q. And you argued then that great advantages were going to accrue to the proprietors from the placing of this wide street there in lieu of Blache Lane, and it was a reason why the damages should be reduced ?

A. When was that ?

Q. When the proprietors interviewed you ?

A. No, we did not in any way consider the street.

Q. There had been meetings of proprietors at which that had been represented ?

A. Yes.

Q. You had represented that in the discussions ?

A. Yes, it was frequently spoken of.

40 Q. That representation had been made to the proprietors and to the arbitrators, and thought that the existence of this street was a weighty consideration for which the amount of damages should be reduced ?

A. I considered that the Railway Company opening up a street there, instead of damaging the property, that the proprietors should pay ; that it was the very opposite, and that the Railway Company should get compensation.

Q. At all events the reduction was made ?

A. It was before the first award was made.

Q. It would have hardly been worth while to urge it after the award was

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RECORD. made. This was before the first award was made you say ?

A. Yes.

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Q. The second award was simply the first award reduced ? Is it not a fact that it was reduction of the first award ?

A. The second award was like on the basis of a notice, and it was a reduction of the first award.

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Q. And the first award had been made by the majority of the arbitrators upon the basis that the Company was going to construct this wide street ?

A. I don't say that.

Q. It was made after you had represented to the two arbitrators who made it that the Company was going to make this wide street and you showed them the tracing of the street ?

A. Well, I must answer that question in my own way. It is a very difficult question to answer and to make it just as I know it. When the first award was made I asked the umpire in the case to come down and explain before Mr. Shaughnessy how he had arrived at these figures. His figures were simply absurd.

Q. I am not asking you that ?

A. I am telling you what I know. I told him to take the responsibility to tell Mr. Shaughnessy how he got at them, that I would not do so. I saw Mr. Shaughnessy afterwards, and he was very much annoyed over the thing, and he said to me : "Cantin if these people are going to act in this way I will not give them a street at all."

Q. So, up to that time, it was distinctly understood that they were going to have a street ?

A. I certainly thought so.

Q. And the first intimation you ever had that they would not have a street was Mr. Shaughnessy stating to you as you have mentioned that if these people were going to behave in that way they would not have a street ?

A. Mr. Shaughnessy said : "If these people are going to behave in that way they would not have a street."

Q. That suggestion was in the sense that the amount should be reduced to the amount that Mr. Shaughnessy was willing to agree to, which was the amount of the final award ?

A. Mr. Shaughnessy said to myself, I think he said something about having to pay through the nose. He said : "We have to pay through our nose and make the best of it." I think he said something to that effect. He made that remark or something like it.

Q. Between that first award and second award you never told the other Arbitrators that this street was not going to be made ?

A. No, I don't think we said anything more about it until I was asked to sign it.

Q. When the second award was made the Arbitrators were under the same impression, were they not, in regard to the street that they were under at the time the first award was made so far as you know ?

A. Well, the fact of the matter is the street was very little discussed.

Q. I ask you if they were not under the same impression at the time the second award was made that they were under when the first award was made?

A. You want to know if the arbitrators were discussing the street?

Q. No, I simply ask you, if as far as you know, the arbitrators were under the same impression in regard to the street that was going to be made as they were under at the time when the first award was made?

A. When the first award was made I don't know what their impressions were.

10 Q. I don't ask you that. I ask you if they were under the same impression when the second award was made as they were when the first award was made?

A. How do I know that?

Q. I ask you as far as you know?

A. I don't know.

Q. Was there any reason why their impression with regard to the street should be changed as far as you know?

A. I don't see how I can answer that question. If a man does not express his impressions to me how do I know what they are.

20 Q. Did the same thing of having two awards occur in any other expropriations but Blache lane?

A. It occurred in three cases before Mr. McDougall. The three cases were before Mr. McDougall the third arbitrator or umpire.

Q. They were the cases of Hughes, Walker and Watt?

A. Yes.

Q. And you say you did not sign any of these first awards?

A. No, I did not.

Q. You did not sign any of them?

A. I signed the minutes of the meeting, but the awards I did not sign,

30 Q. Who is in possession of the minutes of this meeting?

A. Mr. Duff. I think he wrote them and I did not pay any more attention to them. He took them away with him.

Q. Who wrote out the first award, do you know?

A. Well, I was requested by Mr. Lighthall, Notary, to sign the first award which I refused to do.

Q. Before you went to the Notary's office at all, was there any document drawn up shown you?

A. I tell you I saw the minutes of our meeting.

40 Q. Is it not a fact that your award in the case of Mr. Walker was based upon the assumption that the street was going to be constructed as shown upon the tracing you have spoken of?

A. This final award?

Q. Yes, the award you made?

A. In the final award I made no promise of a street or anything else because I did not know if there would be one.

Q. How did you come to the conclusion as to how much you were to give this proprietor in that award. You awarded him a certain amount of money?

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A. Well, I think the matter was discussed before Mr. Shaughnessy. It was talked over before him with the proprietor's consent, That is how the award was made.

Q. The reduction was made with the proprietor's consent ?

A. With the consent of both parties.

Q. There was at that time in existence one award granting a certain amount to the proprietor, and the reduction I understand, was made by consent of both parties, and that is how the second award came into existence ?

A. You mean the agreement between the arbitrators. The first award was never carried out, was it ? It may have been written.

Q. The object of that second award was carried out reducing the amount granted by the first award, which reduction had been consented to by all the parties, is not that the fact ? 10

A. Yes.

Q. Now the first award had, at all events, been carried on upon the assumption that this street was to be made. That, I think you told us already ?

A. The street may have a factor in the case, but the impression I have and I had it at the time, was that the proprietors were naturally going in for all they could get.

Q. You say the proprietors were going in for all they could get, you endeavored to reduce as much as possible the amount, and you argued the consideration of the making of this street as a factor towards the reduction of the amount ? 20

A. I know that before I asked for compensation.

Q. You represented as the basis for asking for compensation the fact of the representations that the Company were going to make the street ?

A. I knew that before. I told you first of all that I thought the Company going to make the street.

Q. And you stated so to others ?

A. I may have stated so ; it is just as likely that I did, but I told you before that the street was not very prominently discussed. 30

Q. Is it not a fact that at the time the first award was agreed upon, you were in possession of the tracing which you have spoken of ?

A. I am in possession of some tracings that I was requested to get to attach to the deeds, and when I got them I stuck them in a pigeon hole and until I got a letter from Mr. Darling, I had quite forgotten all about them.

Q. Have you still these tracings ?

A. Yes, I have.

Q. Among these tracings, was there not at that time the tracing you have been speaking of here ? 40

A. No. That tracing of the street I got more for my own guidance than anything else. I had so many properties there that I asked for a tracing showing the site.

Q. Now, these other tracings which you spoke of and which you still have show a continuation of Donegani street ?

A. I don't think so ; I think they merely show the situation of the property.

Q. They would not be plans indicating the surroundings at all?

A. No, but they were in answer to the request I made for plans to be attached to the deed in each case.

Q. Now, Mr. Cantin, after Mr. Shaughnessy gave his deposition the other day, is it not a fact that you told Mr. Barnard, Q. C., in the presence of Mr. Walker, that although Mr. Shaughnessy might say he did not know that the award had been based on the tracing, yet, you would have to admit the fact beyond all doubt, in fact that the pretension was otherwise absurd?

A. I don't understand your question.

10 Q. Is it not a fact that after Mr. Shaughnessy gave his deposition, the other day, you told Mr. Barnard, Q. C., in the presence of Mr. Walker, that although Mr. Shaughnessy might say that he did not know that the award had been based on the tracing, yet you would have to admit that the award to Mr. Walker was made upon the basis of the tracing you have spoken of, which tracing shows that the street was to be made there?

A. I don't think I said that. I admitted that I thought there was going to be a street there. I admitted that all along, and I said that in my evidence and I thought, up to the time Mr. Shaughnessy told me in the conversation that I had with him, I thought there was going to be a street.

20 Q. And you did not tell Mr. Barnard then that the award was based upon that assumption, that there was going to be a street as shown upon the tracing?

A. I don't see how I could have said that, but I spoke of a street to Mr. Barnard, and I told him that I thought, until after that first award had been made, I thought the street was going to be made. I think I told Mr. Barnard that, but I don't think I said that it was based on that.

Q. Do you remember Mr. Darling asking you about the tracing in question, this tracing which showed the street that was about to be opened?

A. I did not have the tracing that he wanted.

30 Q. But he asked you for it in November, eighteen hundred and eighty-eight?

A. I don't know the month.

Q. Well, in the fall of that year?

A. He wrote me about it.

Q. And did you go to see him?

A. Yes.

Q. And he asked you for that tracing showing the street to be opened there?

A. Yes.

40 Q. Did you tell him that you had the tracing?

A. I told him that I had tracings. I referred to these others. I knew the tracings that he wanted, but I did not have it in my possession.

Q. You say that you knew the tracing that he wanted? Did you tell him that you did not have it?

A. I said that I had tracings in my possession and that he could have them, but I thought afterwards if he wanted them, he could go to the Pacific for them.

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Q. You knew at the time, when you said this to Mr. Darling, in answer to his question for the particular tracing, you told him that you had tracings although you were aware that you have not the one he was speaking about ?

A. Yes, that is the way it was.

Q. Do you know when it was that conversation took place ?

A. I think in his office in St. Francois Xavier street.

Q. Do you remember seeing him in the office of the National Insurance Company ?

A. Yes.

Q. This conversation that you speak of took place in the office of the National Insurance Company ?

A. We did not have very much conversation there.

Q. I don't ask you whether you had much conversation there or not ; I simply ask you if the conversation to which you refer, did not take place in the office of the National Insurance Company when you said you had the tracings, but did not tell him that you had not the one he wanted, although you knew it ?

A. I told him, I think, there—of course this conversation I cannot recollect the date very well. I think I told Mr. Darling that I had tracings, 20 and he asked me if he could use them, and I think I said yes, he could and not finding them afterwards I thought that Mr. Darling might have taken another way of getting them.

Q. Did you speak the matter over afterwards with any one which helped you to reach that conclusion ; before you reached that conclusion did anybody speak to you ?

A. I do not recollect that I spoke to anybody, except when the case was taken out I asked Mr. Campbell, advocate, what it meant,—the Atlantic & North-West Railway Company, or, at least, the Attorney-General and the Atlantic & North-West Railway,—and he explained to me what it meant. 30

Q. Were you not advised to give none of the documents to Mr. Darling ?

A. No, I was not at all.

CROSS-EXAMINED UNDER RESERVED OF OBJECTION.

Q. Did Mr. Campbell, of the firm of Abbotts, Campbell & Meredith, ever make any claim in the Baylis case that Blache Lane was a public street ?

A. That never came up before Mr. Campbell.

Q. Neither in the Baylis case nor in any other case ?

A. No, Mr. Campbell was only in that case.

Q. So no such pretention was ever made as far as you know on behalf of the Company ?

A. Mr. Campbell was only in the Baylis case.

Q. I ask you if any such pretention was ever made in the Baylis case or any other case, that Blache Lane was a public street, on behalf of the Company ?

A. No, the thing was not brought up at all.

Q. I ask you yes or no, if any such pretention was ever made on behalf of the Company ?

A. I cannot see how I can answer that question.

Q. Was any claim made before you, or before any of the arbitrators on behalf of the Company that this street was a public street ?

A. Before me.

Q. Yes ?

A. No.

Q. Not to your knowledge ?

10 A. No.

Q. Did you in your conversations with Mr. Brodie make the claim that this Blache Lane was a public street ?

A. I did not know whether it was or not.

Q. I ask you if you ever made that claim to Mr. Brodie ?

A. No.

Q. As a matter of fact you were satisfied yourself by inquiring from Mr. St. George that it was not public property ?

A. It was from Mr. St George that I heard that.

20 Q. Now, did you return the plan or tracing of which you have spoken showing the street to Mr. Howard.

A. I am not certain if I returned that plan or if it went with my other papers. I brought most of my papers to the Pacific people after the thing was over. I asked Mr. Shaughnessy whom I would give them to, and he said "They are of no more use to us," and then there were some other things. There was some memorandum about the height of the trestle work, one thing or another and I return these.

Q. To whom did you return them ?

A. I think I returned them to Mr. Howard. I got them from time to time from Mr. Howard.

30 Q. Your communications were generally with Mr. Howard ?

A. They were always with him.

Q. And after getting these papers from him, you naturally returned them to him, if you did return them,

A. Yes. It was from him that I got the tracings showing where the properties were that I was arbitrating upon.

Q. And you inferred from the tracing that there was going to be a street there ?

A. Yes, I thought there was going to be a street there.

Q. Will you swear that there was a street shown on this tracing ?

40 A. I will swear that there was a dotted line on the tracing with the letters "Proposed street."

Q. Do you know whether Mr. Howard is still in the employ of the Company (Defendant) or the Canadian Pacific Railway Company ?

A. I understand he is not now in their employ.

Q. Since how long has he ceased to be in their employ ?

A. I don't know.

Q. You stated that you said nothing about the change in the Company's

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- RECORD. intention with regard to this proposed street until you were asked to sign the award. What did you say then ?
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- No. 143. Mr. Lighthall's office.
- Deposition of James B. Cantin for Plff. dated 5 July, 1889. —Continued.
- A. It was at the final award.
- Q. But what did you say then ?
- A. I looked over the award as I said I read the award. It was made in
- Q. But what did you say ?
- A. I read the award and I simply said, "As matters stood now, the Company were not going to bind themselves to put the street there.
- Q. Who was present when you said that ? 10
- A. I think Mr. Duff and Mr. Macdougall were present at the time.
- Q. Mr. McDougall was the third arbitrator or umpire ?
- A. Yes ; he was the umpire. I am not sure that these are the exact words, but I referred to the street in that way. I said, "We must not put in anything about the street," because I was thinking then of Mr. Shaughnessy's conversation with me between the first and second award. I said that I would not sign it if there was anything about the street in it.
- Q. Mr. Walker was present at this discussion that took place with Mr. Shaughnessy ?
- A. I don't recollect whether he was or not. 20
- Q. Was his arbitrator Mr. Duff ?
- Q. Mr. Duff was present, but I don't know whether Mr. Walker was there or not, I am not sure whether he was there or not,
- Q. And in the course of that discussion that took place with Mr. Shaughnessy, was it stated that the Company had abandoned the intention of building the street ?
- A. No, nothing at all was said about that.
- Q. The street was not discussed ?
- A. No.
- Q. Now, why did you refuse to sign what you called the first award ? 30
- A. Because I did not believe that it was honest.
- Q. What reason had you for thinking that it was not honest ?
- A. Well, I had heard something about the umpire and one of the proprietors having business transactions together of an intimate nature.
- Q. Did you mention that fact to the proprietor's arbitrator ?
- A. No, but I would not sign the award.
- Q. Did you tell him that you would not sign ?
- A. Yes, I did.
- Q. Did you give him any reason for not signing ?
- A. I said that I had sufficient reason not to sign the award. 40
- Q. And the other two did not execute the award ?
- A. Mr. Lighthall told me that they could, and I said : "Well, they better try."
- Q. At any rate they did not ?
- A. No.
- Q. And instead of doing that they came and notified you ?
- A. Yes ; they came up to my house in the evening afterwards twice I think.

- Q. To endeavour to get you to come to an agreement ?
 A. Yes.
 Q. Now I ask you with what object ?
 A. To get me to come to some agreement with them.
 Q. What was his name. Who was the proprietor that McDougall had his business relations with, as you have stated ?
 A. Mr. Walker.
 Q. What was the nature of their business relations ?
 A. Well, it was in the nature of accommodation I believe,
 10 Objected to this evidence as not arising out of the examining in chief.
 Objection reserved.
 Q. Give us any particulars that you know ?
 A. It was in the nature of accommodation paper,
 Q. But give us details if you know them ?
 A. I don't know any of the details.
 Q. What do you mean by accommodation paper ?
 A. I think it was Mr. Walker's endorsement on Mr. McDougall's paper.
 Q. Did you hear the amount ?
 A. No, I did not hear the amount until afterwards. I never knew the
 20 exact amount.
 Q. Have you since ascertained as a fact that Mr. Walker's name was on Mr. McDougall's paper for a large amount, and what amount ?
 Objected to this question as not arising out of the examination in chief.
 Objection reserved by consent of the parties.
 A. Well, it was well known.
 Q. Give us the amount please ?
 A. I understood the amount was five thousand dollars. I heard it in an indirect way.
 Q. You say that afterwards you found out the amount. I want to know
 30 now, how you found it out, if you found it out yourself or if you merely heard rumors of it ?
 A. I think Mr. Duff heard the amount. It simply came out in conversation.
 Q. So, Mr. Duff knew also the fact at the time ?
 A. I don't know if he knew it at the time. I think Mr. Duff was under the impression that the firm of McDougall, Logie & Co. were sound.
 Q. That firm has since become insolvent, and Mr. McDougall has absconded from the country ?
 A. Well, he is supposed to be unable to come back. I don't know if he
 40 has absconded, but it is stated that he is unable to come back.
 Q. It was only in the three cases in which Mr. McDougall acted as arbitrator or umpire that this occurrence took place of the signing of the first and second award ?
 A. Only in these three cases.
 Q. Are you certain of the names of the proprietors you have given ?
 A. Yes, I am certain.
 Q. With regard to the other awards, you came to an unanimous decision

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James B.
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RECORD without changing the first award ?

A. Yes.

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James B.
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—Continued.

Q. Did both arbitrators go up to your house to see you ?

A. No.

Q. Only Mr. Duff ?

A. Yes.

Q. So, when you say "they came up to the house," you mean Mr. Duff ? 10

A. Yes.

Q. When you made this statement, "as matters now stood," at the time you were going to sign the first award, the Company would not bind themselves to make the street, was it after the other two arbitrators had signed ?

A. I would not sign, I don't know that these are the exact words, but I said if the street was there I would not sign the award.

Q. All you said was, that if they mentioned the street, you would not sign the award ?

A. Yes.

Q. Before what Notary was it that you made that statement ? 20

A. Before Mr. Lighthall.

Q. Do you know before whom the final award was signed ?

A. Mr. Lighthall.

Q. You are equally positive about that, as to all the rest, that it was before Mr. Lighthall that the final award was signed ?

A. I am very positive. I might be mistaken, but I am almost certain as far as my feelings are now.

Q. At all events, it was on the occasion of signing some document before Mr. Lighthall that you made that statement ?

A. Yes, and that document was the award. 30

Q. And it was after the other two arbitrators had signed it ?

A. No, it was before.

Q. All this that you have told us about accommodation paper and five thousand dollars, I suppose it was merely what you heard from other people ? Personally you don't know these facts yourself ?

A. I knew a little about the firm at the time. We had been doing business with them.

Q. Did you ever see any of these accommodation notes, for instance ?

A. No.

Q. How did you come to know the nature of the transactions : was it 40 simply from what outsiders told you ?

A. I think Mr. Walker told me himself.

Q. You are quite positive that he told you himself ?

A. Yes.

Q. When was it Mr. Walker told you ?

A. It was yestereday.

Q. Yesterday ?

A. Yes.

Q. Are you quite positive that you never said anything to Mr. Brodie about Blache lane being a public street ?

A. That I never said to Mr. Brodie anything about Blache lane being a public street ?

Q. Yes.

A. I am perfectly positive that I did not speak to Mr. Brodie on that subject at all. The subject never came up.

Q. You never spoke to him at all about it ?

10 A. No. As I told you before, Mr. Baylis never brought that up before the arbitators.

Q. Now, this statement that Mr. Shaughnessy made about this street, that is to say, that if these people behaved in that way, he would not give them a street ; are you quite positive that it was not after the final award had been made that Mr. Shaughnessy made that statement ?

A. It was after the first award.

Q. You are equally positive that it was not after the last award ?

A. As I said, it was after the first award. It was between the first and the last award or settlement, whatever you may choose to call it.

20 Q. It was simply to you that it was said ?

A. Yes ; it was to me. I don't know whether he said it to anyone else or not.

Q. So far as you know, other people were not present to hear it ?

A. No, he said it to me.

And further the deponent saith not. And this is a true and correct transcript of shorthand notes of his deposition as taken by me at Enquête.

(Signed,) C. DE B. MACDONALD,
Stenographer.

30 (ENDORSED.)

Deposition of Jos. B. Cantin. Fyled 10th July 1890.

SCHEDULE No. 184.

40 On this ninth day of July, in the year of Our Lord one thousand eight hundred and eighty-nine, personally came and appeared, William B. Lambe, of the City of Montreal, Collector of Provincial Revenue, aged _____ years, witness produced by the Plaintiff, who being duly sworn, deposes as follows : I am not related, allied or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

I was one of the Plaintiffs in the case of Johnson et al. vs, Archambault,

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Court.*

No. 143.

Deposition of
James B.
Cantin, for
Plff. 5th July
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Continued.—

No. 144.
Deposition of
Wm. B.
Lambe for
Plff. Fyled
10th July
1890.

RECORD. No. 1797 S. C. M., in which the writ was returned into court on the 7th of May, 1860.

*In the
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Court.*

No. 144.
Deposition of
Wm; B.
Lambe for
Plff. Fyled
10th July
1890.
Continued.—

The Blache lane referred to in that case is the same Blache lane as is mentioned in the present case.

The copy of the judgment of the Court of Appeals which I now produce as Plaintiff's Exhibit B-2, was executed and since then the lane has remained as a public street or lane and recognized as such until the Company Defendant made some changes in connection with it.

The Plaintiffs in the said case of Johnson and Archambault were proprietors of said property for twelve or fourteen years after the judgment in said case when it was sold to J. G. MacKenzie. 10

I have seen the two plans of the City of Montreal, one dated in eighteen hundred and one, and the other in eighteen hundred and twenty-five referred to in the factum of Appellant in said case of Johnson and Archambault, herewith produced as Plaintiff's Exhibits B-3, B-4, in the factum of the Respondent in said cause.

Said plans shewed Blache lane as a public lane or street.

Defendants object to the production of the factum and to the testimony of the witness as to the plans as illegal.

CROSS-EXAMINED.

20

(BY DEFENDANT UNDER RESERVE OF OBJECTION.)

The declaration in the action in which I was one of the Plaintiffs, of which a copy is produced as Plaintiff's Exhibit A-2 is now before me.

The lane was, at the time I took the action, called Blache lane. The rear of my father's property abutted for one half on said lane, and the lane was used as a mean of access to said property, and also used as such by the other proprietors abutting on the lane; it was a *cul-de-sac*, but was used by the abutting proprietors as a mean of access to and from Mountain Street. It was a public lane; the public had as much right in it as they had in any other public street. The public only used this lane as a mean of communication with the abutting proprietors, although I am of opinion that they had a right to use it as much as they pleased. The property owned by my late father is now owned by the estate of Alexander Watt. I always understood that this lane had been opened by Mr. Blache, who owned the property at the North corner of Mountain Street, as a mean of access to his orchard which was situated at the extreme easterly end of the lane, as I remember it. 30

RE-EXAMINED BY PLAINTIFF.

40

Although the lane might have been opened originally for the use of the proprietors fronting on that lane, in point of fact. the public made use of that lane as they pleased, but not being a thoroughfare, that is being a *cul-de-sac* it was generally used as an access for the proprietors or residents on that lane.

FURTHER QUESTION BY DEFENDANT.

Q. Did the public ever use that lane to your knowledge in any way except as a mean of communicating with the properties abutting on it, and did any persons use it except those who had business, with proprietors or residents such properties?

A. That I cannot say whether they had any business or not there, but I have seen people of all classes walking and driving in the street.

And further deponent saith not, and this his deposition having been read 10 to him, he declares it contains the truth, persists therein and hath signed.

Taken and acknowledged before me }
 at Montreal, this ninth day of }
 July, eighteen hundred and }
 eighty-nine. }

W. B. LAMBE.

L. N. DUMOUCHEL,
 Comm. S. C. D. of Montreal.

20 (Endorsed.) Deposition of W. B. Lambe for Plaintiff. Fyled 10th July,
 1890.

RECORD

*In the
 Superior
 Court.*

No. 144.
 Deposition of
 Wm. B
 Lambe for
 Plff. Fyled
 10th July
 1890.
Continued.—

SCHEDULE NO. 185.

30 On this ninth day of July, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared, John M. M. Duff, of the City of Montreal, Auctioneer, aged forty-five years, witness produced by the Plaintiff, who, being duly sworn, deposes as follows :

I am not related, allied, or of kin to, or in the employ of the parties in this cause. I am not interested in the event of this suit.

I know the parties in this cause. I am aware of the proceedings in expropriation that were had to expropriate at the instance of the Company Defendant, the proprietors having an outlet on Blache lane. I acted as arbitrator on behalf of four of the proprietors, Messrs. Walker, Watt, Hughes and Brennan.

40 The question was discussed at the time of the arbitration as to the Company making a street to form a continuation of Donegani street from Bisson to Mountain street. The plan deposited in the office of the Clerk of the Peace showed Blache lane, and on asking Mr. Cantin, the Company's arbitrator, if Blache lane was to be kept open, he said it was, and not only that, but it was to be condemned—that is, that a street would be opened by the Company which would be a continuation of Donegani street, thus making a street through from Windsor to Mountain street. Mr. Cantin produced a plan showing the street as I have described it. The plan was signed, by whom I

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 Deposition of
 John M. M.
 Duff for Plff.
 Fyled 10th
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John M. M.
Duff for Plff.
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— *Continued.*

do not recollect, but I was assured by Mr. Cantin that it was a responsible officer of the Company Defendant. I believe when it was first produced it was not signed, and upon my requiring that it should be signed, it was taken away to be signed, and brought back signed. The purpose for which I required the plan to be signed was to make it binding on the Company to carry it out. After the plan was returned signed, I understood it to be the basis of the operations of the arbitrators, and proceeded on it as such. The award we made was predicted upon the assumption that the plan would be carried out.

The representation that this street was to be made and the plan carried out made a considerable difference in the amounts awarded the proprietors. 10

I cannot say to what extent, but the amount awarded included nothing for being deprived of the street. In the absence of the plan, and the representation there was to be a street as above. I would have awarded something for the loss of the lane. Without figures, which are not now before me, I could not say how much.

From the time Mr. Cantin produced the plan above referred to, and represented the street was to be made, until after the award was made, I never heard that the intention of making such street was changed or abandoned. After I had got the plan signed I had no further doubt that Mr. Cantin was making the representation in good faith, and that it would be carried out. 20

I think the plan in question was kept by Mr. McDougall during the discussion of the matter, but I am not positive. It did not remain in my possession. I certainly believed that it formed part of the proceedings of record before the arbitrators. After the production of the plan nothing was said, nor was any evidence made about damages resulting from loss of the lane.

I do not remember, at the time the final award was made, hearing Mr. Cantin say, "As matters now stood the Company were not going to put the street there," or anything of the sort. If such a statement had been made I would not have signed the award without further consultation. 30

Some little time before the award was finally made Mr. McDougall, the third arbitrator, and myself had agreed upon amounts to be awarded, which were larger than those finally awarded. I believe Mr. Cantin did not agree to these amounts. Mr. Cantin told me, in the interval between the two awards, that the Company was disposed to resist an award of the amounts first awarded, and suggested that the proprietors might perhaps agree upon an amount to which Mr. Shaughnessy would also agree. At Mr. Cantin's suggestion I saw Mr. Shaughnessy, and ascertained from him what amount could be agreed upon. I then saw Mr. Walker, and, after consultation, he agreed to accept the amount spoken of, and the unanimous award was made in consequence. 40
After what I have said concerning the production and signing of the plan, nothing further was said about the street.

(CROSS-EXAMINED UNDER RESERVE.

The foregoing evidence is taken under reserve of Defendant's objections to the whole thereof as illegal.

There was no discussion about the street after the plan was produced and signed, which was near the beginning of the proceedings in February, I think. It was produced signed at a meeting of arbitrators. I have the minute book of the arbitrators' proceedings at my office. Exhibit A 1 appears to be an extract of the plan I referred to as fyled with the Clerk of the Peace.

10 Mr. Cantin explained to me that Blache lane would not remain open as it was, but that instead there would be a fifty-foot street to the south of it, being in a line with Donegani street, and that the land then being expropriated was more than was required for the railway tracks, because they wished to have a fifty foot street. It didn't enter my mind whether the Company had power to expropriate land to make a street. I thought once they had acquired the property they could do what they liked with it. The expropriation notices were in the ordinary form and contained nothing about the street.

Mr. Walker had the entrance to his factory on Blache lane, and I believe there was a dwelling on the next lot west. The main frontage of these lots was on St. Antoine street. Of the lots for which I was arbitrator only Walker's had buildings in Blache lane.

20 The Hughes lot used Blache Lane as a rear entrance, and, I think, Watts also. These would be by gates in yards. Mr. Walker had his shop and dwellings on St. Antoine street, but you could not get to his factory from St. Antoine street with vehicles.

I never asked Mr. Shaughnessy, or any of the officers of the Company, as to the proposed street, nor do I know that any of the proprietors did—that is, before the award. I relied upon the plan which Mr. Cantin, showed.

The amount which Mr. McDougall and I first agreed upon in Walker's case, was about six thousand six hundred dollars, and the final award was five thousand two hundred and fifty, which was the amount named by Mr. Shaughnessy. I was not aware that the same amount had been previously awarded Mr. Koester.

30 I don't think Mr. Cantin told me the grounds on which the Company intended to resist the awards if rendered at the amounts which I and Mr. Macdougall first agreed upon.

I think Macdougall did sign the awards, but am not quite sure about it. He was away from home a good deal at the time.

I don't remember Mr. Cantin telling me that Macdougall would not sign without him.

40 Q. So, without anything further than Mr. Cantin's mere statement that the Company would resist the awards if rendered at the amounts you and Mr. Macdougall agreed upon, and without his giving any reasons you and Mr. Macdougall decided to abandon the awards you had agreed upon, and after seeing Mr. Shaughnessy to accept his figures?

A. No, I don't think Macdougall had much to do with the change until after it was agreed upon. I had reason to believe that there were irregularities in the award upon which resistance, if made, might have been successful, and I consulted Mr Walker and the other proprietors interested and the result of this consultation was reported to Mr. Macdougall and followed by the making of the final award.

RECORD.

—
In the
Superior
Court.

—
No. 145.
Deposition of
John M. M.
Duff for Plff.
Fyled 10th
Jul^y 1890.
— Continued.

RECORD.

*In the
Superior
Court.*

No. 145
Deposition of
John M. M.
Duff for Plff.
Filed 10th
July 1890.
— *Continued.*

The irregularities I speak of were as to matters of our procedure. Was not and am not aware that Mr, Walker had lent his name to Macdougall for accommodation paper. I knew that Mr. Walker had sold Macdougall, Logie & Co., considerable quantities of goods from time to time, and had taken the firm's note in settlement, some of which notes were then current. I did not know the amount of any of these transactions, but when the firm failed, was surprised to learn the amount they owed Mr. Walker. I did not make any enquiries of Mr. Shaughnessy about the proposed street at the interview or interviews which I had with him before signing the final award.

Q. How was it that you put nothing in the awards about this street, nor had any agreement made between the Company and the proprietors with regard to it? 10

A. Because I was shewn the plan above spoken of by Mr. Cantin and assured by him that it was the Company's intention to have Donegani Street opened as I have described.

(EXAMINED BY PLAINTIFF.)

The business relations which I have referred to between Mr. Walker and the firm Macdougall, Logie & Co., had nothing to do, so far as I know, with the reduction of the award. In the case of Watt it was urged by Mr. Cantin that whereas Watt's property had a frontage on Blache lane of only half the width of said property, it would have on the new street frontage across its whole width, this was taken into consideration by Mr. MacDougall and me when deciding upon the amount to be awarded. 20

Mr. Walker's factory was constructed with its entrance on Blache lane.

And this his deposition having been read to him he declares it contains the truth, persists therein and hath signed.

Sworn and acknowledged before me
at Montreal, this ninth day of
July eighteen hundred and eighty
nine.

J. M. M. DUFF. 30

D. GAREAU, Dep. P. S. C.

(ENDORSED.)

Deposition of J. M. M. Duff for Plaintiff. Filed 10th July, 1890.

SCHEDULE No. 187.

RECORD.

On the thirty-first day of July, eighteen hundred and eighty-nine, appeared at the Office of Messieurs Tracy and Cooper, attorneys at law at Albany, in the State of New York, John McDougall, manufacturer of Newburgh in the said State of New York, aged over forty years, who being duly sworn doth depose and say that he is not interested in the event of this suit. He is not related nor of kin to, nor in the employ of the parties to this suit.

*In the
Superior
Court.*

No. 146.
Deposition of
John McDou-
gall for
Plff. Fyled
10th July
1890.
— *Continued.*

10 I resided in Montreal until about April 1887, I acted as umpire in arbitration between Company Defendant and William Walker. This deed (shown witness) is the 2nd final award in the case (deed dated May 28th, 1887, being award of arbitrators in the matter between the Atlantic & North-West Railway and William Walker before Wm. McLennan, N.P.) I am under the impression that I signed a first award before Mr. Lighthall, and I considered that the question of the arbitration was practically completed, but after that I signed a second award. The first award was \$6,500, the second \$5,250. Mr. Cantin, the company's arbitrator, showed a plan which showed Blache lane and on which Mr. Walker's property abutted showing that a street was to be opened and that a certain amount of his property was necessary to be taken for that purpose.

20 Witness being shown plan exhibit A. I identify the same as showing the territory, I can't say anything about the opening of Donegani street between Windsor and Bisson streets, but a street was opened up, according to Mr. Cantin's plan, the street itself was not shown on the plan but the plan was, I think, similar to the one before me. Mr. Cantin pointed out on it that a street 50 feet in width would be opened out along the south side of the property appropriated by the railroad and on what was to be the railroad property from Bisson street to Mountain street.

Q. Was the plan shown you by Mr. Cantin signed?

30 A. I think not, but it is my impression that Mr. Duff asked that it should be signed, and I think that it was signed afterwards. I meant that it would be signed by the party who made the drawing for the company. It was requested to be signed so as to make it a legal document and binding on the Company. But calculations as to both awards were based on that plan. I valued the indemnity to Mr. Walker with reference to the remainder of his property having a frontage on this proposed street.

40 The arbitrators in considering the award to be made Mr. Walker took into consideration not only the loss of land and buildings but also the interruption to his business and loss of time the amount arrived for such damages by Mr. Duff and I were reduced in consideration of the fact that they were to leave a street as above described thus giving him a frontage on two streets instead of one as the property was situated at that time. These calculations were made in the presence of Mr. Cantin. There was never at any time any question but that the street would go through Mr. Cantin suggested to us that it would be an advantage rather than a disadvantage to Mr. Walker so far as the access to his property from behind was concerned, On that basis I would have allowed \$6,500 and I considered it a fair amount and I still think so and I only gave my consent on account of the wishes of the other parties, that is to say Messrs. Duff

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*In the
Superior
Court.*

No. 146.
Deposition of
John McDougall for Plff.
Filed 10th
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Continued.—

and Walker. As they represented that unless they agreed to this second or final award that they would have to sue the Railway Company for the amount of the first award therefore not to stand in the way of a settlement I gave my consent to the amount of the second award. When the second award was signed before McLenlan I do not remember seeing Mr. Cantin. I am not aware that I saw Mr. Cantin at any time between the signing of the first and second awards. Mr. Cantin at no time after the signing of the first award said to me that they would have no street. He told me at the signing of the first award that they would have a street and never told me the contrary. The fact of his factory being on the rear of his property, he would have no access to it except by destroying a portion of the building fronting on St. Antoine street side of the lot which would of course depreciate the value of his property very much. If I had understood there was to be no street it would in my opinion have damaged the whole of his property to at least one half of the amount of its value at that time. If I had understood there was to be no street it would have made a difference. If I recollect there was about \$2,000 dropped at the time in consideration of having a new street. I can give no explanation why the plan of Mr. Cantin is not annexed to the deed of the award, I am not aware whether there was any understanding that Mr. Cantin's plan was to be annexed to the award, but believe that Mr. Cantin was instructed to supply a copy to be attached to the deed. I have no interest in this case. Had no interest with Mr. Walker at the time I made this award. There is no reason why I cannot go to Montreal when I like, 10

Defendant's Counsel objects to all the foregoing testimony which relates to the grounds, reasons or motives of the arbitrators in arriving at their award as illegal, and inasmuch as the witness is incompetent to give such testimony,

Objection reserved by consent of parties. 20

CROSS-EXAMINATION,
Under reserve of Objections.

There was included in the \$6,500 loss of time and interruption to business, I can't say how much. There was no figuring afterwards; the \$5,250 was a round sum offered by the Railroad Company. The reduction was made before we arrived at \$6,500. This reduction amounted to about \$2,000, which being taken off left \$6,500, 30

Q. How much per foot did you allow for land?

A. Right through at about that time property near there was sold at \$1 per square foot. I think we allowed between 40 and 50 cents per square foot. I am sure it was under \$1. We arrived at the \$6,500 by making allowance for the amount of land which would be taken, the taking down of part of the factory and moving the machinery therein; also for loss of time and interruption to business and rebuilding the factory. I can't remember the figures. About a third of the factory was taken down. The machinery was so altered over the whole factory, I can't tell what the value of the building was. Roughly speaking, the value of the building, without the machinery, would be from \$5,000 to \$6,000. Can't say what it would cost to move machinery. We figured on five or six months for interruption to business. This refers to the \$6,500 40

Q. Did you or did you not reduce the amount which you and Mr. Duff had agreed upon as damages for loss of time and interruption to business, in consideration of the fact that there was going to be a new street made by the Company in rear of the property?

A. The amount which I referred to as being reduced was the amount of damages which Mr. Walker demanded that he should be paid for property and damages. We made the reduction on Mr. Walker's claim in consideration of getting a frontage on the street. We made other reductions besides without reference to the street. The amount of land taken by the railway according to the award was 985½ feet. The amount we awarded for the land alone must have been less than \$900, so that the balance of the \$6,500 was for damages to property and business. Mr. Cantin refused to sign the first award for \$6,500. Cantin considered the award a fair one. He stated that he could not sign the award made because there was such a wide divergence between it and the one which he had from the Company. The Company's award, however, I think Mr. Cantin stated, did not include anything for damages. I think the amount of Mr. Cantin's figures was in the neighborhood of \$5,000. \$5,200 was agreed as a final settlement. I never was in Mr. Cantin's house in my life. Mr. Walker's name may have been on my business paper, but not on accommodation. Can't say to what amount. We had large business transactions together. I can't say who instructed Mr. Cantin to make a copy to attach to the deed. I no doubt suggested it to Mr. Duff, because I considered it necessary that an authenticated copy be attached to the deed.

Q. Why you say the plan showed no street?

A. I considered it necessary inasmuch as that it showed the line of the proposed new street, and ought to be on record in connection with our arbitration.

Q. Did that plan show the line of the proposed street any more than the plan exhibited does?

A. To the best of my knowledge it was similar; had no doubt about the street. There was no street marked on the plan, but Mr. Cantin pointed out on the plan that a street would be made to run through from Mountain street to Bisson street from the south line of the property to be acquired by the Railway Company, which included a portion of the Blache lane. I did not keep the papers of the arbitrators. Duff did. I don't think this plan was put in with the rest of the papers. I think Mr. Cantin retained possession of it. I never had it in my possession and never saw it except at the meetings. Our firm of McDougall, Logie & Co., became insolvent in July, 1887. I have been in Montreal repeatedly since and have given evidence there in regard to my insolvency. I have never been threatened with arrest or proceedings of any kind against me personally, as there was no cause of any kind whatever therefor. RE-DIRECT EVIDENCE:—I think Cantin was aware that Walker had business transactions with me, I can't say positively. There was nothing, I think, in my business transactions with Walker which would be any ground of objection to my acting as third arbitrator. Mr. Cantin called to see me and stated that he was pleased that I was to act as umpire in this matter. We, our firm, were customers of Walker's, and always owed him money. He did not influence me in the

RECORD.

—
In the
Superior
Court.

—
No. 146.
Deposition of
John McDougall for Plff.
Filed 10th
July, 1890.
— Continued.

RECORD. slightest in making my award. I believe our firm was the principal customer of Walker. I do not know why I was selected as umpire. I never heard from Cantin or Duff or any body else that I had been selected umpire on account of my knowledge of Walker's business. The insolvency of our firm was not at all caused by me.

*In the
Superior
Court.*

No. 146.

And further Deponent saith not and hath signed.

Deposition of
John McDougall for Plff.
Filed 10th
July, 1890.

Signed and acknowledged before me at }
Albany, aforesaid, this 31st day of } JOHN MACDOUGALL
July, 1889.

10

—Continued.

WILLIAM H. LOW,
Notary Public for Albany Co.

(ENDORSED.)

Deposition of John McDougall for Plaintiff. Filed 10th July, 1890.

20

SCHEDULE No. 187.

In the Superior Court for Lower-Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 147.
Deposition of
Alex. G.
Fowler for
Plff. Filed
10th July,
1890.

On this seventh day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, Alexander G. Fowler, of the City of Montreal, architect, aged sixty-seven years, and witness produced on the part of the Plaintiff who, being duly sworn, deposeth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Question. Mr. Fowler, you are an architect residing in Montreal ?

Answer. Yes.

Q. You have been employed by Mr. Walker and other proprietors to examine their properties on Blache lane, were you not ?

40

A. Yes.

Q. And you were asked to report as an architect and expert as to the amount of damages done by the embankment of the railway ?

A. Yes.

Q. And you made a report ?

A. Yes.

Q. Can you file the report ?

Objected to the production of this report and objected to the evidence as illegal.

Objection reserved.

Q. You are prepared to state that all you put in that report is correct, as far as you know ?

A. Yes.

And further for the present this deponent saith not, and this is a true and correct transcript of the shorthand notes taken at enquête by

M. E. DOHERTY,

Off. Stenographer.

10

(ENDORSED).

Deposition of Alexander G. Fowler, taken for Plaintiff this 7th of March 1890. Fyled 10 July 1890.

RECORD.

*In the
Superior
Court.*

No. 147.

Deposition of
Alex G.
Fowler for
Plff. Fyled
10th July
1890.

—Continued.

20

SCHEDULE No. 188.

In the Superior Court for Lower-Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 148.

Deposition of
John M. M.
Duff for Plff.
Fyled March
1890.

30

On this seventh day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared, John M. M. Duff, of the City of Montreal, aged _____ years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause : I am not interested in the event of this suit.

Q. Mr. Duff you were arbitrator in the case of Walker, in the case of Hughes and in the case of Brennan, were you not ?

A. Yes.

Q. You were not an arbitrator in the case of Mr. Koester ?

A. No.

Q. Were you in a case of Watt ?

40

A. Yes.

Q. Then you were an arbitrator for four cases out of five ?

A. Yes.

Q. Well, while you were acting as arbitrator in the arbitration to settle the amount of indemnity, did you keep minutes signed by yourself and your two brothers arbitrators ?

A. We did.

Q. Have you been ordered to produce these minutes under a supoena

RECORD. duces tecum ?

A. No.

*In the
Superior
Court.*

Q. Well have you got the minute book now ? Have you understood that we would desire you to produce it ?

A. Yes, I brought it up.

Q. Are you willing to fyle it ?

A. Yes.

No. 148.
Deposition of
John M. M.
Duff for Plff.
Fyled March,

Q. Would you tell me if in the case of Brennan there was a third arbitrator ?

A. No.

Q. Who was the other arbitrator with you in the Brennan's case ?

A. Mr. Cantin.

Q. Have you got the date of Brennan's award ?

A. No.

Q. But if I was to tell you it was on the eighteenth of April eighteen hundred and eighty seven, would that be about right from your recollection ?

A. Oh I suppose it would. It must be if you say so, I don't remember, but is probable that was about the sime.

Q. You have already been examined in this case, have you not ?

A. I may have been. I do not remember that either.

Q. In the deposition that was given in this case, you explained that the indemnity was calculated and operated upon the fact that there was a new street, did you not ?

A. Well, whatever I said there would be absolutely correct.

Q. What you said in the deposition which I have now, which related more particularly to Walker's case, does it equally apply to the case of Brennan of which you had no minutes ?

A. Well, that I cannot tell you without looking over the deposition I do not remember what I said then, but so far as anything could apply generally in the two cases it would.

Q. Will you look at your deposition and tell me if when these expropriations began, Mr. Cantin acting for the Company, showed you a plan which showed that after the expropriation these properties will have a frontage on the new street, would you consider that would equally apply to Brennan ?

A. So far as that plan goes, yes.

Q. And from the beginning to the end of your operations in the case of Brennan, there was no intimation from anybody that there would be a departure from this new street ?

A. Not that I ever heard.

Defendant reserves the right to cross-examine the witness.

And further for the present this deponent saith not.

M. E. DOHERTY,
Official Stenographer.

(ENDORSED.)

Depositor of John M. M. Duff for Plaintiff, taken this seventh day of March 1890. Fyled March 1890.

In the Superior Court for Lower Canada.

Present ;—

THE HONORABLE MR. JUSTICE MATHIEU.

*In the
Superior
Court.*

No. 149.
Deposition of
Joseph Rielle
for Plff. Fyled
10th July,
1890.

10 On this twenty-first day of March, in the year of Our Lord, one thousand eight hundred and ninety, personally came and appeared Joseph Rielle, of the City and District of Montreal, Esquire, Provincial Land Surveyor, aged over fifty years, and witness produced on the part of the——— who, being duly sworn deposeth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit.

BY MR. EDMUND BARNARD, Q. C.

Question. You are a Provincial Land Surveyer ?

Answer. I am.

20 Q. And you have been employed by the Atlantic and North-West Railway Company to value land which is required to be expropriated on Blache Lane ?

A. Some of the land.

Q. How many properties are there on the south side of Blache Lane, to be expropriated ?

A. I do not remember.

Q. You remember the property of Mr. Brennan ?

A. You had better shew me the plan and that will refresh my memory.

Q. Do you remember the property of Mr. Walker ?

30 A. Yes.

Q. Do you remember these five properties of Brennan, Koester, Walker, Donnelly and Hughes ?

A. Yes.

Q. How many of these properties were built upon, and how many were not built upon, I mean on Blache Lane.

A. Well, so far as my memory serves me, and aided by a plan of the property, I believe the number nineteen (19) was partially built upon ; the number twenty-nine (29), number thirty (30), and the number thirty-two (32).

40 Q. The number twenty-seven (27), twenty-eight (28) and thirty-one (31) had no buildings on them, I believe. How many of these five were built upon, and how many were not built upon ?

A. I say numbers twenty-seven (27), twenty-eight (28), and thirty-one (31), so far as my memory serves me, were not built upon ; numbers twenty-nine and thirty (29 and 30) were built upon.

Q. Take Hughes for instance, how many feet were wanting from Mr. Hughes land ?

A. I could not tell you.

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*In the
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Joseph Rielle
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Continued.—

Q. Will you look at this notice in the case of Hughes filed as Exhibit "A A" and state how many feet of land the Company requires of his property?

A. Nine hundred and two (902) in superficies.

Q. How much did the Company offer for it?

A. They were willing willing to pay five thousand four hundred and twenty dollars (\$5,420) in compensation for the said land, and for all damages.

Q. How much does that make per foot?

A. That is sixty cents (60c.) per square foot.

Q. Will you tell me if that valuation was made on the basis that what would remain of the property after the expropriation would have a frontage on a street or would not have a frontage on a street? 10

A. It is already some years ago, but I am not very clear on the subject; my mind is not very clear on the subject. I have been asked to look up my notes concerning number twenty-eight (28.) but have been unable to lay my hands on them but so far as my memory serves me I believe that the estimate was based on the assumption that there would be an outlet at the rear of the balance of the property equivalent to Blache lane; that is so far as my memory serves me. There was a great deal of discussion at the time as to whether there would be a street, or whether there would not be a street, but I cannot speak positively as to that point. 20

Q. I am simply asking you whether it would have made all the difference in the world in your valuation if you had understood that there would be no street—that he was going to lose his access in the rear.

A. It would necessarily have made some difference, of course.

Q. How much property would have been left him after the expropriation of his rear land.

A. I cannot say precisely, but I should judge about three thousand seven hundred and fifty feet.

Q. I would like to divide this property of Mr. Hughes remaining after the expropriation, so as to make two lots of equal depth, one fronting on St. Antoine street and another supposed to front on the street or lot that would be made of eighty feet in depth. How much would that give you? What would give you just half of what you say? 30

A. Half the area—that is, eighteen hundred and seventy five feet.

Q. Now what would be a fair valuation per foot of what I call the rear land of Hughes, on the basis of the street having been opened in rear of fifty (50) feet wide, giving access to the lot with Mountain street, this street that I have referred to being the continuation of Donegani street, and that street being continued all the way to Mountain street. 40

A. Well, really; I am quite prepared to answer questions on facts that I may know, but I do not know that I should be asked to answer questions of that kind off-hand, and I do not think that I am obliged to answer questions of that kind. If obliged to answer, I will do so, but I do not want to. I have not considered the value of that property under these conditions, and am not prepared to answer.

Q. You say you will answer if you are obliged to. You are certainly

obliged to answer.

(This question is withdrawn for the present.)

Q. What is the value of the rear lot of Mr. Hughes, on the assumption of its being blocked by the railway.

A. I am not prepared to answer without consideration, and I will not answer it. I am not prepared to answer you now, and will not do so without consideration.

Q. What did you consider when you made your valuation ?

A. I forgot all about it these three years, it is three years ago, and I am not prepared to answer now without time for consideration.

10 Q. When you made your valuation under oath, what was it you did consider, if you did not consider these facts that I am examining you about ?

A. I have already stated all that I recollect concerning my valuation, and I can add nothing to that.

Q. Did you value the land taken at sixty cents (60 cts.) a foot on the assumption that this was all it was intrinsically worth, or did you allow less than the land taken was intrinsically worth, on the ground that the land remaining was benefitted ?

A. That valuation in question was made now three years ago, at the time that I was making a large number of valuations for railway purposes, and other
20 purposes, and I have made hundreds of valuations since, and I have to confess that I cannot keep in my head all the grounds and considerations which may have been taken into account in every case, and I cannot to-day answer that question.

Q. Have you got any memorandum anywhere shewing how you arrived at the figures ?

A. Very likely I have. I believe I have.

Q. Will you adjourn your deposition and go and look for this memorandum ?

A. I have already spent a large portion of my time myself, and two of
30 my clerks were yesterday engaged in seeking that information. If I can find it I will place it before you. This morning I spent two hours in seeking information in the case of William Walker, for which I am subpoenaed. To-day I am being examined in the case of Hughes.

Q. Did not your subpoena mention that you were to produce all memoranda and so forth with regard to Hughes ?

A. It did not make any mention of memoranda whatever.

Q. And no order to produce these papers ?

A. No.

40 Q. Before you adjourn will you tell me if when your valuation in the case of Hughes, and for that matter in the other cases were made, that you had a plan prepared by the Company shewing a fifty foot street ?

A. No, the plan which I had did not shew a fifty foot street, but as I said before, the question of a street being opened there, had been talked of and discussed between the Company officers and myself, but the plan which I had did not shew a street.

Q. At all events your valuation was on the assumption that there was to

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Deposition of
Joseph Rielle
for Plff.
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Continued.---

be a street ?

A. It was on the assumption that the proprietors were to have an outlet equal to Blache Lane.

Q. Would you tax your memory and recollect whether the conditions were not that the new street would be at least as good as Blache lane, if not better ?

A. Well, I have already said that three times. I think that so far as my memory serves me I feel confident in fact that they were to have an outlet equal to Blache lane. I cannot answer better than that.

Q. Would your memory be sufficiently clear to say that no plan was ever shewn to you ? 10

A. I think I have already said that the question was discussed by the officers of the Company as to whether there would be a street or not and I am quite sure when I saw the officers of the Company there was before us a plan shewing by red lines what would appear to have been the continuation of Donegani street. This was prior to my making my valuation

Q. And it was on that basis you made your valuation ?

A. It was not, I told you before, my valuation was based on the assumption that there should be an outlet equal to Blache lane. That plan when I made my valuation, did not shew that street or projected street. 20

Q. Unless you were told that you were not to value the land on the assumption that Donegani street would be continued, I should think that you must have assumed that the street was to be a continuation of Donegani street unless they shewed you some other plan, that the street was to be equal to Blache Lane ?

A. I do not know that I should be asked to answer questions on what you should think on matters of that kind.

Q. I will repeat my question, I understand you to say that before you valued the property, you spoke to an officer of the Company and in the discussion it was stated, that the street would be extended to Mountain street as a continuation of Donegani street ? 30

A. I never said anything of the kind.

Q. Do I understand you to say that you saw in the office of the Company and discussed with the officials of the Company, a plan shewing in red lines what would appear to be a continuation of Donegani street ?

The Petitioners Counsel objects to this question as informal and irregular, being a repetition of what has been already said many times, and counsel for the Plaintiff-Petitioner would respectfully call the attention of the Court to the repetitions in this deposition in the event of the question discussed arising.

The objection is reserved by the parties. 40

Q. Is that correct ?

A. I think what I said was there had been a discussion between the officers of the Company as to whether there would be a street or not, and that I saw a plan as already stated indicating by red lines what would appear to be the continuation of Donegani street.

Q. I understand you further to say that you made your valuation on the declaration on the officers of the Company that there would be a street at least

equal to Blache Lane ?

The Plaintiffs Petitioners objects to this question as not being correct statement of what the witness already said, and as being irregular and illegal.

The objection is reserved by consent.

A. I did not say that.

Q. Did you say or not that your valuation was on the assumption that there would be an outlet equal to Blache Lane ?

The Plaintiff Petitioner objects to this question on the ground that what the witness said appears by his deposition.

10 The objection is reserved by consent.

Q. With the assumption that you speak of, upon which you made your valuation, that there was to be an outlet equal to Blache Lane, was that assumption based upon what the officers of the Company told you clearly, and by an outlet did you understand it was to be a street ?

A. I understood it to be a street of the same character as Blache Lane—equivalent to Blache Lane. There was no clear statement by the officers of the Company to that effect made to me.

20 Q. Do you wish it to be understood that you assumed it, without any cause or justification, or am I to understand that you had good cause for your assumption ?

A. Well, that was my assumption. Whether I had good cause or not I cannot determine that now. The valuation was made on that basis.

Q. What was your assumption based on ?

A. On the fact that the land in question had an outlet in the rear and that in my opinion I did not think the Company could deprive it of a similar outlet.

Q. What I want to know from you is whether your estimation was based upon anything the officers told you ?

30 A. Well, as I have stated before, there was a great deal of discussion in the offices of the Company on that question. I cannot from my memory state when I got any positive instructions in that direction. I have no recollection of such—of having any distinct instructions on the subject.

Q. Were the officers aware that you made your valuation on that assumption ?

A. I cannot say. I was given a plan of which this is a copy (Exhibit A 1.) I was asked to give a valuation of the different properties, and I got no special instructions whatever—I feel very positive I did not—with regard to the question of the street or lane in rear of the lots in question.

Q. Well, we will adjourn, as you will have to find your memoranda.

40 A. I will.

(The Plaintiff Petitioner's Counsel declines to cross-examine the witness until the examination in chief is closed)

And further for the present deponent saith not.

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*In the
Superior
Court.*

No. 149.

Deposition of
Joseph Rielle
for Plff. Fyled
10th July,
1890.

— *Continued.*

JAMES HENRY BROWNING,

Stenographer.

RECORD.

*In the
Superior
Court.*

No. 149.
Deposition of
Joseph Rielle
for Plff. Fyled
10th July,
1890.
— *Continued.*

James Henry Browning, of the City and District of Montreal, one of the stenographers in this cause, doth on the oath he has already taken, depose and say:—That the forgoing deposition, being ten pages in all, are and contain a true and faithful transcript of the evidence by me taken by means of stenography of the above named and witness in this cause, the whole in manner and form as required by and according to law.

The shorthand notes of the balance of the evidence of this witness were taken by James J. Crowley, Stenographer.

JAMES HENRY BROWNING.

10

(ENDORSED.)

Deposition of Joseph Rielle a witness for the Plaintiff. Fyled 10th July 1890.

SCHEDULE No. 190.

20

In the Superior Court for Lower Canada.

Present:—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 150.
Deposition of
John M. M.
Duff, for Plff.
Fyled 23rd
Oct. 1890.

On this twenty-first day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared John M. M. Duff, of the City and District of Montreal, auctioneer and real estate agent, aged over forty years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

Q. You have already been examined as a witness in this cause?

A. I do not remember; I may have been. Very likely I have.

Q. I believe you gave your evidence after having been an arbitrator in the case of Walker?

A. Yes.

Q. And you have also been an arbitrator in the cases of Watts and Hughes?

A. Yes.

Q. In these three cases of Watts, Walker and Hughes there was a dispute about the amount awarded, and it became necessary to make a second award. You agreed to the reduction?

A. To the best of my recollection the second amount was an arrange-

40

ment arrived at after consideration by both sides.

Q. In these three cases I understand you have sworn it was on the basis of the plan that there was to be a street?

A. I think I have already said that a plan was exhibited by the Company's arbitrator during the proceedings, shewing that the lane called Blache lane was to be moved a little farther toward St. Antoine street and widened.

10 Q. And you got it signed by some official of the Company to make it binding?

A. It was signed. I did not get it signed,

Q. Will you say in the case of Brennan also, where you was arbitrator with Mr. Cantin, and where there was no umpire at all?

A. There was no umpire at all in the Brennan case. Mr. Cantin and I agreed to settle it without the appointment of a third arbitrator.

Q. Was the amount of the award in the case of Brennan based on the fact that there was to be a street?

A. I do not think anything was said about the street. We arrived at
20 the amount to be paid to Mr. Brennan, estimating as near as possible the amount of the value of the land that was to be taken as in the other cases.

Q. It would have altered the character of the award entirely whether the remaining property lost its access or whether it had a better access?

A. I do not quite gather your meaning, sir. What is the question?

Q. Would not the fact of there being no street have altered completely your view of the amount which it was fair to award to these expropriated parties?

A. Well, at this distance of time I could not tell you what our award
30 would be under different circumstances, but there being a street and there being no street would certainly make a difference in the value.

Q. If a rear lot could not have any access, would it have been ruined?

A. I could not say that.

Q. Would its value be diminished?

A. It would not remain of the same value as if a street were there?

Q. In the three cases of Watts, Hughes and Walker, did you not specifically state that you gave less for the land taken, on the ground that the land not taken would be benefitted by a better access? I want to know if you said that before. When Mr. Brennan accepted the award was it on the under-
40 standing that they would have a street?

A. I could not tell you. I did not see Mr. Brennan when he accepted it.

(The Company Defendant's Counsel declares that the foregoing evidence is taken under reserve of the same objection as the evidence taken previously, and will not cross-examine this witness, but reserve his right to recall the witness.

And further deponent saith not.

JAMES HENRY BROWNING,
Stenographer.

RECORD.

In the
Superior
Court.

No. 150.

Deposition of
John M. M.
Duff, for Plff.
Filed 23rd
Oct., 1890.

—Continued.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 150.
 Deposition of
 John M. M.
 Duff, for Plff.
 Fyled 23rd
 Oct., 1890.
 — *Continued.*

James Henry Browning, of the City and District of Montreal, one of the stenographers in this cause, doth, on the oath he has already taken, depose and say that the foregoing sheets, numbered from one to three consecutively, being three folios in all, are and contain a true and faithful transcript of the evidence by me taken by means of stenography in this cause ; the whole in manner and form as required by and according to law.

JAMES HENRY BROWNING.

(ENDORSED)

10

Deposition of John M.M. Duff as a witness for the Plaintiff. Fyled 23rd Oct. 1890.

 SCHEDULE NO. 191.

20

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 151.
 Deposition of
 James B.
 Cantin for
 Plff. Fyled
 10th July,
 1890.

On this twenty-first day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared James B. Cantin, is the City and District of Montreal, ship builder, aged thirty-five years, witness produced by the plaintiff, who, being duly sworn, deposes as follows ;—I am not related, allied, or of kin to, or in the employ of any of the parties in the cause ; I am not interested in the event of this suit. 30

EXAMINED BY MR. EDMUND BARNARD, Q.C.

Question. In your last deposition you spoke of the tracing that you had for your own private use, at the time of this expropriation.

Answer. Yes.

Q. And I understand you to say you did not know what had become of them ?

A. No. 40

Q. Have you ascertained since giving your last deposition what became of them ?

A. I have not seen the tracing for over a year. At least the last time I saw it, it was over a year ago.

Q. Have you made any attempt to find it and failed ?

A. Yes.

Q. In your first deposition you said that that tracing was used during the expropriation up to the time of the first award in the case of Walker?

A. Yes, I say it was made up to the of the first award.

Q. Am I to understand that it was used in the case up to the first award?

A. Well, most of the cases outside of that were private settlements. At least three of the cases outside of that were private settlements. They were not in arbitration at all. They never went before the third arbitrator. I can name the cases if you like.

10 Q. What I ask you is if all these expropriations, five expropriations at the outside, were based upon that tracing.

A. What five do you mean?

Q. Were the five cases of Brennan, Koester, Walker, Hughes and Watt?

A. No.

Q. What cases out of the five were not based at the outset, on the tracing?

A. It is a strange question for me to answer based on the tracing. What I will say is this: that as near as my recollection goes the tracing was very little consulted, or discussed in the walker, Hughes and Watts expropriations, but it was used more to place the location on the property.

20 Q. My question is this: You swear in the case of Brennan and of Koester the tracing was used or was it not used, which?

A. It was used in the case of three I have just named here, I am ready to wear that the tracing was not used in the Brennan case.

Q. You swear that positively?

A. Yes, in the Brennan case.

Q. The award in the case of Brennan was made by yourself and Mr. Duff in the presence of an umpire?

A. It was without an umpire.

30 Q. Do you swear that the amount awarded to Brennan was on the assumption that he would have a street, or that he was not going to have a street?

A. The street was never discussed in the Brennan case at all.

Q. I am not asking you whether the plan was discussed in the Brennan case. My question is: do you swear that the amount awarded to Brennan (to which the Defendant agreed) was awarded by you both on the assumption that Brennan would have no street—would have no access in rear?

A. The street was not discussed.

Q. The matter of the street was not spoken of?

40 A. I say that the street was not spoken of at all. Is not that sufficient?

Q. When you awarded that particular amount did you mean that he would have a street, or did you mean that he would have no street. Whether the plan was discussed or not, is not the question?

A. I never took the street at all into consideration in the Brennan case.

Q. Did you take into consideration that Brennan was to lose his access in rear?

A. Our award was made for the property taken and the damages thereto

RECORD.

*In the
Superior
Court.*

No. 151.
Deposition of
James B.
Cantin for
Plff. Fyled
10th July
1890.

— *Continued.*

RECORD. by reason of the Railway Company using the same. That is the only answer I can make.

*In the
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Q. Because you do not remember?

A. That is the only answer I can make. I do not recollect anything else but that.

Q. My question is whether your award was based on the calculation that Mr. Brennen was to have no access in rear.

A. Well, I cannot tell you how the award was made no. Simply this, that, as I said, we gave him so much for the property and damages.

And further for the present deponent saith not. And it being past, one of the clock in the afternoon the further examination of this witness is continued until two o'clock. 10

JAMES HENRY BROWNING,
Stenographer.

The Plaintiff's counsel declares that the examination of the witness, James B. Cantin, being continued till two o'clock, Plaintiff's counsel appeared at two o'clock and was ready to proceed, and the Defendant's counsel not being ready with his witnesses to proceed. Plaintiff's counsel declares that he cannot wait any longer.

(Patrick O'Leary, doctor of medicine, here appears and is examined as a witness for the Defendant.) 20

And later in the day re-appeared the said witness, James B. Cantin, and continues his evidence-in-chief at the request of Counsel, before the Hon. Mr. Justice Mathieu as follows:—

I may say to Your Honor I have been subpoenaed in this cause, and cases connected with it, eight (8) or nine (9) times, coming up every time, and it has been adjourned, and it is very hard to give satisfaction. They complain of my not being here at two o'clock sharp. I had a distance to go; I am very sorry I was not here on time, but it was not my fault. Complaint is made that I have not answer the question. I did answer the question. I answered the question in this way: it was fully two years ago when this matter came up, and I have got to answer this to the best of my memory, but I am asked a dozen question to trip me up and make me say what I do not want to say and what would not be correct if I did say it. 30

The Court—Well, Mr. Barnard will now put his question and you will answer to the best of your knowledge and ability.

BY MR. EDMUND BARNARD, Q. C.

Q. In the amount you awarded in the case of Brennan, do you recollect whether you took into consideration that the lot after the expropriation would lose its access, or did you make your figures upon the calculation that it would have a better access? 40

A. Well, Your Honor, my answer requires an explanation. I met the same arbitrator, Mr. Duff, in the Walker case, the Brennan case, and the Watt case, and the Hughes case. We took the three cases at first. We took

the Walker, the Watt and the Hughes cases before the third arbitrator. The award was made for a dollar a foot for the property taken, and the damages allowed for them I do not recollect. The damages I cannot recollect clearly, but they are on record. I objected to this award for certain reasons and refused to sign it. When the umpire made his award (he is a gentleman who has since left the country, Mr. McDougall), I told him: "Now, I wish you to go down to Mr. Shaughnessy and explain to him by what process of reasoning you arrived at this award," and why I felt so sore on the subject was that the Company, or their agent or somebody represented they had bought land on the same street just a short time before by private sale for about forty cents a foot, or something a little over forty (40) cents a foot. Now, I could not see how an inch an a quarter fence in Mr. Watt's case was going to make such a tremendous margin, and over and above these damages. Well, the first three awards were set aside, I notarially refused to sign them, consequently they came round to me afterwards acknowledging that they were wrong, and that the awards were excessive. "How could we fix it," they asked. I said they could only fix it in one way. I said: "We have got to go down and have the proprietors with us, and have them consent in Mr. Shaughnessy's office and have it fixed up there." Mr. Shaughnessy told me after this award, if that is to be the way the Company is going to be treated for putting this street there, Mr. Cantin, do not promise them a street, and I was surprised to understand there was to be a street, and Your Honor, as I said, the Company, instead of being assessed for damages, in my opinion, may have a right for compensation for this fifty foot street.

BY THE COURT.

Q. So that when the award was made it was with the understanding that there was to be a street.

BY MR. EDMUND BARNARD, Q. C.

30

Q. The first award. The award as to the case of Brennan?

A. I am coming to Brennan. That is the first award in the Walker, Watt and Hughes cases.

Q. You say the Brennan case was by the same arbitrators, but was not taken up until these awards were made. Where and when did you take it up?

A. Not before the others.

Q. When did you make the arrangement?

A. We simply allowed between us so much for property and damages. I cannot answer it in any other way.

Q. Were you told by any of the officials of the Company that there was to be no street in the case of Brennan? You say that at the time of the first award there was to be a street. Were you led to understand, at any time before the award of Brennan, that there would be no street—between the time of the first award and the second award between Walker, Watt and Hughes—these three cases and the Brennan case?

A. I told you he said, "Mr. Cantin, do not promise them a street."

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Continued.—

RECORD. When I made the award in the Brennan case, with Mr. Duff, I promised them no street.

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Q. And you concurred in that award, with the knowledge that there would be no street?

A. Yes.

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Deposition of James B. Cantin for Plff. Fyled 10th July 1890.
— *Continued.*
Q. That knowledge that there would be no street was confined to yourself? It was not shared in by the other two arbitrators—by Mr. Duff, for instance?

A. I did not say positively that there would be no street, but I did not promise a street.

Q. So that, as far as regards the Brennan award, it was in just the same state, as regards your opinion, as it was at the time of the first award, in the Walker case—so far as Mr. Duff knew? You never communicated to Mr. Duff any change in the projects of the Company? • Do you swear you did?

A. I do not swear I did, nor that I did not. I was simply told by Mr. Shaughnessy, "Do not promise them a street."

Q. And you simply abstained from promising them a street?

A. That is all I did.

Q. Mr. Duff and yourself had acted in the other award; and this third arbitrator, was the Brennan case, the first case in which he had acted on Blache Lane?

A. Well, I could not be positive about that. You must remember you are questioning me about something that happened two years ago.

Q. You want to get into your head that I am trying to make you contradict yourself, whereas all I want to do is to get at the facts. I do not want to make you contradict yourself. Dismiss that thought from your mind at once, and try and answer the questions. At all events these three awards were prior to the Brennan award?

A. Yes.

Q. And at the time of a tracing was put into your hands showing a street which was the continuation of Donegani street?

A. Tracings was put into my hands from the beginning of the expropriation of properties on Blache Lane.

Q. You had a tracing in your possession showing that Blache Lane ran through, to another street?

A. Yes, but all the properties were not fronting on the street, as on the north side of the street the Railway bought the land out altogether.

Q. But the tracing you had showed a street?

A. It showed a proposed street.

Q. And Mr. Duff had communication of that prior to the Brennan award?

A. Mr. Duff's argument was the Railway Company could open the street and charge the proprietors.

BY THE COURT.

Q. Did he not see the tracing? Did not you show him the tracing?

A. Yes.

Q. So you knew and he knew of the existence of the tracing ?

A. Yes.

BY MR. EDMUND BARNARD, Q.C.

Q. You said it was understood among the arbitrators that there would be a street, and that afterwards it was an understood thing among the arbitrators ?

10 A. Yes.

Q. And afterwards you were told by Mr. Shaughnessy, not to promise a street, but that you did not know if that was communicated to the other arbitrators ?

A. I could not swear positively that it was or was not.

Q. Now when you were proceeding in the arbitration of the Brennan matter, did you still have that plan in your possession ?

A. I do not think we had much argument about it.

Q. You and Mr. Duff ?

A. Yes.

20 Q. You did not have an arbitration because it did not become necessary to have an arbitration. You both agreed as to what should be paid ?

A. Yes.

Q. You had some talk between yourselves to arrive at a conclusion as to what was to be done ?

A. Yes.

Q. Mr. Duff was on the other cases ?

A. Mr. Duff was on the other cases.

Q. And knew all about them ?

A. Yes.

30 Q. And that facilitated your work very much ?

A. I do not know about that. I suppose we knew the value of the property and the Defendant did not consider it necessary to fight over the thing.

Q. You came to a conclusion after talking over the matter ?

A. Yes.

Q. At the time you had this one or more interviews, at the time these interviews took place did you still have that tracing ?

A. I had the tracing but it was not produced.

Q. Did you use that tracing ?

A. I am quite positive I did not use that tracing.

40 Q. To arrive at the area of the land in the Brennan matter, had you any plan ?

A. I had the notice of the expropriations. That gave the area. You could not take the areas off that little plan, you could not do it.

Q. Well, now Mr. Cantin, between the first and the second award in the Walker case, there was some time elapsed—some delay ?

A. Yes.

Q. During that period of time did you go on with some of the arbitra-

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RECORD. tions ?

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A. Well, you see, I had a number of other arbitrations, and it is quite natural that I was doing something in them, but to go and specify I could not.

Q. Do you know whether you proceeded in the Kœster, Baylis, Dowling and Brennan case ?

A. I could not tell you whether we did or not. The Deeds of Record or something of that will shew.

Q. Are you quite sure that the Kœster expropriation was after the dispute, and the second award in the Walker case, was it between the first and the second award ?

A. It was after the first award, and I am almost certain to say it was after the second, I think it was after the second. 10

Q. Are you quite certain that it was after the time Mr. Shaughnessy told you not to promise the street ?

A. Yes.

Q. How do you come to fix that time ?

A. I fix that time in this way because Mr. Shaughnessy told me after the first award.

Q. How long after ? A couple of days ?

A. It was not long after. It might be a week, It would not be ten days. It would be inside of a week. 20

Q. And you would not swear that the others were inside of ten days ?

A. The Brennan case I am sure of, and the Kœster case I am pretty sure of too.

Q. Before you proceeded to the arbitration in those matters, you are aware that there were negotiations between the Company and the proprietors abutting on Blache lane, as to the necessity of a way of arriving at the value of the property without going to arbitration ?

A. No, I do not know of that.

Q. You do not know of that ?

A. Only by hearsay. 30

Q. You did not see the proprietors before the arbitration ?

A. I do not know what the other arbitrators did.

Q. Did you have any negotiations with the proprietors ? Do you know of any negotiations between the arbitrators and the proprietors ?

A. Nothing whatever.

CROSS-EXAMINED UNDER RESERVED OF OBJECTION.

Q. You mean to say, Mr. Cantin, you did not negotiate with the proprietors before the cases came to arbitration ? 40

A. You mean to say before I was appointed, before I was put on the notice of expropriations ?

Q. That is not the question. Did you negotiate with the proprietors before the cases came to arbitration ?

A. You mean before I was appointed ; before I was put on the notice of expropriations.

Q. Wait till I have finished my question, with a view to arriving at an amicable settlement before the matter came to arbitration ?

A. Certainly I did with some of the proprietors, I tried to always come to an amicable arrangement with them in preference to arbitration.

Q. Was that before or after you were named an arbitrator ?

A. Certainly after I was named an arbitrator. I did not even know Mr. Shaughnessy before this.

Q. When did you first use this tracing or plan showing the street ?

A. I think it was about the time that the Baylis case came up.

10 Q. About the time that you went to see Mr. Baylis, do you mean ?

A. I do not think I had it then. It is a very hard matter for me to recollect at this date.

Q. Was it given to you shortly after you was named arbitrator ?

A. Yes, shortly after.

Q. When you came to sign the final award in the Walker case, did you make any statement with regard to the street, when before the notary ?

A. Well, I simply said what Mr. Shaughnessy told me, not to promise a street.

Q. I ask you if you made a statement before the notary, and if so what ?

20 A. I simply told the notary that if there was anything about a street in it I would not sign it.

Q. And you satisfied yourself that it was not in the award ?

A. Yes, I read it the day before I signed it.

Q. That was the award before the three arbitrators that was the first award ?

A. Yes.

Q. Were the three arbitrators present at the time ?

A. Yes, Mr. Duff and Mr. McDougall.

Q. They were both present ?

30 A. Yes, and myself.

RE-EXAMINED.

Q. You say that after you became an arbitrator and before, you tried to settle with the proprietors ?

A. Yes, after I became an arbitrator.

Q. You went to see the proprietors, I suppose ?

A. I think in many cases I did generally with the arbitrators.

Q. And you had this tracing with you when you went to see them ?

40 A. I may possibly have had the tracing.

Q. Do you think it is probable that you did ?

A. Certainly it is probable.

Q. Do you remember whether you went to see Mr. Koester and Mr. Brennan ?

A. Mr. Koester, I do not know in the matter at all.

Q. You did not know he was a proprietor,

A. I knew he was a proprietor, and knew that he was represented by

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Alderman Malone.

Q. You saw Alderman Malone as representing him ?

A. I simply saw him on the street.

Q. You spoke to him about it ?

A. Yes.

Q. And generally when speaking between you and the proprietors you spoke of his trading to their representatives ?

A. You say generally, and that implies very often, that implies that I went very often.

Q. No, when I say generally I mean that, that is without reference to any particular individual. It means the proprietors or their representatives ? 10

You went to see the proprietors to make a settlement with the other arbitrator You did not go with a third arbitrator ?

A. Yes, I do not wish to specify any case, I only wish to say that as soon as they spoke of a third arbitrator, I said, very well we do not want a third arbitrator.

Q. But before you understood that you need not take a third arbitrator, you must have talked with them ?

A. There was really no discussion.

A. But at all events at these interviews that you speak of with these proprietors or some of their representatives, who was it spoke to them, it was you and the other arbitrator was it not ? 20

A. I do not think we had a very great discussion in any case. I think M. Walker was the one most seen by the arbitrators, but Hughes, Brennan Koes- ter and I did not speak to.

Q. Or their representatives ?

A. You are speaking of proprietors.

Q. Now, I am asking you about representatives ?

A. Their representatives would mean the other arbitrator in the case. When he was ready for evidence I saw him that was all.

Q. You said in answer to the Company's Attorney that before you were appointed arbitrator, and before you proceeded to arbitration, you did open negotiations with the parties. ? 30

A. I said in several cases. I was in negotiation with the representative arbitrator.

Q. What was the basis of these negotiations. Was it not this plan.

A. The plan was not use in the Donelly case for the property was bought out and out.

Q. But in the ordinary run of cases. What did you use the plan for ? It was given you for something. What was it given you for. Was it not given you to be used ? 40

A. My recollection is it was used at the meetings.

Q. And these meetings you had with the arbitrators and other parties, as well at the meetings where a third arbitrator was appointed ?

A. I may have shown the plan to the proprietors. I do not think it amounted to very much unless they

Q. Unless they what—finish your sentence. I am not discussing whether

it amounted to much or little, I want to get at the fact ?

A. I did not attach much importance to it.

Q. You showed it to them did you not ?

A. I may have done so.

Q. As a matter of fact you did, did you not ?

A. They spoke of it for the fact of location, that was all.

Q. I think if you will get rid of the idea that I am asking you something for the purpose of entrapping you, you will say that it was given you for the purpose of showing it to the proprietors, and assisting the arbitra-
10 tors ?

A. Well, you remember it was two years ago.

Q. I suppose you used the plan for the purposes that Mr. Shaughnessy gave it to you for to carry out his instructions.

A. My principal use of the plan was to show the location of the properties, as I told you. I may say that most of the properties were not affected by this Blache lane business, the north side was bought out and out. There were only a few properties on Blache lane that were affected.

Q. You know after the expropriation was completed, and Mr. Walker began to build, you are aware that he built and put openings on to this lane ?

20 The Plaintiff's Counsel objects to this question as not arising out of the Cross-Examination.

The objection is maintained by the Court,
And further deponent saith not.

JAMES HENRY BROWNING,
Stenographer.

James Henry Browning of the City and District of Montreal, one of the stenographers in this cause, doth on the oath he has already taken depose and
30 say :—That the foregoing sheets numbered from one to eighteen consecutively are and contain a true and faithful transcript in ordinary print of the evidence by me taken by means of stenography of the above named witness in this cause, the whole in manner and form as required by and according to law.

JAMES HENRY BROWNING,
Stenographer.

(ENDORSED.)

40 Deposition of James B. Cantin, a witness for the Plaintiff. Fyled 10th July, 1890.

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Deposition of
James B.
Cantin for
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Continued.—

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SCHEDULE No. 192.

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In the Superior Court.

Present :—

No. 152.
Deposition of
Charles S.
Campbell for
Plff. Fyled
10th July,
1890.

THE HONORABLE MR. JUSTICE MATHIEU.

On this twenty-first day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Charles S. Campbell, 10 of the City and District of Montreal, Esquire, Advocate, and Barrister, aged years, witness produced by the Plaintiff, who, being duly sworn, deposes as follows :

I am not related, allied or of kin to, or in the employ of any of the parties in this cause. I am not interested in the event of this suit.

Question. I believe you acted as Counsel for the Plaintiff, the Canada & North-West Railway Company; on the expropriation of properties fronting on Blache lane ?

Answer. Which properties ?

Q. We will say Baylis' ?

20

A. Yes, I did.

Q. Are you aware, in point of fact, that Mr. Baylis pretended that Blache lane was private property, and that he owned one-half of it ?

A. My recollection is that he did not.

Q. He did not claim it ?

A. My recollection is that he did not.

Q. You do not recollect that he did ?

A. No.

Q. And do you not recollect, on its being shewn, that Mr. Walker's property had been expropriated for the purpose of widening Blache lane, that he gave up his pretext ? 30

A. I do not think the property in the lane was considered one way or the other in Mr. Baylis' case.

Q. You do not recollect that Mr. Brodie and Mr. Cantin discussed the question, and convinced Mr. Baylis that his pretensions to one-half of Blache lane was interferred with ?

A. No ; I do not think Mr. Cantin or Mr. Baylis ever did discuss it in my presence. The only way in which the question was ever referred to, to the best of my recollection, was that in valuing his house, Mr. Baylis pretended that he had lights there, and I knew then, or found out, that these lights had been boarded up on account of the condition of the lane next to his house, which was full of ash-barrels and dirt, and that he boarded it up so as not to have these lights : but he did not go into the question of how he claimed it, as far as I remember. 40

Q. Do I understand you to say that you do not recollect that you argued that Blache lane was a public street ?

A. No ; I am pretty positive that I never argued one way or the other, and have every reason for saying so. I never entered into the conversation,

because I did not enter into the title of the street or know anything of it at that time.

Q. Have you seen Mr. Brodie's deposition ?

A. No.

Q. Will you read Mr. Brodie's deposition, and say whether your recollection is of that nature that you will have any doubt that what he states is correct ?

A. I find on page two (2) of Mr. Brodie's deposition that he said I represented the Company and Mr. Cantin, and pretended that it was a public street or lane, but there was no arguing about it ; the question never came to a head, and I say the same thing of what Mr. Brodie says on page six (6) where he states I remember that Mr. Campbell argued strongly that Mr. Baylis had no right to make a claim for compensation for half of Blache lane. If he had made any claim the question of the condition of the lane would certainly have been gone into.

Q. Mr. Baylis' indemnity was based on the assumption that Blache lane was to be a public street ?

A. I do not know on what assumption it was based.

CROSS-EXAMINED.

20 Q. Did the question as to whether Blache lane was a private lane or a private street or public street ever come up before the Board while you were representing the Company ?

A. To the best of my recollection it never did. It certainly never came up as a serious question.

Q. And you never yourself treated it as a serious question ?

A. Never, it never came up as a serious question, as to the continuity of the lane ; it never did.

Q. And you never argued that before the Board ?

30 A. No.

And further deponent saith not.

JAMES HENRY BROWNING,
Stenographer,

(ENDORSED.)

Deposition of Charles S. Campbell, a witness for the Plaintiff. Fyled
10th July, 1890.

40

SCHEDULE No. 193.

In the Superior Court for Lower-Canada.

On this sixteenth day of May, in the year of our Lord, one thousand

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No. 152.
Deposition of
Charles S.
Campbell for
Plff. Fyled
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No. 153.
Deposition of
George B.
Muir for
Defendant.
Fyled 21st
May, 1890.

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*In the
Superior
Court.*

No. 153.
Deposition of
George B.
Muir for
Defendant.
Filed 21st
May, 1890.
— *Continued.*

eight hundred and ninety, personally came and appeared Geo. B. Muir of the City of Montreal, City Assessor, aged sixty-nine years, and witness produced on the part of the Defendant, who, being duly sworn, deposes and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You are one of the assessors for the city of Montreal, are you not, Mr. Muir?

A. Yes sir, I am one of the assessors.

Q. For what Ward.

A. For the St. Antoine Ward, and have been so ever since April eight-
teen hundred and eighty-three (1883). 10

Q. You are an old resident of Montreal, are you not?

A. Yes sir, I was born in Montreal, and have always lived in Montreal.

Q. For a long time you have had knowledge of the locality where Blache lane was situated?

A. Yes, for a long time.

Q. For how long?

A. I suppose for thirty-five or forty years.

Q. The locality has changed somewhat in that time I presume, has it not?

A. Blache lane itself has not changed, Except one building, which was
built by Mr. Walker. They are all old houses except the tin factory built by
Mr. Walker. 20

Q. Have you anything to do with the Olivet Baptist Church?

A. I am an officer of that Church.

Q. Therefore you have knowledge of the locality surrounding it?

A. Yes, from personal experience I have.

Q. Was Blache lane, as far as you know it, ever public property?

A. No, I always considered it a private lane.

Q. That is ever since you remember?

A. Yes, but no apparent attention ever appeared to be paid to it by the
city during all that time. 30

Q. What was it used for?

A. Until Walker's tin factory was built I think there were two houses
on the north side and one house on the south side.

Q. And those proprietors uses it as an access to their houses?

A. Yes, and also an access for the lots.

Q. Was it used for any other purpose except an egress and ingress for
the properties abutting or bordering on it?

A. No, that was the sole purpose. It was a cul de sac, having no en-
trance except through Mountain street. 40

Q. Do you know whether anybody claimed the ground in it?

A. I do not know.

Q. Do you know anything about what Mr. Baylis considered his rights
were in it?

A. I have no personal knowledge what Mr. Baylis considered his rights.
He sold a lot facing on Osborne street to the Olivet Baptist Church with the

right of passage to that lane.

Q. And that has subsequently been acquired by the railway?

A. Yes, by the railway, not the lot but the passage has.

Q. You say the city of Montreal never did any work or interfered with the lane at all?

A. I never saw anything done by the city. I have passed up and down and seen that street very often, and I never saw anything. I could not swear that they ever did anything I never saw anything.

Q. Now the assessors considered that lane as private property did they
10 not or public city property?

A. I cannot say what all the other assessors considered it, I never considered it anything but a private lane.

Q. Who were the assessors for St. Antoine Ward prior to your being appointed?

A. Mr Gross and Mr. Morin.

Q. Do you know what they did as regards that lane?

A. I could not say.

Q. Since you have been an assessor you have always treated that as private property?

20 A. Yes, of course we did not assess that lane just the same way as all the other private lanes that are used have access to property.

Q. Do you know of other instances in the city in the same way that private lanes are not assessed?

A. Yes, and that are used as access to property.

Q. But that does not make them public property?

A. No.

Q. Will you say whether the plan which I now show you marked Defendant's Exhibit "B, 3" is an extract of plan which is filed in your office by the Atlantic & North Western Railway?

30 A. Yes, it appears to be an extract.

Q. That was filed for the purpose of assessment by the Railway Company was it not?

A. Yes sir.

Q. The plan shows from Bison street to Mountain street, all the railway property which is assessed colored red and green, does it not

A. Yes, colored red and green.

Q. In the portion between those two streets colored red there is an area of sixty-nine thousand five hundred and sixty-three (69,563) feet, which is assessed by the city as against the railway?

40 A. Yes, and also two pieces colored green on which the dimensions are given on the plan.

Q. In this piece colored red, do you see Blache lane included? or what was formerly Blache lane included?

A. Yes, Blache lane is included.

Q. Therefore as a matter of fact, the city of Montreal assesses this lane against the Railway Company as their property?

A. Yes, as the railway's property.

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—
*In the
Superior
Court.*

—
No. 153.
Deposition of
George B.
Muir for
Defendant.
Filed 21st
May, 1890.
Continued.—

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—
*In the
 Superior
 Court.*

No. 153.
 Deposition of
 George B.
 Muir for
 Defendant.
 Filed 21st
 May, 1890.
 — *Continued.*

Q. Had you any notification from the city officials or executive that this lane was public property and not railway property ?

A. No.

Q. On the board of assessors was there any mention made at the time this assessment was put through, was there any objection made to that ?

A. No, there was no objection made.

Q. The board of assessors then I presume, considered that the assessment of this Blache lane as private property was a correct assessment ?

A. Well, we assessed it, and as there was no objection to it we assessed it as being so much assessible to the city, and on which the company have been obliged to pay taxes 10

Q. Had the company not paid taxes in accordance with this assessment, what would have been the result ?

A. I supposed they would have been sued for it by the city.

Q. Did you make any investigation as to what revenue the city obtained from Blache lane prior to the railway's occupation from the surroundings of Blache lane ?

A. Yes.

Q. Will you give us a result of that investigation ?

A. I found on examining the roll of assessment for the year eighteen hundred and eighty-six (1886,) that all the properties surrounding and having access to Blache lane facing the Blache lane, Mountain street and St. Antoine street was assessed for sixty-two thousand and fifty dollars (\$62,050.00.) I produce the statement showing this valuation as Defendants Exhibit "B-4." 20

Q. This statement Defendant's Exhibit "B-4" shows the valuation of properties surrounding the lane, but not all the properties that were actually taxed as being on Blache lane ?

A. All the properties that are surrounding Blache lane from and including Mrs. O'Connell's to Mountain street, except the corner lot on the corner of St. Antoine and Mountain streets. 30

Q. What I wish to understand is whether the properties which are mentioned in this statement, Defendant's Exhibit "B. 4," were taxable as against Blache Lane, or against any other street ?

A. These properties had all access to Blache Lane, or interested at all in Blache Lane. On the list I have mentioned the streets, on which these properties were shown upon the valuation roll as paying taxes on St. Antoine street were Mrs. O'Connell's Watts, Hughes, Walker, Keoster's, Mailloux and Brennan ; on Blache Lane, lots six hundred and fifty-seven (657), subdivisions ten, eleven and twelve (10, 11 and 12), were assessed against Baylis's on Blache Lane. Number nine (No. 9) being common passage was not assessed although it was private property. 40

Q. Which carries out your assertions as regards Blache Lane ?

A. Yes.

Q. Mr. Savage, was he assessed on Blache Lane as shown on statement for twenty-five hundred dollars (\$2500.00) ?

A. The balance of Savage's property was assessed on Osborne street.

Q. Was Walker assessed on Blache Lane ?

- A. Yes, both on Blache Lane and on St. Antoine street, in eighteen hundred and eighty-six (1886).
- Q. Was Koester assessed on Blache Lane and St. Antoine street ?
- A. Yes.
- Q. And was Dowling ?
- A. No, Dowling was assessed all on Mountain street.
- Q. But taking the block, all the property which had any reference to Blache Lane had a valuation of about sixty-two thousand and fifty dollars (\$62,050.00) ?
- 10 A. Yes, on which the city collects the taxes.
- Q. Have you made a statement showing the valuation of this block of property at the present time ?
- A. According to the roll eighteen hundred and eighty-nine (1889), properties exclusive of that assessed to the Atlantic & North-Western Railway, known as the C. P. R. property, the remaining properties are assessed for thirty-nine thousand eight hundred dollars (\$39,800.00) exclusive of the railway.
- Q. With the railway property, that is taking the same block as shown in their list, what is the total assessment ?
- 20 A. Well, I see the railroad property on this block including Blache's Lane which amounts to about sixty-three thousand nine hundred and sixty-nine feet (63,969) feet, which we estimated and assessed the railroad at the rate of seventy-five cents (75 cents) per foot, which makes the assessment on that portion of the railroad property amount to forty-seven thousand nine hundred dollars (\$47,900.00).
- Q. Taking the two together it makes a total of what ?
- A. Makes a total of eighty-seven thousand seven hundred dollars (\$87,700.00), as appears by statement produced as Defendant's Exhibit "B. 5," this is included in the general assessment of the railway property from Windsor street to Mountain street, the assessors valuing that portion of it at
- 30 seventy-five cents (75 cents) per foot.
- Q. So that the result is that on the same block of property which the city assessed at sixty-two thousand and fifty dollars (\$62,050.00) in eighteen hundred and eighty-six (1886), the city now assesses it at eighty-seven thousand seven hundred dollars (\$87,700.00), bringing an increase to the city of about twenty-five thousand dollars (\$25,000.00) ?
- A. Yes, about twenty-five thousand dollars (\$25,000.00) in assessments.
- Q. What would be the difference in taxes to the city ?
- A. About three hundred dollars a year.
- 40 Q. As a matter of fact in eighteen hundred and eighty-nine (1889), the city was making three hundred dollars (\$300.00) a year more on account of that block of property than they were making in eighteen hundred and eighty-six (1886) ?
- A. Yes, that is correct.
- Q. Taking this statement in detail, the property known as the Alexander Watt property, appears to have been assessed in the year eighteen hundred and eighty-six (1886) at thirteen thousand dollars \$13,000.00, what did that

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 153.
 Deposition of
 George B.
 Muir for
 Defendant.
 Filed 21st
 May, 1890.
Continued.—

RECORD. comprise ?

*In the
Superior
Court.*

No. 153.
Deposition of
George B.
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Continued.—

Q. That comprises all of the property up to Blache Lane.

Q. And the same property was assessed in the year eighteen hundred and eighty-nine, at the same figure, what did that comprise ?

A. It applies to the same land, except to the portion taken by the railway.

Q. The assessments on that portion of the Watt property have not been reduced ?

A. No.

Q. And the City gets the revenue from the railway portion, that is the back portion of the Watt property in addition to what they got before the railway was there at seventy-five (75) cents per foot valuation ? 10

A. Yes.

Q. Take the Brennan property, is it the same valuation in the years eighteen hundred and eighty-six (1886) and eighteen hundred and eighty-nine (1889) ?

A. Yes, the same valuation.

Q. Although the area is reduced ?

A. Yes.

Q. And the railway always pays a valuation of a back portion ?

A. Yes, which gives the city an increased revenue. 20

Q. These statements are taken from the rolls themselves, are they ?

A. Yes, taken from the rolls.

Q. And which are in your custody ?

A. Yes, which are in the City Hall office.

Q. On Blache lane itself, the city obtains a revenue does it not, which it did not obtain before ?

A. Yes, I believe Blache lane contains about seven thousand four hundred and fifty-three (7,453) feet which at seventy-five (75) cents per foot, gives five thousand five hundred and ninety dollars (\$5,590.00,) that would be the value which would bring in revenue of about sixty dollars (\$60.00) per year. 30

Q. The same argument applies to that little portion of land number six thousand five hundred and seventy-nine (No. 6,579) on the plan known as the Baylis property ?

A. Yes, sir.

Q. And the city gains a revenue on that which they did not gain before ?

A. Yes, that is correct.

Q. Looking at the matter generally Mr. Muir, has the city financially made any loss by the closing of Blache lane ?

A. No, I do not think they have, I think they have made an advantage by closing Blache lane in the way it has been done. 40

The area which is mentioned on the plan as being the area of the railway property assessed for the city is a rough estimate and be out a few feet.

(The Plaintiff objects to any evidence of an oral character, which should be proved by documentary evidence.)

CROSS-EXAMINATION

UNDER RESERVE OF OBJECTIONS.

RECORD,

*In the
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Court.*No. 153.
Deposition of
George B.
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Q. Mr. Muir, what was the property facing on Blache lane before the railway acquired it so far as the property of the present claimants are concerned?

A. It appears from my statement, Defendant's Exhibit "B, 4."

Q. It gives the valuation for how many years before eighteen hundred and eighty six (1886)?

A. I took the year before the railway and the year after the railway was
10 built.

Q. What I want to know is this, this property of my client was assessed at what depth from Blache lane. Take Walkers property for instance, I want to know whether it was assessed as a lot fronting on Blache lane of a depth of how many feet?

A. Walker's property was assessed both on St. Antoine street and on Bache lane, that is his tin factory was assessed on Blache lane, I do not remember the depth. Walker's property was assessed both on Blache lane and on St. Antoine street.

Q. I suppose you took the whole depth and divided it in the middle?

A. We took what his factory was built upon, it was partly taken by the
20 railway, that is part of it.

Q. Am I to understand the whole of the property at Walker's factory and all was assessed at six thousand five hundred dollars (\$6,500.00)?

A. Yes, assessed at six thousand five hundred dollars (\$6,500.00).

Q. And would that assessment go back several years at the same figure?

A. No, because Walker only built his place, I do not remember how many years, it was not long built before eighteen hundred eighty-six (1886). I think he only built it that year or the year before. We put it separately because he built the building there.

40 Q. I think it would be better to have a certified statement taking the valuation on the assessment roll for three years before the expropriation and for the year subsequent, and certify, I mean in order to have some authentic record, you can give me that can you not, I want to certify the extract from the assessment roll for three years before the expropriation?

A. Yes, I will fyle such.

Q. You speak of some assessments of the property of the railway at seventy-five (75) cents per foot, that excludes I understand Blache lane?

A. No, it includes it.

Q. Now, does it include the rest of the property of the railway all the way up to Osborne street or only a portion, all that is marked red is it valued at seventy-five (75) cents per foot?

A. Yes, all that is marked red is valued at seventy-five (75) cents per foot.

30 Q. Speaking roughly, the railway property extends about half way between Blache lane and Osborne street, does it not?

A. Yes, about half way.

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*In the
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No. 153.
Deposition of
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— *Continued.*

Q. I am quite satisfied so long as you tell me that this seventy-five (75) cents is got out of a certain amount of property, that is placed half way between Blache lane and Osborne street ?

A. Yes, that is right.

Q. The valuations made by the assessors I believe only to be relatively correct ?

A. I consider that no valuations made by anybody can ever be certain, because almost every two real estate agents differ as to the value of properties.

Q. I believe the whole system of valuation by assessors is a very mysterious one, is it not ? 10

A. No more than others, of course we have got to take the best ideas we can, according to sales and other things. We find that real estate men differ most dreadfully about the value of property.

Q. What is this valued according to the market value, or taking what considerations ?

A. We always lean on the side of the proprietor, we never like to go to the extreme. We make it favorable to the proprietors.

Q. The valuations of yours up to the time of the expropriations, were they made after you had ascertained the market value of the property, within the area or in the vicinity ? 20

A. I do not know. There were very few sales around there previous to that time. St. Antoine street for many years remained a good deal stationary in that neighborhood.

Q. I think it is a matter of daily occurrence to find that the value as assessed is very much below what the property brings forth when it is sold ?

A. In many cases it is, but in several cases it is not, sometimes it sells for our assessment alone, but generally it sells for more ; for example Mc-Tavish street, in one of the finest parts of the city, a property was sold at public auction the other day just for our assessment.

Q. You have been speaking of this Blache Lane, being a private lane in your opinion, will you explain what your understanding of a private lane is. 30

A. A private lane is a lane which has never been deeded over to the city.

Q. To whom in your understanding does a private lane belong ?

A. A private lane belongs to all the surrounding proprietors, anybody having a right by their deeds, by access or through it.

Q. Supposing the surrounding proprietors to have no right by their deed to the lane, and at the same time to be making use of it for over thirty (30) years, whom do you consider the property belongs to ?

A. Well, I always understand that prescription does not give a servitude. It belongs to parties who by their deeds have a right to it, that is a legal question. In regard to the question as to whether a party has any right by their deed after thirty years enjoyment to it, that is a legal question. 40

Q. I think you mistake my question, you say that the ownership of the lane, belongs to certain proprietors ?

A. They have a right to it by their deeds.

Q. Of course you are aware that the surrounding proprietors have no right to the lane unless their deed contains the clause giving them the right to use the lane ?

A. Yes, I know that.

Q. Where all the surrounding proprietors have no clause in their deed, but where they have been making use of the lane from time immemorial has not the lane then become public property deduction ?

A. That is a legal question which I would not like to determine, but my impression was always that they had not.

10 Q. Have you any means of ascertaining whether your valuation of the property of the railway including Blache Lane at seventy-five (75) cents per foot is below the market value ?

A. No, this property here is an inside property, which of course, is not worth so much as property facing Osborne street, and on St. Antoine street, having a frontage. Lots were sold on Mountain street for ninety (90) cents, I therefore consider that seventy-five (75) cents for all this back property is a very good price.

Q. Give us what you know of sales, the minimum and maximum, and what you would consider the average ?

20 Q. There were sales on Mountain street, at ninety (90) cents near there, nearly opposite the Boys Home paid a dollar (\$1.00) per foot including a house on it, but we considered that a high price. There has been very few sales up there.

Q. What is the fair valuation of property on St. Antoine street, I am not speaking of what you assess it at, but what knowledge you have derived from actual sales ?

40 A. It depends upon what part of St. Antoine street you mean. I consider from seventy-five (75) cents to one dollar (\$1.00) per foot. It depends very much of course whether a person wants a property or whether the person wants to sell, and very much upon what is paid for it, and it depends upon the depth of the lot.

Q. Do you know any property that can be purchased at the present moment on St. Antoine street opposite Blache Lane at one dollar (\$1.00) a foot ?

A. I do not know, I cannot say.

Q. Are you prepared to swear that the witnesses who valued property on St. Antoine street, the bare ground, at two dollars (\$2.00) per foot have exaggerated ?

A. Yes, I think they have.

Q. Can you give reasons for your belief ?

A. Well, I know of no such sales, I believe such a valuation is exaggerated, and I know of no such sales.

30 Q. Do you know of any property that can be got to-day on St Antoine street, the bare ground for less than two dollars (\$2.00) per foot facing Blache Lane.

A. I do not know what they are asking for it, people may ask ten dollars (\$10.00) per foot for property that is not worth three dollars (\$3.00).

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—
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—
No. 153.
Deposition of
George B.
Muir for
Defendant.
Filed 21st
May, 1890.
— Continued.

RECORD. I do not know whether they want to sell or not. They may be holding it for an exaggerated amount.

*In the
Superior
Court.*

No. 153.
Deposition of
George B.
Muir for
Defendant.
Filed 21st
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Continued.—

Q. Have you any knowledge of actual sales that have taken place on St. Antoine street in the part I have mentioned or in the vicinity within the last five years?

A. Well, Mr. Thomas Darling has bought a property there.

Q. Who else?

A. I think that Mr. Sauvageau must have bought a property there.

Q. Do you know what Walker's tin manufactory cost to build?

A. No, I do not know.

Q. Do you know anything about the property which formerly belonged to the Honorable Mr. Rodier which was expropriated and which the railway paid two dollars (\$2.00) per foot at the corner of Bisson and Donegani streets? 10

A. I know that place; it did not come quite to Donegani street; I know that the railroad had to pay a very exorbitant figure, I think, in my own opinion double what they ought to have paid. Yes, at least double, even including the damages to the rest of the property.

Q. What was that property which they paid two dollars and sixty cents (\$2.60) a foot for assessed at by yourself and your colleagues?

A. That was assessed on Osborne street, it was the back of his private house, there was no separate assessment upon that. 20

Q. But the property expropriated by the railway from Mr. Rodier, that part of it was not so valuable as the part fronting on Osborne street, was it?

A. No.

Q. What would be the difference relatively between the part fronting on Osborne street and the part expropriated (relatively I mean) if Osborne street was worth four dollars (\$4.00), that would be worth about half would it not?

A. Yes about half or two thirds, I should say half. I might say that we have never taken the award again the railroad as any criterion of the values, because they gave too little, because they gave generally in those cases two or three times too much, sometimes three times too much Rodier for example got three times more than he ought to have got. 30

Q. I believe the Mayor stated that Notre Dame street, the parties expropriated, were claiming five, six and ten times the amount of the value, are you aware that there was a public statement made by the Mayor to that effect? that the Notre Dame street expropriations, the parties actually claimed five, six and even ten times the value?

Objected to as not arising out of the examination-in-chief. Objection reserved.

A. I saw the statement reported in the papers, but not to the extent that the question refers to, but that it was outrageously high. 40

Q. Will you be kind enough, in your certificates that you spoke of, to include the assessed value of Mr. Rodier's property, including the house, just as it is on the assessments roll?

A. Yes, I will.

RE-EXAMINED.

RECORD.

Q. The Assessments of the Rodier property includes the stone house, does it not ?

A. Yes, and it is a very expensive house.

Q. And that would raise the value of the land by at least two thirds the value, or perhaps one hundred per cent, to what it would be as if it was a vacant lot ?

A. Yes.

10 Q. In the Rodier award I presume you know that damages were given as well as the value of the land in all the awards ?

A. I understood that the principal amount was given for damages, the two dollars and sixty cents (\$2.60) a foot was given (if that was the amount) principally for damages to the rest of the property.

Q. What would you consider the percentage of that would be for damages ?

A. I cannot say, but a very large percentage.

20 Q. You were asked to give an extract from the valuation rolls, would you say whether your estimate of seventy-five (75) cents a foot from Bisson to Mountain streets would be shown in any extract that could be obtained from any of the valuation rolls, and if not explains how ?

A. No certificate of the extract from the assessment rolls of the railroad property between Bisson and Mountain streets would show this valuation of seventy-five (75) cents per foot, because there was one assessment made of the railroad property from Windsor street to Mountain street of the depot and lands, but this estimate of seventy-five (75) cents was made by the assessors in making up the total valuation for the whole of that block.

Q. Was there any portion of that area worth less than seventy-five (75) cents ?

30 A. It is hard to tell, Baylis wanted a dollar for his portion of it, of course I considered the Mountain street front of it worth more than the back part of it, that was the average value for the whole block.

Q. In assessing property you assess it in accordance with certain rules do you not ?

A. We are bound to assess it at the mercantile value of the property.

Q. You are bound to take an oath to that effect are you not ?

A. Yes, of course, we cannot always tell what the mercantile value of the property is.

40 Q. And therefore you would say simply what you conscience dictates after the oath is taken ?

A. Yes, and that is according to the mercantile value. We cannot always tell what the mercantile value be because properties change so much.

And further deponent saith not,

And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at enquête

A. A. URQUHART,
Off. Stenographer.

*In the
Superior
Court.*

No. 153.
Deposition of
George B.
Muir for
Defendant.
Filed 21st
May, 1890.
— *Continued.*

RECORD.

(ENDORSED.)

*In the
Superior
Court.*

Deposition of Geo. B. Muir for the Defendant. Taken May 16th 1890.
Fyled 21 May 1890.

No. 153.
Deposition of
George B.
Muir for
Defendant.
Fyled 21st
May, 1890.
Continued.—

(Paraphed) A. B. L.

10

SCHEDULE No. 194.

In the Superior Court for Lower Canada.

No. 154. On this twenty-first day of May, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared George Groves, of the city of Montreal, gentleman, aged seventy-five years, and witness produced on the part of the Defendant who, being duly sworn, deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit, 20

Question.—How long have you resided in the City of Montreal ?

Answer.—I have resided seventy-one years (71).

Q. Do you know the lane running off Mountain Street, between St. Antoine and Osborne streets, known as Blache lane ?

A. Yes sir, I know it.

Q. For how many years have you known that lane ?

A. All my life, for a life time.

Q. Did you ever live near there ?

A. I lived on St. Antoine street, my property abutted on Blache's lane, in the rear of it, just in front. 30

Q. Do you know who owns that property now that you had ?

A. Yes, Watt, the baker, I sold it to him.

Q. For how many years did you live on that property ?

A. I lived there for seven or eight years (7 or 8).

Q. And when was that you lived there ?

A. It was between eighteen hundred and sixty-eight (1868) and eighteen hundred and seventy-five (1875) I suppose.

Q. During the time that you lived there by whom was that lane used, who used it ? 40

A. It was used by Mr. Tinsley, that lived there in my rear on Captain Trimm's property. There was no other dwelling excepting the house on the corner of Mountain street, the old Blache house, that had its entrance there if I remember right. Baylis the carpet man, bought it afterwards, and there was one of my neighbors had a back entrance for fetching in wood and fuel. I do not think it was ever used for anything else.

- Q. So that was the purpose for which the lane was used during the time you lived there?
- A. Yes, that is all.
- Q. And used only by the people whose property abutted on the lane?
- A. There was only one that abutted on the lane that used it.
- Q. But the only persons that used it were those abutting on the lane?
- A. Yes, there was only one.
- Q. It was not used by the outside public at all?
- A. No sir, not by the outside public.
- Q. It was not a public thoroughfare by any sense?
- 10 A. It could not be a public thoroughfare.
- Q. How long have you known that lane besides the time you lived there?
- A. Since I was a little kid.
- Q. And you have never known it to be used except by the people that lived there?
- A. No.
- Q. What did you use it for, did you use it yourself?
- A. No, I never used it, I had no gate, and not requiring any I did not go to the trouble and expense of putting any there.
- Q. What was the lane at the back of your property used for?
- 20 A. Nothing, except this man Tinsley who used it for going in and out.
- Q. Was the lane kept clean like an ordinary street?
- A. No, anything but that.
- Q. How was it kept then?
- A. In a very filthy state.
- Q. Well, it was used as a sort of dumping ground was it?
- A. Well, they dumped a good deal of the refuse against my fence, it was just used like any back lane in the city for throwing things out behind,

CROSS-EXAMINATION.

- 30 Q. Mr. Groves, were you ever the proprietor of what is now the property of Mr. Watt, the baker?
- A. I lived there, that was my property, it was me who sold it to Watt, the baker?
- Q. Did your title give you any right to use the lane?
- A. I never asked that question, I was under the impression certainly, when I bought the property that abutted on the street or lane, or whatever you may call it, that I had a right to, if I wanted it, that was my impression, but I never asked the question about it.
- 40 And further deponent saith not.
- I, A. A. Urquhart, of the City of Montreal, official stenographer, on the oath I have taken depose and say, that the foregoing sheets numbered from one to four consecutive, being four sheets in all, are and contain a true and faithful transcript of the shorthand notes of his evidence by me taken by means of stenography, the whole according to law.

A. A. URQUHART,
Official Stenographer.

RECORD.

*In the
Superior
Court.*

No. 154.
Deposition of
George Groves for Defts.
Filed 23rd
May 1890.
— *Continued.*

RECORD.

(ENDORSED.)

*In the
Superior
Court.*

Deposition of George Groves for the Defendant. Taken May 21st, 1890.
Fyled 23rd May, 1890. (Paraphed), A. B. L.

No. 154.
Deposition of
George Groves for Defts.
Fyled 23rd
May, 1890.
—Continued.

SCHEDULE NO. 195.

10

In the Superior Court for Lower Canada.

No. 155.
Deposition of
Thomas Tinsley for Dfts.
Fyled 23rd
May 1890.

On the twenty-first day of May, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Thomas Tinsley, of the city of Toronto, roofer, aged seventy-eight years, and witness produced on the part the Defendant who, being duly sworn, deposeth and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Where do you reside now?

A. In Toronto now.

20

Q. How long have you lived in Toronto?

A. I have been there about seventeen or eighteen years.

Q. And previous to that where did you live?

A. In Blache's lane in Montreal here, on Captain Trimm's property, that is the lane that runs from Mountain street eastward, above St. Antoine street; it leads to Mountain street just above St. Antoine. The next street was St. Janvier street.

Q. How long did you live on Captain Trimm's property?

A. I think I was there about fifteen or sixteen (15 or 16) years. It may be more, I could not exactly swear how long I was there, but my son he was either seventeen or eighteen, and he was born on that ground.

Q. Do you mean he is seventeen or eighteen (17 or 18) years of age now?

A. No, when I left it he was about seventeen or eighteen years of age.

Q. And your son is now about thirty-five years old, is he?

A. Yes, but I could not say exactly his age.

Q. Was Captain Trimm the owner of that lot?

A. Yes sir, Captain Trimm was the owner of the ground.

Q. And you were his tenant I suppose?

A. No, I was married to Captain Trimm's daughter, and I lived there.

40

Q. Which side of the lane were you on?

A. Well, when you turn into the lane I lived on the north side or left hand side, the side further from St. Antoine street.

Q. Did you use the lane for getting in and out from Mountain street?

A. Well, I used to drive a hack and I used to use it when I went in and out.

Q. Did any body else use it?

A. No sir, there was none kept horses in there except me, I was the only person that drove a horse, we would not allow any person to use a horse there; we used to keep a green plot. I always understood that Captain Trimm's wife's ground ran across the property.

Q. And you kept the green in front of the door in the lane?

A. Yes, in the lane, and not only that but the steps off the gallery used to go mostly halfway across the lane to go up on the gallery, which was four or five feet from the ground, and we had to have other steps to get on top of the gallery; these steps projected out into the lane.

10 Q. That lane was never used by the public then?

A. No sir, it was never used by the public, only anyone that rented the house before I went to it.

Q. Now, whoever lived there used the lane as a passage in and out?

A. Yes, because they could not get out any other way.

Q. But no one except those that lived there used the lane?

A. No, they would not be allowed. Captain Trimm's wife, when she came, she would not allow any one. Mr. Lambe wanted one time to bring a load of dung out the back side to put into his garden behind without bothering going through his yard, and she would not allow him.

20 Q. Mr. Lamb owned property going back from the lane?

A. Yes, his land came to the back of the lane.

Q. Outside of the people who owned property on the lane, was it ever used by the public?

A. No, never by the public, unless we bought wood and we hired a carter and allowed him to use it, to bring it to the house.

Q. But the only people who used the lane was people who had business with you?

A. Exactly, we would allow no people to use it.

30 Q. Who was it bought Captain Trimm's property afterwards, who was it sold to?

A. I tell you now that it is going to go to Court about that property, for no one has got any right in that property. In the first place the property was left to Captain Trimm's heirs' children, his heirs had no right only to live upon the interest of the money and they took the rent, and a man by the name of Burroughs cheated us.

Q. Who took possession of the property after you left?

A. Judge Badgley got it to rent it.

Q. But afterwards, cannot you tell me who got the property, for instance in the last five or six years?

40 A. I could not tell you who it is.

Q. Were you next door to the old Blache house?

A. Not next door, for his ground ran up to our land, but we were the next neighbour.

Q. Mr. Blache owned the corner house on the upper side of the lane, did he not?

A. Yes sir, on the upper side of the lane he owned it.

Q. Was that the same property that Mr. Baylis got afterwards?

RECORD

In the
Superior
Court.

No. 155.
Deposition of
Thomas Tinsley of Dfts.
Filed 23rd
May, 1890.
— Continued.

RECORD.

*In the
Superior
Court.*

No. 155.

Deposition of
Thomas Tinsley
for Dfts.
Filed 23rd
May, 1890.
—Continued.

A. Yes, the same property that Mr. Baylis got afterwards.

Q. Do you know how that lane came to be opened there at all?

A. Well, I have heard Captain Trimm's wife saying that Mr. Blache opened that lane for accommodation to put the farmers into the lane out of the street, for they used to keep a kind of tavern or grocery, and farmers used to come into that lane to have their horses out of the street, it was his property, that is what I always understood.

Q. And that was generally understood amongst all the neighbours, was it?

A. Yes, that it was old Blache that owned the lane.

Q. And was it well understood amongst all the neighbours that this was a place—? 10

A. It was a private lane, that was understood by all the neighbours.

Q. And everybody in that neighborhood looked upon the lane as private?

Q. Yes sir; you see we could go up the hill and out by Janvier street, but the man on the other side of him had no way of getting out.

Q. Well, you say that Mr. Blache put up a fence there?

A. No, I say if he had put up a fence there he could have blocked them all in. Koester was on the south side, but they could get out by St. Antoine street. This property ran from Blache's lane to St. Antoine street.

Q. Well, was Koester's house built on the line of Blache's lane? 20

A. No sir, it was put to the best of my opinion about three or four feet in from the east, it stood in on the south side about four feet.

Q. At any rate it stood back from the lane?

A. Exactly. It was not on the lane at all.

Q. You have no doubt from all you know of that lane that it was private property?

A. It was a private lane?

Q. And was always so treated by you?

A. Yes, and by all the others. I never knew any one to go into that lane, only just Mr. Koester's tenants and ours, and a man by the name of Blache. That is all, just three. Joe Archambault, you see, he would not allow our children to play in front of his house. He put up a fence, but we could not put up a fence to block him. He would not allow us to go further back, he was the next neighbor to us. He was at the very end of it. 30

CROSS-EXAMINATION.

Q. Captain Trimm's property, is that Baylis's property now?

A. No, it was Mr. Baylis's property.

Q. On the same side as Baylis?

A. Yes, the same side as Baylis, it was on the south side of the lane, when you turn into the lane. You see you have to turn in to the right to go into the lane, and the house was up on the left hand side. There was only one house and there was two houses on the south side, not counting the corner house, for, you see, the corner house faced Mountain street. It was at the corner of Blache's lane as we called it and Mountain street, but the property went back to Captain Trimm's property. 40

Q. Do you know that Mr. Lambe sued and had it declared that the lane was public?

A. No sir, I do not recollect Mr. Lamb, but I recollect that Mr. Lambe, the old gentleman, saying that he would go in with his manure into the lane, and Captain Trim's wife would not let him, and turned him back. He never brought any duning that I recollect through that lane, for he had a passage on St. Antoine street to go into his yard, and there was never a gate at Mr. Lambe's, only just a small little gate. They would not allow him to go through the lane.

Q. You do not know of a suit by Lambe against a man by the name of Archambault?

10 A. Yes, I know a man by the name of Archambault, but I do not know anything about a suit. I never heard that Mr. Lambe sued Mr. Archambault. And further deponent saith not.

And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at enquête.

A. A. URQUHART,
Official Stenographer.

(ENDORSED.)

20 Deposition of Tho. Trusley for the Defendant. Taken May 21st 1890.
Fyled 23rd May 1890.
(PARAPHED A. B. L.)

SCHEDULE No. 196.

30 In the Superior Court for Lower-Canada.

On this thirtieth day of May, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared Michel Laurent, of the City of Montreal, architect, aged fifty-seven years, and witness produced on the part of the Defendant who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You were chairman of the Road Committee, were you not?

A. Yes, sir.

40 Q. For how long were you chairman of that committee?

A. I was on the Road Committee twelve years and I was chairman for ten years and a half.

Q. Do you remember the dates?

A. From eighteen hundred and seventy-six until nearly the present date.

Q. The Road Committee have charge of all the streets in the city of Montreal, has it not?

RECORD.

*In the
Superior
Court.*

No. 155.

Deposition of
Thomas Tinsley for Dfts.
Fyled 23rd
May, 1890.

—Continued.

No. 156.

Deposition of
Michel Laurent for Defts.
Fyled 23rd
Oct. 1890.

RECORD.

—
*In the
 Superior
 Court.*
 —
 No. 156,
 Deposition of
 Michel Lau-
 rent for Defts.
 Fyled 23rd
 Oct. 1890.
 — *Continued.*

- A. Yes sir.
- Q. And has an intimate knowledge of all the streets in the city.
- A. Yes sir, a great many of them, I do not think there are many that I do not know.
- Q. And you, as chairman of that Committee, had knowledge of all the public streets ?
- A. Yes sir.
- Q. Do you know where Blache lane was situated ?
- A. Yes sir.
- Q. You have known that lane for some years, have you ?
- A. Yes, since I was a young man, about thirty-years ago. 10
- Q. Do you consider it a public or a private lane ?
- A. It was a private lane, what we call a *cul-de-sac*.
- Q. How was it treated by the Road Committee ?
- A. It was considered as a private lane belonging to the party interested in it for their tenants and to whom they sold lots in front.
- Q. In other words it belonged to the parties who owned land abutting on it ?
- A. Yes sir.
- Q. Was it treated in that way by the Road Committee ?
- A. Yes, they are all treated in the same way, there are a great many of those lanes treated like that. 20
- Q. Do you know anything about any work that was done in it or ever any work done in it ?
- A. No.
- Q. If there was water pipes put in it would that be done at the request of the proprietor ?
- A. No, sometimes there is water pipes put in at the request of the proprietor, but it is not considered public for all that.
- Q. Do you know other private lanes in the city, would Overdale avenue be one ? 30
- A. Yes, and there is Leduc's lane, George Hypolite's lane, from Ontario street up, and there is Pitchard's lane and others, if you had asked me I could have told you more.
- Q. Sometimes there is a sidewalk put down in those lanes at the request of the parties, is there not ?
- Yes, sometimes it is done by the foreman, but the City Surveyor knows nothing about it.
- Q. Well you know nothing as Road Committee chairman, or during your term of office, of any work being done in the lane ? 40
- A. No sir, there was no work done in the lane.
- Q. If any work had been done under the orders of the city you would have known of it ?
- A. Yes, when it comes before the Road Committee I would have known of it. Sometimes the city foreman put something on those lanes, but he is not supposed to do so. That might be done by laying water pipes or sidewalks.
- Q. Would that be done in the same way as in other private lanes, and

would that constitute getting possession of it by the city ?

A. No, Mr. Lesage never considered by laying water pipes it belonged to the city, It was only for the convenience of the parties living there that water was put in.

Q. And if they did not want to use it ?

A. The city had no right to collect, supposing we built a drain in this lane we had no right to collect from the parties on the other streets as it was private property. I got a law passed several years ago to change that so as to collect, but before that we had no right to collect, as it was a private lane.

Q. You remember, do you not, when plans were fyled by which the
10 Canadian Pacific Railway were to pass over the streets of the city into their Windsor street depot and the matter came up before the Council I believe ?

A. I do not recollect that. I know there was something about it.

Q. Do you not remember plans were fyled showing arches over the streets, and the city's consent was asked in order to enable the company to get the railway in in that manner ?

A. Yes, it was myself that made that motion to have the arches built over the city right to the city limits, there were few objections to Bisson street.

Q. Well now, on those plans you, I suppose knew that Blache lane was
20 to be closed by the Canadian Pacific Railway Company ?

A. Yes, I knew by the plan.

Q. As chairman of the Road Committee did you take any action to keep that lane open and report the matter to the city ?

A. No, we considered that if the company bought that lane we had no business to interfere with it.

Q. And you were chairman that time ?

A. Yes I was chairman that time.

Q. It would have been your duty to report that ?

A. Yes, if it had been a public street I would have reported it, the Cana-
30 dian Pacific Railway Company would have to put in an application to use it.

Q. At the time when this application came up before the city you knew personally that Blache lane was to be closed ?

A. Yes, by this plan Exhibit "A 1," copy of which was fyled with the Clerk of the Peace.

CROSS-EXAMINATION.

Q. What do you call a private lane ?

A. A private lane is a private lane, it is not a public street. I call a
40 private lane a lane opened by people interested to sell their lots on each side. Sometimes they open a lane into a yard, and later on some other parties buy a lot from that land and the build small houses.

Q. When you say that the Committee considered it a private lane, did the question come up before them whether it was a private or a public lane ?

A. No, the Committee had nothing to do with that, a man opens a private lane on his ground, we have nothing to do with that, there was not a word said about that.

RECORD.

*In the
Superior
Court.*

No. 156.
Deposition of
Michel Lau-
rent for Defts.
Fyled 23rd
Oct. 1890.
—Continued.

RECORD.

*In the
Superior
Court.*No. 156,
Deposition of
Michel Lau-
rent for Defts.
Fyled 23rd
Oct. 1890.
— *Continued.*

Q. What you mean, I suppose, is that they acted as if they considered it a private lane ?

A. Yes sir.

Q. The question was never considered whether it is a private lane, or not, but you considered it as a private lane, that is what you mean ?

A. Yes sir.

Q. Are you aware that there were sidewalks there laid down ?

A. That I do not know. I know there were water pipes laid in that lane.

Q. Had you ever occasion officially to examine Blache lane ?

10

A. No sir I knew it by passing.

Q. How often did you pass there in your life ?

A. A great many times, I do not know exactly how many times, but I used to go in that lane very often.

Q. Did you examine it very closely, or merely in passing ?

A. I have not been there to examine the lane specially, but some years ago I had to go there very often, there was a man worked for me and he lived in that lane, and I used to go there and get him.

Q. Are you aware that there was a judgment in the Court of Appeals twenty-five years ago declaring it public property ?

20

A. No sir, I am not aware of that.

Q. Are you aware that the plans of the Corporation of Montreal make it public property ?

A. No sir, I am not aware of that.

Q. Are you aware that it is registered as a public street in the register of the Corporation of Montreal ?

A. Not during my time.

Q. Being aware of all those things, does not form part of the Road Committee's duties ?

A. Well, supposing the street has been given to the city twenty-five years ago, I did not know anything about that, but we considered it as a private lane.

Q. You are not a lawyer ?

A. No, and I do not pretend to be one.

RE-EXAMINATION.

Q. If Blache lane appeared on the city's register, would any other lane appear on that register if it was a private lane ?

A. I cannot tell you the practice of it. The reason why we keep a register of all those names is to prevent litigation and trouble. For instance, the city might go and do some work on a lane and then it might be sued for damages. For instance, the city made some grading into a lane named Susanne street, some footpaths, etc., and the party who owned the street or lane sued the city and the city had to pay eight or ten thousand dollars.

Q. And it is your duty to keep a register of the city's lanes ?

A. Yes, and Mr. St. George has put up on every private lane a notice

saying "Private lane." So if any accident takes place in them the city of Montreal is not liable.

Q. On that register do the private and public streets appear?

A. I did not examine the register myself. I understand by the way we have it that Mr. St. George, the City Surveyor, puts on the register "private" or "public streets" as the case may be.

And further deponent saith not.

And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at enquête.

A. A. URQUHART,
Official Stenographer

10

(ENDORSED.)

Deposition of M. Laurent for the Defendant. Taken 30th May, 1890.
Fyled 23rd Oct., 1890.

RECORD.

*In the
Superior
Court.*

No. 156.
Deposition of
Michel Lau-
rent for Defts.
Fyled 23rd
Oct. 1890.
—Continued.

20

SCHEDULE No. 197.

In the Superior Court for Lower Canada.

On this thirtieth day of May in the year of Our Lord one thousand eight hundred ninety, personally came appeared, James T. Dillon, of the City of Montreal, city assessor aged fifty-years and witness produce on the part of the Defendant, who, being duly sworn, deposeth and saith:—I am not related, allied or of kind to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

30

Q. You are an assessor now for the city of Montreal in the St. Antoine Ward?

A. Yes, sir, in the St. Antoine Ward.

Q. For how long have you been an assessor?

A. This is my eighth year, for the third term. I first was in St. Antoine Ward in the year eighteen hundred and sixty-nine (1869) and I was there afterwards in the years eighteen hundred and eighty-one (1881) and eighteen hundred and eighty-two (1882,) at all events I have been there three different periods.

40

Q. As a matter of fact since eighteen hundred and sixty-nine (1869,) you have had an intimate knowledge of the property in St. Antoine Ward as assessor?

A. Yes, sir.

Q. And before that had you any knowledge of the St. Antoine Ward?

A. I had no knowledge, except as a citizen,

Q. Blache Lane or what was so called, it is situated in St. Antoine Ward

No. 157.
Deposition of
James T.
Dillon for
Defts. Fyled
23rd Oct,
1890.

RECORD. is it not ?

A. Yes it is.

*In the
Superior
Court.*

Q. Since eighteen hundred and sixty-nine (1869) what has been your opinion and what has been your knowledge in so far as Blache Lane was concerned as to its being a public or private street ?

A. I always looked upon it as a private lane.

No. 157.
Deposition of
James T.
Dillion for
Defts. Fyled
23rd Oct.
1890.

Q. What led you to think so ?

A. Because the grass was growing over it, the grass was about six inches long on each side of it, and there were a few old shantys or whatever you call them, or small houses built there, occupied by laborers, and there were two 10 or three old houses.

Q. I suppose those people use the lane as an access to their property ?

A. Yes, that is what we thought those houses were built on the rear of other property.

Q. Was the lane used in any other way than as an access to properties that abutted on it ?

A. Not that I know of.

Q. Was it ever used by the public, had the public any interest in using it ?

A. No, I should say not. 20

Q. There was no outlet ?

A. No, there was no outlet.

Q. Do you know whether the property in the lane was ever claimed by any party abutting on it, or was there ever any mention made to the assessors of parties having a right to the lane ?

A. Never, that I know of.

Q. Do you know if the city did any work in the lane ?

A. I do not think so, as far as I know I never saw any appearance of any work being done.

Q. There are other lanes in the city of the same class as Blache Lane 30 was, are there not ?

A. Yes, a great many of them, at present a large number of them.

Q. Can you mention any ?

A. I know a number of lanes. The Corporation has got up a number of notices, "This is private property. No thorough fare." I have passed dozens of them this spring.

Q. You do not assess private lane do you ?

A. No, we do not assess those private lanes.

Q. And in the same way you did not assess Blache Lane ?

A. No.

Q. If that lane was built over would you assess it against the parties who 40 built over it ?

A. Yes sir : we would.

Q. The same way as any other lane ?

A. Yes, just the same as any other lane.

Q. Will you look at the plan which has been fyled as Exhibit "B,3," and say whether you recognize it as an extract from the plan in your office ?

- A. Yes, this is the same plan as we have in our office.
- Q. That shows that Blache lane is now assess against the Canadian Pacific Railway Company?
- A. Yes, it is assessed now against the Canadian Pacific Railway Company.
- Q. If that was a public lane, public property, and the public had a right to use it, would you have assessed it against the private individual?
- A. No, we look upon it solely as the property of the Canadian Pacific Railway Company.
- 10 Q. Do you know how it became the property of the Canadian Pacific Railway Company?
- A. They bought all the properties surrounding it.
- Q. And those proprietors having the only right in it, they practically gave the company the right to close it?
- A. That was my private opinion, yes, undoubtedly, certainly, or we would not have charged the Canadian Pacific Railway Company with it.
- Q. I suppose you would refer to the matter to the Finance Committee for the collection of taxes, if they were not paid on that property?
- A. Well, we would not, but the treasurer is the party who would.
- 20 Q. What would be your action, supposing the company refused to pay taxes on that Blache Lane?
- A. If you protested against our assessing we would refer the matter to the City Attorney, that is the usual course in the office, and it would very likely be brought before the Finance Committee if we referred it to the City Attorney.
- Q. Well, no notice was ever given to the assessors by the city authorities, that that was a public lane, that the company, the Canadian Pacific Railway, in closing it had acted illegally, and that you had no right to access it against the Canadian Pacific Railway Company?
- 30 A. No sir, this is the first I have heard of it.

CROSS-EXAMINATION.

- Q. Mr. Dillon, which is your beat as assessor?
- A. The St. Antoine Ward is one of them.
- Q. And how many times in your life do you swear that you have examined Blache Lane very critically with your spectacles on?
- A. I did not use spectacles in eighteen hundred and sixty-nine (1869), but I am sorry to say I have been obliged to use them for the last six or
- 40 seven years, but I will answer your question Mr. Barnard and leave joking aside.
- Q. Was your attention ever called to whether it was a private lane or what it was when you brought your mind to bear upon it?
- A. It was about eleven times or eleven consecutive years.
- Q. What do you call your examination of the lane, did you go over every foot of ground, did you measure the grass?
- A. No, we do not measure the ground backwards and forwards, other-

RECORD.

*In the
Superior
Court.*No. 157.
Deposition of
James T.
Dillon for
Defts. Fyled
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—Continued.

- RECORD. wise we would not know the tenants who live on the lane.
- Q. What is your idea of a private lane ?
- In the Superior Court.* A. A lane that the Corporation of Montreal have no control over except to see that it is kept clean, to see that there is no deposit of filth or dirt put there. Private property.
- No. 157. Q. Your idea of a private lane I suppose is a lane which is used by the
Deposition of proprietors abutting on it ?
- James T. A. Yes.
- Dillion for Q. And they would use that lane having the right to use it ?
- Defts. Fyled A. I presume so.
- 23rd Oct. Q. And I believe the general impression is that they cannot have a right
1890. to use it unless their deeds give it to them ? 10
- *Continued.* A. That is correct.
- Q. Supposing that in this case their deeds did not give them the right how would you account for their using the lane without any objection from anybody ?
- A. I cannot answer that question.
- Q. Are you aware that a judgment of the Court of Appeals twenty-five years ago declared it public property ?
- A. No. 20
- Q. Are you aware that the City of Montreal registers it as a street ?
- A. No.
- Q. Your duties as an assessor I do not suppose called upon you to look very particularly at the documents of the Corporation, to know whether the lane is private or public property ?
- A. No.
- Q. How long did each examination of those eleven examination take ? Several hours or a whole day or two days ?
- A. No, not an hour.
- Q. Did they take only a few minutes ? 30
- A. No, it would take more than that, we have got to get the tenant's name, the rent they pay, etc.
- Q. Are you aware that the proprietors on that lane were taxed as having property abutting on the street ?
- A. They were assessed to the owners, that is the houses on that lane, there is no question about that.
- Q. You are aware that property fronting on what you would call the private lane, was assessed and taxed by the Corporation of Montreal for a number of years ?
- A. Yes, sir, but that would not make it a public property. 40
- Q. And the property was assessed by yourself ?
- A. Yes.
- Q. And how do you manage to assess property having frontage on a lane ?
- A. That does not matter, we are obliged to assess property wherever we find it, that does not make it public.
- Q. Well, I suppose your assessments must be very low ?

A. Well, our assessments are low as compared with what proprietors asked for it afterwards, there is no question about that.

Q. I suppose you would consider it a terrible disadvantage for a proprietor to have his property assessed on a lane having no street ?

A. It would certainly not be as valuable there, as if it was fronting on Mountain or St. Antoine streets.

Q. Are you one of the assessors that is accused of assessing very high or do you keep within a reasonable amount ?

A. I do not think you could accuse me of assessing too high.

10 Q. How do your assessments compare with the selling price of the property ?

A. Well, we are supposed by law to assess for the full market value, but we do not always do that, we generally lean on the side of the proprietor, leaving a margin, between what we think it might sell for and what we assess it for ?

Q. You are suppose to assess for the full value, are you not ?

A. Yes, by law we are suppose to do so, but we do not, we lean on the side of the proprietors ; we would sooner be too low than too high in our assessments in justice to the proprietor.

20 Q. And you are prepared to swear that the assessment as a rule is below the market value ?

A. Yes, sir ; I believe as a rule it is.

Q. You stated you did not leave a margin ?

A. Yes, sir ; we do leave margins, I said so.

Q. Of course you are liberal about margins ?

A. Yes, I think we are always liberal, we are always supposed to do what is just and fair.

Q. Have you ever heard of anyone selling their land at ten times its assessed value ?

30 A. No, not ten times.

Q. What is the most you ever heard of ?

A. Well in extraordinary instances I have heard of fifty or seventy-five per cent. more.

Q. Have you heard of the Mayor saying about the proprietors on Notre Dame claiming more than the value of the property than that for which it was assessed at ?

(Objected to as not arising out of the examination in chief. Objection reserved.)

40 A. I never heard the Mayor say so, I saw it in the papers that he had said so.

Q. Seventy-five per cent. off more than the assessed value is the maximum that you ever heard property sold for ?

A. I only recollect one instant where such a thing took place, that is seventy-five per cent. more than the assessed value.

Q. Do you know what you assessed the property that Mr. Rodier had on Osborne street ?

(Objected to as not arising out of the examination-in-chief. Objection

RECORD.

*In the
Superior
Court.*

No. 157.

Deposition of
James T.
Dillion for
Defts. Filed
23rd Oct.
1890.

— *Continued.*

- RECORD. reserved.)
 In the Superior Court. A. I will have to refer to the books. I forget now, I cannot speak positively.
 No. 157. Deposition of James T. Dillon for Defts. Fyled 23rd Oct, 1890. Q. Are you aware of the price Mr. Rodier got from the Canadian Pacific Railway Company when they expropriated.
 —Continued. (Objected to as not arising out of the examination-in-chief. Objection reserved.)
 A. I will have to refer to the books again.
 Q. Are you aware that he got ever so much more than you assessed the property at. 10
 (Same objection. Objection reserved).
 A. I am.
 Q. Are you acquainted with actual sales in the vicinity of property there?
 A. Yes, every sale of property in the City of Montreal is reported to us.
 Q. You say, I understand that by expropriating surrounding properties the company got possession of that lane?
 A. Yes sir.
 Q. And that you considered that that was a perfectly good title?
 A. I am not a lawyer, sir, that is my private opinion. 20
- RE-EXAMINATION
 UNDER RESERVE OF OBJECTIONS.
- Q. The price that was paid for the Rodier property was not greater than for the price of the land?
 A. None whatever.
 Q. It included a large per centage of damages!
 A. Yes, a large per cent, of damages.
 And further deponent saith not. And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at enquête.
 A. A URQUHART,
 Stenographer 30

SCHEDULE No. 198.

In the Superior Court for Lower Canada.

- No. 158. Deposition of Thomas Webb, for Defendants. Fyled 23rd Oct. 1890. On this tenth day of June, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared Thos Webb, of the city of Montreal, trader aged about seventy years, and witness produced on the part of the Defendant who, being duly sworn, deposeth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. 40
 Q. Were you born in Montreal ?

A. Yes sir, I was born in Montreal and resided here ever since, excepting a little while I travelled in the United States for nearly a year or so.

Q. Whereabouts did you live in Montreal during the whole period you have been here ?

A. I have lived where I am living now, forty (40) years in one place.

Q. And where is that place ?

A. On St. Antoine street.

Q. That is quite close to the lane that is known as Blache lane, is it not ?

A. Yes, I suppose I am about three hundred feet (300) from it or so.

10 Q. You have known that Blache lane for a great many years ?

A. Yes, I have known it for fifty years.

Q. You lived in it yourself, did you not ?

A. No sir, I never lived there.

Q. But you know who has lived in it and how it has been utilized ever since ?

A. I know pretty well how it has been occupied since my recollection.

Q. You know how it happened to be opened originally ?

A. I do not know as I could state originally what caused the opening of it only what I heard.

20 Q. The people by the name of Blache used to live there, did they not ?

A. Yes, and I understood they were the owners of it, I understood so.

Q. That was the ground in the lane itself you mean ?

A. Yes, that is how it derives its name.

Q. They had a grocery store there, had they not, at the corner ?

A. Yes, the old man kept a grocery store.

Q. Was there any difficulty about accommodation there when they had the grocery store for people coming to the grocery on business ?

A. Just the same as any other grocery.

Q. Where did they put up when they came from the country ?

30 A. I understand they had a place there to entertain farmers coming from the country, because they used to come in from the country the night before.

Q. And what did they do then ?

A. They stopped there for the market the next day.

Q. Did they use this lane for that purpose ?

A. Yes, they used it for putting in their carts and things.

Q. Was that privilege given to them by the Blache people ?

A. Yes, he kept the lane for that purpose for them, as I understand it.

Q. But it still remained his property ?

40 A. I never seen any deeds so far as I know, but I should consider it was his property.

Q. Well, there was a fence put up around it by those Blache people later on around the lane, was there not ?

A. There was a fence always around to my knowledge.

Q. Well, latterly, that fence has been broken down, has it not ?

A. Yes, it has been taken away.

A. How did that happen, do you know ?

A. I suppose that happened through neglect on the part of the Blache

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family, or the owners of it, that is as far as I know.

A. Did the people who live in the lane utilize it or use it to go in and out of their property?

A. Yes, for a long time.

Q. That is what the lane was used for, latterly, for those people to go in and out.

A. Yes, that is what it was used for.

Q. Do you know whether the public had any rights in it?

A. I never knew any hindrance to it.

Q. There were no gates to hinder the public from entering it? 10

A. No, I never heard of any hindrance?

Q. But, as a matter of fact, Mr. Webb, did people who had no interest in going to that lane, ever use it to go in and out, or use it for any other purpose?

A. Only those who lived in it, to my knowledge.

Q. Then the general public had no interest in it?

A. Well, there was no hindrance to the public.

Q. Well, there was no interest taken in it by the public?

A. No.

Q. Well, you, yourself, did you ever consider it a public lane, from what you know of it? 20

A. Well a public lane is a Corporation Lane, and I cannot answer for the Corporations actions. The Corporation, I believe, makes and forms public roads.

Q. Did you ever know of them making this road a public road?

A. No, I never heard of them doing any such thing.

Q. There was water put in once, was there not?

A. Yes, There were people supplied with water pipes.

Q. Do you know if that was done at the request of anybody?

A. It was done at the request of the proprietor who lived in it.

Q. Do you know who the proprietor was? 30

A. Yes, a man by the name of Tindsley.

Q. That was in order to give him water for his house, was it not? It was not for the general public?

A. I know they applied for it and were obliged to pay the water, and they said they would not pay the water unless they had water put in.

Q. They are those who used it for their personal use?

A. Yes, for their personal use?

Q. Then, from your knowledge and recollection, the only use that was ever made of that lane was made by parties who owned property or leased property in it for the purposes of going in and out to their properties? 40

A. That is all that was ever used for, to my recollection.

Q. And you remember it in that way ever since you have been there?

A. Yes, ever since I have been there, it was only used by the people who owned it or lived on it.

Q. Did the whole property belong to one man, originally, and did he sell it up—I mean the lane itself and the property surrounding it—did it originally belong to one man?

A. The way I always understood it was that the whole of that lane belonged to the Blache Estate.

Q. Did they divide it up, do you remember ?

A. No, I never knew of them to divide it up.

Q. Do you think they would have a right to it yet ?

A. Well, I think if I was them I would claim it.

Q. Do you know where they are, or where they are living now, where any of them are living now ?

A. No, the son died here two years ago.

10 Q. Are there any other relations do you know ?

A. Yes, there are some daughters.

Q. Where do they reside ?

A. They used to live on Dorchester street.

Q. Do you know that the Canadian Pacific Railway Company have now built their station over that lane ?

A. Yes, they occupy over it now.

Q. Do you know, as a fact, that the Canadian Pacific Railway Company have bought the property all round it ?

20 A. Well, I only heard they bought it, I never saw any transactions of deeds, but I understand they bought it.

Q. Assuming that the Canadian Pacific Railway Company have bought property all around the lane, so that no one would require it to go in and out of their properties, would you consider that the public generally had suffered any damage through the closing of the lane ?

A. I consider that no one has any right to damage, excepting those who were bounded by it.

CROSS-EXAMINATION.

30 Q. You said that for the last fifty (50) years that Blache lane was opened there without any hindrance at all to the public ?

A. Yes, it was opened without any hindrance to the public.

Q. Did you see the public going to that lane often ?

A. I never knew any hindrance to anybody going into it, and I have been living there close by. I have been in it myself plenty of times.

Q. Did you ever notice any sidewalks there in that lane ?

A. No, I do not think so, only what the proprietors in the street put, a plank or so along.

Q. Did you notice any drains being placed there ?

40 A. No, I do not remember that I noticed any drains being placed there.

Q. Did you notice any gas pipes being put in there ?

A. No, I do not remember any gas pipes being put in.

Q. Besides the man that you mentioned, Tindsley, who asked for the water, do you know anybody else living on that lane got the use of the water ?

A. I could not say about the water, I know there were others living there.

Q. But as far as you remember you say that the water was placed there in

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that lane and any proprietor could use it ?

A. Yes, it was placed there and any proprietor could use it.

Q. Just the same as the Corporations does for other streets ?

A.—Yes, just the same as the Corporation does for any other streets in the city.

Q. Do you remember the width of Blache Lane ?

A. No, only to guess at it.

Q. Was there any grading made in that lane, any paving or grading, do you remember ?

A. None to my knowledge.

Q. And for the last fifty (50) years I suppose those properties have¹⁰ changed hands. I mean the properties that you mentioned as belonging to Blache ?

A. The Blache property, I understand, has changed hands several times,

Q. Do you know Mr. Walker, the owner of the property there ?

A. Yes, I know Mr. Walker, owning property on St. Antoine street.

Q. Do you know whether he has got the front or rear of his property on Blache Lane ?

A. I could not say. If a man gets deeds of a place he gets boundary in his deeds, whenever I got deeds I always got the boundary given to me also.²⁰

Q. You never examined that ?

A. No.

RE-EXAMINED.

Q. The water that you spoke of, it was not put in until application was made by one of the proprietors ? Is not that a fact ?

A. Well, that is what I said. They would not pay for water until they got it.

Q. But the water was only put in one of the proprietors asking for it, is that not so ?³⁰

A. Well, to my knowledge, only one asked for it, but they might have all asked for it.

And further deponent saith not.

And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at enquête.

A. A. URQUHART,
Off. Stenographer.

(ENDORSED.)

Deposition of Thos. Webb for the Defendant. Fyled 23rd Oct., 1890.⁴⁰
 Taken June, 1890.

On this seventh day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, Percival W. St. George, of Montreal, aged _____ years, and witness produced on the part of the Intervening party, who being duly sworn, deposes and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

*In the
Superior
Court.*

No. 159.
Deposition of
Percival W.
St. George for
Intrs. Filed
25th Apr.
1890.

10 Q. You are the City Surveyor of the City of Montreal, and you were acting in that capacity for the last eight or ten years?

A. About seven years, I think, since eighteen hundred and eighty-three?

Q. Do you know Blache lane, the street in question in this case?

A. I know Blache lane, yes.

Q. Will you take communication of this plan, exhibit number one, and state whether this shows the actual position of Blache lane, and also the rails of the Atlantic and North-West Railway Company, and also other buildings and so on?

A. This shows Blache lane. I do not see about the Company's buildings there, only Blache lane.

20 Q. This plan was prepared in your department?

A. This plan showing Blache lane with the surrounding properties. That is all I see on this plan.

Q. It was prepared in your department—in the Road department?

A. Yes, not under my orders, I did not order it all. It was prepared there.

Q. Will you take communication of Exhibit number two, and state whether this is a true extract from the homologated plan?

A. Yes, it is.

Q. It was prepared in your department?

30 A. Yes, the copy of the homologated plan.

Q. Will you explain what was the object of the homologated plan as far as Blache lane was concerned?

A. It was an extension of Donegani street through to Mountain street.

Q. And the object also was to widen Blache lane?

A. There was no intention about Blache lane at all. It was merely an extension of Donegani street.

Q. The width was originally 28 feet.

A. The width of what?

Q. Well, the continuation of Donegani street,—Blache lane?

40 A. Donegani street was to be fifty feet and there was a portion of the land in the middle of the block called Blache lane, twenty-eight and a half feet wide.

Q. Therefore, in order to get the projected widening of Donegani street, they would have to pass through Blache Lane, and to widen that lane to the same extent, that is to fifty feet?

A. Yes, on both sides of the lane.

Q. Do you know whether in accordance with that new line from Blache

RECORD. Lane the expropriation has taken place ?

A. Yes, one property—Walker's.

In the Q. Do you remember the year—about ?

Superior A. Not exactly. I cannot remember the year. I think it was about
Court. five years ago ; perhaps like that. Our books will show you exactly. I could
not tell you exactly the year.

No. 159. Q. Now, after the expropriation, do you know whether a building has
Deposition of Percival W. been erected on the new line, that is on the width of fifty feet ?

St. George for A. Yes.

Intrs. Fyled Q. That is to your personal knowledge ?

25th Apr.

A. Yes.

1190.

— *Continued.*

Q. Do you know what the Company has done as far as Blache Lane is
concerned since that expropriation has taken place ?

A. They have covered it up by a bank.

Q. Well, have you seen buildings there lately ?

A. No, I have not seen it lately. I saw them working at it, but Mr.
Barlow made a survey of it.

Q. Have they got any rails there ?

A. I do not know. I have not seen it lately at all.

Q. Well, you sent Mr. Barlow to make that survey ?

A. Yes.

Q. Well, that Blache lane, has it been considered to be a street, to your
personal knowledge, for many years ?

A. No sir, it was not a public street. It was considered to be a private
lane by the City since and before I was City Surveyor.

Q. Well, it was open to the public ?

A. Yes, a *cul-de-sac* for the properties on both sides.

Q. Do you know whether certain works of the Corporation have been
done there ?

A. Yes, I believe they laid a sidewalk there without any authorization. 30

Q. They have also placed water pipes there ?

A. I do not know about that.

Q. Any macadamizing or grading ?

A. No, I do not know about that.—not to my knowledge—not during
my time.

Q. For how many years do you know this has been open to the public ?

A. For a great number of years.

Q. About ?

A. Well, it was open before I came there in eighteen hundred and seven-
ty-five, and before that too. For a long time it was the old lane, old lanes are 40
open to the public, but that does not make them public.

Q. Were there buildings also erected on that Blache Lane on the old line ;
just the width of twenty feet ?

A. Yes, there were other buildings there ; brick buildings.

Q. And by the projected street they were to be expropriated ?

A. Yes.

CROSS-EXAMINED.

RECORD.

Q. This sidewalk you say was made without any authorization?

A. It was made before my time. I am afraid that there are several buildings that they have put up on private property. We always considered it private property.

Q. In your time, you never renewed that sidewalk?

A. No.

10 Q. So that when you speak about a sidewalk being laid there by the city, you were speaking by hearsay?

A. No, it is also on record in the annual report of the City Surveyor.

Q. Is there a sidewalk there now?

A. I have not seen it.

Q. No, I mean was there on the land so taken for the Railway Company?

A. A small, little, narrow sidewalk.

Q. A single board?

A. Two or three planks wide, I think.

Q. That was not laid by you?

A. No.

20 Q. It must have been laid by the proprietors?

A. No. As I have said, in the annual report of the City Surveyor it mentions having done work in that lane, I think. They have it on record in one of the papers. I forget the year exactly. When the city record was made by my predecessor Blache lane was simply Blache Lane, with no proprietorship to it.

Q. You can verify between this and two o'clock when that sidewalk was laid?

A. Yes.

30 And further the deponent saith not, and this is true an correct transcript of the shorthand notes taken at enquête by

M. E. DOHERTY,

Stenographer.

(ENDORSED.)

Deposition of Percival W. St. George for Intervenants. Fyled 25th April, 1890.

Paraphed A. B. L.

SCHEDULE No. 200.

RECORD.

*In the
Superior
Court.*No. 160.
Deposition of
Patrick
O'Reilly for
the Intrs.
Filed 25th
Apr. 1890.

On this seventh day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Patrick O'Reilly, of Montreal, aged forty-five years, and witness produced on the part of the Intervenant, who, being duly sworn, deposeth and saith;—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. O'Reilly, you are the Secretary of the Road Committee? 10

A. Yes.

Q. For the last how many years?

A. Eight or nine years.

Q. You are in possession of the minutes of the Road Committee, I think?

A. Yes.

Q. Have you got anything concerning Blache street or Blache lane, and if so, will you give us what you have there?

A. I have a minute of a letter of Mr. Thomas Darling protesting against the closing of Blache street for the Railway Company, Defendant. It was referred to the City Surveyor for a report on the 20th of March, 1889. Again 20 on the 3rd of April, 1889, I have got a resolution of the Road Committee that the Atlantic and North-Western Railway Company be requested to redeem the promise made by Mr. Hennecker, their solicitor, to furnish the city with a written guarantee whereby the said Company would bind themselves to indemnify the city for all claims, actions, etc., that might arise from the widening of their line across Mountain Street and the closing of Blache Street. I have got a minute of a letter from the Atlantic and North-Western Railway Company acknowledging the receipt of that resolution of date the 15th of April, 1889. On the 8th of May, 1889, I have got a minute of the reception of a letter from Mr. William Walker in reference to the closing of Blache 30 Street by the Atlantic and North-Western Railway Company, and a resolution on the said letter resolving that the letter of Mr. William Walker in reference to the closing of Blache Street be referred to the City Attorney for his opinion. On the 14th of August, 1889, letters of Messrs. Walker and Thomas Darling in reference to the closing of Blache street were again submitted for the opinion of the City Attorney, and it was resolved that the City Attorney be instructed to protest the Atlantic and North-Western Railway Company *in re* the closing of Blache Street, and to intervene on behalf of the City in a case, now pending before the court.

A. And that was the last? 40

A. Yes, that was the last.

Q. Have you anything in your minutes about that protest that was served in 1888, I think?

A. I do not think so.

Q. Would you be kind enough to prepare copies of extracts of these minutes and fyle them?

A. I will.

Q. Will you let me see again about that resolution that was sent to the Atlantic and North-West Railway Company?

A. Resolving that the Atlantic and North-West Railway Company be requested to redeem the promise made by their solicitor, Mr. Henneker to furnish the City with a written guarantee whereby the said Company would bind themselves to indemnify the City for all claims, actions, etc., which might arise from the closing of Blache Street.

Q. Was that promise of Mr. Henneker in writing?

A. I do not know.

10 Q. Was anything done as mentioned in this resolution about the guarantee; any deed passed?

A. No.

Q. This was left in abeyance, and still is, is it not?

A. Yes, we sent them this resolution of the committee and they sent a letter acknowledging the receipt. They did not make any promise.

Q. You have all these letters and resolutions, and you will fyle copies and extracts therewith?

A. Yes.

20 Q. Now, for the last eight years that you were in the employ of the City, do you know whether that street has been open to the public?

A. Yes.

Q. Do you know whether certain corporation works has been done in that street?

A. I do not know.

Q. Do you know whether there is a sidewalk on that street?

A. Oh, not much.

Q. Do you know whether there was any macadamizing done there?

A. I do not know.

30 Q. You had a personal knowledge of the Quinquennial expropriation when Mr. Walker was expropriated there?

A. Yes.

Q. Do you know whether he built on the new line, the homologated line as given by the City?

A. Yes.

Q. Will you take communication of these three or four papers being Exhibit Four at Enquête, and state whether this paper comes from the Road Department, signed by Mr. St. George. Is it an official document from your Department?

A. Yes.

40 Q. Will you explain what is that first document?

A. Well, it is what we call a procès verbal from Mr. Walker. He has built on the homologated line of the street, and it would have entitled Mr. Walker to get paid under the Quinquennial law of expropriation which takes place every five years.

Q. This procès verbal was given to you in what year?

A. In December 29, 1885.

Q. Did the Quinquennial expropriation commence that year?

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A. That was at the end of 1885.

Q. Now, the other paper annexed thereto, you know that also?

A. Yes, it is a description of the property.

Q. You see Mr. Walker's property is there?

A. Yes.

Q. And the third one is a plan?

A. A plan of the strip of land which we took off Mr. Walker.

Q. You notice on that plan that Blache lane is mentioned there as being Blache Street?

A. Yes.

Q. And the official number of Mr. Walker is six hundred and sixty-one of what ward? 10

A. St. Antoine Ward.

Q. Do you know what was the projected widening of that street; how many feet?

A. I do not, sir; I could not exactly say.

Q. Well, since that expropriation has taken place, do you know whether an alteration has been made by the Railroad Company, Defendant, in that street?

A. Yes. 20

Q. What have they done?

A. Well, the street is closed.

Q. And what else?

A. That is all I know about it. I just see it closed as I pass.

Q. It is closed from what point to how far?

A. I could not say that.

Q. Do you know for what object it was closed by the Railroad Company, Defendant?

A. Well, it was closed by the abutment of their bridge.

Q. It was for the object of occupying the place there for their railway purposes? 30

A. Yes.

Q. Do you know whether Mr. Walker or some other proprietors there have been prevented from using the street by the Railway Company, Defendant.

A. Well they cannot use the street now; there is no street there.

Q. Therefore, that property of Mr. Walker's that was expropriated there is fronting on no street at.

A. Yes.

Q. It is fronting on the property that the company occupies? 40

A. Yes.

Q. You know there is a number of other properties on that street?

A. Well, there are.

Q. Well, this plan shows that there are some?

A. Yes.

Q. Well, what applies to Mr. Walker, applies also to the other proprietors as far as this obstruction is concerned?

A. Certainly.

Q. Now, Mr. O'Reilly, you know also, that for the purpose of defraying the cost of that expropriation, an assessment roll has been made?

A. Yes.

Q. I think you were acting at the time as the Secretary of the Commissioners?

A. Yes.

Q. You prepared that roll under their instructions?

A. Yes.

10 Q. Do you know who paid for that improvement?

A. The proprietors on Blache street.

Q. And perhaps a little further too?

A. No.

Q. Will you explain the reason why the whole cost was defrayed by the assessment of the proprietors of Blache lane only?

A. Because that is the law, the Quinquennial law at that time ordered that the proprietors on the street were to be assessed.

Objected to this evidence, witness not being competent to prove the law.
Objection reserved.

20 Q. Well, am I to understand that that was what you understood in making the roll?

A. Yes.

Q. And the proprietors have paid the amount?

A. Yes.

Q. Do you know whether by that alteration made by the Company, Defendant, damages have been caused to the city by the fact that this was a public street?

A. I do not know.

30 Q. Well, did not the fact of closing the street injure the proprietors there.

A. I could not say that either.

Q. Well, the fact of Mr. Walker having the street opposite his property and now having no street at all is detrimental to him?

A. Yes.

CROSS-EXAMINED.

Q. Will you please produce all the letters you have referred to in the minutes which you have mentioned?

40 A. Yes, I will fyle them Monday morning.

Q. Were you ever on Blache Lane yourself?

A. Yes.

Q. When?

A. Oh! hundreds of times.

Q. When?

A. Four and five years ago, and six years ago—ten years ago, fifteen twenty years ago.

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— *Continued.*
- Q. Were you then in the employ of the Corporation ?
- A. Before I was but afterwards, I was on Blache Lane in the employ of the Corporation at the time we expropriated that piece of land of Mr. Walkers.
- Q. What kind of a lane was that ?
- A. Well, an ordinary lane.
- Q. Just like any other back lane, I suppose ?
- A. Just like any other lane, yes.
- Q. Used for depositing ash barrows and that sort of thing ?
- A. No, sir. There were houses on it and people living in it.
- Q. What houses ?
- A. Well, there were two houses at the end of the lane furthest from Mountain street. 10
- Q. Whose house ?
- A. I could not say who owned them.
- Q. You say furthest from Mountain street.
- A. Yes.
- Q. These are the houses shown on the plan, exhibit one ?
- A. Well, I cannot find Blache Lane here at all.
- Q. Well, look at exhibit number two, and say if it is shown on that plan ? 20
- A. Yes.
- Q. I suppose you had business that took you there ?
- A. Yes.
- Q. What was that ?
- A. Well, I went to see people that lived there.
- Q. When you say that lane was open to the public for the last eight or nine years, you speak from the fact of yourself having gone there to visit persons who lived in the lane ?
- A. Yes.
- Q. That is not on what you base your opinion to say it was open to the public ? 30
- A. Well, it was open to the public as long as I remember.
- Q. That is to say, any people who had business there could go there and see the people there ?
- A. Yes.
- Q. That is your reason for saying it was open to the public ?
- A. Yes.
- Q. The lines on that plan, exhibit No. two—the homologated lines taken from the homologated plan, show the extention of Donegani street through to Mountain street. 40
- A. Yes.
- Q. And when you speak of Mr. Walker having built on the line, you refer to this line shown on that plan ?
- A. Yes.
- Q. And do you know to your own personal knowledge that he built on the line. Did you see it ?
- A. The only reason I know he built on the line is, because he got a certi-

ificate from our office when we expropriated the lane.

Q. You never verified that yourself.

A. No.

Q. You did not expropriate any of the proprietors except Mr. Walker?

A. That is all sir.

Q. Do you swear that all the proprietors abutting on Blache lane paid the tax?

A. Well I will swear they were all taxed.

Q. All mentioned in the assessment roll?

A. Yes.

10 Q. But you will not swear that they have all paid.

A. No sir.

Q. Was anything further ever done by the Corporation with the exception of expropriating Mr. Walker?

A. There was no expropriation there.

Q. And nothing else done for the purpose of getting it for expropriation?

A. No.

Q. You would know if any action had been taken to carry out the widening?

A. Yes, there was no action taken.

20 Q. Will you take communication of this plan attached to exhibit "A 4" and state if the lines drawn in red there are the same lines as shown on exhibit number two for the continuation of Donegani street?

Q. Well, they appear to me to be the same lines.

Q. Have you no other minute in your minute book referring to the intervention of the city in this case?

A. That is all that I can find.

Q. Do you know of any agreement or understanding between some of these proprietors and the city as to this intervention?

A. No, sir.

30 Q. You do not know on what terms the city agreed to take these proceedings?

A. Well, I do not know any more than that the question came up before our committee and the committee thought that they should intervene on behalf of the citizens?

Q. Well, did these citizens give the city any guarantee as to the expenses and so forth?

A. Not that I am aware of.

Q. You do not know?

A. No.

40 Q. Now, these minutes you have referred to are all the minutes you can find relating to Blache Lane?

A. I think they are about all.

Q. You made a search for that purpose?

A. Well, I looked over them this morning here about as well as I could?

Q. There is no work done in the streets of Montreal without the authorization of the committee, is there?

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No. 159.
 Deposition of
 Percival W.
 St. George for
 Intrs. Fyled
 25th Apr.
 1190.
 —Continued.

- A. Well, the City Surveyor is the gentleman that conducts that.
- Q. Yes, you must either have the authorization of the City Surveyor or of the Road Cymmittee?
- A. Yes.
- Q. Was the promise of Mr. Hennecker referred to in the minutes of the 3rd of April, 1889, in writing?
- A. No, sir.
- Q. Is there any minute embodying that promise?
- A. No, sir.
- Q. It was a matter between Mr. Henneker and the Chairman?
- A. Yes, the Chairman and Mr. St. George. I was given to understand there was such a promise, and it was stated before the committee that there was a promise of the Company, Defendant, of having this promise in writing and the minute was made on that. 10
- Q. Now, the minute of the 20th March, 1889, the letter protesting against the closing of Blache street, appears to have been referred to the City Surveyor for a report?
- A. Yes.
- Q. Did you make the report?
- A. Yes. 20
- Q. Have you that report here?
- A. Mr. Ethier has it. I will fyle it.

RE-EXAMINED.

- Q. You said in your cross-examination, that the widening of Blache street was nothing but the continuation of Donegani street?
- A. Well, I said it appears to me on the plan.
- Q. It is what the plan shows as far as you can see?
- A. Yes. 30
- Q. Then, the projected improvement, that is to say, the widening of Blache street, the beginning of it was Mr. Walker's expropriation?
- A. Yes.
- Q. And it was to be continued in the future?
- A. Yes.
- Q. Do you know whether Blache street was the only outlet for these proprietors that you see on the plan there, that is, Mr. Walker, and three or four others?
- A. That was the only outlet. It was a *cul-de-sac*. The property that I went to visit there on the north side of the street has no other outlet but Blache street. 40
- Q. And it was since you were there that the Company closed this street?
- A. Yes.
- Q. Did you notice any civic members on that street?
- A. Well, I could not exactly say.
- Q. Did you notice any lamp, posts or gas?

A. I did not notice.

And further the deponent saith not; and this is a true and correct transcript of shorthand notes taken at enquête by

M. E. DOHERTY,
Stenographer.

(ENDORSED.)

Deposition of Patrick O'Reilly for Intervenant. Fyled 25th April, 1890.
Paraphed A. B. L.

RECORD.

*In the
Superior
Court.*

No. 160.

Deposition of
Patrick
O'Reilly for
the Intrs.
Fyled 25th
Apr. 1890.
Continued.—

10

SCHEDULE No. 201.

In the Superior Court for Lower Canada.

Present :—

20

THE HONORABLE MR. JUSTICE MATHIEU.

No. 161.
Deposition of
John Brophy
for the Intrs.
Fyled 25th
Apr. 1890.

On this seventh day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, John Brophy, of Montreal, aged 47 years, and witness produced on the part of the Intervener, who being duly sworn, deposeseth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

3) Q. Mr. Brophy, you are the official on the Road Department for drawing plans, and having also the custody of the plans ?

A. Yes.

Q. You have in your possession the homologated plan for St. Antoine Ward showing Blache street ?

B. Part of it.

Q. Now, is this exhibit number two, a true exhibit of that homologated plan ?

A. Yes.

Q. Will you explain us the meaning of this plan here showing Blache lane with twenty-eight then fifty, as far as the widening is concerned ?

40 A. The figure twenty-eight refers to the old lane, the width of the lane itself—Blache lane ; and the figure fifty will be the lane when it is widened into a street, the continuation of Donegani street.

Q. When was that plan homologated, Mr. Brophy ?

A. On the 27th March, 1887.

Q. By the Superior Court ?

A. Yes ; by the Superior Court.

Q. Now, since the homologation of that plan, do you know whether the

RECORD.

*In the
Superior
Court.*

No. 161.

Deposition of
John Brophy
for the Intrs.

Filed 25th

Apr. 1890.

—Continued.

expropriation has taken place there on Blache street ?

A. No ; I know that a portion belonging to a man named Walker was expropriated.

Q. Has a portion of the projected line been expropriated ?

A. No ; I believe not.

Q. Do you know whether that street has been closed since ?

A. No ; I could not say anything about that.

Q. Now, have you got any other plan showing Blache street besides that one—previous to that one ?

A. Well, I have an old plan that was made by John Adams, but it does not mention Blache lane at all. But the position of it is about the same on this plan of Adams. 10

Q. How is it mentioned there ?

A. It is called a street.

Q. Does it correspond to the portion of the homologated plan, called and designated there as Blache lane ?

A. Just about the same place.

Q. And by the scale you see it is the same place ?

A. It is just about the same place.

Q. Is it the same width ?

A. Well, I did not measure it ; but I should say it is about the same width. 20

Q. It is also about the same length ?

A. I could not tell that ; I did not measure the length. I should say it was just about the same.

Q. Did you see any buildings fronting on that street there ?

A. Yes ; on the north-west side.

Q. Now, what else have you got also by the surrounding places to say that it is the same place ?

A. Well, it is situated between St. Antoine st. and St. Janvier, that is to say Osborne street at that time. 30

Q. Well, can you trace Donegani street there ?

A. No ; there is no sign of it.

Q. Is there any sign of Bisson street ?

A. No ; I should say not.

Q. Is there of Mountain street ?

A. Yes ; the entrance of the little lane.

Q. The entrance is by Mountain street ?

A. Yes.

Q. They do not give the name of the street though ? 40

A. No ; they say "street."

Q. Well, you say about the same place. Have you any doubt that it is the same place by what you saw there ?

A. I have no doubt it is the same place.

Q. Now, since how long are you in the Corporation, Mr. Brophy ?

A. Since 1875.

Q. Well, since 1875, do you know that Blache street has been open to the

public ?

A. No ; I do not know.

Q. You have never been on the spot there ?

A. No ; I never was.

Q. Only you know it by the plan ?

A. Yes ; just by the plan.

Q. Do you know whether the Company, Defendant, has taken possession of that street ?

A. No

10 Q. Has some one been deputed to investigate that for your department ?

A. Yes ; I believe so.

Q. Do you know that Mr. Barlow was sent to make an examination of it ?

A. Yes.

Q. These plans have been there in the Corporation, to the best of your knowledge, I suppose, since 1875, that is to say, the Adams' plan ?

A. Yes.

Q. And I think this plan has been used as a guide for tracing a great many plans of the city ?

A. No ; we did not use this plan.

20 Q. No, but before 1875 ?

A. No ; I cannot say it was used.

Q. Did you ascertain whether the scale that is mentioned there is correct. You have to take it for what it is inscribed for ?

A. Yes.

CROSS-EXAMINED.

30 Q. Now, Mr. Brophy, on the homologated plan, is it not a fact that the homologated lines showing the street between Windsor street and Mountain street crossing Bisson street, are the homologated lines of Donegani street ?

A. Well, I know that if the street was open through to Mountain street it would be called Donegani.

Q. The object of this line is in the event of its being open to Mountain street ?

A. Yes ; it would embody Blache lane in it.

Q. Blache street was in the way ?

A. Yes, we took it in.

Q. You would not widen Blache lane unless you carried Donegani street through ?

40 A. No, of course not.

Q. Will you verify whether the little street that you identify on Adam's plan lane, is of the same width as Blache lane shown on the homologated plan ?

A. Well, it appears to be the best of my belief.

Q. Well, can you not verify it by actual scaling ?

A. Well, I have no scales here.

Q. I suppose, as it is shown there on Adam's plan, Mountain street and

RECORD.

*In the
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Court.*

No. 161.

Deposition of
John Brophy
for the Intrs.
Filed 25th
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Continued.—

RECORD. St. Antoine street, are in the same places as at the present day ?

A. Just about.

Q. And Janvier is in the same place as Osborne ?

A. No ; Janvier has been widened, and consequently cannot be the same.

Q. Do you know which side it was widened on ?

A. No, I cannot say. On both sides I think.

And further this deponent saith not.

And this is a true and correct transcript of Shorthand notes taken at en-
quête by

M. E. DOHERTY,
Stenographer.

10

(ENDORSED.)

Deposition of John Brophy. Fyled 25th April, 1890.
(Paraphed), A. B. L.

20

SCHEDULE No. 202.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

On this seventh day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared John Barlow, of Montreal, 30 aged 40 years and witness produced on the part of the Intervener, who, being duly sworn, deposeseth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You are employed in the same department as Mr. Brophy as assistant

A. Yes, I am the Assistant City Surveyor.

Q. Do you know the homologated plan there showing Blache street ?

A. Yes.

Q. You know also that an expropriation in accordance with this plan has 40 taken place ?

A. Yes.

Q. Mr. Walker's property has been expropriated ?

A. Yes.

Q. Now, will you explain to us the plan marked exhibit number one ?

A. That is the Copy of the plan that the City Assessors received from the Atlantic and North West Railway Company for the purpose of assessing their

property.

• Q. Do you see Blache street there ?

A. I see the position of it marked by the lines.

Q. Well, by this plan is Blache Lane included amongst the property of the Company Defendant ?

A. It is.

Q. Now, did you go on that spot lately and ascertain whether Blache street has been closed by the Company ?

A. Yes, I did.

10 Q. Will you state what date you went there ?

A. About a month ago.

Q. And what portion, by the homologated plan there, has been closed and taken possession of by the Railway Company, Defendant ?

A. The whole of Blache street right up to the homologated line of Mountain street.

Q. And for what purpose did they closed that street ?

A. For railway purposes.

Q. They are in open possession of that street entirely ?

A. Yes.

20 Q. Did they do any work there ?

A. Yes, they had a wall across the face of it, and their railway works, embankment and trestle works.

Q. Well, then, with this possession, they have taken, is it possible now for the proprietors of both sides of Blache street to use the street for the same object and with the same facility as before ?

A. No, it is not.

Q. Is it possible for them to use it all ?

A. No, sir.

Q. Is there any outlet for the north side proprietors on that street ?

30 A. There is an outlet on St. Antoine street.

Q. Well, I mean on the north side ?

A. There is an outlet on Blache Lane side.

Q. In that street did you notice any corporation work before it was closed ?

A. I cannot say I did.

Q. Do you know this plan of John Adams ?

A. I have seen it.

Q. Do you trace the same spot of Blache street on that plan ?

40 A. Yes, there is a line running from Mountain street in an easterly direction which is in about the same position as Blache Lane occupied.

Q. Now, is it designated under the name of lane or street there ?

A. It is called a street. It just occupies the same place in Adams' plan as on the homologated plan.

Q. Well, to guide you in saying that it is the same place, you take the scale from St. Antoine street and Mountain street up to Blache Street ?

A. Yes.

Q. And you find it is in the same position ?

RECORD

*In the
Superior
Court.*

No. 162.
Deposition of
John Barlow
for the Intr.
Filed 25th
Apr. 1890.
— *Continued.*

RECORD

*In the
Superior
Court.*No. 162.
Deposition of
John Barlow
for the Intrs.
Filed 25th
Apr. 1890.
— *Continued.*

A. Yes.

Q. Well, do you know whether the name of the street has been changed on the homologated plan of the land ?

A. Yes, it was called a lane on the homologated plan.

Q. And there you find it is called a street ?

A. Yes.

Q. Do you know whether that street has been open to the public for a long time ?

A. I know it has been open for a few years, but not to my own personal knowledge for many years. I am not acquainted with that section of the county. 10

Q. Do you know that there are properties fronting on that street by the homologated plan ?

A. Do you mean houses ?

Q. Yes.

A. Yes.

Q. Do you know there are no other means of egress than by that street ?

A. I do not know it.

CROSS-EXAMINED.

20

Q. Did the city assess the Company, Defendant, in accordance with that plan ?

Q. Were you ever in Blache Lane yourself ?

A. Yes.

Q. When ?

A. In 1885.

Q. What were you doing there ?

A. I was running the homologated line of Donagani street.

Q. That is the only occasion on which you were there ?

A. I went afterwards to verify the buildings erected on that line. 30

Q. Those are the only two occasions on which you have been in Blache Lane ?

A. No, I may have been there at other times.

Q. But you do not recollect any other time ?

A. No, I do not.

Q. You never went there on business ?

A. Business took me there ; business of the Corporation.

Q. You never did any work in that lane for the Corporation except running the line of Donegani street ? 40

A. That is all.

Q. The only experience which you have on which to base your statement that you have known this lane to be open to the public for a number of years is that ?

A. That is all, except from the City Surveyor's reports.

RE-EXAMINATION.

Q. You remember that you were there about a month ago to see what the Company had done there ?

A. Well, I was not in Blache lane, because it was not there.

RECORD.

*In the
Superior
Court.*

RE-CROSS-EXAMINED.

10 Q. By the way, Mr. Barlow, is not the work now covering Blache lane a solid embankment, trestle filled in ?

A. I believe it is an earth embankment.

Q. That is to say a trestle filled in with earth surrounded by a masonry ?

A. It is not filled in with earth ; it is paid up.

Q. At the present time there is an embankment of earth around it ; it is all a solid bank ?

A. Well, the outside trestles are not surrounded with earth.

Q. Then you swear that the outside trestles are on Blache lane ?

A. No, sir, I do not.

20 Q. I ask you if that part of the railway trestle which is over Blache lane is not a solid embankment ?

A. Yes ; I did not understand you.

And further this deponent saith not, and this is a true and correct transcript of shorthand notes of his deposition taken at Enquête by

M. E. DOHERTY.

Stenographer.

(ENDORSED.)

30 Deposition of John Barlow. Taken the 4th March, 1890. Fyled 25th April, 1890.

(Paraphed), A. B. L.

SCHEDULE NO. 203.

In the Superior Court for Lower Canada.

40

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

On this seventh day of March, in the year of Our Lord, one thousand eight hundred and ninety ; Personally came and appeared, John L. Brodie, of the City of District of Montreal, Real Estate Agent, aged forty-five years, and

No. 163.
Deposition of
John L.
Brodie for the
Intrs. Fyled
25th April,
1890.

RECORD. witness produced on the part of the Intervenant, who being duly sworn, deposes and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

*In the
Superior
Court.*

No. 163.

Deposition of it ?

John L. Bro-

die for the

Intrs. Fyled

25th Apr.

1890.

Continued.—

Q. Mr. Brodie, do you know Blache street ?

A. I do.

Q. Have you been there before the Railway Company took possession of

A. I was.

Q. And after they took possession of it ?

A. Well I was not able to go there afterwards on account of its being 10
blocked up. I was there several times in a case of Savage and Baylis, making
an examination of the property.

Q. Since how many years do you know that lane ?

A. Well I was never there before eighteen-hundred and eighty-seven ; I
have passed there frequently.

Q. Well on that occasion in eighteen-hundred and eighty-seven, was this
street open to the public ?

A. It was.

Q. Did you notice a side-walk there ?

A. I noticed a side-walk, two planks in breadth on both sides, and I 20
noticed houses on the north-west side.

Q. Was it possible for these houses to have egress or an outlet otherwise
than by Blache Lane ?

A. No, that was the sole place of having an outlet.

Q. Well, then, since the Railway Company has closed the place where is
the outlet ?

A. Well, if I understand it these houses are removed from there, on the
north-west side, and I do not know where they have been put. That is where
the Railway Company have built their roadway.

Q. The company have taken possession of it for their Railway purposes ? 30

A. Yes.

Q. Did you notice any macadamizing there in the street ?

A. No, I did not take any particular notice of it.

Q. Did you see any lamp posts or gas lights there ?

A. No.

Q. Do you know whether they have any water there ?

A. I am not aware, I was in these houses, but I cannot say whether they
had water there or not

CROSS-EXAMINATION

40

Q. You were never in Blache Lane, I understand, except when you went
there for the purpose of expropriation, acting as arbitrator for the proprietors
who had land in that Lane ?

A. That is all, Sir.

Q. You went there for that purpose ?

A. No, I made several examinations on account of Mr. Baylis claim, that

it was a private street.

Q. Now these houses you speak of as fronting on the lane, is it not a fact that they have been bought and paid for by the Railway Company Defendant?

A. There was one of them expropriated, Mr. Savage's property. The award was rendered for that house on it; so much was allowed for the house by the arbitrators.

Q. Well, is it not a fact, that the Railway Company have acquired the property?

A. Yes, they have acquired the property.

10 Q. You know that the Railway Company acquired all the property abutting on that lane?

A. Yes, that is all the properties on the north-west side. I am not certain as to the south-east side; I have nothing to do with that.

Q. Mr. Baylis had a house fronting on Mountain street?

A. He had.

Q. And windows opening on Blache lane?

A. I do not remember.

Q. You do not remember seeing these windows boarded up?

A. Yes, there was some.

20 Q. On Blache lane?

A. Yes. I cannot say whether it was on account of the dust or as a matter of view that they closed them up.

Q. It was a pretty dirty place?

A. Well, it was not in as good order as it might have been.

Q. It was in about the same state as most back lanes in the city?

A. I have not visited many other back lanes in the city.

Q. Well, it was not an inviting place to take the air in?

A. If you went as far as Mr. Baylis' garden it was a very inviting place?

Q. Yes, but the lane itself was not a very inviting place?

30 A. No.

Q. It was used for depositing the refuse from the houses; ashes and so forth?

A. I cannot say exactly.

And further, this deponent saith not, and this is a true and correct transcript of shorthand notes of his deposition as taken at Enquête by

M. E. DOHERTY,
Stenographer.

40

(ENDORSED.)

Deposition of John D. Brodie. Taken the 5th for Intrs. this 7th March 1890. Fyled 25th April, 1890.
(Paraphed), A. B. L.

RECORD.

—
*In the
Superior
Court.*
—

No. 163.
Deposition of
John L.
Brodie for the
Intrs. Fyled
25th April,
1890.
—*Continued*

*In the
Superior
Court.*

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 164.
Deposition of
Réné Bauset
for the Intrs.
Filed 25th
April, 1890.

On this seventh day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared René Bauset, of the city of 10 Montreal, clerk, aged twenty-five years, and witness produced on part of the Intervener who being duly sworn, deposes and saith :—I am not related, allied or of kin to or in employ of any of the parties in this cause : I am not interested in the event of this suit.

Q. Mr. Bauset, you are employed in the City Clerk's Office ?

A. Yes.

Q. As Assistant to the City Clerk ?

A. Yes.

Q. You have in your possession the minutes of the Council for February 20 1888, I think ?

A. The book of minutes I have here contains the minutes of a Council meeting in February, 1888, yes.

Q. Will you read what you have there about the Company, Defendant, for the closing of streets for the purpose of railway ?

A. On the 20th of February, 1888, the minutes read as follows : "The order of the day being read to consider the report, the following report was drawn up: Road Committee received a letter from the Company, Defendant, asking the city to approve their plan for crossing the streets leading to their station in Windsor street, and also asking to be permitted to close Bisson street from Donegani to Osborne street, and Your Committee having examined the 30 said plan, has come to the conclusion that the application of the Railway Company should be granted. They have altered their plan so as to cross Mountain street with a single span instead of piers. Your Committee, therefore, recommend that it be resolved to approve the plan of the Railway Company, showing the manner that the Company proposes to cross the street, on the condition that Mountain street be crossed by a single span and not by piers as on their plan. They further recommend that they be allowed to close Bisson street between Donegani and Osborne on condition that they cede to the city the land and also that they sign an agreement."

(Signed)

M. LAURENT,
WILSON,
HENNESSY,
MALONE.

40

Then the minutes go on afterwards : "Moved by Alderman Malone, seconded by Alderman Wilson, that the report be adopted, less that part which refers to the closing of Bisson street, which is left over for further consider-

ation. Moved in amendment that the report of the Road Committee, now before the Council, be referred back to the said Committee, with instructions to take into consideration the question concerning the closing of Bisson street."

Q. Will you also file the protest that is mentioned there about the closing of Bisson street?

A. Yes, I will look for it and file it.

Q. You have also in your possession the notice for the quinquennial expropriation for Blache street?

A. Yes.

Q. Now, in this notice, have you got Blache street designated under the name of lane or of street?

A. It is designated as a street—Blache street.

Q. Well, will you get an extract from the assessment roll from the Treasurer's Office and file it at the next meeting of the Court?

A. Yes, I will file it as Exhibit number seven.

Q. Will you also mention in this notice when the assessment roll was made, when it was commenced and when it was finished?

A. On the 18th of August, 1886, the Commissioners gave notice to the interested parties that they would meet in the City Hall and review the assessment roll for the expropriation of Blache Street, and on the 8th of September, 1886, the City Treasurer gave notice that the said assessment roll has been homologated and deposited with him and is due and exigible.

CROSS-EXAMINED.

Q. Are the minutes which you have read the only minutes which you have with regard to the closing of streets by the Railway Company in coming into their station?

A. Well, I have examined the minutes of the Council, and that is all I could find relating to that matter.

Q. Do you know if the Railway Company acted on the resolution of the Council as passed at that meeting of the 25th of February, 1888?

A. I am not aware of it.

And further this deponent saith not.

And this is a true and correct transcript of shorthand notes of his deposition as taken at Enquête by

M. E. DOHERTY,

Stenographer.

(ENDORSED.)

Deposition of René Bauset, taken the 6th for Intervenant this 7th March, 1890. Fyled 25th April, 1890.

(Paraphed) J. B. V., Dep. P. S. C.

RECORD.

*In the
Superior
Court.*

No. 164.
Deposition of
René Bauset,
for the Intrs.
Fyled 25th
Apr. 1890.
—Continued.

RECORD.

*In the
Superior
Court.*

In the Superior Court for Lower-Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 165.
Deposition of
Percival W.
St. George
for the Intrs.
Fyled 25th
Apr. 1890.

On this eleventh day of March, 1890, personally came and appeared, Percival W. St. George, (re-called), age years, witness produced by the Inter-ener, who, being sworn, doth depose as follows : I am not related, allied or of kin to or in the employ of any of the parties in this cause : I am not interested in the event of this suit. 10

Q. You have already commenced your evidence, Mr. St. George ?

A. Yes.

Q. Did you look over your annual reports to find out the date when the Corporation has done some work on Blache Street ?

A. Yes.

Q. Will you give us the date ?

Objected to this evidence, witness not being competent to prove what took place before his time, and what was not done to his personal knowledge. 20

Objection reserved.

A. In the City Surveyor's report of 1869, I find ; Blache lane footpath, repaired seventy-eight feet, and a new footpath of twenty-one lineal feet and a new crossing. This was done at a cost of \$16.97, and there has been no work done since then.

Q. Have you any objection to fyle a copy of that report ?

A. We have not got a copy, but I can certify to this as being an extract copy of what I find. That is all I find.

Q. Well, will you fyle these several extracts of that report ?

A. Yes, I fyle it marked exhibit number nine.

Q. Will you certify it as being the true extract from the official report in your capacity as City Surveyor ? 30

A. Yes ; I certify it as a true extract from the City Surveyor's report of 1869.

Q. You have in your possession, Mr St. George, the schedule and records of streets, lanes, and so on ?

A. Yes.

Q. What is the title of that book you have there ?

A. It is called schedule of streets, and is signed by the then City Surveyor in 1865. 40

Q. Will you give us the inside title of it ?

A. Record of streets, lanes, highways and public squares in the City of Montreal, kept by the City Surveyor according to law and made in 1865.

Q. And will you refer and see if you have something there concerning Blache street ?

A. Blache Lane, St. Antoine ward, from Mountain street north-west.

Q. That is all you have ?

- A. That is all.
- Q. There is no other explanation but that ?
- A. No ; it is called Blache lane.
- Q. This record of streets was commenced, as far as I can see, before the report showing that works had been done on that street ?
- A. Yes, in 1865, and has not been added to. It is the original kept by Mr. McQuisten.
- Q. Therefore, three years before you did any work there, that record was made ?
- 10 A. Yes, so it seems by that date.
- Q. Were you aware at the time you made your report to the Road Committee about Blache lane, that a judgment has been rendered by the Court of Queen's Bench about the same street in case of Johnston and Archambault ?
- A. No, I was not,
- Q. Well, last year were you aware of that decision of the Court of Queen's Bench ?
- A. No, I was not, and if I had been I should take my record, unless I was ordered otherwise by the Council to do so, but I was not aware of it. The City Clerk does not send us the decisions of the Court to fyle.
- 20 Q. Were you aware also, that the report which the City Attorney made to the Road Committee about the same Blache lane on Mr. Walker's letter, that this report was based on that same decision of Queen's Bench ?
- A. No, I do not remember.
- Q. Were you aware also that the work of 1869 had been made by the Corporation ?
- A. Not except what I saw in the annual report.
- Q. Are you aware that the Adams' plan of 1825 shows that same location of Blache street as being a street ?
- A. I see it is there, but the Adams' plan is not an official plan, it has nothing to do with the city.
- 30 Q. Well, you admit, I suppose, the authenticity of that plan ?
- A. Yes, it is signed ; it is the old plan.
- Q. What is the meaning of these abbreviations there ?
- A. The City Surveyor's Office, C. S. O.
- Q. Are you aware of an old plan made in eighteen hundred and one by Mr. Charland, I think ?
- A. Yes, I know that plan. It is in our office : Louis Charland
- Q. Is it possible to bring it up here ?
- A. Yes.
- 40 Q. Well, will you send for it ?
- A. Yes.
- And the deposition of this witness is suspended for the production of Charland's plan.
- Q. You have now in your possession that plan of Charland's, dated eighteen hundred and one ?
- A. Yes.
- Q. Is there anything on that plan showing a location similar to that of

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—
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 No. 165.
 Deposition of
 Percival W.
 St. George
 for the Intrs.
 Fyled 25th
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RECORD. Blache street ?

—
In the Superior Court.
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No. 165.
Deposition of Percival W. St. George for the Intrs. Fyled 25th Apr. 1890.
—*Continued.*

A. Yes, I scaled it between Mountain street and Cemetery, now Cathedral street. I scaled it on the homologated plan and I find that they are correct as near as you can see by this scale.

Q. What have you got representing Blache street there ?

A. Following up Mountain street on the right hand side, you find that it agrees with what you call Blache lane. We find an opening here on this plan.

Q. How wide ?

A. You cannot scale the width.

Q. Well, it is somewhat similar to Blache street ?

10

A. Yes.

Q. The width of the plan there shows that it was a street open to the public ?

A. You cannot tell what it is. It is an open place ; it might be a lane or a street. It is an open place between two properties.

Q. Is it about the same length as Blache street ?

A. Yes.

Q. It corresponds to Blache street as it is now ?

A. Yes.

Q. Now, what authenticity or officiality has that plan ?

20

A. It is an old plan of the city, and I believe that Louis Charland was an old surveyor long before the city was incorporated.

Q. Do you recognize the plan as official ?

A. Well, we have used it as being an old authentic plan, and we have checked it very carefully and find it very correct. I should tell you that it is the official plan as it was before the city was incorporated.

I will produce an extract from this plan marked exhibit eleven.

Q. Now, Mr. St. George, seeing these two plans and also the decision of Court of Queen's Bench on that same Blache street, also the City Attorney's report, have you any hesitation in saying whether it is a public street or not ?

30

A. Well upon the authority of the City Attorney and the orders I have always received, I have to take anything in the Schedule as streets. That is in there certified as being public property. I took what is on this plan if it did not disagree with the Schedule of streets as public streets, but as that was signed by the late City Surveyor and accepted as such, I have had no authority since to do away with that book.

Q. But you admit, I suppose, that at the time you made that report to the Road Committee, you had not this information which you have now ?

A. I had nothing, simply, but what I show you there.

Q. Is this paper exhibit number twelve your report ?

40

A. Yes.

Q. Jointly with Mr. Barlow, I think ?

Q. Yes, sir.

CROSS-EXAMINED.

Q. What you have stated, Mr. St. George, regarding the repairs made,

and so forth, on this street, is simply taken from the printed report which you have in your office of the former City Surveyor ?

A. Yes.

Q. You have no personal knowledge ?

A. No sir.

Q. Is it to your personal knowledge that anything has been done in that street by the city ?

A. Yes, before, during Mr. Ansley's time. We never recognized it as a street and never did any work in it although asked several times to do so.

10 Q. Are there not a number of private streets in the City of Montreal which have been used by the public for more than ten years past ?

A. Yes, there are a good many that do not belong to us, and that have been used by the public.

Q. Could you mention some of them ?

A. I know there are several lanes—I cannot recollect them all now. There is the continuation of Albert street.

Q. Where is that ?

A. That is to Canning street. We do not own that.

Q. Does that go through ?

20 A. It is like this one, a cul-de-sac.

Q. Do you know Overdale avenue ?

A. Yes, that is another. We have also a lane—Bronson lane.

Q. Now, what about the upper part of St. Martin street ?

A. We do not own that. We thought we did, but we tried the case and we lost it, I think. We had sidewalks laid there.

Q. You graded it ?

A. Yes.

Q. Where does that run from ?

A. From St. Antoine up to the foot of the hill.

30 Q. With houses on each side.

A. Yes.

Y. There appear to be a number of streets in Montreal like that ?

A. Yes, there are several of them.

Y. Is it not a fact the city within the last year or two put up notices on these streets ?

A. Yes, they have done so, so as to protect themselves against any damage that might occur.

Y. Notices to what effect ?

A. Notice that there is no thoroughfare ; that it is in a dangerous way.

40 Y. That it is private property ?

A. Yes.

Y. If Blache lane had not been taken by the Railway Company would you have treated it in the same way ?

A. Certainly.

Y. You considered that the city had no responsibility, or no property in that lane ?

A. I do not know of any property with regard to that lane.

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*In the
Superior
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No. 165.

Deposition of
Percival W.
St. George for
Intrs. Fyled
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—Continued.

RECORD.

*In the
Superior
Court.*

No. 165.

Deposition of
Percival W.
St. George
for the Intrs.
Fyled 25th
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—Continued.

Q. Did the abutting proprietors ever advance the same claim that this was a private street ?

A. Yes, Mr. Baylis did in presence of myself and Mr. Ansley. We were talking about opening up the street, and Mr. Ansley said it would be done. Mr. Baylis said : " Well, it is a private street."

Q. He refused to allow you to occupy it ?

A. Yes.

Q. When was that ?

A. When Mr. Ansley was City Surveyor.

Q. During what portion of time was that ?

A. Since 1874 to 1883 ; it was in Mr. Ansley's office, and that is why I was so firm in not doing anything for the street. 10

Q. Through that notwithstanding the name of Blache lane appears in the schedule of streets that you have produced made in 1865, neither you nor Mr. Ansley treated that as a public street ?

A. No, we did not treat it as a public street, because I have been asked by the proprietors to repair the sidewalks, and I have refused simply on that account.

Q. You find that some of these streets are now marked " private possession," and are recognized by the city as private streets in the schedule of streets which you produce, will you look and see if you find Bronson Lane there ? 20

A. Yes, it is called a lane, not a street. Finding that was on the plan in Mr. McQuisten's time, we put it as it was there ?

Q. He put down every lane, alley and whatever he found in the city without regard to whether it was a public or private property ?

A. Yes, sir, and he gave them their names.

Q. Do you find Albert street there, too ?

A. That is not a part of Albert street, that is ours. The Albert street which appears in the Register, only goes as far as Mountain street. The portion I mentioned as the continuation of Canning street belonged to Mr. Fred. Judah. 30

Q. Please look at homologated plan of which a copy is fyled in this case as exhibit number two, and state what is the meaning of the fine white line shown on that exhibit number two which extends from Bisson street to Mountain street on both sides of Blache Lane ?

A. It is the homologated line for the opening of Donegani street through to Mountain street.

Q. And the lines running parallel with Mountain street show the widening of Mountain street ? 40

A. Yes, the widening, but I think that in the description you will see the opening of Donegani street.

Q. Where is that description ?

A. I think it is fyled in the Court here.

Q. Could you scale the distance on this map of Mr. Adams' ?

A. I tried it on the plan of Mr. Charland and I scaled it within a foot or so.

Q. Well, could you do it on Mr. Adams' plan ?

A. On measuring the distance from the corner of St. Antoine street to the corner of the street shown on Mr. Adams' plan as opening on to Mountain street, I find the distance to be one arpent.

Q. Now, will you take the homologated plan and give us the distance through to Blache lane ?

A. A hundred and ninety-two feet is as close as you can get it. It is nearer a hundred and ninety-two than a hundred and ninety-three. The thickness of the incline would give you a foot.

Q. Please give the distance on Mr. Adams' map from St. Antoine to
10 Dorchester street, and also the distance on the homologated plan, that is along the line of Mountain street ?

A. It is nine hundred and thirty-seven feet by Mr. Adams' plan, and by the homologated plan it is nine hundred and fifty feet. That is, measuring from the lower corner of Dorchester street to the upper corner of St. Antoine street. You cannot depend on that plan, except for their distances. Whenever you put varnish on paper it either shrinks or expands according to the weather. That is why we never varnish our plans.

Q. Well, what is the distance from the lower corner of Dorchester street to the upper corner of Blache street, as shown on the homologated plan along
20 the line of Mountain street ?

A. It is seven hundred and thirty feet. On the lower side of Dorchester three arpents seven and a half perches, equivalent to seven hundred and nineteen English feet.

Q. I understand there has been no change in the position of Dorchester street from what it was in eighteen hundred and twenty-five when the Adams' plan was made ?

A. I do not know of any change at all. The only way I can identify it, is by an old shanty that I find on Dorchester street.

Q. And it shows on the plan of Mr. Adams ?

30 A. Yes, and old wooden house there.

Q. Is it not marked Dorchester street on the Adams' plan ?

A. Yes, it identifies the street ; it has not been changed on the south-side.

Q. You have no recollection of Dorchester street ever having been widened ?

A. No.

And further the deponent saith not.

And this is a true and correct transcript of short hand notes of his deposition taken at enquête by

40

M. E. DOHERTY,
Stenographer.

(ENDORSED.)

Deposition of P.W. St. George (recalled) for Intervenants, taken this 11th March, 1890. Fyled 25th April 1890.

(Paraphed), J. B. V. Dep. P. S. C.

RECORD

*In the
Superior
Court.*

No. 165.
Deposition of
Percival W.
St. George
for the Intrs.
Fyled 25th
Apr. 1890.
—Continued.

SCHEDULE No. 206.

RECORD.

*In the
Superior
Court.*

In the Superior Court.

Present :

THE HON. MR. JUSTICE MATHIEU.

No. 166.
Deposition of
Patrick
O'Reilly for
the Intrs.
Fyled 25th
Apr. 1890.

On this eleventh day of March, one thousand eight hundred and ninety : personally came and appeared Patrick O'Reilly, of Montreal, (re-called) aged _____years, witness produced on the part of the Intervent, who, being duly 10 sworn deposes and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit.

Q. Mr. O'Reilly, you filed as exhibit number ten Mr. Walker's letter, the City Attorney's report, and also the plan that is a copy of that ?

A. Yes, I will file it. I also file as exhibit number thirteen Mr. Darling's letter of the twenty-first of February, eighteen hundred and eighty-nine as exhibit fourteen, Mr. Darling's letter of August the fifteenth, Mr. Van Horn's letter addressed to the City Clerk, acknowledging the receipt of the resolution of the Road Committee ; as exhibit sixteen the resolutions of the Road Committee ; as exhibit seventeen, copy of the report of the Road Committee with the application from the Railway Company, Defendant of date the eight of February, eighteen hundred and eighty-eight. 20

CROSS-EXAMINED.

Q. Was this report of the Road Committee dated the eighth of February, eighteen hundred and eighty-eight, adopted by the Council and acted upon ?

A. Yes.

Q. And this report was made upon application of the Railway Company 30 Defendant, of date the first of February, eighteen hundred and eighty-eight, and annexed to the report ?

A. Yes.

Q. This application submitted plans which I see here annexed to the report also ?

A. Yes.

Q. You have no personal knowledge of any promise made by Mr. Henneker with regard to this street ?

A. No, sir.

Q. All you can speak of is this condition in the minutes ? 40

A. That is all.

And further deponent saith not.

And this is a true and correct transcript of the shorthand notes of his deposition as taken at enquête by

M. E. DOHERTY,
Stenographer.

(ENDORSED.)

Deposition of Patrick O'Reilly for Intervenant (Recalled Fyled 25th April
1890.)
(Paraphed) A. B. L.

RECORD.

*In the
Superior
Court.*

No. 166.
Deposition of
Patrick
O'Reilly for
the Intrs.
Fyled 25th
Apr. 1890.
— *Continued.*

10

SCHEDULE No. 207.

In the Superior Court.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 167.
Deposition of
John Brophy
for the Intrs.
(recalled).
Fyled 25th
Apr. 1890.

20

On this eleventh day of March, 1890, personally came and appeared, John Brophy, aged . . . years, witness produced by the Intervenant who being duly sworn deposes as follows :—I am not related allied or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit. The witness now reappears to complete his evidence, and fyles as exhibit number eight of the City, an extract of the plan made by John Adams of which he has already spoken in his evidence.

30

Q. Did you ascertain in drawing that small extract as to whether the location of the line straight throught to Mountain street, having an outlet on Mountain street, is the same location as Blache Lane mentioned in the homologated plan ?

A. Yes, they correspond exactly.

Q. How did you ascertain that ?

A. By scaling them.

Q. You have no doubt that it is the same thing ?

A. The same thing, yes.

Q. What is the width there ?

A. Well, I would not swear to that. Eight hundred and twenty-five is a very small scale to measure, and you cannot tell to a foot or two.

40

Q. It is the same location ?

A. Yes.

CROSS-EXAMINED.

A. What is the distance on Mr. Adams' plan from St. Antoine street to the corner of Blache lane along Mountain street ?

A. Well, I cannot tell you that ?

RECORD.

*In the
Superior
Court.*

No. 167.
Deposition of
John Brophy
for the Intrs.
Filed 25th
Apr. 1890.
Continued.—

Q. You cannot tell ?

A. No.

Q. Can you tell it by measuring by the scale ?

A. Yes, but I have no scale here with me. I measured it in the office, I did not know you required them here.

Q. Would you swear that there was not a difference in the distance from the corner of St. Antoine street to the corner of Blache Lane, along Mountain on Mr. Adam's plan, of which you have produced an extract number eight, and on the homologated plan ?

A. No, no difference that I could find out. 10

Q. Do you swear that there was not a difference of three feet ?

Q. Well, as I said before, the eighteen hundred and twenty-five plan is a very small one, and no one can measure it to a foot in several hundreds.

Q. Now, from the corner of Osborne street, the upper corner to Blache Lane along Mountain street, do you swear that there was not a difference in the two plans of twenty feet ?

Q. Well, I do not know whether Janvier street as it is called on this plan is the same as Osborne street now.

A. All you swear to as I understand you, is, that the locality is practically the same ? 20

A. The general position is the same.

Q. But you cannot swear that the lane is the same width, that it occupies exactly the same ground as it did when the Adams' plan was made ?

A. Of course yes, I can swear to that, that it occupies the same place.

Q. Well, if there is a difference in the crossing on St. Antoine street of three feet, it would not be the same place ?

A. Well, you will get six to swear that it is the same place, and six to swear that it is not. I suppose they measured from the plan ?

Q. Yes, but you cannot swear yourself that it occupied exactly the same number of feet of ground ? 30

A. No.

RE-EXAMINED

Q. If that location called street and having an outlet on Mountain street on that small plan does not correspond to Blache Lane, to what will it correspond ?

A. Well, it does not correspond to any other street ?

Q. Now, from St. Antoine street and Mountain street, as far as that street which is called there and supposed to be Blache Lane, do you find on both sides about the same distance. 40

A. Yes, St. Antoine street not having been opened.

Q. Now, what is the meaning of these little dotted squares there ?

A. They are houses that were in existence at that time.

And further the deponent saith not.

And this is a true and correct transcript of shorthand notes of his deposi-

tion as taken at enquête by

M. E. DOHERTY,
Stenographer.

RECORD.
*In the
Superior
Court.*

(ENDORSED).

Deposition of John Brophy (re-called) from Intra. Fyled 25th April 1890.
Paraphed A. B. L.

No. 167.
Deposition of
John Brophy
for the Intra.
'(re-called).
Fyled 25th
Apr. 1890.
— *Continued.*

10

SCHEDULE No. 208.

In the Superior Court.

Present :—

No. 168.
Deposition of
Wm. Walker
for the Intra.
Fyled 25th
Apr. 1890.

20

THE HONORABLE MR. JUSTICE MATHIEU.

On this eleventh day of March in the year of Our Lord eighteen hundred and ninety, personally came and appeared, William Walker, of the City of Montreal, witness produced on the part of Intervener, who, being duly sworn deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You are one of the proprietors on Blache street ?

A. Yes.

30

Q. Living there for many years ?

A. For five years ?

Q. Have you been expropriated since you have been living there ?

A. Yes.

Q. For a portion of your property ?

A. Yes, sir.

Q. Is your psoperty fronting on Blache street or any other street ?

A. On both streets, on Blache street and on St. Antoine street.

Q. Have you been expropriated on both streets or only on one ?

A. Only on Blache street.

40

Q. Have you paid your share on that expropriation ?

A. Yes.

Q. Did you build on the new homologated line after the expropriation ?

A. Yes.

Q. What kind of building did you build there ?

A. A brick building.

Q. Of how many stories ?

A. Of three stories.

RECORD.

*In the
Superior
Court.*
No. 168.
Deposition of
William
Walker for
the Intrs.
Filed 25th
Apr. 1890.
—Continued.

- Q. What kind of a street was it ?
A. It is the same as any other ordinary street. It was a wide, well kept street.
- Q. Had you any sidewalk there ?
A. Yes, there was one on oneside of the street.
- Q. Had you any macadam on the street ?
A. No sir, I did not notice.
- Q. Had you any gas, or oil lamps there ?
A. There was one on the corner, I believe.
- Q. Had you any water pipes there ?
A. Yes, water pipes ran through there. 10
- Q. Had you water in your house there ?
A. Yes but I took it from St. Antoine street.
- Q. Did the other houses also take their water from that street ?
A. Yes.
- Q. Had you any drain there ?
A. No sir, there was no drain.
- Q. Since that expropriation, what has become of the street ?
A. Well, the railroad blocks. They have made an embankment and trestle works, and have blocked the street up wit a stone barricade. 20
- Q. So the street has disappeared entirely now ?
A. Yes, unfortunately so,
- Q. Well, besides these buildings there were others there ?
A. Yes.
- Q. How many ?
A. I think three or four buildings.
- Q. Do you know whether these three or four buildings had any ingress or egress otherwise than by the street ?
A. The four had no other way except by Blache Street,
- Q. Well, at the time that the street was closed by the Railway Com- 30
pany, in what state was it ; in what state was it kept generally ?
A. I considered it first-class.
- Q. Well, is it true that it was kept for rubbish only as a dumping ground ?
A. No sir.
- Q. You are positive of that ?
A. I am positive.
- Q. Did you notice any pickets there that were put there by the City Surveyor, Mr. St. George, about that time ?
A. Which pickets do you refer to ?
- Q. Well, I do not know of what kind they are, but I ask you if there 40
were any there ?
A. Well, at the time of their going to work there, certainly I saw pickets.
- Q. For what reason where these pickets put there ?
A. I do not know, but I took it for granted myself that it was for the city. Of course, I could not tell for what purpose they were there.
- Q. When you built a new house after the expropriation did you get a new grade from the city ?

- A. No, sir.
 Q. Did you get a line?
 A. I got a line from some of the employees of the Railway Company, showing me that was to be the length of the street. I was lamenting at the time, because my foundation had all been built.
 Q. Well, what was the object of the railway employees giving you a special grade that way?
 A. Well, I asked them why they just went up that height; that is all that was graded between Bisson and Mountain Streets.
 10 Q. Did they mention about the closing of Blache Street?
 A. No, sir.
 Q. Was that closing made after the expropriation or before the expropriation on the part of the railway. Was it by a regular expropriation of the law?
 Objected to this, witness not being competent to say.
 Objection reserved.
 A. I do not know about that.
 Q. The dumping of the refuse of the houses there, was that made there by the city as for other streets?
 A. Yes.
 20 Q. Do you pay taxes on that street?
 A. Yes, sir.
 Q. Assessments, water rates?
 A. Yes.
 Q. Since the five years that you have been there?
 A. Yes,

CROSS-EXAMINED.

- 30 Q. What street did you pay taxes on?
 A. On both streets, on Blache street and St. Antoine.
 Q. What do you mean by paying taxes on Blache street?
 A. Well, the city taxes.
 Q. And you say that was on Blache street?
 A. It was on Blache street—what was called Blache street—there is no Blache street now.
 Q. Do you mean taxes on your property?
 A. Yes.
 Q. Which reaches from Blache street to St. Antoine street?
 A. Yes.
 40 Q. But you do not mean to say that you paid taxes on Blache lane?
 A. Separately for both; I got taxed for both of them.
 Q. Were you taxed for the property which had formed Blache lane?
 A. Yes.
 Q. Part of your property?
 A. Yes.
 Q. Is it a fact that the city recognize Blache lane as private property?
 A. Yes.

RECORD.

*In the
Superior
Court.*No. 168.
Deposition of
Wm. Walker
for the Intrs.
Filed 25th
Apr. 1890.
— *Continued.*

RECORD.

*In the
Superior
Court.*No. 168.
Deposition of
William
Walke for
the Intrs.
Filed 25th
Apr. 1890.
—Continued.

Q. Then, what do you mean by saying that you had to pay taxes?

A. Just that. I got a separate bill for St. Antoine street and another for Blache street; they assessed the property right through.

Q. Could you show me one of your tax bills?

A. I guess I could.

Q. Do you know the number on Blache lane?

A. Yes.

Q. What is the number?

A. I think it was number eleven.

Q. Will you please produce one of your bills that you speak of? 10

A. I think it was number eleven.

Q. I am not asking you that. I ask you if you will produce one of the bills that you got?

A. I will try, Mr. Abbott.

Q. When you speak about the dumping done by the Corporation, you mean carrying away the refuse thrown up behind?

A. Yes, or anything that is put in front the same as any other street in front of the houses.

Q. Just the same. They carried away the refuse put out of your property the same as they would for any ordinary back lane? 20

A. For any ordinary street or lane or highway just as you like to put it.

Q. You are aware that contractors for that work take away the stuff from all private lane in the city?

A. Yes.

Q. And they treated this the same as any other?

A. Yes.

Q. Where you in the habit of putting your ash barrels on Blache street?

A. No, sir, I did not have occasion to, for I did not have any ashes. 30

Q. You did not have any fuel in your house?

A. Not in my factory.

Q. I am speaking of your house?

A. Well, my house is on St. Antoine Street. We put that out on St. Antoine Street.

Q. When you say that you built that house in the line of the street after the expropriation, you were referring to the expropriation by the Railway Company, I suppose?

A. I referred to the Company as far as that goes. In the first place I built on the homologated line given to me by the city after the city expropriated that piece which was left and paid me for it. 40

Q. But you say that after this expropriation you built on the new line?

A. I say on the line given to me by the Corporation.

Q. You said after the expropriation, what do you mean by that?

A. What I mean to say is that when I built, I called for a line knowing that there was a homologated line, and I built on that line leaving a space of about twenty-seven feet.

Q. Well, I understand that, but I want to know what you mean by saying that you built on the line of the new street after the expropriation ?

A. Well, there, are two lines. Which line do you mean ?

Q. I do not care which line. I want you to explain what you mean by saying that you built on the line of the new street after the expropriation ?

A. In the first place I told you.

Q. Well, never mind the first place ; give us the second place ?

A. In the second place, I got a line from Mr. Rielle's office and I built from that line.

10 Q. Then, you built further back than the line given by the city the second time.

A. Yes.

Q. So the second time you did not build on the homologated line, but some distance ?

A. Yes.

Q. How far back ?

A. About twenty-eight feet.

Q. Then that new street was not the street shown on the homologated plan ?

A. No, the second line was not certainly.

20 Q. So that you must have known then that it was the intention of the Railway Company to build over Blache lane ?

A. No, sir, I did not.

Q. Well, then, how did you come to build back from the homologated line twenty-eight feet ?

A. I think you are already aware of that. I thought that we were to have the street there.

Q. Yes, Blache lane was to be closed up, and there was to be a street in the rear of your property ?

30 A. Yes, there was to be a street. There was no closing of the street, or anything of that kind.

Q. Will you look at this plan filed as exhibit A-1, being a plan showing the line expropriated by the Company, Defendant, for the Windsor Street Station ground, and state if that shows the portion of your property expropriated by the Railway Company ?

A. That is the line I believe that has been expropriated by the Railway Company.

Q. And it is the lowered line which crosses the lot marked "William Walker" up to which you built your factory the second time ?

40 A. Yes, sir.

Q. Would you give me the names of these proprietors of the buildings which you say there were on Blache lane ?

A. Well, I cannot give you all of them but I will give you some of them.

Q. Well, give me some of them ?

A. There was, I think, Mr. Dowlin, and I think Mr. Koester is another, and I think Savage was a proprietor of the other buildings.

Q. Now, will you show us on the plan, exhibit number two of the inter-

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—
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—
No. 168,
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Wm. Walker
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— *Continued.*

- RECORD. vening party, where the situation of these houses was ?
- A. Dowlin's house is the one on the corner of Mountain street, on the south side.
- In the Superior Court.*
- No. 168. A. No, I did not say that.
- Deposition of William Walker for the Intrs. Q. Then where was Mr. Dowlin's entrance.
- Fyled 25th Apr. 1890. A. He had it from the front.
- Continued.* Q. On Mountain street ?
- A. Both ways. 10
- Q. I am asking you about the front. Do you mean Mountain street ?
- A. His private entrance is on Mountain street and his rear entrance on Blache lane.
- Q. Was it the entrance from his house or from his yard ?
- A. Well, I think he had tenants that went in from the yard. I cannot say positively.
- Q. Now, on the opposite corner there was a house also.
- A. Yes, Mr. Baylis'.
- Q. Do you mean to say that he had no egress from his house, except by Blache lane ? 20
- A. That is not for any cumbersome thing to fetch in or out such as soil.
- Q. That would be the entrance in the rear ?
- A. Well, he had a gateway in the rear of his property.
- Q. That was to communicate with his yard ?
- A. Yes.
- Q. But the main entrance of his house was on Mountain street ?
- A. Yes.
- Q. Do you know that the windows opening on Blache street were boarded up ?
- A. I am not aware of it. 30
- Q. Now, give us another house. You say they were four houses ?
- A. The house shewn on lot six hundred and sixty-two of this plan is Mr. Koester's house.
- Q. Well, was not that on your property ?
- A. No sir ; mine is number six hundred and sixty-one, Koester's is number six hundred and sixty-two.
- Q. Now, do you mean to say that Mr. Koester had no means of egress except by Blache lane ?
- A. No, sir ; not at that time, for the simple reason that he had tenants in front, and they would not allow of that. 40
- Q. What time ?
- A. Before the expropriation.
- Q. What expropriation ?
- A. The expropriation by the Company.
- Q. And after the expropriation by the Railway Company ?
- A. Well, it has changed hands since that.
- Q. When the Railway Company expropriated, they took in Koester's

house or part of it ?

A. No ; they gave him the house.

Q. Do you mean to say he removed the house ?

A. Yes.

Q. But the Company took the house and occupied it after expropriating ?

A. Yes ; that is to say, the ground the house was on.

Q. Then, the destination of the property was changed ?

A. Yes.

Q. Now, what are the other houses there ?

10 A. There are two on the north side of the lane towards the rear end.

Q. That is two old cottages, is it not ?

A. There is one, a very nice little cottage.

Q. Of wood ?

A. I do not know ; I did not pay any attention.

Q. Do you know that these houses were expropriated by the Railway Company ?

A. I believe they were.

Q. What property was that on. Was it not on the Savage property ?

20 A. I am not certain. I do not know. I know that there were houses there and nothing more than that.

Q. Now, you say you know that the parties in four of these houses had water from Blache Lane ?

A. Yes.

Q. You are quite positive of that, I suppose ?

A. Yes.

Q. You went into the houses ?

A. Yes ; I have been in the houses.

Q. What took you up there. You went up there in connection with rent, did you not ?

30 A. No, I did not do anything like that. We kept a quitting ground there, and I used to go up and see them.

Q. I do not understand you. I ask you if there were pipes there, and if they got water from Blache street ?

A. Yes.

Q. How do you know that ?

A. Because I saw it in the houses.

Q. But you do not know where it came from ?

A. Yes, from Blache Lane.

Q. And how do you know that ?

40 A. Well, I do not see how else they could get it without coming through my property, and I would not allow them to take it through my property.

Q. Well, do you mean to say that Mr. Dowlin would have to go through your place to get water ?

A. No, sir, I do not say that.

Q. Then, the houses that did get it from Blache Lane, do you mean to say that they had to go through your place to get it ?

A. No, sir, they get it from Mountain street.

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Court.*

No. 168.
Deposition of
William
Walker for
the Intrs.
Fyled 25th
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—Continued.

- Q. Why not from St. Antoine street ?
A. Because that would be a long way to go for it.
Q. Did you ever see any pipes laid in Blache Lane ?
A. No, sir.
Q. You do not pretend to swear that there are any water pipes laid there ?
A. Yes, because I saw them there.
Q. When was that ?
A. When Mr. Koester left his house, I saw the main pipe after he had moved his house in the foundation. 10
Q. Where in the foundation ?
A. In the foundation of the house after he had moved the house from there.
Q. Yes, but where did you see the main pipe ?
A. In Blache Lane.
Q. Then, his house was built in Blache lane ; the foundation was in the lane ?
A. Yes, it was on the edge of the lane.
Q. Then, that is the only one that you know of as having got his water from Blache Lane ? 20
A. No, sir ; I know of the others too.
Q. Yes, but you do not know where they got it from ?
A. Yes ; they got it out of Blache lane.
Q. At which corner of the street is the lamp, is it on the corner of Mountain street ?
A. I could not swear to that.
Q. Will you swear that the lamp was on Mountain street or on Blache lane ?
A. I think it was on the corner, projecting out of the corner, but I cannot say which side it was on. 30
Q. You are the Mr. Walker mentioned in the petition in this matter ?
A. Yes sir.
Q. And it was at your request that the proceedings by the Attorney-General were taken ?
A. Yes sir.
Q. Did you make application to the Attorney-General in your own name ?
A. Through my counsel, Mr. Barnard.
Q. Not personally ?
A. Well, not myself personally, with others who are in with me.
Q. Yes, but you made application through your attorney, and not in your own name ? 40
A. Yes.
Q. That is Messrs. Barnard & Barnard, attorneys of record in this case for the Attorney-General ?
A. Yes.

The Defendants require Messrs. Barnard & Barnard, the attorneys for the Petitioner in this case, to produce the application of the Attorney-General and

the authorization to take the present proceedings.

Q. You have been sued, Mr. Walker, by the Railway Company Defendant, have you not?

A. Yes.

Q. The action against you was on account of windows overlooking and certain projections on their railway property?

A. Yes.

Q. Which suit is now pending before this Court?

A. Yes sir.

10 Q. I believe it was you who applied to the City and requested them to take action in this matter?

A. Yes, I was one of them.

Q. Who are the others?

A. What was that question? I think you mean the first action I took here in protesting the City?

Q. I ask you the question whether it was you who requested the City to take these proceedings?

A. No, sir.

Q. You did not.

20 A. No, sir.

Q. Well, will you look at the letter of date of the second of May, eighteen hundred and eighty-nine, addressed to the Chairman of the Road Committee attached to exhibit number ten, and state whether that is written by you?

A. Yes, it was written by me.

Q. Then you were in error in stating that you never asked the city to take these proceedings?

A. Yes, I was.

Q. Do you know that a subsequent action was taken out on that letter of yours?

30 A. Yes, I believe so.

Q. By the City?

A. Yes.

Q. What was the arrangement between you and the other proprietors and the city with regards to that?

A. I do not know anything about that.

Q. You say you know nothing further than what is in that letter?

A. No.

Q. Who made the arrangements with the City?

A. I do not know, sir.

40 Q. Mr. Walker, are you continuing to run your factory at the present time?

A. Yes.

Q. How do you get you stuff in and out of it?

A. Through my neighbor's property.

Q. Who is your neighbor?

A. Mr. Savageau the carpenter.

RECORD.

*In the
Superior
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RE-EXAMINED.

*In the
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Deposition of
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—Continued.

Q. When you said that you paid taxes for Blache Lane, do you mean taxes for the houses fronting on Blache street ?

A. Yes, sir.

Q. That is what you mean by it ?

A. Yes.

Q. The Civic number that you mentioned, number eleven, who placed that number on your property ?

A. I do not know how that came there. 10

Q. It was a civic number ?

A. Yes, it was a Civic number. If I can remember right. I think that was the number given my place.

Q. That second line that you got from Mr. Rielle's office on which you built, was it the line of Donegani street, the continuation of Donegani street ?

A. It was supposed to be.

Q. Was it explained to you that it was the continuation of Donegani street ?

A. Yes.

Q. Well, the continuation of Donegani street is nothing but Blache street 20 widened ?

A. Yes.

Q. Well, by the plan there, Donegani street and Blache street widened, are they different at all ?

A. That was the land expropriated by the Railway Company. It was supposed to be a new street.

Q. Of how many feet wide ?

A. Fifty feet.

Q. And crossing Bisson street.

A. Yes. 30

Q. This homologated plan does not shew that ?

A. No.

Q. Did the Company's plan shew that ?

A. Yes.

Q. Do you know Mr. Cantin's plan ?

A. Yes.

Q. Have you seen it ?

A. Yes ; dozens of times.

Q. It shewes the same line as mentioned on the Company's plan there on which you built ? 40

A. Yes.

Q. When was that plan exhibited to you ?

A. At the time of the expropriation,

Q. Was it fyled in the expropriation proceedings ?

A. No, I do not think it was.

Q. Was it placed before the Commissioner's in expropriation ?

A. Yes.

Q. You were asked about an arrangement with the city. Are you aware of any arrangement with the city as to the costs or anything of that kind.

A. No sir.

RECORD.

*In the
Superior
Court.*

RE-CROSS-EXAMINED.

Q. You got an expropriation notice, did you not, Mr. Walker, from the Railway Company, Defendant?

A. Do you mean, when they came first to expropriate for that projected street?

10 Q. I want to know whether you got a notice from the Railway Company, yes or no?

A. Yes; I got one.

Q. When did you get it?

A. Well, for dates I cannot mind.

Q. You only got one?

A. That is all I mind of.

Q. Was that notice of expropriation which you received from the Company, Defendant, given to you before or after Mr. Rielle gave you the line?

A. Before.

20 Q. Before Mr. Rielle gave you the line?

A. Yes.

Q. Did not that line which Mr. Rielle gave you correspond with the line described in the expropriation notice from the Railway Company?

A. Well there was no line given at all for that expropriation.

Q. They said they were going to give an expropriation notice, describing the extent of property which was going to be expropriated by the railway?

A. Yes.

Q. And did not that extent of property correspond with the line that Mr. Rielle gave you afterwards?

30 A. Yes.

And further the deponent saith not.

And this a true and correct transcript of shorthand notes taken at enquête

M. E. DOHERTY,

Stenographer.

(ENDORSED.)

Deposition of Wm. Walker for Intervener, taken 11th March 1890. Fyled 25th April 1890.

40 (Paraphed) J. B. V. Dep. P. S. C.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 169.

Deposition of
John Eaman,
for the Intrs.
Filed 25th
April, 1890.
—Continued.

On this eleventh day of March, one thousand eight hundred and ninety, personally came and appeared : John Eaman, of Montreal, aged years, and witness produced on the part of Intervener, who being duly sworn, deposeth and 10 saith : I am not related, allied or of kin to or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. Do you know Blache Lane, sir ?

A. Yes.

Q. Do you live there ?

A. I have lived there for some time past.

Q. For how many years ?

A. For between twelve and fifteen years.

Q. When did you live there ?

A. We left in eighteen hundred and seventy. 20

Q. You have been there from eighteen hundred and seventy, that is to say for fifteen years ?

A. Yes, between twelve or thirteen years.

Q. Do you remember whether any sidewalk was put down there ?

A. Yes.

Q. Do you remember what time about ?

A. Well, during the first two or three years that we lived there a sidewalk was put down.

Q. By whom ?

A. By the Corporation. 30

Q. Was there any other work done there ?

A. No, nothing to speak of.

Q. Was there any drain put in there ?

A. Not in our time, but it was well drained.

Q. Were there any water pipes ?

A. Water pipes were in the house when we lived there.

Q. Water pipes from Mountain street, I suppose ?

A. From the main on Mountain street, but it came in through that lane. 40

Q. Who placed these pipes there ?

A. They were there when we went into the house.

Q. That is they were corporation pipes ?

A. Yes, we paid for the water to the Corporation at the City Hall.

Q. Were there other proprietors or tenants or occupants living at that time on the same side as you ?

A. Not on the same side except at the corner, there was a house occupied

by Mooney ; but there were on the other side three or four houses.

Q. Well, these houses, had they any other means of egress or ingress but that street?

A. No, there was no other.

Q. Well, during the twelve or fifteen years that you have lived there, was it a street which was open to the public?

A. Oh, yes.

Q. There is no doubt about that?

A. Yes, it was a public street.

Q. Were there any lamp posts there?

10 A. Yes sir, at the corner.

Q. That is at the corner of Mountain and Blache streets?

A. Yes.

Q. Did you notice any civic numbers there?

A. My number was nine, I think.

Q. Was it a Corporation number?

A. Yes.

Q. And the other houses, had they numbers too?

A. Yes, they were numbered.

20 Q. During the whole time that you were there, did you pay the ordinary taxes on the property you occupied on that street?

A. Yes, the yearly taxes.

Q. Water rates and so on?

A. Yes.

Q. Since that, did you have occasion to go on that street to see if it is open or closed?

A. Well, it is closed.

Q. Do you know by whom?

30 A. By the Atlantic and North West Railway Company, one of the parties in this case,

Q. Do you know anything about the grading of that street?

A. No, I cannot say.

Q. Did you see any sticks or pickets that had been placed there?

A. I did not notice. There was some pickets placed there when they were building that shed which I thought was the line of the street?

Q. Do you know who placed them there.

40 A. I cannot say who placed them there.

Q. Well, what line do you mean by that ; that they were planting pickets for?

A. Well, it was the line of the new street that was going through there I bought property on the corner of Bisson street and when I bought it I expected to have a street there. In fact I was told by the man that there was going to be a street which would have enhanced the value of the property.

Q. What was the name of that street.

A. It was the continuation of Donegani street ; that was why I bought my property. I did not think I was going to be hemmed in.

Q. Did you notice whether there was a dumping-ground for rubbish and

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Deposition of
John Eaman
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—Continued.

RECORD. the refuse from the houses ?

A. Not during our time. It was any thing but that.

In the Q. Well, you say that the refuse of the houses was carried away ?
Superior

A. Well, we used to carry it away ourselves and put it on that we had there back of our premises. I considered it was perfectly clean.

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— *Continued.*

CROSS-EXAMINED.

Q. On which side of the lane was the house occupied by you ?

A. On the lower side from Mountain street. 10

Q. Could you indicate it on the plan ?

A. I should think so, yes.

The witness indicates the house on lot number six hundred and sixty-two, as being the house occupied by him.)

Q. Is that house occupied by Mr. Koester ?

A. Yes ; he is my landlord.

Q. Now, the property you speak of as buying was on Bisson street on the line of the continuation of Donegani street ?

A. Yes.

Q. On which side, the upper or the lower ? 20

A. On the lower side—the continuation of Donegani street.

Q. Did the Railway Company defendant in this case expropriate any of your line ?

A. None of my land that I bought afterwards.

Q. Your land would be about lot number six hundred and fifty-two ?

A. Well, I do not know about the numbers.

Q. Well, cannot you tell from the continuation of Donegani street ?

A. Well, my property forms the corner of lot on the opposite side of Bisson street from Donegani. I am on the opposite corner—two brick houses there. 30

Q. You are aware that the Atlantic and North Western Railway Company has expropriated that part of lot number six hundred and fifty-two, the property of Joseph Boden ?

A. Yes, I bought from Joseph Boden.

Q. So that the Railway Company have expropriated that part of Boden's property through which Donegani street should have run if it had been continued ?

A. Yes.

Q. And you have no ground of complaint against the Railway Company if you can have that street opened ? 40

A. Yes I would like to have a street opened.

Q. Did you ever see the water pipe that was laid down in Blache Lane ?

A. Yes, I saw it in the cellar.

Q. What kind of a pipe was it ?

A. A regular ordinary water pipe that every one uses at present in our houses.

Q. I want to know what kind of material it was made out of ?

- A. It was an ordinary lead pipe.
 Q. Was it the same kind of a pipe that was in the street?
 A. I did not see the pipe in the street.
 A. No, sir, I never saw any pipe in the street.
 Q. You did not see this pipe in the street?
 Q. Did you pay any taxes besides the water tax?
 A. Yes.
 Q. And the ordinary property taxes?
 A. Yes, sir.
 Q. You say that you saw pickets there placed there in building the shed.
 10 What shed do you mean?
 A. I mean the passenger depot there.
 Q. You mean pickets placed there by the Railway Company?
 A. I do not know. I saw them there and I thought they were the line of the street.
 Q. Where were they?
 A. In a line with the shed that was built there.
 Q. In a line with the Railway Company shed?
 A. Yes.
 Q. When was that?
 20 A. During the time that work was going on.
 Q. Well, can you not give us the date
 A. No, I cannot give you the date?
 Q. Is it two years ago?
 A. Yes, it is two years.
 Q. Not more?
 A. No, not more.
 Q. I suppose the people you have mentioned as living on this land, had no means of egress but Mountain street?
 A. That was their only way of getting out—by Mountain street.
 30 Q. And these were the only people who used it—the people who lived in these houses and those that had business with them?
 A. The people that lived there, yes—the regular tenants.
 Q. Where did you put the refuse from the houses, from your own house for instance?
 A. Well, in my house we used to have a box and have it carted away.
 Q. Where was that box?
 A. In rear of the shed.
 Q. You never put ash barrels in the street?
 40 A. No, sir. At that time there was no scavengers going around to take ash barrels away. We had to carry them away ourselves or have them carted away.
 Q. So far as you know, this lane or street or whatever you like to call it, is used merely as a means of going in and out of this property?
 A. Yes.

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*In the
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No. 169.
Deposition of
John Eaman,
for the Intrs.
Filed 25th
April, 1890.
—Continued.

Q. You consider that you have a ground of complaint against the Company about Donegani street, will you state why ?

A. Well, I did not say Donegani street—I mean Blache street, because if Blache street had been opened, I would have had a thoroughfare right through, and I should have built on it, and at present, I can do nothing with it. If Blache street had been opened up, I would have had a corner lot and I should have done well with it.

Q. Well, who was going to open that Blache street ; was it the city or the Railway Company Defendant ? 10

A. I cannot say.

Q. Well, who closed that street ?

A. The Company closed it.

Q. Was Blache street used at the time you lived there, for vehicles ?

A. Yes.

Q. As well as for pedestrians ?

A. Yes, for both purposes.

And further deponent saith not.

And this a true and correct transcript of shorthand notes of his deposition as taken at enquête by 20

M. E. DOHERTY,
Stenographer.

(ENDORSED.)

Deposition of John Eaman for Intr. Filed 25th Apr. 1890.
(Paraphed), A. B. L.

30

SCHEDULE No. 210.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

40

On this eleventh day of March, in the year of Our Lord, one thousand eight hundred and ninety ; Personally came and appeared, William Darling, of the City of Montreal, Accountant, aged —— years, witness produced on the part of the Intervent, who, being duly sworn deposes and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this

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Deposition of
William
Darling for
the Intrs.
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cause, I am not interested in the event of this suit.

Q. Mr. Darling, I think you are the same gentleman who wrote that letter to the Road Committee complaining against the closing of Blache street ?

A. I am.

Q. Do you know that street well ?

A. Yes.

Q. You have acquired property there, I think, since how many years ?

A. I bought what is known as the Hughes property subsequently to the expropriation by the Railway Company, Defendant;

Q. Do you know whether that street was open to the public ?

10 A. It has been opened ever since I lived in Montreal—twenty-five years.

Q. You know that street has been there ?

A. I do

Q. Did you see any sidewalks there ?

A. Yes, on one side of the street for a portion of the time.

Q. Do you know whether there are any water pipes there ?

A. I have no knowledge of that.

Q. In your own property in eighteen hundred and eighty-seven was there any water there ?

20 A. No, the property I acquired only fronted on St. Antoine street.

Q. Do you know whether there were any lamp posts there ?

A. I do not recollect.

Q. Do you know Mr. Walkers property there ?

A. I do.

Q. Do you know whether he has been expropriated ?

A. Yes.

Q. And whether he has rebuilt his property ?

Q. I do.

Q. Did he do it on the same line ?

30 A. He built on the new line, the line of expropriation by the Railway Company.

Q. Do you know who closed that street ?

A. The Atlantic & North-Western Railway Company.

Q. Was it closed by the said Company entirely or only partially ?

A. It is entirely closed.

Q. Do you know of any proprietors whose ingress or egress on that street was by Mountain street—Blache Lane ?

40 A. Yes, Hughes, Nichols and Walker's. The first two the entrance was entirely by Blache Lane, and you could not get access to them in any other way, and to Walker's factory also, because there was a shop before it on St. Antoine street.

Q. Do you know whether before or after the closing of that Blache Lane by the Railway Company, there was any talk or promise by the said Company to have another street to replace that one ?

Objected to this evidence as being illegal, and also as tending to prove against the award and the deed of sale produced.

Objection reserved.

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—
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Deposition of
Wm. Darling
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A. Well, before purchasing the property, I called on Mr. Walker, whom I had never seen before, and inquired of him as to what the arrangement was in regard to the street in the rear.

Q. Well, now Mr. Darling, did you get anything directly from the Company or its officials?

A. Well, I saw the Company's arbitrator before purchasing; I saw Mr. Duff, the proprietor's arbitrator, and after that I saw Mr. Cantin. I asked him to show me the plan he had produced at the arbitration showing the fifty feet street that was promised. He told me that he had the plan amongst his papers, and that the arrangement was perfectly clear, that this fifty feet street was to be given, and I accepted his explanation on that point as being conclusive that the fifty-foot street had been promised. 10

Q. Well, was it Donegani street that was going to be extended?

A. It is a continuation of Donegani street. The real line of this property is in a true line on the continuation of Donegani street.

Q. You know that it was nothing but Blache Lane shown as the homologated lines are now?

A. No; there is a diversion of the homologated line. The homologated lines trend mostly to the north, but the true line of Donegani street is a diversion from the homologated line, as it occupies the same width, only it runs in a direct line verging to the north. 20

Q. Mr. Cantin was the arbitrator of the Railway Company?

A. Yes.

Q. Are you still a proprietor in Blache Lane?

A. Yes.

Q. So you were enquiring for your own personal interest and information from that official?

A. Certainly.

Q. By what you know for the last thirty-five years of that street, is it a private lane or a public street? 30

A. It has been perfectly open to the public during all that time.

Q. It is possible to use this street for vehicles?

A. It was used both for vehicles and for pedestrians.

Q. Now, is it to your personal knowledge that this street or lane has been used for a dumping-ground, as a place or public refuse?

A. I never saw anything of that kind.

Q. At the time that the Company took possession of that street, was there anything of that kind? Was it used as a dumping-ground?

A. I never saw any such thing.

Q. Did you ever notice there any barrels they used for carrying away the refuse of the houses there? 40

A. No; my attention was never called to it, and I never noticed anything unusual about the question.

Q. Well, you have seen these plans that have been exhibited here, for instance, Mr. Adams' plan and Mr. Charland's plan, and all the others, and you find on these plans the same location as the actual Blache lane?

A. They appear to me to be exactly the same location, and there is a cir-

cumstance about that, that has not been spoken of. It is this : That the northern boundary of the lane was formed by a very old stone house which was called Blache ; so far as I know, it formed the northern boundary of the lane on the corner of Mountain street. Of course, I did not see it built, but it looked to me to be there at least fifty years, when I saw it first thirty years ago.

Q. Was it the house of the proprietor from whose name Blache street is deprived ?

A. That is what I have always understood.

Q. The Mr. Walker you refer to is the same gentleman who also sent a letter addressed to the Council and the Corporation ?

10 A. He is.

Q. What is the object of these two letters ?

A. To represent to the Corporation the injury and injustice that was done to the proprietors by depriving us of our entrance and damaging the properties by making them quite unaccessible.

Q. In others words, it was to call the Corporation to your help ?

A. Yes.

CROSS-EXAMINED.

20 Q. When did you purchase the Hughes property ?

A. I bought it in October, eighteen hundred and eighty-seven.

Q. That was after the expropriation by the Railway Company ?

A. Yes ; and prior to the deed being granted to the Railway.

Q. It was after the award ?

A. Yes ; after the award was rendered.

Q. Now, previous to that time, you had no interest in the street there ?

A. None whatever.

Q. The street that you understood from Mr. Cantin was to be put down there was one which would run between Blache Lane and the property which
30 bought ?

A. No, it was a street between Mountain and Bisson street.

Q. Yes, but it ran parallel with the rear line of the property you bought and Blache Lane ?

A. No, because it was to be fifty feet wide, and they only expropriated about twenty-eight feet. So, it must have taken in a large portion of the rear of Blache Lane ?

Q. The Hughes property was towards the back end of the lane ?

A. Yes, towards the east end of the lane.

Q. When we got to the Kœster property number six hundred and sixty-
40 two, this new line would not have touched Blache Lane at all ?

A. No, apparently not. It would just trend over it at that point. It would begin to trend over it at that point.

Q. However the street you speak of would have been as you understood it, a prolongation, in a direct line of the lines of Donegani street as now existing ?

A. That is what I understood at the time.

RECORD

*In the
Superior
Court.*

No. 170.

Deposition of
Wm. Darling
for the Intra,
Filed 25th
Apr. 1890.

— *Continued.*

RECORD.

*In the
Superior
Court.*

No. 169.

Deposition of
Wm. Darling
for the Intrs.
Filed 25th
Apr. 1890.
— *Continued.*

Q. And you understood then also that Blache Lane as previously existing would be locked up.

A. I understood that so much of Blache Lane as would be necessary to form a new street would be incorporated in the new street. I knew nothing of what was to become of the rest of it. It was a matter I did not enquire into.

Q. Were you ever in Blache Lane yourself, Mr. Darling ?

A. I never was in Blache Lane until after having bought this property.

Q. You went in there at the time that you bought the property ?

A. Yes I was in there before and after I bought it. 10

Q. That is just at the time you were negotiating for these properties ?

A. Yes.

A. You were in the habit of passing up and down Mountain street ?

A. Yes, very often.

Q. You saw this lane there ?

A. Yes, I knew it as I know other streets that I have never gone into.

Q. What was the name of this street ?

A. I could not say.

Q. Before you bought that property from Mr. Hughes and before you had begun to negotiate for it, could you have told any one the name of that lane ? 20

A. Yes, I think I could.

Q. But you are not very positive about that, are you ?

A. Well, my impression is that I did not know the name of it but I had occasion to enquire about properties there previous, and I have become familiar with it in that way.

Q. You have no personal knowledge of any particular person using that street ?

A. No. I knew nothing about the people who lived there. I do know that Mr. Walker was using it before my purchase.

Q. This is the Mr. Walker who lived there ? 30

A. Yes.

Q. Who says that this lane was closed up by the Railway Company. Do you not pretend to know from your own personal knowledge as to what company it was.

A. I presume that the company that expropriated the land made the works, and that is all the reason I have for saying it.

Q. Now, you are aware, I suppose, that this railway which covered the lane formed part of the approach to the passenger terminus ?

A. No, it does not form part of the approach to the station.

Q. Well, does it form part of the siding ? 40

A. Yes, tracks are upon it.

Q. They are tracks laid down by the Railway Company ?

A. It is at present occupied by tracks supported on trestles and on embankment, partly by both.

Q. Are you not aware that that part of the station or the train shed is built over the site of Blache Lane ?

A. I am aware that this is the case as regards portions of it. It is not

the case as regards the part made in rear of my property.

Q. Well, now, you are aware that the part of the railway there forms portion of that part of the Canadian Pacific Railway track between the passenger terminus in Montreal and the Lachine Bridge ?

A. I know that the railway runs in over that line.

Q. Well, I want to know if trains going up to Lachine Junction pass over that road there ?

A. Yes.

Q. And you are aware, are you not, that trains from Sault Ste. Marie and all over the North-West, the Pacific Coast from the United States and the Atlantic Coast pass over this portion of the road ?

A. All the Canadian Pacific trains coming to that station, as far as I know.

Q. Are you not aware, as a matter of public notoriety, that all the trains running over these lines come to that depot over that portion of the road ?

A. Yes, I know that.

Q. You say that Mr. Hughes' only egress was by this lane ?

A. Yes, for the rear lot.

Q. But he had not built on the rear lot ?

A. That is perfectly true, but it was a building lot. His premises on St. Antoine street had a shed close to St. Antoine street, and the rest was a building lot, and I bought it as a building lot.

Q. Was there any division ?

A. No, there was no division.

Q. There was no fence across any part of the lot ?

A. No.

Q. It was opened from St. Antoine street.

A. No, St. Antoine street was blocked.

Q. From the back part of the house to the rear of the lot there was no obstruction ?

A. No.

Q. Could you give us, roughly speaking, the depth of the Hughes lot remaining after the expropriation ?

A. A hundred and sixty to a hundred and sixty-two feet after the expropriation.

Q. You are the Mr. Darling who was giving security for the prosecution of this suit ?

A. Yes.

And further deponent saith not ; and this is a true and correct transcript of shorthand notes of his deposition as taken by me at enquête.

M. E. DOHERTY.

Stenographer.

(ENDORSED.)

Deposition of William Darling for Intervenant, taken this 11th March, 1890. Fyled 25th April, 1890.

(Paraphed), A. B. L.

RECORD

*In the
Superior
Court.*

No. 170.

Deposition of
Wm. Darling
for the Intrs.
Fyled 25th
Apr. 1890.

— *Continued.*

SCHEDULE No. 211.

RECORD.

*In the
Superior
Court.*

Cour Supérieure pour le Bas-Canada.

Présent :—

L'HONORABLE MR. LE JUGE MATHIEU.

No. 171.
Deposition of
Ovide
Mailloux for
Intrs. Fyled
25th Apr.
1890.

L'an mil huit cent quatre-vingt dix le onzième jour de Mars est comparue: Ovide Mailloux, Architecte de la City et District de Montréal, âgé de trente quatre ans témoin produit par l'Intervenante lequel après serment prêté, dépose et dit : je ne suis point intéressé dans l'évènement de ce procès ; je ne suis ni parent, ni allié, ni au service d'aucune des parties en cette cause : 10

Q. Comme architecte vous avez construit la maison de Mr. Walker sur la rue Blache ?

R. Oui, Monsieur.

Q. Voulez-vous nous dire sur quelle ligne vous l'avez construite et comment vous avez pris telle ligne ?

R. Je l'ai construite sur les deux lignes, les deux fois.

Q. La première fois combien y a-t-il d'années ?

R. La première fois il y a cinq ans à peu près. 20

Q. Sur quel ligne était-ce ?

R. Sur la ligne homologuée de la Corporation.

Q. Ça c'était après l'expropriation n'est-ce pas ?

R. Après l'expropriation parce qu'on a laissé le morceau de terrain de l'exproprié.

Q. Et la seconde fois, il y a à peu près deux ans, sur quelle ligne ?

R. Sur une ligne qui avait été donnée par la Compagnie du Pacifique.

Q. Vous rappelez-vous qui représentait la compagnie pour donner cette ligne ?

R. Non. Monsieur Walker a dit, que c'était la compagnie. Je n'ai pas vu personne donner la ligne. 30

Q. Comment expliquez-vous ce changement de ligne là ?

R. Dans l'intervalle, j'avais entendu dire que Monsieur Walker avait vendu au Pacifique et que la Compagnie l'avait exproprié et qu'il bâtissait en arrière.

Q. Cette ligne sur laquelle vous avez bâti correspondait à quelle ligne de la rue ?

R. Laquelle, la première.

Q. La seconde ?

R. Vous avez le plan homologué devant vous. Les deux lignes sur le plan correspondent à la rue Donégani. 40

Q. Est-ce Monsieur Walker qui vous a donné la ligne, ou quelqu'un du Pacifique.

R. Non, Monsieur Walker m'a montré la ligne, la ligne était marqué sur là bâtisse.

Q. De quelle manière était-ce marquée ?

R. Avec une espèce de croix.

Q. Quand avez-vous préparé ce plan de la bâtisse ? N'avez-vous pas préparé ce plan sur l'alignement de la nouvelle rue, d'une nouvelle rue.

R. Il en a été question, c'était l'intention. Nous avons laissé les ouvertures, à la façade, exprès pour cela, Monsieur Walker disait qu'il y avait une rue, qu'il devait y avoir une rue ; nous avons laissé les ouvertures pour avoir droit de vu sur la rue comme s'il devait y avoir une rue.

Q. Est-ce qu'il n'a pas eu un changement de niveau dans la rue ?

R. Nous n'avons jamais demandé de niveau ni à la corporation, ni la première, ni la seconde fois. Nous avons pris le niveau à peu près de la rue de La Montagne, par nous-mêmes. C'était à peu près le niveau de la rue Blache qui existait la première fois.

Q. Est-ce qu'il n'y a pas eu un changement ensuite de ce niveau ?

R. Le Pacifique a mis de la terre, ils ont augmenté cela, ils ont rapporté de la terre. On a dit dans le temps, que c'était la Compagnie ; mais je n'ai pas vu qui l'a mise, j'ai vu mettre de la terre là et c'est le niveau.

Q. Est-ce que cela affectait les fondations de la maison de Monsieur Walker ?

R. Ça l'affectait toujours ; il ne pouvait plus sortir, car les ouvertures qu'il y avait là étaient bouchées, ses portes ; il ne pouvait plus sortir.

TRANSQUESTIONNÉ PAR MONSIEUR ABBOTT :

Q. Quelle sorte d'ouverture avez-vous faites, dans la bâtisse en arrière ?

R. Nous avons mis des chassis, des portes.

Q. Quelle était la largeur de ces portes ?

R. Quatre pieds, une porte de cour, on a laissé une porte de cour, sept pieds et demi, à côté de la bâtisse, et la porte où l'on entrait dans la manufacture avec quatre pieds de largeur, et les chassis quatre pieds aussi.

Q. Les ouvertures, dans la bâtisse même donnant sur la rue étaient de quatre pieds seulement ?

R. Quatre pieds de largeur.

TRANSQUESTIONNÉ PAR MONSIEUR BARNARD :

Q. Quelle a été la durée des travaux pour construire la bâtisse sur la nouvelle ligne, en deuxième lieu ?

R. Cela a duré à peu près une couple de mois, deux mois, je crois.

Q. De qui avez-vous obtenu l'alignement ?

R. C'est Mr. Walker qui m'a montré l'alignement.

Q. La bâtisse a été construite précisément dans la ligne la nouvelle ligne du terrain ?

R. La ligne que Monsieur Walker m'a montrée dans le temps.

Q. La bâtisse a été construite dans la ligne du terrain tel que le terrain était après l'expropriation ?

R. Oui, monsieur.

Q. C'est Monsieur Walker qui vous a donné cette ligne là ?

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—Continued.

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R. Oui, monsieur.

Q. De qui l'a-t-il obtenue ?

Objecté par Monsieur Abbott, à cette preuve comme illégale, comme étant des oui-dire.

Objection réservée par les parties.

R. Du Pacifique d'après ce qu'il a dit.

Q. Quand vous parlez du "C. P. R." à quel individu en particulier référez-vous ?

R. C'est la compagnie du chemin de fer que est là ?

Q. Vous ne savez pas de quel ingénieur ou de quel arpenteur, employé par la corporation, la ligne a été obtenue. 10

R. Je ne le sais pas. L'alignement non seulement avait rapport à la ligne, mais ç'avait rapport au niveau aussi.

Q. Sur quel niveau avez-vous construit ? sur l'ancien ou sur un nouveau ?

R. Sur l'ancien niveau de la rue Blache. Nous avons suivi le même niveau pour construire l'autre.

Q. En êtes-vous certain ?

R. J'en suis certain, en autant que je puis me rappeler.

Q. Pendant le temps que vous avez eu la surintendance de la nouvelle bâtisse vous faisiez des visites fréquemment ? 20

R. Oui, presque tous les jours.

Q. Vous rencontriez les employés de la compagnie ?

R. Non, je n'ai jamais vu un employé de la compagnie ; je n'ai pas vu d'employé de la compagnie.

Q. Vous n'auriez pas reconnu Monsieur Van Horne ?

R. Non, je ne le connais pas du tout, je ne l'aurais pas reconnu.

Q. A l'époque en question, alors que vous construisiez la nouvelle bâtisse, avez-vous vu si la rue était indiquée, la nouvelle rue ? Y avait-il des piquets pour montrer l'alignement de la nouvelle rue ?

R. Dans le temps qu'on construisait la compagnie faisait charroyer de la terre dans le côté ; le chemin était laissé là ; nous entrions les matériaux, les matériaux ont passé par ce chemin-là. 30

Q. Vous avez vu là, d'un côté ? Avez-vous des piquets sur la ligne vis-à-vis ?

R. Opposé, non. De ce côté-ci, ils ont fait une clôture ; il y a une clôture de plantée de ce côté-ci.

Q. Comment Monsieur Walker avait-il sa provision d'eau alors que sa bâtisse faisait face à la rue Blache ?

R. Par la rue St. Antoine.

Q. Pour construire la nouvelle bâtisse il a fallu faire venir un grand nombre de matériaux ? Tout cela est venu par où, par la rue de La Montagne ? 40

R. Oui, Monsieur, et cela passait sur le chemin de l'exproprié qui est aujourd'hui au Pacifique là où il est.

Q. C'était, dans quel temps le l'année ?

R. Voilà deux ans à peu près, en mil huit cent quatre vingt-huit (1888) je crois bien.

Q. Avez-vous eu occasion de visiter la nouvelle bâtisse, après que ç'eut

été fini ?

R. Oui, j'y suis allé.

Q. Jusqu'à quelle époque ?

R. Je suis allé à peu près voilà deux mois.

Q. Plusieurs mois après ?

R. Plusieurs mois après, et même j'y ai été à peu près il y a deux mois encore.

10 Q. Pouvez-vous dire que pendant tout le temps qui s'est passé après la construction alors que vous la visitiez, Monsieur Walker avait accès à la rue de La Montagne comme avant ?

R. Je sais qu'il a sorti pendant un certain temps, après qu'on eut fini la construction.

Q. Cette bâtisse là combien d'étage a-t-elle ?

R. Trois étage à part de la cave.

Q. Les portes donnent sur la nouvelle rue, les fenêtres et même le toit ?

R. Oui, la corniche surplombe comme dans une rue ordinaire.

Q. Cette bâtisse et tout cela est-ce que ça s'est fait sans que les employés de la compagnie s'en soient aperçus ? ça c'est fait ouvertement ?

20

RÉ-EXAMINÉ PAR MR. ABBOTT :

Q. Pour combien de temps Monsieur Walker avait-il accès à la rue de la Montagne, en arrière, après la construction du chemin de fer ?

R. Je ne puis pas dire ; je sais qu'il a sorti par là, après, mais je ne puis pas dire combien de temps.

Q. Vous l'avez vu après ?

R. Oui, monsieur.

Q. Quand ?

30

R. Quand le Pacifique a planté ses piquets ; quand ils ont planté leurs murs.

Q. La construction n'était-elle pas finie dans le temps ?

R. La nôtre était finie, celle de Monsieur Walker.

Q. Mais la construction du chemin de fer n'était pas finie ?

R. Non ce n'était pas comme elle est aujourd'hui.

Q. Dans le temps quand vous avez construit cette bâtisse pour monsieur Walker, n'est-ce pas que la ruelle Blache était obscurée par les travaux du chemin de fer ?

R. Oui, monsieur.

40 R. Monsieur Walker a charroyé les matériaux pour sa bâtisse sur la propriété expropriée par le chemin de fer, dans la rue de La Montagne parce qu'il ne pouvait plus passer sur la rue Blache ; elle était bloquée ; il passait à côté, sur le terrain qu'il avait vendu au Pacifique.

Q. Du côté du sud de la ruelle Blache ?

R. Oui, monsieur.

Et le dit Déposant ne dit rien de plus.

Je, soussigné, sténographe officiel, pour le District de Montreal, déclare sous le serment que j'ai déjà prêté en cette cause, que ce qui précède est une

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—Continued.

RECORD. transcription fidèle et exacte en écriture au type writer de la déposition du dit témoin prise par moi par le moyen de la sténographie ; et ce conformément à la loi ; et j'ai signé.

—
*In the
Superior
Court.*
—

L. J. COLLIN,
Sténographe Officiel.

(ENDORSED.)

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Deposition of
Wm. Darling
for the Intrs.
Fyled 25th
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—*Continued.*

Deposition de Ovide Mailloux, témoin de l'Intervenante, prise le 11 Mars,
1890. Prod. 29 Avril, 1890.
(Paraphed), A. B. L.

10

SCHEDULE No. 212.

In the Superior Court for Lower Canada.

20

No. 172.
Deposition of
Thos. Darling
for the Intrs.
Fyled 25th
Apr. 1890.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

On this fourteenth day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared Thomas Darling of the city of Montreal Accountant, aged _____ years and witness produced on the part of the Intervener, who, being duly sworn, deposed and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

30

Q. You have already been sworn in this cause ?

A. Yes.

Q. By what you have seen and declared here before this Court about the closing of Blache street, what is the amount of damages the City has suffered, and also what inconvenience and damages have been suffered by proprietors who had properties on that lane or street ?

A. The City has suffered damage to the extent of all the assessed value of the property on that street, being the difference between what the property may be considered to be worth now, without having any access to the street and what the property was worth when the street was open and the various proprietors had an outlet on the street; that is to say, the property is practically valueless now which would have fronted on Blache Lane or the substitute promised for it. It has now assessable value now where it would have been valuable for assessment if the promise had been fulfilled and Blache Lane had been substituted by a new improved street. In my opinion there is a further damage the City is likely to suffer. There is the same necessity for a street between Osborne and St Catherine at the point between Bisson and Mountain as

40

between Bisson and Windsor; that is to say, there is the same necessity for Donegani street as there was. In order to continue Donegani now it would be necessary to expropriate at much greater expense than would have been the case when the area of Blache Lane was available.

Q. Have you fixed a figure, in your own estimation, which the City would suffer or has suffered?

Objected to, as the witness is not competent to assess the damage, that being a matter for the Court to decide.

Objection reserved.

10 A. I think the damage from loss of revenue and additional cost of expropriation would be, at a moderate figure, not less than fifty thousand dollars and the loss to the proprietors, in consequence of the deprivation of access to their property and the deprivation generally, I should say would be about as much—fifty thousand dollars.

Q. Did you also include in the amount of damages the fact that the homologated plan has been entirely changed and altered?

20 A. I made no particular estimate on that point. I formed what I believed to be substantially an approximate idea as to the additional amount that would be involved in consequence of the City having to expropriate on a different line in order to continue the street, as well as representing a certain capital which is equivalent to the loss of revenue to the City.

Q. I think you had some conversation or interviews with Mr. Shaughnessey or Mr. Heneker about the closing of that street?

A. I had, in October and November, eighteen hundred and eighty-eight.

Q. Will you mention in detail those conversation you had?

A. When it began to be evident that the Company were encroaching upon the area of the promised street, I went to Mr. Heneker and represented the fact to him.

Q. Who was Mr. Heneker—in what official capacity was he then?

30 Q. Assistant Attorney, I believe of the Canadian Pacific Railway Company. I saw him in the Canadian Pacific office.

Q. Had he anything to do with the expropriation of the present Company in this case?

A. Yes.

Q. Was he known as the Attorney of the Atlantic & North-Western Railway?

A. Yes; the legal business connected with this expropriation was done through his office.

Q. Mr. Shaughnessey, what was he?

40 A. He was at that time, I believe—I will not be quite positive,—Assistant Manager of the Canadian Pacific Railway Company.

Q. With the Atlantic and North-Western Railway, had he anything to do?

A. What I understand to be the case is that the Canadian Pacific Railway Company stand in the position of the Atlantic & North-Western Railway, either as lessees or as being substituted in their charter. I saw Mr Heneker and represented to him the breach of contract with the parties involved in

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encroaching on the new lane or street, and called his attention to the plan which had been submitted to the arbitrators and was expected by the parties. He asked me to return, and in the meantime he would see Mr. Shaughnessey. I returned some days afterwards, and he said he did not see that he could not interfere at the present time; that the matter was not before the legal department, and it would be necessary for me to see Mr. Shaughnessey about it. I called and saw Mr. Shaughnessey, and I made the same representations to him regarding the breach of contract under the plan, and asked him if he was aware of all the circumstances which were connected with the filling up of the promised street. He said he knew all about it, and that he did not intend to deviate from what they were doing. I mentioned to him that my reason for calling upon him was in connection with a projected public meeting of the proprietors to institute proceedings for their own protection, and that was the answer he gave me, "That they had no intention to deviate from the plan they had subsequently adopted." 10

Q. So that the practical result of the conversations or interviews you had with those two officers was that they did not like to do anything at all?

A. That was exactly what took place. Mr. Shaughnessey declined, and Mr. Heneker said it was not his department.

Q. Was there any talk about a plan that was originally made with the intention of having a street? 20

A. Certainly; that was the plan I represented to him was the basis of the agreement, and Mr. Shaughnessey acknowledged that. I said it was submitted by Mr. Cantin, their Arbitrator. He admitted that plan had been in existence; I did not ask him if it was in existence.

Q. Did he give any reason why this plan had been abandoned?

A. No; he did not offer any explanation.

Q. Are you aware that, owing to the encroachment of the Company, the water supply had been cut off on Blache street?

A. I do not know anything about that. 30

CROSS-EXAMINED BY H. ABBOTT, ESQ., Q.C., OF COUNSEL FOR DEFENDANTS.

Q. Did you intend to say that these properties lying between St. Antoine street and the railway are assessed at less now than before the railway passed there?

A. They are assessed at a great deal less than they would have been if the street had been opened. I got a reduction on my own property by representing the value of the property was actually diminished in consequence of the deprivation of the frontage of the rear. 40

Q. Do I understand you to say you are paying less on that property, in proportion to its size, than Mr. Hughes?

A. I am paying less than before I made this representation.

Q. Did the City assess you on the whole property?

A. Yes.

Q. In the first place?

A. Yes.

Q. That included the piece in the rear?

A. No. The City assessed me on the whole property as I award it, and on account of the deprivation of frontage to the rear they reduced the amount of the assessed value.

Q. You do not know if that was done in the other cases?

A. I paid no attention.

Q. The damage you estimate as the loss of revenue that will result to the City, in your opinion, is the loss of the increased value that would have been given to these properties if Donegani street had been continued through?

10 A. That is only one element.

Q. The other is the increased cost of expropriating?

A. No; the other is the decreased value of the land as it stands to-day in consequence of having no frontage to the rear.

Q. Are you aware that that portion of the railway property which was built on the former site of Blache Lane is assessed and brings in a revenue to the City?

A. I have no doubt it does.

Q. Do you know how much that amounts to?

A. I do not know how much that piece may be assessed at.

20 Q. You are aware the City derives a revenue from the railway property being assessed?

A. I presume so. I do not know anything about it.

Q. You say you think it is practicable now to extend Donegani street?

A. Not in a straight line without the removal of the works which the railway has put on the site.

Q. Do you consider it practicable to do so, without interfering with the railway?

A. It is perfectly practicable to carry out the original plan, by carrying out the line of the original plan.

30 Q. Without trenching on the railway property?

A. The railway having taken possession of what they promised the proprietors it would simply result in the railway abandoning what they were to cede to the proprietors.

Q. I ask you whether it would be practicable to open that street through, as things stand now, without touching the property acquired by the railway?

A. I say it is without touching the property of the railway to the extent the railway originally agreed with the proprietors.

40 Q. What you mean to say is, if the portion which the Company has, as you pretend, illegally possessed itself of, were given up, it would be practicable to make a street.

A. The city can still make a connection between Bisson and Mountain by expropriating properties from proprietors other than the railway.

Q. To the south of the railway?

A. Yes.

Q. Do you consider that would be practicable?

A. Yes.

Q. What good object would that serve?

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—
*In this
Superior
Court.*

—
No. 172.
Deposition of
Thomas
Darling for
the Intrs.
Filed 25th
Apr. 1890.
Continued.—

RECORD.

*In the
Superior
Court.*

No. 172.

Deposition of
Thos. Darling
for the Intrs.
Filed 25th
Apr. 1890.
— *Continued.*

A. As a means of communication between Bisson and Windsor streets and Mountain street, and the proprietors on that section of the street, are as much entitled to have access from the rear, as they are to the east of it.

Q. To carry on an extension of Donegani street as things are at present the City would have to begin the street from Bisson to Mountain, at the lower corner and make a jog there ?

A. Yes ; what would have been under other circumstances the Southern would become the northern side of the street.

Q. They would have to pull down several houses on Bisson and Mountain streets ?

A. Remove whatever is in the way. 10

Q. You consider that would be a benefit to the proprietors ?

A. Yes, and to the City.

Q. I suppose you are aware at the time the railway was constructed there Donegani street was not open to Bisson street ?

A. I know that.

Q. Miles Williams' property intervened and that was acquired by the railway ?

A. I presumed it was.

Q. You are not aware the railway gave that to the City in order to let them open Donegani street to Bisson ? 20

A. I have no knowledge of the circumstances under which it was done. I know it was done.

Q. Without that the City would have to expropriate that property ?

A. Some means would have to be found in order to continue the connection to Bisson street.

Q. Do you know of any other means ?

A. That is the ordinary means ; sometimes a proprietor considers it to his advantage to open a street and offer it to the City.

Q. Will you give us the figures by which you arrived at fifty thousand dollars damages to the city ? 30

A. In the first place, I assume the frontage on Blache Lane which was open to have been about three hundred and fifty feet, and the buildings which existed and would have been constructed on that, would have been the source of a large revenue to the City.

Q. If they had been constructed ?

A. Those that were, and would have been constructed. There is no doubt they would have been. People cannot afford to keep vacant lots at a cost of one dollar a foot. Then the expropriation necessary to be done by the City if the Company had fulfilled their agreement with the proprietors would have been nil. Now the City has the prospect of acquiring a strip of five hundred by fifty feet in order to carry this street through. 40

Q. There is no obligation on the City to do that ?

A. It is a necessary improvement, and it is a duty the City owes the proprietors by being deprived of a street they had a right to.

Q. You are now giving us figures ?

A. I say I estimate those two things together at not less than fifty

thousand dollars.

Q. That is not giving me the details ?

A. It is all the details I am in a position to give you ?

Q. How do you arrive at the proprietors' loss being the same figure ?

A. I made an estimate of that also, and taking the estimate in my own case, which I know, and the others being approximate to that, I say the loss to the proprietors, as near as I can make it, is fifty thousand dollars.

Q. What is your loss ?

A. About three thousand dollars.

10 Q. When you went to Mr. Heneker in November, eighteen hundred and eighty-eight, you say that at that time the Company were beginning to encroach on the land which they had expropriated from Miles Williams, and which you expected was to be made into a street ?

A. Yes.

Q. Therefore they had at that time covered Blache Lane.

A. I cannot say how much they may have covered, but the encroachment that struck me in the first instance was the continuation of the stone work across part of what would be the entrance of the new street.

Q. So the stone work had blocked up Blache lane before that?

20 A. It must have blocked up Blache Lane, because it was encroaching on what would have been the area of the new street.

Q. So you did not make any remonstrance about closing Blache Lane, what you objected to was blocking up what they intended to give you as a street ?

A. I did not pay any attention to Blache Lane until we ascertained the fact that the Company had taken that street without any title, and then we remonstrated about that.

Q. I understood you to say what you remonstrated with Mr. Shaughnessy was, covering with railway works what was to be made a street ?

30 A. That is right. We served a protest on the City about the blocking of Blache Lane about the month of November, eighteen hundred and eighty-eight.

Q. Do you mean a notarial protest ?

A. Yes ; Kittson, I think, was the notary .

Defendants object to this evidence without the protest being produced.

Q. I understand you to say Mr. Shaughnessy repudiated all responsibility towards the proprietors with regard to this new street ?

A. He did not say that. He said he did not intend to deviate from the plan which had been subsequently adopted.

40 Q. They did not intend to deviate from the plan fyled with the Clerk of the Peace ?

A. He never said such a word.

Q. Have you ever seen the plan that was fyled with the Clerk of the Peace ?

A. Yes, I have ; I have seen all the plans fyled in that office.

And further deponent saith not.

RECORD.

—
*In the
Superior
Court.*

—
No. 172.

Deposition of
Thos. Darling
for the Intrs.

Fyled 25th

Apr. 1890.

—*Continued.*

J. J. CROWLEY,
Off. Stenographer.

RECORD

—
*In the
 Superior
 Court.*

No. 172.

Deposition of
 Thos. Darling
 for the Intrs.
 Fyled 25th
 Apr. 1890.

— *Continued.*

I, James J. Crowley of the City of Montreal, Official Stenographer, sworn stenographer in this cause, on the oath I have taken, depose and say :—

That the foregoing sheets numbered from one to eleven, consecutively, being eleven pages in all, are and contain a true and faithful transcript of the evidence of the named witness, by me taken by means of stenography, the whole in manner and form as required by and according to law.

J. J. CROWLEY,
Offi. Stenographer.

(ENDORSED.)

10

Deposition of Thos. Darling for Intervenant. Fyled 25th April, 1890.
 (Paraphed), A. B. L.

SCHEDULE No. 213.

20

In the Superior Court.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 173.
 Deposition of
 Stuart
 Howard for
 the Intrs.
 Fyled 25th
 Apr. 1890.

On this fourteenth day of March, in the year of Our Lord one thousand eight hundred and ninety, personally came and appeared, Stuart Howard, of the city of Montreal, civil engineer, aged forty-two years, and witness produced on the part of the Intervenant, who being duly sworn, depose and saith :— 30
 I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You are a Civil Engineer ?

A. Yes.

Q. I think you have been charged and instructed by the Atlantic and North Western Railway Company, to prepare a plan that shows the proposed street that was to replace Blache street, after the closing of Blache street ?

A. I do not remember the plan entirely, but they say a plan was given so I presume it was done by me.

Q. Do you remember having planted pickets, or something of that kind, 40
 to indicate the place, or the tracing of the new street ?

A. No, I never laid out the street.

Q. I think you have been called upon by the Canadian Pacific Railway Company to prepare, at the time, the new line of the Atlantic and North-Western Railway towards Blache street, and took possession of that street ?

A. No, there was no other plan made than the original plan deposited with the Clerk of the Peace.

Q. Had you anything to do with taking possession of the street, so far as the railway is concerned?

A. No.

Q. Did you prepare any field notes at the time they commenced working, or before they commenced working on that street?

A. No, I never made the right of way plan at all, it was made by Mr. Rielle.

Q. So, as a matter of fact, you did not prepare any plan for the Company, so far as Blache street was concerned?

10 A. No, I simply had charge of the construction of the work.

Q. I think you saw in what state Blache street was before the encroachment of the railway?

A. Yes.

Q. In what state was it?

A. An ordinary lane, a blind lane.

Q. Was it open to the public?

A. I do not know whether it was a private street or not; but there were buildings on either side of the lane.

Q. Was it also possible for vehicles to go on that street?

20 A. Yes.

Q. Did you notice whether there were properties having frontage on that street?

A. There were properties on both sides of the street.

Q. Do you know whether there were houses that had no other ingress or egress besides Blache street?

A. Yes, some houses on the north side.

Q. How many—three or four?

A. Three or four houses I remember.

30 Q. Since the Company has done the work you mentioned a moment ago, what has become of that street?

A. It is all covered over.

Q. That is to say the street has entirely disappeared and the Company has taken possession of the street?

A. Certainly.

Q. In your estimation, the fact of the city having a street open to the public where vehicles and pedestrians could pass without any obstacles, and the taking possession of that street entirely and having that street disappear entirely, is it a damage to the city?

A. I do not know really, I do not know anything about the assessments.

40 Q. Supposing the city will have to replace that street, to expropriate new properties for another street to replace that one, for the extension of Donegani street, or to give certain advantages to the properties on Bisson street will be a matter of damage to the city to open a street—I mean a matter of cost?

A. Yes.

Q. To those proprietors who had a frontage on Blache street, and now have none at all, is it also a matter of damage to them?

RECORD.

—
*In the
Superior
Court.*

—
No. 172.
Deposition of
Stuart
Howard for
the Intrs.
Filed 25th
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Continued.—

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Deposition of
Stuart
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- A. I presume it is.
 Q. Have you any idea as to the extent of the amount ?
 A. No.
 Q. Do you know whether at present some of the proprietors on the old Blache street have properties where there is no ingress or egress at present ?
 A. No, I do not think I do. I think most of the properties extend up to Osborne street.
 Q. Walker's property, for instance, had a frontage on what street ?
 A. St. Antoine.
 Q. Also a frontage on Blache street ?
 A. Yes.
 Q. Since that street has been taken in possession of by the Company he has no more frontage, nor any more outlet by way of Blache street ?
 A. No.

10

EXAMINED BY E. BARNARD, ESQ., Q. C. FOR PLAINTIFF.

- Q. You said you were in the employ of the Company from what date ?
 A. I have not mentioned the date.
 Q. Were you in the employ of the Canadian Pacific Railway Company ?
 A. Yes.
 Q. Would you look at this plan, exhibit number two, filed on the seventh of March by the Intervenants : You are well acquainted with the ground ?
 A. Yes.
 Q. You are acquainted also with the properties which was expropriated ?
 A. Yes.
 Q. Do you know how they stood—that they faced Blache Lane before the expropriation ?
 A. Yes.
 Q. You know that the new line after the expropriation is marked on the plan ?
 A. Yes, the south line of the railway property.
 Q. The line on which the expropriated properties would abut ?
 A. Yes.
 Q. Did you ever see a plan which would give not only this line, I mean the line the expropriated parties would abut on, after the expropriation, but also a corresponding line at a distance of fifty feet which would represent an open space—I call it a street—which would connect with Mountain street ?
 A. I believe there was such a sketch made.
 Q. Who made it ?
 A. They say I made it. I may have made it. I do not remember.
 Q. Do you remember giving such a plan to Mr. Cantin ?
 A. No, I do not remember it at all.
 Q. Do you remember Mr. Cantin after using such a plan, returning it to you ?
 A. No.
 Q. If you made such a plan, would you have any field notes ?

20

30

40

A. No, if there was such a plan as that it would be made from a drawing like this without any field notes at all.

Q. Whoever made the plan, do you know for what purpose it was made?

A. I believe there was such a plan made, at least I have heard so, and I believe it was for the purpose of arranging with the proprietors.

Objected to the foregoing evidence as hearsay and illegal.

Objection reserved by consent.

Q. Do you know as a fact that it was not only made for the purpose of arranging with the expropriated parties but that it was shown to the expropriated parties to obtain their consent?

A. I could not say; I do not know whether they saw it or not.

Q. Do you know whether it was given to Mr. Cantin for the purpose that he should shew it to the expropriated parties?

A. I could not say it is so long ago.

Q. Would this plan, so far as you can remember, shew Donegani street continued to Mountain street?

Objected to as illegal, inasmuch as the witness has not sworn any such plan did exist?

Objection reserved by consent.

Q. The plan we are now referring to, there is no doubt, is there, that it would shew a line corresponding with that of Donegani street, on the south?

A. I presume it would.

Q. That would be the new line upon which the expropriated parties would abut afterwards?

A. Certainly.

Q. You swear you had seen that plan?

A. No. I would made so many plans that it is very hard to remember any particular plan.

Q. Who said you had made it?

A. Mr. Shaughnessey said so.

Q. After the expropriation, are you aware that Mr. Walker applied for the line upon which he was to put up his factory?

A. I believe he did.

Q. Did you give him the line?

A. No.

Q. Did you refer him to anybody that would give him the line?

A. I most likely would refer him to Mr. Rielle.

Q. Were you employed by the Company or Mr. Rielle to stake the new line?

A. I never staked the new line at all.

Q. Did you put pickets. I am talking about the street now. I am simply now talking of pickets which would have been planted to shew what the new boundary of the expropriated parties would be. Did you plant those pickets?

A. When Mr. Rielle gave us the exact line I remember putting pickets along there for them to build the fence.

Q. After you put pickets on the line given by Mr. Rielle, do you remember

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*In the
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Deposition of
Stuart

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Continued.—

RECORD putting pickets opposite that line to ascertain the line opposite the boundary line of the expropriated parties ?

In the A. I must have drawn lines there to locate the train shed.

Superior Q. That would be at a distance of fifty feet from the boundary line of
Court. the expropriated parties ?

No. 173, A. Yes, it must be a distance of fifty feet, because we had to continue
Deposition of the train shed straight ; we could not make any jog. The train shed being built
Stuart on the north side of Donegani street at fifty feet, the line going through would
Howard for still be fifty feet.

the Intrs. Q. When Mr. Walker pulled down his old building which formerly 10
Filed 25th fronted on Blache Lane in order to rebuild on the new line, did you see him do
Apr. 1890. it ?

A. Oh, yes.

Q. It was done, to your knowledge ?

A. Yes ; certainly.

Q. When Mr. Walker put up his new building on the new line, did you
see him erect the wall ?

A. Yes.

Q. You saw him putting windows and doors ?

A. Yes.

Q. And his wall was plumb on the new line ?

20

A. No, not quite.

Q. Within an inch or two ?

A. Yes.

Q. You saw Mr. Walker's building as it was going up, and when it was
finished ?

A. Yes.

Q. That would be about what date ?

A. I do not remember.

Q. He would have taken two or three months erecting it ?

30

A. Yes ; certainly.

Q. And that would have been, at any rate, in the fall of eighteen hun-
dred and eighty-seven ?

A. I should think so.

Q. You are aware that when Mr Walker's building fronted on Blache
Lane, he had access through that lane to Mountain street ?

A. Yes.

Q. After his new building was put up, did you see him have access to
Mountain street as formerly, not through Blache Lane, but through the open
ground that was staked on both sides ?

40

A. I have seen him passing through there.

Q. I suppose his factory is a large one, merchandise coming in and going
out all the time.

A. Yes. I used to see him driving often over the dumps,

Q. There was traffic going on after his building was put up ?

A. Yes,

Q. I suppose not only yourself, as an employee of the Company, but all the

other employees saw it just as well as you did ?

A. I presume so.

Q. Were you in the employ of the Company on the first of February, eighteen hundred and eighty-eight ?

A. Yes.

Q. Did you become acquainted with the application made by the Company to the City, asking to make certain alterations in Bisson street, and crossing Bisson street and crossing Mountain street.

A. I do not remember the circumstances.

10 Q. You do not remember having drawn the plans submitted to the City ?

A. Yes, I do, those.

Q. Are you aware that the plans submitted to the City were plans which shewed in part what I call the fifty feet street, the continuation of Donegani to Mountain ?

A. No ; I do not remember.

Q. Are you aware that after the pickets had been planted on both sides of what I call this new street, that the grade was altered by the employees of the Company—there was a difference of twenty inches ; I understand the level of the street was lowered twenty inches ?

20 Witness. Do you mean Bisson street ?

Counsel. I am speaking of the space fronting the new line of the expropriated parties.

A. I do not remember any alteration in the grade.

Q. You do not remember there was a change of grade there ?

A. No.

Q. I spoke just now of Mr. Walker's new building—there was another building of Kœster—Kœster had a building there before the expropriation ?

A. Yes ; where number thirty is on the plan.

30 Q. All you have said about Walker when he put up his new building would equally apply to Kœster when he transferred his building from the old line to the new line ?

A. I presume so.

Q. You saw him put a stone foundation to raise his shed ?

A. I do not remember.

Q. At all events, Kœster's building was put up as openly and publicly as Walker's ?

A. Yes

40 Q. Did you ever hear that, at some time about February or March eighteen hundred and eighty-eight, the Company for some reason or other, altered their original intention of having a street ?

A. I do not know it for a fact ; it is only hear-say—I heard so.

Q. From whom did you hear this alteration or intention ?

Objected to this evidence as hear-say and illegal.

Objection reserved by consent.

A. I may have heard it from Mr. Cantin or Mr. Shaughnessy.

Q. If you heard it from any one it must have been from Mr. Cantin or

RECORD.

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Superior
Court.*

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Deposition of
Stuart
Howard for
the Intrs.
Filed 25th
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Continued.—

- RECORD Mr. Shaughnessy ?
- *In the
Superior
Court.*
- No. 173.
Deposition of
Stuart
Howard for
the Intrs.
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Apr. 1890.
—Continued.
- A. Yes; I do not know from whom I heard it.
- Q. Did you hear what induced them to make this alteration ?
- A. I heard that the proprietors would not come to the figure that the Company held at, with the proviso of giving them a road, and that they then said they would abandon the road.
- A. Are you aware that when the first indication came of such an alteration of plan that there was a great outcry on the part of the proprietors, complaining of the great injustice done them ?
- A. I never heard any.
- Q. You never saw any protest from Walker to Shaughnessy that he would be cut off from his access ? 10
- A. No, I would never have seen such papers.
- Q. Did you hear of any excuse made for allowing Walker to put up his new building on the new line and then closing his access ?
- A. No.
- Q. Are you aware of, or could you value the amount of damage done to Mr. Walker, by being refused his access after his building was put up ?
- A. No.
- Q. In a general way it would be a great damage ? 20
- A. Of course it would be a damage.
- Q. Have you an approximate idea of the difference of indemnity a proprietor would have been entitled to, if he was to get a street, or not get a street ?
- A. No.
- Q. In a general way are you prepared to say it would make all the difference in the world ?
- A. It certainly would make a difference.
- Q. It would completely alter the character of the award ?
- A. I should presume so.

CROSS-EXAMINED BY H. ABBOTT, ESQ. Q. C. OF COUNSEL FOR DEFENDANT. 30

- Q. I understand you to say you have no recollection yourself of ever giving Mr. Cantin, or ever making any plan, showing a street on the property between Bisson and Mountain streets ?
- A. I do not remember the facts at all of the case.
- Q. Have you any recollection of making such a plan ?
- A. I have seen such a plan. Whether I made it or not I could not say now; there were so many plans made it is hard to say whether I made it or not.
- Q. I think you said there was a sketch ? 40
- A. Yes.
- Q. Where did you see it, and when ?
- A. Mr. Cantin had it.
- Q. When ?
- A. At the time that he was arranging with the parties to expropriate the land.

- Q. He was negotiating with them at that time ?
 A. Yes.
 Q. This sketch was prepared for the purpose of negotiating ?
 A. Yes.
 Q. All you know about it is you heard when these negotiations fell through the Company adhered to their original plan.
 A. They adhered to the original plan.
 Q. That is the plan before you—Defendant's exhibit A 1 ?
 A. Yes.
 10 Q. That is the plan fyled with the Clerk of the Peace in accordance with the Railway Act ?
 A. Yes.
 Q. That plan as I understand it, shows, colored red, the lands required for railway purposes from Windsor street in the City of Montreal
 A. Yes.
 Q. This Blache lane is shown, colored red, as part of the land required for railway purposes ?
 A. Certainly.
 Q. That is the Blache lane in question in this case ?
 A. Yes.
 20 Q. That particular piece of land marked "Blache Lane" and marked "32 A" of the railway plan is now covered, you say by the railway embankment
 A. It is.
 Q. And forms part of that portion of the Atlantic & North-Western Railway Company lying between the terminus at Windsor Street Station and the Lachine Bridge ?
 A. Yes,
 Q. You were never instructed by the Railway Company to lay out a street between Bisson and Mountain ?
 30 A. Never.
 Q. Any pickets you put there were for the purpose of the train shed ?
 A. Yes.
 Q. How far did the train shed extend westward from Bisson ?
 A. I think one hundred and seventy-five feet.
 Q. Fifty feet north of the lower boundary of the railway property would only the same length as the train shed from Bisson street ?
 A. I may have extended it further, just to take a line. I had a point here on the sidewalk to get the straight line of the building all the way through.
 40 Q. It was merely for the purpose of the train shed ?
 A. Yes.
 Q. Then you say you put pickets along the line of the property expropriated from the proprietors, for the fence ?
 A. Yes.
 Q. Who built the fence ?
 A. The Company.
 Q. The regular fence, which they are bound by the Railway Act to

RECORD.

—
*In this
 Superior
 Court.*

—
 No. 173.
 Deposition of
 Stuart
 Howard for
 the Intrs.
 Fyled 25th
 Apr. 1890.
Continued.—

- RECORD build, enclosing the right-of-way ?
- In the Superior Court.*
- No. 173.
Deposition of Stuart Howard for the Intrs. Fyled 25th Apr. 1890.
- A. Yes.
- Q. When was that fence built ?
- A. I could not remember now, but right at the beginning of the work, it was the first thing done after the buildings and things were taken down, when we got a clear way.
- Q. Before they began to make the embankment ?
- A. Yes.
- Q. Before they made their trestle work ?
- A. Yes.
- Q. Mr. Walker's house wall was not built at that time ? 10
- A. Yes ; I think it was.
- Q. Was it completed, or only commenced ?
- A. I could not say ; I know it was built.
- Q. Then, that fence must have been built sometime in the year eighteen hundred and eighty-seven ?
- A. I presume so.
- Q. Could you give us an idea when it would be in the summer or winter ?
- A. I think in the fall of eighteen hundred and eighty-seven. 20
- Q. I understand that the Railway was first built on trestle work here, and then the trestle work filled in ?
- Witness. Which portion ?
- Counsel. I mean the portion opposite Walker's place.
- A. That has never been filled in yet ; the trestle work is there yet. There was a portion just immediately west of Mountain street that was filled in, but this trestle work running along the south line of the Railway property was not expropriated from these proprietors from Bisson to Mountain street ?
- Q. Then I understand there was trestle built along the south line of the property ? 30
- A. Yes.
- Q. Do you know, as a fact, whether it is filled now or not ?
- A. It is filled to the extent it will always be ; it will never be filled any more.
- Q. How much is it filled ?
- A. What we call filling in a trestle work is hiding the whole thing. There the slope of the bank was to run down to the toe, on foot of the fence, therefore it covers only half the trestle work.
- Q. When was that trestle work built opposite Walker's property ?
- A. I should presume it was just about the winter of eighteen hundred and eighty-eight. 40
- Q. A year ago last fall ?
- A. Yes, at least.
- Q. And this trestle comes right over close to Walker's wall ?
- A. Yes, close to his wall.
- Q. Within how many feet ?
- A. The outside guard timbers touch his wall.

- Q. These outside guard timbers come to the line ?
 A. Yes.
 Q. Not beyond the line ?
 A. No.
 Q. Walker's wall must project on the Railway property ?
 A. The window-sills only.
 Q. And the cornices of the roof ?
 A. That is on the property.
 Q. Do you know of any plan being made for the right-of-way other
 10 than that before you, marked Defendant's exhibit A 1, fyled with the Clerk
 of the Peace ?
 A. No.
 Q. There was never any alteration made in that to your knowledge ?
 A. No alteration.

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*In the
Superior
Court.*No. 173.
Deposition of
Stuart
Howard for
the Intrs.
Fyled 25th
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Continued.—

RE-EXAMINED BY E. BARNARD, ESQ., Q.C. FOR PLAINTIFFS.

- Q. You spoke of a fence built in 1887 : there was no fence built where
 Walker's building was. Walker's building would serve as a seperation ?
 20 A. Certainly.
 Q. There would be no fence where Koester's building was ?
 A. Yes, Koester's building is back from the fence. I should think five or
 six feet from the fence.
 Q. There would be a gateway in that fence ?
 A. No.
 Q. Are you sure it was not two or three feet. Could you swear it was
 more than one foot ?
 A. Yes. I can swear is it was more than one foot. If my memory is good
 I think it is five or six feet, at least.
 30 Q. I now show you the plan annexed to the petition of the Company to
 the city for permission to cross certain streets ; you see here Donegani street
 extending beyond Bisson street in the direction of Mountain street ?
 A. No.
 Q. I mean Donegani goes westward ?
 A. There is a line, of course, there at Bisson street.
 Q. Beyond this line, across Bisson street, there is a space, exactly corres-
 ponding with the width of Donegani street ?
 A. Yes.
 40 Q. What I want to know from you is this : The plan which we have been
 talking of, which you saw in the hands of Mr. Cantin, was it a plan correspond-
 ing to this plan, less the line across Bisson street and extending to Mountain
 street ?
 A. Yes.
 Q. Will you tell me what you call the old plan to which the Company
 reverted when they found the proprietors would not come to their terms ?
 A. The right-of-way plan deposited with the Clerk of the Peace, Defend-
 ant's Exhibit A 1.

RECORD.

*In the
Superior
Court.*

No. 174.

Deposition of
Charles La-
gassé for the
Intervenants.
Filed 25th
Apr. 1890.— *Continued.*

Q. You do not mean to say that this plan, Defendant's Exhibit A 1, corresponds with the plan filed with the Clerk of the Peace?

A. Certainly; that is a true copy of the plan deposited with the Clerk of the Peace, everything on that plan is on the plan deposited with the Clerk of the Peace.

Q. What date would you fix approximately as the date when the Company abandoned the new plan and reverted to the old one?

A. In the summer eighteen hundred and eighty-seven, I presume.

Q. It must have been after the erection of Walker's building?

A. I could not say. I do not know when the expropriations were ended.

Q. How do you reconcile your last answer, that it must have been in the summer of eighteen hundred eighty-seven, with the fact that Mr. Walker was allowed to put up his building and have his doors and windows on the new line?

A. He got up his building. We had nothing to do with his doors and windows.

Q. Did you ever call Mr. Walker's attention to the fact that he was trespassing?

A. I do not know that I ever did.

Q. Did you ever by any single one act indicate to Mr. Walker that he was not to use the premises until the twelfth of March, eighteen hundred and eighty-eight?

A. I do not remember anything.

Q. Are you aware that among the expropriated parties there were two of five to whose indemnity there was no question at all—no dispute?

A. I do not know. I do not know anything about the expropriations. I had nothing to do with them.

Q. You do not know that in the case of Brennan and Koester the indemnity was fixed by consent?

A. No.

Q. After they had been promised a street?

A. No.

30

RE-EXAMINED BY MR. ABBOTT, ESQ., Q. C., FOR DEFENDANTS.

Q. Will you look at the plan now shewn to you, marked Exhibit B 1, and state whether it is a true copy of the plan to which you have been referring as attached to the application of the Railway Company to the City for permission to cross various streets?

A. It is.

Q. An exact copy.

A. Yes.

Q. Do you find there that the train shed of the Railway Company would appear to cross Bisson street, going over it by an arch?

A. Yes.

Q. The dotted line across the street show the street is left open beneath the shed?

40

- A. Yes.
- Q. Donegani street appears to be only open there to Bisson street ?
- A. Yes.
- Q. And a solid line on the west side of Bisson street ?
- A. Yes.
- Q. Point out on that plan the boundaries of the Railway Company west of Bisson street, as shewn by the plan itself ?
- A. It is indicated by letters A, B, C, D, E and F. which I now put on this plan, B 1, but which do not appear on the original plan.
- 10 Q. The lines inside these letters appear on this plan, although the letters were not there ?
- A. Yes.
- Q. You made the original of this plan yourself ?
- A. I do not remember. I do not think I did—it is not my work, but it was made in the office.
- Q. Could you give us the distance by this plan to which the train shed extends, west of Bisson street ?
- A. I think it is one hundred and seventy-five feet ; I have not my scale here.
- 20 Q. The plan, of which you have now produced a copy, is attached to a letter of the Company to the City Council, dated first of February, eighteen hundred and eighty-eight.
- A. Yes.
- Q. Signed by Mr. Drinkwater, as Secretary ?
- A. Yes.
- Q. There is also attached to this plan a report of the Road Committee of Montreal.
- A. Yes.
- Q. Dated eighth of February, eighteen hundred and eighty-eight.
- 30 A. Yes.
- Q. You find there the Committee recommend that the Railway Company be allowed to close Bisson street between Donegani and Osborne on condition that they cede to the City gratuitously the land required for the opening of Donegani street from its present terminus to Bisson street ?
- A. Yes.
- Q. Will you shew us on the plan, exhibit A. 1, where the terminus of Donegani street, as referred to in the Road Committee report, then was ?
- A. On the east side of lot six hundred and forty-eight, the property of Miles Williams.
- 40 Q. On the plan, B. 1 Donegani, street is shewn opened up in the way the Committee provided ?
- A. Yes.
- Q. The Williams property was given up as a street ?
- A. Yes.
- Q. Do you know the Company acted on that recommendation of the Committee, left Bisson street open, and in addition, left Donegani street open as far as Bisson street ?

RECORD.

—
*In this
 Superior
 Court.*

—
 No. 173.
 Deposition of
 Stuart
 Howard for
 the Intrs.
 Fyled 25th
 Apr. 1890.
Continued.—

RECORD.

*In the
Superior
Court.*

No. 173.
Deposition of
Stuart
Howard for
the Intrs.
Fyled 25th
Apr. 1890.
—Continued.

A. Certainly.
And further deponent saith not.

J. J. CROWLEY,
Official Stenographer.

I, James J. Crowley of the City of Montreal, Official Stenographer, on the oath I have taken, depose and say :—

That the foregoing sheets, numbered from one to twenty-two consecutively, being twenty-two folios in all, are and contain a true and faithful transcript of the evidence of the above named witness by me taken by means of 10 stenography, the whole in manner and form as required by law and according to law.

J. J. CROWLEY,
Stenographer.

(ENDORSED.)

Desposition of Stuart Howard for Intervenant. Fyled 5th April 1890.
(Paraphed) A. B. L.

20

SCHEDULE No. 214.

Cour Supérieure pour le Bas-Canada.

No. 174.
Deposition of
Charles La-
gassé for the
Intervenants.
Fyled 25th
Apr. 1890.

L'an mil huit cent quatre-vingt-dix, le quatorzième jour de mars, est ³⁰
comparu, Charles Lagassé, contre-maitre de la cité et du district de Montréal,
âgé de quarante-sept ans, témoin produit par l'intervenante, lequel, après
serment prêté, dépose et dit : je ne suis point intéressé dans l'évènement de ce
procès ; je ne suis ni parent, ni allié d'aucune des parties en cette cause ;

Je suis contre-maitre pour le département de l'aqueduc de la cité de Mon-
tréal ; j'agis en cette qualité depuis douze ans.

Q. Voulez-vous nous dire si les tuyaux à l'eau ont été posés sur la rue
Blache ou la ruelle Blache de cette ville, et si oui, quand et quelle quantité de
tuyaux ont été posés là ?

R. Oui, le tuyau a été posé dans la ruelle Blache comme il appert ici, par ⁴⁰
un rapport que je tiens en main qui a été publié en mil huit cent soixante-trois
(1863).

Q. De qui est ce rapport ?

R. Du surintendant de l'aqueduc.

Q. Monsieur Louis Lesage ?

R. Oui, monsieur.

Q. En quelle année ont-ils été posés, ces tuyaux-là ?

R. C'est en mil huit cent soixante-deux, comme il appert par ce rapport-ci. Se trouve à la page vingt-trois du dit rapport que sur la rue Blache il a été posé deux cents pieds de tuyaux en plomb. Je ne vois pas par le rapport quelles en sont les dimensions, mais d'après ce que j'ai vu, c'était un tuyau d'un pouce.

Q. Un tuyau comme celui-là est-il suffisant pour donner l'approvisionnement d'eau voulu aux résidents de cette rue-là ?

R. C'était plus que suffisant.

10 Voulez-vous produire ce rapport-là ?

R. Oui, je le produis comme exhibit numéro vingt-et-un (No. 21) de la cité de Montréal.

Q. Est-il à votre connaissance qu'on ait fait autre chose sur la ruelle Blache, quant aux tuyaux ?

R. Quand la compagnie de chemin de fer a passé sa voie à la ruelle Blache, j'ai *déconnecté* le tuyau, ainsi que ceux de toutes les maisons ou elle a traversé.

Q. Pourquoi faisiez-vous cela ?

R. C'est parce que nous ne pouvions pas laisser le tuyau dans le chemin du Pacifique.

20 Q. Sous la voie ferrée ?

R. Sous la voie ferrée.

Q. Si la voie du chemin de fer n'eut pas passé sur la rue Blache, auriez-vous ôté ces tuyaux-là ?

R. Nécessairement non ; à moins que les maisons ne fussent enlevées et qu'il n'y eut pas de bâtisse.

Q. Par qui vous a été donné cet ordre ?

R. L'ordre a été donné au bureau du Surintendant de l'aqueduc.

Q. Et c'est vous-même qui l'avez exécuté ?

R. Oui, monsieur.

30 Q. Quand vous parlez de la Compagnie du Pacifique, savez-vous si c'est cette compagnie-là, le Pacifique, ou une autre compagnie ?

R. J'ai toujours compris que c'était le Pacifique.

Q. Vous n'en êtes pas sûr ?

R. Non, je n'en suis pas sûr.

Q. Savez-vous si c'est The Canada Atlantic & North West ?

R. Oui ; mais j'ai toujours compris, que c'était sous le contrôle du Pacifique.

40

TRANSQUESTIONNÉ.

Q. Vous n'avez aucune connaissance personnelle que ces tuyaux ont été posés dans la ruelle Blache ? Ce que vous en savez, ce n'est que parce que vous avez compris de ce rapport ?

R. J'en juge d'après le rapport ; cependant je sais que les tuyaux existaient là.

Q. Parce que vous les avez *déconnectés* ?

RECORD.

—
In the
Superior
Court.

—
No. 174.
Deposition of
Chas. Lagassé
for the Intrs.
Filed 25th
Apr. 1890.
—Continued.

RECORD.

—
*In the
 Superior
 Court.*

No. 174.
 Deposition of
 Chas. Lagassé
 for the Intrs.
 Fyled 25th
 Apr. 1890.
 —Continued.

R. Je les ai vus à part de cela ; j'ai fait des examens à part de cela ; je l'ai vu aussi quand on l'a déconnecté plus particulièrement.

Q. Où les avez-vous déconnectés ?

R. Sur la rue La Montagne, du moins je devrais dire qu'on l'a déconnecté.

Q. C'est dans la rue La Montagne que se trouve le tuyau principal ?

R. Le tuyau principal de la rue La Montagne.

Q. Ce tuyau dans la ruelle n'était qu'un tuyau de service n'est-ce pas ?

R. C'était un tuyau de service qui abreuvaît trois maisons, je crois, en autant que je puis m'en rappeler ; je crois qu'il y a trois maisons là. Je ne suis pas positif quant au nombre de maisons. 10

Et le déposant ne dit rien de plus.

Je, soussigné, L. J. D. Papineau, sténographe, assermenté en cette cause, certifie sous le serment que j'ai prêté en cette cause, que les deux feuillets ci-annexés, numérotés respectivement et successivement un et deux, contiennent une traduction exacte et fidèle, au type-writer, de mes notes sténographiques ayant trait au rapport de la déposition donnée par Charles Lagassé, témoin produit par l'intervenante, le quatorzième jour de mars, mil huit cent quatre-vingt-dix, le tout selon la loi.

L. J. D. PAPINEAU,

Sténographe.

20

(ENDORSED.)

Deposition of Mr. Charles Lagassé, témoin produit par l'Intervenante,
 Prod. 25 Avril, 1890.

(Paraphed), A. B. L.

30

SCHEDULE No. 215.

Cour Supérieure pour le Bas-Canada.

No. 175.
 Deposition of
 Herménégilde Dufaure
 for Intervenants. Fyled
 10th July,
 1890.

L'an mil huit cent quatre-vingt dix le quatorzième jour de Mars, est comparu Herménégilde Dufaure, entrepreneur maçon de Montréal, âgé de quarante ans, témoin produit par l'Intervenante, lequel après serment prêté, dépose et dit : Je ne suis point intéressé dans l'évènement de ce procès, je ne suis ni parent, ni allié, ni au service d'aucune des parties en cette cause. 40

Question. M. Dufaure, vous êtes unmaçon ?

Réponse. Oui, monsieur.

Q. Vous avez été employé par Mr. Walker n'est-ce pas, pour construire les fondations de sa nouvelle bâtisse après l'expropriation ?

R. Oui, monsieur.

- Q. Est-ce vous qui avez également construit les fondations de l'ancienne bâtisse sur la rue Blache ?
- R. Oui, monsieur.
- Q. Avant de parler des nouvelles fondations comment était la rue Blache ? en bon ordre ?
- R. Elle était en bon ordre, comme une rue ordinaire ; j'ai passé tous mes matériaux là ; j'ai passé à peu près trois cent (300) à trois cent cinquante (350) charges de matériaux là.
- Q. Il y avait un trottoir ?
- R. Sur un côté, le côté sud.
- Q. Les gens passaient, circulaient ?
- R. Ah ! Oui. Il y avait des maisons à part des maisons du coin, il y avait je crois, trois maisons sur la rue.
- Q. Maintenant, quant à la nouvelle bâtisse, elle est sur la ligne, n'est-ce pas ?
- R. Oui, monsieur.
- Q. A quelque différence près, quelques pouces.
- R. Droit dans la ligne.
- Q. De sorte que les chassis, les portes, donnent sur la ligne.
- R. Sur la ligne.
- Q. Eh, bien quant vous avez fait les fondations vous a-t-on donné le niveau, y a-t-il eu un changement de niveau ?
- R. Nous avons pris le même niveau que la première bâtisse, mais lors que les fouilles de l'ancienne bâtisse ont été remplies la Compagnie du chemin de fer a placé une planche environ vingt pouces à deux pieds plus bas. Plusieurs employés du chemin de fer.
- Q. Pouvez-vous nommer les personnes ?
- R. Non, du tout ; mais les gens nous ont dit que c'était le niveau de la rue. M. Walker m'a demandé :
- “ Dufaux, qu'allons-nous faire ? si c'est le niveau de la rue, notre fondation n'est pas assez creusée.” J'ai dit ; “ Nous mettrons une chemise sous la bâtisse.”
- Q. Le changement de niveau dont vous parlez a-t-il été continué d'une manière uniforme dans toute la rue ?
- R. Toutes les parties basses ; la partie voisine et celle-là ont été mises au même niveau, on prenait la terre du dépôt de la rue Osborne.
- Q. A l'époque où vous avez commencé les fondations, la ligne était-elle tracée. Je veux parler non pas du niveau, mais de la ligne.
- R. Oui, monsieur.
- Q. Était-elle marquée par des piquets ?
- R. Elle était marquée par une patte d'oie sur la bâtisse, vis-à-vis elle était marquée aussi.
- Q. Pendant combien de temps avez-vous été employé à construire les fondations ? Combien ça vous a-t-il pris de temps ?
- R. Du côté de la rue Blache, ça peut avoir pris à peu près en approchant quinze jours.
- Q. Pendant ce temps-là les employés de la Compagnie vous voyaient tra-

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Court.*No. 175.
Deposition of
Herméné-
gilde Dufaure
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July 1890.
Continued.—

RECORD. vailler.

R. Oh ! oui.

*In this
Superior
Court.*

TRANSQUESTIONNÉ.

No. 175.
Deposition of
Herméné-
gilde Dufaure
for Interven-
ants. Fyled
10th July,
1890.
Continued.—

Q. Où étaient les piquets dont vous avez parlé ?
R. Je n'ai pas parlé d'aucun piquets.
Q. Vous n'avez pas vu de piquets là.
R. J'ai vu dans le temps que je contruisais des piquets à environ qua-
rante (40) ou cinquante (50) pieds de la ligne où le chemin de fer jetait de la
terre en bas, pour donner une ligne pour ne pas excéder les piquets ; c'étaient 10
des piquets d'environ un pied de hauteur durant l'ouvrage ; nous prétendions
que c'était la largeur de la rue dans le temps.

Q. Vous avez prétendu cela.

R. Tous ensemble nous disions que c'était la largeur de la rue. Ils avaient
mis une ligne de piquets tout le long ; je jetais la terre en bas du haut pour
que ça n'excède pas les piquets.

Q. Avez-vous remarqué que c'était dans la même ligne que le mur de sta-
tion (train shed) ?

R. C'est à peu près cela, oui.

Q. Le train shed n'était pas encore fini dans le temps ?

20

R. Il était, à se creuser dans le temps.

Q. Quand est-ce que vous avez construit ces fondations ?

R. Voilà une couple d'années environ deux ans.

Q. Dans l'hiver ?

R. Dans le printemps.

Q. Dans quel mois ?

R. Le mois je ne l'ai pas retenu.

Q. Dans le printemps mil huit cent quatre-vingt huit (1888) dites vous ?

R. Dans le printemps de mil huit cent quatre-vingt-huit (1888), oui, mon-
sieur.

30

RÉ-EXAMINÉ

Q. A quelle époque de l'année avez-vous travaillé aux fondations de la
nouvelle bâtisse ?

R. Il me semble que c'est dans le printemps.

Q. Dans le printemps ?

R. Il me semble que oui, en été.

Q. De quelle année ?

R. Ça se trouve en mil huit cent quatre-vingt-huit ?

40

Q. Voyons tachez de vous rappeler. Combien y aurait-il de temps de
cela ? Est-ce deux ans le printemps dernier ?

R. Non, ça fait un an le printemps dernier, il me semble.

Q. Y aurait-il trois ans le printemps prochain ou y avait-il trois ans au
printemps dernier ?

R. Ça va faire trois ans le printemps prochain.

Et le déposant ne dit rien de plus

Je, soussigné sténographe officiel de la cité et du district de Montreal, dûment assermenté comme tel en cette cause déclare sous serment que j'ai prêté que les feuillets qui précèdent numérotées de un à trois et formant en tout six pages sont et contiennent une transcription fidèle et exacte de la déposition donnée en cette cause par le témoin ci-dessus nommé et prise par moi au moyen de la sténographie, et conformément à la loi.

J. A. CUSSON,
Stenographer.

10

(ENDORSED.)

Deposition of Herménégilde Dufaure pour l'Intervenante, Prod. 10 Juillet 1890.

RECORD.

*In the
Superior
Court.*

No. 175.

Deposition of
Herménégilde
Dufaure
for Intrs.
Fyled 10th
July 1890.
Continued.—

SCHEDULE NO. 216.

20

In the Superior Court for Lower Canada.

On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Percival W. St. George, of the city of Montreal, City Surveyor, aged over forty years, and witness produced on part of the *mis en cause*, who being duly sworn, deposes and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause: I am not interested in the event of this suit.

No. 176.
Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled.
6th Augt.
1890.

30

Q. Have you already been sworn in this case?

A. Yes.

Q. Will you state whether with regard to streets you are in possession of a register that has been prepared in virtue of the law of eighteen hundred and sixty-one?

A. I believe so.

Q. There is no other one?

A. That is the only one, I think, that has been signed as authentic.

Q. Since then did you keep any?

A. We started a new one since then. It has never been signed or accepted.

40

I referred the matter to the City Attorney, and this is the one he said was the only one we had, and I was not allowed to add any new streets to this one. We started a new one, but it was never made law—never been made complete.

Objected to this evidence as not being the best evidence to prove a register in course of law, and the witness is not competent to prove the same.

Objection reserved.

Q. In this second one I see, which is called "Street Register," do you find Blache street or Blache Lane?

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—
*In this
 Superior
 Court.*

No. 176.

Deposition of
 Percival W.
 St. George for
 the *mis-en-
 cause*. Fyled.
 6th Augt.
 1890.

— *Continued.*

A. Blache Lane is shewn on the plan made by John Adams, Military Surveyor, in eighteen hundred and seventy-five, as a *cul-de-sac*, and extends from Mountain street to Bisson street.

Q. Is that Register signed by anybody ?

A. No, this book was presented to the City Attorney, and he said he could not do anything with it ; he could not authorize its being signed, so we left it stand as it is.

Q. In those two records of streets or schedules of streets do you find anything giving a proper definition of a public street, a private street or public lane ?

A. There is no definition, it simply says streets, lanes, alleys. 10

Q. That book does not show ?

A. No. It gives you a distinction between a street and a lane ; it does not say whether it is a public street or public lane, but all streets that are entered as public streets, but a lane is always a lane.

Objected to as above.

Objection reserved.

Q. Does that record of streets show any distinction between a private lane and a public lane, or a private street and a public street ?

A. No.

Q. Nor the second book ? 20

A. I do not think it does. It is simply a copy of the other one extended ; it is a little fuller. It tries to prove a street by giving certain information so we can get at it.

Q. Look at the first one of eighteen hundred and sixty-five, and find out whether you have there for Jacques Cartier Square an entry made, and if so, what is the entry you have there ?

A. Jacques Cartier street east from Commissioners street to Champ de Mars.

Q. Is this the only entry you have in the schedule of streets made for Jacques Cartier Square ? 30

A. In this book it is.

Q. Have you any entry in the second book ?

Objected this evidence as irrelevant.

Objection reserved.

A. Jacques Cartier Square was opened at its present width of one hundred and ninety feet previous to the incorporation of the city, from Notre Dame to St. Paul street. From St. Paul to Commissioner street was partly opened previous to eighteen hundred and thirty-six. In 1860 the land necessary to widen this part was expropriated from the heirs, Pickle. Deeds were passed before C. F. Papineau, Notary. This square was given to the city for the purpose of being used as a public market. See old plan No. 99 portfolio. 40

Q. Those are the entries you have concerning that square ?

A. Those are all I find.

Q. Do you know whether any by-law was passed for the closing of Blache street to your knowledge ?

A. I do not know of any.

- Q. If there was any one in existence you would know it ?
 A. I suppose so. I generally have to find these things out myself from the City Clerk, they do not always send them to me.
 Q. But, a by-law being passed for the closing of a street, you would know it as a matter of your department ?
 A. If they sent it to me I would know it.
 Q. Do you remember the contestation about Jacques Cartier square ?
 Objected to as irrelevant.
 Objection reserved.
 A. Yes.
 10 Q. Do you remember those books that were there for the purpose of showing the closing of that street ?
 A. I do not. I was not brought up in the case.
 Q. You are sure these are the only schedules of streets or the only records you have in your department ?
 A. Yes.
 Q. Is there anything else in any other department besides your own about records of streets ?
 A. I do not know of anything.
 20 Q. What distinction would you place between a private lane and a public lane for the object of your department ?
 A. I do not know of any public lanes, we call them streets. When a street become public we call it a street. Lanes are generally supposed to be in Montreal, private property. I do not know of any public one.
 Q. A public street and a private street, what distinction would you make between the two ?
 A. Public streets should not be registered now at all. I have now, in order to avoid damages to the city, put up notices. I do it in order to try and save the city from damages. I took upon myself to do it. I did not know how it will turn out.
 30 Q. When you said Blache Lane was a private lane do you mean it belonged to private proprietors ?
 A. Yes.
 Q. Did you find out the proprietors to whom it belonged ?
 A. All the parties fronting on that street.
 Q. You did not look up the deeds ?
 A. No, we had no cause to do so. Another reason I took it to be a street was, on the homologated plan it distinctly states Donegani street shall be opened from Bisson street to Aqueduct street ; it does not talk about Blache Lane, therefore, I naturally concluded it was a private street.
 40 Q. When you stated at first it was a private lane you had not all the informations we laid before the Courts since that ?
 A. No, we did not know of it.
 Q. You have seen the petition for the appointment of Commissioners for the expropriation of Blache street according to the homologated plan ?
 A. Yes.
 Q. Do you know whether it was designated there as being Blache street

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Percival W.
St. George for
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—Continued.

RECORD. or Blache Lane ?

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St. George for
the *mis-en-*
cause. Fyled.
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1890.
—Continued.

A. I do not remember, but the expropriation notice is Donegani street. It should be under the heading of Donegani street, if they took any action at all, according to the homologated plan.

CROSS-EXAMINED BY E. BARNARD, ESQ., Q.C.

Q. I suppose you are aware that many of the principal streets in Montreal thoroughfares, were once mere links, cul-de-sacs, gradually brought together ?

A. Yes.

Q. You are aware that Donegani street in particular is a cul-de-sac ? 10

A. Yes.

Q. It is as Blache lane was ?

A. Yes.

Q. You are aware that on the original line of Lagauchetièrè street, Donegani street, Blache Lane and some other links leading to Richmond square are to be found, and if they were all joined together Lagauchetièrè street would extend all the way through ?

A. I could not tell you that, because the homologated plan says distinctly Donegani; it does not say there is any chance of calling it Lagauchetièrè street. 20

Q. You have never seen the deeds of property abutting on Blache Lane in which Blache lane is described as a continuation of Lagauchetièrè street ?

A. I have not seen them.

Q. When you originally gave your deposition in this cause your impression seems to have been that Blache Lane was private property ?

A. Yes.

Q. Would you kindly state what you mean by the term "private property ?

A. I mean private property owned by individuals, those individuals having a right. 30

Q. By what individuals ?

A. Proprietors abutting on the said properties.

Q. If the deeds of all these properties abutting on Blache Lane shew that the abutting proprietors had no right on Blache Lane, what then ?

Objected to as being a matter of opinion, and of law for the Court and not for the witness.

Objection reserved.

A. The original proprietor who owned the whole property, unless he gave it to the city; that is what has been passed in the Courts in several cases of that kind. 40

Q. What would you understand if the original proprietor, seventy-five years ago, having a large tract of land, divided it into lots, putting Blache Lane into the middle, and allowing the public for fifty years to use it, what would be your idea of property then ?

Witness. What do you call the public ? All lanes are open to the public.

Counsel. What I call a public lane, as distinguished from a private lane, is one which the abutting proprietors have no right to use as a private lane; which, if they use, they only use in so far as the general public can use it; in other words it has been deducted off the original land, leaving it open to the public to use. There is no servitude. He has never given any private proprietors a servitude.

Objected to as above.

Objection reserved.

10 A. The city would not take any land unless handed them, or petitioned to be taken over. I never knew otherwise.

Q. The register will prove the city did take the land?

A. No; it is not signed. In the first ledger they are traced; the lots, alleys, highways and public squares in the City of Montreal, which tell you distinctly what they are.

Q. Which of these is the register kept at the City Hall under the terms of the Act of eighteen hundred and sixty.

A. The one signed. I said in my deposition we commenced a second one which was not made official.

20 Q. From what register did you take the entry in the case of Lachevrotière about Jacques Cartier square?

A. I do not know. I was not there then.

Q. This is an official register, the one signed, of the streets that belonged to the city?

A. Up to eighteen hundred and sixty-five.

Q. Blache Lane is in that register?

A. Yes.

Q. And Blache Lane is in both for that matter?

A. Yes.

Q. The one that was not finished and the one that is finished?

30 A. Yes.

Q. You would, I suppose, be of opinion that the closing of Blache Lane would cause damage to the property?

A. Yes.

A. Much damage?

A. I suppose so, if they had no front.

Q. It would alter completely the nature of the property formerly fronting on Blache Lane if it had no access?

A. Yes.

40 Q. With regard to the damage done to the city, do you consider making it impossible for the city to carry out the homologated plan of joining Donegani street to Blache Lane, etc., would you consider that would cause damage to the city?

A. Yes.

Q. Great damage?

A. Yes.

Q. Somebody here swore to fifty thousand dollars damages to the public and fifty thousand dollars damage to the city, what do you say about that?

RECORD.

—
*In the
Superior
Court.*

No. 176.
Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled.
6th Augt.
1890.
— *Continued.*

RECORD.

Objected to as illegal.

Objection reserved.

*In the
Superior
Court.*

A. I could not say, but a large sum—the general damage that would result from closing streets.

No. 176.

CROSS-EXAMINED BY H. ABBOTT, ESQ., Q.C.

Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled.
6th Augt
1890.
—Continued.

Q. Do, I understand you to say in answer to Mr. Barnard, that this register made in eighteen hundred and sixty-five was the register of the streets belonging to the city? 10

A. It is a register of streets, lanes alleys, etc.—it shews all kinds.

Q. You stated in answer to Mr. Barnard, it was a list of the streets belonging to the city.

A. I did not; the heading shews.

Q. You do not mean to pretend that all the streets, lanes and highways entered in this book belonged to the city?

A. No; it is simply a register of those within the city limits in eighteen hundred and sixty-five, whether public or private streets, lanes and alleys.

Q. You say this was made in accordance with the law of eighteen hundred and sixty. 20

A. Yes.

Q. Have you ever read this law of eighteen hundred and sixty?

A. No. I simply identify the signature of Mr. MacQuisten.

Q. You read the words "according to law" and you presume it was made in accordance with law.

A. Yes.

Q. You do not know what the law was?

A. No.

Q. Have you any knowledge of any By-law for the making of this book previous to eighteen hundred and sixty-five? 30

A. I have not gone into it.

Q. Do you find any declaration entered in this book anywhere, that the streets, alleys, lanes, highways and public places therein mentioned are public property or have been used by the public for ten years, or any declaration of any kind concerning them other than the entry on the first page which reads as follows, "Record of streets, lanes, alleys, highways and public squares, in the City of Montreal, kept by the City Surveyor according to law."

A. No.

Q. As to the homologation, did Blache Lane, or street, ever appear on the homologated plan as part of the homologated plan of the city? 40

A. No.

Q. So far as your knowledge goes it was never homologated for the purpose of widening?

A. It was homologated under the heading of Donegani street, not as Blache Lane.

Q. That is to say the lines of Donegani street took in Blache Lane besides other property?

- A. Yes.
- Q. But there was nothing in any of the proceedings concerning the widening of Blache Lane ?
- A. I do not know about the proceedings. I know it is not on the homologated plan.
- Q. You say Donegani street is a cul-de-sac, was it not shewn to Aque-
due street ?
- A. Shewn in red lines to be continued, but at the time it was mentioned as a cul-de-sac.
- 10 Q. Donegani street was forty feet in width, it is entered so in the Register ?
- A. I think so. I know it is to be widened ten feet to fifty feet on the homologated plan. It was to be made a fifty feet street.
- Q. Please look at the entry, in the second register, prepared in Mr Ansley's time, and see if you do not find it entered forty feet in width ?
- A. Yes.
- Q. In the register prepared by Mr. Ansley the second register is the width of the street given in each case ?
- A. Yes, as near as we can get them.
- 20 Q. Do you know what the object of that was ?
- A. I could not tell you,—simply to indentify the properties better.
- Q. As to the continuation of Lagauchetière street, it has never been shewn on the homologated plan as being continued along Donegani street ?
- A. No.
- Q. Do you know that it was ever intended to continue Lagauchetière street up to Janvier street which is now Osborne street ?
- A. No, only as far as Cathedral street, is shewn on the homologated plan.
- 30 Q. The homologated plan shews Lagauchetière street stopped at Cathedral street ?
- A. Yes.
- Q. Is it not on the same line as Donegani street ?
- A. No, it is higher up.
- Q. Its direction would be more towards Osborne street than Donegani street ?
- A. Yes, about midway between Osborne and Donegani streets, it would go through the Canadian Pacific Station.
- Q. You say you consider a private street, or a private lane, one in which the proprietors had a right, do you mean a right of passage or property ?
- 40 A. They control the street.
- Q. That is to say the proprietors abutting on the street would have the exclusive right of using it in common ?
- A. In common with each other.
- Q. Such lanes and streets you treat as private property, and have treated so ?
- A. Yes, so as to save damages, it is very apt to cause damage to the city.

RECORD.

—
In this
Superior
Court.

No. 176.

Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled,
6th Augt.
1890.

— *Continued.*

RECORD.

*In the
Superior
Court.*

No. 176.

Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled.
6th Augt
1890.

—Continued.

Q. You referred in you former examination in this case to Bronsdon's lane as being a private lane ?

A. Yes.

Q. There is no doubt about it ?

A. We have gained some suits on the strength of it.

Q. And it has always been treated by the city as a private lane ?

A. Yes.

Q. Is there a notice put up to that effect ?

A. I cannot remember.

Q. Look at the Register prepared by Mr. Ansley in eighteen hundred and seventy-four, and see if you find Bronsdon's Lane on that register ? 10

A. Yes.

Q. Read the entry ?

A. Bronsdon's Lane is first mentioned in the City Surveyor's report for the year eighteen hundred and sixty-two ; it extends from Dorchester street towards St. Catherine, it is about four hundred and fifty-four feet in length and the average width is about twenty-one feet. It does not belong to the city.

Q. So you cannot say that this register made by Mr. Ansley is a register of the public streets, lanes and alleys of the city, when you find in it, at least, one entered as not belonging to the city at all ? 20

A. Yes, I do not know why it is there—it is in the first one also.

Q. Do you find, also, Ontario Avenue entered in the Register kept by Mr. Ansley ?

A. Yes.

Q. What is the entry ?

A. Private street from Sherbrooke street towards Pine avenue.

Q. I dare say we could find more instances of that kind in this Register.

A. Yes.

Q. Wherein is the damage to the City arising from the fact that they are not able to extend Donegani street in accordance with the homologated plan ? 30

A. There are fewer houses and our assessment bills will be less. If Donegani street had been opened up through we should have houses on both sides and would derive a large revenue.

Q. That is what you consider would be the loss of the City ?

A. Yes.

Q. You consider it is an advantage to the City, in point of revenue, the more streets there are open ?

A. Yes.

RE-EXAMINED BY E. BARNARD, Esq., Q. C.

40

Q. Would you kindly refer to the bills sent by the city to Mr. Walker for taxes on property of his, and say, first—whether those are the bills sent by the City, and secondly whether in those bills the property of Mr. Walker is referred to as fronting on Blache street or lane ?

A. It is mentioned Blache Lane in all these. That is the Blache Lane in

Question.

Q. The Defendants admit these documents are what they purport to be.

A. After this exhaustive examination of the question, are you prepared to withdraw or maintain your former opinion that Blache lane is private property?

Q. Certainly it is private property, I will always maintain it.

Whose private property?

A. It belongs to the individuals. I could not tell you whose. I know it is not city property.

10 Q. You do not know whether it belongs to the abutting proprietors or the original proprietors of the lane?

A. No.

Q. Do you believe a property can be private without the owner being known?

A. Certainly, if it does not belong to the City.

Q. For what reason do you say it is not public property in this case?

A. Because I do not know it was ever given to the City. I know it was in dispute in Mr. Ansley's time.

And further this deponent saith not.

20

J. J. CROWLEY,
Stenographer.

(ENDORSED.)

Deposition of P. W. St. George, for the City of Montreal. Fyled 6th Aug., 1890.

(Paraphed), G. H. K. Dep. P. S. C.

30

SCHEDULE No. 217.

In the Superior Court for Lower-Canada.

40 On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, René Bauset, of the City of Montreal, clerk aged——years, and witness produced on the part of the Intervener, who being duly sworn, deposeth and saith: I am not related, allied or of kin to, any of the parties in this cause; I am not interested in the event of this suit. I have already been sworn in this case.

Q. You are one of the employes of the City Clerk's Department?

A. Yes.

Q. In your department you keep all the City-by-laws that are passed by the Council?

A. Yes.

RECORD.

—
*In the
Superior
Court.*

—
No. 176.

Deposition of
Percival W.
St. George for
the *mis-en-
cause*. Fyled.
6th Augt.
1890.

Continued.—

No. 177.
Deposition of
René Bau-
set for the
Intervenants.
Fyled 6th
Aug. 1890.

RECORD.

*In the
Superior
Court.*No. 177.
Deposition of
René Baucet
for the
Intervenants.
Fyled 6th
Aug. 1890.
— *Continued.*

Q. You can trace them ?

A. Yes.

Q. Will you state whether there is any by-law in the hands of the City Clerk, or in your department, ordering the closing of Blache street, or Blache lane ?

A. I have reason to believe there is not.

Q. Did you ascertain from the City Clerk himself ?

A. Yes, and he is under the same impression.

Q. There is nothing in your books or archives ?

A. There is no trace of a by-law to that effect.

10

CROSS-EXAMINED BY H. ABBOTT, ESQ., Q.C. for Defendant.

Q. You did not bring the books with you ?

A. No.

Q. You find no by-law referring to Blache lane or Blache street ?

A. No.

And further deponent saith not.

J. J. CROWLEY.

Official Stenographer.

20

(ENDORSED.)

Deposition of René Bauset for the city of Montreal. Fyled 6th August 1890.

(Paraphed) G. H. K. Dept. P. S. C.

30

SCHEDULE No. 218.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

40

On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared, C. A. Geoffrion of Montreal, advocate, aged _____ years, and witness produced on the part of the Plaintiff, who being duly sworn, deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties to this cause ; I am not interested in the event of this suit.

Q. Mr. Geoffrion, you wrote a letter to the Attorney-General which is in

No. 178.
Deposition of
C. A. Geoff-
frion for
Plaintiff.
Fyled. 28th
March, 1891.

the private record in Quebec, and which Mr. Robidoux considered was confidential and of which he has not given me a copy? Would you be kind enough to say what the date of that letter was, so far as you remember, was it not a letter written after what took place in Court when you produced your discontinuation?

10 A. It was either after Mr. Barnard had stated in open Court, then presided over by Judge Wurtele, that the Attorney-General was trying to use his influence on his officers to obtain possession of the record against his consent and he asked the protection of the court against such proceeding, or after he refused to suspend the proceedings when I had given him private communication of a letter in which the Attorney-General instructed me as his habitual adviser in Montreal to request Mr. Barnard to suspend the proceedings until he had obtained access to the record. I cannot say after which of the two circumstances this letter was written, but it was after one of them

Q. Are there no means of getting at the exact date of that letter?

A. Except by seeing the letter, and unfortunately it was a letter dictated to my stenographer and the book cannot be found; but the date I can ascertain by writing to Quebec.

Q. Have you any copy of it in your office?

20 A. No, I have made a search for the letter; I was informed by you that the record was here. If it can be found here, I will take the trouble to verify and see the letter, and if it is your desire I will certainly ascertain the date of the letter, because I believe I am entitled to give that communication.

Q. Now, Mr. Geoffrion, it happens that I have seen the letter and I ask you whether you would be prepared to swear that this letter was not written after the discussion that took place in Court before Judge de Lorimier as to the right of the Attorney-General to discontinue, and whether in that letter you did not argue at great length citing the opinion of the Minister of Justice, Mr. Campbell, and getting authority from Ellis & Blackburn showing that the
30 Attorney-General had an absolute right to refuse his *fiat* in the first instance, from which you drew the conclusion that if he could refuse his *fiat* in the first instance, he had the right to withdraw the permission he had given. I merely want to know whether you would be prepared to go so far as to say that this analysis I made of your letter is not correct?

A. As I have another way, Your Honor, of ascertaining the date of the letter, I will do it, because answering on the suggestion of my confrere would be divulging the contents of the letter, and I do not consider myself at liberty to divulge a communication that took place between me and my client. I may further state that I have written the letter of which a copy is in the
40 hands of Mr. Barnard where I say that as far as I am concerned, I have no objection that the letter should be filed; but that I did not feel that I was the master. Owing to the confidential nature of the letter it was my client and not I that was master of the letter, but that I was willing that the letter should be put in the record, and notwithstanding that letter the present Attorney-General, whom I still represent, declined to file the letter, and I cannot divulge its contents here now.

Q. At the time, Mr. Geoffrion, that you wrote that letter were you acting

RECORD.

—
*In this
Superior
Court.*

—
No. 178.
Deposition of
C. A. Geoffrion for
Plaintiff.
Filed 28th
March, 1891.
— *Continued.*

RECORD. or had you been acting for a long time previous as the senior counsel of the Railway Company ?

*In the
Superior
Court.*

No. 178.
Deposition of
C. A. Geoffrion for
Plaintiff.
Filed. 28th
March, 1891.

A. I do not know whether I had been retained then ; but I am satisfied that I had been retained by the Company Defendant ; I know that when I was retained, the case was far advanced. In fact when Mr. Shaughnessy wrote me he was under the impression that the case was ready for argument ; and he retained me for that purpose and not for the incidents of the case which had been hanging since several months. I had nothing to do with the evidence in the case.

Q. At the time you wrote the letter Mr. Geoffrion, had you been retained by the Company and did you appear as their counsel before the Court and argue on the law points that had arisen ? 10

A. If my letter is subsequent to the circumstances which you mention as having taken place before Judge de Lorimier, I was then retained. I am not sure whether I was retained at the time of the incident before Judge Wurtele, but I may state that Mr. Turcotte was never made aware that I had been retained, and I think he was made aware of it only to-day by me.

Q. Did you argue before the Court on behalf of the Company on the motion made to suspend the proceedings on the letter that is produced in the record from Mr. Turcotte asking me to suspend proceedings, did you argue the motion on behalf of the Company ? 20

A. As I say, if it is the motion before Judge de Lorimier, yes, because I remember I was then retained.

Q. Did you argue a month or two before Judge Wurtele when we were trying to force you on ?

A. Well, I am not sure whether I was retained then, but I was present and was made aware of the application made to Judge Wurtele for a rule against the Prothonotary, and an order of the Prothonotary not to part with the record.

Q. Do you remember that for four, if not five or six months, previous to the proceedings of the Attorney-General, I had tried to get the case argued on the merits, and that you appeared for the Company and resisted my application on various grounds ? 30

A. I am not very sure of that ; as I say I was retained to argue the case on the merits because Mr. Shaughnessy was under the impression that the evidence, was completed, but I am aware that since I am retained, there were any amount of applications and adjournments either for hearing on the merits or evidence and I have hardly any doubt that I was retained when I wrote my letter to the Attorney General, hardly any doubt.

Q. Now, Mr. Geoffrion, were you not present in Court, when on my application before Judge Wurtele to go on, Mr. Meredith appeared and gave in your presence as his reason for not going on that the record was missing and thereupon it turned out on that the Prothonotary said the record was here and was never missing. Were you present on that occasion ? 40

A. I was present at one application when Mr. Meredith was alone in Court ; I do not know whether I was then retained by the Company, but Mr. Meredith knowing that I had frequently acted for the Company asked me to

help him and I did so ; but I am unable to say whether I was then retained ; but I am aware of such an incident of the record not being in Court, and its being found.

Q. Now, have you had an opportunity of ascertaining whether the record was held by me and kept in my custody, and out of the Court House as a means of preventing you or anybody else or the Attorney General, having communication of it ?

A. I am aware of being informed by Mr. Longpré that you being in possession regularly of the record declined to return it to Court claiming that you still wanted it. I think Mr. Longpré even informed me that you were afraid that by parting with the record it would be sent to Quebec, and that you also stated to him that you were willing to transfer the record to any of the attorneys of the parties, but I was informed by Mr. Longpré that you had given him positive orders not to hand the record to the Attorney-General.

Q. Have you seen the letter of Mr. Longpré to the Attorney General refusing to send down the record ?

A. No.

Q. Have you any doubt that the record was in court whenever it was wanted ? Have you ever heard that you or your colleagues ever asked for the record and did not get it ?

A. I never required it myself, and the only knowledge that I have about the difficulty concerning that record is the statement of the custodian of it, the late Mr. Longpré.

Q. Have you any doubt, Mr. Geoffrion, that anything that took place about an unwillingness to have the record sent down to Three-Rivers or Quebec was owing to a pretension on my part that this was only a mode of hanging up the case ?

Q. You so stated in Court.

Q. Have you any doubt about it ?

A. You so stated in Court and as I know you always say what you believe, I have no doubt you meant what you said.

Q. Well, are you aware of any fact having been supplied to the Attorney-General which on the merits, on a fair estimation of the rights of Mr. Walker, would have justified him in discontinuing the proceedings and saddling Walker with all the costs that had been incurred ?

A. I myself, either by letter or personally, made him aware of the fact that the City of Montreal had agreed to suspend their proceedings on the intervention in this matter for a certain time, and that I thought the Attorney-General ought to instruct the Attorneys of record proceeding in his name to suspend proceedings for the same length of time, there then being negotiations for an amicable settlement. It was on the refusal of Mr. Barnard to suspend on behalf of the Attorney-General, after the city had agreed to suspend their proceedings, that I first communicated with the Attorney-General to ask him to give an order to Mr. Barnard to grant such delay, and as I did not want things to be disagreeable and to appear myself of record, the Attorney-General wrote me a letter to request Mr. Barnard to do it, and I did shew him the letter. Having refused to comply with the request made to him through me, I then

RECORD.

*In the
Superior
Court.*

No. 178.

Deposition of
C. A. Geoffrion for
Plff. Fyled,
28th March,
1891.

Continued.—

RECORD.

*In the
Superior
Court.*

No. 178.

Deposition of
C. A. Geoffrion for
Plff. Fyled,
28th March,
1891.*Continued.*—

fyled the first notice which is fyled in the record, requesting Mr. Barnard, on behalf of the Attorney-General, to suspend; there were also some other reason which I gave to the Attorney-General. to wit: that the parties who were the informants in the case had also taken an action to have the award set aside, and new proceedings on the expropriation ordered. Finding that these proceedings would be sufficient to protect the rights of the informants, I also advised the Attorney-General to order, not a discontinuation, but an indefinite suspension of the proceedings, until the action to set aside the award be disposed of. Mr. Barnard again refused to suspend. I then left about the twentieth of July for my vacation, and was away for two weeks. The case had been fixed by Judge Ouimet, I believe, for the first of August, in spite of Mr. Barnard, who did not want to suspend. On the first of August my vacation was not over, and I did not feel disposed to come back. I communicated by telegram with Mr. Hennecker, who was in Montreal; Mr. Abbott was not in Montreal; anyhow, I asked Mr. Hennecker to obtain a further adjournment of the case from the first of August, to the eight or the tenth, to allow me to finish my vacation. I received, if I remember right, a communication from Mr. Hennecker, at Orchard Beach, that Mr. Barnard would not wait and would go on the first of August, and I received a pressing request to be present in Montreal, on that date. I telegraphed back that I did not care for the C. P. R. or any company in the world; that I would take my vacation. Mr. Hennecker then—I understand by what he told me—went to see the Attorney-General; I am not aware what he stated to the Attorney-General, but he came back on the first of August with a discontinuation, which is now in the record signed by the Attorney-General himself, whilst if I had been here I might have signed it for him, because I had a special power of Attorney to sign any paper for him; I do now know whether it would go as far as to sign a discontinuation, but I had power to disavow Mr. Barnard if necessary.

10

20

CROSS-EXAMINED.

30

Q. With reference to the instance, Mr. Geoffrion, that you speak of when Mr. Meredith asked you to assist him, do you remember that, that was when the case was inscribed for hearing on the intervention of the City, and that an objection was made by Mr. Meredith on behalf of the Company that the intervention of the City should not proceed until the question was decided as to whether the main case had been properly discontinued or not?

A. I remember I was present and took part in a discussion of that kind, that is to say on an adjournment obtained on a motion of the City, where for the first time in my life I found Mr. Barnard, Counsel for Mr. Roy, to go on with the intervention when the principal case was suspended or even discontinued, and I remember I helped Mr. Meredith in that circumstance!

Q. Well, that was after the discontinuance had been produced?

A. It was certainly after, it being the only circumstance where I argued with Mr. Meredith.

And, further, the deponent saith not:

And this is a true and correct transcript of shorthand notes of his deposition as taken by me at Enquête.

M. E. DOHERTY,
Stenographer.

(ENDORSED).

Deposition of C. A. Geoffrion, for Plaintiff. Fyled, 28th March, 1891.

10

RECORD.

*In the
Superior
Court.*

No. 178.
Deposition of
C. A. Geof-
frion for
Plff. Fyled,
28th March,
1891.

SCHEDULE No. 219.

In the Superior Court for Lower Canada.

Present :—

20

THE HONORABLE MR. JUSTICE TAIT.

No. 179.
Deposition of
Hon. A. Tur-
cotte for Wm.
Walker, Petr.
for *manda-
mus* Fyled
28th March
1891.

Continued.—

On this twelfth day of September, on the year of Our Lord, one thousand eight hundred and ninety, personally came and appeared Hon. Arthur Turcotte, of the City of Montreal, Prothonotary, aged, forty-five years, and witness on the part of the who, being duly sworn, deposes and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

30 Q. Mr. Turcotte, you have been Attorney-General, and you have been succeeded by Mr. Robidoux?

A. Yes, sir.

Q. The proceedings in this case were taken up in your name, were they not?

A. Yes, sir.

Q. And with your consent?

A. Yes, sir.

Q. For the benefit of Thomas Darling, William Walker, and several others parties expropriated on Blache Lane?

40 A. I forget.

Q. Before these proceedings were authorized or began to be taken in the name of the Attorney-General, were you made aware of the nature of the case?

A. I suppose I must have been aware.

Q. Did you insist that before you could give your authority a copy of the intended declaration with all the documents in support of it should be submitted to you?

A. I forget.

RECORD.

*In the
Superior
Court.*

No. 179.

Deposition of
Hon. A. Tur-
cotte for Wm
Walker Petr.
for *manda-
mus.* Fyled,
28th March,
1891.

Continued.—

Q. Do you forget whether the document was submitted to you with all the documents belonging to and every explanation given you and a motion that was satisfactory, and it was upon the full consideration of the case that you gave your consent?

A. I must have been satisfied at the moment and gave my consent to the proceedings.

Q. Do you remember that you wrote or telegraphed me that you must receive a copy of the declaration?

A. It is quite possible, but I don't remember, I had so many things to attend to.

Q. Is it the practice for the Attorney-General to give his opinion as a matter of course? 10

A. As a matter of course, did you say?

Q. Is it the practice for the Attorney-General in cases such as this, when he is asked for his authority, to give it without inquiring into the facts?

A. Well, the law is laid down in the statutes.

Q. Well, would you understand the law laid down in the statutes is that you have no discretion?

A. On the contrary.

Q. What do you mean by saying that the law as laid down in the statutes? 20

A. Because the law defines when the Attorney-General gives his consent and in what cases.

Q. No, no, no. What do understand by what the law defines—that you acted upon? I don't ask your opinion of the law only in so far as you acted.

A. I say that in cases where the Attorney-General lends his name.

Q. Did you consider you had used discretion in the matter?

A. Certainly.

Q. You considered you used discretion?

A. Certainey.

Q. And you exercised your discretion? 30

A. Yes.

Q. You exercised your discretion in a full examination of the case and authorized the proceedings—is that it?

A. Well, I suppose I must have examined the papers; it is some time ago?

Q. What reason had you afterwards to interfere and suspend these proceedings, which you had authorized in view of the large amount of costs that had been incurred?

A. That I decline to answer on account of secrets of office. I discovered that the case was far from being a case where the public interest was concerned, and I refuse to answer any further. 40

Q. Mr. Turcotte, what I want to know is the position you took, not the motives—the position you took when you proceeded to deviate from what you had done; what was it—not the motive, but on what ground did you proceed?

A. There is a private record concerning this case, and I am not going to divulge anything of it, but I can state that I discovered afterwards, after having

consented to the proceedings, that the case was not one involving public interest ; it was a mere case of a private individual.

Q. Do you refuse also to divulge who was informant that this matter was not of public interest

A. I repeat that there was a private record in the hands of the actual Attorney-General, over which I have no control and it would not be my duty to divulge any part of that record, as it is a ministerial and private record.

Q. Are you aware that the ground upon which the proceedings were taken was as stated in the record that it was a matter of public interest ?

10 A. At first I might have appeared so.

Q. Are you aware that the Court has decided that it was a matter of public interest ?

A. I don't know anything of the kind.

Q. I asked you whether you were aware ?

A. No, am not aware of it.

Q. You are not aware that the court has decided it was a matter of public interest ?

A. No.

20 Q. Are you prepared to state what is the view you take which results in holding that the matter is not of public interest—is that a state secret ?

A. I don't understand the question.

Q. Are you willing to explain why in your opinion this matter is not of public interest ?

A. No.

Q. You are not willing ?

A. No, I am not willing.

30 Q. Are you prepared to deny that all you have done has been upon secret interviews you have had with my adversaries or rather the adversaries of Mr. Thomas Darling and William Walker and that you have never given me a chance or a single opportunity of telling you that what they stated to you was false, did you or did you not ?

A. I don't understand you, I don't know what you mean.

Q. My first part of the question is ; are you prepared to deny that all your official actions are based upon my adversaries' opinions and in consequence false ? Are you prepared to state that you have given me the slightest opportunity of showing you what you have been informed was false ?

A. There has been some correspondence between you and me asking you not to go on any further in the name of the Attorney-General and I never got any reply, if I remember properly, so you see it was silence on your part.

40 Q. With whom had you interviews ? What correspondence have you had with me ?

A. I wrote to you to the effect that I thought—

Q. Are you prepared to produced the correspondence ?

A. It belongs to the private record that I have been speaking of.

Q. What was the nature of that correspondence if you say you have corresponded with me ?

A. It was correspondence concerning this present case.

RECORD.

*In the
Superior
Court.*

No. 179.
Deposition of
Hon. A. Tur-
cotte for Wm.
Walker Petr.
for *manda-
mus*. Fyled,
28th March,
1891.

RECORD.

*In the
Superior
Court.*

No. 179.
Deposition of
Hon. A. Tur-
cotte for Wm.
Walker Petr.
for *manda-
mus*. Fyled,
28th March,
1891.
Continued.—

Q. What correspondence do you allude to, was it after you tried to back out or before ?

A. Some time ago I wrote to you, if I mistake not, stating that I had reason to believe that this case was not a matter of public interest and I ask you discontinue the proceedings in the name of the Attorney-General. As far as my memory serves me you refused to answer or refused to act and it was afterwards that I ordered a discontinuation to be fyled, that is as much as I can remember.

Q. That is the correspondence you referred to, there was no other was there ?

A. I really forget.

Q. But, Mr. Turcotte, is very desirable that you should not forget ?

A. I am very sorry, but I have had so much business that I forget. Produce your letters and you will probably refresh my memory.

Q. I ask you if the correspondence you have just now described is it the only correspondence that ever took place between you and me ?

A. I do not know. I do not remember.

Q. Let me refresh you memory. In the first place did I ever go to you and ask you to authorize me or was it done in an ordinary correspondence.

A. I forget.

Q. Have you ever seen me or spoken to me personally or have I ever spoken to you personally asking you to authorize me ?

A. I don't remember.

Q. Are you sure I did not ?

A. I don't think you did.

Q. But your are not sure ?

A. I say I am not sure that you did not speak to me, you may have spoken to me, but I don't remember.

Q. How often have I spoken to you can you tell us ?

A. I forget.

Q. After you had authorize me to proceed in your name, what was the first correspondence that took place between you and me ?

A. I do not know.

Q. I will tell you what it was. Did you write to Prothonotary Longpré to send you the record down to Quebec ?

A. It is quite possible.

Q. Did you find among Prothonotary Longpré's records a letter in which you ordered him to send the record to Quebec or Three-Rivers ?

A. I don't remember.

Q. You have not found among the papers of Prothonotary Longpré a letter written by you in your capacity as Attorney-General ordering him to take the record or send it down to Quebec or Three-Rivers, I don't know which ?

A. I have not look for such a letter, if it was sent it must have been in the office. I have other business to attend other than this particular case.

Q. Well, if you did not look for the letter that you addressed to Prothonotary Longpré, did you address a letter to Mr. Longpré of the nature that I

have described ?

A. If I wanted to have that record I must naturally have written to Mr. Longpré.

Q. Were did you tell Mr. Longpré to send you the record to ?

A. It must have been Quebec I suppose at my office.

Q. Are you in the habit as Attorney-General of ordering prothonotaries to send you court records ?

A. No, but sometimes when I want a record I write to the prothonotary for it.

10 Q. Are you aware that the Attorney-General had no right to take a record ?

A. I did my duty, I cannot answer you.

Q. Did you ask the consent of the parties to the record before you asked that it should be sent to you. Did you consult me ?

A. I believe that parties were consulted and I believe that you refused to have the record sent down to me, and that is the reason why I ordered proceedings to be taken. I was quite surprise to hear that you objected to allow me to look at the record.

Q. Who is your private adviser.

20 A. Nobody is advising me at the present moment. I am advising myself.

Q. Your relations between Mr. Geoffrion and yourself is a sort of state record I suppose ?

A. That may be your opinion.

Q. What grounds for believing have you, that I refused to allow you to see the record.

A. For refusing the record—I said I was informed so.

Q. I suppose that you have reason to believe that Mr. Geoffrion or Abbott or Heneker had no objection ?

30 A. I believe the information came from the Prothonotary here that you refused to allow the Attorney-General to see the record.

Q. When were you informed I refused, and where were you at that time ? you never asked me ?

A. I forgot the exact date I was informed by the authorities here that you refused to allow the Attorney-General to look at the record or to have the record sent down to Quebec.

Q. Let me have your answer. Mr. Turcotte were you at the time you ordered the record to be sent to you—were you aware that all the counsel employed by the Railway Company were quite willing, and you were not aware whether the counsel employed by the interested parties were willing or not, and you did not care I suppose ?

A. I was quite aware that the counsel employed by Mr. Walker, in the name of the Attorney-General, was quite unwilling to allow the record to go to Quebec for what reasons I do not know.

Q. Have you ever seen the record since ?

A. Not the record as it stands to-day ?

Q. Are you aware that proceedings have been taken in this case in your

RECORD.

*In the
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No. 179.

Deposition of
Hon. A. Tur-
cotte for Wm.
Walker, Petr.
for *manda-
ms.* Fyled,
28th March,
1891.

Continued.—

RECORD. name by these gentlemen saying that you were most anxious to see the record and have the case suspended for months in order to give you the benefit of seeing the record?

*In the
Superior
Court.*

A. I know very well that after I was informed that you had refused to allow the Attorney-General to look at the record in Quebec that some proceedings were taken in Court here.

No. 179.

Q. Was there an angel from Heaven advising you or any body else?

Deposition of
Hon. A. Turcotte for Wm.
Walker, Petr.
for *mandamus* Fyled
28th March
1891.

A. I decline to answer. I told you some time ago that it was a private record on which I acted, which record I have no control over.

Q. Are you prepared to say that all the advice you got was from the counsel of the Railway Company; and did you ever act on your own judgment—that you never had a fact before you? 10

A. I had sufficient facts to ask you to withdraw in the name of the Attorney-General.

Continued.

Q. What facts had you and what facts had you before you? Had you ascertained by your own efforts?

A. If you can manage to get the private record to which I have alluded to already several times and if I judge proper to answer, I think you may have better answers than these.

Q. You swear that you never made inquiry for yourself—will you swear that? 20

A. I was sufficiently informed to give you instructions which you refused to follow.

Q. Mr. Turcotte, whether you were sufficiently informed is a matter of private opinion upon which we may be all wrong. I want to know what were you informed of upon the inquiry made by yourself independently?

A. I had sufficient grounds to induce me to ask Mr. Barnard to withdraw the action taken in the name of the Attorney-General. These grounds or documents are contained in the private record, and as I was then acting in my official capacity and as this record is not in my possession or under my control I cannot answer any further. 30

Q. Are you prepared to swear that you ascertained impartially and independent of the counsel of the other side for the Railway Company any facts upon inquiry made by yourself?

A. I swear that it is after having examined the documents that I came to the conclusion that I had a right to exercise the discretion which I had and that belonged to me, to ask you to withdraw in the name of the Attorney-General.

Q. Who furnished you the documents?

A. I decline to answer. These documents are in a private record. 40

Q. Besides the documents furnished to you had you ascertained first of all the documents that you refer to were they procured by yourself independent of the counsel on the other side for the Railway Company?

A. Some were, others were not.

Q. Where did you get the documents?

A. These documents formed part of the private record in Quebec.

Q. Mr. Turcotte, once for all, this is my last question on that point. Are

you prepared to deny under oath that you have not ascertained a single fact for yourself, and that you have taken your instructions from the Railway Company and from counsel without any opportunity being given my clients to interfere ?

A. I have taken instructions from no one, the decision came from myself, and I was quite surprised to see the position you took in this matter.

Q. The decision came from yourself upon facts furnished by whom ?

A. These facts are included in the record which I have mentioned.

10 Q. Are you in the habit of acting as a judge without hearing both sides or hearing only one side ?

A. It strikes me that I wrote to you at the time and I got no answer, or the answer I got was not satisfactory—that is the reason I ordered the proceedings to be stopped.

Q. Mr. Turcotte, you say now that it strikes you that you wrote to me. Do not interject into this record such vague impressions as to what strikes you. You seem to be struck all on one side.

Objected to such questions being asked.

Objection maintained.

Q. Can you produce the private record ?

20 A. I cannot produce the private record. I am not Attorney-General now.

The counsel for Plaintiff requested the Court that the witness be ordered to answer all questions that he declines to answer.

By the Court.—You allege, Mr. Barnard, that this proceeding was fraudulently withdrawn. That is your charge. Now, Mr. Turcotte says that when he was Attorney-General he ascertained that he had information satisfactory to himself that this proceeding was not one in the public interest, but one in a private interest, and therefore, he instructed the proceedings to be withdrawn, and he says that the proof of that is to be found in a private record which was
30 in his possession when Attorney-General, and over which he now has no control. Now, what can I order him to do on that ?

By Plaintiff.—I will subpoena Mr. Robidoux and see if you can get the private record.

By the Court.—If that record can be produced it might clear up things, it is true.

By Plaintiff.—I ask that the case be suspended until Tuesday next.

Application granted.

And further for the present deponent saith not, and also for the present his examination is adjourned.

40 And this is a true and correct transcript of the shorthand notes of his evidence as taken by me at Enquête.

A. A. URQUHART,
Stenographer.

(ENDORSED.)

Deposition of Hon. A. Turcotte for the Plaintiff. Taken September 12th, 1890.

RECORD.

—
*In the
Superior
Court.*

—
No. 179.
Deposition of
Hon. A. Tur-
cotte for Wm.
Walker, Petr.
for *manda-
mus* Fyled
28th March
1891.
Continued.—

RECORD.

SCHEDULE No. 220.

*In the
Superior
Court.*

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

No. 180.
Deposition of
R. T. Hen-
neker for
William
Walker Petr.
for *manda-
mus*. Fyled,
28th March,
1891.
— *Continued*

On this eighteenth day of March, in the year of our Lord one thousand eight hundred and ninety, personally came and appeared Richard T. Kenneker, of the city of Montreal, advocate, aged years, and witness produced on the part of the Plaintiff, who being duly sworn, deposes and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause: I am not interested in the event of this suit. 10

Q. Mr. Henneker, I believe you are the Solicitor for the Company Defendant in this case, I mean the Defendant in the principal case, and you have been for several years?

A. Yes, I am the solicitor for the Canadian Pacific Railway Company which amounts to the same thing, and I have been since eighteen hundred and eighty-three. 20

Q. Will you look at William Walker's exhibit number one, fyled on the twenty-second of August, eighteen hundred and ninety, any say whether you identify that Mr. Henneker mentioned there?

A. Yes.

Q. This is quite correct, is it, that is the statement that you appeared as solicitor for the Company before the Road Committee to ask the city to stop proceedings in the matter of Blache street for a time as the Company had been proceeding for a settlement in the interest of the parties, the facts mentioned there are correct?

A. I do not know about the reasons given, but the fact that I was before the Road Committee for the purpose of getting it to postpone it is certainly correct. 30

Q. Well, what were the reasons, if not those mentioned there? Have you any reason to doubt that those were the reasons you gave?

A. Yes, I have; I have reason to doubt that; I do not think that is the reason I gave; it may have been one of the reasons, but it was not the main reason.

Q. Would you identify the date?

A. The twenty-fifth of June I presume that is right.

Q. And had you a general sort of superintendance over the proceedings in Court? 40

A. I have to look after all the business of the Company.

Q. You had a general superintendance as wire puller for many months before the twenty-fifth of June?

A. I never was appointed wire puller, Mr. Barnard.

Q. Now, Mr Henneker, is it not the case that for months before this twenty-fifth of June, all the exertions of the powerful minds which represent you were bent on obtaining delay and preventing the case from being argued on the merits ?

A. My recollection of the matter is that Mr. Walker and other parties having taken personal actions for damages that it was considered that these actions should be decided before the action of the City and Turcotte should be decided. The result would be that if they were not, there would be double condemnations on the same ground, and it was that, I think, that I stated to
10 the Road Committee.

Q. When did you go for the first time to the Attorney-General to suggest to him that he should withdraw his permission and help you to suspend the proceedings ? How many months before the twenty-fifth of June ?

A. Well, what I did in my capacity as Solicitor for the Canadian Pacific Railway Company, I do not know that I am bound to divulge in Court.

Q. If you have any delicacy, Mr. Henneker, I will relieve you altogether from answering ?

A. I might answer the question in this way, if necessary, that I never saw Mr. Turcotte before the twenty-fifth of June.

20 Q. If you have any scruple, Mr. Henneker, do not answer; but I should like to know when you began to collect the documents which would enable you to make out a case before the Attorney-General to induce him to withdraw his leave and his name and whether it was you or some one else acting to your knowledge for the Company that suggested to the Attorney General that it would be advisable that he should get the record of the Court sent to him in Quebec or Three Rivers, and whether this suggestion was at a time when you knew that every effort was being made to push on the case and hear the argument, but if you have any scruple you need not answer ?

A. I think this question involves a privileged matter. I shall answer if
30 ordered by the Court.

Q. Well, will you look at this telegram of Mr. Shaughnessy, of the thirty-first of July, and tell me who is the Solicitor mentioned there, if it is not a breach of privilege ?

A. Well, Mr. Shaughnessy will probably explain that better than I can. It mentions solicitors here, Mr. Shaughnessy did not show me that telegram.

Q. Would you look at that letter of Mr. Turcotte of the thirty-first of July, exhibit of William Walker, number one, fyled on the eighth of August, eighteen hundred and ninety, and whether you happen to be acquainted with this letter ?

40 A. Well, I think that comes under the objection I made some time ago to answer questions which relate to my doings as solicitor of the Company in connection with this case.

Q. In other words, you refuse to answer the question that this is the one which you went down to Three Rivers to give Mr. Turcotte to sign and which he signed at your request, you refuse to answer ?

A. I was never asked that question.

Q. Did you take down that letter or prepare whether by yourself, or by

RECORD.

—
*In the
Superior
Court.*

—
No. 180.
Deposition of
R. T. Hen-
neker for
W m Walker,
Petr. for *man-*
damus. Fyled
28th March,
1891.

RECORD. some other solicitor of the Company to Mr. Turcotte on the date in question, and did you obtain this signature to it ?

*In the
Superior
Court.*

A. What I did as acting solicitor of the Canadian Pacific Railway Company in this case, I considered privileged and shall not answer unless ordered by the Court to do so.

No. 180.
Deposition of
R. T. Hen-
neker for
Wm. Walker,
Petr. for *man-
damus*. Fyled
28th March,
1891.
Continued.—

Q. Was the whole thing done with such absolute confidence on the part of Mr. Turcotte in the integrity of your motives that he did not even take a copy of the letter that you sent him the next day from Montreal ?

A. I can only give you the same answer as before.

10

CROSS-EXAMINATION

Q. You have stated in your examination in chief that you did not see the Attorney-General before the twenty-fifth of June, which was the date mentioned in the question, when did you see him first about that ?

A. I never saw him, never knew him before the thirty-first of July ? I never knew him by sight and never corresponded with him.

Q. You had no communication with him ?

A. None whatever.

And further deponent saith not, and this is a true and correct transcript 20 of shorthand notes of his deposition as taken by me at enquête.

M. E. DOHERTY,
Stenographer.

(ENDORSED.)

Deposition of Richard T. Henneker for the Plaintiff. Fyled 28 March 1891.

30

SCHEDULE NO. 221.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE MATHIEU.

40

No. 181.
Deposition of
Hon. A. Tur-
cotte (recall-
ed) for Wm.
Walker, Petr.
for *mandam-
us*. Fyled
28th March
1891.

On this fourteenth day of March, in the year of Our Lord one thousand eight hundred and ninety-one personally came and appeared Hon. A. Turcotte, of Montreal Prothonotary, aged _____ years and witness produced on the part of the Intervener, who, being duly sworn, deposeth and saith :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. Mr. Turcotte, would you examine this telegram and say whether you

can identify it, marked " B 1 ?"

A. I suppose it is all right, I must have sent it, although it it very long ago.

Q. Do you remember the circumstances ?

A. Well, I remember something of that kind.

Q. Well, will you look at the document which I now show you, being Petitioner's Exhibit A.1., and say whether that is a copy of the record in the office of the Attorney-General to which you referred in you first deposition ?

A. I suppose that is all right as far as my memory can help me.

10 Q. Mr. Robidoux swore that this is the entire record in the office of the Attorney-General with two exceptions ; one is a confidential letter to Mr. Geoffrion, and the other a short letter from Mr. Henneker ?

A. I don't remember, I cannot say.

Q. My question is, Mr. Turcotte, are you satisfied that this is the entire record, with the two exceptions that I have mentioned, and if you are not satisfied that it is the entire record, would you tell us what other document was in the Attorney-General's office ?

A. It may be the entire record, but it is such a distance, such a long time ago, that I could not swear whether this is the complete record or not, 20 with the two exceptions you mention.

Q. Will you look more especially at Exhibit A.5, one of the Exhibits of that record, and say what you remember about it ?

A. Well, I could not swear to the exact wording, but I believe I had got a telegram from this party ; I could not swear to the wording.

Q. Now, on the thirty-first of July, the date of this telegram of Mr. Shaughnessey, you addressed to the firm of Barnard & Barnard a letter giving your reasons why. Would you look at this letter, recited in the mandamus, and say whether this is the copy of the letter of the thirty-first of July that you addressed to your Attorney of record at that time ?

30 A. Well, I do not remember if it is the exact letter, but I remember distinctly that I asked you at the time to proceed no further.

Q. You have no doubt that that is a copy of your letter ?

A. I say that I could not swear that is the letter.

Q. The letter is fyled in the record ?

A. Yes.

This Petitioner's (William Walker's) Exhibit No. 1, fyled the eighth of August eighteen hundred and ninety, is identified by the witness as the letter signed by him and dated from Three Rivers on the thirty-first of July eighteen hundred and ninety.

40 Q. That was during the elections, Mr. Turcotte ?

A. Oh, no ; that was after the elections ; that was some ten or twelve days after.

Q. What was the date of the elections ?

A. The twentieth of June.

Q. Well, now, I want to know what is the connection between the telegram of Mr. Shaughnessey of the thirty-first of July, eighteen hundred and ninety, and your letter of the thirty-first of July eighteen hundred and ninety ?

RECORD.

—
*In the
Superior
Court.*

—
No. 181.
Deposition of
Hon. A. Tur-
cotte (re-
called) for
William
Walker, Petr.
for *manda-
mus*. Fyled,
28th March,
1891.

Continued.—

RECORD. Mr. Shaughnessey mentions that he had sent some one down to Three Rivers to see you at your private residence ?

—
*In the
Superior
Court.*
—

A. This last document is the conclusion I arrived at after I had asked you for the record which you refused to send me, and after I had information enough to write what is here in this letter.

Q. I am not asking you what conclusion you arrived at from anything I did. Mr. Shaughnessey said that he sent the Solicitor of the Company to you in Three Rivers, and on the same day he arrived there some time in the afternoon or evening at your house. Now, I want to know if, on that same evening, you signed that letter, or if this was the letter that was brought to you by Mr. Henneker all prepared and you signed it ?

A. I signed that letter the same night that these gentlemen came down, I forget their names. 10

Q. Was the letter you signed that evening presented to you by Mr. Henneker, and was it a letter of which you did not even keep a copy, and is the letter of Mr. Henneker in the private record one in which he enclosed you a copy of the letter you had signed the night before ?

A. I forget if I kept a copy of the letter, not being in my office ; I was in Three Rivers then, I was not in Quebec, and I would be much surprised if there was any copy of that letter in my office.

Q. You forget if you drafted that letter or not ?

A. No, I say I do not remember if I kept a copy of it, but I am under the impression that I must have kept a copy. 20

Q. No, I do not ask you whether you kept a copy of it ; I want to know whether you drafted the letter or whether it was brought to you ready prepared and you signed it ?

A. I believe the letter was brought to me prepared ; but that letter as it was worded which I carefully read, met exactly my views which I expressed to you before.

Q. Where did you get the information for the facts mentioned in that letter ; where did you get these facts mentioned in that letter ?

A. I forget ; I believe it was in Montreal, here. 30

Q. There is nothing in the record. you said in your first deposition that all the facts that you had ascertained were to be found in the private record of the Attorney-General ; there are no such facts, now, I want to know where you got the facts which are mentioned in that letter of the thirty-first of July ?

A. Well, I am not prepared to say that that private record is all what Mr. Robidoux has told you. I know that at the time I had enough information here and at Quebec and elsewhere to come to the conclusion that his action should not be proceeded with, and as I have already said in the first part of my testimony, I found it extraordinarily strange that you refused to send that record that I officially asked you for from Quebec in writing. 40

Q. Mr. Turcotte, what I want to know from you, and it will save a great deal of time if you understand my object, I want to know whether you acted impartially in the matter as a public officer or whether you acted as a partisan, taking all your information from the solicitors of the Company ?

A. I am very much convinced that I acted very impartially in the whole matter, and there was no idea of partisanship; I never thought of it or dreamed of it in anything I did in this matter.

Q. Well, if you acted impartially, tell us then where you got the information.

A. Where I got the information?

Q. Yes. Where did you get the facts. I told you that my object is to show that these facts are all false, and if you believe them to be true, I want you to tell the Court where you got them from, and what reason you had to believe them to be true?

A. No, I won't tell you because what information I got as Attorney-General is private information, and I had a perfect right as Attorney-General to have private information which led me to believe seriously that this case should be suspended until such time as I should see clearly. I had enough information to make me believe the case should be discontinued, and I may add that I take it as an insult when you ask me if I acted impartially in the matter.

Q. Can you deny that you got not information except what was furnished by the Solicitors of the Company?

A. I can positively affirm that I had all the information required to come to this conclusion.

Q. You swear that?

A. Certainly. When the letter of the thirty-first of July was signed, I had a letter previously and all the necessary information had been furnished me and I knew exactly all I was signing after having read it over carefully. When the Attorneys, Messieurs Barnard & Barnard, in this case refused repeatedly to send down the record to the Attorney-General, I did get other information. I had to get other information that that I could have got by the record, that information I got both in writing and verbally when I came here to Montreal and in Quebec, and I rest satisfied that I was quite justified and that it was my duty to order that no further proceedings should be had in this case.

Q. Do you refuse to answer my question as to whether any information you got in the matter was from an impartial source and not from the Company or its solicitors?

A. I do not refuse to answer at all; on the contrary I am doing my best to answer to that question, and I repeat that all my information which was complete was got from very impartial sources.

Q. What were these sources which were impartial?

A. I told you at the time when I was first examined that there were some private communications made which I am surprised to see are not in the record to-day, and apart from that I had verbal communications from parties here in Montreal placing me exactly *au courant*, so that I could form my judgment, asking me to suspend proceedings especially as you persistently refused to send down the record, and moreover I venture to say that your mere refusal to give the Attorney-General communication of such a record where his name was used was sufficient to justify the Attorney-General in stopping the proceedings.

Q. You were surprised that there was some information which you had and which should not be in the record. What do you refer to?

RECORD.

In the
Superior
Court.

No. 181.

Deposition of
Hon. A. Tur-
cotte (re-
called) for
William
Walker Petr.
for *manda-
mus*. Fyled,
28th March,
1891.

Continued.—

RECORD.

*In the
Superior
Court.*

No. 181.

Deposition of
Hon. A. Tur-
cotte (re-
called) for
Wm. Walker,
Petitioner for
mandamus.

Fyled,
28th March,
1891.

Continued.—

A. I do not remember, I would have to see the record again.

Q. I want to know what you go upon when you suspect that the record may be complete.

A. There is no suspicion whatever on my part, if my memory serves me. I repeat again that I got private information, and if it is not in the private record I am very much surprised.

Q. Well, you said that you were surprised not to have found certain information which you remember that you received?

A. Not in this record; in the full report of the Attorney-General's office. 10
This is only part of the record, and the best proof of it is that you admit yourself that there are certain documents which have not been sent to you as being private.

Q. What do you mean by saying that this is only a part? Do you mean to refer to the letter of Mr. Geoffrion which the Attorney-General would not give me?

A. That and other documents which are not there and are not even mentioned.

Q. Are you willing to give me that private information, or do you refuse? 20

A. I refuse nothing. I say if my memory serves me right that I had received private information concerning this case; whether this information remained in the private record I do not know; I am no longer in possession of the papers.

Q. Do you remember a private communication of Mr. Geoffrion to you and which Mr. Robidoux thought better not to show me?

A. It is quite possible that Mr. Geoffrion wrote to me about it; I do not remember.

Q. You remember nothing about it?

A. It is quite possible he may have written to me; I do not remember. 30

Q. Do you remember that you got a long letter from him?

A. I do not know whether he wrote to me in this particular case, but what I know is that Mr. Geoffrion represented the Attorney-General in almost every case here in Montreal; every time there was anything important Mr. Geoffrion was consulted by the Attorney-General and I had a great many communications from him. He was, I should say, the *avocat attitré* of the Government.

Q. You remember nothing at all about Mr. Geoffrion's letter? In two words, you do know what it was, what it contained about this particular case?

A. I do not remember, I remember that I had several communications 40
from him about several questions.

Q. If I understand right, you do not remember what was the private information that you got or from whom you got it?

A. I do not remember from whom, but I am positive to say that I did get it and I got more; I got verbal information.

Q. And you do not remember from whom you got the verbal information?

A. I do not remember exactly all that was done, because I could not get hold of the record which you refused persistently to send me ; it was the only course opened to me to get at the truth.

Q. You said that you had been in Montreal and that you had got information in Montreal ?

A. Yes.

Q. Why, then, did you not examine the record at the Court House ?

A. Because I was informed by the Court House when I asked for the record, that you refused to give it even to the Court House.

10 Q. Are you prepared to swear that you were informed that I had the record and refused to show it to any one ?

A. I was positively informed of that at the time.

Q. By whom ?

A. I must have been informed by some officials here that the record was in your possession, and that you positively refused to bring it back to Court.

Q. Mr. Turcotte, you now appear to say that you had no justification except that I refused you the record. Do you mean to say that I did refuse you the record ?

20 A. No, I do not mean that. I say that I wrote up here officially to get the record and the information I got in answer was that the record was in your possession, and that you positively refused to give it up to the officials.

Q. Will you produce that correspondence ?

A. I do not believe there is any official correspondence.

Q. I have been very anxious to get your correspondence with Mr. Longpré and his answer to you. Have you got it ?

A. If I wrote to Mr. Longpré it should be in the office.

Q. I asked you in your first deposition whether you had a letter of Mr. Longpré, and what was the reason the record could not be got out of the
30 office ?

A. I do not know that at all.

Q. What was the official you corresponded with if it was not Mr. Longpré ?

A. It must have been he.

Q. And you got a letter from him ?

A. I suppose an answer must have come from him. I am not very sure, but I am sure of the facts I have just related.

Q. Well, in the first place, what caused you to ask for the record. Tell how it came about ?

40 A. Well, I forget the occasion ; I remember very well that I was acting as Attorney-General ; I thought it was very natural for me to know exactly what proceedings were going on in my name as Attorney-General. I do not remember any case in which the name of the Attorney-General, was used that I did not examine. I do not remember ; it may have been and my attention may not have been drawn to the injustice of such proceedings.

Q. Now Mr. Turcotte, will you swear that it was on the solicitation of the solicitors of the Company that you asked to see the record and take it down

RECORD.

*In the
Superior
Court.*

No. 181.

Deposition of
Hon. A. Tur-
cotte (re-
called) for
Wm. Walker,
Petitioner for
mandamus.

Fyled,
28th March,
1891.

Continued.—

RECORD. to Three Rivers or Quebec ?

—
*In the
Superior
Court.*
—

No. 181.

Deposition of
Hon. A. Tur-
cotte (re-
called) for
William
Walker, Petr.
for *manda-
mus* Fyled
28th March
1891.

Continued.—

A. I cannot swear to that ; but even supposing that the other party would have asked me to draw my attention to the record, it was certainly my duty to examine the record.

Q. Are you aware that at the time you were asked to see the record and take it down to Quebec, the solicitors of the Company had had it for a number of terms previously in their custody as a means of hanging up the case and preventing the arguments on the merits ?

A. I could not swear to that for the simple reason that I could never lay my hands on the record which was refused to me persistently. 10

Q. Will you look at the letter I addressed to you, protesting in the most vigorous terms against their conduct, and will you tell me whether that letter is dated the ninth of July, and what justification you had in the meantime between this letter and your letter on the thirty-first of July to take the course you did ?

A. My justification for the course I took in this matter I have explained a dozen times already. I have no more to say about it ; I think my explanation are very clear.

CROSS-EXAMINED.

20

Q. Were you aware that in the latter days of July Mr. Geoffrion was away ?

A. Yes, in the latter days of July, Mr. Geoffrion, who represented me in Montreal, was away on his vacation.

Q. Were you ever informed that Mr. C. A. Geoffrion was acting as counsel for the Company Defendant ?

A. No.

RE-EXAMINED.

Q. Do you know the date of Mr. Geoffrion absence ? 30

A. He was absent at the time I was in communication with Mr. Hennecker.

Q. Do you mean to say he was absent on the twenty-first of July ?

A. I know as a fact that he was absent at that time, the thirty-first of July and previous to that date, a few days before.

And further deponent saith not.

And this is a true and correct transcript of shorthand notes of his deposition as taken by me at enquête.

M. E. DOHERTY,
Stenographer. 40

(ENDORSED.)

Deposition of Arthur Turcotte for Plaintiff (Recalled). Fyled 28 March 1891.

Province de Québec, }
 District de Québec. }

Dans la Cour Supérieure.

In the
 Superior
 Court.

Le sixième jour de Décembre 1890.

No. 182.
 Deposition of
 Hon. J. E.
 Robidoux for
 William
 Walker Petr.
 for *manda-*
mus. Fyled,
 28th March,
 1891.

L'Honorable Arthur Turcotte, Procureur-Général,.....Requérant.

10

ET

La Compagnie du chemin de fer de l'Atlantique et du Nord-Ouest,.....

ET

William Walker,.....Défendeur Requérant sur *mandamus*.

ET

20 Turcotte,.....Contestant.

ET

L'Honorable J. E. Robidoux,.....Reprenant l'instance.

Preuve de la part du requérant sur *mandamus* en cette cause. L'Honorable Joseph Emery Robidoux, de la cité de Montreal, avocat et procureur-général, âgé de plus de 21 ans, étant dûment assermenté sur les Saints Evangiles dépose et dit :

30 Je connais les parties en cette cause ; je ne suis ni parent, ni allié, ni serviteur, ni domestique d'aucune d'elles ; je ne suis point intéressé dans l'évènement de ce procès.

Je suis le Procureur-Général de la Province de Québec ayant succédé comme tel à l'Honorable Arthur Turcotte qui a cessé d'être Procureur-Général dans le commencement d'août mil huit cent quatre-vingt-dix.

40 Q. Voulez-vous produire devant le tribunal le dossier qui se trouve dans le cabinet du Procureur-Général relatif aux procédés contre la compagnie de chemin de fer Atlantique et Nord-Ouest intentées au nom du Procureur-Général Turcotte pour faire ré-ouvrir la rue Blanche à Montréal, y a-t-il quelque objection au point de vue de l'intérêt public qui vous empêcherait de produire ce dossier ?

Objecté à cette preuve comme illégale et objection réservée.

Réponse—Je produis copie des papiers et documents qui forment le dossier officiel dont on me demande la production.

Je certifie les copies ainsi produites par moi.

Je ne crois pas devoir me départir des pièces originales du dossier qui sont la propriété de la province.

RECORD.

Et la dite déposition ayant été lue au témoin, il y persiste déclarant qu'elle contient la vérité et a signé.

*In the
Superior
Court.*

Assermenté devant moi, à Québec, }
ce cinq de décembre, 1890. }

J. E. ROBIDOUX,

No. 182.
Deposition of
Hon. J. E.
Robidoux for
Petr. Walker.
Fyled 28th
March, 1891.
Continued.—

THOS. MALONEY,

Commissaire, Cour Supérieure, District de Québec.

Assermenté de consentement devant un commissaire de la Cour Supé- 10
rieure.

JULES TESSIER,
Conseil de Walker.

F. LANGELIER,
Conseil du Proc.-Gén.

(ENDORSED.)

Deposition of J. E. Robidoux, for Petitioner for *mandamus*. Fyled 28th 20
March, 1891.

30

40

DOCUMENT XIV.

RECORD.

Province of Quebec, }
District of Montreal. }

Court of Queen's Bench.

*In the Court
of Queen's
Bench.*

(Appeal Side.)

No. 183.
Suggestion
by Applt.
that Hon. J.
E. Robidoux
Atty. Gen.
has ceased
to hold office.
Dated 14th
Jan'y. 1892.

10 The Atlantic and North-West Railway Company.....
.....Defendants in the Court below.

APPELLANTS;

AND

The Honorable J. E. Robidoux, Attorney-General,.....
.....Plaintiff *par reprise d'instance* in the Court below.

AND

20 The City of Montreal.....Intervening Party in Court below,

RESPONDENTS.

The Appellants suggest that the Honorable Joseph Emery Robidoux one of the Respondents in this case, Plaintiff *par reprise d'instance* in the Court below, in his then quality of Attorney General for the Province of Quebec, has ceased to hold the office of Attorney-General, and has been replaced in his said office by the Honorable T. Chase Casgrain, who is now the Attorney-General for the Province of Quebec.

Montreal, January 14th, 1892.

30 ABBOTTS, CAMPBELL & MEREDITH.

Attorneys for Appellants.

To Messrs. Geoffrion Dorion & Allan and Messrs. Barnard & Barnard, attorneys for the Respondent the Attorney-General, and Rouer Roy Esquire, Q. C., attorney for the Respondent the City of Montreal.

Gentlemen :—

You are hereby required to take notice of the foregoing suggestion, and govern yourselves accordingly.

40 Montreal, January 14th, 1892.

ABBOTTS, CAMPBELL & MEREDITH.

Attorneys for Appellants.

(ENDORSED.)

Suggestion by Appellant that Hon. J. E. Robidoux Attorney General has ceased to hold office. Fyled 15th January 1892.

(Paraphed) L. W. M.

RECORD.

DOCUMENT XV.

*In the Court
of Queen's
Bench.*

Province of Quebec,
District of Montreal.)

Court of Queen's Bench.

(Appeal Side.)

No. 184.

Motion by
Appellant
that the
Atty-Gen. be
called upon
to declare
firm of advo-
cates author-
ized to
represent
him. Dated
15th Jan.,
1892.

The Atlantic and North-West Railway Company,.....
.....Defendants in the Court below,

APPELLANTS; 10

AND

The Honorable J. E. Robidoux, Attorney-General.....
.....Plaintiff *par reprise d'instance* in the Court below)

AND

The City of Montreal....Intervening party in the Court below

RESPONDENTS. 20

Motion on the part of the Appellants.

Inasmuch as the Respondent the Honorable the Attorney-General for the
Province of Quebec has appeared in this cause, both by Messrs. Geoffrion,
Dorion & Allan, and by Messrs. Barnard & Barnard, as his attorneys *ad litem*.

That the said Respondent the Honorable the Attorney-General be called
upon to declare which of the said firms of advocates are authorized to represent
him as his attorneys in the present cause.

The whole with costs.

Montreal, January 15th, 1892.

30

ABBOTTS, CAMPBELL & MEREDITH.

Attorneys for Appellants.

To MESSRS. GEOFFRION, DORION, & ALLAN,

AND

MESSRS. BARNARD & BARNARD,

Attorneys for Respondent.

The Attorney General.

40

AND

ROUER ROY, Esq., Q. C.

Attorney for Respondent,

The City of Montreal.

Sirs,

Take notice of the foregoing Motion and that the same will be made before

this Honorable Court on Friday, the fifteenth day of January instant, at the opening of the said Court, or so soon thereafter as counsel can be heard.

Montreal, January 13th, 1892.

ABBOTTS, CAMPBELL & MEREDITH,
Attorneys for Appellants.

(ENDORSED.)

10 Motion by Appellant that the Attorney-General be called upon to declare firm of advocates authorized to represent him. Fyled 15th January, 1893. (Paraphed,) L. W. M.

DOCUMENT XVIII.

20 Province of Quebec. }
District of Montreal. }

In the Court of Queen's Bench.
(Appeal Side.)

The Atlantic and North-West Railway Company,

APPELLANT,

AND

The Honorable Arthur Turcotte,

AND

The City of Montreal,

RESPONDENTS,

AND

The Honorable J. E. Robidoux,

Reprenant d'instance.

40

The Petition of the Honorable Thomas Chase Casgrain of the City of Quebec, Attorney-General of the Province of Quebec;

Respectfully sheweth:

That since the present appeal was instituted the Honorable Joseph Emery Robidoux has ceased to be Attorney-General for the said Province of Quebec, and your Petitioner has become Attorney-General in his place.

That your Petitioner is desirous to take up the instance in this in his

RECORD.

*In the Court
of Queen's
Bench.*

No. 184.
Motion by
Appellant
that the
Atty-Gen. be
called upon
to declare
firm of advo-
cates author-
ized to
represent
him. Dated,
15th Jan.,
1892.
— *Continued.*

No. 185.
Motion to
take up the
Instance.
Dated 13th
May, 1892.

RECORD. official capacity and support the judgment in this cause rendered by the Court below dismissing the discontinuation of the Honorable Arthur Turcotte and maintaining the original conclusions taken by him to the effect that Blache Lane be ordered to be, and opened with costs.

Wherefore your Petitioner prays that he may be allowed to take up the instance as aforesaid the whole with costs to abide the result.

Montreal, 13th May, 1892.

BARNARD & BARNARD,
for the Attorney-General.

10

No. 185.
Motion to
take up the
Instance.
Dated 13th
May, 1892.
Continued.—

To MESSRS. GEOFFRION, DORION & ALLAN,
Attorney's for HON. A. TURCOTTE, personally
and for HON. J. E. ROBIDOUX.

AND

ROUER ROY ESQR.
Attorney for Respondent,
The City of Montreal.

20

AND

MESSRS. ABBOTTS, CAMPBELL & MEREDITH,
Attorney for Appellant the said Railway Company.

Gentlemen :—

Take notice of the foregoing Petition and that the same will be presented o the Court of Queens Bench, (appeal side) sitting in and for the District of Montreal, in the Court House, Montreal, on Monday the sixteenth day of May 30 instant, at ten of the clocks in the forenoon or so soon thereafter as Counsel can be heard.

Montreal, May 13th, 1893.

BARNARD & BARNARD,
For the Attorney General.

(Reçu Copie,)

ROUER ROY,
Avocat de l'Intervenante.

40

DOCUMENT XXI.

Canada
 Province of Quebec, }
 District of Montreal. }

In the Court of Queen's Bench.
 (Appeal side.)

RECORD:

*In the Court
 of Queen's
 Bench.*

No. 186.
 Appellants'
 Case.
 Dated 23rd
 Oct., 1890.

The Atlantic and North West Ry. Co., (Defendants in the Court Below,
 Appellants).

AND

10

The Hon. Joseph Emery Robidoux, Attorney General of the Prov. of Quebec.
 (Plaintiff par reprise d'instance in the Court Below,)

AND

The City of Montreal, (Intervening party in the Court below,) Respondents.

20

APPELLANTS' FACTUM.

This is an appeal from a judgment of the Superior Court, (Mathieu J.) condemning the Appellants to re-open a street or lane in this city, called Blache Lane, which was closed, (it is alleged) by the Appellants' Railway.

The action was under article 997 of the Code of Civil Procedure, in the name of the Hon. Arthur Turcotte, then Attorney-General, at the instance and request of one William Walker, as private relator, and asked purely and simply for the opening of the street.

30 The principal questions arising upon this appeal are :

1. Whether the Railway Company, which closed the lane, exercised in so doing, under all the circumstances, any power, franchise or privilege which did not belong to it or was not conferred upon it by law ?

2. Whether the Attorney-General of the Province of Quebec could bring such an action under the Article of the Code ?

3. Whether, having lent his name to such a proceeding, he could validly discontinue the action and disavow his attorneys ?

40 4. Whether the action was properly brought in the first instance without making the City parties ; and the validity and effect of their subsequent intervention ?

5. Whether the action can be maintained as against the Appellants ?

These questions arise upon the following pleadings ;

The Plaintiff's declaration sets out in effect that up to the year 1887 Blache Street, or Blache Lane, having its outlet in Mountain Street, and running in the direction of Donegani Street, and as a continuation thereof, existed as a public street, the land constituting which had from time immemorial been dedicated to the public, and was public property, and had been so declared by

RECORD.
—
*In the Court
of Queen's
Bench.*
—

No. 186.
Appellants'
Case.
Dated 23rd
Oct., 1890.
Continued.—

this Court in March, 1864, in the case of Johnson v. Archambault. That in 1887 the Company, Defendants, acquired by expropriation strips of land on both sides of the lane; and that under pretext that thereby all rights of servitude in favor of the abutting proprietors had become vested in the Company, they closed the street. That such closing was particularly damaging to William Walker and other abutting proprietors, inasmuch as the expropriation was made on the understanding that their properties would not lose their frontage on a street, whereas by the closing of Blache Lane these properties lost their outlet in rear to their great damage. Then follows this allegation:

“That the closing of the said street, as aforesaid, by the said Company, 10
Defendants, and the keeping of the said street closed ever since, so as to deprive the public in general, and the proprietors in the vicinity in particular, of their right of using the same, was and is illegal, and constitutes the exercise by the said Company, Defendants, of a power, franchise and privilege which does not belong to it, or is not conferred upon it by law, and is a case governed by Article 997 of the Code of Civil procedure.”

The declaration then states that the proceeding is taken at the request of Walker, and that security has been given by Thomas Darling.

The prayer is for the issue of a writ of summons under the said article and following articles of the code, and for a condemnation against the Defendants 20
to re-open and restore the street, and in default that it be re-opened at their expense.

The writ was issued expressly under Article 997 by an order of Mathieu, J., of the 14th February, 1889.

The appellants pleaded to this action, first by demurrer, by which they claimed that no such right of action as that sought to be enforced was given under Article 997 and the following articles of the Code, and that the Attorney-General was not entitled under those articles to the remedies prayed for. The demurrer also raised the point that the City of Montreal, within the limits of 30
which the lane in question was alleged to be situated, had not been made a party to the suit, and did not appear to have ever been called upon or to have refused to take steps to re-open the street. Upon this demurrer, Judge Mathieu ordered *preuve avant faire droit*. The appellants also pleaded that, being incorporated by a statute of the Parliament of the Dominion, they were subject to the exclusive jurisdiction of the Dominion Parliament and of the officers of the Government of Canada, and that the Attorney-General of the Province of Quebec had no power by law, or under the Constitution, to take any proceedings whatsoever against them. Upon demurrer, this plea was dismissed by Judge Mathieu, on the ground that the Attorney-General of the Province of Quebec is specially charged to see to the observance of the laws of 40
the Province, and that his action is not limited to the laws made by the Province, but to all laws which are in force there under whatever authority they may enacted.

The appellants also pleaded, besides a general denial, a special denial that Blache Lane was ever a public street; and they alleged that it had always been a private lane, serving as a means of communication to the properties abutting thereon, and that the only persons having any right in the said lane were the

abutting proprietors thereon, having common right or passage from their properties to Mountain street. The appellants then set out their acquisition of all the lands abutting upon both sides of the lane, alleging that neither Walker nor any other of the adjoining proprietors have since had any rights in the lane, and that they received compensation from the appellants for all damages caused by the building of the railway, including the damage, if any, resulting from the closing of the lane. They further alleged that by the purchase of the properties aforesaid they acquired all the rights of servitude and passage over the lane, and aver that they had the right by law and under their charter and the
 10 Railway Act to build and maintain their railway there, and that the closing of the lane did not constitute the exercise by them of any power, franchise, or privilege not belonging to them or not conferred upon them by law.

The petitioner answered this plea by reiterating the statement in his declaration that the expropriation was made on the understanding that Walker and the other proprietors would have a frontage on a new street, which, he says would, according to the plans shown to the arbitrators, copies of those filed in the office of the Clerk of the Peace, be a continuation of Donegani street, in which proposed new street Blache lane would be incorporated as to a portion of it; and he alleged that the indemnity awarded to the expropriated parties
 20 was fixed on that basis. He then alleged that after the expropriation, the appellants constructed their railway in accordance with new and different plans, whereby the proprietors found themselves deprived of all access to a street on that side of their property. The petitioner further alleged that throughout the proceedings in connections with the expropriation and up to the filing of their second plea, the appellants had repeatedly and formerly admitted that Blache lane was public property which was not and could not in any manner be affected by the expropriation, and that the pretension of the appellants that Blache lane was private property of which they became proprietors by the means of expropriation was unfounded and in bad faith.

It may be remarked here that this allegation is hardly consistent with that
 30 contained in the declaration, namely, that in 1887, the appellants acquired by expropriation the strip of ground fronting on the lane on both sides thereof, "and under pretext that thereby all rights of servitude in favor of proprietors abutting on said street had become vested in the said Company alone, the said Company defendant has since the said expropriation closed the said street, etc."

The Appellants' replied to this answer, denying its allegations; especially those as to any understanding as to a new street, and setting up that the deeds of sale passed between the expropriated parties and the Appellants, and the
 40 award of the arbitrators, contained the whole of the agreements between the parties.

These issues were joined in the month of May, 1889, and the parties went to proof in the following month of July.

On the 10th September, 1889, the City of Montreal presented a petition, after previous notice, asking to be allowed to intervene, and this petition was allowed on the same day. On the 16th September the Appellants moved for dismissal of the intervention, under article 157 of the Code of Civil Procedure,

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of Queen's
Bench.*No. 186.
Appellants'
Case.
Dated 23rd
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RECORD.
 —
*In the Court
 of Queen's
 Bench.*
 —
 No. 186.
 Appellants'
 Case.
 Dated 23rd
 Oct., 1890.
Continued.—

on the ground that it had not been served upon the parties within the three days' delay fixed by that article, and they also raised the same ground in their constestation of the right to intervene. They also contested on the ground that the proceedings were not in the nature of a suit, but of a prosecution undertaken by the Attorney-General, under Article 997, and that the City could not take any conclusions or for any modifications of the judgement which might be rendered; and because by law the Attorney-General represented the public, and no further representation was requisite or necessary for the purpose of protecting the rights of private individuals in the matter in question; and, lastly, because by the Code of Procedure special delays are provided for such 10 proceedings by the Attorney-General, and that the intervening parties were not entitled in their private interest to avail themselves thereof.

Both the motion and the constestation of the intervention were dismissed on the ground that the petition to intervene had been served before its presentation, and that the City being specially charged with the maintenance and surveyance of streets, had an interest in the issue of the action, and that the Appellants could not prevent the City from joining in the action of the Attorney-General by alleging objections which could only be availed of by him. It is submitted that the intervention should clearly have been dismissed under Article 157. It matters not whether the notice of the petition asking for per- 20 mission to intervene was previously given to the parties or not. The article is positive that when the intervention is allowed the suit is suspended during three days, and if the intervening party fails within that period to have it served upon the parties in the case, and file a certificate of such service, it is held not to have been filed and is of no effect. The previous service of the petition was a mere notice of the intention of the City to present the same on a certain day. What the law requires is that the intervention, being allowed, must then be served upon the parties. It is only when the petition has been presented and allowed by the Court or judge that it constitutes an intervention, and it is sub- 30 mitted that the default to serve it within the delays was fatal, and that the City never really effected a valid intervention and should have been put out of Court, and upon this appeal their intervention should be dismissed.

Upon the other ground it is confidently submitted that the intervention of the City was not admissible. The proceeding of the Attorney-General being taken avowedly under Article 997 is a special action in which private parties cannot intervene. It is a special right of action given alone to the Attorney-General, and the Appellants fail to see how it is possible that any private individual or corporation can take conclusions in their own behalf in such a suit.

After the intervention of the City had been allowed the evidence was continued, and by consent made to apply to all the issues. An immense mass of 40 evidence was adduced on the part of the Petitioner and the Intervening party, the greater part of which was entirely irrelevant, and much of it illegal, being allowed, however, under reserve of objections.

The evidence was directed chiefly to two points—first to prove that Blache Lane was a public street, which was relevant to the issue; and secondly, to prove that the award of the arbitrators in the proceedings for the expropriation of the properties abutting upon the lane was based upon the understanding that

the proprietor would be given a street fifty feet wide in the place of Blache Lane. The whole of the evidence on this point, it is submitted, is both irrelevant and illegal. Irrelevant because it would not affect the question in the issue in this case, whether the Company, Appellants, had agreed or not to give the proprietors another street. The breach of such an agreement might give rise to an action of damages on the part of the proprietors, but certainly not to an action by the Attorney-General to re-open the closed street.

The evidence was also illegal generally because it tended to prove against the contents of the deeds passed between the parties, namely, the award of
 10 the arbitrators and the subsequent deeds of sale to the Company.

The evidence of the arbitrators on this point was illegal because it was not competent to ask an arbitrator the grounds or basis of his award. (Duke of Buccleugh vs. Metropolitan Board of Works *L. R. 5 H. of L.* 418.)

Pending the Enquête, which extended up to June, 1890, the private relator, William Walker, and the other proprietors, instituted actions in their own names against the Company, Appellants, for damages caused to them by having been deprived of a rear access to their properties, and by the failure of the Company to carry out the alleged agreement to give them a new street in the place of Blache Lane. This new street, it is alleged, was to have run, as
 20 appears by the statement in the answer to plea in this case, as a continuation of Donegani street, which as will be seen from the plans produced, would have brought it south of Blache Lane, slightly infringing upon one corner of it. It will be seen, therefore, that it was perfectly understood on all sides, previous to the expropriation, that the Railway Company intended to close up Blache Lane at its entrance to Mountain street, the only point in dispute being as to whether the Company ever undertook to make a new street to the south of the Railway, employing the property expropriated from Walker and others for that purpose.

A large portion of the evidence was, as has been said, directed to proving
 30 that a promise of a new street had been made by the Railway Company, and that the proprietors had accepted the amount of compensation awarded them, relying upon the Company's promise. It is clear that these facts, if proved, would in no way affect the question as to the Company's liability, under the action as brought, whether to open the street, or pay damages. As the learned Judge below put it, the Plaintiff *es-qualité* could not recover damages, because the damages suffered by the proprietors did not result from the closing of the street, but from the breach of the obligation which they pretended was assumed by the Company to open a larger street.

This evidence, however, disclosed the true nature of the proceedings
 40 taken in the Attorney-General's name. It at once became evident that this action was being used as a means of forcing the Railway Company to accede to the demands of these proprietors for damages for the in-execution of a pretended understanding, rather than see destroyed the immense and costly works forming part of the entrance to their new station in this city. These facts coming to the knowledge of the Attorney-General, Mr. Turcotte, and he seeing that the rights of all the private individuals interested were protected by the actions of damages which they had taken, he requested his attorneys

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of record to suspend proceedings till he could further examine into the question, and decide if in the interests of justice his name should continue to be used. This they refused to do. Whereupon the Attorney-General, on the 10th July, 1890, disavowed his Attorneys and ordered them to suspend proceedings till further orders. They still refused to comply with his requests, even as to communication of the record; and finally, on the 31st July, 1890, he, in his own name, discontinued the action. The Appellants' claim the benefit of this discontinuance; but the Court below has held that the Attorney-General having once allowed the use of his name, under Article 997, to a person who has given security, cannot withdraw it without the permission of the Court. A *mandamus* was taken by the private relator, Walker, to compel the Attorney-General to proceed, notwithstanding the discontinuance; but this proceeding was held unnecessary, and was dismissed. The Court held that the discontinuance was not justifiable, and would result in grave injustice to Walker. It is submitted that this decision were entirely erroneous. The only prejudice Walker could suffer would be the payment of his own costs. This could hardly be looked upon as an injustice, if he had been using the Attorney-General's name improperly. It is submitted that it was not for the Court, but for the Attorney-General to decide what was just in such a case. But the Court holds that the Attorney-General had no discretion in the matter, once he had given his name. If so held, it must be held that he would have no discretion in allowing the use of the name in the first instance. And that was the argument used in the Court below, an argument founded on a misconception of the terms of Article 997. The Court seems to have been misled by the language of the English version, for the French version is misquoted in the judgment. The English version, says: "It is the *duty* of Her Majesty's Attorney-General to prosecute, etc., . . . whenever he has good reason to believe that such facts can be established by proof, in every case of public general interest; but he is not *bound* to do so in any other case unless sufficient security is given." etc. It is argued from this that while in a case of public general interest the Attorney-General may have a discretion, he has none in a private case; that once security is given he is "bound" to prosecute. It is submitted that the language used will not bear such an interpretation, and that it would be contrary to the spirit of the law that the Attorney-General should be compelled, without discretion, to lend his name in every case, however unfounded or malicious he might believe the action to be, simply because the Government was indemnified against costs. It is clear from the article that it is not his duty to prosecute, unless he is satisfied as to the proof; and the duty is the same in the case of public or private interest. If there were any doubt on this point the French version would make it clear. There the word used in both cases is the same; instead of saying in the one case it is his "duty," and in the other he is "bound," the French version uses the same word in both cases, viz., "tenu." It is evident, therefore, that there is no difference in the duty cast upon the Attorney-General in either case. For the performance of his duty, the Attorney-General is answerable to Parliament alone, and not to any court. It follows that a *mandamus* would not lie to compel him to perform this duty; it is in his discretion in each particular case to act or not according

to the facts presented to him. If he exercise his discretion wrongly, he may be called to account in the Legislature, and would there have to justify his actions. These principles have been laid down by two of the most eminent jurists whoever filled the office of Attorney-General of Canada, namely, by Sir Alexander Campbell, in the *Bank of St. Hyacinthe* case (20 *Revue Légale* 580), and by Sir John Thompson in an application for the use of his name in a prosecution against certain directors of the Canadian Pacific Railway Company (ibid 590). It is true that in those cases the particular article of the Code was not in question, but it is submitted that the governing principle is the same.

10 It follows that if the Attorney-General has a discretion to refuse the use of his name, he has a like discretion to withdraw it. It would be absurd to say that, having on certain representations exercised his discretion by allowing his name to be used, he could not afterwards withdraw; on finding, for instance, that the representations were false, or that his name was being used for purposes of blackmail or extortion. And it is submitted, on the principles above laid down, that he is the sole judge of his action, and that the Court cannot enquire into his reasons. He is the master of his case, and cannot be prevented from abandoning it, any more than any other suitor. The Appellants for these reasons, submit that the judgment in refusing to give effect to the discontinuance was erroneous, and that the action should have been declared discontinued and judgment entered accordingly. It is true that after the discontinuance Mr. Turcotte ceased to act as Attorney-General and Mr. Robidoux, the new incumbent of that office, was called in to take up the instance, and appear by his attorney and substitute, Mr. Geoffrion, Q.C., and declared "*qu'il s'en rapporte à justice.*" But this, of course, would not affect the validity of the discontinuance previously filed.

20 It is further submitted that the Attorney-General having once disavowed his attorney and discontinued the action, neither they nor the private relator, Walker had any status in the case, except, perhaps, to contest the disavowal which they did not do. The *mandamus* having been dismissed, and no appeal taken by the Respondents, the judgment in this respect constitutes *res judicata*; and there remains nothing in the record contesting the disavowal or the discontinuance. In fine the private relator, Walker, and his attorneys, have no *locus standi* before this Court, except in so far as they are represented by the present Attorney-General.

30 The discontinuance being validly made, the suit must fail, and with it the Intervention of the City, which, of course, could not exist without the main action. The object of the intervention of the City was to cure the omission to make them parties, and their *raison d'être* in the record ceases with the discontinuance of the action. It has already been argued that the City could not validly maintain any conclusion on their own account in such an action as this by the Attorney-General. Moreover, it is held by the judgment that the City did not suffer any damage by reason of the closing of the street. The City did not appeal from the judgment, therefore this holding is *chose jugée* against them. Having failed to establish any damage, it is submitted that the City have no standing in the case. Apart from this, it was shown by the evidence that the city acquiesced in the closing of the street. The plan filed by the Company in the

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office of the Clerk of the Peace, in accordance with the Railway Act, showed that they intended to take Blache Lane as part of the property required for the location of the Railway, this portion being colored red on the plan, of which a copy is produced in the record. The City Surveyor and the other City officials were well aware, as appears by the evidence, of the intention of the Company to occupy this lane. Moreover, when application was made by the Company to the Road Committee, for permission to cross Mountain street with a bridge and to close Bisson street, plans were submitted to the Road Committee and to the Council, which showed that Blache Lane was to be occupied and entirely covered by the railway works. In fact, the entrance to the lane on Mountain street was completely blocked by the abutment of the Mountain street bridge. The road Committee and the City Council adopted this plan, with some modifications, and authorize the Company to carry out the works, which necessarily including the closing up of this lane. The modifications which the Council exacted did not affect this question of the abutment of the Mountain street bridge and other works of the railway covering the lane; in fact it was treated as a matter of course between the Company and the City, as well as the proprietors, that the Company would close up this lane. The works afterwards proceeded openly, and no protest of any kind was made by the City until long after the works were completed and the present action instituted. It is submitted that under these circumstances the City must be held to have acquiesced in the works, and is estopped from now asking for their demolition, on the same principle that a party would be stopped from asking an injunction where he had acquiesced in the construction of the works. 10

This brings us to the discussion of the main question in the case, namely, whether the act of the Company in closing the street under the circumstances was *ultra vires*. The Statute under which the railway was built was Chapter 109 of the Revised Statutes of Canada. Among the powers granted to the Railway Company under that Act by Section 3, are those of constructing, maintaining and working the railway across, along, or upon any highway which it intersects or touches (Sub-section 4), with the proviso that the highway so intersected or touched shall be restored by the Company to its former state or to such a state as not to impair its usefulness. It is clear from this clause that the Company had the power under the Act to construct the railway along or upon the street in question, treating it as a highway. The latter part of the clause providing for the restoration of the highway does not affect the question as to the Company's power, but merely has reference to the conditions under which the power is to be exercised. By reference to Section 12, however, it will be clearly seen that the Railway Act contemplated the entire occupation of a street, or portion of street or highway by a railway company. It is there provided that a railway shall not be carried along an existing highway, but shall merely cross the same in the line of the railway, unless leave has been obtained from the proper municipal or local authority therefor. It is one of the powers of a railway company granted by Section 6, to carry a railway along an existing highway, but as to the manner in which this power is to be exercised. Section 12 makes it subject to the formality of obtaining leave from the municipal authorities. The remaining portion of Section 12, providing for the 30 40

leaving of an open and good passage, etc., evidently applies only to the case where the highway is crossed by the railway. All the subsequent paragraphs refer to highway crossings.

It is evident that if a railway may be carried along an existing highway with the consent of the municipal authorities, the whole of that highway may be absorbed by the railway; and the granting of leave to carry the railway along the highway or construct it upon the highway would necessarily in certain cases involved the complete closing thereof. As for instance, in the present case, the lane being only twenty-eight feet wide, the building of the railway embankment upon it necessarily occupied the whole of it, and involved the closing of the street. It would be absurd to say that a municipal authority such as the City Council could not validly give leave to a railway company to close any street. The closing of certain streets is absolutely necessary in many cases where railways are carried into towns, and it was only reasonable that the power of the Company to close such streets should be conditional only upon the consent of municipal authorities. As a matter of practice, it is done every day; and the record in the present case shows that several streets were closed by this very company with the consent of the City Council. The Appellants respectfully contend, therefore, that the closing of this street did not constitute the exercise of a power not conferred upon them by law, but on the contrary was within the powers expressly given to all railway companies by the Railway Act. The only objection could be raised would be that they had not complied with the formalities and requirements of the Railway Act in exercising the power conferred upon them; that is to say, that their actions was not *ultra vires* of the Railway Company, but that in the execution of it, they did not comply with the conditions imposed upon them by the Act, namely, the obtaining of the leave of the municipal authority. Such a complaint as this might constitute a ground for the issue of an injunction at the suit either of the City or of the proprietors who were deprived of access to this lane without indemnity, for it has been frequently held that proprietors abutting on a street are entitled to compensation from a railway company under the Act, where their access is completely cut off. The action of the Company in closing the street might therefore have been restrained by injunction, if they were unable to show that they had obtained the leave of the City in the one case or had not given compensation to the proprietors in the other. But it is submitted that it did not give rise to a prosecution at the suit of the Attorney-General under the article of the code in question.

In any event, it is confidently submitted to the Company had sufficiently applied with the requirements of the Railway Act, and had in fact obtained the leave of the City Council before closing the street. The law does not require that there should be a consent in writing by the municipal authorities; it merely says that leave must be obtained. Now it has already been shown that the City were made fully aware of the intention of the Company to close this lane, and received and accepted and acted upon the plans submitted to them by the Company showing this lane to be covered by the railway works. Short of an express permission in writing as by-law of the Council, no more explicit permission than this could very well be proved.

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The Appellants have so far treated the case as though Blache Lane were a public street. The evidence, however, by no means establishes this fact. It will be seen that the judgment holds that it has been proved that Blache Lane had a width of twenty-eight feet and formed a cul-de-sac running back Mountain street, that it was fenced in, and that the City had put down sidewalks and water pipes, and that the properties abutting on the lane were described in their titles as bounded by it. It is true that the evidence shows that some planks for sidewalk were put down at one time by the City on one side of the lane, and also that water pipes were laid to two or three small houses which were situated on the lane. These facts, however, the Appellants submit, are not inconsistent with the facts of its having been a private lane or street. It appears by the evidence of the City Surveyor Mr. St. George, that there are numbers of private streets and lanes in the City in which such work has been done by the Corporation, either through error or at the request of the proprietors and on payment by them. But he swears that these are all now treated as private streets, so much so that notices are posted by the City at the entrance to such streets warning the public that there is no thoroughfare. He swears that he always considered this lane as a private lane and not as one of the public streets of the City, and that if it had not been closed by the railway he would have placarded it as a private lane, as he did many others in the City. The City Assessors for that portion of the town, also swear that they have always regarded this as a private lane. In addition to this, we have the evidence of several of old residents who described it as such. As to the water pipes, it would appear that the City is in the habit of laying pipes even in private streets or lanes, up to any houses, where the proprietors will pay water rates. On the other hand, there is a considerable amount of evidence on the part of the Respondents that this street has been used as a public street for many years, and that it always appeared on the plans of the City for more than thirty years back. The evidence of these witnesses is not of very great weight, as none of them can swear to a personal knowledge of anyone using the street beside the witness himself and the persons living in the lane. Everyone of the witnesses, on cross-examination admits that the only occasions on which he went into the lane were when he had business there with persons living in it. The Appellants submit that the history of the lane, so far as appears by the proof, shows that it was opened for private purposes only; and has since been used purely and simply for the benefit of those persons having property abutting upon it, giving them a right of passage in rear of their properties to Mountain street. The lane appears to have been opened upon the property of one Blache, who owned a house fronting on Mountain street and the upper corner of the lane. He opened this lane on his own property to the south of his house for his own accommodation, and subsequently extended it when he sold portions of his property; and ever since the lane has been used for the purpose of access to these properties in rear from Mountain street. It is true that in most of the deeds the properties abutting on this lane are described as bounded by it in rear. It does not follow from this, however, the Appellants submit, that the lane is a public one. A proprietor of land may lay out a street or lane on his own property and sell lot described as bounded by such a lane or street,

thereby giving the owners of such lots rights of passage in the lane or street but not thereby abandon his property therein. That seems to have been the case here, and it is certain that no one outside of the proprietors abutting on the lane had any interest in it. It is clear, therefore, that the property immediately surrounding the lane having been acquired by the Railway Company, the object and usefulness of the lane was at an end, and the only person who could have any claim against the Railway Company would be the original proprietor of the lane itself. The public certainly does not appear to have ever had any rights or interests in the lane, and the whole evidence shows conclusively that there was no public injury done by closing it.

10 The judge below also relies upon the judgment of this court in the case of *Johnson vs. Archambault*, in 1864, (8 L.C.J. 317.) It is true that in that case, on the evidence before it, this Court held that the lane was a public one; but it is submitted that that judgment being purely on a question of fact, is not binding upon the Appellants, nor upon this Court in the present case. From the facts and evidence in that case, which are printed of record, it would appear that no such evidence was given as that which has been given, on the part of the Appellants in the present case, by the city officials to show that the lane was a private one.

20 The Respondents attempted to prove that this street had been registered as a public street in the register prepared by the City Surveyor in accordance with 23 Vic., Chap. 72, sec. 10, sub-sec. 6. In this attempt, however, it is submitted, the Respondents entirely failed. It is true that the lane appears as Blache lane in a register which purports to have been prepared in accordance with that statute; but the proof showed that this register was a register of all the streets and lanes in the City without regard to whether they were public or private, and a number of admittedly private streets are pointed out in the evidence as being entered in this register; some of them indeed are therein entered as private streets. It is clear from the language of the Statute, and
 30 from the judgment of this Court in *Guy vs. City* (3 L.N. 402), that the intention of the Statute was to give the City Council power to pass a by-law for the purpose of causing such of the streets, lanes, etc., in the City as had not theretofore been recorded, or which had been opened for public use during ten years, but not recorded, to be ascertained, described and entered of record in a book to be kept for that purpose by the City Surveyor, and the Act declared that such streets, lanes, etc., when so entered of record, should be public highways; and the record thereof should in all cases be held and taken as evidence of their being such public highways. To comply with the law, therefore, it was necessary first that a by-law should be passed. There is no proof of such by-
 40 law; in fact, there is negative proof that no such by-law was ever passed. Moreover, the Statute evidently requires that the streets, lanes, etc., should be registered as public property and declared to be such in the register. The register produced in this case is nothing but a list of all the streets, lanes, alleys and squares in the City, without regard to their ownership and without any declaration as to whether they are public or private. No such evidence as this was brought out in either the case of *Guy vs. City* or *La Chevrotière vs. City*. In these cases an extract from the register was produced, and the Court would

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seem to have taken for granted that a by-law had been passed and a register made in accordance with the Statute, whereas in the present case it is clearly shown that such was not done. It is submitted, therefore, that the Respondents have made nothing by their evidence upon this point and cannot claim Blache lane as a public street on account of its appearing in the register.

Upon the whole, the Appellants submit that, taking the witnesses most qualified to speak on the subject, the weight of the evidence shows that this was a private lane. If such is the case, it cannot be controverted that the Railway Company, having purchased the surrounding land, were entitled to close it.

The Appellants further submit that there is no such right of action given by Article 997 as that sought to be exercised by the Attorney-General in this case. It is evident from the language of that article and the following articles, that the intention of the Legislature was that the Attorney-General should prosecute corporations for violations of their charter, where such violations made them liable to a prosecution either for penalties or forfeiture of their charter. It does not appear to have been intended by these articles that the Attorney-General should take proceedings to have works demolished as in the present case. The intention was that the Attorney-General should see that corporations were punished for infractions of the law, where punishment was 20 provided. As for instance, in the present case, the company which violates the provisions of Section 12 of the Railway Act is subject to a penalty of \$40. But it is submitted that it was not intended that the Attorney-General should have the power to obtain an order for the destruction of works, and in default, be authorized to destroy them himself. In all actions of this kind, in order to make the remedy effective, the Plaintiff is authorized, in default of the Defendant obeying the order of the Court, to himself demolish the works at the Defendant's expense. Surely it was never intended that the Attorney-General should be the party to such proceedings.

It may be said that the Attorney-General, as representing the public, may 30 always ask for the abatement of any nuisance, by action at common law. This may be so, but the case here is not taken under the common law, but avowedly and expressly under Article 997 of the Code of procedure. In any event, any action against the Railway Company in the premises could not, it is submitted, be taken in the name of the Attorney-General for the Province of Quebec, as the infraction of the law is alleged to have been committed by a company, incorporated by Act of the Dominion Legislature, against the provisions of the Dominion Railway Act. The railway in question is subject to the provisions of that Act and not to those of the Provincial Railway Act, and it is submitted that it is not the duty of the Provincial Attorney-General to see to the enforce- 40 ment of the provisions of the Dominion Statutes.

It is further submitted that inasmuch as the action was taken after the coming into force of the new Railway Act 51 Vic. cap. 29, the remedy of the parties aggrieved by the construction of the railway upon the lane in question was by application and complaint to the Railway Committee of the Privy Council. Under sec. 11, par. (H) that Committee is given power and jurisdiction to enquire into, hear and determine any application, complaint or dispute

concerning, amongst other things, the construction of railways upon, along or across highways. It is submitted that the jurisdiction thus given was exclusive, and the parties were confined to the remedy provided by the Act. (*Mitchell v. Hancock Inspirator Co.*, 8 L.N. 50; *Barter v. Smith*, 8 L.N. 210; *Telephone manufacturing Co. v. Bell Telephone Co.*, 9 L. N. 27; *Royal Electric Co., v. Edison Electric Light Co.*, 12 L. N, 90, 102; *Smith v. Goldie*, 9 S. C. R. 46.) In any event, an adequate remedy being provided by the Railway Act, this extraordinary remedy, by way of a prerogative writ, should not have been permitted by the Court, and the proceedings should have been quashed. (*Out. Express Co., v. G. T. R. Co.*, M. L. R. 7 S. C. 308.)

10 Finally, it is submitted that the action is not maintainable against the Appellants. It is true they constructed the works, but their railway is now, and was at the date of the institution of the suit, in the possession and under the control of the Canadian Pacific Railway Company, and formed part of that railway. It is proved that this piece of the railway forms part of the entrance to the Windsor Street Station, in the City of Montreal, on the line between that Station and Montreal Junction and the St. Lawrence Bridge over which the whole of the passenger traffic of the C.P.R. Co., from the West, North and South, passes into the City. Under the Acts affecting the Atlantic & North
20 Western Railway Company, the Ontario & Quebec Railway Company, and the Canadian Pacific Railway Company, this line became part of the latter Company's railway as soon as built. In fact the Appellants built this line for the O. & Q. Ry. Co., who, under 46 Vic. cap. 58, were empowered to acquire their line; and by an Act of the same Session, 46 Vic. cap. 55, the C. P. R. Co. were empowered to lease in perpetuity the O. & Q. Ry., and that part of Appellant's Railway in question. By sale of date the 3rd December, 1883, the O. & Q. Ry. Co. acquired this portion of the line (then projected), which formed part of their consolidated railway, as it was called. By an agreement executed in January, 1884, and appended as a schedule to 47 Vic. cap. 54, and ratified
30 by that Act, the C. P. R. Co. leased in perpetuity the whole of the O. & Q. Co.'s consolidated railway, including this portion. Under the charter of the Canadian Pacific Railway Company (44 Vic. cap. 1, schedule A, secs. 15 and and 25) this line so acquired by them became part of their Railway. It is clear, therefore, that the Appellants have no right of property in the part of the railway in question, and could not be compelled to demolish the property of another Company.

Under all the circumstances of the case, the Appellants submit that judgment of the Court below should be reversed and the action dismissed with costs.

40 MONTREAL, January 15th, 1892.

ABBOTTS, CAMPBELL & MEREDITH,

Attorneys for Appellants.

RECORD.

*In the Court
of Queen's
Bench.*

No. 186.
Appellants'
Case.

Dated 23rd
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Continued.—

RECORD. Province of Quebec, }
District of Montreal. }

In the Superior Court.

In the Court
of Queen's
Bench.

No. 842.

No. 186.
Appellants'
Case.
Dated 23rd
Oct., 1890.
Continued.—

The Hon. A. Turcotte *es qualité*,.....Petitioner.

AND

The Atlantic and North-West Railway Company,.....Defendant. 10

AND

The City of Montreal,.....Intervening Party.

The parties consent that the depositions taken and exhibits filed by the City of Montreal on its intervention in this cause avail the Petitioner as part of his evidence on the main action and *vice versa* and the depositions taken and exhibits filed by the Defendant on said Intervention serve also as part of the said Defendants' evidence on the main action and *vice versa*. 20

Montreal, April 14th 1890.

BARNARD & BARNARD,

Attys. for Petitioner,

ABBOTTS, CAMPBELL & MEREDITH,

Attys. for Defendants.

ROUER ROY,

Atty. for City.

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Province of Quebec, }
District of Montreal. }

In the Superior Court.

The Hon. A. Turcotte, *es qual.*.....Petitioner.

AND

The Atlantic and North-West Railway Company,.....Defendant. 40

The City of Montreal,.....Interg. Party.

The parties, to save costs, admit :

1st. That the property described in the Deed of Sale by Louis Blache et al., to Jean B. Renaud, before J. Belle, N. P., dated the 18th March, 1857, and filed as Petitioner's Exhibit at Enquête, Aa and in the deed of sale by Jean B.

Renaud to James Baylis, before J. S. Hunter, dated the 17th of May, 1864, and filed as Petitioner's Exhibit *Ab* at Enquête is the property belonging to the Atlantic and North West Railway Company, known as subdivisions 7, 8, 9, 10, 11 and 12 of cadastral lot No. 657 of St. Antoine Ward, Montreal;

2d. That the property described in the extract of the judgment of the 26th February, 1867, in confirmation of title in *re* James Grantham et al., Plaintiffs, vs. Isaac Taylor, et al., Defendants, and Cynthia Gilbert et al., Opposants, filed herewith as Petitioner's Exhibit *Ac*, is the property bought by the Company Defendant from Dame Lilas E. Fraser, known as cadastral lot No. 658 St. Antoine Ward.

3d. That the property described in the Deed of Sale by Dame M. J. Hervieux, wife of Robert J. Greig, to Jos. Archambault, before A. Montreuil, N. P., dated the 4th September, 1844, and filed as Petitioner's Exhibit *Ad*, is the property bought by the Atlantic and North-West Railway Company from Francis Huston, known as cadastral lot No. 655 St. Antoine Ward, Montreal.

4th. That the property described in the Deed of Sale by Michael Babcock and Alexander Anderson, Trustees of creditors of Wm. B. Lambe, to John Gordon Mackenzie, before Griffin, N. P., dated the 22nd August, 1866, and filed as Petitioner's Exhibit *Ae*, is the property now belonging to the Estate Watt, known as cadastral lot No. 660 St. Antoine Ward, Montreal.

5th. That the north-easterly portion of the property described in the Deed of sale by Augustin Larocque *dit* Lebrun to Louis Russell before Chevalier de Lorimier, N. P., dated the 19th February, 1834, and filed herewith as Petitioner's Exhibit *Af* at Enquête; in the Deed of Sale by Miss Marie A. Rasco to John McGregor, before J. A. Labadie, N. P., the 26th February, 1847, and filed as Petitioner's Exhibit *Ag*, and in the Deed of Sale by Robert S. Auld et al. to Edward C. Hughes, before Geo. R. W. Kittson, N. P., the 2nd May, 1885, and filed as Petitioner's Exhibit *Ah*, is the property belonging to Thomas Darling, known as the north-easterly portion of cadastral No. 661 St. Antoine Ward, Montreal.

6th. That the south-westerly part of the property described in the said Deeds of Sale by Augustin Larocque *dit* Lebrun to Louis Russel, and by Miss Marie A. Rasco to John McGregor, is the property now belonging to William Walker, known as the south-westerly portion of cadastral lot No. 661, St. Antoine Ward, Montreal.

7th. That the property described in the Deed of Sale by Louis Russell et uxor to George Koester, before Gibb, N. P., dated the 30th March, 1842, filed as Petitioner's Exhibit *Ai* at Enquête, is the property belonging to Félix Sauvageau, known as cadastral lots Nos. 662 and 663 St Antoine Ward.

8th. That the property described in the Deed of Sale by Margaret Sweeney to Rev. James Sommerville, before N. B. Doucet, N. P., the 2nd March, 1833, filed as Petitioner's Exhibit *Aj* at Enquête, is the property now belonging to John James Brennan, known as cadastral lot No. 665 St. Antoine Ward, Montreal.

9th. That the property described in marriage contract and donation between Jean Descaries and Marie Louise Lanthier, before Chevalier de Lorimier, N. P., the 23rd November, 1834, filed as Petitioner's Exhibit *A* at Enquête, is

RECORD.

—
*In the Court
of Queen's
Bench.*

—
No. 186.
Appellants'
Case.

Dated 23rd
Oct., 1890.

Continued.—

RECORD. the property now known as cadastral lot No. 665 At St. Antoine Ward, Montreal.

In the Superior Court.

Montreal, October 23rd, 1890.

ABBOTTS, CAMPBELL & MEREDITH,

Attys. for Defendants.

BARNARD & BARNARD,

Attys for Petitioner.

No. 186.
Appellants' Case.
Dated 23rd Oct., 1890.

(ENDORSED).

10

Appellants Factum, Prod. 22nd Jany. 1892.
Paraphed L. W. M.

DOCUMENT XXII.

20

No. 187.
Respondent's case. Dated, 29th Augt. 1891.
Continued.—

Province of Quebec, }
District of Montreal, }

In the Court of Queen's Bench

[Appeal side.]

No. 468.

The Atlantic and North-West Railway Company Defendants in the Court below,

APPELLANTS 30

AND

The Hon A. Turcotte, Attorney-General,(Petitioner in the Court below),

RESPONDENTS.

RESPONDENTS FACTUM.

The judgment appealed from was rendered by the Superior Court at Montreal on the sixteenth day of May last.

40

That judgment maintained the Petition of the Respondent, the Attorney-General for the Province of Quebec, whereby at the relation of William Walker, he prayed that Blache street, one of the public streets of Montreal, which had been closed and built over by the Company Appellant, should be re-opened.

The nature of the issues of law and fact in the case is so fully stated in the judgment appealed from, that it is deemed unnecessary to do more than refer this honorable Court to it.

The only question really involved in the contestation between the parties was one of fact, namely, whether Blache lane was a public street, and the evidence adduced on behalf of the Respondent has been of such an overwhelming character that it is not thought that the Appellant will seriously attempt before this Court to dispute the judgment on that point.

10 The Appellants have pretended in the Court below that the City of Montreal only could take action in such a case as this. On this point also the Appellants are not likely to insist before this Court, and therefore nothing will be said about it here. In point of fact the City of Montreal did intervene to support the Attorney-General's Petition, and its intervention has been maintained by the judgment appealed from, while no appeal has been taken so far as the City is concerned.

Another pretention of the Appellants in the Court below was that at any rate only the Attorney-General of the Dominion could interfere in this matter, as the Company Appellant holds its charter from the Dominion Parliament. His pretention was dismissed by the Court below on demurrer, and the judgment was not appealed from. Even if the Appellants could raise that point now it is deemed improbable that they will, and the respondent will not argue it here.

20 The Respondent, however, considers it is proper he should state here that long before the judgment appealed from was rendered the Appellants had recognised the utter hopelessness of their pretensions by abusing their great influence, and getting the Attorney-General to withdraw his petition, without considering the scandalous injustice which such a course would entail. The attempt, as the judgment appealed from shows, failed, and the Company probably now regrets, and certainly ought to regret, the discredit it has brought upon its case thereby, to say nothing of the unfortunate position in which it has placed the highest law officer of the Crown in the Province,

BARNARD & BARNARD,
Attorneys for Respondent.

30 Montreal, 29th August, 1891.

(ENDORSED.)

Respondent's factum, Filed 25th Nov. 1891.
Paraphed L. W. M.

RECORD.

—
*In the Court
of Queen's
Bench.*

—
No. 187.
Respondents'
Case.
Dated 29th
Augt., 1891.

RECORD.

*In the Court
of Queen's
Bench.*

DOCUMENT XXIII.

Canada,
Province de Québec,
District de Montréal. }

Cour du banc de la Reine.

[EN APPEL.]

No. 468

No. 188.
Case of the
Intr. The
City of
Montreal.
Dated 16th
May., 1892.
— *Continued*

La Compagnie de Chemin de Fer Atlantique et du Nord-Ouest,.....
(Défenderesse en Cour Inférieure,) 10

APPELANTE.

ET

L'Honorable Arthur Turcotte,.....(Requérant en Cour Inférieure,)

La Cité de Montréal.....(Intervenante en Cour Inférieure,)

INTIMÉE.

FACTUM DE L'INTIMÉE.

20

La Cité de Montréal, Intervenante en Cour Inférieur.

L'appelante, dans le cours de l'année 1887, a fermé la ruelle Blache, une rue publique en la Cité de Montréal, et y a construit son chemin de fer, en violation de la loi.

Le Procureur Général de la Province de Québec, a en conséquence procédé en vertu de l'article 997 du Code de Procédure pour faire ré-ouvrir la rue.

L'appelante ayant contesté la requête du Procureur Général pour la raison 30 entr'autres que la Cité de Montréal seule avait droit de se plaindre, la Cité de Montréal est intervenue pour concourir dans les conclusions ou Procureur Général.

Quant à la question de savoir si la ruelle Blache était une rue ou chemin public, la preuve établit clairement qu'elle l'était, et l'on ne peut sérieusement soutenir le contraire.

D'après l'acte des chemins de fer (49 Vic. C. 106, sec 12) la compagnie n'avait pas le droit de construire son chemin le long d'un chemin public (high-way) à moins d'avoir obtenu le consentement préalable des autorités municipales. Le consentement de la Cité de Montréal, d'après sa charte (37, Vic. C. 40 51, sec. 123, sous section 37, ne pouvait être donné que par un règlement. L'appelante n'a ni allégué, ni prouvé qu'elle avait obtenu le consentement de la Cité. Il s'en suit donc qu'elle a agi en contravention de la loi. Sa position était celle d'un *wrong doer*, elle doit remettre les choses dans l'état où elles étaient, (*North Shore Railway Co. & Pion et al*, décision du Conseil Privé, 12 Legal News p. 407, et *Procureur Général & Montreal City Passengers Railway*, 2 Legal News. p. 338)

La Cour Inférieur a adopté ce point de vue, a maintenu l'intervention et ordonné la ré-ouverture de la rue.

Les prétentions de l'appelante en Cour Inférieur, qu'elle maintiendra probablement devant cette Cour, sont : 1o. que l'intervention est irrégulière, parce que l'intervenante a seulement signifié une copie de l'intervention avec avis qu'elle serait présentée pour être allouée, mais qu'elle a omis de donner avis subséquemment à l'effet que l'intervention avait été admise.

2o. Que le Procureur Général seul pouvait adopter des procédés dans l'intérêt public, et que ces procédés ne constituaient pas une action dans laquelle une intervention pût être admise ; que dans tous les cas la Cité de Montréal n'avait que la voie de l'action ordinaire et ne pouvait intervenir dans les procédés sommaires du Procureur Général en vertu d'une loi spéciale.

3o. Que les procédés du Procureur Général étaient mal fondés dans le principe et que dans tous les cas ils ont été discontinués par le Procureur Général Turcotte, et qu'en conséquence, l'intervention doit subir le sort de ces procédés, vu qu'elle en dépend. En d'autres termes, si l'action elle-même est déboutée, l'intervention dans cette action se trouve sans basse, et doit être également déboutée.

La première objection est mal fondée. La jurisprudence est à l'effet que si les parties ont reçu copie de l'intervention et avis qu'elle serait présentée pour être allouée, cela suffit. Quoique l'appelante ait soulevé cette objection dans sa contestation de l'intervention, après avoir failli sur une motion pour rejeter l'intervention, il n'en est pas moins vrai qu'elle a répondu à l'intervention qui a été décidée au mérite. Elle est sans intérêt par conséquent à constater une jurisprudence qui paraît bien raisonnable.

Quant à la seconde objection, les procédés du Procureur Général constituent une action, et il n'existe pas de raison de les considérer autrement. Le droit de filer une intervention sur un injonction, (un procédé d'une nature analogue) a été reconnu, *Stephen et al, & the Montreal Portland & Boston Railway Company*, Legal News, pp. 62 et 63). Quant à dire que la juridiction de la Cour n'est pas la même dans des affaires sommaires, la question a déjà été décidée dans cette cour dans la cause de *Chrétien et Crowley* (2^e Décision de la Cour d'Appel p. 385,) dans le sens que c'est la même juridictions.

Quant à la troisième objection, le droit du Procureur Général de la Province de Québec de prendre des procédés en vertu de l'article 997, dans un cas de ce genre, semble incontestable, puisqu'il s'agit de protéger l'intérêt public dans la Province de Québec, dans un cas où la loi est violée au détriment des habitants de cette Province. Il est même douteux que le Procureur Général de la Puissance ait aucun droit quelconque d'intervenir dans un cas de ce genre ; tout au plus son droit dans les cas serait un droit concurrent.

Quant à la discontinuation des procédés par le Procureur Général Turcotte, la raison, d'accord avec la loi, refuse au Procureur Général le droit arbitraire de discontinuer les procédés qu'il a autorisés et qui ont été faits aux dépens d'un tiers. Dire que le Procureur Général peut agir sans l'autorisation de la Cour dans un cas de ce genre, serait introduire un principe dangereux. Dans le cas actuel rien ne justifiait la discontinuation ; William Walker demandait la ré-ouverture de la rue, dans l'intérêt public aussi bien que dans son in-

RECORD.

In the Court
of Queen's
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No. 188.
Case of
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The City of
Montreal.
Dated 16th
May, 1892.
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RECORD.

*In the Court
of Queen's
Bench.*No. 188.
Case of the
Intr. The
City of Mont-
real. Dated
15th May.
1892.— *Continued.*

térêt individuel. Son intérêt individuel consistait en ceci : que sa propriété, qui faisait face à la ruelle Blache avait en partie été exproprié à la condition que ce qui resterait après l'expropriation aurait un front sur une nouvelle rue, que la Compagnie devait ouvrir et qui, avec le consentement de la Cité de Montréal, devait prendre la place de la rue Blache. Et l'indemnité avait été évaluée sur ce principe. La rue Blache ayant été fermée par la Compagnie et la nouvelle rue n'ayant pas été ouverte par elle, William Walker et les autres propriétaires sur la rue Blache qui étaient dans la même position ont demandé l'annulation de l'expropriation, afin de recouvrer leur front originaire sur la rue Blache, et ont également procédé en dommages. Ces procédés étaient naturels de leur part, indispensables même pour éviter des questions de prescription. Mais tant que justice ne leur serait pas rendue, leur intérêt privé à la réouverture de la rue continuait d'exister, pendant que l'intérêt public restait également le même, au moins tant que la Compagnie n'aurait pas avec le consentement de la Cité (consentement qu'elle pouvait obtenir sans aucune difficulté,) ouvert la nouvelle rue. 10

Le jugement rendu, qui rejette la discontinuation et accorde les conclusions originaires du Procureur Général et de l'intervenante doit donc être maintenu.

Au reste, l'intervenante n'admet pas la proposition de l'appelante que l'intervention doit nécessairement subir le même sort que l'action principale. 20

Dans le cas actuel, la preuve s'est faite en même temps sur l'action principale et sur l'intervention. De fait la preuve a été déclarée commune, et l'action principale n'a nullement été retardée; en d'autres termes, il n'y a jamais eu de motifs de la part des parties à l'action principale de demander que l'intervenante fut renvoyée à se pourvoir par une action directe. Sous ces circonstances, l'intervenante avait droit à un jugement sur le mérite de son intervention, qui n'aurait pas pu être rejetée, pour la seule raison que la Cour ne pouvait pas maintenir l'action principale.

L'intervention une fois admise et la contestation liée régulièrement, les parties étaient devant la Cour, comme elles l'eussent été sur une action distincte intentée par la Cité, et la Cour pouvait maintenir l'intervention si elle était bien fondée, sans égard au sort de l'action principale. 30

Les circonstances particulières de la cause mettent ce point de procédure, bien en lumière.

La Compagnie, sous prétexte qu'elle désirait faire un arrangement à l'amiable, cherchait depuis longtemps à remettre l'audition de la cause. William Walker ayant insisté pour que la cause fut plaidée, l'appelante s'avisait d'obtenir du Procureur-Général, Turcotte, une déclaration qu'il discontinuait les procédés, adoptés en son nom. Cette discontinuation non seulement ne fut jamais exceptée par l'intervenante, mais ne lui fut pas même signifiée ou communiquée en aucune manière; ce que l'appelante aujourd'hui prétend, c'est une pareille discontinuation de l'action principale a eu l'effet d'anéantir l'intervention, ce qui est souverainement exorbitant. Il est à propos d'ajouter que, la discontinuation ayant été réjetée par la Cour Inférieure, l'appelante n'a pas même le droit, sur le présent appel, d'attaquer le jugement sous ce rapport; pour que l'appelante pût prendre avantage de cette discontinuation il 40

eût fallu qu'elle y eût été partie d'une manière régulière. Or elle ne l'a jamais été.

La discontinuation, n'étant pas sujette au paiement des frais, suivant les articles 450-51 du Code de Procédure, ne pouvait avoir aucun effet dans la cause tant qu'elle n'aurait pas été formellement acceptée par les parties.

L'appelante ne l'a jamais acceptée, conséquemment le jugement qui rejette la discontinuation qu'elle n'avait pas acceptée n'est pas un jugement dont elle puisse appeler.

10 Une autre prétention, qui sera probablement maintenue par l'appelante dans le cours de la discussion sur le mérite de l'intervention de la Cité, est que la ruelle Blache, n'était pas une rue publique, que c'était une simple ruelle ouverte temporairement pour le bénéfice de certains propriétaires, et dans laquelle la Cité n'avait aucun intérêt comme corporation.

Nous réfutons immédiatement cette objection, et nous affirmons que LA RUELLE BLACHE ÉTAIT AVANT SA FERMETURE PAR LA COMPAGNIE, UNE RUE PUBLIQUE; et nous allons le démontrer.

20 Cette ruelle était connue sous le nom de *Blache Lane*, (ruelle Blache), ou rue Blache; elle avait une largeur de vingt-huit (28) pieds, et formait un *cul-de-sac*, à partir de la rue de La Montagne, jusque vis-à-vis de l'immeuble portant le No. 661, des plan et livre de renvoi officiels du quartier St. Antoine, de la Cité de Montréal; elle était entourée de clôtures; la Cité y avait fait beaucoup de travaux, notamment y avait posé des trottoirs et des tuyaux-à-l'eau, et l'on trouve que les propriétés longeant cette rue ou ruelle, sont désignées dans les titres comme bornées par cette rue. On constate qu'elle apparaît comme ouverte au public, sur un plan fait pour la Cité, par John Adams, arpenteur militaire, (*military surveyor*), en l'année 1825; des titres remontant à une époque au-delà de la période nécessaire, pour la prescription la plus longue, donnent des descriptions de cette rue de la manière la plus complète; ces titres viennent de la famille Blache, à laquelle appartenait 30 la propriété dont la dite rue est un démembrement, et nous l'indiquent comme formant la continuation de la rue Lagauchetière.

A une époque remontant plus loin que cinquante ans, la famille Blache, a fait diverses ventes de terrains, que les titres mentionnent comme bornés en front par la dite rue Blache, (sous le nom de la rue Lagauchetière,) et en arrière par la rue St. Janvier, aujourd'hui rue Osborne. Les titres de James Baylis, propriétaire sur la rue Blache et sur la rue Osborne, dont la propriété est indiquée sur le plan Exhibit A. de la défenderesse à l'Enquête, sont aussi de cette nature; pareillement les terrains possédés par madame Savage, sur la rue Osborne, (voir même plan) sont décrits dans de vieux actes comme 40 ayant leur front sur la rue Blache; de plus, cette dernière a été déclarée *rue publique*, le 18 mars 1864, par jugement de la Cour du Banc de la Reine, pour le Bas-Canada, en Appel, dans la cause de *Johnson & Archambault*,—L. C. J. Vol. 8. p. 317.

Les propriétés *Dowling, Brennan, Koester, Walker, Hughes, Watt*, sont décrites, dans les actes anciens et nouveaux, comme bornées par la ruelle, ou rue Blache, ou par une rue anonyme; et rien ne fait voir que les propriétaires de ces dits terrains aient un droit de servitude privée sur la dite rue.

RECORD.

In the Court
of Queen's
Bench.

No. 188.
Case of the
Intr. The
City of Mont-
real. Dated
16th May,
1892.
Continued.—

RECORD.

*In the Court
of Queen's
Bench.*No. 188.
Case of the
Intr. The
City of Mont-
real. Dated
15th May.
1892.—*Continued.*

Nous avons plus encore : dans le plan de la Cité qui a été homologué suivant la loi en 1877, la dite rue, figure comme *rue publique* ; et le 31 décembre 1885, la Cité a donné à William Walker, un des intéressés dans la présente cause, son alignement en vue des bâtisses qu'il voulait ériger sur la ligne homologuée, et a expropriée une partie de son terrain pour donner à la rue Blache la largeur indiquée sur le dit plan homologué ; elle a payé au dit William Walker l'indemnité qui lui avait été allouée par les commissaires en expropriation, et jamais personne n'a contesté la validité de la dite expropriation, qui du reste avait été faite régulièrement et légalement.

La dite Compagnie est donc aujourd'hui en possession illégale, et 10 sans droits quelconque, des terrains acquis par la Cité de Montréal pour l'élargissement de la rue Blache avec des titres qui remontent à au-delà de cinquante [50] ans ; et dans les procédés en expropriation adoptés par la dite compagnie elle-même, les terrains qu'elle a déclaré vouloir acquérir dans les alentours de la rue Blache sont tous bornés par la dite rue Blache il n'a jamais été question dans ces procédés qu'aucun droit de servitude privée sur la dite ruelle ou rue Blache existât en faveur des terrains expropriés. La prétention de la dite compagnie qu'en expropriant les terrains décrits comme bornés par la dite rue Blache elle a acquis en même temps tout le terrain qui forme la dite rue, est absolument frivole ; le fait de s'approprier 20 une rue de la Cité sans droit ni prétexte et de son autorité privée pour la fermer à l'usage du public, constitue de sa part une nuisance publique, un attentat grave aux droits de la Cité et des citoyens, un empiètement sur le domaine public, qui cause des dommages non-seulement aux propriétaires riverains mais encore à la corporation en général.

La possession même décennale, ouverte au public et sans interruption de la dite rue Blache par la Cité avec les travaux faits que nous connaissons déjà établit en faveur de la Cité un titre parfait que nul ne peut contester, pas même les propriétaires riverains ; encore moins une compagnie de chemin de fer, qui, tout-à-fait étrangère à la localité, s'arroge un droit de spoliateur et n'observe 30 pas même les formalités que sa charte requiert en pareil cas.

Cette doctrine a été maintenue à différentes reprises par la Cour Supérieure, la Cour d'Appel et même par le Conseil Privé de Sa Majesté.

Vide L. N. Vol. 3, p. 402.—*Guy vs. Cité.*

do Vol. 10, p. 41.—*Charigny vs. Cité.*

La Cour Inférieure n'a donc pas erré en condamnant la compagnie à restituer la dite rue Blache à l'usage du public et, à défaut par elle de ce faire en permettant à la Cité de la réouvrir aux risques et dépens de la dite compagnie ; s'il y a eu vraiment erreur dans le jugement de la dite Cour, c'est parce que cette dernière n'a pas accordé de dommages : ce dont la dite compagnie 40 ne se plaint guère.

C'est pourquoi la dite Intervenante soumet respectueusement que le jugement porté en appel, maintenant la demande et les moyens d'intervention de la dite Cité, sauf quant aux dommages réclamés, est bien fondé et doit être confirmé avec tous les dépens distraits aux soussignés.

Montréal, 16 Mai 1892.

ROY & ETHIER,
Avocats de la Cité,

APPENDICE.

RECORD.

*In the Court
of Queen's
Bench.*

DEMANDE D'INTERVENTION.

No. 188.
Case of
the Intr.
The City of
Montreal.
Dated 16th
May., 1892.
Continued.—

The petition of the City of Montreal, a body politic and corporate, having
10 its principal office in Montreal,

Respectfully represents :

That by the petition in this cause the said Attorney-General alleges that
the said Company Defendant hath illegally closed Blache Lane, one of the public
streets of the City of Montreal, and prays that the said Company be condemned
to reopen the same at its expense ;

That the said City of Montreal, being interested in the subject matter of
the said petition, is desirous to intervene in this cause for the purpose of watch-
ing the proceedings, taking such conclusions or making such declarations therein
as she may be advised.

20 Wherefore your Petitioner prays that she may be permitted to intervene in
this cause for the above purposes, the whole with costs to abide the result.

Montreal, 28th August, 1889.

ROUER ROY,
Attorney for said Petitioner.

30

MOYENS D'INTERVENTION.

Et la Cité de Montréal pour *moyens d'intervention* déclare : qu'elle concourt
dans les allégations de Procureur Général sur la présente instance et dans les
conclusions par lui prises pour obtenir la réouverture de la rue connue sous le
nom de "*Blache Lane*."

Et d'abondant l'intervenante allègue :

Que la dite rue appartient à la Cité, a été à l'usage du public et a été
reconnue comme propriété publique depuis un temps immémorial ;

40 fait pour la Cité par John Adams, arpenteur militaire (*military surveyor*) en
l'année mil huit cent vingt-cinq (1825) ;

Que dans les titres remontant à une époque d'au-delà de la période néces-
saire pour la prescription la plus longue, cette rue est décrite par les membres
de la famille Blache, de la propriété de laquelle famille la dite rue était un
démembrement, comme constituant la continuation de la rue Lagouchetière.

Qu'à une époque remontant à au-delà de cinquante ans, diverses ventes
de terrains ont été faites par la famille Blache, lesquels terrains ont été décrits

RECORD.

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*In the Court
of Queen's
Bench.*
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No. 188.
Case of the
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Montreal.
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— *Continued.*

dans les actes de vente comme bornés en front par la dite rue Blache sous le nom de rue Lagauchetière, et en arrière par la rue St. Janvier, aujourd'hui rue Osborne ;

Que les titres de James Baylis, propriétaire sur la rue Blache et sur la rue Osborne, dont la propriété est indiquée sur le plan Exhibit A de la Défenderesse à l'Enquête, sont de cette nature ;

Que pareillement les terrains possédés par Madame *Savage* sur la rue Osborne et indiquées au même plan, sont décrits dans les actes les plus anciens comme ayant leur front sur la rue Blache .

Que le huit mars mil huit cent soixante-quatre (1864), dans la cause de *Johnson & Archambault*, la Cour la Banc de la Reine pour la Bas-Canada, siégeant en appel, a expressément décidé que la dite rue était une rue publique et que les actes produits, dans la dite cause montrent que la propriété *Archambault* en question dans la dite cause, et indiquée au même plan sous les numéros vingt et six cent cinquante-cinq sous le nom de *Francis Huston*, était décrite dans les anciens actes comme ayant son front sur la rue Blache, de même manière que les propriétés *Baylis & Savage* sont décrites comme bornées en front par la rue Blache ;

Que les propriétés *Dowling, Brennan, Koester, Walker, Hughes et Watt*, indiquées au même plan comme ayant leur front sur la rue St. Antoine, sont décrites dans les actes anciens et nouveaux comme bornées par la ruelle Blache ou par la rue Blache, ou par une rue anonyme, mais que nulle part ne se trouve une indication quelconque dans les actes que ces propriétés eussent un droit de servitude privée sur la dite rue : d'où il s'ensuit que leur droit de servitude sur la dite rue Blache découlait du caractère de propriété publique s'attachant à la dite rue ;

Que dans le plan de la Cité de Montréal et qui a été homologué suivent la loi en la l'année mil huit cent soixante et dix-sept (1877), la dite rue figure comme rue publique ;

Que le trente et un décembre mil huit cent quatre-vingt-cinq (1885), la dite Cité de Montréal, présente intervenante, étant appelée à donner au dit William Walker son alignement en vue des bâtisses qu'il voulait ériger a, suivant la loi, exproprié une partie du dit terrain du dit Walker comme moyen de donner à la rue Blache la largeur indiquée sur la dit plan homologué, et que les procédés de la dite Cité en expropriation ont été faits régulièrement et n'ont jamais été contestés ;

Que la dite Compagnie défenderesse est aujourd'hui en possession illégale et sans droit quelconque du terrain ainsi exproprié par la dite Cité pour l'élargissement de la rue Blache, lequel terrain ainsi exproprié par la dite Cité appartient incontestablement à la dite Cité ;

Que finalement, dans les procédés en expropriation adoptés par la Compagnie défenderesse elle-même, les terrains qu'elle a déclaré vouloir acquérir dans les alentours de la rue Blache sont tous décrits comme bornés par la rue Blache, et qu'il n'a jamais été questions dans les dits procédés de dite Compagnie en expropriation qu'un droit de servitude privée sur la dite ruelle ou rue Blache existât en faveur des terrains que la dite Compagnie se proposait ainsi d'acquérir ;

Que la prétention de la dite Compagnie défenderesse, que parce que la dite

Compagnie a acquis les terrains décrits comme bornés par la dite rue Blache, elle a acquis le terrain lui-même constituant la dite rue Blache, est absolument frivole ;

Que le fait de s'approprier une rue de la Cité sans droit ni prétexte et de son autorité privée de la fermer à l'usage du public, constitue de la part de la dite Compagnie une nuisance publique et un attentat grave aux droits de la Cité, et a causé des dommages à la dite Cité au montant de vingt mille dollars (\$20,000.)

- 10 Pourquoi la dite Cité, partie intervenante en cette cause en vertu d'un jugement de cette Cour, conclut en son propre nom à ce que la dite Compagnie défenderesse soit condamnée à réouvrir la dite rue et à la restituer à l'usage du public, remplaçant les choses dans l'état où elles étaient alors que la dite Compagnie a illégalement pris possession de la dite rue, et à ce qu'à défaut par la défenderesse de ré-ouvrir la dite rue, sous quinze jours de la signification de jugement à intervenir, il soit permis à la dite Cité de ré-ouvrir la dite rue aux risques et dépens de la dite Compagnie défenderesse se réservant son recours pour tout dommage à venir ; à ce qu'en outre la dite compagnie défenderesse soit condamnée à payer à la dite intervenante la somme de vingt mille dollars (\$20,000) dommages pour la passé, tant réels qu'exemplaires ; le tout avec dépens, y compris les frais d'exhibits et tous frais incidents de même nature, distraits au sous-signé, la dite Cité se réservant le droit de prendre des conclusions ultérieures, s'il y a lieu.

Montréal, 10 Octobre, 1889.

ROUER ROY,
Avocat de l'Intervenante.

(ENDORSED.)

Factum de l'Intimée "La Cité de Montréal," Intervenante en Cour Inférieure.
Prod. 4 Juin, 1892. (Paraphed,) L. W. M.

30

RECORD.

—
*In the Court
of Queen's
Bench.*

—
No. 188.
Case of
the Intr.

The City of
Montreal.
Dated 16th
May, 1892.
Continued.—

The parties having been heard by their respective Counsel upon Respondent's motion for the dismissal of the Appeal.

Curia Advisare Vult.

18th September, 1891.

Présents.

L'HONORABLE JUGE EN CHEF LACOSTE.

10

„ „ BABY.

„ „ BOSSÉ.

„ „ WURTELE, Assistant.

La Cour après mûre délibération sur la motion de l'Intimé tendant au renvoi de cet appel faute de paiement par l'Appelante de certains honoraires dues au protonotaire.

Accorde la dite motion mais pour les frais encourus sur icelle seulement.
25th November, 1891.

The Respondent files his printed case.

The Respondent Inscribes the case on the roll for hearing on the merits
20 *Exparte.*

26th November, 1891.

The Honorable CHIEF JUSTICE LACOSTE.

„ Mr. JUSTICE BOSSÉ.

„ „ BLANCHET.

„ „ WURTELE, Assistant,

„ „ TAIT. *Ad hoc.*

30 Pursuant to notice given, it is moved by Respondent that the Appellan, having failed to fyle his factum, the present appeal be dismissed with costst Affidavits and Exhibits are fyled.

The motion is continued over to next term.

27th November, 1891.

The Respondent fyles a Notice of Inscription of the case for hearing on the merits *Exparte.*

15th January, 1892.

40

Present:—

The Honorable CHIEF JUSTICE LACOSTE.

„ „ Mr. JUSTICE BOSSÉ.

„ „ „ „ BLANCHET.

„ „ „ „ WURTELE, Assistant.

„ „ „ „ OUMET. do

RECORD.

*In the Court
of Queen's
Bench.*

No. 189.

Transcript of
all the pro-
ceedings in
the Court of
Queen's
Bench.

from 5th June
1891 to 25th
Dec. 1892
Continued.—

RECORD.
 ———
*In the Court
 of Queen's
 Bench.*
 ———
 No. 189.
 Transcript of
 all the Pro-
 ceedings in
 the Court of
 Queen's
 Bench, from
 5th June
 1891 to 23rd
 Dec., 1892.
 —Continued.

The Appellant files Suggestion that the Honorable J. E. Robidoux, Attorney-General has ceased to hold office and has been replaced as Attorney-General for the Province of Quebec by the Honorable T. Chas. Casgrain.

And it is moved on the part of said Appellant that inasmuch as the Attorney General has appeared in this cause both by M.M. Geoffrion, Dorion & Allan and by Messrs Barnard & Barnard as his attorney *ad litem* that the said Respondent the Honorable the Attorney General be call upon to declare which of the said firms of Advocates are authorized to represent him as his Attorneys in the present cause.

The hearing on said motion, and on Respondent's motion for the dismissal of 10 the Appeal is continued over to Monday the 18th January instant.

18th January, 1892.

Present.

| | | | | |
|--------------------------------------|---|-----|---|---------------------|
| THE HONORABLE CHIEF JUSTICE LACOSTE. | | | | |
| " | " | MR. | " | BOSSÉ. |
| " | " | " | " | BLANCVET. |
| " | " | " | " | WURTELE, Assistant. |
| " | " | " | " | OUMET do. |

20

This cause being called for hearing on Appellant's motion that the Attorney-General be called to make option of Attorneys.

It is moved on the part of the Respondent, the Attorney-General that the appearance of Messrs. Geoffrion Dorion and Allan be rejected from the record And the hearing on both motions is continued over to to-morrow.

19th January, 1892.

30

| | | | |
|----------------------------------|---|---|---------------------|
| THE HONORABLE MR. JUSTICE BOSSÉ. | | | |
| " | " | " | BLANCHET. |
| " | " | " | HALL. |
| " | " | " | WURTELE, Assistant. |
| " | " | " | OUNET " |

The parties having been heard by their Counsel respectively as well on Appellants motion that the Attorney-General be called to make option of Attorneys as our Respondents motion that the appearance of Messrs. Geoffrion 40 Dorion and Allan for the Attorney-General be rejected from the record.

Curia Advisare Vult.

22nd January, 1892.

The Appellants file their printed case.

25th January, 1892.

THE HONORABLE MR. JUSTICE BOSSÉ.
 " " " BLANCHET.
 " " " HALL.
 " " " WURTELE, Assistant.
 " " " OUMET do.

The Court doth order that Appellants motion to compel the Attorney-
 10 General to make option of Attorneys and the motion of the Attorney-General to
 reject, from the record, the appearance of Messrs. Geoffrion Dorion and Allan
 be struck from the rôle des délibérés.

27th January, 1892.

Present.

20 THE HONORABLE MR. JUSTICE BOSSÉ.
 " " " BLANCHET.
 " " " HALL.
 " " " WURTELE, Assistant.
 " " " OUMET do.

The re-hearing on the motion of the Appellants to compel the Attorney-
 Genera. to make option between two firms of advocates who have appeared for
 the Attorney-General, and on the motion of the Attorney-General for the dis-
 mission from the record of the appearance of Messrs. Geoffrion Dorion and
 Allan for the Attorney-General, as well as the hearing on the motion of the
 respondent for the dismissal of the appeal is fixed for Wednesday the 17th
 30 February next.

17th February, 1892.

THE HONORABLE CHIEF JUSTICE LACOSTE.
 " " MR. " BOSSÉ.
 " " " BLANCHET,
 " " " HALL.
 " " " WURTELE, Assistant.

40 L'Audition sur les motions pendantes eu cette cause est remise à demain.

18th February, 1892.

Present,

L'HONORABLE JUGE EN CHEF LACOSTE
 " " BABY.
 " " BOSSÉ.

RECORD.

*In the Court
 of Queen's
 Bench.*

No. 189.
 Transcript of
 all the pro-
 ceedings in
 the Court of
 Queen's
 Bench, from
 5th June
 1891, to 23rd
 Dec., 1892.
Continued.—

RECORD.

*In the Court
of Queen's
Bench.*

L'HONORABLE JUGE BLANCHET.
" " HALL.

L'Audition sur les motions pendantes en cette cause est remise à demain.

22 February 1892.

Présents.

| | |
|-------------------------|----|
| L'HONORABLE JUGE BOSSÉ. | 10 |
| " " BLANCHET. | |
| " " HALL, | |
| " " WURTELE, Assisant. | |

No. 189.
Transcript of
all the pro-
ceedings in
the Court of
Queen's
Bench from
5th June
1891 to Dec.
1892.

— *Continued.*

La Cour donne acte à la partie appelante de la suggestion que le Procureur Général n'est représenté et en conséquence ordonne que la motion pour forcer le Procureur Général à faire option d'avocats et la motion pour faire rejeter du dossier la comparution de Messrs Geoffrion, Dorion & Allan soient toutes deux rayées du délibéré pour être procédé sur icelles lorsque le Procureur Général sera représenté dans la cause.

20

16th May 1892.

Present.

| | |
|--------------------------------------|----|
| THE HONORABLE CHIEF JUSTICE LACOSTE. | |
| " " MR. " BOSSÉ, | |
| " " " " BLANCHET, | |
| " " " " HALL, | |
| " " " " WURTELE, Assisant. | 30 |

The Court upon the Petition of the Hon. Thomas Chase Casgrain of the City of Quebec, Attorney General doth grant him leave to take up the instance in lieu and stead of the Hon. J. E. Robidoux who has ceased to be Attorney General for the Province of Quebec costs to abide the result, and the cause is fixed for Wednesday the 18th instant by privilege.

18th May, 1892.

Present.

40

| | |
|---------------------------------|--|
| THE HON. CHIEF JUSTICE LACOSTE, | |
| " " MR. " BABY, | |
| " " " " BOSSÉ, | |
| " " " " BLANCHET, | |
| " " " " HALL. | |

The hearing is fixed for Monday the sixth of June next.

4th June 1892.

The Intervenants files his printed case.

6th June, 1892.

Present.

10 THE HON. MR. JUSTICE BABY,
 " " BOSSÉ,
 " " BLANCHET,
 " " HALL,
 " " WURTELE, Assistant.

The argument on the merits is opened.

7th June 1892.

Present.

20 THE HON. MR. JUSTICE BABY,
 " " BOSSÉ,
 " " BLANCHET,
 " " HALL,
 " " WURTELE, Assistant.

The hearing on the merits is concluded *Curia advisare vult*.

16th September 1892.

30

Present.

L'HON. MR. LE JUGE BABY,
 " " BOSSÉ
 " " BLANCHET,
 " " HALL.

40 La cour intime aux partie qu'un certain nombre de dépositions ne sont pas imprimées et qu'en conséquence le délibéré est suspendu jusqu'à ce que le dossier soit mis en état.

21st September 1892.

Present.

THE HON. MR. JUSTICE BABY,
 " " BOSSÉ,
 " " BLANCHET,
 " " HALL,
 " " WURTELE, Assistant.

RECORD.

*In the Court
of Queen's
Bench.*

No. 189.
Transcript of
all the pro-
ceedings in
the Court of
Queen's
Bench.
from 5th June
1891 to 25th
Dec. 1892.—
Continued.—

RECORD.

*In the Court
of Queen's
Bench.*

The parties file a certificate of the transmission of the record from the Superior Court to this court and a consent that the original record in the case of Johnson vs. Archambault S. C. M. No. 1797 included by error in the record in this cause be at once taken out thereof and returned to the Superior Court.

No. 189.
Transcript of
all the Pro-
ceedings in
the Court of
Queen's
Bench, from
5th June
1891 to 23rd
Dec., 1891.
—Continued.

10

DOCUMENT XXV.

23rd December 1892.

20

No. 190.
Judgment of
the Court of
Queen's
Bench, ren-
dered 23rd
Dec., 1892.

Present.

L'HON. JUGE BABY,
" " BOSSÉ
" " BANCHET
" " HALL
" " WURTELE.

No. 468.

30

Dans une certaine cause entre :
L'Honorable Arthur Turcotte de la cité et du district de Québec en sa
qualité de Procureur Général de la Province de Québec.
Demandeur en Cour de première instance.

&

The Atlantic and North West Railway Company, corps politique et incor-
poré ayant son principal siège d'affaire en la cité et le district de Montréal. 40
Défenderesse en Cour de première instance.

ET

L'Honorable Joseph Emery Robidoux, de la cité et du district de Mont-
réal, en sa qualité de Procureur Général de la Province de Québec.
Demandeur par reprise d'instance en Cour de première instance.

ET

La Cité de Montréal, corps politique et incorporé ayant son principal siège d'affaires à Montréal.

Intervenante en Cour de première instance.

ET

10 La dite The Atlantic and North West Railway Company.

Appelante.

ET

Le dit Honorable Turcotte es qualité.

ET

Le dit Honorable Joseph Emery Robidoux es qualité.

20

ET

La dite Cité de Montréal,

Intimée,

ET

L'Honorable Thomas Chase Casgrain, de la cité de Québec en sa qualité de Procureur Général de la Province de Québec.

Intimé par reprise d'instance au lieu du dit Honorable Joseph Emery Robidoux esqualité.

30 La Cour après avoir entendu les parties par leurs avocats sur le mérite, examiné le dossier de la procédure en Cour de première instance, les Griefs d'appel et les réponses à iceux et sur le tout murement délibéré :

Vû que la requête originaire en cette cause se plaint de ce que la compagnie défenderesse n'aurait pas exécuté les conventions prétendues intervenues entre elle et William Walker, lors de l'expropriation par elle faite de partie du terrain appartenant à ce dernier.

Vû que la dite requête et la preuve faite en cette cause n'établissent pas que la compagnie défenderesse ait assumé quelque pouvoir, franchise ou privilège qui ne lui appartient pas ou ne lui a pas été conféré par la loi.

40 Considérant qu'en autant que les articles 997 et 998 du Code de procédure Civile ne sont pas applicable à l'espèce et n'autorisent pas la présentation de la dite requête ni les conclusions prise en icelle ;

Considérant que la Cour Supérieure, était, partant sans autorité pour ad-juger les conclusions de la dite requête ;

Considérant que la requête en intervention produite dans la présente cause par la cité de Montréal au soutien de la dite requête et par laquelle la corporation de la dite cité se joint au requérant pour demander l'obtention des con-

RECORD.

*In the Court
of Queen's
Bench.*

No. 190.
Judgment of
the Court of
Queen's
Bench, ren-
dered 23rd
Dec., 1891.
—Continued.

RECCRD.

*In the Court
of Queen's
Bench.*

No. 190.

Judgment of
the Court of
Queen's
Bench, ren-
dered 23rd
Dec., 1891.
—Continued.

clusions de la dite requête originaire n'était pas rejetée pour les raisons ci-haut mentionnées.

Considérant que le Procureur Général de cette Province pouvait comme il l'a fait retirer son consentement à la dite requête et demander d'être mis hors de cour et que la Cour Supérieure ne pouvait le forcer à continuer le litige introduit par la dite requête ;

Considérant que le Procureur Général donne pour raison de son abandon de la dite requête, le fait qu'il ne s'agissait en icelle que d'intérêts privés et non l'intérêt public et qu'il n'y avait partant pas lieu à l'application des articles sus mentionnés du Code de procédure mais à un recours devant les tribunaux sui-
10
vants les modes ordinaires, et qu'il paraît au dossier que cette raison est bien fondé.

Considérant qu'il n'y a pas de bref de *mandamus* contre la couronne ni contre ses officiers agissant comme tels ;

Considérant que pour ces raisons il y a eu erreur dans le jugement de la Cour Supérieure siégeant à Montréal en date du seize mai mil huit cent quatre-vingt-onze, dont est appel.

Cette Cour casse et annule le dit jugement et procédant à rendre le juge-
ment que la dite Cour Supérieure aurait du rendre renvoie la dite requête ori-
ginaire, la demande en intervention de la corporation de la dite cité de Mont-
20
réal, et le bref de *mandamus* émané contre le dit Procureur Général, le tout
tout avec dépens tant en faveur de la dite compagnie appelante qu'en faveur
du dit Procureur Général et du Honorable A. Turcotte personnellement dans
les deux cours à être taxés comme dans une cause de première classe. Et il
est ordonné que le dossier soit transmis au Greffe de la Cour Supérieure sié-
geant à Montréal.

Et la Cour sur motion de Messrs Abotts, Campbell & Meredith, Avocats de l'appelante leur accorde distraction de frais.

30

DOCUMENT XXVI.

No. 191.
Proceedings
for leave to
Appeal to
Her Majesty,
in Her Privy
Council.

Il est fait motion de la part de l'intimé, l'Hon. Chase Casgrain, es qualité, qu'il lui soit permis d'appeler à sa Majesté en son Conseil Privé du jugement rendu ce jour en cette cause, et qu'exécution soit suspendue pendant l'appel.

Il est ordonné que l'appelante comparaisse devant cette Cour Lundi le
40
seizième jour de janvier prochain pour montrer cause si aucune elle a à l'en-
contre de la dite motion et qu'une règle nisi émane en conséquence rapportable
le dit jour.

DOCUMENT XXVII.

16th January 1893.

Present.

10

| | |
|---------------------------|-------------|
| THE HONORABLE MR. JUSTICE | BABY, |
| “ | “ BOSSÉ, |
| “ | “ BLANCHET, |
| “ | “ HALL, |
| “ | “ WURTELE. |

The Court upon the motion of the Respondent Honorable T. C. Casgrain *es qualité*, doth grant him leave to Appeal to Her Majesty in Her Privy Council from the judgment rendered by this Court on the 23rd December last on his giving within six weeks the security required by law and in default of such security being given within said delay. It is ordered that the record be forthwith returned to the Court below without any further order.

20

DOCUMENT XXVIII.

| | |
|--------------------------------------|-----------------------|
| THE HONORABLE SIR ALEXANDRE LACOSTE, | |
| | Knight Chief Justice. |
| “ MR. JUSTICE. | BABY, |
| “ “ “ | BOSSÉ, |
| “ “ “ | BLANCHET, |
| “ “ “ | WURTELE. |

30

The Court upon the motion of the intervening party doth grant to said Intervening party leave to appeal to Her Majesty in Her Privy Council from the judgment rendered by this Court on the twenty-third December last on the said Intervening party giving the security required by law within six weeks from the day.

40

RECORD.

*In the Court
of Queen's
Bench.*

No. 192.
Order allow-
ing Appeal of
Hon. T. J. *Casgrain*
Dated, 16th
Jan'y. 1893
Continued.—

No. 193.
Motion of
the Inter en-
ing party for
leave to ap-
peal and or-
der allowing
appeal. Date
18th Jany.
1893.

RECORD.

27th February 1893.

In the Court
of Queen's
Bench.

Present in Chambers :

THE HONORABLE MR. JUSTICE BABY.

No. 194.
Proceedings
of Court as to
security for
costs of ap-
peal.

Pursuant to notice given the said Honorable Chase Casgrain *ès qualité* offers to give good and sufficient security for the due prosecution of his appeal to Her Majesty in her Privy Council.

And the further proceedings on the entering in security are continued un- 10
til to-morrow in order to allow said Hon. T. C. Casgrain *es qual*, time to give
proper notice to the Respondent as to the change made in the nature of the
security offered.

28th February 1893.

Present in Chambers :

THE HONORABLE MR. JUSTICE WURTELE.

Pursuant to notice given the said Hon. Thomas Chase Casgrain *ès qualité* 20
offers as security for the due prosecution of the appeal to Her Majesty in Her
Privy Council, William Walker of the city and district of Montreal, Manufac-
turer

After having heard the parties it is adjudged that the surety offered be
accepted, provided, he justifies satisfactorily and it is ordered that he do pro-
duce his titles deeds, registrar's certificate of the hypothecary status and an
extract of the valuation roll showing the assessed value of the property ; and the
further proceedings are adjourned to the sixth of March next.

6th March 1893.

30

The further proceedings on the entering in security on the appeal to Her
Majesty in Her Privy Council are continued until to-morrow.

7th March 1893.

The parties appeared according to adjournment and the said William
Walker the surety offered by the said Honorable T. C. Casgrain *ès qualité* as
security for his appeal to Her Majesty in Her Privy Council having justified as
to his solvency doth execute a Bail Bond which is taken, acknowledged and
fyled. 40

DOCUMENT XXX.

RECORD.

Be it remembered that on the seventh day of March in the year of Our Lord one thousand eight hundred and ninety-three, at the City of Montreal before Me, the Honorable Jonathan S. C. Wurtele, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared: William Walker, of the City and District of Montreal, manufacturer, who declare himself bound and liable unto and in favor of the said The Atlantic and North West Railway Company, their heirs, assigns and representatives in the sum of
 10 two thousand dollars, current money of Canada, for costs to satisfy the condemnation in principal, interest and costs to be made and levied of the several goods and chattels, lands and tenement of him the said William Walker to the use of the said The Atlantic and North West Railway Company their heirs, assigns and representatives and more especially to be made and levied of the following real property belonging to the said William Walker to wit; of cadastral lot number six hundred and sixty-one (661) St. Antoine ward in Montreal, being of the value of at least two thousand dollars and upwards, over and above all charges, hypothecs and incumbrances thereon.

*In the Court
of Queen's
Bench.*

No. 195.
Bail Bond,
dated
7th March,
1893.

Whereas judgment was rendered in the said cause in the said Court of
 20 Queen's Bench on the twenty-third day of December one thousand eight hundred and ninety-three on the appeal instituted in this cause and whereas the said the Honorable Thomas Chase Casgrain *ès qualité* has obtained leave to appeal therefrom to Her Majesty in Her Privy Council.

Now the condition is such that if the said the Honorable Thomas Chase Casgrain *ès qualité* do prosecute effectually the said appeal to Her Majesty, satisfy the condemnation and pay unto the said The Atlantic and North West Railway Company their heirs, assigns and representatives, such costs and damages as may be awarded unto them by Her Majesty in the event of the said judgment of the said Court of Queen's Bench being confirmed, then the
 30 present obligation shall be null and void, otherwise the same shall be and remain in full force and effect. And the said William Walker hath signed.

WM. WALKER.

Taken and acknowledged before Me at the City of Montreal the day and year first above written, the said sureties having first duly justified as to their solvency.

J. WURTELE,
J. Q. B.

40 The said Willam Walker, being duly sworn doth depose and say that he is the lawful owner and proprietor of the real estate described in the foregoing Bond and that the same is worth the sum of two thousand dollars current money of Canada, and upwards over and above all charges, hypothecs and incumbrances and over and above what would pay his just and lawful debts, and he hath signed.

WM. WALKER.

RECORD.
—
*In the Court
of Queen's
Bench.*
—

Sworn before Me, at Montreal, the seventh day of March, one thousand eight hundred and ninety-three.

J. WURTELE,
J. Q. B.

(ENDORSED.)

No. 195.
Bail Bond,
dated 7th
March 1893.
Continued.—

Bail Bond in appeal to the Privy Council. Fyled 7 March, 1893.
(Paraphed) M. & D.

10

20

30

40

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We, Louis F. W. Marchand and William E. Duggan, Joint Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the forgoing and present pages from page 1 to page 529, contain true and faithful copies of all and every, the originals papers, documents, and principal proceedings, and of the Transcript of all the Rules, Orders, Proceedings and Judgments of Her Majesty's Superior Court for Lower Canada, sitting in the City of Montreal, in the Province of Quebec, transmitted to the Appeal Office in the said City of Montreal, as the Record of the said Superior Court, in the cause therein lately pending and determined, wherein the Honorable Arthur Turcotte, Attorney-General for the Province of Quebec was Petitioner and Plaintiff in the
 10 said Superior Court and the Atlantic and North West Railway Company, were Defendants, in the said Superior Court and the City of Montreal, were Interveners in the said Superior Court and the said The Atlantic and North-West Railway Company were Appellants in the said Court of Queen's Bench (appeal side) and the said the Honorable Arthur Turcotte, in his said quality was Respondent in the said Court of Queen's Bench (appeal side) and the Honorable Joseph Emery Robidoux, Attorney General for the Province of Quebec, was Respondent *par reprise d'instance* in said Court of Queen's Bench, and the Honorable Thomas Chase Casgrain, now Attorney General for the Province of Quebec,
 20 was Respondent *par reprise d'instance* in said Court of Queen's Bench, and the said City of Montreal were Respondents in the said Court of Queen's Bench, and also of all the proceedings and documents had and fyled in the said Court of Queen's Bench (appeal side), and of all and every the entries made in the Register of the said Court of Queen's Bench, and of the Judgment therein given on the Appeal instituted before the said Court of Queen's Bench, by the said The Atlantic and North West Railway Company.

In faith and testimony whereof we have to these presents set and subscribed our signature and affixed the seal of the said Court of Queen Bench (appeal side).

30 Given at the City of Montreal in that part of the Dominion of Canada, called the Province of Quebec, this seventh day of October, in the year of Our Lord one thousand eight hundred and ninety-three.

MARCHANT & DUGGAN,
 Clerk of Appeals.

RECORD.

*In the Court
 of Que.n's
 Bench.*

No. 197.
 Certificate of
 Clerk of
 Appeals.



RECORD.

*In the Court
of Queen's
Bench.*

No. 198.
Certificate of
Chief Justice.

I, the undersigned Sir Alexandre Lacoste, Knight Chief Justice of the Court of Queen's Bench for Lower Canada, do hereby certify that the said Louis François Wilfrid Marchand, Q. C., and William E. Duggan are the joint Clerk of the Court of Queen's Bench, on the Appeal Side thereof, and that the signature "Marchand & Duggan" subscribed at the foot of each of the foregoing pages and of the certificate above written, is their proper signature and handwriting.

I do further certify that the said Marchand & Duggan as such Clerk, are the Keeper of the Record of the said Court, and the proper Officer to certify the proceedings of the same (on the Appeal Side), and that the seal above set, is the seal of the said Court on the Appeal Side, and was so affixed under the sanction of the Court. 10

In testimony whereof, I have hereunto set my hand and seal, at the City of Monteval, in the Province of Quebec, the _____ day of _____ in the year of our Lord one thousand eight hundred and ninety-three, and of Her Majesty's Reign, the fifty-seventh.

A. LACOSTE,
Chief Justice, Queen's Bench,
Province of Quebec

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In the Privy Council.

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

BETWEEN :

THE HON. THOMAS CHASE CASGRAIN,
(Respondent in the Court of Queen's Bench.)
APPELLANT IN THE PRIVY COUNCIL,

AND

THE ATLANTIC AND NORTH-WEST
RAILWAY COMPANY.

(Appellants in the Court of Queen's Bench.)

RESPONDENT IN THE PRIVY COUNCIL,

AND

THE CITY OF MONTREAL,

INTERVENING PARTY.

RECORD OF PROCEEDINGS.

UNIVERSITY OF LONDON
W.C.1.

11 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

29372

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Honourable Thomas Chase Casgrain v. The Atlantic and North-West Railway Company, and the City of Montreal (a party intervening), from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 9th February 1895.

Present:

The LORD CHANCELLOR.

LORD WATSON.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

[*Delivered by Lord Watson.*]

In this case, their Lordships heard a very full argument upon a great variety of questions. They have not found it necessary to decide all of these questions; but they have thought it right to express their opinion upon some points, the decision of which is not, in the view which they take, necessary to the disposal of the appeal.

It is impossible to appreciate the various questions presented for decision, without referring, in detail, to the circumstances in which these have arisen, and also to the peculiar course of the present litigation in the Courts below. Before advertng to these proceedings, their Lordships will notice certain facts which are either not in dispute, or have, in their opinion, been established by evidence.

The Respondent Company were incorporated by an Act of the Dominion Legislature, which empowered them to carry their line of railway through the city of Montreal. For effecting that purpose, they proposed to take and use a rectangular piece of ground (herein-after referred to as "the area"), lying between Mountain Street and Bisson Street, two of the public streets of the city, which run parallel to each other. There was a lane wholly situated within the area, known as Blache Lane, which opened off Mountain Street and terminated in a *cul de sac*. The lands abutting on the lane belonged to private individuals, by whom it was used as an access to their properties. The Company duly expropriated such parts of these properties as lay within the area, and had a frontage to the lane; and thus acquired the right to exclude all access to Blache Lane, except from Mountain Street.

The Company submitted to the City Council, for approval, a plan of their contemplated works which showed, *inter alia*, that the line of railway was to be carried over Mountain Street by means of a bridge, one of the abutments of which completely closed the entrance to Blache Lane from Mountain Street. It also showed that the whole area, including the *solum* of Blache Lane, was to be occupied and used for railway purposes. The Company also applied to the Council for leave, instead of carrying their railway by a bridge over Bisson Street, to close and occupy that part of the street which adjoins the area, offering, at the same time, to protect the city from all claims of damage resulting from the closing of the street.

The plan in question, and the application for leave to close Bisson Street were remitted to the Road Committee of the Council, who recommended that the Company should be permitted

to make bridges over Mountain Street and other streets as shewn on the plan; and that they should be allowed to close Bisson Street, upon certain conditions, which need not be specified. On the 20th February 1888, the plan and application, together with the report of the Road Committee, were considered at a special meeting of the City Council, called for that purpose, when the report was unanimously adopted, with the exception of the recommendation with regard to Bisson Street, which was sent back to the Committee for further consideration. It is unnecessary to notice what followed upon the remit. It is sufficient to say that the crossing of Bisson Street was subsequently arranged.

After receiving the assent of the Council, the Company proceeded with the construction of their line; and, before the end of the year 1888, the railway was formed across Mountain Street, upon the area in question, and across Bisson Street. In the course of these operations, the whole of the area, including the old site of Blache Lane, was covered by an embankment of considerable height, in order to bring it up to the proper level of the railway road.

In the month of February 1889, after the railway had been for some time in actual operation, the Company were served with a Writ of Information, bearing to be in terms of Article 997 of the Civil Procedure Code for Lower Canada, at the instance of the Honourable Arthur Turcotte, who was at that time Attorney-General for the Province, which prayed that the Company should be condemned to open Blache Lane, and leave it free for public use, and that, in default of their so doing, the same should be opened to the public at their expense. It was set forth in the Writ, that the proceedings had been instituted by the Attorney-General at the request of William Walker, one of the proprietors whose land fronting

Blache Lane had been expropriated by the Company, who had found security to indemnify the Government against costs, in accordance with the provisions of Article 997. It appears that the Attorney-General had, upon the 4th January 1889, given Mr. Walker's solicitors a written mandate authorising them to prosecute the Company in his name.

In view of the objections which are urged by the Company against the competency of the proceeding, it becomes necessary to notice the averments which are made on behalf of the Attorney-General, in support of the conclusions of his writ.

The first and cardinal averment is, that Blache Lane was a public street, and had been so from time immemorial. That is followed by an allegation that the Company, after they had acquired by expropriation the land abutting on the lane, "under pretext that thereby all rights of servitude " in favour of proprietors abutting on said street " had become vested in the said Company " alone," had closed the lane at its intersection with Mountain Street, and had made all ingress and egress impossible to the public in general. That statement imports that the Company justified their operations, not upon the ground that the lane was the property of the public, and that they were possessed of some power, franchise, or privilege which enabled them to close it at their own hand, but on the ground that it was private, and that they had acquired all the servitudes of way by which it was affected.

The next averment is to the effect that the closing of the street was particularly damaging to Mr. Walker, and the other proprietors whose lands had been in part expropriated; that the expropriation was made "on the distinct under- " standing that the said properties would not, " by reason of the said expropriation lose their

“ frontage on a street ;” whereas, by reason of the closing of Blache Lane, these properties had “ no outlet whatever in rear.” The street contemplated in the “ distinct understanding ” was obviously not Blache Lane ; and the evidence supplies the information that it was a new street which Mr. Walker alleges the Company undertook to make for his and others’ convenience, as part of the compensation for the lands which had been taken by compulsion. It is difficult to conceive of what relevancy these averments can be, in an action brought by the Attorney-General for the public interest. They relate exclusively to the rights of Mr. Walker and others to be compensated for lands which had been expropriated by the Company ; and their introduction is calculated to beget a suspicion, that the prosecution on behalf of the general public was expected to promote the enforcement of these private claims. It is manifest that the interest of the public in the opening of Blache Lane was infinitesimal. Even if the lane were opened to Mountain Street, they could derive little or no advantage from it ; and, if the consent given by the City Council to the construction of an abutment which closed the entrance from Mountain Street were valid, their privilege of using Blache Lane would consist in the right to perambulate the bottom of a pit, which they could only reach by means of a balloon, or some similar contrivance.

The next and last averment is simply a plea in law, which sets forth that the closing of Blache Lane constituted, in the circumstances previously detailed, “ the exercise by the said Company of “ a power, franchise, and privilege, which does “ not belong to it, or is not conferred upon it by “ law, and is a case governed by Article 997 of “ the Code of Civil Procedure for Lower Canada.”

In their defence, the Company denied the allegations of the petitioner, and averred

that Blache Lane was private property; and that Mr. Walker, and all other persons, whose lands fronting the lane had been expropriated, had been fully compensated, on the footing that the lane was to be closed and occupied for railway purposes. They also pleaded by way of demurrer, that the allegations made in the writ were insufficient in law to support its conclusions. After hearing parties upon that plea, Mr. Justice Mathieu, on the 29th March 1889, reserved it for consideration along with the merits of the cause.

On the 10th September 1889, the City Council of Montreal presented a petition for leave to intervene in the suit. The Company opposed the petition, upon the ground, mainly, that the suit was one brought under Article 997 of the Code, and that the terms of the Article do not warrant the admission of any party other than the Attorney-General to take part in its prosecution. Their objections were over-ruled, and the City Council were allowed to intervene in the cause, "for the purpose of watching the proceedings, taking such conclusions or making such declarations therein as they may be advised."

On being thus admitted, the Council filed grounds of intervention. These consist of a detailed statement of facts tending to show that Blache Lane was one of the public streets of the City; and they conclude by preferring a claim against the Company, which they were allowed to support by proof, for the sum of \$20,000, as damages already sustained by the City through the closing of the lane. The statement is certainly not characterized by an excess of candour. It carefully avoids all reference to the fact that the Council themselves had sanctioned the exclusion of the public from the lane, by authorising the only public access to it to be closed. From the date of their intervention, until the present appeal was brought, the Council

appear to have taken a very active part in the litigation, and a large proportion of the proof led was adduced by them.

On the 31st July 1890, the Hon. Arthur Turcotte, as Attorney-General, lodged in Court a notice, signed by himself, in these terms:—
 “ Arthur Turcotte, the said Petitioner hereby
 “ discontinues the present action without costs,
 “ and prays acte of this, his said discontinuance.”
 On the same day, he gave notice of his intention to discontinue to Mr. Walker’s solicitors, who had till then conducted the case on his behalf, by a letter in which he explains his reasons for taking that step, as follows:—“ Careful enquiry
 “ has satisfied me that aside from the interest of
 “ these gentlemen” (*i.e.*, Mr. Walker and others in his position) “ there is no public general
 “ interest which requires the re-opening of this
 “ lane. The private relator, at whose request I
 “ instituted the prosecution above-mentioned,
 “ having chosen, along with the parties interested
 “ with him, to resolve his remedy to have the
 “ lane re-opened into an action to recover the
 “ damages caused him by its being closed, I
 “ must refuse to allow my name to be further
 “ used in this prosecution which is now being
 “ evidently pushed solely with the object of
 “ forcing the payment of the damages sought to
 “ be recovered in the private suits.”

At this time, the proofs for the Attorney-General, the interveners, and the Company, had been practically completed. Nearly the whole of the evidence led for the Attorney-General consisted of productions and oral testimony bearing upon the averments, made in the information, with respect to the private interests of Mr. Walker and others, the obligation said to have been undertaken by the Company to give them a new road as an access to their properties, and the amount of the damages which they had suffered by reason of their not

getting that access. Amongst his witnesses, there were three gentlemen who had acted, two of them as arbitrators and the other as umpire, in assessing the compensation due to Mr. Walker: and their Lordships observe, with regret, that these gentlemen were subjected to an irregular and improper examination, by Counsel representing the Attorney-General, as to the reasons and motives by which they were influenced in making their award. His evidence also disclosed the fact that Mr. Walker had, on the 3rd February 1889, raised, and was still pursuing, an action, concluding to have it declared that the award was made on the condition and understanding that his property, after expropriation, was to be bounded by a new street fifty feet wide, and also to have the Company condemned to pay him damages in respect of their failure to fulfil that condition.

Mr. Walker, the relator, after the discontinuance was filed, presented an incidental petition to the Court praying that a Writ of Mandamus should issue "in this cause," commanding Mr. Turcotte, in his capacity of Attorney-General, to withdraw his discontinuance, and to allow the petitioner to obtain a final judgment upon the merits of the Writ of Information. The grounds upon which the application was made were substantially these:—that the discontinuance of the action was the result of a corrupt agreement between the Attorney-General and the Company; that, in the circumstances of the case, the Attorney-General was bound by law to prosecute, at the relation of any citizen of the city of Montreal; and that, if the Attorney-General had any discretion as to discontinuing the suit, which was denied, such discretion had not been properly exercised, and could be controlled by the Court.

Notwithstanding the opposition of the Attorney-General, a Writ of Mandamus was issued in the terms craved on the 22nd August 1890;

but the final determination of the matter was delayed until the hearing of the cause upon its merits. On the 28th August, Mr. Turcotte ceased to hold the office of Attorney-General, and was succeeded by the Hon. Joseph E. Robidoux, who, on the 1st September, became officially a party to the action, and submitted himself to the decision of the Court.

The cause, including the incidental proceedings for Mandamus, was heard before Mr. Justice Mathieu, who gave judgment on the 16th May 1891. The learned Judge held that the permission, originally given to Mr. Walker, by the Attorney-General, to use his name in the prosecution of the Writ, could not be withdrawn without the authority of the Court; and that the discontinuance was not justified and must be rejected. He therefore discharged the Writ of Mandamus as being unnecessary. The learned Judge also held that Blache Lane was shown by the evidence to have been one of the public streets of the city, at the time when it was closed by the Company; and that the case came within the provisions of Article 997, inasmuch as the Company, in closing the lane, had assumed a power which the law did not accord to them. He accordingly condemned the Company to re-open the lane within six months from the date of his judgment, and, in the event of their failing to do so, authorised the Interveners and Mr. Walker to re-open it, at the expense and risk of the Company. The learned Judge dismissed the Interveners' pecuniary claim, on the ground that they had not proved any damage.

The Company appealed to the Court of Queen's Bench, who, on the 23rd December 1892, reversed the decision of Mr. Justice Mathieu. Before the appeal was heard, Mr. Robidoux had ceased

to be Attorney-General, and was succeeded in office by the Hon. T. C. Casgrain, the present Appellant, who appears to have entertained a more sanguine view of the merits of his cause, and a more modest estimate of his official privileges, than his predecessor. He was made a party to the Record, upon a petition which sets forth that he was "desirous to take up the instance in this" "in his official capacity, and support the judgment in this cause rendered by the Court below, " dismissing the discontinuation of the Honorable " Arthur Turcotte, and maintaining the original " conclusions taken by him to the effect that " Blache Lane be ordered to be, and be opened " with costs."

The Court before whom the appeal was heard consisted of Baby, Bossé, Blanchet, Hall, and Wurtele J.J., who were unanimously of opinion that whether he ought or ought not to permit the action to be continued in his name was a matter entirely within the discretion of the Attorney-General; that the Court had no right to interfere with the exercise of his discretion, and no jurisdiction, in any event, to issue a mandamus against an officer of the Crown in his position. They accordingly held that the discontinuance of the action on the 31st July 1890 was valid and effectual. Upon the merits, the learned Judges were of opinion that it had not been established, by satisfactory evidence, that Blache Lane was a public street; and they appear, so far as the interveners were concerned, to have attached considerable weight to the fact that they had not only been parties to the closing of the lane, but had been guilty of laches in not objecting until the railway was completed and in operation. They held, in these circumstances, that the case did not fall within Article 997 of the Code, and they dismissed the original action,

the intervention of the City Council, and Mr. Walker's Writ of Mandamus.

The City Council have submitted to the judgment of the Court of Queen's Bench, and were therefore not represented in the argument addressed to this Board. In the course of that argument, the legality and propriety of their admission to the suit as interveners were fully discussed. Their Lordships entertain doubts whether, in an action brought by the Attorney-General under Article 997, any other party can be entitled to appear and prosecute, as an intervener, in terms of Article 154 of the Code. Even more doubtful is their right to prosecute a claim of damages which was not within the conclusions of the original Writ. But in the absence of the City Council, who are out of the case, and seeing that, now, neither the Appellant nor the Respondent Company have any real interest in its determination, their Lordships abstain from deciding the point. They will proceed to deal with such questions raised in the argument as appear to them to require notice, in the order in which they were presented by Counsel.

The first of these questions is, whether the information, as laid, discloses any cause of action under Article 997, which enacts, as follows:—
 “ In the following cases:—1. Whenever any
 “ association or number of persons acts as a
 “ corporation without being legally incorporated
 “ or recognised; 2. Whenever any corporation,
 “ public body or board, violates any of the
 “ provisions of the Acts by which it is governed,
 “ or becomes liable to a forfeiture of its rights,
 “ or does or omits to do acts the doing or omission
 “ of which amounts to a surrender of its corporate
 “ rights, privileges and franchises, or exercises
 “ any power, franchise or privilege which does
 “ not belong to it or is not conferred upon it by

" law, it is the duty of Her Majesty's Attorney-
 " General for Lower Canada to prosecute, in
 " Her Majesty's name, such violations of the law
 " whenever he has good reason to believe that such
 " facts can be established by proof, in every case
 " of public general interest, but he is not bound to
 " do so in any other case unless sufficient security is
 " given to indemnify the Government against all
 " costs to be incurred upon such proceeding, and
 " in such case the special information must
 " mention the names of the person who has
 " solicited the Attorney-General to take such
 " legal proceedings, and of the person who has
 " become security for costs."

The Respondent Company are not alleged to
 have incurred a forfeiture of their corporate
 rights, or to have been guilty of any act or
 omission which implies a surrender of these rights.
 The charge which the Attorney-General prefers
 against them is, that, in closing Blache Lane,
 they exercised a power, franchise, or privilege
 which did not belong to them and was not con-
 ferred upon them by law. It therefore becomes
 necessary to consider what kind of acts are
 indicated by the statutory expression "exercises
 "any power, franchise, or privilege." Their
 Lordships are of opinion that the words were
 meant to include, not every act done by the
 Company which can be shown to be contrary to
 law, but such acts only as are either professedly,
 or from their very nature manifestly done in the
 assertion of some special power, franchise, or
 privilege. The Company might illegally occupy
 and use a public road, and exclude the public, in
 such circumstances as to bring them within the
 provisions of Article 997. On the other hand,
 if one of their goods trains ran off the line and
 blocked a highway, and they failed to remove the
 obstruction within due time, they would be liable
 to an indictment for nuisance, but could not, in

their Lordships' opinion, be reasonably said to have committed the nuisance, in the exercise of a power, franchise, or privilege which did not belong to them.

The Attorney-General does not, in his Information, allege that the Company closed Blache Lane in the assertion of any power possessed by them to close a public street. On the contrary, he avers that they did so under the pretext that they had acquired private interests in the lane which entitled them to shut it up. Neither does he state any fact or circumstance from which it could reasonably be inferred that the Company must have seen and known that they were not dealing with private property, but with a public street. The reason for so limiting his averments may very well be explained by the fact that, after a voluminous proof, one Judge has come to the conclusion that the lane was a public street, whilst five learned Judges are of opinion that the evidence is insufficient to support that conclusion. Their Lordships are of opinion that the averments in the Writ, although sufficient to sustain an indictment for nuisance at the instance of the Attorney-General, do not amount to a relevant allegation that the lane was closed by the Company, in the exercise of any power, franchise, or privilege, within the meaning of Article 997.

Upon the next question, that which relates to the discontinuance of the action, their Lordships entertain no doubt that the decision appealed from is right. The Attorney-General was the sole *dominus litis*, and had the same right to control the conduct and settlement of the suit as if there had been no relator.

Counsel for the Appellant, although they referred to, did not very seriously press, two points which appear to have been relied on in the Courts below. One of these was that a new Attorney-General might so far disturb judicial

arrangements made by his predecessor, as to retract a discontinuance by the latter; and the other that the Attorney-General for Lower Canada, as an officer of the Crown, stands in this exceptional position, that a Mandamus will lie at the instance of his relator, to compel him to perform what the Court may conceive to be his official duty, in a prosecution under Article 997 of the Code. There is no authority for either of these propositions, which are so plainly erroneous, that it is unnecessary to take any further notice of them.

But it was strenuously urged, on behalf of the Appellant, that in a prosecution under Article 997, the Attorney-General does not possess the usual powers of a plaintiff and *dominus litis*. In so far as concerns the right to discontinue, it was maintained by the Attorney-General, that he is the mere servant of the Court, and cannot refuse to insist until final judgment, unless he has leave from the Court. In support of that strange assertion, his Counsel relied upon Article 998 of the Code, which enacts that, without the authorization of the Court or Judge, no writ of summons can issue under Article 997. Whatever may be its practical effect, that enactment is plainly intended to be for the protection of the persons or companies against whom the writ is directed. It enables the Court or Judge, in their discretion, to prohibit the issue of a writ; but it cannot imply any unusual right, on their part, to interfere with the discretion of the prosecutor to withdraw or insist, after their authority has been given to the institution of his action.

Their Lordships can hardly conceive anything less calculated to advance the interests of justice than to make the Bench prosecutors as well as Judges, by devolving upon the Court before whom the cause depends, the duty of determining whether the Attorney-General shall, or

shall not continue to insist. Apart from plain considerations of policy, it is clear that he must always be in a better position than the Court to decide whether he ought or ought not to discontinue the action. Their Lordships have come without difficulty, and certainly without regret, to the conclusion, that the learned Appellant has underrated his official powers and privileges. With one exception, the authorities cited appeared to them either to have no bearing on the point, or to be inconclusive. Section 703 of the revised Statutes of Quebec 1888, which was not referred to by the Appellant's Counsel in their opening, and was not noticed in their reply, although cited by the Respondents, is, in their Lordships' opinion conclusive. It enacts that the Attorney-General "has the functions " and powers which belong to the office of " Attorney-General and Solicitor-General of " England respectively, by law or usage, in so " far as the same are applicable to this Province." It is scarcely necessary to observe that the power to discontinue an action, independently of the Court, is possessed by the law officers of England; and that no reason exists for holding that an enactment, which confers the same power upon the law officer of the Crown for Lower Canada, is inapplicable to that Province.

Upon the assumption that his predecessor had the power to discontinue, to be exercised according to his own discretion, it was argued for the Appellant, that the discontinuance could not be given effect to, in the first place because it did not comply with the requirements of Article 450 of the Civil Procedure Code, and, in the second place, because it was not accepted by the Respondent Company. It is difficult to say which of the reasons thus alleged was most destitute of plausibility.

Article 450 enables a plaintiff to discontinue

his action, and, if he thinks fit, to bring a new one, without the consent, and against the will of the defendant. It is made an indispensable condition that, in such a case, the plaintiff shall pay the costs incurred by the defendant in the suit which he seeks to discontinue. The Article has no application whatever to any case where the parties are agreed as to the terms upon which the suit is to be withdrawn.

But then it was argued that, as matter of fact, the Company never accepted or intimated their willingness to accept the discontinuance. The argument is somewhat audacious, seeing that the discontinuance has been all along impeached upon the ground that it was the result of a corrupt agreement between Attorney-General Turcotte and the Company to put an end to the action. That they were agreed as to the discontinuance, on the terms which it specifies, has never been disputed; but corruption was denied, and, although proof was allowed and led upon the point, there is not a tittle of evidence to prove it. And, in both Courts below, unsuccessfully in the first, but successfully in the Court of Queen's Bench, the Company have pleaded that the discontinuance was valid, and terminated the suit.

The greater part of the argument was directed to the merits of the cause, and, in particular, to the question whether Blache Lane was a public or a private street. Their Lordships do not think it necessary to determine whether the decision of Mr. Justice Mathieu or the decision of the Court of Queen's Bench, upon that point, ought to be followed. If the lane was private property, there is admittedly an end of the Attorney-General's case. On the other hand, if the lane was a public street, their Lordships are of opinion that his case equally fails, because the City Council had power to

authorise, and did authorise, the Company to close it.

The plan which has already been referred to was submitted by the Company to the City Council, for the purpose of informing that body of the extent to which, and the manner in which the construction of their railway would affect the streets of Montreal, and of obtaining their consent to the works indicated on the plan. And it is not disputed that the Council, in whom the public streets of the City are vested by Statute, was the only authority competent to deal with the application. The evidence clearly proves, and the plan, which speaks for itself, also shows, that the Council were distinctly apprized that the design of the Company was, not only to close the entrance to Blache Lane from Mountain Street, but to occupy and use the lane for the purpose of constructing their railway track. The Council gave their express assent to the carrying out of that design, so that the only question left is, whether they had a legal right to do so. The answer to be given to that question depends upon the construction of Section 12 of the General Railway Act, Cap. 109 of the Revised Statutes of Canada, 1888.

The clause, in so far as bearing on this point, enacts that "the railway shall not be carried along an existing highway, but shall merely cross the same in the line of the railway, unless leave has been obtained from the proper municipal or local authority therefor; and no obstruction of such highway with the works shall be made without turning the highway so as to leave an open and good passage for carriages, and, on completion of the works, replacing the highway."

The enactment just quoted appears to their Lordships to deal with two separate matters, the first being, the carrying of the permanent track

along a public highway, and the second, the temporary occupation and obstruction of a highway, for the purpose of constructing the permanent works. In the first case, the Company are empowered to carry their line along a highway, upon condition of their obtaining the consent of the proper authority. In the second case, it is imperatively enacted that they shall remove the obstruction, and restore the highway to the site which it occupied before their operations commenced, as soon as their operations are completed.

If the first branch of these enactments be taken *per se*, their Lordships see no reason to doubt that it must be interpreted as giving the local authority an absolute discretion to sanction the construction of the permanent line of railway along a public road, unqualified by any condition to the effect that the public must not be thereby excluded from the use of the road. The Appellant's Counsel argued that the discretion conferred upon municipal and local authorities by the first enactment is qualified by the provisions of the second. The result of sustaining that contention would be, that the Company, as soon as they had, with the leave of the proper authority, completed the construction of their permanent track upon a public highway, would incur a statutory obligation to remove it, and to restore the highway to its original condition.

The clause under consideration, enacted in 1888, was not new legislation. It merely re-enacted, without verbal alteration, Section 12 of the Canadian Statute, 14 & 15 Vict. Cap. 51, and extended to the Dominion the same statutory provisions which had previously been in force within the Provinces of Ontario and Quebec, before and after their separation.

In the year 1857, two cases, involving the construction of Section 12 of the Canadian

Statute, were decided in the Supreme Court for Upper Canada. The first of these,—*Regina v. Grand Trunk Railway Co. of Canada* (15 Q. B. Toronto 121.),—was an indictment for nuisance against the Company, who had, in constructing their line, occupied for a considerable distance, the whole of a public street, to the exclusion of the public, with the leave of the municipality. The prosecutor maintained that the municipality had no power to grant such leave. The Judge of First Instance, and the learned Judges of the Court of Queen's Bench, held that under Section 12 the municipality had power to sanction the closing of a public street; and that, their leave having been duly given, no indictment would lie. In the second case,—*Re Day and The Town Council of Guelph* (15 Q. B. Toronto 126.),—the same question was raised in different circumstances, and was decided in the same way.

Their Lordships cannot assume that the Dominion Legislature, when they adopted the clause *verbatim* in the year 1888, were in ignorance of the judicial interpretation which it had received. It must, on the contrary, be assumed that they understood that Section 12 of the Canadian Act must have been acted upon in the light of that interpretation. In these circumstances their Lordships, even if they had entertained doubts as to the meaning of Section 12 of the Act of 1888, would have declined to disturb the construction of its language which had been judicially affirmed.

The practical result of these views is, that effect ought to have been given to the discontinuance filed by the Attorney-General in July 1890; and that the Court of Queen's Bench were right in dismissing the action upon that ground. But the discontinuance was without costs, and it follows that the Court ought not to have given the Company the costs incurred by

them prior to its date. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment appealed from, with the variation as to costs which they have indicated. The Appellant must pay to the Respondent Company their costs of this Appeal.
