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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIESIn the Privy Council.
No. 70 of 1893.ON APPEAL FROM THE COURT OF
QUEEN'S BENCH FOR
LOWER CANADA.

BETWEEN

THE ATLANTIC AND NORTH-WEST RAILWAY
COMPANY - - - - -*Appellants*

AND

PETER WOOD et al. ès qual. - - -

Respondents.

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 70 of 1893.

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

BETWEEN

THE ATLANTIC AND NORTH-WEST RAILWAY
COMPANY - - - - - *Appellants*

AND

PETER WOOD et al. ès qual. - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

IN THE COURT OF QUEEN'S BENCH

Peter Wood et al. ès qual. - - Respondents-Appellants

v.

The Atlantic and North-west Railway
Company - - - - - Petitioners-Respondents.

Canada, Province of Quebec.

RECORD.

*In the Court
of Queen's
Bench.*

In the Court of Queen's Bench for the Province of Quebec (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 the Province of
10 Quebec (Appeal Side) in the matter lately pending between the Atlantic and
North-west Railway Company, Petitioners, and Peter Wood et al. ès qual.,
Respondents. Transmitted to the Court of Queen's Bench upon the Appeal
Side thereof in virtue of an Inscription filed by the said Peter Wood et
al. ès qual., and to be transmitted on an Appeal to Her Majesty in Her Privy
Council on the Appeal of the Atlantic and North-west Railway Company.

RECORD

*In the Court
of Queen's
Bench.*

No. 1.
Inscription
in appeal
and notice,
dated 26th
Nov. 1891.

Document I.

Province of Quebec, District of Montreal.
Superior Court.

The Atlantic and North-west Railway Company,
a body politic and corporate duly incorporated,
having its chief office and place of business in
the City and District of Montreal - Petitioners,
and

Peter W. Wood, Benjamin Lamb, Robert W.
McLachlan, George McGarry, Robert Allan
Short, Robert Hood, and James O'Richardson, 10
all of the City and District of Montreal, in their
quality of Trustees duly appointed of and for
the Congregation of Christians of the Congre-
gational Denomination known as Calvary
Church, worshiping in the said City of Mon-
treal, and individually for the rights they may
have, and Charles Cushing, of Montreal afore-
said, Notary Public - Respondents, 20
and

Charles James Fleet and Robert D. McGibbon, both
of Montreal aforesaid, Advocates, and John L.
Brodie, of the Parish of Notre Dame de Grace,
Farmer - - - Mis-en-cause.

The Respondents hereby inscribe this cause in Appeal to the Court of
Queen's Bench (Appeal Side) from the Judgment rendered herein on the seven-
teenth day of November instant, and declare that their sureties in and for the
said Appeal are Charles Cushing, Notary Public, and Robert W. McLachlan,
Merchant, both of the City and District of Montreal.

Montreal, November 26th, 1891. 30
Attorneys for Respondents.

To MM. Abbotts, Campbell, and Meredith, Attorneys for Petitioners, and
to the said Mis-en-cause.

Take notice of the foregoing inscription and that the said sureties will
attend in the Prothonotary's office at Montreal aforesaid on Friday, the fourth
day of December next, at half-past ten of the clock in the forenoon, to justify
as to their solvency as such sureties and to sign the security bond as required
by law, and you are hereby required to govern yourselves accordingly.

Montreal, November 26th, 1891.
(Signed) TAYLOR AND BUCHAN, 40
Attorneys for Respondents.

(On the back.)

RECORD.

*In the
Superior
Court.*

No. 1.

Inscription
in appeal
and notice,
dated 26th
Nov. 1891—
continued.

I, the undersigned, one of the sworn bailiffs of Her Majesty's Superior Court for Lower Canada, appointed and acting in and for the district of Montreal, residing in the City of Montreal, do hereby certify and return under my oath of office that I did on the second day of December Eighteen hundred and ninety-one between the hours of nine and twelve of the clock in the forenoon, serve the within original Inscription in Appeal and notice on the within-named Messrs. Abbotts & Co., Attorneys for Petitioner, by speaking to and
 10 leaving a true and certified copy thereof for them with — Campbell, Esq., one of the aforesaid Attorneys, in person, at their office in the City and District of Montreal, and Messrs. Laflamme & Co., Attorneys for John L. Brodie; Messrs. MacMaster & Co., Attorneys for R. D. McGibbon and C. James Fleet, Esq., the within-named mis-en-cause, by speaking and leaving a true and certified copy thereof for each of them with a grown and reasonable person in charge of their office at their office in the City and District of Montreal. The distance from the Court House in the City of Montreal to the furthest place of service aforesaid is less than one mile, and from my residence the same.

Montreal, 2nd December 1891.

(Signed) WALTER REED,
B.S.C. and Q.B.A.S.

20

Fee \$4.00.

(Endorsed.) Inscription in Appeal and notice. Filed December 4th, 1891.

(Paraphed.) G. H. K., Dep. P. S. C.

Recu le dossier en Appel ce 14 Avril 1892.

(Paraphed.) L.M., Dep. C. A.

RECORD.

*In the
Superior
Court.*

No. 2.

Summary of
proceedings
in the
Superior
Court from
10th March
1890 to 6th
Dec. 1891.

Proceedings in the Superior Court.

Schedules annexed to the Inscription.

A.

In the Superior Court for the Province of Quebec.
No. 1,654.

Province of Quebec, District of Montreal.

The Atlantic and North-west Railway Company,
a body politic and corporate duly incorporated,
and having its chief office and place of business
in the City and District of Montreal - - Petitioners, 10

v.

Peter W. Wood, Benjamin Lamb, Robert W.
McLachlan, George McGarry, Robert Allan
Short, George Robert Hood, and James
O'Richardson, all of the City and District of
Montreal, in their quality of Trustees duly
appointed of and for the Congregation of
Christians of the Congregational Denomination
known as Calvary Church, worshipping in the
said City of Montreal, and individually for any
rights they may have, and Charles Cushing, of
the said City of Montreal, Notary Public - Respondents, 20

and

Charles James Fleet and Robert D. McGibbon, both
of the said City of Montreal, Advocate, and
John L. Brodie, of the Parish of Notre Dame
de Grace, Farmer - - Mis-en-cause.

The 10th March 1890.

Messrs. Abbotts, Campbell, and Meredith appear for the Atlantic and North-west Railway Company and present a Petition, whereby they pray that a writ of summons be issued against the said Respondent and the said Arbitrators as mis-en-cause to annul and set aside the award herein rendered by said Arbitrators. 30

Present: The Honourable Mr. Justice Mathieu.

Let the writ issue.

(Signed) M. MATHIEU, J.C.S.

The 11th March 1890.

A writ of summons is issued as ordered against said Respondent and said mis-en-cause, said writ made returnable on the 24th March instant.

The 24th March 1890. 40

The said Petitioners return the writ of summons in this cause with the Petition thereto annexed, with a certificate of service upon the mis-en-cause,

the Respondents having accepted a copy thereof, through their Attorneys, Messrs. Trenholme, Taylor, and Buchan.

The said Petitioners also file a list and Exhibit No. 1.

The said Respondents appear by their Attorneys, Messrs. Trenholme, Taylor, and Buchan, and give notice thereof to Petitioners.

Messrs. MacMaster and McGibbon appear for the mis-en-cause R. D. McGibbon and give notice thereof to Plaintiffs.

RECORD.

*In the
Superior
Court.*

No. 2.—
continued.

The 26th March 1890.

MM. Laflamme Madore and Larochelle appear for the mis-en-cause J. L. Brodie and give notice thereof to said Plaintiffs.

The 20th January 1891.

The said Respondents file answers to petition for Petitioners having received copy thereof.

The 21st January 1891.

The said Petitioners file demurrer to Respondent's answer to their Petition, the Respondents and mis-en-cause having received a copy thereof.

The 4th February 1891.

The mis-en-cause Brodie files notice to said Petitioners that unless they desist from their demand for costs against him, he will resist their demand in so far as respects the said demand for costs, and that except as to the said demand for costs he declares s'en rapporter à justice as to the judgment to be rendered herein, copy of said notice having been served upon said Petitioners.

The said Respondents hereby inscribe for hearing on the Petition in Appeal of award for the 23rd January 1891 and give notice thereof to Petitioners.

The 5th February 1891.

The Respondents give notice to Petitioners that the present cause is inscribed for hearing on demurrer as well as on the merits of said Petition, for the 6th day of February instant.

The 7th February 1891.

The Petitioners file desistment from the conclusions of their Petition in so far as their demand for costs against any of said mis-en-cause; said mis-en-cause having received notice of said desistment.

The mis-en-cause, J. L. Brodie, files declarations qu'il s'en rapporte à justice as to the judgment to be rendered herein, after having returned into Court all papers in his possession having reference to the expropriation in this cause, copy of said declaration having been served upon said Petitioners.

The said mis-en-cause file a list of all papers, exhibits, and depositions under the proceedings on the expropriation herein with all papers, exhibits, documents, and depositions mentioned in said list.

RECORD.

—
*In the
 Superior
 Court.*
 —

The 10th February 1891.

At the hearing upon merits, present the Honourable Mr. Justice Mathieu,
 P.O.C.A.V.

The 17th day of November 1891.

No. 2A.
 Judgment
 of the
 Superior
 Court ren-
 dered 17th
 November
 1891.

Present: The Honourable Mr. Justice Mathieu.

La Cour, après avoir entendu les parties par leurs avocats respectifs sur le mérite de la Requête de la dite Compagnie de chemin de fer, en appel de la sentence arbitrale rendue en cette instance, le quatorze de Février, mil huit cent quatre-vingt-dix, examiné la procédure, la preuve et généralement toutes les pièces du dossier et sur le tout délibéré :

10

Attendu que le premier Octobre, mil huit cent quatre-vingt-huit, la Compagnie du chemin de fer de l'Atlantique et du Nord-Ouest, à conformément aux dispositions de la section 146 du chapitre 29 des Statuts du Canada de mil huit cent quatre-vingt-huit, " l'acte des chemins de fer " donné un avis aux Syndics de l'Église du Calvaire qu'elle se proposait d'ériger au-dessus d'une ruelle dont le fond leur appartenait, à une hauteur d'au moins douze pieds sur le numéro 1604 des plan et livre de renvoi officiels du Quartier St. Antoine, dans la Cité de Montréal une construction pour y poser des voies de chemin de fer, en appuyant cependant cette construction en dehors de la ruelle et sans occuper aucune partie d'icelle :

20

Attendu que le quatorze Février, mil huit cent quatre-vingt-dix, la majorité des arbitres nommés sous l'acte des chemins de fer pour constater l'indemnité à payer aux Syndics pour le terrain et les dommages, leur accorda la somme de seize mille trois cent huit piastres comme indemnité pour l'exercice des pouvoirs conférés à la Compagnie par l'acte des chemins de fer :

Attendu que la dite Compagnie appelle de cette sentence sous les dispositions de la section 161 du chapitre 29 des Statuts de Canada, de mil huit cent quatre-vingt-huit et demande que cette sentence soit déclarée nulle parcequ'elle est irrégulière et parcequ'elle est excessive et que cette Cour détermine le montant de l'indemnité :

30

Attendu que la section 161 de l'acte des chemins de fer dit que nulle sentence arbitrale ne sera invalidée pour défaut de forme ou autres objections techniques, si toutes les prescriptions de l'acte ont été essentiellement remplies et si la sentence arbitrale établit d'une manière précise le montant adjugé et les terrains ou autres propriétés droit ou chose dont ce montant est l'indemnité :

Considérant que la dite sentence arbitrale est conformé aux exigences de cette section et qu'il n'y a pas lieu de l'annuler pour défaut de forme :

Considérant que le propriétaire d'un terrain sur lequel il a donné droit de passage n'en conserve pas moins le droit d'élever des constructions sur ce terrain tout en laissant libre ce droit de passage, et que la dite Compagnie en construisant son chemin de fer sur le terrain des dits Syndics les a expropriés en les privant du droit qu'ils avaient de construire sur ce terrain :

40

Considérant que la plus grande valeur que les témoins donnent aux propriétés à cet endroit est une piastre du pied :

Considérant que ce terrain exproprié se trouve à la profondeur du No. 1604 et qu'il n'a pas la même valeur que s'il était sur la rue Guy, et qu'on doit aussi prendre en considération le fait qu'en construisant il faut laisser le passage libre :

Considérant que la superficie expropriée est de 367 pieds et que la valeur du terrain ainsi exproprié est de cinquante centins du pied, ce qui forme une somme de cent quatre vingt trois piastres et cinquante centins à laquelle les dits Syndics ont droit :

Considérant que les dits Syndics ont droit à une somme égale à la valeur du terrain pour morcellement de leur immeuble :

Considérant que les dits Syndics ont aussi droit à des dommages comme indemnité pour privation de lumière et d'air, par suite de la construction du chemin sur la partie du terrain exproprié et pour les obstacles à la communication du reste de la propriété à la voie publique et que ces dommages n'excèdent pas la somme de mille piastres :

Considérant que les dits Syndics n'ont pas droit à des dommages qui pourraient leur être imputés par la mise en opération du chemin tel que ceux qui pourraient leur résulter de la vibration et le bruit causés par le passage des trains et la fumée des locomotives :

Considérant que ces dommages ne résultent pas de l'expropriation et que si les Syndics ont un recours à cet égard, ils devront l'exercer suivant le cours ordinaire de la loi et qu'il n'y a pas de dispositions dans l'acte des chemins de fer pour déterminer ces dommages par l'arbitrage :

Considérant qu'il résulte de la preuve que presque tous les dommages accordés par les arbitres aux dits Syndics résulteraient de la mise en opération du chemin, et qu'il y a lieu de réduire cette sentence à la somme de mille trois cent soixante-et-sept piastres, montant réuni des divers items ci-dessus mentionnés :

A maintenu et maintient la dite requête en appel pour partie et réduit la dite sentence arbitrale à la dite somme de mille trois cent soixante-et-sept piastres et ordonne que chaque partie paye ses frais sur le présent appel.

(Signé) M. MATHIEU,
J.C.S.

The 6th December 1891.

The said Respondents file an Inscription in Appeal of the judgment rendered herein on the 17th November last 1891, and give notice of security.

The 4th December 1891.

The said Appellants give the security required on said Appeal (Charles Cushing and Robert W. McLachlan become sureties).

Montreal, 14th April 1892.

(Signed) GEO. H. KERNICK,
Dep. P.S.C.

RECORD.

*In the
Superior
Court.*

No. 2A.
Judgement
of the
Superior
Court rendered
17th
November
1891—
continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition for
writ to set
aside award,
dated 28th
Feb. 1890.

Schedule No. 1.

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

The Atlantic and North-west Railway Company,
a body politic and corporate duly incorporated,
and having its chief office and place of business
in the City and District of Montreal - Petitioners,

and

Peter W. Wood, Benjamin Lamb, Robert W.
McLachlan, George McGary, Robert Allan
Short, Robert George Hood, and James
O'Richardson, all of the City and District of
Montreal, in their quality of Trustees, duly
appointed of and for the Congregation of
Christians of the Congregational Denomination
known as Calvary Church, worshipping in the
said City of Montreal, and individually for any
rights they may have, and Charles Cushing, of
the said City of Montreal, Notary Public - Respondents,

10

and

Charles James Fleet and Robert D. McGibbon, both
of the said City of Montreal, Advocates, and
John L. Brodie, of the Parish of Notre Dame
de Grace, Farmer - - - Mis-en-cause.

20

To the Honourable the Superior Court, sitting in and for the District of Montreal.

The Petition of said Petitioners respectfully represents :

That heretofore, to wit, on the first day of October Eighteen hundred and eighty-eight, your Petitioners gave notice to Respondents in the form required by law, that they would require to exercise for the purposes of their railway, 30 certain powers conferred upon them by their charter, and by Statute, to wit, the power of the building, and maintaining above and over a lane herein-after described of a structure on which is to be carried two railway tracks, the supports of the structure being erected not on said lane, but on adjoining land, and no part of said structure being nearer the present surface of such land than twelve feet, leaving the lane free and clear, with an opening to its full width of ten feet, up to the said height, the lane being more fully described as lot number sixty-seven, on the map or plan and book of reference of the said railway, to wit, the part of said portion, number sixteen hundred and four, described as follows:—

A tract or parcel of land, being part of a lane in common and forming the 40 southern corner of the said property, number sixteen hundred and four, of said ward, bounded on the north-east end and on the north-west side by the

remainder of the said property, number sixteen hundred and four, on the south-east side by the property known as official number sixteen hundred and five (1605) of the said ward, and on the south-west end by a lane leading to Richmond Avenue, the said tract of land being more particularly described as follows, viz., commencing at the southern corner of the said property, number sixteen hundred and four, and continuing from thence in a north-westerly direction along the south-western side of the last-mentioned property, a distance of ten feet, thence in a north-easterly direction along the north-western side of said lane in common, a distance of twenty-three feet, thence
 10 in an easterly direction diagonally across said lane, a distance of twenty-nine feet one inch to the southern-eastern side of said lane in common, thence along said south-eastern side, a distance of fifty feet four inches, to the point of commencement, the said tract of land containing a superficies of three hundred and sixty-seven feet, the whole English measure.

That the amount offered by Petitioners to Respondents for damages and compensation having been refused by the Respondents, the said mis-en-cause were duly appointed Arbitrators to determine the amount payable therefor by Petitioners.

20 That afterwards, to wit, on the fourteenth day of February Eighteen hundred and ninety, an award purporting to be the final award of said Arbitrators was rendered in notarial form before William de M. Marler, N.P.

That afterwards, to wit, on the eighteenth day of February Eighteen hundred and ninety, the Petitioners were notified of the rendering of said award, and are desirous of appealing from the same, both on questions of law and of fact.

That said award is illegal, and contrary to the evidence adduced, for the following among other reasons:—

1. Because the said award is excessive.
2. Because the amount so awarded is largely in excess of the amount of
 30 compensation and damage proved before the Arbitrators.
3. Because the proceedings of the said Arbitrators were wholly irregular, and did not comply with the requirements of the Railway Act.
4. Because the evidence rendered before the said Arbitrators was not taken down in the manner provided by law.
5. Because the witnesses did not give their evidence under oath as required by law.
6. Because illegal evidence was laid before and received by said Arbitrators.
7. Because no day was properly fixed as required by law by the said Arbitrators for the rendering of the said award, and that said award was
 40 not rendered at the time required by law.
8. Because the said award is null and void upon the face thereof, and is informal.
9. Because in estimating the compensation to the proprietor fixed by the award, the said Arbitrators took into consideration matters and things which they had no right by law to do, and which were outside the

RECORD.

*In the
 Superior
 Court.*

No. 3.

Petition for writ to set aside award, dated 28th Feb. 1890—
continued

RECORD.

*In the
Superior
Court.*

No. 3.

Petition for writ to set aside award, dated 28th Feb. 1890—
continued.

scope of the arbitration proceedings, and put a speculative and prospective and grossly exaggerated estimate on the damage done to the Respondents by the erection of the said structure over the said lane, and awarded damages which were illegal and not the subject of arbitration and award under the Railway Act, and also illegally awarded damages to property which was not taken for or affected by the railway, and illegally awarded remote speculative and prospective damages to the proprietors.

Wherefore your Petitioners pray that the said Arbitrators may be summoned to be and appear before this Honourable Court, on the twenty-first day of March next, and to produce and file all papers, writings, and documents which they may have in connexion with the said award, and more especially the notes of evidence taken by them, and the exhibits filed therewith, and be further summoned, together with said Respondent, and to hear the judgment of this Court in the premises, and that this Honourable Court may annul and set aside the said award so rendered on the fourteenth of February Eighteen hundred and ninety, by the said Arbitrators as illegal, irregular, and excessive, and that the Court will proceed to adjudge and decide upon the amount of compensation and damages to which the said proprietor may be entitled by law, and the Statutes in such case made and provided the whole with costs distracts to the undersigned Attorneys. 10 20

Montreal, February 28th, 1890.
(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,
Attorneys for Petitioners.

Let the writ issue.

(Signed) M. MATHIEU, J. C. B.

We hereby require a writ of summons in conformity with the above Petition, and as allowed by his Honour Mr. Justice Mathieu.

Montreal, March 5th, 1890. 30
(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,
Attorneys for the Atlantic and North-west
Railway Company.

(Endorsed.) Petition filed
10th March 1890.

(Paraphed.) A. B. L.



Schedule No. 2.

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

RECORD.
*In the
Superior
Court.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India.

No. 4.
Writ of
summons,
dated 11th
March 1890.

To any of the bailiffs of the said Superior Court, acting in the District of Montreal, greeting.

10 We command you to summon Peter W. Wood,
Benjamin Lamb, Robert W. McLachlan, George
McGary, Robert Allan Short, Robert Hood,
and James O'Richardson, all of the City and
District of Montreal, in their quality of
Trustees duly appointed of and for the Con-
gregation of Christians of the Congregational
Denomination known as Calvary Church, wor-
shipping in the said City of Montreal, and
individually for any rights they may have, and
Charles Cushing, of the said City of Montreal,
Notary Public - - - Respondents,

20 and
Charles James Fleet, and Robert D. McGibbon, both
of the said City of Montreal, Advocates, and
John L. Brodie, of the Parish of Notre Dame
de Grace, Farmer - - - Mis-en-cause,

30 to be and appear before our said Superior
Court in the Court House in the City and Dis-
trict of Montreal, on the twenty fourth day of
March instant, or the next following judicial
day, to answer the demand of the Atlantic
and North-west Railway Company, a body
politic and corporate duly incorporated, and
having its chief office and place of business in
the City of Montreal aforesaid - - - Petitioners,

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 here-
unto affixed at Montreal this eleventh day of March, in the year of our Lord,
One thousand eight hundred and ninety.

40 (Signed) A. B. LONGPRÉ,
Prothonotary of the Superior Court.

RECORD.

(On the back.)

*In the
Superior
Court.*

No. 1.
Writ of
summons,
dated 11th
March 1890.
—continued.

I, the undersigned, residing in Montreal in the District of Montreal, one of the sworn bailiffs of the Superior Court for Lower Canada, duly admitted for the said district, do hereby certify under my oath of office that on the thirteenth day of March One thousand eight hundred and ninety, between the hours of ten o'clock forenoon and three of the clock in the afternoon, I did serve the present writ and the Petition thereto annexed on the mis-en-cause, Charles J. Fleet, Robert D. McGibbon, and John L. Brodie, by leaving duly certified copies thereof by speaking to, and leaving the same with each of them in person, in the said City of Montreal, moreover that the distance from my domicile to the place of such service is two miles, and from the Montreal Court House to the furthest of the domiciles of mis-en-cause is seven miles, and I necessarily travelled four miles. 10

Done at Montreal this 13th May 1890.

(Signed) SAML. C. MARSAN,
B.S.C.

Fee \$3.50.

No. 5.
Award of
Arbitrators,
dated 14th
Feb. 1890.

Schedule No. 4.

Before Maitre William de M. Marler, the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal. 20

Appeared—

Charles James Fleet and Robert D. McGibbon, both of the City of Montreal, Advocates, and John L. Brodie of the parish of Notre Dame de Grace, Farmer.

Who declared unto the said Notary—

That whereas the Atlantic and North-west Railway Company, a body politic and corporate duly incorporated, having its chief place of business at the City of Montreal,

Notified Peter M. Wood and others, of the City of Montreal, Trustees of the Calvary Congregational Church, that the said Railway Company intended to exercise the powers hereunder described in regard to a certain lot of land, forming a portion of the property known and distinguished on the official plan and book of reference of the St. Antoine Ward, of the said City of Montreal as lot No. sixteen hundred and four (1604) being a lane and described as lot No. sixty-seven on the map or plan and book of reference of the said railway, to wit: the part of said portion, number 1604, described as follows: 30

A tract or parcel of land being part of a lane in common and forming the southern corner of the said property number 1604 of the said ward, bounded on the north-east end and on the north-west side by the remainder of the said property No. 1604 on the south-east side by the property known as official number sixteen hundred and five (1605) of said ward, and on the south-west end by a lane leading to Richmond Avenue; the said tract of land, being more particularly described as follows, viz., commencing 40

RECORD.

*In the
Superior
Court.*

No. 5.
Award of
Arbitrators,
dated 14th
Feb. 1890—
continued.

at the southern corner of the said property number 1604 and continuing from thence in a north-westerly direction along the south-western side of the last-mentioned property, a distance of ten feet (10 f.), thence in a north-easterly direction along the north-western side of said lane in common a distance of twenty-three feet (23 f.), thence in an easterly direction diagonally across said lane, a distance of twenty-nine feet one inch (29. 1) to the south-eastern side of said lane in common, thence along said south-eastern side, a distance of fifty feet four inches (50. 4) to the point of commencement, the said tract of land containing a superficies of three hundred and sixty-seven feet (367), the whole English measure :

10

The said powers to be so exercised being the building and maintaining above and over the said lane, of a structure on which is to be carried two railway tracks, the supports of the structure being erected not on said lane but on adjoining land, and no part of said structure being nearer the present surface of such land than twelve feet, leaving the said lane free and clear, with an opening to its full width of ten feet up to the said height :

And whereas the said Railway Company appointed the said Robert D. McGibbon, as their Arbitrator for the purpose of ascertaining the compensation to be paid to the said Trustees for the said land and damages, in accordance with the Railway Act :

20

And whereas the said Trustees refused the amount offered them by the said Railway Company and appointed the said John L. Brodie as their Arbitrator :

And whereas the said Robert D. McGibbon and the said John L. Brodie appointed the said Charles James Fleet as third Arbitrator :

And whereas the said three Arbitrators were sworn faithfully and impartially to perform the duties of their office, and have visited the land above described and obtained all information necessary to enable them to make their award, have heard the parties and their witnesses, first duly sworn and have on the whole maturely deliberated :

30

Wherefore these presents and I, the said Notary, witness—

That the said John L. Brodie and the said Charles James Fleet, being two and a majority in number of the said Arbitrators do hereby award the sum of sixteen thousand three hundred and eight dollars as compensation for all damages caused to the said Trustees (proprietors) by the exercise by the said Railway Company of the powers above described in regard to the said land.

And the said Robert D. McGibbon declares he does not concur in this award, and dissents therefrom.

Whereof Acte

40

Executed at the City of Montreal this fourteenth day of February Eighteen hundred and ninety, and of record in the office of the said Maitre Marler, under No. fifteen thousand eight hundred and forty-nine.

And after due reading hereof, the parties signed in presence of the said Notary.

(Signed) C. J. FLEET.
JOHN L. BRODIE.
R. D. MCGIBBON.
W. DE MARLER, N.P.

RECORD.

*In the
Superior
Court.*

A true copy of the original hereof remaining of record in my office.
(Signed) W. DE MARLER.
(Endorsed.) Plaintiff's Exhibit No. 1, with return.
Prod. 24th March 1890.
(Paraphed.) A.B.L.

No. 6.
Repondents'
answer to
Petition,
dated 1st
Dec. 1890.

Schedule No. 8.

Province of Quebec, District of Montreal.
Superior Court.

The Atlantic and North-west Railway Company	Petitioners,	
and		10
Peter W. Wood et al. ès equal.	- - -	Respondents,
and		
Charles G. Fleet et al - - -	- - -	Mis-en-cause.

The said Respondents for answer to the Petition in Appeal of the said Petitioners, say—

That each and every the allegations of the said Petition in Appeal, save and except in so far as herein-after expressly admitted are false and unfounded.

That true it is that expropriation on proceedings took place by the said Company in expropriation as alleged by the said Petitioners, and that the award of the Arbitrators appointed therein was rendered, awarding to the said Respondents damages for the land of the Respondents taken by the said Company, and the damages caused by the passing of their line of railway; but the said Respondents specially deny that the said proceedings were illegal, and that the said award was illegal and contrary to the evidence adduced as falsely alleged by said Petitioners.

And the said Respondents specially deny each and every the reasons assigned in the said Petition in Appeal, and say that the proceedings before said Arbitrators and the said award were and are in all respects illegal* and valid.

*(*Sic.*)

Wherefore Respondents pray that the said Appeal of the said Company Petitioners be dismissed, that it be declared that the award rendered by the said Arbitrators was, and is legal and valid in all respects, and that the Company Petitioners be adjudged and condemned to pay and satisfy to the Respondents in their said quality the amount of said award, to wit, the sum of sixteen thousand three hundred and eight dollars, with interest from the date of the said award, and all costs, especially the costs of this Appeal, of which the undersigned Attorneys pray distraction.

Montreal, December 1st, 1890.

(Signed) TRENHOLME, TAYLOR, AND BUCHAN,
Attorneys for Respondents.

30

40

Received copy.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,
Attorneys for Petitioners.

RECORD.
*In the
Superior
Court.*

(Endorsed.) Respondents' answers to Petition.

Filed 20th June 1891.

(Paraphed.) A.B.L.

*No. 6.
Respondents'
answer to
Petition,
dated 1st
Dec. 1890.—
continued.*

Schedule No. 9.

Canada, Province of Quebec, District of Montreal.
In the Superior Court.

*No. 7.
Petitioners'
demurrer to
Respondents'
answer to
Petition,
dated 19th
Jan. 1891.*

10	The Atlantic and North-west Company	-	Petitioners,
	and		
	Peter W. Wood et al	-	Respondents,
	and		
	Charles J. Fleet et al	-	Mis-en-cause.

The said Petitioners, for demurrer to the Respondents' answer to their Petition in Appeal, say :—

That the conclusions of the said answer whereby the Respondents pray that the Petitioners be adjudged and condemned to pay and satisfy to the Respondents the amount of the award in question in this case, to wit, the sum of sixteen thousand three hundred and eight dollars, with interest and costs, do not flow from the allegations of the said answer and are illegal and should be so declared by this Honourable Court for the following amongst other reasons :—

1. Because the Respondents have no right by law to ask nor demand any condemnation against the Petitioners, in and by an answer to their Petition in Appeal, from the award of the Arbitrators herein.

2. Because the Respondents could only enforce payment of the amount of the said award under the authority of a competent Court upon a suit brought in the ordinary manner.

Wherefore the Petitioners pray that the portion of the conclusion of the said answer herein-above set forth be declared to be illegal and be struck from the Record, the whole with costs of which the undersigned Attorneys pray distraction.

Montreal, January 19th, 1891.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,
Attorneys for Petitioners.

Received copy under reserve.

(Signed) LAFLAMME AND Co.,
Attorneys for Respondents.

RECORD.

Received copy under reserve.

*In the
Superior
Court.*

(Signed) TRENHOLM AND Co.,
Attorneys for Respondents.

(Signed) MACMASTER AND MCGIBBON,
Attorneys for mis-en-cause.
R. D. MCGIBBON.

No. 7
Petitioners'
demurrer to
Respondents'
answer to
Petition,
dated 19th
Jan. 1891—
continued.

(Endorsed.) Petitioners' demurrer to Respondents' answer to Petition.
Prod. 21st January 1891.
(Paraphed.) A.B.L.

No. 8.
Notice by J.
L. Brodie to
Petitioners,
dated 3rd
February
1891.

Schedule No. 10.

10

Province of Quebec, District of Montreal.
Superior Court.

The Atlantic and North-west Railway Company Petitioners,
to
Peter W. Wood et al Respondents,
and
Charles J. Fleet et al - - - Mis-en-cause.

To Messrs. Abbotts, Campbell, and Meredith,
Attorneys for Petitioners.

GENTLEMEN,

20

THE said Petitioners are hereby notified by and on behalf of John L. Brodie, one of the mis-en-cause, that unless the said Petitioners desist from their demand for costs against the said John L. Brodie in this cause for the said John L. Brodie will plead herein and resist the demand of the said Petitioners in so far as respects the said demand for costs and that except as regards the said demand for costs, the said mis-en-cause John L. Brodie is prepared to submit himself to such judgment as shall be rendered herein (s'en rapporte à justice).

Montreal, 3rd February 1891.

(Signed) LAFLAMME, MADORE, CROSS, AND LAROCHELLE,
Attorneys for the said mis-en-cause.

30

(On the back.)

Je, Damase Fortier, résidant en la Cité de Montréal un des huissiers jurés de sa Majesté pour la Cour Supérieure pour la province d' Québec immatriculé et pratiquant dans et pour le District de Montréal certifie par les présentes et fais rapport sous mon serment d'office que le troisième jour de Février mil huit cent quatre vingt onze entre trois et quatre heures de l'après midi j'ai signifié la motion d'autre part a MM. Abbotts Campbell et Meredith avocats de la Requérente en leur laissant une vraie copie certifiée d'icelle en parlant à l'un de leurs employés en leur bureau dans la Cité de Montréal.

40

La distance du Palais de Justice en la Cité de Montréal et de mon domicile au dit lieu de signification est de moins d'un mille et celle parcourue pour faire la dite signification est de moins d'un mille.

Montréal, 3 Février 1891.
(Signed) D. FORTIER, H.C.S.

(Endorsed.)
Notice respecting Defence.
Filed 4 Février 1891.
(Paraphed.)
10 W.B.
Deputy P.S.C.

RECORD.
—
In the Superior Court.
—
No. 8.
Notice by J. L. Brodie to Petitioners, dated 3rd February 1891—
continued.

Schedule No. 13.

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

The Atlantic North-west Railway Company		Petitioners,
	and	
Peter W. Wood et al	- -	- Respondents,
	and	
Charles J. Fleet et al	- - -	- Mis-en-cause.

No. 9.
Desistment of conclusions of Petition as regards mis-en-cause Brodie, dated 3rd Feb. 1891.

20 Said Petitioners hereby desist from the conclusions of their Petition in so far as they may be held to ask for costs against the mis-en-cause or any of them, and hereby declare that they do not, and did not in and by their said conclusions, intend to ask or demand costs against the mis-en-cause.

Montreal, February 3rd, 1891.
(Signed) ABBOTTS, CAMPBELL, and MEREDITH,
Attorneys for Petitioners.

Received copy.

(Signed) LAFLAMME & Co.,
Attorneys for John L. Brody.

30 (On the back.)

I, the undersigned, one of the sworn bailiffs of Her Majesty's Superior Court, appointed and acting in and for the District of Montreal, residing in the City of Montreal, hereby certify and return under my oath of office, that I did on the fifth day of February Eighteen hundred and ninety-one, between the hours of four and five of the clock in the afternoon, serve the within original document on the within-named At. MacMaster & Co., by speaking to and leaving a true and certified copy thereof, with a grown and reasonable person in care of and at their office in the said City of Montreal. The distance from the Court

RECORD. House in the City of Montreal to said place of service is less than one mile, and from my residence to place of service is mile.

*In the
Superior
Court.*

Montreal, February 5th, 1891.

(Signed) SAMUEL C. MARSAN, H.C.S.

(Endorsed.) Desistment.

Prod. 7 Février 1891.

(Paraphed.) D.G.

D. P.C.S.

No. 10.
Declaration
of mis-en-
cause Brodie
(qu'il s'en
rapporte à
justice),
dated 4th
Feb. 1891.

Schedule No. 14.

Province of Quebec, District of Montreal,
Superior Court.

10

The Atlantic and North-west Railway Company - Petitioners,
to
Peter W. Wood et al - - - Respondents,
and
Charles J. Fleet et al - - - Mis-en-cause.

Seeing the desistment of the said Petitioners of their demand for costs against the said mis-en-cause. John L. Brodie, one of the said mis-en-cause, hereby declares that having returned into Court such papers as he had in his possession as Arbitrator upon the expropriation in question, he submits himself to such final judgment as shall be rendered in the present matter (qu'il s'en rapporte à justice), saving his right to any costs heretofore incurred which may be taxed in his favour. 20

Montreal, 4th February 1891.
(Signed) LAFLAMME, MADOU, CROSS and LAROCHELLE,
Attorneys for John L. Brodie,
Mis-en-cause.

Je, Demase Fortier, résidant en la Cité de Montréal, un des huissiers jurés de sa Majesté pour la Cour Supérieure pour la Province de Québec, immatriculé et pratiquant dans et pour le District de Montréal, certifie par les présentes et fais rapport sous mon serment d'office que le cinquième jour de Février mil huit cent quatre vingt onze entre trois et quatre heures de l'après-midi j'ai signifié la Déclaration d'autre part à MM. Abbotts et Cie avocats de la Requérente en leur laissant une vraie copie certifiée d'icelle en parlant à l'un de leurs employés en leur bureau dans le dite cité. La distance du Palais de Justice en la Cité de Montréal et de mon domicile au dit lieu de signification est de mille et celle parcourue pour faire la dite signification est de mille. 30

Montréal, 5 Février 1891.

(Signed) D. FORTIER, H.C.S.

(Endorsed.) Declaration par mis-en-cause J. L. Brodie de s'en rapporter à justice. RECORD.

Filed 12th February 1891.

(Paraphed.) G.H.K.

Dept. P.C.S.

*In the
Superior
Court.*

Schedule No. 15.

Province of Quebec, District of Montreal.

In the Matter of the Atlantic North-west Railway Company

and

Peter M. Wood et al.

No. 11.
Plan showing arrangement of trestles vents to clear lanes of Calvary Church, and John Lawson and Notice of expropriation and certificate filed 25th Oct. 1888.

10

To Peter M. Wood et al. of the City of Montreal, District of Montreal, Trustees of the Calvary Congregational Church.

Take notice that the Atlantic North-West Railway Company intend to exercise the powers hereunder described in regard to a certain lot of land forming a portion of the property known and distinguished on the official plan and book of reference of the St. Antoine Ward of the City of Montreal as lot No. sixteen hundred and four (1604), being a lane and described as lot No. sixty-seven on the map or plan and book of reference of the said Railway, to wit, the part of said portion number 1604 described as follows:—

20

A tract or parcel of land, being part of a lane in common and forming the southern corner of the said property number 1604 of said Ward, bound on the north-east end and on the north-west side by the remainder of the said property number 1604, on the south-east side by the property known as official number sixteen hundred and five (1605) of said Ward, and on the south-west end by a lane leading to Richmond Avenue, the said tract of land being more particularly described as follows, viz., commencing at the southern corner of the said property number 1604 and continuing from thence in a north-westerly direction along the South-western side of the last-mentioned property, a distance of ten feet (10 f.), thence in a north-easterly direction along the north-western side of said lane in common, a distance of twenty-three feet (23 f.), thence in an easterly direction diagonally across said lane, a distance of twenty-nine feet one inch (29-1) to the south-eastern side of said lane in common, thence along said south-eastern side, a distance of fifty feet four inches (50-4) to the point of commencement, the said tract of land containing a superficies of three hundred and sixty-seven feet (367 f.), the whole English measure.

30

The said powers to be so exercised being the building and maintaining above and over the said lane of a structure on which is to be carried two railway tracks, the supports of the structure being erected not on said lane but on adjoining land, and no part of said structure being nearer the present surface of such land than twelve feet, leaving the said lane free and clear with an opening to its full width of 10 feet up to the said height.

40

RECORD.

*In the
Superior
Court.*

No. 11.
Plan showing arrangement of trestles and clear lanes of Calvary Church, and John Lawson and Notice of expropriation and certificate filed 25th Oct. 1888—
continued.

That the said Atlantic and North-west Railway Company are ready and willing, and hereby offer to pay the sum of (\$25.00) twenty-five dollars as compensation for all damages caused to you by the exercise of the said powers in regard to the said land.

That in the event of your not accepting this offer the Atlantic and North-west Railway Company hereby nominate and appoint R. D. McGibbon, of the City of Montreal, Advocate, to be their Arbitrator for the purpose of ascertaining the compensation to be paid to you for the said damages in accordance with the Railway Act.

Montreal, October 1st, 1888.

(Signed) C. DRINKWATER,
Secretary,
Atlantic North-west Railway Company.

10

[*Here follows Plan referred to.*]

I, Joseph Rielle, of the City of Montreal, in the Province of Quebec, a sworn surveyor for the Province of Quebec, do hereby certify—

1. That I am disinterested in the matter within referred to.
2. That the powers within described are necessary for the Atlantic and North-west Railway Company for the purpose of building their 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 herein above-mentioned.
4. That the sum offered by the Atlantic and North-west Railway Company in the within notice is a fair compensation for all damages as aforesaid, which I consider to be merely nominal.

Dated at Montreal the 2nd day of October 1888.

(Signed) JAS. RIELLE,
Provincial Land Surveyor.

Received duplicate on behalf of Trustees Calvary Church.

(Signed) TRENHOLM, TAYLOR, AND BUCHAN,
Attorneys for Calvary Church.

30

(Endorsed.) Notice of expropriation and certificate.

Filed 25th October 1888.

(Paraphed.) D.G. Dep. P.S.C.

Schedule No. 16.

Resolutions.

On motion of John Redpath Dougall, seconded by James O'Richardson, the offer of twenty-five dollars made by the Atlantic and North-west Railway Company was refused.

On motion of Robert Wallace McLachlan, seconded by Robert George Wood, the Church appointed John L. Brodie as their Arbitrator to act for and represent the Church and Trustees in the Arbitration with the Atlantic and North-west Railway Company.

40

No. 12.
Notice refusing offer and appointing Arbitrator, dated 3rd Oct. 1888.

On motion of George McGary, seconded by R. W. McLachlan, the Church authorised their Solicitors, Messrs. Trenholm, Taylor, and Buchan, to receive, adopt on their behalf, and on behalf of the Trustees of the Church, all writs and legal processes of every nature, rendered necessary or that may become necessary in the course of the proceedings in arbitration.

RECORD.

—
*In the
 Superior
 Court.*
 —

And that a copy of these resolutions be sent to the aforesaid Solicitors, and notice of his appointment be sent to Mr. Brodie respectively by the Church Clerk.

I certify the foregoing to be true extracts from the minutes of the regular and duly convened monthly business meeting of the members of the Calvary Church held in the Lecture Hall, Gery Street, on Wednesday evening the third day of October instant (1888).

Montreal, 4th October 1888.

(Signed) C. CUSHING,
 Church Clerk,
 Calvary Church.

Province of Quebec, District of Montreal,

In re

Atlantic North-west Railway Company

and

20 Peter W. Wood, et al, Trustees of Calvary Congregational Church

To the said Atlantic and North-west Railway Company.

Take notice that the said Trustees refuse the offer of indemnity of said Company, contained in its notice in expropriation to them of date the 2nd October instant, relative to the expropriation of a portion of lot official 1604 of St. Antoine Ward, in the City of Montreal, and that under express reserve of all rights the said Trustees named as Arbitrator in their behalf John L. Brodie, of Notre Dame de Grace, in the District of Montreal.

The said Company is hereby also notified that the undersigned have been duly appointed to act for and on behalf of said Trustees and said Church in all matters relative to the expropriation referred to in said notice of said Com-
 30 pany, and that all notices and proceedings in said matter may be served on the undersigned at 18, St. Alexis Street, in the City of Montreal.

Montreal, October 3rd, 1888.

(Signed) TRENHOLME, TAYLOR, AND BUCHAN,
 Attorneys for said Trustees and said
 Calvary Church.

We hereby appear for the said Trustees as the Attorneys in this matter.

(Signed) TRENHOLME, TAYLOR, AND BUCHAN.

(Endorsed.) Notice refusing offer and appointing Arbitrator, appearance
 40 of Attorneys, authorisation.

Filed 25th October 1888.

(Paraphed.) D.G. Dep. P.S.C.

RECORD.

*In the
Superior
Court.*

No. 13.
Notice
naming third
Arbitrator,
dated 19th
Oct. 1888.

Schedule No. 17.

Province of Quebec, District of Montreal.

To the Atlantic and North-west Railway Company - Expropriating,
and
Peter W. Wood, et al, Trustees for the Calvary
Congregational Church - - - Proprietors.

Montreal, October 19th, 1888.

Pursuant to adjournment Messrs. John L. Brodie and Robert D. McGibbon, proprietors and Company's Arbitrators respectively met this morning at the office of Mr. McGibbon, 157, St. James's Street, Montreal, and after having considered a number of names suggested by these parties as their Arbitrators 10 it was decided by the said Arbitrators that Mr. Charles James Fleet of the City and District of Montreal, Advocate, be appointed third Arbitrator by the said two Arbitrators.

(Signed) R. D. MCGIBBON,
Company's Arbitrator.
(Signed) JOHN L. BRODIE,
Arbitrator for the Proprietors.

(Endorsed.) Notice naming third Arbitrator.
Filed 25th October 1888.
(Paraphed.) L.G. Dep. P.S.C

20

No. 14.
Oath of
R. D.
McGibbon as
Arbitrator,
sworn 10th
Oct. 1888.
(Exhibit
No 1 of
mis-en-
cause.)

Schedule No. 19.

Atlantic North-west Railway Company.

Proceedings for Expropriation. In the Matter of Peter W. Wood, et al,
Trustees of the Calvary Congregational Church, Proprietor.

I, Robert D. McGibbon, of the City of Montreal, Advocate, Arbitrator duly nominated and appointed by the Atlantic and North-west Railway Company as their Arbitrator in respect of the said expropriation matter, do solemnly swear that I will faithfully and impartially perform the duties of my office as such Arbitrator, and that I am not related nor of kin to the said proprietor, and am disinterested in this matter.

(Signed) R. D. MCGIBBON.

Sworn before me at Montreal this tenth day of October A.D. 1888.

(Signed) M. DE MARLER,
J.P. for Montreal.

(Endorsed.) Exhibit No. 1.

30

Schedule No. 20.

Province of Quebec, District of Montreal.

The Atlantic and North-west Railway Company - Expropriating,
and
Peter W. Wood, et al, Trustees for the Calvary
Congregational Church - - - Proprietors.

I, Charles James Fleet, of the City of Montreal, Advocate, being duly sworn depose and say:—

10 That I will faithfully and impartially perform my duties as Arbitrator in this matter, so help me God.

Sworn before me at Montreal this nineteenth day of Oct. A.D. 1888.

(Signed) C. J. FLEET.

(Signed) M. DE MARLER,

J.P., District of Montreal.

(Endorsed.) Exhibit No. II.

RECORD.

In the Superior Court.

No. 15.
Oath of C. J. Fleet as Arbitrator, sworn 19th Oct. 1888. Exhibit No. 2 of mis-en-cause.

Schedule No. 21.

Province of Quebec, District of Montreal.

In the Matter of
The Atlantic and North-west Railway Company Expropriating,
and
20 Peter W. Wood, et al, Trustees of the Calvary
Congregational Church - - - Proprietors.

To the said the Atlantic and North-west Railway Company and to R. D. McGibbon, of the City and District of Montreal, Esquire, Advocate, Aribtrator, appointed by said Company, you and each of you are hereby notified that John L. Brodie, the Arbitrator named and appointed by said proprietor, hath this day been duly sworn according to law, and is ready to proceed in this matter.

Montreal, October 9th, 1888.

(Signed) TRENHOLME, TAYLOR, AND BUCHAN,
Attorneys for said Proprietor,
W. Wood, et al, Trustees.

30

(A true copy.)

(Signed) TRENHOLME, TAYLOR, AND BUCHAN,
Attorneys for .

(Endorsed.) Notice, Exhibit No. III.

No. 16.
Notice that John L. Brodie has been summoned as Arbitrator, dated 9th Oct. 1888. (Exhibit No. 3 of mis-en-cause.)

RECORD.

Schedule No. 22.

*In the
Superior
Court.*

Province of Quebec, District of Montreal.

In the Matter of

The Atlantic and North-west Railway Company - Expropriating,
and
Peter W. Wood, et al, Trustees of the Calvary
Congregational Church - - Proprietors.

No. 17.
Notice of
R.D. Gibbon
calling meet-
ing, dated
10th Oct.
1888.
Exhibit No.
4 of mis-en-
cause.

To Messrs. Trenholme, Taylor, and Buchan,
Attorneys for Proprietors
and
John L. Brodie,
Arbitrator for Proprietors.

10

GENTLEMEN,

TAKE notice that I, Robert D. McGibbon, Arbitrator herein named and appointed by the said Atlantic and North-west Railway Company, have been this day sworn according to law, and am ready to proceed in this matter; and hereby appoint Monday morning October fifteenth at nine o'clock in the forenoon at my office, one hundred and fifty-seven St. James's Street, Montreal, to meet with said John L. Brodie, Arbitrator for said proprietors, and to appoint a third Arbitrator.

20

Montreal, Oct. 10th, 1888.
(Signed) R. D. MCGIBBON,
Arbitrator for A. & N.W. Rly. Co.

I, the undersigned, one of the sworn bailiffs of Her Majesty's Superior Court, appointed and acting in and for the District of Montreal, residing in the City of Montreal, hereby certify and return under my oath of office that I did on the eleventh day of October Eighteen hundred and eighty-eight, between the hours of nine and twelve of the clock in the forenoon, serve the within original notice on the within-named John L. Brodie and Messrs. Trenholme & Co. by speaking to and leaving a true and certified copy thereof with said Brodie in person in Montreal, and by speaking to and leaving a true and faithful copy thereof with Mr. Trenholme, one of said Attorneys, in person, at their office in the said City of Montreal. The distance from the Court House in the City of Montreal to said place of service is more than one mile and from my residence to place of service is two miles.

Montreal, 11th October 1888.
(Signed) SAML. C. MARSON, B.S.C.

(Endorsed.) Exhibit IV.



Schedule No. 23.

Province of Quebec, District of Montreal.

The Atlantic and North-west Railway Company - Expropriating,
and

Peter W. Wood, et al, Trustees for the Calvary
Congregational Church - Proprietors.

Montreal, October 15th, 1888.

Pursuant to notice served upon John L. Brodie, proprietors' Arbitrator herein by Mr. R. D. McGibbon, Company's Arbitrator, these gentlemen met in 10 the office of Mr. McGibbon, 157, St. James's Street, for the purpose of discussing the question of a third Arbitrator. Several names were suggested by both parties and the Arbitrators adjourned till Friday, October 19th, morning, at 9 o'clock at the same place, for the purpose of finally settling the question.

(Signed) R. D. MCGIBBON.
JOHN L. BRODIE.

(Endorsed.) Exhibit V.

RECORD.

*In the
Superior
Court.*

No. 18.
Memorandum of meeting of two Arbitrators. Exhibit No. 6 of mis-en-cause.

Schedule No. 24.

Province of Quebec, District of Montreal.

The Atlantic and North-west Railway Company - Expropriating,
and

Peter W. Wood, et al, Trustees for the Calvary
Congregational Church Proprietors.

Montreal, October 19th, 1888.

Pursuant to adjournment Messrs. John L. Brodie and Robert D. McGibbon Proprietors and Company's Arbitrators respectively, met this morning at the office of Mr. McGibbon, 157, St. James's Street, Montreal, and after having considered number of names suggested by these parties as third Arbitrator, it was decided by the said Arbitrators that Mr. Charles James Fleet, of the City and District of Montreal, Advocate, be appointed third Arbitrator by the said 30 two Arbitrators.

(Signed) R. D. MCGIBBON,
Company's Arbitrator.

(Signed) JOHN L. BRODIE,
Arbitrator for the Proprietors.

Duly notified.

(Signed) C. J. FLEET.

(Signed) TRENHOLME, TAYLOR, AND BUCHAN,
Attorneys for Proprietors.

(Signed) ABBOTS AND CAMPBELL,
Attorneys for the A. and N.W. Rly.
Co. Expropriating.

40

(Endorsed.) Exhibit VI.

No. 19.
Memorandum of meeting of two Arbitrators, dated 19th Oct. 1888. Exhibit No. 6 of mis-en-cause.

RECORD.

*In the
Superior
Court.*

No. 20.
Oath of
John L.
Brodie, sworn
8th Oct.
1888.
Exhibit No.
7 of mis-en-
cause.

Schedule No. 25.

Province of Quebec, District of Montreal.
Superior Court.

In the Matter of

The Atlantic and North-west Railway Company, Petitioners in Expropriation,
and

Peter W. Wood, et al, Trustees of the Calvary Congregational Church.

I, John L. Brodie, Farmer, of the parish of Notre Dame de Grace, in the District of Montreal, Arbitrator duly nominated and appointed by said proprietors as their Arbitrator in respect of said expropriation matter, do solemnly swear that I will faithfully and impartially perform the duties of my office as such Arbitrator. 10

(Signed) JOHN L. BRODIE.

Sworn before me at Montreal the eighth day of October Eighteen hundred and eighty-eight.

(Signed) J. O. HETA,
Justice of the Peace in and for the
District of Montreal.

(Endorsed.) Oath of proprietors' Arbitrator, Exhibit No. VII.

No. 21.
Oath of
Grace H.
Eaton, sworn
26th Oct.
1888.
Exhibit No.
8 of mis-en-
cause.

Schedule No. 26.

20

In the Matter of

The Atlantic and North-west Railway Company
and

The Trustees of the Calvary Church.

I, Grace H. Eaton, of the City and District of Montreal, Stenographer, do solemnly swear that I will faithfully, fully, and impartially take down and transcribe the evidence to be given of the proceedings before the Arbitrators in this cause appointed, so help me God.

(Signed) GRACE H. EATON.

Sworn before me at the City of Montreal this twenty-sixth day of October 30 1888.

(Signed) M. DE MARLER,
J.P. and Commissioner of the
Superior Court.

(Endorsed.) Exhibit No. VIII.

Schedule No. 27.

Quebec, Montreal.

In the Matter of

The Atlantic and North-west Railway Company

and

Peter W. Wood et al.

To Peter W. Wood et al, of the City of Montreal, District of Montreal,
Trustees of the Calvary Congregational Church.

RECORD.

*In the
Superior
Court.*

No. 21½.
Notice of
expropriation
with plan,
dated 1st
Oct. 1888.
Exhibit No. 9
of mis-en-
cause.

Take notice that the Atlantic and North-west Railway Company intend to
10 exercise the powers hereunder described in regard to a certain lot of land
forming a portion of the property known and distinguished on the official plan
and book of reference of the St. Antoine Ward of the City of Montreal as Lot
No. Sixteen hundred and four (1604) being a lane and described as Lot No.
Sixty-seven on the map or plan and book of reference of the said Railway, to
wit, the part of that portion No. 1604 described as follows:—

A tract or parcel of land, being part of a lane in common and forming the
southern corner of the said property No. 1604 of said Ward, bounded on the
north-east end and on the north-west side by the property known as official No.
Sixteen hundred and five (1605) of said Ward, and on the south-west end by a
20 lane leading to Richmond Avenue, the said tract of land being more particularly
described as follows, viz.: Commencing at the southern corner of the said
property No. (1604) and continuing from thence in a north-westerly direction
along the south-western side of the last-mentioned property, a distance of ten
feet (10'), thence in a north-easterly direction along the north-western side of
said lane in common, a distance of twenty-three feet (23'), thence in an easterly
direction diagonally across the lane, a distance of 29 feet one inch (29' 1") to the
south-eastern side of said lane in common, thence along said south-eastern side a
distance of fifty feet four inch (50' 4") to the point of commencement, the said
tract of land containing a superficies of three hundred and sixty-seven feet
30 (367'), the whole English measure.

The said powers to be so exercised being the building and maintaining
above and over the said lane of a structure on which is to be carried two railway
tracks, the supports of the structure being erected not on said lane but on
adjoining land and no part of said structure being nearer the present surface of
such land than twelve feet, leaving the said lane free and clear with an opening
to its full width of ten feet up to the said height.

That the said Atlantic and North-west Railway Company are ready and
willing and hereby offer to pay the sum of (\$25.00) twenty-five dollars as com-
pensation for all damages caused to you by the exercise of the said powers in
40 regard to the said land.

That in the event of your not accepting this offer the Atlantic and North-
west Railway Company hereby nominate and appoint R. D. McGibbon, of the
City of Montreal, Advocate, to be their Arbitrator for the purpose of ascertaining

RECORD. the compensation to be paid to you for the said damages in accordance with the Railway Act.

In the Superior Court.

No. 21½—
continued.

Montreal, October 1st, 1888.
(Signed) C. DRINKWATER,
Secretary, Atlantic and North-west
Railway Company.

I, Joseph Rielle, of the City of Montreal, in the Province of Quebec, a sworn surveyor for the Province of Quebec, do hereby certify :—

1. That I am disinterested in the matter within referred to.
2. That the powers within described are necessary for the Atlantic and North-west Railway for the purpose of building their railway.
3. That I know the lot of land and premises in question and the amount of damage likely to arise from the exercise of the powers of the said Railway Company herein above-mentioned.
4. That the sum offered by the Atlantic and North-west Railway Company in the within notice is a fair compensation for all damages as aforesaid, which I consider to be merely nominal.

Dated at Montreal the 2nd day of October 1888.

(Signed) JOS. RIELLE,
Provincial Land Surveyor. 20

(Endorsed.) Exhibit IX.

[Plan.]

Schedule No. 28.

Province of Quebec, District of Montreal.

In the Superior Court.

Peter W. Wood et al - - Petitioners

and

The Atlantic and North-west Railway Company Respondents.

1. Charles Drinkwater, of the City of Montreal, Secretary of the Atlantic and North-west Railway Company, being duly sworn, make oath and say :— 30

That on the twelfth day of February One thousand eight hundred and eighty-seven the Atlantic and North-west Railway Company deposited with the Clerk of the Peace for the City and District of Montreal a plan of their railway as required by law, showing the line of the said railway across the properties known on the official plan and book of reference of the St. Antoine Ward of the City of Montreal, as Lot Sixteen hundred and four (1604) and Sixteen hundred and five (1605); said plan having previously been certified to by the Minister of Railways and Canals, and a duplicate thereof deposited in the office of the Department of Railways and Canals at Ottawa as required by the Railway Act.

No. 22.
Affidavit of
Chas.
Drinkwater
with plan,
sworn 27th
Aug. 1888.
Exhibit No.
10 of mis-en-
cause.

That the accompanying extract from the said plan shows the manner in which the railway of the Respondents crosses the said lots. RECORD.

That the said plan filed on the twelfth day of February One thousand eight hundred and eighty-seven, as aforesaid, is the only plan which has been filed with the Clerk of the Peace for the said City and District in conformity with the Railway Act, and said railway of the said Respondents is being constructed entirely in conformity with the said plan and shows all the property which the Company Respondents require for the construction of their railway through the said lots. *In the Superior Court.*

No. 22—
continued.

10 And I have signed.

(Signed) C. DRINKWATER.

Sworn before me at the City of Montreal on this twenty-seventh day of August 1888.

(Signed) R. T. HENEKER,
Commissioner for taking Affidavits for
the Province of Quebec.

(Endorsed.) Affidavit of Charles Drinkwater, with plan attached, Exhibit No. X.

Filed 31st August 1888.

20 (Paraphed.) J.R.V. Dep. P.S.C.

[Plan.]

Schedule No. 29.

On this day, the twenty-ninth day of July, in the year of Our Lord One thousand eight hundred and seventy-four, before the undersigned Public Notary, duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the City of Montreal, in the said Province—

No. 23.
Copy of
Deed of Sale
from Geo.
Foster to
Chas.
Cushing,
dated 29th
July 1874.
Exhibit No.
11 of mis-en-
cause.

Personally appeared Andrew Morton of the town of Brantford in the County of Brant, in the Province of Ontario, manufacturer; James Young Morton, of the same place, hardware merchant; and George Foster, of the same place, administrators of the real and personal estate, with the Will annexed, of Robert Morton, late of the said town of Brantford, gentleman, deceased, all herein acting and represented by John Young of the said City of Montreal, Esquire, merchant, their Attorney as such duly constituted by Letter or Power of Attorney, executed in presence of a witness at Brantford aforesaid the tenth of July instant (1874) hereto annexed identified by the signatures of the parties hereto, and me, said Notary, who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over, and by these presents do bargain, sell, assign, transfer, and make over from henceforth and for ever, with promise of
40 warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, to Charles Cushing of the said City of Montreal, Notary

RECORD. Public, party to these presents, and accepting thereof for himself, his heirs and assigns.

*In the
Superior
Court.*

No. 23.
Copy of
Deed of Sale
from Geo.
Foster to
Chas.
Cushing,
dated 29th
July 1874.
Exhibit No.
11 of mis-en-
cause—
continued.

That certain lot of land or emplacement situate and fronting on Guy Street, in the said City of Montreal, and known and designated by the number Sixteen hundred and four (1604) on the official plan and book of reference of the St. Antoine Ward, containing ninety-six feet in width in front and in rear by one hundred and sixty feet in depth, English measure, with two brick dwelling-houses and other buildings thereon, and such right to use the lane in rear in common with others as the said Testator, Robert Morton, had or was in his lifetime entitled to, with all or every the members and appurtenances thereunto 10
belonging, of all which the said purchaser declares to have a perfect knowledge, as having seen and viewed the same and therewith is content and satisfied. Which said vendors *à* qualité are lawfully seised thereof by virtue of a good and sufficient title, the same having been acquired by them as administrators of the real and personal estate with the Will annexed of Robert Morton late of the town of Brantford, in the County of Brant, gentleman, deceased, under Letters of Administration so to them granted by the Surrogate Court of the County of Brant, and acquired by the said Robert Morton, by Deed of Sale from John Try and James Thomson, bearing date and passed before W. Ross and his colleague, Notary Public, the eighteenth of February Eighteen hundred and forty-five, 20
registered the twenty-fourth of April following (1845) under the No. 6465.

The aforesaid hereby bargained and sold lot, piece, or parcel of land, and premises are held under the tenure of Franc aleu roturier, the same having been commuted by Acte passed before P. Lacombe and his colleague, Notaries Public, the twelfth of January, Eighteen hundred and forty-one.

To have, hold, use, and enjoy the aforesaid bargained and sold lot of land, buildings and premises, with their rights, members, and appurtenances unto the said purchaser, his heirs and assigns as his and their own proper freehold for ever by virtue of these presents to enter upon and take possession of the aforesaid lot of land, buildings, and premises forthwith subject to the existing 30
leases of the said houses, the rents whereof to be collected by and paid to the said purchaser from the first of May last 1874.

The present bargain and sale is made in manner as aforesaid for and in consideration of the sum of ten thousand six hundred and twenty-five dollars currency part whereof, to wit, the sum of two thousand five hundred dollars hath been paid in cash at the execution hereof, the receipt whereof is hereby acknowledged whereof quit, and as to the balance or sum of eight thousand one hundred and twenty-five dollars, the said purchaser binds and obliges himself, his heirs and assigns, to well and truly pay or cause the same to be well and truly paid as follows, to wit: seventeen hundred and ninety-two dollars currency part 40
thereof to the exoneration and discharge *à* l'acquit of the said vendor to John Try and James Thomson the vendors named in the above-mentioned Deed of Sale of the eighteenth of February Eighteen hundred and forty-five, their heirs and assigns at the time therein specified, and for the purpose of paying the same at the time and in the manner expressed in a certain marriage contract executed between John Blackwood Forzwith and Mary Catherine Gerrard on the fourteenth of

March Eighteen hundred and twenty-nine, and deposited in the office of Henry Griffin, Notary, the twenty-eighth of April of the same year with interest thereon in the meantime at the rate of six per centum per annum payable half-yearly on the first of March and September each year to whom the same may appertain.

And the balance or sum of six thousand three hundred and thirty-three dollars to the said vendors *ès qualité*, their heirs or assigns, in five years from the date hereof, with interest thereon computed from the date hereof at the rate of seven per centum per annum, payable the said interest half-yearly on the first days of July and January in each year, the first whereof will become due and be payable on the first day of January next (1875).

The vendors *ès qualité* agree and bind themselves and their assigns to discharge any parts or portions of the hereby sold property from any hypothecary claims except as regards the sum of six per cent. on payment to them in cash of the proportionate value of the *Baillieur de fonds* on the part of said property sought to be released.

And for security and faithful payment of the said balance of consideration money and interest 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.

And as further security the said purchaser doth hereby bind and oblige himself immediately to insure and to keep constantly insured at his own costs and expense against loss by fire with such Insurance Company or Companies as the said vendors or their representatives may approve of for a sum of money the house and other buildings erected on the above described piece and parcel of land, and to transfer to the said vendors or representatives the policy or policies of such insurance and insurances, together with the sum of money thereby insured the whole as long as any part or portion of the said amount in principal or interest may remain unpaid. Failing which the said vendors, their heirs and assigns shall have the right to do so, and the said purchaser, his heirs and representatives shall be bound to pay on demand to the said vendors their heirs and assigns all such sum and sums of money which he or they may have expended in so doing, and for security thereof the said premises are hereby further hypothecated to the extent of one hundred dollars.

And in consideration of the premises the said vendors *ès qualité* 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 vendors *ès qualité* can have demand or pretend in or upon the aforesaid hereby bargained and sold lot, piece, or parcel of land and premises of which they hereby divest themselves *ès qualité* in favour 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 do hereby constitute the bearer of these presents, their attorney to whom they give all necessary power and authority to that effect for thus.

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.

RECORD.

*In the
Superior
Court.*

No. 23.

Copy of
Deed of Sale
from Geo.
Foster to
Chas.
Cushing,
dated 29th
July 1874.
Exhibit No.
11 of mis-en-
cause—
continued

RECORD.

*In the
Superior
Court.*

No. 23.

Copy of
Deed of Sale
from Geo.
Foster to
Chas.
Cushing,
dated 29th
July 1874.
Exhibit No.
11 of mis-en-
cause—
continued.

Done and passed at the City of Montreal, in the office of James Stuart Hunter, the said Notary, on the day, month, and year first before written and signed by the said parties hereto, with and in the presence of said Notary, also hereunto subscribing, these presents having been first duly read and executed under the number Nineteen thousand nine hundred and seventy-eight.

(Signed) ANDREW MORTON.
JAMES YOUNG MORTON.
GEO. FOSTER.
By their ATTORNEY.
JOHN YOUNG.
C. CUSHING.
J. S. HUNTER, N.P.

10

A true copy of the original 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 Honour, the Lieutenant Governor of the Province of Quebec, in Council, dated the seventh day of February 1885.

(Signed) J. S. HUNTER, N.P.
(Across the face.)

20

I certify that another copy of this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal, Reg. B., vol. 172, p. 490, at 12 o'clock at noon on the 24th day of August 1874, under the number Eighty thousand seven hundred and twenty-six, G.H.R.

(Signed) JOSEPH BOUCHARD,
Deputy Registrar.

(Endorsed.) Deed of Sale from Geo. Foster et al ès qualité to Charles Cushing, Esq. Copy. Exhibit No. XI., Petitioner's Exhibit No. 6.

Filed 27th August 1888.

(Paraphed.) G. H. K. Dep. P.S.C.

30

No. 24.

Copy of Deed
from Chas.
Cushing to
Calvary
Church,
Trustees,
with Bye-
laws, dated
10th April
1879.
Exhibit No.
12 of mis-en-
cause.

Schedule No. 30.

On this day, the 10th of April, in the year of our Lord One thousand eight hundred and seventy-nine, before the undersigned Public Notary, duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the City of Montreal, in the said Province. Personally appeared Charles Cushing, of the said City of Montreal, Esquire, Notary Public, a Bachelor, 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 hence-

40

RECORD.

*In the
Superior
Court.*

No. 24.

Copy of Deed
from Chas.Cushing to
Calvary
Church
Trustees,with Bye-
laws, dated
10th April
1879.Exhibit No.
12 of mis-en-cause—
continued.

*(See

forth and for ever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever to Peter W. Wood, watchmaker and jeweller; William P. Weir, tide surveyor; Robertson Macaulay, insurance manager; Cranson A. Stark, civil engineer; Benjamin Lamb, butcher; Robert William McLachlan, merchant; and John Redpath Dougall, printer and publisher, all of the said City of Montreal, parties to these presents, and accepting thereof for themselves, their successors in office, and assigns to be elected as provided by the rules and regulations of Calvary Church, herein-after referred to upon trust for the use, benefit, and advantage of the members of Calvary
10 Church, and to and for the ends, intents, uses, and purposes declared and expressed in the rules and regulations hereunto annexed, and identified by the signatures of the parties hereto, and me, the said Notary *re varietur*, and subject to the terms, conditions, limitations, restrictions, and reservations herein contained, and to such alterations or changes* may be made in the said rules and regulations as therein provided.

That certain lot of land situate and fronting on Guy Street, in the said City of Montreal, containing ninety-six feet in width in front, and in rear by one hundred and twelve feet in depth, more or less English measure, and being part of the lot known and designated by the number Sixteen hundred and four (No.
20 1604) on the official plan and in the book of reference of St. Antoine Ward, Montreal aforesaid, bounded in front by Guy Street aforesaid, in rear by the remainder of said lot, on the north-west side by lot official number Fifteen hundred and ninety-three, and on the south-east side by lot official number Sixteen hundred and five (No. 1605), both on said plan, with a church building with lofty easement and sub-basement thereon, and with right of way over the lanes connecting with Richmond Square and of Mitoyennete, in the wall of the dwelling-house on the rear part of and adjoining said hereby sold lot, and subject the said lot now sold to a right of way in favour of the proprietors of the remainder of said lot over a strip of land or roadway at least twelve feet
30 width, communicating along the northerly side of said lot with Guy Street, with all and every the members and appurtenances thereunto belonging, of all which the said purchasers declare to have a perfect knowledge as having seen and viewed the same, and therewith are content and satisfied, which said vendor is lawfully seized thereof by virtue of a good and sufficient title, the same having been acquired by him from Andrew Morton et al. administrators of the Will of Robert Morton, under Letters of Administration granted by the Surrogate Court of the County of Brant, Ontario, by Deed of Sale executed before J. S. Hunter, Notary, the twenty-ninth of July Eighteen hundred and seventy-four, registered the twenty-fourth of August following, under the number 80,726,
40 G. H. R., the said Robert Morton having acquired the same by Deed of Sale from John Try and James Thompson, bearing date and passed before W. Rose and colleague, Notaries, the eighteenth day of February Eighteen hundred and forty-five, registered the twenty-fourth of April following, under the number 6425.

The aforesaid bargained hereby and sold lot, piece, or parcel of land and premises are held under the tenure of franc aleu roturier, the same having been

RECORD. commuted by deed of commutation executed before P. Lacombe and colleague, Notaries, the twelfth of January Eighteen hundred and forty-one.

*In the
Superior
Court.*

No. 24.

Copy of Deed
from Chas.

Cushing to
Calvary
Church
Trustees,
with Bye-
laws, dated
10th April
1879.

Exhibit No.
12 of mis-en-
cause—
continued.

To have, hold, and use and enjoy the aforesaid bargained and sold lot of land and buildings and premises, with their rights, members, and appurtenances unto the said purchasers, their successors in office, assigns, as their own freehold for ever by virtue of these presents, to enter upon and take possession of the aforesaid lot of land, buildings, and premises forthwith.

The present bargain and sale is made in manner aforesaid, for and in consideration of the sum of one dollar, currency cash in hand, paid at the passing of these presents, the receipt whereof is hereby acknowledged whereof quit. 10
And in further consideration that the said purchasers shall as by these presents they do assume payment to the exoneration of the vendor of the sum of nine thousand two hundred dollars to Dame Marion Torrance Gibb, wife of Alexander Gibson, of Willow Bank, Kingston, near Dublin, Ireland, due under and by virtue of a certain deed of obligation and mortgage from the said vendor to her, bearing date and passed before J. S. Hunter, Notary, the sixteenth day of November Eighteen hundred and seventy-six; registered the thirtieth of the same month and year under the No. 95,525, G.H.R., with interest thereon payable as set forth in said deed.

And for security of the due and faithful payment of the said balance of 20
consideration money and interest the hereby bargained and sold lot of land, buildings, and premises are by these presents specially and by privilege of Bailleur de fonds mortgaged and hypothecated.

And as further security the said purchasers do hereby bind and oblige themselves to immediately insure, and to keep constantly insured at their own costs and expenses against loss by fire with said Insurance Company or Companies as the said Dame Marion Torrance Gibb, or her representatives, may approve, for a sum of money equal to the amount at any time remaining due, the house and other buildings erected upon above described piece and parcel of land, and to transfer to the said Dame Marion Torrance Gibb and representa- 30
tives the policy or policies of such insurances. together with the sum of money thereby insured the whole as long as any part or portion of the amount in principal or interest may remain unpaid. Failing which, the said Marion T. Gibb, her heirs and assigns, shall have the right to do so, and the said purchasers, their successors, and representatives shall be bound to repay on demand to said Marion T. Gibb, her heirs and assigns, all such sum and sums of money which she or they may have expended in so doing and for security thereof the said premises are hereby further hypothecated to the extent of two hundred dollars.

And in consideration of the premises the said vendor doth hereby transfer 40
and set over to the said purchaser all right of property, claim, titles, interest, demand, seizen, 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 favour of the said purchasers, their successors and assigns consenting and agreeing that the said purchasers be and remain 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, &c.

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.

Done and passed at the City of Montreal, in the office of James S. Hunter, the said Notary, on the day, month, and year first before written and signed by the said parties hereto with and in the presence of said Notary, also hereunto subscribing these presents, having been duly first read and printed under the
 10 number Twenty-four thousand four hundred and seventy.

(Signed) C. CUSHING.
 PETER W. WOOD,
 W. P. WEIR.
 BENJAMIN LAMB.
 J. REDPATH DOUGALL.
 R. W. McLACHLAN.
 R. MACAULAY.
 C. A. STARK.
 J. S. HUNTER, N.P.

RECORD.
 In the
 Superior
 Court.

No. 24.
 Copy of Deed
 from Chas.
 Cushing to
 Calvary
 Church
 Trustees,
 with Bye-
 laws, dated
 10th April
 1879.
 Exhibit No.
 12 of mis-en-
 cause—
 continued.

20 A true copy of original hereof 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 Honour the Lieutenant-Governor of the Province of Quebec in Council, dated the 7th day of February 1885.

H. S. HUNTER, N.P.

30 Certain regulations adopted by the members of Calvary Church to be appended to the Trust Deed.

The members of Calvary Church Congregational in Montreal do hereby adopt the following regulations to be appended to the Trust Deed of the lot of ground and church premises known as Calvary Church.

1. All those are members of this church and those only whose names are duly entered upon the church roll, the books of the church being in all cases *prima facie* evidence of membership. Every member is entitled to attend and vote at all meetings of the church, and all matters and things pertaining to the church shall be regulated by the members, who shall determine who shall be received into membership, and also when and for what cause any names shall be
 40 erased from the church roll, but no name shall be erased until after one month's notice.

2. Deacons shall be elected by the members from among themselves.

A member to be elected deacon must receive a majority of all the votes cast.

RECORD.

*In the
Superior
Court.*

No. 24.

Copy of Deed
from Chas.
Cushing to
Calvary
Church
Trustees,
with Bye-
laws dated
10th April
1879.
Exhibit No.
12 of mis-en-
cause—
continued.

3. No one shall be eligible to or shall hold the pastoral office who does not hold and maintain the following doctrines or principles of religion, or who upholds or maintains any doctrines subversive of or contrary to them.

Article A.—The Scriptures of the Old and New Testaments are the words of God and the supreme rule of faith and practice.

Article B.—There is only one living and true God revealed as the Father, the Son, and the Holy Spirit, the Creator and Preserver of all things, whose purposes and Providence extend to all events, and who exercises a righteous Government over all His creatures.

Article C.—The human race is in a sinful state. 10

Article D.—The Lord Jesus Christ the Son of God has taken our nature and become obedient unto death, having appeared once to put away sin by the sacrifice of Himself, dying the just for the unjust that he might bring us to God, thereby opening the way of salvation to all men, so that through faith in His name whosoever will may be saved.

Article E.—The Holy Spirit has been poured out upon all flesh, convinces of sin and takes of the things of Christ and shows them unto men, so that they may believe and be saved, and it is only by His regenerating and sanctifying grace that we can be fitted for and introduced into the Kingdom of Christ.

4. Whenever a vacancy shall occur in the pastoral office, the deacons shall, without delay, call a meeting of the members of the church to take such steps as to them may seem good to obtain a pastor; but no pastor shall be elected without a two-third vote of all the members of the church, who at such time shall be resident in the City of Montreal or neighbourhood. 20

5. An annual meeting of the members of the church shall be held in the month of January of each year, or as soon thereafter as possible, to be called by public notice at or during Divine service on the two Lord's days immediately preceding, at which meeting seven trustees shall be elected for the ensuing year, or until their successors are elected, four of them to form a quorum, who shall have power to fill vacancies in their own number. 30

The said trustees shall be and are hereby empowered to hold all property belonging to the church, and more especially a lot of land and premises on Guy Street, in the City of Montreal, known as Calvary Church, in trust for and to the religious use and purposes of the said church, and shall administer its financial affairs subject to such rules of order as may be determined upon from time to time by the church. And the said trustees shall prepare and present at each annual meeting, or at any other time if required, a full and detailed statement of the financial or other affairs of the trust, and further the said trustees shall have full power and authority to mortgage and hypothecate, or to sell, transfer, or dispose of the said lot of land and church premises, or any part thereof, provided it be so resolved and determined upon by a majority of at least two-thirds of the members of the church who shall at such time be resident in the City of Montreal or neighbourhood at or after a meeting called for that purpose by public notice on two Lord's days immediately preceding at or during Divine service. 40

6. It shall at any time be competent for a majority of two-thirds of the whole number of members of the church, who shall at any such time be resident in the City of Montreal or neighbourhood, to remove the pastor, deacons, or trustees, all or any of them from office at or after a meeting of the church called by due notice for the purpose, and it is further understood that withdrawal or exclusion from the membership of the church shall be held to be withdrawal or exclusion from office.

7. No change shall be made in any of the above Articles without a two-thirds vote of all members of the church who shall at such time be resident in the City of Montreal or neighbourhood, nor till after three months' notice publicly given of the same in writing, or at a meeting of the church.

Rules and regulations referred to in Deed of Sale, from Charles Cushing to Peter W. Wood et al. trustees of Calvary Church executed before J. S. Hunter, Notary Public, this tenth day of April, One thousand eight hundred and seventy-nine.

In test. veritatis.

(Signed)

C. CUSHING.
 R. MACAULAY.
 PETER W. WOOD.
 BENJAMIN LAMB.
 W. P. WEIR.
 C. A. STARK.
 R. W. McLACHLAN.
 J. REDPATH DOUGALL.
 J. S. HUNTER, N.P.

20

A true copy.

(Signed)

H. S. HUNTER, N.P.

(Endorsed.) Exhibit XII.

Filed 27th August 1898.

30

(Paraphed.) G. H. K. Dep. P.S.C.

RECORD.

In the Superior Court.

No. 24.

Copy of Deed from Chas. Cushing to Calvary Church Trustees, with Bye-laws, dated 10th April 1879. Exhibit No. 12 of mis-en-cause—
continued.

Schedule No. 31.

Before Herbert Story Hunter, the undersigned Notary Public for the Province of Quebec, residing in the City of Montreal—

40 Appeared Charles Cushing of the said City of Montreal, Esquire, Notary Public, who has hereby sold and conveyed with legal warranty and free and clear of all encumbrances unto Peter W. Wood, watchmaker and jeweller, Benjamin Lamb, butcher; Robert W. McLachlan, merchant; Thomas B. Macaulay; George McGarry, produce merchant; Robert Allan Short, editor, and George Hood, contractor, all of the said City of Montreal, parties to these presents, and accepting thereof for themselves, their successors in office and

No. 25.

Copy of Deed from Chas. Cushing to Trustees of Calvary Church, dated 18th March 1887. Exhibit No. 13 of mis-en-cause.

RECORD.

*In the
Superior
Court.*

No. 25.

Copy
of Deed
from Chas.
Cushing to
Trustees of
Calvary
Church,
dated 18th
March 1887.
Exhibit No.
13 of mis-en-
cause—
continued.

assigns to be elected, as provided by the rules and regulations of Calvary Church, herein-after referred to upon trust, for the use, benefit, and advantage of the members of Calvary Church, and to and for the ends, intents, uses, and purposes declared and expressed in the rules and regulations annexed to a Deed of Sale from the said vendor to the trustees of said church, bearing date, and passed before J. S. Hunter, Notary Public, the tenth day of April Eighteen hundred and seventy-nine, and subject to the terms, conditions, limitations, restrictions, and reservations therein contained, and to such alterations or changes as may be made in the said rules and regulations as therein provided.

A strip of land from off the southerly corner of the lot of land known and designated on the official plan and in the book of reference of St. Antoine Ward, Montreal, by the number Sixteen hundred and four, containing ten feet in width by forty-eight feet in depth, English measure, more or less bounded on the south-west side by a lane which forms the south-westerly boundary of said official lot, and the adjoining Lot No. 1605, on the north-east side by another portion of said lot, Sixteen hundred and four, the property of the purchasers, on the north-west side by another portion of said Lot number Sixteen hundred and four, the property of John Lawson and John Hanna, or representatives, and on the south-east side by Lot number Sixteen hundred and five with the appurtenances thereto belonging, of all which the said purchasers declared to have a perfect knowledge as having seen and viewed the same and therewith to be content and satisfied. 10

The vendor acquired the said property, together with a larger extent of land, from Andrew Morton et al. *ès qualité* by Deed of Sale bearing date, and passed before J. S. Hunter, Notary Public, the twenty-ninth day of July Eighteen hundred and seventy-four, registered on the twenty-fourth day of August following, under the No. 80,726 G.H.R.

The property was commuted by Acte of Commutation, bearing date, and passed before P. Lacombe and colleague, Notaries Public, the twelfth day of January Eighteen hundred and forty-one. 20

To have, hold, use, and enjoy the said property unto the said purchasers with immediate possession, subject to the right of way thereon of abutting proprietors. The present sale and conveyance is thus made for and in consideration of the sum of one dollar currency cash in hand paid at the passing of these presents, the receipt whereof is hereby acknowledged by the vendor whereof quit and in accordance with a resolution passed at a meeting of the managing board or trustees of the said Calvary Church, then known as the Western Congregational Church, worshipping in Shaftesbury Hall, held on the twenty second June Eighteen hundred and seventy-four, a copy whereof is hereto annexed, authorising and empowering the said vendor to purchase and acquire the property for said church, of which property the hereby conveyed lot of land formed part, and the vendor hereby declared that he bought said lot for the purpose of said church, and for no other purposes. 40

The vendor is separate as to property from his wife, Dame Lilly Macaulay, by contract of marriage bearing date and passed before H. S. Hunter, Notary, the twenty-eighth day of June Eighteen hundred and eighty-three.

RECORD.
—
*In the
Superior
Court.*

Done and passed at the said City of Montreal, in the office of Herbert Story Hunter, the said Notary, on the eighteenth day of March One thousand eight hundred and eighty-seven, under the number One thousand nine hundred and eighty-three, and signed by the said parties hereto, with and in the presence of said Notary, after due reading hereof.

No. 25.
Ccopy
of Deed
from Chas.
Cushing to
Trustees of
Calvary
Church,
dated 18th
March 1887.
Exhibit No.
13 of mis-en
cause—
continued.

(Signed) C. CUSHING.
BENJAMIN LAMB.
R. W. McLACHLAN.
T. B. MACAULAY.
PETER W. WOOD.
GEO. MCGARRY.
R. A. SHORT.
R. GEO. HOOD.
H. S. HUNTER, N.P.

A true copy of the original hereof remaining of Record in my office.

H. S. HUNTER, N.P.

(Across the face.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West, Reg. B., Vol. 227, page 198, at fifteen minutes past two o'clock in the afternoon, of the thirtieth day of March Eighteen hundred and eighty-seven, under the number One hundred and thirteen thousand seven hundred and fifty-eight.

(Signed) G. H. RYLAND,
Registrar.

(Endorsed.) Deed of Sale, from Charles Cushing, Esquire, to Peter W. Wood, és qual et al., trustees of Calvary Church.

Exhibit No. XIII. (Petitioner's Exhibit No. 10).

Filed 27th August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

Schedule No. 32.

Extract of Minutes of Calvary Church, Montreal.

“ Shaftesbury Hall, June 22nd, 1874.

“ Mr. Cushing reported that the lot the building committee was empowered to buy had passed into the hands of T. E. Foster, Esquire, also that the lot on Guy Street was obtainable at 45 cents or thereabouts on condition that a church be built thereon at once.

No. 26.
Certified
extract of
minute of
meeting of
Calvary
Church of
22nd June
1874.
Exhibit
No. 14 of
mis-en-cause.

RECORD.

—
*In the
 Superior
 Court.*
 —

“It was moved by Mr. Parker, and seconded by Mr. Osborne, that the lot on Guy Street be secured at once, and that we proceed at once to collect funds for the building.—Carried unanimously.”

I hereby certify that the foregoing is a true extract from the minutes of a meeting of the building committee of the Congregation of Christians of the congregational or independent denomination worshipping in Shaftesbury Hall now known as Calvary Church, duly held on the 22nd June 1874, and at which meeting were present the following members of the said committee being a quorum thereof, to wit, Messrs. John Ritchie, Thomas Parker, William P. Weir, Charles Cushing, William Osborne, and John Redpath Dougall.

10

Which minutes are now in my possession as lawful custodian thereof.
 Montreal, 24th August 1888.

(Signed) C. CUSHING,
 Church Clerk of said Calvary
 Church.

(Endorsed.) Exhibit No. XIV.

Filed 27th August 1888, Petitioner's Exhibit No. 1.

(Paraphed.) G.H.K. Dep. P.S.C.

No. 27.
 Certified
 extract of
 minutes of
 meeting of
 Calvary
 Church
 of 1st Feb.
 1888.
 Exhibit
 No. 15 of
 mis-en-cause.

Schedule No. 33.

Extract from Minutes of Calvary Church, Montreal.

20

“Trustees.

“The following were elected trustees on ballot after nomination:—

“R. W. McLachlan, Peter Wood, Benjamin Lamb, George McGarry,
 R. Allan Short, R. George Wood, James Anderson Richardson.

“Mr. C. Cushing was re-elected clerk.”

I hereby certify that the foregoing is a true extract from the minutes of a meeting of the members of Calvary Church Congregational, Montreal, duly called and held on the first of February last (1888).

Which minutes are now in my possession as lawful custodian thereof.
 Montreal, 24th August 1888.

30

(Signed) C. CUSHING,
 Church Clerk, Calvary Church.

(Endorsed.) Exhibit XV. Petitioner's Exhibit No. 2.

Filed 27th August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

Schedule No. 34.

Extract from Minutes of Calvary Church, Montreal.

" April 2nd, 1879.

" A draft Trust Deed was read whereupon it was moved by Mr. Wood, seconded by Mr. Ritchie, that the draft now read be adopted.—Carried.

" The following were elected trustees, Messrs. Wood, Macaulay, W. P. Weir, C. A Stark, Benjamin Lamb, Robert W. McLachlan, and J. R. Dougall."

" April 30th, 1879.

10 " Mr. Cushing reported that the Trust Deed had been completed by the signatures of the trustees."

I hereby certify that the foregoing are true extracts from the minutes of meeting of the members of Calvary Church, Congregational, Montreal, duly called and held on the second day and thirtieth day of April 1879 respectively.

Which minutes are now in my possession as lawful custodian thereof.
Montreal, 24th August 1888.

(Signed) C. CUSHING,
Church Clerk, Calvary Church.

(Endorsed.) Exhibit XVI., Petitioner's Exhibit No. 3.

Filed 27th August 1888.

20 (Paraphed.) G.H.K. Dep. P.S.C.

RECORD.

*In the
Superior
Court.*

No. 28.

Certified
extract of
minutes of
meeting of
Calvary
Church of
30th Apr.
1879.

Exhibit No.
16 of mis-en-
cause.

Schedule No. 35.

Extracts from Minutes of Calvary Church, Montreal.

" Trustees.

" On motion of Mr. Cushing the following were elected trustees for the current year :—Peter W. Wood, Benjamin Lamb, R. W. McLachlan, T. B. Macaulay, George McGarry, R. A. Short, Robert George Wood.

" Mr. C. Cushing was re-elected clerk."

30 I certify the foregoing to be a true extract from the minutes of a meeting of the members of Calvary Church, Montreal, duly called and held on the 2nd February 1887, of which minutes I am the legal depositary and guardian.
Montreal, 24th August 1888.

(Signed) C. CUSHING,
Church Clerk, Calvary Church.

(Endorsed.) Exhibit XVII., Petitioner's Exhibit No. 4.

Filed 27th August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

No. 29.
Certified
extract of
minutes of
meeting of
Calvary
Church of
2nd Feb.
1887.
Exhibit No.
17 of mis-en-
cause.

RECORD.

Schedule No. 36.

*In the
Superior
Court.*

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

Appeared—

No. 30.
Copy of
Deed of Sale
from John
Hannah to
the Atlantic
and North-
west Railway
Company,
dated 19th
Oct. 1887.
Exhibit No.
18 of mis-
en-cause.

John Hannah of the City of Montreal, watchman, who hath by these presents sold with legal warranty unto the Atlantic and North-west Railway Company, a body politic and corporate duly incorporated, having its principal place of business at the City of Montreal, and herein acting and represented by Charles Drinkwater of the said City of Montreal, the secretary of the said Company, and hereto present and accepting the following immovable property which is required for the purposes of the said railway by the said Railway Company, namely :— 10

Description.

That certain lot of land and premises forming part of Lot Sixteen hundred and four on the official plan and book of reference of the St. Antoine Ward of the said City of Montreal, described as Lot No. 67A on the map or plan and book of reference of the said railway, being of triangular shape and measuring twenty-three feet along the south-east side line, eight feet nine inches along the south-west side line, and containing one hundred feet in superficies, English measure, and more or less with the building thereon erected. 20

Bounded as follows : on the south-west side by a lane which forms the south-west boundary of said official Lot No. Sixteen hundred and four, on the south-east side by another lane of ten feet in width forming the part of said Lot No. Sixteen hundred and four, and dividing the piece of land now sold from official Lot No. Sixteen hundred and five of said ward, and on the north-west side by the remainder of the vendor's property as the said property now subsists, and all its rights, members, and appurtenances without exception or reserve of any kind on the part of the vendor, who acquired the same from Charles Cushing, Esquire. by deed passed before J. S. Hunter. Notary, on the twenty-ninth of August Eighteen hundred and seventy-seven, duly registered on the eighteenth of September of the same year under the No. 99,734, with the right to the said purchaser, as far as the said vendor is concerned, of building over the said lane which forms the south-west boundary of official Lot No. 1,604, but at a height above the ground of not less than twelve feet English measure, and abandons in favour of the purchaser all the rights of the vendor in the lane above-mentioned, which divides the property now sold from official Lot No. Sixteen hundred and five. 30

Vendor's Declarations.

The vendor declared and covenanted—

1. That the said property is held en franc aleu roturier having been duly commuted. 40
2. That the said property is free from all encumbrances whatsoever to the date hereof.

Price.

This sale is thus made in consideration of the sum of six hundred dollars which the vendor acknowledged to have received from the said purchaser at the execution hereof in full payment, discharge, and satisfaction, as well of the value of the said lane as of the damages caused to the vendor by the exercise by the said Railway Company of their franchise thereon.

RECORD.
—
In the Superior Court.
—

And to these presents intervened Dame Cecilia Burns, wife of the vendor, and duly authorised by him, who, after taking communication of this deed, declared herself these with content and renounced as well for herself as for her
10 children to all dower or right of dower and all other matrimonial rights which she or her children may or might have or claim against the said sold property.

No. 30.
Copy of Deed of Sale from John Hannah to the Atlantic and North-west Railway Company, dated 19th Oct. 1887. Exhibit No. 18 of mis-en-cause—
continued.

Whereof Acte.

Done and passed at Montreal aforesaid on the nineteenth day of October One thousand eight hundred and eighty-seven, and of record in the office of the said Mtre Marler, under the No. Thirteen thousand five hundred and seventy, and after due reading hereof the appearers signed in presence of the said Notary with the exception of the said Dame Cecilia Burns, who, on being requested to sign her name, declared she was unable to do so through her ignorance in the art of writing.

20

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

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

(Signed) W. de M. MARLER, N.P.
(Across the face.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West, in Reg. B., Vol. 228, page 95, at ten o'clock in the forenoon of the fourth day of November Eighteen hundred and eighty-seven under the number One hundred and fourteen
30 thousand seven hundred and sixty-one.

(Signed) G. H. RYLAND, Registrar.

(Endorsed.) Sale from John Hannah to the Atlantic and North-west Railway Company, Exhibit No. XVIII., Respondent's Exhibit No. 3.

Filed 31st August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

Schedule No. 37.

On this day the 8th of June in the year of our Lord One thousand eight hundred and seventy-six, before the undersigned Public Notary duly commissioned and sworn in and for the heretofore Province of Lower Canada now the

No. 31.
Copy of Deed of Sale from Chas. Cushing to James Allen, dated 8th June 1876, Exhibit No. 19 of mis-en-cause.

RECORD. Province of Quebec in the Dominion of Canada, residing in the City of Montreal in the said Province—

*In the
Superior
Court.*

No. 31.

Copy of
Deed of Sale
from Chas.
Cushing to
James Allen,
dated 5th
June 1876.
Exhibit No.
19 of mis en-
cause—
continued.

Personally appeared Charles Cushing of the said City of Montreal, Esquire, Notary Public, 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 for ever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever to Mr. James Allan of the said City of Montreal, carpenter, party to these presents and accepting thereof for himself, his heirs and assigns.

That certain emplacement being and situate in the said Antoine Ward of the said City of Montreal, being part and portion of Lot number Sixteen hundred and five (1,605) on the official plan and book of reference of said ward, bounded in front by Richmond Avenue, in rear by Lot No. 1,604 on one side, to the north-west by another part of said Lot No. 1,605, sold to Messrs. Tolmie and Belle, and another side by another part of said Lot No. 1,605, sold to John Ritchie, and containing twenty feet in width in front, and in rear by fifty-three feet in depth, more or less English measure, with right of way over the lane in rear on Lot No. 1,604 of ten feet in width from said lot towards Richmond Square, but not towards Guy Street, and subject to the express condition that said purchaser and assigns shall at all times hereafter maintain that portion of said lane immediately in rear of said lot now sold free and clear of any rubbish, manure, or other substance whatsoever, and the strict observance of this condition may be enforced by any person or persons having a right to use said lane now or in future at the expense of the purchaser. 10

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 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 him by Deed of Sale from Michael C. Mullarky, bearing date and passed before J. S. Hunter, Notary Public, this eighth day of June instant, who acquired the same from the Montreal Building Association by Deed of Sale bearing date and passed before W. F. Light Hall, Notary, the thirteenth of February Eighteen hundred and seventy-four, registered the twenty-sixth of the same month under No. 77,316, G.H.R., and by them by Deed of Sale from Alexander McGibbon before W. H. Lighthall, Notary, the seventeenth of April Eighteen hundred and seventy-one, registered the twenty-sixth of May following (1871) under No. 62,409, G.H.R. 30

The aforesaid hereby bargained and sold lot, piece, or parcel of land and premises are held under the tenure of franc aleu roturier, the same having been commuted. 40

To have, hold, and enjoy the aforesaid bargained and sold lot of land and premises with their rights, members, and appurtenances, unto the said purchaser, his heirs, and assigns, as his and their own proper freehold for ever, by virtue of these presents to enter upon and take possession of the aforesaid lot of land and premises forthwith.

RECORD.

*In the
Superior
Court.*

No. 31.

Copy of
Deed of Sale
from Chas.
Cushing to
James Allen,
dated 8th
June 1876.
Exhibit No.
19 of mis-en-
cause—
continued.

The present bargain and sale is made in manner aforesaid for and in consideration of the sum of five hundred dollars currency part thereof to wit: The sum of two hundred dollars hath been paid cash at the execution hereof, the receipt whereof is hereby acknowledged whereof quit. And as to the balance or remaining sum of three hundred dollars the said purchaser hereby binds himself, his heirs and assigns to well and truly pay the same, or cause it to be paid to the said vendor, his heirs, and assigns, in three years computed from the first of June instant (1876), with interest thereon, at the rate of seven per centum per annum computed from the said first June instant and payable yearly on the first day of June in each year, the first part of said interest payments to become due and payable on the first of June next (1877).

Inasmuch as a hypothec for five hundred dollars exists in favour of the heirs, Gerrard, on a larger extent of property, including the lot now sold, it is hereby understood that said purchaser shall not be bound to pay off said balance of consideration money until the said hypothec is removed.

And for security of the due and faithful payment of the said balance of consideration money and interest, the hereby bargained and sold lot of land and premises are by these presents specially and by privilege de bailleur de fonds mortgaged and hypothecated.

And in consideration of the premises the said vendor doth 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 hereby divests himself in favour 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 doth hereby constitute the bearer of these presents his Attorney to whom he gives all necessary power and authority to that effect.

For thus, &c.

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.

Done and passed at the City of Montreal in the office of J. S. Hunter, the said Notary, on the day, month, and year first before written and signed by the said parties hereto, with and in the presence of said Notary, these presents having been first duly read and executed under the number Twenty-two thousand and thirty-eight.

(Signed) JAMES ALLAN.
C. CUSHING.
J. S. HUNTER, N.P.

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

(Signed) J. S. HUNTER, N.P.

(Endorsed.) Deed of Sale from Charles Cushing, Esq., to Mr. James Allan.

RECORD.

(Across the face.)

—
*In the
 Superior
 Court.*
 —

I certify that the within document was entered and registered at full length in the Registry Office for the Registration Division of Montreal in Reg. B., Vol. 196, p. 490, at two o'clock in the afternoon of the twenty-seventh day of June Eighteen hundred and seventy-six, under the number Ninety-three thousand one hundred and sixty-nine. G.H.R.

(Signed) G. H. RYLAND,
 Registrar.

(Endorsed.) Exhibit No. XIX., Respondent's Exhibit No. 2.

Filed 31st August 1888.

10

(Paraphed.) G.H.K. Dep. P.S.C.

No. 32.

Copy of
 Deed of Sale
 from Chas.
 Cushing to
 Tolmie
 and Belle,
 dated 8th
 June 1876.
 Exhibit
 No. 20 of
 mis-en-
 cause.

Schedule No. 33.

On this day the eighth of June in the year of our Lord One thousand eight hundred and seventy-six—

Before the undersigned Notary Public duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said province. Personally appeared Charles Cushing, of the said City of Montreal, Esquire, Notary Public, 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 for ever, with promise of warranty against all gifts, dowers, and mortgages, substitutions, alienations, and other hindrances whatsoever to Murdo Tolmie and William Bell, both of the said City of Montreal, carpenters, parties to these presents, and accepting thereof for themselves, their heirs, and assigns. That certain emplacement being situate in the St. Antoine Ward of the said City of Montreal, being part and portion of Lot number Sixteen hundred and five (1,605) on the official plan and book of reference of said ward, bounded in front by Richmond Avenue, in rear by Lot No. 1,604, on one side to the south-west by part of said lot sold to James Allan, and on the other side to the north-west by the remaining portion of said Lot No. 1,605, and containing forty feet in width in front, and in rear by fifty-three feet in depth, more or less English measure, with right of way over the land in rear on Lot No. 1,604 of ten feet in width from said lot towards Richmond Avenue Square, but not towards Guy Street, and subject to the express condition that said purchasers and assigns shall at all times hereafter maintain that portion of said lane immediately in rear of said lot now sold free and clear of any rubbish, manure, or other substances whatsoever, and the strict observance of this condition may be enforced by any person or persons having a right to use said lane now or in the future at the expense of said purchasers

With all and every the members and appurtenances thereunto belonging of all which the said purchasers declare to have a perfect knowledge as having seen and viewed the same, and therewith are content and satisfied, which said vendor

is lawfully seized thereof by virtue of a good and sufficient title, the same having been acquired by him, together with a larger extent of land by Deed of Sale from Michael C. Mullarky, bearing date and passed before J. S. Hunter, Notary, the eighth of June instant, who acquired the same from the Montreal Building Association by Deed of Sale bearing date and passed before Mr. H. Lighthall, Notary, the thirtieth of February Eighteen hundred and seventy-four, registered the twenty-sixth of the same month under No. 77,316, G.H.R., and by them by Deed of Sale before W. F. Lighthall, Notary, the seventeenth of April Eighteen hundred and seventy-one, registered the twenty-sixth of May following

10

(1871) under No. 62,409, G.H.R., from Alexander McGibbon. The aforesaid hereby bargained and sold lot, piece, or parcel of land and premises are held under the tenure of franc aleu roturier, the same having been commuted.

To have, hold, use, and enjoy the aforesaid bargained and sold lot of land and premises, with their rights, members, and appurtenances unto the said purchasers, their heirs and assigns, as their own proper freehold for ever, by virtue of these presents to enter upon and take possession of the aforesaid lot of land and premises forthwith.

20

The present bargain and sale is made in manner aforesaid for and in consideration of the sum of one thousand dollars currency, part whereof, to wit: the sum of five hundred dollars hath been paid in cash at the passing of these presents, the receipt whereof is hereby acknowledged, whereof quit as to the balance or remaining sum of five hundred dollars the said purchasers hereby bind and oblige themselves and assigns to well and truly pay the same or cause it to be paid to the said vendor, his heirs or assigns in three years, computed from the first day of June instant (1876), with interest thereon at the rate of seven per cent. per annum, computed from said first of June instant (1876) and payable half-yearly on every first days of June and December in each year, the first of said interest payments to become due and payable on the first of December next (1876), inasmuch as a hypothec for five hundred dollars exists in

30

favour of the heirs Gerrard on a larger extent of property, including the lot now sold, it is hereby understood that said purchasers shall not be bound to pay off said balance of consideration money until the hypothec is removed.

And the security of the due and faithful payment of the said balance of consideration money and interest, the hereby bargained and sold lot of land and premises are by these presents specially and by privilege de bailleur de fonds mortgaged and hypothecated.

40

And in consideration of the premises, the said vendor doth hereby transfer and set over to the said purchasers all right of property, claim, title, interest, demand, seizing, possession, and other rights whatsoever which the said vendor can have, demand, or preterd in or upon the aforesaid hereby bargained and sold lot, piece, or parcel of land and premises of which he hereby divests himself in favour of the said purchasers, their heirs, assigns, consenting and agreeing that the said purchasers 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, &c.

RECORD.

—
In the
Superior
Court.
—

No. 32.

Copy of
Deed of Sale
from Chas.
Cushing to
Tolmie
and Belle,
dated 8th
June 1876.
Exhibit
No. 20 of
mis-en-
cause—
continued.

RECORD.

*In the
Superior
Court.*

No. 32.
Copy of
Deed of Sale
from Chas.
Cushing to
Tolmie
and Belle,
dated 8th
June 1876.
Exhibit
No. 10 of
mis-en-
cause—
continued.

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.

Done and passed at the City of Montreal in the office of J. S. Hunter, the said Notary, on the day, month, and year first above written, and signed by the said parties hereto, with and in the presence of said Notary, these presents having been first duly read and executed under the number Twenty-two thousand and thirty-seven.

(Signed) C. CUSHING.
M. TOLMIE.
W. BELL.
J. S. HUNTER, N.P.

10

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

(Signed) J. S. HUNTER, N.P.

(On the back.)

I certify that the within document was entered and registered at full length in the Registry Office for the Registration Division of Montreal in Reg. B., Vol. 196, p. 431, at twelve o'clock at noon, the twentieth day of June Eighteen hundred and seventy-six, under the number Ninety-three thousand and eighty-two.—G.H.R

(Signed) G. H. RYLAND,
Registrar.

20

Deed of Sale from C. Cushing to Messrs. Tolmie and Belle (Exhibit No. XX., Respondent's Exhibit No. 10).

Filed 31st August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

Schedule No. 39.

No 33.
Deed
of Sale from
Murdo
Tolmie
to Wm.
McCrudden,
dated 5th
February
1885.
Exhibit No.
21 of mis-en-
cause. 3

On this day, the fifth of February, in the year of our Lord One thousand eight hundred and eighty-five—

Before Leandre Bilanger, the undersigned Public Notary, commissioned and sworn, in and for the Province of Quebec, in the Dominion of Canada, 30 residing in the City of Montreal in the said Province—

Personally appeared Mr. Murdo Tolmie of said City of Montreal, carpenter. Who has hereby sold and conveyed with legal warranty, and free and clear of all encumbrances, unto Mr. William McCrudden of the said City of Montreal, trader, present and accepting :

That certain emplacement, being and situate in the St. Antoine Ward of the said City of Montreal, being part and portion of lot known and designated under the number Sixteen hundred and five (1,605) on the official plan, and in the book of reference of said St. Antoine Ward, containing twenty feet in width in front, and in rear by fifty-three feet in depth more or less, English 40

measure, and bounded in front by Richmond Avenue, in rear by a lane which is part of Lot number Sixteen hundred and four on said plan, on one side to the south-west partly by a lane dividing the property presently sold from two parts of said Lot Sixteen hundred and five, belonging to Caroline F. Aitchcock, wife of James Northington, and Mr. Alex. D. Fraser, respectively, and partly by a part of said Lot Sixteen hundred and five, belonging to P. C. Small, and on the other side by that part of said Lot Sixteen hundred and five belonging to George Nelson, together with right of way over the lane in rear, being as aforesaid part of said Lot Sixteen hundred and four, of ten feet in width from said part of lot
 10 presently sold towards Richmond Square, and subject to the express condition that said purchaser and assigns shall at all time hereafter maintain that portion of said lane immediately in rear of the property sold free and clear of any rubbish, manure, or other substance whatsoever, and the strict observance of this condition may be enforced by any person or persons having a right to use said lane now or in the future at the expense of said purchaser.

The said property is the south-west half of the emplacement which said vendor and William Bell bought from Charles Cushing by Deed of Sale executed before J. S. Hunter, Notary, on the eighth June Eighteen hundred and seventy-six, duly registered by the Registry Office for the Registration Division of
 20 Montreal, on the twelfth day of June 1876, under the number 93,082, G.H.R., and the said Mr. Bell sold his share or undivided half in the emplacement described in the last-mentioned Deed of Sale to Mr. Tolmie, in virtue of a Deed of Sale made and executed before J. S. Hunter, Notary, on the first May Eighteen hundred and seventy-nine, duly registered at said Registry Office on the Twenty-eighth May, 1879, under the number B. 102,647, G.H.R.

The aforesaid hereby bargained and sold piece of land is held under the tenure of franc aleu roturier, the same having been commuted.

To have, hold, use, and enjoy the said property unto the said purchaser with possession from the first of February instant, subject however to the
 30 existing leases of the said property which are to be respected by the said purchaser, and the rents accruing therefrom to be collected and received by him from the first day of February instant.

The present sale and conveyance is thus made for the price of nineteen hundred dollars, which the said vendor doth hereby acknowledge to have had and received from said purchaser whereof quit.

At the execution of these presents was present Dame Joan McKenzie, wife of the vendor, who does hereby renounce all rights to dowers or other matrimonial rights she may have on the immoveable* presently sold.

Done and passed at the said City of Montreal on the day, month, and year
 40 above written, under the number Two thousand three hundred and twenty-four.

And the parties have signed with us, said Notary, after due reading.

(Signed) MURDO TOLMIE.
 JOAN TOLMIE.
 WILLIAM McCRUDDEN.
 L. BELANGER, N.P.

RECORD.
 —
In the
Superior
Court.
 —
 No. 33.
 Deed
 of Sale from
 Murdo
 Tolmie
 to Wm.
 McCrudden,
 dated 5th
 February
 1885.
 Exhibit No.
 21 of mis-en-
 cause—
continued.

*(*Sic.*)

RECORD.

*In the
Superior
Court.*

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

(Signed) L. BELANGER, N.P.

(Across the face.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal, Western Reg. B., Vol. 223, page 220, at eleven o'clock in the forenoon of the sixth day of February Eighteen hundred and eighty-five, under the number One hundred and ten thousand five hundred and fifty-seven.

(Signed) G. H. RYLAND,
Registrar.

10

(Endorsed.) Deed of Sale from Mr. Murdo Tolmie to Mr. William McCrudden, Exhibit No. XXI., Respondent's Exhibit 9.

Filed 31 Aug. 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

No. 34.
Copy of
Deed of Sale
from Wm.
McCrudden
to the At-
lantic and
North-
west
Company,
dated 7th
June 1887.
Exhibit No
22 of mis-en-
cause.

Schedule No. 40.

Before Maitre William de Marler, the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal—

Appeared William McCrudden, of the said City of Montreal, trader.

Who hath by these presents sold with legal warranty unto the Atlantic and North-west Railway Company, a body corporate duly incorporated, 20 having its chief place of business at Montreal, herein acting and represented 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 for the construction of the railway of the Railway Company aforesaid, namely :—

Description.

The following property, of which a portion is known on the location plan and book of reference of that part of the railway of said Railway Company from Windsor Street to the City limits as numbered sixty-three, to wit :

That certain emplacement being situate in the St. Antoine Ward of the 30 said City of Montreal, being part of portion of lot known and designated under the number Sixteen hundred and five (1,605) on the official plan and in the book of reference of said St. Antoine Ward, containing twenty feet in width in front and in rear by fifty-three feet in depth, more or less, English measure, and bounded in front by Richmond Avenue, in rear by a lane which is part of Lot number Sixteen hundred and four on said plan on one side, to the south-west partly by a lane dividing the property presently sold from two parts of said Lot Eighteen hundred and five belonging to the purchasers, representing Caroline F. Hitchcock, wife of James Worthington, and Mrs. Alex. D. Fraser

respectively, and partly by a part of said Lot Sixteen hundred and five belonging to the purchasers, as representing Peter C. Small, and on the other side by that part of said Lot Sixteen hundred and five belonging to Geo. Neilson, together with all the vendor's right in the said lane in rear, subject to the obligations imposed upon him by his title deed.

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.

Title.

The vendor acquired said property as follows:—From Murdo Tolmie by
 10 Deed passed before L. Belanger, Notary, dated fifth February 1885, registered 6th of February 1885, No. 110,557.

Possession.

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 Declaration.

The vendor declared and covenanted—

1. That said property is held under the tenure of franc aleu roturier having been duly commuted.
2. That said property is free from all encumbrances and of all assessments
 20 and rates, general or special, to the first of May instant.
3. That he has but once married, namely, to Dame Mary Ann Owens, his present wife, an intervening party hereto.

Conditions.

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

1. To pay the costs of this Deed and its registration.
2. To pay all assessments and rates which may hereafter be imposed upon the said property.
3. To settle with the tenant of said property for any damages the latter
 30 may sustain by his being dispossessed of the said sold property by the Railway Company, the whole to the vendor's exoneration.

Price.

This sale is thus made for the price of three thousand dollars, which the vendor acknowledged to have received from the said purchasers at the execution hereof whereof quit.

And to these presents intervened Dame Mary Ann Owens, the vendor's wife, and duly authorised by him, who, after taking communication of this Deed, declared herself therewith content, and renounced all dower and right of dower, customary and conventional, which she or her children may or might
 40 have or claim against the said sold property.

RECORD.

—
In the Superior Court.
 —

No. 34.
 Copy of Deed of Sale from Wm. McCrudden to the Atlantic and North-west Company, dated 7th June 1887. Exhibit No. 22 of mis-en-cause—
continued.

RECORD.

Whereof Acte.

In the Superior Court.

Executed at Montreal the seventh day of June One thousand eight hundred and eighty-seven, and of record in the office of said Maitre Marler under No. Thirteen thousand two hundred and ten, and after due reading hereof the parties signed in presence of said Notary.

(Signed) W. McCrudden.
M. A. OWENS.
C. DRINKWATER.
W. DE M. MARLER, N.P.

No. 34.
Copy of Deed of Sale from Wm. McCrudden to the Atlantic and North-west Company, dated 7th June 1887. Exhibit No. 22 of mis-en-cause—
continued.

A true copy of the original hereof remaining of record in my office. 10
(Signed) W. DE M. MARLER.

(In the margin.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West in Register B., Vol. 227, page 536, at two o'clock in the afternoon of the twenty-fourth day of June Eighteen hundred and eighty-seven, under the number One hundred and fourteen thousand two hundred and eleven.

(Signed) G. H. RYLAND,
Registrar.

(Endorsed.) Sale of William McCrudden to the Atlantic North-west 20
Railway Company, Exhibit No. XXII., Respondent's Exhibit No. 8.

Filed 31st August 1888.

(Paraphed.) G.H.K. Dep. P.S.C.

Schedule No. 41.

No. 35.
Copy of Deed of Sale from Murdo Tolmie to George Neilson, dated 6th Jan. 1885. Exhibit No. 23 of mis-en-cause.

Before Charles Cushing, the undersigned Notary Public for the Province of Quebec, residing in the City of Montreal—

Personally appeared Murdo Tolmie, of the said City of Montreal, carpenter.

Who has hereby sold and conveyed with legal warranty and free and clear of all encumbrances whatsoever unto George Neilson, of the said City of Montreal, foreman, hereto present and accepting the following immovable property, 30
to wit:—

That certain lot of land forming part of Lot number Sixteen hundred and five on the official plan and in the book of reference of St. Antoine Ward, Montreal, containing twenty feet in width by fifty-three feet in depth, English measure, more or less, bounded in front by Richmond Avenue, in rear by a lane, on the north-east side by another portion of said Lot number Sixteen hundred and five, the property of the said vendor, twenty feet in width, and separating the lot now sold from a lane in rear of the houses fronting on Guy Street, and on the other side to the south-west by another portion of said Lot number Sixteen hundred and five, owned by Mrs. James Allan, with a double brick 40

tenement known by the numbers nine and eleven (9 and 11) of said Richmond Avenue thereon erected, with the right to use the lane in rear, and the servitude of keeping the same in order and free of obstructions, with the appurtenances thereto belonging, of all which the purchasers declared to have a perfect knowledge as having seen and viewed the same and therewith to be content.

RECORD.

*In the
Superior
Court.*

No. 35.

Copy of
Deed of Sale
from Murdo
Tolmie to
George Neil-
son, dated
6th Jan.

1885.

Exhibit

No. 23

of mis-en-

cause—

continued.

The vendor acquired the undivided half of said property from William Bell by Deed of Sale bearing date and passed before J. S. Hunter, Notary Public, the first day of May Eighteen hundred and seventy-nine, registered in
10 the Registry Office for the Registration Division of Montreal West on the twenty-eighth day of the same month and year (1879), under the No. 102,647, G.H.R., and the said vendor and the said William Bell acquired the said property jointly by Deed of Sale from Charles Cushing, the said Notary, bearing date and passed before J. S. Hunter, Notary Public, the eighth day of June Eighteen hundred and seventy-six, registered the twentieth day of the same month and year, under the No. 93,082, G.H.R., who acquired the same, together with a larger extent of land, by Deed of Sale from Michael C. Mullarky, bearing date and passed before the said J. S. Hunter, Notary Public, the eighth day of
20 June Eighteen hundred and seventy-six, registered the twentieth day of the same month, under the number 93,081, G.H.R., who acquired the same from the Montreal Building Association, by Deed of Sale bearing date and passed before W. F. Lighthall, Notary Public, the thirteenth day of February Eighteen hundred and seventy-four, registered the twenty-sixth day of the same month under the No. 77,316, G.H.R.

The said property has been commuted.

To have, hold, and use, and enjoy the said property unto the said purchaser with immediate possession, subject to the existing leases of the same, the rents whereof are to be collected by the said purchaser, at his own costs and expense,
30 on and from the first day of January instant 1885.

The present sale and conveyance is thus made for and in consideration of the sum of nineteen hundred dollars, currency cash, in hand, paid by the said purchaser to the said vendor at the passing of these presents, the receipt whereof is hereby acknowledged, whereof quit.

And to these presents intervened Dame Joan McKenzie, wife of the said Murdo Tolmie, and by him duly authorised who hereby renounces to all right of dower and other matrimonial rights upon the said property.

Done and passed at the City of Montreal in the office of Charles Cushing the said Notary, on the sixth day of January One thousand eight hundred and eighty-five, under the number Nineteen thousand six hundred and twenty-nine,
40 and signed by the said parties hereto with and in the presence of me, the said Notary, after due reading hereof.

(Signed) MURDO TOLMIE.
JOAN TOLMIE.
GEO. NEILSON.
C. CUSHING, N.P.

RECORD.
 In the
 Superior
 Court.

A true copy of the original hereof remaining of record in my office.
 (Signed) C. CUSHING, N.P.

(Across the face.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West in Reg. B. Vol. 223, page 185, at twelve o'clock at noon, on the twenty-third day of January Eighteen hundred and eighty-five, under number One hundred and ten thousand five hundred and fourteen.

(Signed) G. H. RYLAND,
 Registrar. 10

(Endorsed). Deed of Sale from Mr. Murdo Tolmie to Mr. George Neilson, Exhibit No. XXIII, Respondent's Exhibit No. 7, filed 31st August 1888.

(Paraphed.) G.H.K. Deputy P.S.C.

No. 36.
 Copy of Deed
 of Sale from
 George
 Neilson to
 the Atlantic
 and North-
 west Railway
 Company,
 dated 2nd
 June 1887.
 Exhibit No.
 24 of mis-en-
 cause.

Schedule No. 42.

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

Appeared—

George Neilson, residing at the said City of Montreal, forenoon :

Who hath by these presents, sold and conveyed with legal warranty unto the Atlantic and North-west Railway Company a body corporate duly 20 incorporated, having its principal place of business at the said City of Montreal hereto represented and accepting by Charles Drinkwater of the City of Montreal the Secretary of the said Company, the following immovable property, which is required by the said Railway Company for the purposes of their railway, namely :—

Description.

That certain lot of land forming part of Lot number Sixteen hundred and five upon the official plan and in the book of reference of the St. Antoine Ward of the said City of Montreal, containing twenty feet in width by fifty-three feet 30 in depth, English measure, and more or less, bounded in front by Richmond Avenue, in rear by a lane, in the north-east side by another portion of said Lot No. Sixteen hundred and five, the property of William McCrudden on location plan herein-after referred to, or representatives, twenty feet in width, and separating the lot hereby sold from a lane in rear of the houses fronting on Guy Street, and on the other side to the south-west by another portion of the said Lot No. Sixteen hundred and five, owned by Mr. James Allan or representatives, with a double brick tenement, known by the numbers nine and eleven (9 and 11) of said Richmond Avenue, thereon erected, with the right to use the lane in rear subject to keeping the same in order and free from all obstructions, a portion 40 of the above described land is known as Lot number Sixty-four on the location

plan of the part of said railway, lying between Windsor Street and the City limits, with all the rights, members, and appurtenances thereunto belonging without any exception or reserve on the part of the said vendor, who acquired the same under the following—

RECORD.

*In the
Superior
Court.*

No. 36.

Copy of Deed
of Sale from
George
Neilson to
the Atlantic
and North-
west Railway
Company,
dated 2nd
June 1887.
Exhibit No.
24 of mis-en-
cause—
continued.

Titles.

1st. A Deed of Sale to him from Murdo Tolmie, executed before C. Cushing, N.P., on the 6th January 1885, registered 23rd January 1885, under No. 110,514.

2nd. A Deed of Sale to said Tolmie from William Bell of the undivided half of said property, passed before J. S. Hunter, N.P., on the 1st May 1879, registered 28th May 1879 under No. 102,647.

3rd. A Deed of Sale to said Tolmie and Bell jointly from Charles Cushing, executed before said Mon. J. Hunter, the 8th June 1876, registered the 20th June 1876 under the No. 93,082.

Possession.

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

Vendor's Declarations.

The said vendor declared and covenanted—

1st. That the said property is commuted and is free and clear of all encumbrances, and of all assessments and rates, general or special, to the date hereof.

That he has but once married, namely, to Dame Elizabeth Gibson, an intervening party hereto.

Price.

The present sale is thus made for and in consideration of the price and sum of three thousand and fifty dollars which the purchasers have at the execution hereof paid to the vendor, and the latter acknowledges to have executed in full payment and satisfaction, as well of the value of the said land as of the damages suffered or sustained by the vendor by the exercise by the said purchasers of their franchise thereon.

And hereunto intervened Dame Elizabeth Gibson, the vendor's wife, and duly authorised by him, who as well for herself as for her children renounced all dowers, right of dower customary or conventional, and all other matrimonial rights which she or her children may or might have or claim on said property.

Whereof Acte.

Done and passed at Montreal aforesaid on the twenty-second day of June One thousand eight hundred and eighty-seven, and of record in the office of the undersigned Notary, under the No. Thirteen thousand two hundred and

RECORD. forty-five, and the said appearers, after due reading hereof, signed in presence of the undersigned Notary.

In the Superior Court.

(Signed) GEORGE NEILSON.
ELIZABETH NEILSON.
C. DRINKWATER.
W. DE M. MARLER, N.P.

No. 36.
Copy of Deed of Sale from George Neilson to the Atlantic and North-west Railway Company, dated 2nd June 1887. Exhibit No. 24 of mis-en-cause—
continued.

A true copy of the original hereof remaining of record in my office.
(Signed) W. DE M. MARLER, N.P.

(Across the face.)

I certify that this document was entered and registered at full length in 10 the Registry Office for the Registration Division of Montreal West in Reg. B., Vol. 227, p. 571, at eleven o'clock in the forenoon of the seventh day of July Eighteen hundred and eighty-seven, under the number One hundred and fourteen thousand two hundred and seventy-one.

(Signed) G. H. RYLAND,
Registrar.

(Endorsed.) Deed of Sale from George Neilson to the Atlantic and North-west Railway Company. Exhibit No. XXIV., Respondent's Exhibit No. 6.

Filed 31st August 1888.

(Paraphed.) G.H.K.
Deputy P.S.C.

Schedule No. 43.

No. 37.
Copy of Deed of Sale from Dame Helen Law to the Atlantic North-west Railway Company, dated 31st Jan. 1888. Exhibit No. 25 of mis-en-cause.

Before Maitre William de Marler, the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal—

Appeared Dame Helen Law, of the said City of Montreal, widow of the late James Allan, in his lifetime, of the same place, carpenter, acting herein as well in her own name and on her own behalf as in her quality of tutrix to her minor children, issue of her marriage with her deceased husband, namely, Robert Allan, Helen and James Allan, and hereunto in their said quality duly authorised by an order granted by the Honourable Mr. Justice Davidson, one 30 of the Judges of the Supreme Court in the District of Montreal, on the ninth day of July last, of which order a copy is hereunto annexed.

Who hath by these presents sold with legal warranty unto—

The Atlantic and North-west Railway Company, a body corporate duly incorporated, having its principal place of business at the City of Montreal, and herein acting by Charles Drinkwater, of the 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.

That certain emplace^{ment} being and situate in the St. Antoine Ward of the said City of Montreal, bein^g part and portion of Lot number Sixteen hundred and five (1,605) on the official plan, and in the book of reference of the said ward, bounded in front by Richmond Avenue, in rear by Lot No. 1,604, on one side, to the north-east by another part of said Lot No. 1,605, belonging to the purchasers, and to the south-west by the said Railway Company, as representing William Cook, and containing twenty feet in width, in front and in rear by fifty-three feet in depth, more or less, English measure, with the right of way over the lane in rear on Lot number 1,604, of ten feet in width from said lot towards Richmond Square, but not towards Guy Street, and with all the vendor's right in the lane on the south-west side of said Lot 1,605.

A portion of the said emplacement is known as Lot number sixty-five, on the location plan of the said railway, 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.

RECORD.
 —
*In the
 Superior
 Court.*
 —
 No. 37.
 Copy of
 Deed of Sale
 from Dame
 Helen Law
 to the
 Atlantic
 North-west
 Railway
 Company,
 dated 31st
 Jan. 1888.
 Exhibit No.
 25 of mis-en-
 cause—
continued.

Title.

The vendor acquired said property as follows: The late James Allan purchased said property during his marriage with his said wife from C. Cushing, by Deed passed before J. S. Hunter, Notary, on the 8th June 1876, duly registered on the 27th June 1876, No. 93,169, the said Dame Helen Law declares that her said husband was only once married, that he died intestate, leaving as his sole heirs at law his three children above named, to wit: Robert, Helen, and James, to whom one undivided half of said property has been transmitted, the other half belonging to the said Dame Helen Law in virtue of said marriage with her deceased husband, James Allan.

Possession.

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.

The Railway Company to give the vendor possession of the upper part of the house adjoining purchased from W. J. Cook free of rent, to first of May next.

Vendor's Declaration.

The vendor declared and covenanted—

- 1st. The said property is held under the tenure of franc aleu roturier.
- 2nd. That said property is free from all assessments and rates, general or special, to the first of May last, and of all encumbrances except that herein-after released.

RECORD.

Conditions.

In the Superior Court.
 No. 37.
 Copy of Deed of Sale from Dame Helen Law to the Atlantic North-west Railway Company, dated 31st Jan. 1888. Exhibit No. 25 of mis-en-cause—
continued.

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.
- 2nd. 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 seven 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 value of the second land, as of the damages caused her by the exercise by the Railway Company of their powers and franchise thereon. 10

And hereto intervened John Allan of the said City of Montreal, carpenter and contractor, the hypothecary-creditor of said property, under a Deed of Obligation, granted by the said Dame Helen Law in his favour, passed before C. Cushing, Notary, on the seventh of January Eighteen hundred and seventy-nine, and duly registered on the twenty-fourth of the same month, under No. 102,120, who released and discharged the property above described of and from all claim or demand, privilege, or hypothec in his favour, under said Deed and its registration, requiring the Registrar to cancel the registration of said Deed in the Registers wherein said deed is registered. 20

Whereof Acte

Thus done and passed at the City of Montreal on the thirty-first day of January One thousand eight hundred and eighty-eight, and of record in the office of said Maitre Marler, under No. Thirteen thousand nine hundred and five, and after due reading hereof, the parties signed in the presence of said Notary.

(Signed) H. ALLAN.
 JOHN ALLAN.
 C. DRINKWATER. 30
 W. DE M. MARLER, N.P.

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

(Signed) W. DE M. MARLER, N.P.

(Across the face.)

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West in Reg. B., Vol. 228, page 324, at three o'clock in the afternoon, of the sixth day of

February Eighteen hundred and eighty-eight, under the number One hundred and fifteen thousand one hundred and fifty-two. RECORD.

(Signed) G. H. RYLAND,
Registrar.

*In the
Superior
Court.*

(Endorsed.) Sale by Dame Helen Law, widow of James Allan, to the Atlantic and North-west Railway Company (Exhibit No. XXV.) Respondent's Exhibit No. 1, filed 31st August 1888.

(Paraphed.) G.H.K.
Deputy P.S.C.

Schedule No. 44.

No. 38.

Copy of
Deed of
Sale from
John Ritchie
to Wm. J.
Cooke, dated
20th Oct.
1876.
Exhibit No.
26 of mis-en-
cause.

10 On this day, the twentieth of October, in the year of our Lord One thousand eight hundred and seventy-six, before the undersigned Public Notary, duly commissioned and sworn in and for heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the City of Montreal, in the said Province :—

Personally appeared John Ritchie, of the City of Montreal, aforesaid, gentleman, who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over, and by these presents does bargain, sell, assign, transfer, and make over, from henceforth and for ever, with promise of warranty, against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever to William J. Cook, of the said City of Montreal, plasterer, party to these presents, and accepting thereof for himself, his heirs and assigns, that certain emplacement being and situate in the Saint Antoine Ward of the said City of Montreal, being part and portion of Lot number Sixteen hundred and five (1,605) on the official plan and book of reference of said ward, bounded in front by Richmond Avenue, in rear by Lot number 1,604, on one side to the south-east by another part of said Lot No. 1,605, sold to James Allen, and on the other side by a lane, and containing twenty feet in width in front, and in rear by fifty-three feet in depth, more or less, English measure. With right of way over the lane in rear of Lot No. 1,604, of ten feet wide from said lot
20 towards Richmond Square, but not towards Guy Street, and subject to the expressed condition that said purchasers and assigns shall at all times hereafter maintain that portion of said lane immediately in rear of said lot now sold free and clear of any rubbish, manure, or other substances whatsoever, and the strict observance of this condition may be enforced by any person having a right to use said lane now or in the future, at the expense of said purchaser, 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 is content and satisfied. Which said vendor is lawfully seized thereof, by virtue of a good and sufficient title, the same having been
30 acquired by him by Deed of Sale from Charles Cushing, of the said City of Montreal, Notary Public, executed before J. S. Hunter, Notary, the eighth of

RECORD. June last (1876), registered the twenty-seventh of the same month of June, under No. 93,170, G.H.R. The aforesaid hereby bargained and sold lot, piece, or parcel of land and premises are held under the tenure of franc aleu roturier, the same having been commuted.

*In the
Superior
Court.*

No. 38.

Copy of
Deed of
Sale from
John Ritchie
to Wm. J.
Cooke, dated
20th Oct.
1876.
Exhibit No.
26 of mis-en-
cause—
continued.

To have, hold, use, and enjoy the aforesaid bargained and sold lot of land and premises, with their rights, members, and appurtenances, unto the said purchaser, his heirs and assigns, as his and their own proper freehold for ever, by virtue of these presents, to enter upon and take possession of the aforesaid lot of land and premises forthwith. The present bargain and sale is made in manner as aforesaid, for and in consideration of the sum of five hundred and fifty dollars currency, in deduction of which said sum the said vendor hereby acknowledged to have had and received from the said purchaser at the execution hereof that of two hundred and seventy-five dollars, whereof quit. And as to the balance or remaining sum of two hundred and seventy-five dollars, the said purchaser hereby promises, binds, and obliges himself, his heirs or assigns, to pay or cause the same to be well and truly paid as follows, to wit:

The sum of one hundred dollars by and with the consent of the said vendor to the herein-before named Charles Cushing in three years from the first day of June last (1876), with interest thereon at the rate of seven per centum per annum, to be computed from said last-mentioned date, and payable half-yearly on every first days of June and December in each year, the first of which said interest payments to become due and be payable on the first day of December next, in payment and satisfaction of the bailleur de fonds claim by the said Charles Cushing held on the hereby sold land and premises under the said above-cited Deed of Sale of date the eighth of June last. And the remaining sum of one hundred and seventy-five dollars to be paid by the said vendor, his order, or legal representatives, in three years from the said first day of June last 1876, together with interest thereon at the rate of seven per centum per annum, to be computed from the date hereof, and payable half-yearly on the first of June and December in each year, the first payment for the broken period payable on the first of December next.

And for security of the due and faithful payment of the said balance of consideration money and interest, the hereby bargained and sold lot of land and premises are, by these presents, specially, and by privilege of bailleur de fonds, mortgaged and hypothecated.

And in consideration of the premises, the said vendor doth hereby transfer and set over to the said purchaser all right 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 favour 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 doth hereby constitute the bearer of these presents his attorney, to whom he gives all necessary power and authority to that effect. For thus, &c.

And at the making and passing of these presents also personally appeared and intervened Dame Margaret Long, wife of the said John Ritchie, by her said husband duly and specially authorised for all and every the effects and purposes hereof, who, after having had and taken communication of the foregoing Deed of Sale, declared to have renounced, as by these presents she doth, as well in her own name and behalf as for and in the name and on behalf of her child or children born or to be born issue of her marriage with the said John Ritchie, renounces to all dower and all right and title of dower, soit coutumier ou prefix, which she the said Margaret Long might or of right ought to have or claim in
 10 or upon the above described and hereby bargained and sold lot, piece, or parcel of land and premises, of which she hereby divests herself and her said children, declaring the said property and every part thereof hereby freed, cleared, and discharged of and from all her said rights of dower and all other her matrimonial rights and claims whether legal, stipulated, or customary.

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 Charles Cushing, the said Notary, on the day, month, and year first before written and
 20 signed by the said parties hereto with and in the presence of said Notary, also hereunto subscribing these presents having been first duly read and executed under the number Eight thousand six hundred and twenty-two.

(Signed) J. RITCHIE.
 W. J. COOK.
 MARGARET RITCHIE.
 C. CUSHING, N.P.

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

(Signed) C. CUSHING, N.P.

(Endorsed.) Exhibit XXVI. Deed of Sale from John Ritchie, Esq, to
 30 Mr. William J. Cook. Respondent's Exhibit No. 5.

Filed 31st August 1888.

(Paraphed.) G.H.K.
 Deputy P.S.C.

Schedule No. 45.

Before Maitre William de M. Marler the undersigned Public Notary for the Province of Quebec, residing in the City of Montreal—

Appeared William J. Cook, of the said City of Montreal, plasterer, who hath by these presents sold with legal warranty unto—

The Atlantic and North-west Railway Company, a body corporate duly
 40 incorporated, having their principal place of business at the City of Montreal,

RECORD.

*In the
 Superior
 Court.*

No. 38.

Copy of
 Deed of
 Sale from
 John Ritchie
 to Wm. J.
 Cooke, dated
 10th Oct.
 1876.
 Exhibit No.
 26 of mis-en-
 cause—
continued.

No. 39.

Copy of
 Deed of Sale
 from Wm.
 J. Cook to
 the Atlantic
 and North-
 west Railway
 Company,
 dated
 11th July
 1887.
 Exhibit No.
 27 of mis-en-
 cause.

RECORD. herein acting by Charles Drinkwater of the said City of Montreal, the Secretary of the said Company hereto present and accepting the following immovable property, namely :—

*In the
Superior
Court.*

Description.

No. 39.
Copy of
Deed of Sale
from Wm.
J. Cook to
the Atlantic
and North-
west Railway
Company,
dated
11th July
1887.
Exhibit No.
27 of mis-en-
cause—
continued.

An emplacement forming part of Lot number Sixteen hundred and five (1,605) on the official plan and book of reference of the St. Antoine Ward of the said City of Montreal, bounded as follows:—In front by Richmond Avenue, in rear by official Lot number Sixteen hundred and four, on one side to the north-east by another part of said Lot Sixteen hundred and five, the property of the estate of James Allan; and on the other side to the south-west by a lane, and containing twenty feet in width, in front and in rear by fifty-three feet in depth, more or less, English measure, with all the vendor's rights in the said lane in rear of ten feet in width forming part of said Lot number Sixteen hundred and four, and on the lane on the south-west side of the said emplacement and in said Richmond Avenue. 10

A portion of the said emplacement is known on the location plan of that part of the railway of said Railway Company lying between Windsor Street and the City limits, as Lot number Sixty-six; 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. 20

Title.

The vendor acquired said property as follows :—From George A. Cook, by Deed of Sale passed before the undersigned Notary, on the 21st May 1878, registered on the twelfth June 1878, No. 101,186.

Possession.

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 the tenure of franc aleu roturier, 30 having been duly commuted.
- 2nd. The said property is free from all encumbrances, and of all 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, namely :—

- 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, including those for the current year.

Price.

This sale is thus made for the price of three thousand and four hundred dollars, which the purchasers have paid, and the vendor acknowledged to have received in full payment, discharge, and satisfaction as well of the said land, as of the damages suffered by the exercise thereon of the powers and franchises of said Railway Company.

And hereto intervened Dame Elizabeth Moore, wife of the vendor, and duly authorised by him, who after taking communication of this Deed, declared herself therewith content and renounced as well for herself as for her children to all dower and right of dower, customary or conventional, which she or her children may or might have or claim upon the said sold property.

Whereof Acte.

Thus done and passed at the City of Montreal, on the eleventh day of July, One thousand eight hundred and eighty-seven, and of record in the office of said Maitre Marler, under number Thirteen thousand three hundred and twenty-one, and after due reading hereof the parties signed in the presence of said Notary.

(Signed) ELIZABETH COOK.
W. J. COOK.
C. DRINKWATER.
W. DE M. MARLER, N.P.

20

A true copy of the original hereof remaining of record on my office.

(Signed) W. DE M. MARLER, N.P.

{Across the face.}

I certify that this document was entered and registered at full length in the Registry Office for the Registration Division of Montreal West in Reg. B., Vol. 227, p. 644, at four o'clock in the afternoon of the twenty-eighth day of July Eighteen hundred and eighty-seven, under the number One hundred and fourteen thousand three hundred and seventy-seven.

30

(Signed) G. H. RYLAND,
Registrar.

(Endorsed.)

Sale by William J. Cook to the Atlantic and North-west Railway Company, Exhibit No. XXVII., Respondent's Exhibit No. 4, filed 31st August 1888.

(Paraphed.) G.H.K.
Deputy P.S.C.

RECORD.

*In the
Superior
Court.*

No 39.

Copy of
Deed of Sale
from Wm.
J. Cook to
the Atlantic
and North-
west Railway
Company,
dated
11th July
1887.
Exhibit No.
27 of mis-en-
cause—
continued.

RECORD.

Schedule No. 46.

*In the
Superior
Court.*

No. 40.

Copy of pro-
test by
Calvary
Church
Trustees
against the
Atlantic and
North-west
Railway
Company,
dated 30th
March 1887.
Exhibit No.
28 of mis-
en-cause.

On this day, the thirtieth of March, in the year of Our Lord one thousand eight hundred and eighty-seven—

At the request of the trustees of Calvary Congregational Church, in the City of Montreal—

I, Charles Cushing, the undersigned Notary Public, duly commissioned and sworn in and for the Province of Quebec, in the Dominion of Canada, residing in the City of Montreal, in the said Province.

Personally went to the office in the said City of Montreal, of the Atlantic and North-west Railway Company, a body corporate, where being and speaking 10
to Charles Drinkwater, Esquire, the Secretary of the said Company, I declared that the said Company obtained a Charter or Act of Incorporation to enable it to construct a railway line from a point on the Atlantic coast in the said Dominion to a port on Lake Superior, via Montreal, and acquire the land necessary for the purpose.

That the said Company did deposit with the Clerk of the Peace for the City and District of Montreal, as required by law, a plan showing the line of said railway through said district.

That subsequently the said Company deposited another plan with the said Clerk of the Peace, which new plan and line of railway are *ultra vires*. 20

That the said Company is seeking to construct a branch from its line of railway, which will penetrate the City of Montreal, from a point in its line between Mile End and the Lachine Bank in the District of Montreal, to a point or terminus within the City, which it has no right to construct nor to acquire land for.

That the said Company has deposited or caused to be deposited in the office of the Clerk of the Peace for the District of Montreal, a map or plan and book of reference of a proposed line or branch of line of railway into and through the said Antoine Ward, of the said City of Montreal, which the said Company has not the right to build or acquire or expropriate land for, and that 30
according to the said plan or map and book of reference a portion of the property of the said requirants, forming part of lot, official number Sixteen hundred and four (1,604) on the plan and book of reference of said St. Antoine Ward will be required.

That the expropriation of any parties of the land of the said requirants by the said Company is and will be illegal, nul, and void, and moreover, if 40
persisted in, will under* the building erected by the requirants, and upon the said lot, official number Sixteen hundred and four (1,604), unfit for the purposes for which it was erected.

*(*Sic.*)

Now, therefore, I, the said Notary, at the request aforesaid and speaking 40
aforesaid, did and do hereby notify and warn the said the Atlantic and North-west Railway Company, not to trespass upon nor interfere in any way with the said property of the said requirants, and that the said requirants will resist to the uttermost all and any attempts to trespass upon or interfere with or expropriate said property by the said Company, or by any other person or persons, or bodies politic or corporate.

And I, the said Notary, at the request aforesaid, and speaking as aforesaid, have protested, and by these presents do most solemnly protest against the said the Atlantic and North-west Railway Company, and all others whom the same doth, shall, or may in any way concern, for all costs, losses, damages, detriments, 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 all and every the causes above-mentioned or incidental thereto. And I have served a copy hereof upon the said the Atlantic and North-west Railway Company, speaking as aforesaid.

RECORD.

In the Superior Court.

No. 40.

Copy of protest by Calvary Church Trustees against the Atlantic and North-west Railway Company, dated 30th March 1887. Exhibit No. 28 of mis-en-cause—*continued.*

10 This 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 Twenty-one thousand seven hundred and twenty-five of the original Deeds of Record in my office of the said Notary, being first duly read, and I have signed in testimony of the premises.

(Signed) C. CUSHING, N.P.

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

(Signed) C. CUSHING, N.P.

(Endorsed.) Protest at the request of the trustees of the Calvary Church against the Atlantic and North-west Railway Company, Exhibit No. 28, 20 Petitioners' Exhibit No. 7.

Filed August 1888.

Schedule No. 47.

Cost of building basement finished in 1876. Upper part finished in 1878.

No. 41. Detailed statement of cost of building basement and upper flats of Church property. Exhibit No. 29 of mis-en-cause.

				\$
	Barlow, W. J.	-	Plumber	437.43
	Barlow, Moore, & Co.	- - - -	Do.	159.37
	Clark, William	- - - -	Sodding	249.42
	Cook, Wm. J.	- - - -	Plasterer	365.00
30	Cowen, A.	- - - -	Bricklayer	2065.00
	Craig, A.	- - - -	Painter	998.00
	Currie, Wm.	- - - -	Carpenter	267.60
	Decain, J.	- - - -	Labourer	15.00
	Garnen, E.	- - - -	Do.	15.50
	Gould, Jos.	- - - -	Organ builder, &c.	480.00
	Hendery, R.	- - - -	Pew numbers	6.04
	Hutchinson and Steele	- - - -	Architects	310.00
	McClelland Bros.	- - - -	Hardware	231.10
	McDonald & Co., A. P.	- - - -	Carpenters	1450.00
40	McNally, W.	- - - -	Drains	54.25
	Marion, J.	- - - -	Mason	2400.00
	Morgan & Co., H.	- - - -	Merchants	120.00

RECORD.									\$
In the Superior Court. No. 41. Detailed Statement of cost of building basement and upper flats of Church property. Exhibit No. 29 of mis- en-cause— <i>continued.</i>	Nicholson, Peter	-	-	-	-	Mason	-	-	10.50
	Phillips and Currie					Carpenters			260.00
	Phillips and Wand					Plasterers			229.00
	Prowes Brothers	-				Furnaces, &c.	-	-	602.60
	Ritchie, John	-	-	-	-	Contractor	-	-	89.55
	Reed, George W.	-	-	-	-	Roofer	-	-	831.00
	Robertson & Co., Thomas	-	-	-	-	Hardware	-	-	258.38
	Roberts, George	-	-	-	-	Carpenter	-	-	3952.60
	Rochon, Felix	-	-	-	-	Labourer	-	-	13.15
	Ryan, M.	-	-	-	-	Furnaces	-	-	200.00
	Smith, J. C.	-	-	-	-	Carpenter	-	-	379.24
	Tees Bros.	-	-	-	-	Manufacturers	-	-	373.23
	Tolmie and Bell	-	-	-	-	Carpenters	-	-	50.00
									\$16872.96

(Endorsed.) Exhibit No. 29.

Schedule No. 49.

Province of Quebec, District of Montreal.

In the Superior Court.

Peter W. Wood et al - Petitioners, 20

v.

The Atlantic and North-west Railway
Company - - - Respondents.

I, Thomas G. Shaughnessy, of the City and District of Montreal, a Director of the Company, Respondents, make oath and say :—

I am in charge of, and superintending the, construction of the railway of the Respondents, through the St. Antoine Ward of the City of Montreal, and know the property referred to in this matter as a lane which is known as a portion of the Official lot of the said Saint Antoine Ward, No. 1,604.

That it is not the intention of the said Railway Company Respondents to close up this lane, or to obstruct it in any way whatsoever, or to interfere with the free use of the said lane by all parties who have a right of passage and usage therein, under the title deeds of the various proprietors owning portions of the said official Lot 1,604 referred to in the said Petition.

That in order to construct the railway of the Respondents in such a way as to leave an open and uninterrupted passage through and along this lane, to communicate with the lane communicating with St. Antoine Street, the said Respondents intend to erect a trestle work in the manner and form as shown upon the accompanying plan, which will leave this lane entirely free and uninterrupted to its full width and length, which trestle work will give a clear

headway of the proper height as required by the Ordinances of the City of Montreal. RECORD.

In the
Superior
Court.

That the said Atlantic and North-West Railway Company, the Respondents in this cause, do not intend to construct their railway so as to touch in any way the property of the Petitioners, to wit: that portion of the said Lot 1,604 upon which Calvary Church is erected, and although by the plan filed with the Clerk of the Peace it appears that the line of the railway interferes with corner of the said lot, by cutting off a few feet of it, the said railway will be constructed in such a way as to clear the said lot, and pass by the corner thereof, without touching it in any way whatever, and hath signed.

(Signed) THOS. G. SHAUGHNESSY.

Sworn before me at the City of Montreal this thirty-first day of August 1888.

(Signed) R. T. HENEKER,
Commissioner for taking affidavits for
the Superior Court, Province
of Quebec.

(Endorsed.) Affidavit of Thomas G. Shaughnessy, and plan attached. Exhibit No. 31, filed 30th August 1888.

(Paraphed.) J.B.B.
Deputy P.S.C.

[Plan of Trestle Work.]

Schedule No. 50.

On this day, the eighth of June, in the year of our Lord One thousand eight hundred and seventy-six, before the undersigned Public Notary, duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the City of Montreal, in the said Province—

Personally appeared, Michael C. Mullarky, of the said City of Montreal, 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 from henceforth and for ever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, to Charles Cushing, of the said City of Montreal, Esquire, Notary Public, party to these presents, and accepting thereof for himself, his heirs and assigns.

That certain emplacement being and situate in the St. Antoine Ward of the said City of Montreal, forming the south-westerly half or portion of Lot number Sixteen hundred and five (1,605) on the official plan and book of reference of said ward, bounded in front by Richmond Avenue, in rear by Lot No. 1,604 on one side, to the south-west by a lane, and on the other side to the north-east by the

No. 43.
Copy of
Deed of Sale
from
Michael C.
Mullarky to
Charles
Cushing,
dated 8th
June 1876.
Exhibit No.
32 of mis-en-
cause.

RECORD.

*In the
Superior
Court.*

No. 43.

Copy of
Deed of Sale
fromMichael C.
Mullarky to
Charles
Cushing,
dated 8th
June 1876.
Exhibit No.
32 of mis-en-
cause—
continued.

remaining portion of said Lot No. 1,605, and containing eighty feet in width by fifty-three feet in depth, English measure, and more or less, with the right to use said lane and Richmond Avenue, but not to incumber or obstruct the same, 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 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 him from the Montreal Building Association by Deed of Sale bearing date and passed before W. F. Lighthall, Notary, the thirteenth of February Eighteen hundred and seventy-four, registered the 10 twenty-sixth of the same month under No. 77,316, G.H.R., and by them by Deed of Sale before W. F. Lighthall, Notary, the seventeenth of April Eighteen hundred and seventy-one, registered the twenty-sixth of May following (1871) under No. 62,409, G.H.R.

The aforesaid hereby bargained and sold lot, piece, or parcel of land and premises are held under the tenure of franc aleu roturier, the same having been commuted.

To have, hold, use, and enjoy the aforesaid bargained and sold lot of land and premises, with their rights, members, and appurtenances, unto the said purchaser, his heirs and assigns, as his and their own proper freehold for ever, 20 by virtue of these presents to enter upon and take possession of the aforesaid lot of land and premises forthwith.

The present bargain and sale is made in manner aforesaid, for and in consideration of the sum of fourteen hundred and eighty-four dollars, currency, part whereof, to wit, the sum of nine hundred and eighty-four dollars hath been paid in cash at the passing of these presents, the receipt whereof is hereby acknowledged, whereof quit, and as to the balance or remaining sum of five hundred dollars the same shall remain in the hands of the said purchaser, his heirs and assigns, until the mortgage affecting the emplacement hereby sold in favour of the heirs Gerrard shall be discharged or said emplacement freed 30 therefrom, upon the obtaining of which discharge or release the said balance shall immediately become due and exigible, the said purchaser to pay interest on such balance at the rate of six per centum per annum from the first day of November Eighteen hundred and seventy-three, payable semi annually, as the whole is expressed in the Deed of Sale, from David Moss to George Stanway passed before W. Eaton and his colleague notaries, the ninth of May Eighteen hundred and sixty-four, and registered the twenty-eighth of June following, under the No. 38,186, G.H.R., and as also expressed in Deed of Sale from John Try, and James Thomson to David Moss.

And for security of the due and faithful payment of the said balance of 40 consideration money and interest the hereby bargained and sold lot of land and premises are by these presents specially and by privilege of bailleur de fonds mortgaged and hypothecated.

And in consideration of the premises the said vendor doth hereby transfer and set over to the said purchaser all right 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 favour 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 doth hereby constitute the bearer of these presents, his Attorney, to whom he gives all necessary power and authority to that effect, for thus, &c.

RECORD.
*In the
 Superior
 Court.*

No. 43.
 Copy of
 Deed of Sale
 from
 Michael C.
 Mullarky to
 Charles
 Cushing,
 dated 8th
 June 1876.
 Exhibit No.
 32 of mis-en-
 cause—
continued.

And at the making and passing of these presents also personally appeared
 10 and intervened Dame Elizabeth Carey, wife of the said Michael C. Mullarky, by
 her said husband duly and specially authorised for all and every the effects and
 purposes hereof, herein acting by the said Michael C. Mullarky, by power of
 attorney, executed before E. Moreau, Notary, the sixteenth of June Eighteen
 hundred and sixty-nine, who, after, having had and taken communication of the
 foregoing Deed of Sale, declared to have renounced as by these presents she
 doth as well in her own name and behalf, as for and in the name and on behalf
 of her child or children born or to be born issue of her marriage with the said
 Michael C. Mullarky, renounce to all dower, and all right and title of dower, soit
 coutumier ou prefix which she the said Elizabeth Carey might or of right ought
 20 to have or claim in or upon the above described and hereby bargained and sold
 lot, piece, or parcel of land and premises of which she hereby divests herself and
 her said children, declaring the said property and every part there hereby freed,
 cleared, and discharged of and from all her said rights of dower and all other her
 matrimonial rights and claims whether legal, stipulated, or customary.

And for the execution of these presents and of every the premises the said parties have elected their domicile at the place above mentioned.

Done and passed at the City of Montreal in the office of J. S. Hunter, the
 said Notary, on the day, month, and year first before written, and signed by the
 said parties hereto, with and in the presence of said Notary, these presents
 30 having been first duly read and executed under the number Twenty-two thousand
 and thirty-six.

(Signed) M. C. MULLARKY.
 ELIZABETH CAREY.
 per M. C. MULLARKY.
 C. CUSHING.
 J. S. HUNTER, N.P.

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

(Signed) J. S. HUNTER, N.P.

(Endorsed.) Deed of Sale from Michael C. Mullarky, Esq., to Charles Cushing,
 40 ing, Esq. (copy 2nd.) Registered 20th June 1876, No. 93,081, G.H.R., Exhibit
 No. 32.

—————
 Schedule No. 51.
 Sketch of property expropriated.
 —————

No. 44.
 Sketch of
 Property
 expropriated.
 Exhibit 33
 of mis-en-
 cause.

RECORD.

*In the
Superior
Court.*

Schedule No. 52.

Calvary Church.

Quantities in Carpenter and Joiner Work.

No. 45.

Detailed quantities and specifications of cost of rebuilding. Filed with the deposition of J. A. U. Beaudry. Exhibit No. 34 of mis-en-cause.

			\$	\$
2 pieces	80 × 14 × 11 =	2060 ft. B.M.	40	82.40
4 "	10 × 12 × 12 =	480 "	17	8.16
95 "	45 × 14 × 3 =	14963 "	32	478.82
31 "	6 × 10 × 8 =	1240 "	16	19.84
4 "	10 × 12 × 15 =	600 "	17	10.20
10 "	38 × 10 × 8 =	2534 "	28	70.95
5 "	25 × 10 × 8 =	834 "	21	17.51
10 "	16 × 8 × 8 =	854 "	18	10.57
10 "	6 × 12 × 8 =	480 "	16	7.68
10 "	6 × 8 × 8 =	320 "	16	5.12
5 "	16 × 14 × 8 =	750 "	18	13.50
10 "	12 × 14 × 8 =	1120 "	17	19.04
500 lin. ft.	8 × 5 =	1667 "	18	30.00
160 "	6 × 4 =	320 "	18	5.76
86 pieces	38 × 5 × 3 =	4085 "	21	85.80
81 "	24 × 7 × 3 =	2402 "	17	40.83
		(Average \$26.00)		
		34709		906.18
600 lin. ft. of bridging.	Per ft.	- - - - -	7c.	42.00
Bolts and irons.	5000 lbs.	- - - - -	4½c.	225.00
10 curved braces	-	- - - - -	7.00	70.00
Dental blocks and ornamental cut	-	- - - - -		
Filling in main roof trusses	-	- - - - -	10.00	100.00
Dressing 8000 ft. of timber	-	- - - - -	10.00	80.00
42 × 75 of 2 T. & G. flooring	4000 ft. face M. 40 sqr.	- - - - -	4.50	180.00
42 × 75 of ¼ "	4000 ft. " 40 sqr.	- - - - -	3.75	140.00
Furring up floor under pews	30 × 60 = 18 sqrs.	- - - - -	1.00	18.00
83 ft. × 76 of ¼ T. & G. roofing	6308	- - - - -		
40 ft. × 32 of ¼ "	" " to tower 1280	- - - - -		
	7588	- - - - -		
	1897 ft. waste	- - - - -		
	9485 = 95 sqrs.	- - - - -	3.00	285.00
Porch roof complete	-	- - - - -		50.00
320 lin. ft. cornice	-	- - - - -	1.00	320.00
500 ft. B. M. of 4 × 2½ wall plate	417 ft.	- - - - -	18	7.51
54 ft. × 75 of ceiling furring	40½ sqrs.	- - - - -		
42 ft. × 75 "	31½ "	- - - - -		
	72 "	- - - - -	75cts.	54.00
30 × 204 of wall furring	61¼ sq.	- - - - -	75cts.	46.00
75 × 3 or 250 ft. of dressed casing	to beams 2½ square 1"	- - - - -	300	7.50
4 columns	16 × 6" drain 1' thick 3200 setting columns	- - - - -	4ct.	128.00
42 windows	average size 10 × 4	- - - - -	Ea. \$30	1260.00
4 sub-basement windows	-	- - - - -	" \$ 5	20.00
1 sub-basement door	-	- - - - -	" \$ 8	8.00

RECORD.

	\$	\$	
2 round windows	Ea \$12	24.00	
2 pairs front doors	" \$45	90.00	<i>In the Superior Court.</i>
2 pairs inside doors	" \$25	50.00	
1 pair basement outer entrance door		35.00	
1 " inner " "		25.00	No. 45.
9 doors	12	108.00	Detailed quantities and specifications of rebuilding.
810 ft. of sash partition	30c.	243.00	Filed with the deposition of J. A. U. Beaudry. Exhibit No. 34 of mis-en-cause—
Stairs—			<i>continued.</i>
10 Outer front platform and steps		30.00	
" side " "		45.00	
13 steps 8 long	4.00	52.00	
40 " "	3.00	120.00	
18 " "	3.00	54.00	
13 " 8 long	4.00	52.00	
20 " "	3.00	60.00	
15 ft. inclosed railing to stairs	1.00	15.00	
204 ft. of T. & G. ash wainscoting 1000 10 sqrs.	4.00	40.00	
204 lin. ft. capping skirting	8	25.00	
20 Raised floor and seats in infant classroom		75.00	
1 water-closet		12.00	
1 " partition		12.00	
Shelving		10.00	
1 ash and walnut reading desk		25.00	
Sunday school platform		30.00	
Studding out church walls to form centres	40.00		
Arches	76.00		
		116.00	
Belfry and spire		500.00	
30 Finnials		50.00	
Coal bins and shoots		50.00	
Jobbing and tending other trades		50.00	
700 ft. of pews in church	2.00	1400.00	
400 ft. of mock perlins to form roof panels 8 x 8 = 2400	45.00	108.00	
Wood work of centre ventilator		15.00	
Bracket out for plaster cornice		10.00	
Angle beads		10.00	
152 ft. partition	.25	38.00	
45 ft. of beam 9 x 12 dressed and chamfered 405 ft.	28.00	11.34	
40 3 turned posts complete and set up 405 ft.	5.00	15.00	
25 joists 16' x 13 x 3 by twice to form bracketing to raise floor 1300	30.00	39.00	
1 beam 45 x 12 x 8 dressed 360'			
3 posts 12 x 8 x 8	192		
	552		
Iron	28.00	15.16	
45 for bridging	.6	25.00	
16 x 42 of 1 1/2 T. & G. flooring 840	3.50	2.70	
42 of ornamental gallery front	2.00	29.40	
Closet under tower stairs		84.00	
50 16 x 42 of furring of 7 sqrs.	.90	18.00	
204 x 4 of ash T. & G. wainscoting 1000 10 sqrs.	4.00	6.30	
204 ft. capping		40.00	
Front platform		40.00	
Black walnut reading desk		35.00	
Back to pulpit		100.00	

RECORD.

	\$	\$
<i>In the Superior Court.</i>		
1 ventilator of galvanised iron	-	15.00
1 trap door to roof	-	5.00
Ladder	-	6.00
Walking boards over ceiling	-	5.00
Library fittings in library	-	80.00
Book case in bible classroom	-	100.00
Remove rubbish	-	15.00
Carpentry caretaker's apartments	-	275.00
		88488.39 10

No. 45.
Detailed quantities and specifications of cost of rebuilding. Filed with the deposition of J. A. U. Beaudry. Exhibit No. 34 of mis-en-cause—
continued

Calvary Church Quantities.

Excavation, Grading, and Sodding.

	\$	\$	\$
Excavation in sub-basement 834 c. yds., 60 c. yds. to front curbing	.30		588.00
<i>Drains and Masonry.</i>			
Drains 6 ins. (100 ft.) at 28 per ft. × trench 50		78.00	
493 c. yds. of masonry	5.00	2465.50	
240 lin. ft. base, coarse	.90	216.00	
42 window sills	2.80	117.60	
672 ft. of stone window jambs	.70	470.40	20
200 ft. of rock face work	.20	40.00	
Sandstone trimmings	-	140.00	
90 ft. of curb stone	1.60	144.00	
		3671.50	
<i>Brick Work.</i>			
158 × 22 × 12 = 3,476 ft.			
46½ × 30 × 12 = 1,365 "			
90 × 22 × 16 = 2,480 "			
50 × 40 × 12 = 2,000 "			
say 200,000 bricks			30
Chimneys, say 12,000 "			
212,000 "			
per 1,000	14.00	2968.00	
Extra for white brick trimming in arches, &c., say		250.00	
140 ft. chimney tiles	.25	35.00	
2 soot doors	-	2.00	
Pipe rings	-	1.00	
Remove rubbish	-	10.00	
		3266.00	

RECORD.

*In the
 Superior
 Court.*

No. 45.
 Detailed
 quantities
 and speci-
 fications of
 cost of
 rebuilding.
 Filed with
 the deposi-
 tion of J. A.
 U. Beaudry.
 Exhibit No.
 34 of mis-en-
 cause—
continued.

		\$	\$	\$	
	<i>Lathing and Plastering.</i>				
	2,930 yds. - - - - -	.30	879.00		
	150 for cornice - - - - -	.20	30.00		
	65 ft. circular or arch cornice - - - - -	.40	26.00		
	4 capitals - - - - -	-	50.00		
	500 ft. plaster angle beads - - - - -	.10	50.00		
	Centre \$6.00, remove rubbish \$10.00 - - - - -	-	16.00		
				1051.00	
10	<i>Roofing.</i>				
	75 sqrs. of slating - - - - -	7.50	562.50		
	Extra for green slate, say - - - - -	-	60.00		
	Tinning deck of belfry, say - - - - -	-	18.00		
	200 ft. of ridge and hip roof - - - - -	.30	60.00		
	Front galvanised iron ornament, say - - - - -	-	15.00		
	Rear chimney top - - - - -	-	10.00		
	Flashing, &c., say - - - - -	-	40.00		
	Extra cost of slating spire over ordinary work - - - - -	-	40.00		
				805.50	
20	<i>Plumbing, Gas, and Heating.</i>				
	Plumbing - - - - -	-	540.00		
	Gas - - - - -	-	550.00		
	Heating apparatus - - - - -	-	850.00		
				1940.00	
	<i>Painting and Glazing.</i>				
	4,000 yds. - - - - -	.20	800.00		
	4,000 ft. glazing - - - - -	.8	320.00		
	Graining doors, beams, and gallery front, say - - - - -	-	50.00		
				1170.00	
30	<i>Iron in Truss Rods and Front Fence.</i>				
	Truss rods - - - - -	-	300.00		
	98 ft. front fence at \$1.00 - - - - -	-	98.00		
				398.00	

RECORD.

Montreal 1888.

Estimated Cost to Rebuild Calvary Church.

In the Superior Court.

No. 45. Detailed quantities and specifications of cost of rebuilding. Filed with the deposition of J. A. U. Beaudry. Exhibit No. 34 of mis-en-cause -- continued.

	\$	
Excavating, grading, and sodding	588.00	
Drains and masonry	3671.00	
Brick work	3266.00	
Carpentry and joinery	8488.39	
Lathing and plastering	1051.00	
Roofing	805.00	
Plumbing, gas, and heating apparatus	1940.00	10
Painting and glazing	1170.00	
Truss irons and front fence	398.00	
	<u>21377.00</u>	
	\$ 21377.00	
Architect's Commission 5%	1068.00	
	<u>22445.00</u>	

(Endorsed.) Exhibit No. XXXIV.

No. 46. Plan. Exhibit No. 35 of mis-en-cause.

Schedule No. 53.

Plan showing position of trestle work in relation to Church Building. Exhibit No. 35 of mis-en-cause. Filed 27th March 1890.

20

No. 47. Section Plan. Exhibit No. 36 of mis-en-cause.

Schedule No. 54.

Section Plan showing respective elevations of line of railway and basement and first floor of church buildings.

No. 48. Estimate of quantities required for building a church like Calvary by Joseph Cadieux. Exhibit No. 37 of mis-en-cause.

Schedule No. 55.

Montreal, Dec. 12th /88.

Bill of Quantities for Building a Church like Calvary Church, Guy Street.

	\$	\$
Excavation, Drains, &c.—		
1845 yds. cubic of excavation at 45	830.25	
Sodding, grading, and filling around walls	35.00	
Drains complete	90.00	
	<u>955.25</u>	30
Stone Work and Curb—		
195 toises of masonry at 10.50	2048.50	
1122 lin. feet of window sills, jambs, and cut stone course, average .80	897.60	
25 yds. sqr. of rock face work 2.50	62.50	
Trimming with sandstone	170.00	
Front curb, with foundation and iron railing in front of church at street line	280.00	
	<u>3458.60</u>	

		\$	\$	RECORD.
	Brick Work—			<i>In the</i>
	224450 Montreal brick laid at 13.50 -	3030.07		<i>Superior</i>
	White bricks and chimneys	320.00		<i>Court.</i>
		-----	3350.07	
	Plumbing—			No. 48.
	Plumbing, gas fitting, and gas fixtures	1025.00		Estimate of
		-----	1025.00	quantities
	Roofing—			required for
10	Roofing, slating, and galvanized iron trimmings, &c.	917.60		building a
		-----	917.00	church like
	Heating apparatus	980.00		Calvary by
		-----	980.00	Joseph
	Painting—			Cadioux.
	Painting, glazing, and tinting	1000.00		Exhibit No.
		-----	1000.00	37 of mis-
	Plastering—			en-cause—
	3236 yds. plain plaster at 25	809.00		<i>continued.</i>
	Cornice, centres, and capitals	170.00		
20		-----	979.00	
	Wood and Iron Work—			
	9855 feet lin. of timber laying at 4	394.20		
	39650 feet B.M. pine timber at 3	1189.50		
	Dressing of timber	65.00		
	Straps, ties, bolts, and other iron work	400.00		
	5 prs. of braces and ornament at \$40.00 about roof truss	200.00		
	Herring-bone strutting	40.00		
	31½ squares 1½ y. flooring	at 4.50 142.00		
	31½ " 2 " "	5.50 173.25		
30	82 " 1¼ y. roofing	3.00 246.00		
	320 feet lin. cornice	1.25 400.00		
	145 squares furring	130.30		
	Furring under pews	15.00		
	4 iron columns and settings	30.00 120.00		
	1 main entrance door	100.00		
	1 side entrance door	45.00		
	2 inside doors to same	30.00 60.00		
	10 other inside doors	10.00 100.00		
	50 feet lin. glass partition	4.50 225.00		
40	200 " ash lining	.40 80.00		
	Cut side steps and platform front side	69.00		
	110 steps of inside stairs	3.75 412.50		
	Seats and fitting infants' classroom	85.00		
	1 reading desk	18.00		
	1 closet and partition	28.00		
	680 feet lin. of church pews	2.20 1496.00		
	175 " scantling partition	.10 17.50		
		-----	6251.45	
	1 platform Sunday schoolroom	36.00		
	Coal bins and shoots	40.00		
50	Building up centres for arches, wall, plates, and strips	125.00		
	Attending plumbers, gas fitters, and heating apparatus with casing of pipes	75.00		
	Wood work about ventilators in centre	20.00		
	500 feet lin. of timber laid (gallery 04)	20.00		
	2750 feet B.M. timber laid (gallery 03)	82.50		
	Dressing part of said timber	15.00		

RECORD.

		\$	\$
		Brought forward—	
<i>In the</i>	3 hard wood turned posts 4.00	12.00	
<i>Superior</i>	Angle beads and sundries for plastering	35.00	
<i>Court.</i>	Herring-bone strutting	3.50	
No. 48.	7 squares 1½ T.G. flooring \$1.50	29.50	
Estimate of	42 feet lin. of front gallery ornamented 2.00	84.00	
quantities	450 feet lin. of blocking to roof purlines .30	135.00	
required for	2 closets with partition fitting and 1 sink	35.00	
building a	1 platform with panel back and reading desk	200.00	10
church like	1 spire and fineal	500.00	
Calvary by	1 trap door and ladder	6.00	
Joseph	Wood work about finished part of basement including porch	325.00	
Cadieux.	Fixed fittings in library and classroom	150.00	
Exhibit No.	Removing rubbish of all trades	50.00	
37 of mis-		<hr/>	8229.95
en-cause—	Carpeting, &c., &c.	250.00	
<i>continued.</i>		<hr/>	250.00

Recapitulation.

		\$	20
Excavations, grading, sodding, and drains		955.25	
Stone work and curb		3458.60	
Brick work		3350.07	
Plumbing and gas fitting		1025.00	
Roofing, slating, &c.		917.00	
Heating apparatus		980.00	
Painting, glazing, tinting		1000.00	
Plastering		979.00	
Wood work		8229.95	
Carpeting		250.00	30
Architects commission for plans, specifications, and superintendence at 5% on \$20894.80		1044.74	
		<hr/>	
		22189.61	

(Signed) Jos. CADIEUX,
Builder.

(Endorsed.) Exhibit No. XXXVII.

Schedule No. 57.

Quantité dans l'érection de l'église 'Calvary' rue Guy Montreal.

RECORD.

In the
Superior
Court.

No. 49.

Specification
of quantities
required in
the erection
of Calvary
Church.
Exhibit No.
39 of mis-
en-cause.

	Excavation.			\$	
	81'.0" × 48'.0" × 6'.0 = 864 verges cube pour cave et tranchés @ 45c.	-		388.80	
	Fondations.				
10	2 Murs 81'.0" × 3'.0" × 1'.0" assise longpans =		486.0		
	2 Murs 42.0 × 3.0 × 1.0 assise devant et derrière		252.0		
	1 Mur 30.0 × 3.0 × 1.0 assise tour	-	90.0		
	1 Mur 47.0 × 3.0 × 1.0 assise bas côté	-	141.0		
	2 Murs 79.0 × 22.6 × 2.1½ long pans -	-	7554.0		
	2 Murs 42.0 × 22.6 × 2.1½ devant et derrière	-	4016.0		
	1 Mur 30.0 × 22.6 × 2.1½ fondation de tour	-	1434.0		
	1 Mur 47.0 × 22.6 × 2.1½ bas côté	-	2311.0		
	1 Mur 84.0 × 6.0 × 2.1½ palissade	-	1071.0		
			17355.0		
20			\$		
	17355.0 = @ 200 toises -	@	10.00	2,000.00	
	40 Verges de canaux	@	2.00	80.00	
	40 Appuis en pierre		2.50	100.00	
	60 Pds courant base en pierre 12" chanfreiné		60c	36.00	
	230 Pieds courant lancé de 8' × 8" (rock face) taillé sur le tableau et marge en avant		50	115.00	
	163 Pds courant base en pierre de 12" chanfreiné (rock face) avec marges sur long-pans		50	81.50	
30	30 Pds courant cordon de 4" en pierre de sable	-	50c	15.00	
	1 (water table) en pierre de sable	-		10.00	
	160 pieds courant pierre de rang de 12" face rock face		.50	80.00	
	14 pds courant chaperon en pierre pr palissade de 12 × 10		1.50	126.00	
	65 pds courant palissade en fer		1.50	97.50	
	2 colonnes en pierre de sable		15.00	30.00	
	4 piliers en maçonnerie de 6'.0" × 2'.0" × 2'.0"		6.00	24.00	
	1 console moulée			10.00	
					\$3,193.80
	Brique.				
40	2 murs 79.0 × 24.0 × 1.0 pans d'église	=	3792.00		
	2 „ 45.0 × 24.0 × 1.0 pignons	=	2184.00		
	1 „ 45.6 × 34.0 × 1.0 dans les deux pointes du devant et derrière	=	1547.00		
	2 „ 78.0 × 2.9 × 1.0 cheminées	=	429.00		
	1 „ 4.0 × 3.0 × 2.0 têtes de cheminées	=	24.00		
12	„ 21.0 × 2.9 × 0.4 contre fort des murs	=	231.00		
	1 mur 14.0 × 3.0 × 0.4 bandellettes dans les longs pans	=	140.00		
	1 „ 20.0 × 11.0 × 1.0 bas de la tour	=	220.00		
	2 „ 20.0 × 8.0 × 0.1 1 ^{er} étage „	=	320.00		
	2 murs 34.0 × 10.0 × 0.8 2 ^e „	=	493.4		
50	2 „ 34.0 × 8.8 × 0.8 2* „	=	392.10		
	8 „ 30.0 × 2.6 × 0.4 contre fort „	=	200.00		
	4 „ 6.0 × 4.0 × 0.4 Bandelettes	=	32.00		
	1 „ 29.0 × 15.0 × 1.0 bas côté	=	435.00		
			10440.2		

*(Sic. ? 3.)

RECORD.

<i>In the Superior Court.</i>	Deduction.	Montant rapporté	\$	\$	
No. 49. Specification of quantities required in the erection of Calvary Church. Exhibit No. 39 of mis- en-cause— <i>continued.</i>	11 Murs 8.6 × 3.6 × 1.0 chassis d'église	=	308.00		
	3 " 23.0 × 3.6 × 1.0 chassis "	=	241.00		
	2 " 26.0 × 1.6 × 0.8 " tour	=	52.00		
	1 " 20.0 × 1.6 × 0.8 " "	=	20.00		
	1 " 7.0 × 1.6 × 1.0 " "	=	10. 6		
	1 " 11.0 × 6.0 × 1.0 porte de devant	=	66.00		
	1 mur. 8.0 × 5.0 × 1.0 Porte intérieure tour	=	40.00		
	2 murs. 9.6 × 3.0 × 1.0 " " "	=	39.00	10	
				<u>776.6</u>	<u>776.6</u>
					<u>9,664.00</u>
	9664 pds cub. de brique = 193,280 briques				
	Moins 1,500 " blanches				
	<u>191,780 " "</u>	@	12.00	2,301.36	
	1,500 briques blanches		40.00	60.00 20	
	6 trous de tuyaux		75	4.50	
	2 postes à ramouer		2.50	5.00	
				<u>\$2,370.86</u>	
	Plombage—				
	45 Lumières de gaz	@	1.25	56.25	
	2 Water closets		40.00	80.00	
	2 Eviers complets		16.00	32.00	
	21 brackets a gaz		1.50	31.50	
	15 Do.		3.00	45.00 30	
	1 gazelier (8 lumières)			40.00	
	1 Do. (3 ")			5.00	
	7 Do.		4.00	28.00	
	1 Tête de ventilateur en tolle gal			15.00	
				<u>\$332.75</u>	
	Fer, etc.				
	5 bars de fer 46'.0" × 1¼"		20.00	100.00	
	4 " " 12'.0" × ¾"		2.00	8.00	
	35 Boulons 1"		1.25	43.75 10	
	10 Strapés aux pieds des chevrons 2" × ½		2.00	20.00	
	4 Strapés aux entrails		1.00	4.00	
	1 boulon 182.0" × 1½ du jubé aux entrails			11.00	
	4 colonnes en foote 15'.0" × 6		25.00	100.00	
				<u>\$286.75</u>	
	Ardoises, etc.				
	2 m 79.0 × 34.0 = 5372.0 couverture d'église.				
	1 " 31.0 × 6.0 = 186.0 " bas côté.				
	4 " 40.0 × 5.0 = 800.0 Flèche du clocher.				
	<u>6358.0 = 63½ Carrées d'ardoises</u>	@	\$ 8.00	\$ 508.00 50	
	70 pieds courant chaperons en tolle galvanisée		30	21.00	
	160 pieds courant moulures d'angles du clocher en tolle gal		15	24.00	
	78 pieds de faitier		15	11.70	
	2 ornements en fer			35.00	
	110 pieds courant de renvers en tolle galv		20	22.00	
				<u>\$621.70</u>	

RECORD.

*In the
Superior
Court.*No. 49.
Specification
of quantities
required in
the erection
of Calvary
Church.
Exhibit No.
39 of mis-
en-cause—
continued

Enduits, etc.		Sous Basement.	
1 m	16' . 0" × 13' 0" =	208.0	Plafonds de cuisine.
1 "	58.0		Mur " × 9' 6"
1 m	12.0 × 8.0 =	96.0	Plafond chambre.
1 "	40.0 ×		Mur "
1 "	8.0 × 4.0 =	32.0	Plafond passage.
1 "	24.0 ×		Mur "
1 "	16.0 × 13.0 =	208.0	Plafond salon.
10	1 "	58.0 ×	= 1710.0
Ecole.			
1 m	74.8 × 41.6 =	3098.8	Plafond.
1 "	232.4		Mur " × 15.0.
2 "	96.0	=	6365.0 " division.
Eglise.			
1 m	76.0 × 51.6 =	3914.0	Voute.
2 "	76.0 × 16.6 =	2508.0	Mur long pans.
2 "	43.0 × 16.6 =	1419.0	
24	15.0 × 0.4 =	120.0	Flanco pilastres.
20	2 "	43.0 × 14.0 =	1204.0 Murs vestibules.
1 "	43.0 × 15.0 =	645.0	Plafonds de jubé.
6 "	20.0 × 0.8 =	80.0	Flanc d'alcove.

21607.8

Deductions.

3 m	3.6 × 3.6 =	36.6	Chassés basement.
1 "	7.0 × 3.0 =	21.0	Portes entérieures.
8 "	6.6 × 3.0 =	156.0	Côtés portes.
8 "	7.0 × 3.0 =	168.0	Ecole côtés portes.
30	4 "	7.0 × 5.0 =	140.0 " "
11 "	10.0 × 3.3 =	335.0	Chassés églises.

906.6 = 906.6

20701.2

20,701.2 = 2300 verges d'enduits y compris le temturage		@	23c.	\$ 529.00
140 pds. courant moulures en plates 15"		-	15c.	21.00
140 " " " 6"		-	10c.	14.00
40	62 " cadre "	-	25c.	15.50
4 Chapiteaux en platre avec cap.		-	5.00	20.00
1 piece de centre		-	-	6.50

\$606.00

Charpente et Menuiseries.

1 m		78.0 × 14 × 14 =	1274.0	poutre en pin cave	-	-
1 "		78.0 × 14 × 10 =	910	" " école	-	-
40	"	1700.0 × 14 × 3 =	5950.0	soleves " "	-	42.6
40	"	1780.0 × 14 × 3 =	6230.0	" " église	-	44.6
50	20 "	260.0 × 12 × 3 =	780.0	" " jubé	-	13.0
4	"	41.0 × 12 × 12 =	528.0	pièce en pin tour	-	11.0
2	"	154.0 × 8 × 4 =	440.8	sablières en pin église	-	77.0
4	"	48.0 × 8 × 4 =	128.0	sablière tour	-	-
37	"	180.0 ×	=	770.0 palotage	-	-
8	"	608.0 × 4 × 3 =	608.0	semelles	-	-
10	"	340.0 × 9 × 8 =	2040.0	chevrons en pin église	-	34.0

RECORD.

				\$	\$
<i>In the Superior Court.</i>					
No. 49.					
Specification of quantities required in the erection of Calvary Church.					
Exhibit No. 39 of mis-en-cause-- <i>continued.</i>					
			Montant rapporté		
5 "	70.0 × 12 × 8 =	560.0	aiguilles		14.0
5 "	110.0 × 9 × 8 =	660.0	entraîs		22.0
5 "	390.0 × 10 × 5 =	1583.4	fillières		78.0
80 m	2720.0 × 5 × 3 =	3400.0	chevrons		34.0
12 "	888.0 × 5 × 3 =	1100.0	solèves en pin plafonds	-	71.0
10 "	110.0 × 12 × 3 =	33.0	" tour		11.0
	<u>9558.0</u>	<u>27,262.0</u>			10
Charpente Blanchie.					
10 m	50.0 × 8 × 8 =	266.8	pôteaux sur bracket		5.0
10 "	110.0 × 9 × 8 =	660.0	ardoubleau église	-	11.0
10 "	96.8 × 9 × 8 =	576.0	" "	-	9.8
8 "	52.1 × 9 × 8 =	312.6	" "		10.5
1 "	44.6 × 12 × 11 =	489.6	poudres du jubé	-	
	<u>353.3</u>	<u>2304.8</u>			
		<u>29,566.0</u>			20
Charpente.					
500 pds	lambourdes de cèdre	-	-	@ 10c.	50.00
86 carrés	planchers de 2" et 1½ en pin bâtisse tour, etc.	-	-	@ 5.00	430.00
250 pds	courant de colombage de 4" × 3"	-	-	@ 20.00	50.00
175 carrés	foulures sur mur et plafonds	-	-	@ 80.00	140.00
2 chassis	3.6 × 3.6 et doubles	-	-	- 6.00	12.00
1 "	3.6 × 2.0 "	-	-	-	5.00
17 "	ang 9.4 × 3.6 segment et double	-	-	20.00	340.00
11 "	10.3 × 3.6 centres "	-	-	20.00	220.00
3 "	22.0 × 3.0 "	-	-	15.00	45.00
3 "	ang 7.0 × 1.8 centres pas de double	-	-	7.00	21.00
2 "	26.0 × 2.0 tour "	-	-	15.00	30.00
1 "	20.0 × 2.0 "	-	-	-	15.00
1 porte	vitree extérieur de 6.6 × 3.0	-	-	-	8.00
3 "	intérieures	-	-	7.00	21.00
4 porte	chambre à 4 panneaux 1½	-	-	7.00	28.00
9 "	7.0 × 3.0 × 2 @ 4 panneaux	-	-	12.00	108.00
4 "	7.0 × 4.8 2 volets	-	-	15.00	60.00
1 tambour	porte et manches	-	-	-	20.00
1 armoire	salle à diner	-	-	-	10.00
1 "	et tablette de cuisine	-	-	-	15.00
16 marches	d'escalier entre cloison de la cuisine à l'école	-	-	1.50	24.00
1 escalier	de cave au W.C.	-	-	-	10.00
26 marches	d'escalier de 3.0 de l'école au vestibule	-	-	2.00	52.00
6 "	" 5.0 et plateforme entrée de côté	-	-	4.00	24.00
9 "	" 5.0 vestibule	-	-	2.50	22.50
26 "	" 3.6 au jubé	-	-	2.00	52.00
400 pds	plinthes de 6 @	-	-	.10	40.00
800 "	courant croix St. André	-	-	.5	40.00
34 Braquettes	aux embrasures des chassis de l'école	-	-	.25	8.50
46 pds	courant de cloisons vitrées avec chassis anglais et portes dans l'école	-	-	3.00	128.00
225 pds	courant de boiseries aux murs de frêne et pins de 4' 0" × 3' 0" × 1" @	-	-	.40	90.00
150 pds	courant de banc en amphithéâtre avec plancher et plateforme	-	-	1.00	150.00
1 chambre	de water-closet évier boiserie de murs plafonds dimensions divisions et portes	-	-	-	60.00
1 plateforme	9' 0" × 5' 0" (école)	-	-	-	5.00

		\$	\$	RECORD.
				<u>Montant rapporté</u>
	1 porte extérieure de 8.0 × 5.0 × 0.2 @ 6 panneaux seg. 2 volets enté de l'école - - - - -		25.00	<i>In the Superior Court</i>
	3 colonnes tournées caps et bases - - - - -	12.00	36.00	
	43 pds courant balustrades de jubé - - - - -	2.00	86.00	No. 49.
	76 bancs d'église - - - - -	8.00	608.00	Specification of quantities required in the erection of Calvary Church. Exhibit No. 39 of mis-en-cause— <i>continued.</i>
	1 plateforme de 9' 0" × 29' 0" × 2" avec 2 marches - - - - -		25.00	
	1 prie Dieu et dossier - - - - -		150.00	
10	15 foulures de pilastres et arches audessus des chassiss de l'église a 4" d'épaisseur - - - - -	4.00	60.00	
	4 " " " " " " " 8" d'épaisseur - - - - -	6.00	24.00	
	10 brackets découpés de 5' × 4 en bois 12" × 8" - - - - -	10.00	100.00	
	4 gradins, jubé - - - - -	15.00	60.00	
	300 pds cts. moulures de plafond en bois 5 × 4 - - - - -	.15	45.00	
	10 pilastres en bois chaufrenees de 10.0 × 8 × 4 et caps - - - - -	6.00	60.00	
	1 chassis rond 3.0 - - - - -		8.00	
	1 " " 1.3 - - - - -		5.00	
20	1 porte d'entrée de 11' 0" × 6' 0" assemblage et 2 pas 2 volets cadrée et vitrain cintre - - - - -		50.00	
	1 flèche de la tour charpente et couverture en bois - - - - -		300.00	
	55 carrés couverture en bois 1¼ sur l'église et bas côte 3 - - - - -	3.50	192.50	
	29,566 pds B.M. bois de charpente - - - - -	20.00	591.32	
	9,558 pds cts. bois de charpente à poser - - - - -		191.16	
	350 " " blanchi à poser - - - - -		35.00	
	250 " " corniche en bois extérieure - - - - -		100.00	
	75 " " poutre boisée en bois 1" - - - - -		11.25	
	1 plateforme et escalier en extérieur allant au sous bassement - - - - -		20.00	
30	1 glissoire au charbon - - - - -		20.00	
	1 tuyau de ventilation - - - - -		10.00	
	1 trappe au plafond - - - - -		5.00	
	1 passage sur les entrails - - - - -		5.00	
			<u>5,167.23</u>	
				<u>Appareils de chauffage.</u>
	3 fournaises Ryan - - - - -	225.00	675.00	
				<u>Peinturage et vitrage.</u>
	17 m 8.6 × 2.9 = 397.0 verres de couleurs pour chassiss. - - - - -			
40	11 " 9.0 × 2.9 = 272.0 " " - - - - -			
	3 " 21.0 × 2.6 = 157.0 " " - - - - -			
			<u>826.0</u>	
	900 pds sup. de verres de couleurs - - - - - @	.25	225.00	
	1,500 " starr - - - - - - -	.15	225.00	
	2,000 verres sup. peinture teinture, etc. - - - - -	.15	300.00	
				<u>Tapisserie.</u>
	140 pds crt. d'ornements entre les 2 corniches en plâtre - - - - -	.10	14.00	
50			<u>889.00</u>	

RECORD.

Recapitulation Générale.

*In the
Superior
Court.*

	\$	
1. Maçonnerie creusage pierre de taille, etc.	3,193.80	
2. Briques rouge et blanche	2,370.86	
3. Couverture ardoise	621.70	
4. Enduits corniche, etc.	606.00	
5. Plombage, etc.	332.75	
6. Fer fonte, etc.	286.75	
7. Charpente menuiserie, etc.	5,167.23	
8. Appareil de chauffage	675.00	10
9. Peinturage, vitrage et tapisserie	889.00	
	\$14,143.09	

(Endorsed.) Exhibit No. 39 of mis-en-cause.

Schedule No. 59.

No. 50.
Notice to
McGibbon
and Fleet of
meeting of
Arbitrators,
dated 20th
April 1889.
Exhibit
No. 41 of
mis-en-
cause.

The Atlantic and North-west Railway Company	Expropriating,	
and		
Peter W. Wood et al, Trustees of the Calvary Congregational Church	Proprietors,	
To Charles James Fleet, Esq., third Arbitrator in the above Arbitration Cause	Advocate,	20
and		
Robert D. McGibbon, Esq., Arbitrator for the said Company	Advocate.	

GENTLEMEN.

Take notice that on Thursday the 28th instant at 10 of the clock in the forenoon the Arbitrators in the above arbitration case will meet in the Standard Building, being No. 157, St. James Street, in the City of Montreal, for the purpose of hearing evidence on behalf of the said Company, and for attending to such other business as may require the consideration of said Arbitrators in this cause.

Montreal, April 20th, 1889.

(Signed) JOHN L. BRODIE,
Arbitrator for the Proprietors.

(On the back.)

I, the undersigned, one of the sworn Bailiffs of Her Majesty's Superior Court for Lower Canada, appointed and acting in and for the District of

Montreal, residing in the City of Montreal, do hereby certify and return under my oath of office, that I did on the twentieth day of April Eighteen hundred and eighty-nine, between the hours of three and four of the clock in the afternoon, serve the within original notice on R. D. McGibbon, Esq., Advocate, Arbitrator, by speaking to and leaving a true and certified copy thereof for him, with a grown and reasonable person in charge of his office at his office in the City and District of Montreal, the distance from the Court House in the City of Montreal to the place of service aforesaid is less than one mile, and from my residence to the aforesaid place of service is less than one mile.

10 Montreal, 20th April 1889.

(Signed) WALTER REED, N.P.

(Endorsed.) Notice to Charles G. Fleet, Esquire, Advocate to R. D. McGibbon, Esquire, Advocate. (Exhibit No. 41.)

RECORD.

In the Superior Court.

No. 50.
Notice to McGibbon and Fleet of meeting of Arbitrators, dated 20th April 1889. Exhibit No. 41 of mis-en-cause—*continued*

Schedule No. 60.

On this day, the eleventh of May, in the year of our Lord One thousand eight hundred and seventy-six, before the undersigned Public Notary, in and for the Province of Quebec in the Dominion of Canada, residing in the City of Montreal, in the said Province.

20 Personally came and appeared John C. Smith, carpenter, and John Redpath Dougall, printer, both of the said City of Montreal, herein representing the Western Congregational Church of the first part; and George W. Reed, of the said City of Montreal, roofer, of the second part; which said parties declared to said Notary to have covenanted and agreed with each other in the manner following, that is to say :

30 The said contractor for the considerations and under and subject to the conditions and stipulations herein-after mentioned do thereby undertake and promise, bind, and oblige himself to do, execute, and perform in a good, neat, proper, substantial, and workmanlike manner, and of the best materials of their several kinds, the whole and every part of the roofer's work required to be done and requisite and necessary in the erection and completion of a chapel or building, on Guy Street, facing Scotland Street, according to the plans and drawings of the same made by Messrs. Hutchinson and Steele of Montreal, aforesaid, Esquire, architect, in whose possession it is agreed the same shall remain for general reference, being numbered and in strict conformity with the specifications of the said works annexed hereto as forming part thereof, which said plans and specifications are identified by the signatures of the parties hereto and said Notary, and also in conformity with such descriptions and details as may from time to time be given and furnished to the said contractor during the progress of the said works, and should anything be omitted in either
40 which is considered necessary for the completion of the said works, the said contractor hereby agrees to execute the same without obtaining any advantage by such omission, but shall supply whatever may be wanting to finish the whole

No. 51.
Copy of builder's contract between Western Congregational Church Trustees and George W. Reed, dated 11th May 1876. Exhibit No. 42 of mis-en-cause.

RECORD.

*In the
Superior
Court.*

No. 51.

Copy of
builder's con-
tract between
Western
Congrega-
tional
Church
Trustees and
George W.
Reed, dated
11th May
1876.
Exhibit No.
42 of mis-en-
cause—
continued.

in a complete and perfect state according to the directions, details, and specifications aforesaid.

And for the purposes aforesaid the said contractor shall and he doth hereby agree to find, provide, and furnish all and every kind of materials, tools, labour, implements, carriages, and scaffolding, and the requisite number of mechanics and workmen, and all things needful and proper for the due and proper performance and completion of the said works hereby undertaken, and all matters and things incident to the same.

The said works shall be commenced and finished and completed with all due diligence, under the superintendence of the said architect, to the entire approval of the said proprietor or the said architect. 10

And it is hereby understood and agreed that no addition to or omission from the said specifications or the details to be furnished as aforesaid, or the said plans or any deviation therefrom, shall in any way invalidate or make void the present agreement, but the same shall be ascertained by the architect, and the amount so ascertained shall be added to or deducted from the contract sum herein-after mentioned, as the case may be.

And it is further agreed and understood that from the commencement of the said works until the actual completion, delivery, and acceptance thereof, the care of the same and whatever appertains or belongs thereto, shall be with the said contractor, and the said proprietor shall not be accountable for any part of the said works, or any materials or anything connected therewith which may happen to be lost, stolen, burnt, damaged, or destroyed in any manner howsoever; and in case of the like occurring during the progress of said works, or before their final completion, delivery, and acceptance, the said contractor shall and he doth hereby bind and oblige himself to repair and replace such parts of said work as may happen to be lost, stolen, burnt, damaged, or otherwise destroyed, to the entire exoneration of the said proprietor. 20

And it is further understood and agreed that the said details and descriptions so to be given during the progress of the said works shall be equally binding with the said specifications; and should anything be omitted in either which is considered necessary for the completion of the said works, the said contractor hereby agrees to execute the same as if it had been particularly specified without obtaining any advantage by such omission; but shall supply whatever may be wanting to finish the whole in a complete and perfect state, according to the directions, details, and specifications aforesaid. 30

And it is further agreed and understood that the said contractor shall clear away from time to time, and at the end of this contract all rubbish which may accumulate in the performance of the present contract, and also that no allowance shall be made to the said contractor for any extra or additional work, unless the same be ordered in writing by the said proprietor or his said architect. 40

And the said contractor doth hereby bind and engage himself to have the said roof made water-tight in ten days after commencing work on same, under a penalty of all damages that may occur in default thereof.

The present contract is thus made and entered into by and on the part of the said contractor for and in consideration of the sum of Eight hundred and

thirty-one dollars, currency of the said Province, which the said parties of the first part do hereby promise, bind, and oblige themselves to well and truly pay, or cause to be paid, to the said purchaser as the works hereby contracted for shall progress, at the rate of ninety per centum on all work done and materials furnished on the ground, to be estimated by the said architect, and the remaining ten per centum, which in the meantime shall be retained in the hands of the said proprietor as security for the due and faithful performance of the present contract, shall be paid to the said contractor within one month after the said works are finally completed, delivered, and accepted by the said proprietor.

RECORD.

*In the
Superior
Court.*

No. 51.

Copy of
builder's con-
tract between
Western
Congrega-
tional
Church
Trustees and
George W.
Reed, dated
11th May
1876.
Exhibit No.
42 of mis-en-
cause—
continued.

10 The present contract is furthermore made under and subject to the stipulations following, to wit:—

In case of stoppage of the said works the said contractor shall not be entitled to claim any compensation as prospective profit under the present contract, payment, however, shall be made to him in full for materials and work done, and also for contracts entered into by him with other parties connected with the said works.

The said architect shall have power to order off the ground all improper and unsound materials, and his opinion on the works done shall be final and conclusive.

20 In case the said contractor refuse to proceed with the works with such diligence as to enable him to complete the same at the time above mentioned, the said proprietor shall have the power to take the works into his own hands, and finish the same at the contractor's expense, and the amount expended by him in so doing over and above the contract sum to be paid under this agreement, shall be recovered by law if needs be.

The contractors shall not sub-let the present contract or any portion thereof without the written consent of the said proprietor or architect.

30 In case any difference of opinion shall arise in regard to the construction to be placed upon any of the provisions of the present contract or of the said specifications, the said architect's opinion and decision thereon shall rule, and be binding on all parties.

Any notice which it may be requisite to serve on the said contractor, connected with the said works, may be addressed to him at his own domicile, or at the place where the said works are carried on, and left at the Post Office in Montreal, and any paper writing so addressed and left at the Post Office shall be considered legally served upon the said contractor.

40 And it is hereby agreed and understood by and between the said contracting parties hereto that none of the clauses herein contained shall be considered comminatory comminatoire, but on the contrary the same, and especially the clause relating to the forfeiture to be incurred in case of default by the contractor in completing the works at the times above stipulated, shall be strictly enforced, and be de rigueur as expressing the well understood meaning and intentions of the said contracting parties, and without which these presents would not have been made and executed.

Done and passed at the City of Montreal, in the Office of Charles Cushing, the said Notary, under the number Seven thousand eight hundred and twenty-

RECORD. three, and signed with and in the presence of the said Notary subscribing, after these presents had been duly read in their presence.

In the Superior Court.

(Signed) G. W. REED.
J. C. SMITH.
J. R. DOUGALL.
C. CUSHING, N.P.

No. 51.
Copy of
builder's con-
tract between
Western
Congrega-
tional
Church
Trustees and
George W.
Reed, dated
11th May
1876.
Exhibit No.
42 of mis-en-
cause—
continued.

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

(Signed) C. CUSHING, N.P.

(Endorsed.) Builder's contract between the Western Congregational Church and Mr. George W. Reed. (Exhibit No. 42.)

10

Congregational Church, Guy Street.

Roofer's Work.

Cover the roof of the church and belfry with slate from the Rockland Slate Company's quarries, lay the slate upon one thickness of tarred felt, and work two bands of green slate on each slope of the main roof, and on the roof of the belfry as shown on the drawings. Make a high stepped flashing of galvanized iron ground, the joining of the tower with the roof, the valley between the tower and the roof to be covered with a wide flashing of galvanized iron; make the angle roll on the belfry and the ridge, and the valley flashing of galvanized iron.

20

Cover the floor of the belfry with J.C. charcoal, tin soldered at the joint. The tablet over the corbel on the front elevation to be made of galvanized iron, moulded as per detail drawings.

The chimney on the front elevation to be made of galvanized iron, moulded and worked as per detail drawing.

Make a smoke pipe inside of the galvanized iron casing, of heavy sheet iron. This flue is to be made long enough to go down about three feet into the brickwork; make an ornamental top of galvanized iron for the near chimney. The roofer is to commence his work whenever the carpenter has the roof so far advanced that he can do so, and shall prosecute his work with all diligence, so as to make the roof water-tight in ten days after commencing work on the same. Specifications referred to in contract and agreement between the Western Congregational Church and George W. Reed, bearing date and passed before the undersigned Notary, this eleventh day of May Eighteen hundred and seventy-six.

In test: Veritatis.

(Signed) G. W. REED.
J. C. SMITH.
J. R. DOUGALL.
C. CUSHING, N.P.

40

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

(Signed) C. CUSHING, N.P.

Schedule No. 61.

The parties hereby consent that Exhibit number Forty-three of the mis-en-cause being a copy of a time-table of the Grand Trunk Railway Company be omitted from the transcript of the record in this cause to be transmitted to the Registrar of the Judicial Committee of Her Majesty's Privy Council upon the present Appeal, and the Clerk of the Court of Queen's Bench (Appeal side), Montreal, is hereby required and directed not to copy the said time-table as part of the record to be so transmitted.

Montreal, September 13th, 1893.

10

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,
Attorneys for the Atlantic and North-west
Railway Company.

(Signed) TAYLOR AND BUCHAN,
Attorneys for Peter Wood et al ès qual.

RECORD.

*In the
Superior
Court.*

No. 52.
Time-table
of Grand
Trunk
Railway
Company of
Canada. Ex-
hibit No. 43
of mis-en-
cause
omitted by
consent of
parties.

Schedule No. 64.

In re Atlantic and North-west Railway Company,
Pet. in Expropriation,
and
The Calvary Church.
Statement.

20

	\$
Value of property before the passage of the railway—11,232 feet of land at 75 cts. per foot	8,424
Cost to build a similar church	20,000
Cost to remove church fixings and organ	1,000
Total	\$29,424

30

Present value of land —	
11,232 feet depreciated 50 per cent.	4,212
Present value of church building	5,000
Difference of 10 per cent. between the old and new church	2,000
Total	\$11,212

Making a difference in value of \$18,212, which, I think, is a fair compensation for the expropriated parties.

(Signed) JOHN L. BRODIE.

(Endorsed.) Ex. No. 46 of M.E.C.

No. 53.
Memoran-
dum of
Arbitrator,
John L.
Brodie,
in estimate
of award to
proprietors
Exhibit No.
46 of mis-en-
cause.

RECORD.

*In the
Superior
Court.*

No. 54.
Consent to
extend delay
to render
award, dated
9th Oct.
1889.

Schedule No. 65.

Province of Quebec, District of Montreal.
Superior Court.

In the Matter of

The Atlantic and North-west Railway Co. - Expropriating,
and
Calvary Church - - - Proprietors.

The parties herein hereby consent and agree that the delay within which the Arbitrators herein may render their award be extended to the second day of January next Eighteen hundred and ninety. 10
Montreal, October 9th, 1889.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH.
Attorneys, Railway Company.
(Signed) N. W. TRENHOLME,
for Proprietors.

(Endorsed.) Consent that delay to render award be extended to 2nd January 1890.

No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888.

Schedule No. 66.

The Atlantic and North-west Railway Company

v.

Peter Wood et al., Trustees of Calvary Church, Proprietor.

On this twenty-sixth day of October Eighteen hundred and eighty-eight, personally came and appeared CHARLES CUSHING, of the City and District of Montreal, a witness produced on the part of the proprietors, having been duly sworn by C. J. Fleet, third Arbitrator appointed, deposed as follows:—

I am a Notary practising in the City of Montreal, aged forty years. I am Secretary of the Calvary Church. I am not one of the trustees holding the property. I now file proprietors' Exhibit number 9—duplicate notice of expropriation served upon the proprietors by the said Company in this matter. I also file, as proprietors' Exhibit number 10, a certified extract from the plan of the said Railway Company deposited with the Clerk of the Peace, and certified by said Clerk, with an affidavit of the said Company's Secretary attached. 30

(Counsel for the Railway Company objects to the production of this plan, inasmuch as the notice of expropriation and the plan thereto attached show the property which is the subject of this arbitration. Objection reserved.)

I also produce, as proprietors' Exhibit number 11, authentic copy of Deed of Sale from George Foster to myself of the twenty-ninth of July Eighteen

hundred and seventy-four, under which the Calvary Church property was acquired, that is the land without the church.

I also produce proprietors' Exhibit number 12, authentic copy of the Deed of Conveyance from myself to the trustees of the said church, of date tenth April Eighteen hundred and seventy-nine.

I also produce proprietors' Exhibit number 13, Deed of Sale and Declaration by myself in favour of the trustees of the said church, of date eighteenth of March Eighteen hundred and eighty-seven.

10 The said last Deed was registered on the thirtieth of March Eighteen hundred and eighty-seven, and the date of registration of said other Deeds also appears by certificate thereon.

I produce, as Exhibit number 14, a true extract from the minutes of the said Calvary Church, of the twenty-second of June eighteen hundred and seventy-four, under authority of which I acquired said property from George Foster, by Deed, Exhibit number 11.

I also produce proprietors' Exhibit number 15, true extract from minutes of the said church, of date the first of February Eighteen hundred and eighty-eight, showing election of trustees.

20 I produce, as proprietors' Exhibit number 16, true extract from minutes of said church, of date April second Eighteen hundred and seventy-nine, under authority of which said Deed to the trustees Exhibit number 12 was executed, and also containing extract from minutes of meeting of said church of the second February Eighteen hundred and eighty-seven, showing election of trustees of said church.

In all these transactions I acted without any personal interest of my own, and wholly for the church. I have no personal interest in the matter, that is, I have no pecuniary interest in the award.

Examined by *Mr. Trenholme*, as representing the Proprietors.

30 Q. You have been a Notary here for how many years?—A. I have been a Notary for about twenty years.

Q. During that time have you had to do with a good many transactions in connexion with land in the City of Montreal, in the way of investments and sales, so as to know the value of property pretty well, besides dealing in it yourself?—A. During that time I have had occasion to pass deeds affecting real estate in every portion of the City, to examine property offered for sale, and to examine titles connected with property, and to deal with real estate generally in every possible way.

40 Q. You claim to have a pretty good knowledge of real estate?—A. I claim to have a pretty good knowledge of real estate and its value in the City of Montreal.

Q. You live, I think, in the west end, do you not?—A. I live in the west end, just outside the limits of the City. I lived for many years in the St. Antoine Ward.

RECORD.

*In the
Superior
Court.*

No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

RECORD.

*In the
Superior
Court.*

No. 55.

Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

Q. About how many feet of land was there in this church property, Mr. Cushing?—A. About eleven thousand two hundred and thirty-two (11,232) superficial feet.

Q. What is the value of that land in the absence of a railroad, that is, suppose the railroad did not pass there?—A. In the absence of a railway I should value the land there about seventy-five cents a foot. It is in a good position. This was facing on Argyle Avenue, fronting on Guy Street.

Q. Are you aware whether there has been any, and if so, any considerable advance in property in that locality since it was first acquired, in eighteen hundred and seventy-four?—A. There has been a material advance in property in all that section of the City. 10

Q. Has not there been a very marked advance?—A. I said material advance. There has been an advance in many cases of one hundred per cent., or more than double the value.

Q. I believe you took an active part, as a member of the church, in constructing the church?—I was one of the active promoters of the church, and was on the Building Committee.

Q. You have a pretty good idea of what it would cost to build such a church?—A. I have a pretty good idea of what it would cost to build such a building. 20

Q. What could such a church as that be built for at the present time? Suppose the church was being erected new, what would it cost? What is the value of that church now?

(Counsel representing the Railway Company objects to this evidence as irrelevant to the matters in question before the arbitrators, the value of the church and the lot on which it was built and damage thereto not being the subject within the scope of the present arbitration proceedings. Objection reserved by the arbitrators.)

(And the arbitrators further decide that all further evidence by either of the parties will be taken and accepted under reserve.) 30

A. In my opinion it would require twenty thousand dollars to replace Calvary Church as it now stands, without the land.

Q. And with the land?—A. Eight thousand four hundred and twenty-four dollars for the land, altogether twenty-eight thousand four hundred and twenty-four dollars (\$28,424).

Q. What have you included in the land, which you have given the quantity of here?—A. All the land originally required for the church, with the exception of two lots with brick dwellings and other dwellings thereon, each lot measuring twenty-four feet frontage by eighty-six feet depth, except two lots with the brick buildings and outbuildings thereon. 40

Q. The land you have given as belonging to the church at present is the whole of lot official sixteen hundred and four (1,604) St. Antoine Ward, Montreal, except the two portions sold off which you refer to?—A. Yes. They were sold to Messrs. John Lawson and John Hannah, the proceeds of which lots were credited in the church book.

Q. The land which you have given as belonging to the church consists of the portion of lot official 1,604 on which the church is built and of the lane, by which the church has access towards Richmond Square, and across which lane the line of railway is carried. It includes the lane of 10 feet in width by forty-eight feet in length, which lane is also a part of lot official 1,604, acquired for the church?—A. Yes. Said lane is used for the purpose of ingress and egress to and from the church basement and sub-basement.

RECORD.

—
In the
Superior
Court.
—

No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

10 Q. What is the basement of that church to which access is gained through that lane, used for?—A. For the residence of the caretaker, or sexton; for storage of fuel; for furnaces, and for materials connected and belonging to the church, that is the sub-basement, and also it has a kitchen for the use of the church.

Q. The sexton lives on the premises?—A. Yes.

Q. There are three flats?—A. Yes, there are three flats in the church: the sub-basement occupied by the sexton and his family; the flat above, occupied as a lecture room, Sunday schoolroom and for meetings, &c., and the church proper or auditorium of the building, on the third flat.

Q. The Deeds will show who have a right to access over that lane from the church?—A. Yes.

20 Q. Has that been used as a public lane going right through?—A. It has for the use of the people bordering on the lane only.

Q. Who have the right of access over that lane?—A. Well, the people bordering on it, above and below, as indicated on the plan, proprietors' Exhibit number 10.

Q. How much has that land depreciated by the passage of the railway there: how is it affected?—A. I consider the property has been rendered valueless for church purposes.

30 Q. As regards the land alone, would you say it has affected the railway?—A. If the church building were not there, I should consider that land worth merely thirty cents in view of the railway there, forty-five cents depreciation per foot.

Q. And then as regards the church building, what do you say?—A. Well, it is no use for church purposes or any other purposes. It requires too much alteration to render it of any value.

Q. Well what value would you attach to it for other purposes, or rather, what value would you attach to it after the passage of the railway?—A. Oh, perhaps five thousand dollars.

40 Q. For what purposes would you consider it could be available at all?—A. I consider that it would be available for tenement houses more than for any other purpose.

Q. What kind of tenements?—A. A cheaper sort of tenement houses, because the locality would forbid the residence of a better class of people, as the railway business would be continually injurious to the property.

Q. Do you know about the distance between the church and the railway?—A. I ran a tape line from the nearest point I could make on the line of the railway and I made the railway line to be twenty feet distant from the rear

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 55.
 Deposition of
 Charles
 Cushing for
 proprietors,
 dated 26th
 Oct. 1888—
continued.

end of the church, and about forty-five feet distant from the front of the church, and at the beginning of the iron bridge about sixty to sixty-one feet distant.

Q. The iron bridge over the street?—*A.* Over Guy Street. These figures are not exact, but approximately correct.

Q. Have you an idea about the elevation of this railroad compared with the church?—*A.* The railway I take it there to be from the top of the trestle work to the ground, about twenty-five feet. The iron rails would be about on a level with the floor of the upper flat, or auditorium of the church.

Q. That is the part used for the church pulpit?—*A.* Yes. For the preaching, It was so mentioned to me by one of the employés of the railway, 10 and I gathered it from the plan.

Q. And the structure as it stands at the present is a series of wooden trestles?—*A.* Yes, upon the land taken by the railway.

Q. Extending up to about, you say, the height of the main floor of the church?—*A.* Yes.

Q. Are there windows along that side of the church?—*A.* There are a number of windows on that side of the church, and the bottom of these windows is about four feet above the floor. The windows extend ten or twelve feet high.

Q. Are those windows used, is it customary to open those windows?—*A.* Those windows, and all the windows of the church are constantly opened, in 20 fact, it is required for the ventilation of the church.

Q. You are now speaking of the windows in the main auditorium of the church, then there are windows below?—*A.* Also in the basement or Sunday schoolrooms, and also in the sub-basement. The sub-basement has windows only on the side next to the railway, and none on the other side.

Q. That is, the street declines?—*A.* Yes.

Q. It is lower on the side next to the railway than the side from the railway?—*A.* Very much.

Q. And the sub-basement or sexton's residence has windows only on the side next to the railway, and none on the other side?—*A.* None on the other 30 side. The basement and main flat, or church flat, have windows on both sides of the church. There are not so many windows in the basement on the upper side, the side from the railroad, as in the side next to the railroad, and the windows on the other side are materially interfered with by the steep slope of the hill.

Q. So that you would depend mainly on the side next to the railroad for light and ventilation?—*A.* Yes, we depend upon the windows more particularly for light for the basement and sub-basement.

Q. You have stated that you consider the passage of the railroad destroys the property for church purposes; will you just now explain what are the 40 purposes for which it is used?—*A.* I consider Calvary Church is exceptional in the use to which it is put. Many up-town churches are hardly used during the week. Calvary Church, on the contrary, is used, not only all day Sunday, but there are meetings held almost every week day evening and in the afternoons of two or three days of the week for the various organisations of the church and school, and it has been in contemplation to use the Sunday schoolrooms for a day school or Kindergarten, for which it is most admirably adapted.

Q. Carried on by the church?—A. Carried on by the church.

Q. Then the church is in constant use?—A. Yes.

Q. How will the passage of the railway destroy that property for church purposes; state some of your reasons?—A. As I before stated, I believe the church to be valueless after the passage of the railway for church purposes. The noise and the whistling, and the general surroundings of a railway will destroy its usefulness, altogether making it impossible to carry on the work of the church.

Q. Do you know, as a rule, that churches have all selected quiet residential portions for their location, do you not, Mr. Cushing?—A. That is the aim of all churches, I believe. And this church had for its position a quiet and beautiful locality until the appearance of this railway, which has disfigured its whole surroundings and destroyed its location. The church is located on a line between upper and lower town, the only church in the City that has such a location. On Mountain Street and Beaver Hall Hill there are a number of churches situated, but west of Mountain Street, Calvary Church is the only one that has such a location.

Q. Was the church and its locality satisfactory to the congregation before this railway?—A. It has always been very satisfactory. But since the railway the church has become divided, and it is certain that it will be scattered.

Q. Are you able to give any instances of the value of land in that locality or the advance which has taken place in late years there?—A. Yes; there was a lot somewhat similarly situated to that on which Calvary Church is built, on Bisson Street.

Q. How far distant is that?—A. I think more than a quarter of a mile in a straight line.

Q. Further out?—A. In towards the City. It was a vacant lot. It was acquired about the same time that the Calvary Church was acquired, for fifty cents a foot, on the twenty-first of September eighteen hundred and seventy-eight, by Mrs. Williams for forty-five cents a foot, and it was sold on the twenty-ninth of March of last year eighteen hundred and eighty-seven, for seventy-five cents a foot.

Q. That is in no better locality?—A. It is by no means as good. Bisson Street is an unknown street.

Q. It is not nearly so good a street as Guy Street?—A. No.

Q. Guy Street is a good street?—A. Yes. There are other instances not so prominent as that. The land below the church, corner of St. Antoine and Guy Streets was acquired in eighteen hundred and seventy-three by John McDougall for forty-eight and a half cents, and it was subsequently sold for seventy cents.

Q. What date was that?—A. December eighteen hundred and seventy-four. And a portion of that same lot, upon Guy Street, adjoining the railway, was acquired by the railway by Mr. Duncan McIntyre for one dollar and twenty-five cents a foot. That was on the twenty-fourth of October eighteen hundred and eighty-seven.

Q. How far is that distant from the property in question?—A. That is the adjoining property with the railway on the lower side. It cannot be more than

RECORD.

—
In the
Superior
Court.

—
No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

RECORD. one hundred feet from the property in question. That fronts on Guy Street, corner of Richmond Avenue.

—
*In the
Superior
Court.*
—

Cross-examined by *Mr. Abbott*, of Counsel for the Railway Company under reserve of objections.

No. 55.

Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

Q. By this resolution of the trustees of the twenty-second of June eighteen hundred and seventy-four, Exhibit number fourteen, by which you state you were authorised to purchase from Mr. George Foster, there is a lot on Guy Street referred to, that is the lot mentioned in this Deed, Exhibit number 11, number 1,604 St. Antoine Ward?—*A.* Yes.

Q. Was that lot then sub-divided with the lane shown on it?—*A.* No; not 10 to my knowledge.

Q. Is it not a fact that the two brick houses were then built and erected on the lot previous to your buying it?—*A.* Yes, they were acquired with the lot.

Q. Described in the Deed?—*A.* Yes.

Q. Therefore the two lots on which these houses were built, and which, I believe, are now the property of Mr. Hannah and Mr. Lawson, were then divided from the rest of the property?—*A.* They formed part of the original purchase for the church.

Q. But the two lots on which the houses stood must have been separate 20 from the church lot?—*A.* The title is the same—it is one property. These houses and that lot formed one property in the hands of Mr. Forsythe, or the vendor, Mr. Foster, and we could take it with the houses, or we would not be allowed to take it all.

Q. I ask you if these two houses were not built on a part of lot 1,604, which were divided off from the rest of the property?—*A.* They were not divided off in any way.

Q. No fence?—*A.* No fence whatever.

Q. Was it not intended that it should be so divided?—*A.* Not that I am 30 aware of.

Q. On what streets did these houses front?—*A.* They front Mount St. Mary Convent, with a strip of land between the front of the brick house and the line of property.

Q. Do you intend to say that at the time you bought there was no intention of these two houses standing on separate lots?—*A.* No intention whatever. One house was used for the parsonage after the property was acquired.

Q. When was the lane in question laid out?—*A.* When the property was sold.

Q. To whom?—*A.* To Messrs. Lawson and Hannah, when the Deeds were made to them they were allowed access to the rear of their property over this ground, which was then called a lane I believe for the first time.

Q. Did you sell to Hannah and Lawson?—*A.* Yes, I sold to Messrs. Lawson and Hannah.

Q. You sold to Hannah I think on the twenty-ninth of August eighteen hundred and seventy-seven?—*A.* Yes.

Q. When did you sell to Lawson—about the same time?—A. Yes, about the same time, or a little later.

Q. And when you sold to Mr. Hannah I presume you gave him a right of way?—A. I did towards Richmond Square, but not toward Guy Street.

Q. You are aware that the Atlantic and North-west Railway Company purchased from Mr. Hannah his lot?—A. I am not aware of it.

Q. Will you please take communication of the Deed of Sale now shown to you, marked Exhibit number 18, dated the nineteenth of October eighteen hundred and seventy-seven, and state whether it is not a sale of that same lot that you sold to Mr. Hannah?—A. This is only a portion of the lot, a triangular portion, and described as number 67 A on a map, or plan, and book of reference in the railway: “being triangular shaped and measuring twenty-three feet long, the south-east side of line,” &c.

Q. You see by this Deed Hannah abandoned in favour of the Railway Company all his rights in the lane in question?—A. Yes, he only ceded whatever rights he had.

Q. Will you produce copies of the Deed to Mr. Lawson and to Mr. Hannah if you have got copies? You gave Mr. Lawson the same rights in the lane, did you not?—A. Yes, precisely.

Q. About the time you purchased this lot 1,604 you also bought lot 1,605, did you not, or a portion of it?—A. While the contractors were doing work upon the church building they used a portion—the rear part of 1,605 St. Antoine Ward for building purposes, mixing mortar, or piling material or some such purpose, and the proprietor of the lot threatened to institute an action, and I made him an offer for the lot in question and bought it. I subsequently disposed of that lot to different proprietors, and the lot being very shallow from Richmond Avenue to the rear—not admitting of any egress from the rear—I allowed the purchasers similar rights to those allowed Messrs. Lawson and Hannah, that is, right of way from this lane towards Richmond Square, but not towards Guy Street, with the express understanding that they should not in any way encumber the lane.

Q. They would have to come towards Guy Street to get into their property?—A. Yes, but not beyond their property.

Q. What lot was this that you bought there?—A. A portion of the rear lot of 1,605 St. Antoine Ward.

Q. Cannot you give us any idea of the size that portion was?—A. Yes, the portion I acquired contained four thousand two hundred and forty feet.

Q. And fronted on Richmond Avenue?—A. Fronted on Richmond Avenue.

Q. How is it you call it the rear part?—A. Because the front part of 1,605 fronts on Guy Street.

Q. Point out the lots which you bought?—A. The lots I then bought, I marked on this certified copy of the plan, Exhibit number 10, as railway numbers 63, 64, 65, and 66.

Q. And you say that your contractors for the church had been using a portion of that land?—A. This was all an open field at the time, and they piled some of their stuff and lumber on that property, and the proprietor approached me one day with a threat.

RECORD.

In the
Superior
Court.

No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 55.
 Deposition of
 Charles
 Cushing for
 proprietors,
 dated 26th
 Oct. 1888—
continued.

Q. Did you buy that in your own interest?—*A.* I bought that in my own name. I bought it as a person interested in the church.

Q. Did you make any profit on the sale?—*A.* Yes, I made some small profit on the sale.

Q. Was not that your personal profit and not the profit of the church?—*A.* That was my own personal profit.

Q. When was the church begun?—*A.* The church was begun some time in eighteen hundred and seventy-six, the corner stone was laid on the tenth of June eighteen hundred and seventy-six.

Q. And how long previous to that had the contractors been at work or piling on that property, or had they been there before that day?—*A.* They began in the early spring of eighteen hundred and seventy-six.

Q. It was early in the spring you began?—*A.* Yes.

Q. You sold to Mr. James Allan the lot marked on this plan, Exhibit No. 10, number 65 on the tenth of June eighteen hundred and seventy-six?—*A.* Yes, the same day on which I bought the property, was, appears by the Deed, Exhibit 19. I may as well remark, before I acquired this property, not wishing to be out of pocket, I found I could dispose of it, and on the day I bought the property, I did dispose of it, I believe, in three lots. I made a profit on it. It was my personal profit, but I may as well say here that I gave it to the church, although it was not a church matter. I bought it as interested in the church.

Q. By this Deed, you gave Mr. Allan the rights in the lane in question, then apparently existing. Now, how long previous to that date had it been in existence?—*A.* It was only created then—the rights were only created at that time. You see it was an open field before that time—the fence had been allowed to fall down. It was only created under that Deed. There had been an old fence, but it was rubbed out. There was no previous lane to that. The lane was created by that Deed.

Q. On the same day you sold to Messrs. Tomlie and Bell, marked 63 on the railway plan, as appears by the Deed now produced, marked Exhibit 20. This Tomlie and Bell, as appears by Exhibit 21, sold to McCrudden the same property. Then by this Deed of seventh June eighteen hundred and eighty-seven, marked Exhibit 22, Mr. McCrudden sold same lot, number 63, to the Railway Company with the rights in the lane?—*A.* Yes.

Q. You also sold lot number 64 to Mr. Murdo Tomlie, did you not?—*A.* I had the impression that Tomlie and Bell bought by the one Deed, on the eighth of June, two lots, numbers 63 and 64.

Q. Do you see by these Deeds, Exhibits numbers 23 and 24, that Mr. Tomlie sold his share of the property first to Mr. Neilson, and that Mr. Neilson sold to the Railway Company?—*A.* Yes.

Q. Those two lots of McCrudden and Neilson, the lane is extended beyond the limits of Hannah and Lawson's lots?—*A.* Their right of way over that land is different.

Q. So that at the present time, the Railway Company has a right of way over——?—*A.* Whatever rights the proprietors of 63 and 64 had along there, are now held by the Atlantic and North-West Railway Company.

Q. That is to say, that the lane in question, although described in the Deeds of Hannah and Lawson as being a length of forty-nine feet, has really a greater length towards Neilson's and McCrudden's properties to serve them?—*A.* They were simply given the right of way of what was called a lane, but it was never a public lane at all—simply a right of way over the land of the church: called for that purpose a lane.

Q. You see by this Deed, Exhibit number 25, that the widow of Mr. James Allan sold the lot number twenty-five, already referred to, to the Railway Company?—*A.* Yes.

10 *Q.* The only lot remaining there is the one marked 66 on the plan, Exhibit number 10; I think you sold that to Ritchie, did you not?—*A.* Yes, to John Ritchie.

Q. Now by the Deeds shown you, marked Exhibits 26 and 27, it would appear that Mr. Ritchie sold to Mr. Cook, on the twentieth of October eighteen hundred and seventy-six, and that Mr. Cook has not sold on the eleventh of June eighteen hundred and eighty-seven, to the Atlantic and North-west Railway Company?—*A.* Yes.

20 *Q.* So that at the present time the Railway Company have acquired the rights of all the parties to that lane, with the exception of the Calvary Church and Lawson?—*A.* So far as you have shown with the exception of Calvary Church and Lawson, and those are the only rights that exist.

And the cross-examination of this witness is continued until Monday, the twenty-ninth October, at half-past ten o'clock in the forenoon.

And on the twenty-ninth day of October, reappeared said witness and continued his cross-examination as follows:—

30 *Q.* There was a protest made by you, Mr. Cushing, as Notary, on the thirtieth of March eighteen hundred and eighty-seven, served by you at the request of the trustees of Calvary Church, which document is now shown you marked number 28?—*A.* This protest was served by me at the request of the trustees of Calvary Church on the thirtieth of March eighteen hundred and eighty-seven.

Q. By whom were you authorised to make this protest?—*A.* By the trustees of Calvary Church.

Q. Was any resolution passed authorising you to make this protest?—*A.* Not that I am aware of.

Q. You would be aware of it if there was one, I suppose?—*A.* Not necessarily. I am not a member of the Board of Trustees.

Q. Who keeps the minutes of the Board?—*A.* They are kept this year by George McGarry. He is the secretary of the trustees.

40 *Q.* In eighteen hundred and eighty-seven, by whom were the minutes of the Board kept?—*A.* In eighteen hundred and eighty-seven, the minutes were kept, I believe, by Mr. Thomas Macaulay, actuary of the Sun Life Assurance Company.

Q. Was there any written authorisation given you to make this protest?—*A.* No, it is not usual to give written authorisations. I make them every day of my life without any written authorisation whatever.

RECORD.

—
In the
Superior
Court.
—

No. 55.

Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

RECORD

—
*In the
 Superior
 Court.*
 —

No. 55.
 Deposition of
 Charles
 Cushing for
 proprietors,
 dated 26th
 Oct. 1888—
continued.

Q. Simply verbally?—A. So far as I recollect it, it was a verbal authorisation.

Q. Your instructions seem to have been that the Company had deposited two plans—subsequent plans to the first one—according to this protest?—A. That was my understanding at the time, and I believe it to be still correct. As I understood the matter then, and as the trustees understood it, the Company first of all obtained a charter to run a line of railway from some place on the seacoast, down here, to some place on the Georgian Bay, and they were passing outside of Montreal, going through by Lachine. Subsequent to that they deposited another plan, by which they gave access to the City—their original 10 charter did not allow them access into the City of Montreal.

Q. According to your interpretation of it?—A. According to the interpretation made to me at the time, and they got subsequent power to come into the City of Montreal, and deposited a subsequent plan. I think they are both to be found to-day in the office of the Clerk of the Peace of the City of Montreal.

Q. You say they got subsequent power to come into the City of Montreal?—A. They deposited a subsequent plan, that is my belief. I saw both plans at the time.

Q. The plan you refer to as the subsequent plan is the one which gave access to the City; you do not mean to say the protest was made after that 20 plan had been issued?—A. No, not after that had been deposited with the Clerk of the Peace. I considered at that time that that plan was *ultra vires*. And in view of the possibility of that line coming in, according to the plan deposited with the Clerk of the Peace, I saw that line would interfere with our property, and that protest was served, that if the railroad should come in we should certainly endeavour to prevent them injuring our property.

Q. The plan which you saw, I presume, was the same as this extract, which is produced as Exhibit number 10?—A. Precisely, it was a plan of which that is a certified copy of a small portion.

Q. And the plan number 10 would show that the railway takes a corner of 30 the church lot—if you will allow me, I will mark it Block A, besides the lane?—A. It takes in addition to the lane, so called, which is church property, an additional corner from the church property.

Q. Which may be called Block A?—A. Yes.

Q. Are you aware in the actual construction of the railway they did not take that corner?—A. I do not see how anyone can be aware of that as yet; it is laid down on the plan as required, and anyone looking at the place will see that it is impossible for the railway, if they make an embankment, to avoid using it, unless they build revetment walls.

Q. You don't know whether they intend to build a revetment wall or not? 40—A. They have not given any such indication.

Q. You have not taken communication of Mr. Shaughnessy's affidavit filed in the injunction proceedings?—A. I have not seen any such affidavit.

Q. You did not take communication of Mr. Shaughnessy's affidavit?—A. I did not take communication of it, nor do I consider it a material fact in the evidence—the property right out to the lane running down from Mount St. Mary Avenue towards Richmond Square.

Q. I am talking of the lane just now?—A. I do not distinguish between what you call the lane and what you do not.

Q. I ask you as a matter of fact whether you are aware whether the Company did not intend to take the corner of the Block A?—A. I have not been made aware of that fact, and I do not consider it material.

RECORD.

*In the
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No. 55.

Deposition of
Charles
Cushing for
proprietors,
dated 26th
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continued.

Q. What is the superficial area of the lane in question from the continued easterly line of Lawson's property to the lane marked number 86 on the plan, do you know?—A. That portion of the church property measures 48 feet in length from the continued line on the easterly side of Lawson's houses to the
10 line of the lane marked 68 on the railway plan by an even width of 10 feet. That is that part of the lane in rear of Hannah and Lawson's properties.

Q. So in order to get at the area of Block A we would, I suppose, deduct four hundred and eighty feet from eleven thousand two hundred and thirty-two?—A. Precisely.

Q. Leaving ten thousand seven hundred and fifty-two superficial feet?—A. Yes, leaving ten thousand seven hundred and fifty-two feet.

Q. Do you consider the land in the lane as valuable as the property on which the church is built, marked A?—A. Certainly; I consider it more valuable.

20 Q. Why?—A. The means of access to the building from Richmond Square, and it was always the intention of members of the church to increase the building by an additional building in the rear by some prominent members of the church, to give increased accommodation, and we have always had that means of access in view, and it was for that reason that so stringent clauses were put in the Deed in allowing use of the lane, that it was not to be encumbered or disfigured in any way.

Q. How do you mean building in the rear?—A. I mean those to whom access over said lane was allowed, towards Richmond Square. In each one of those Deeds you will find that they must keep that lane in order.

30 Q. I am asking you what you mean by building in the rear of the church?—A. Well, to continue the church building from there back to Lawson's house. You will find in the Deed of the property to Lawson, the church retains the right to use his gable wall.

Q. How would that affect the value of the lane?—A. Well, simply because if we had an extra building here we would have most likely an entrance straight on the rear of the building, and the access to Richmond Square would be much easier than coming all the way down Guy Street.

Q. Then you value the lane purely as a right of access to the church?—A. So far as that building was concerned.

40 Q. What other use could you put the lane to, considering that you have granted rights of passage over it to third persons?—A. We could build over it.

Q. Where from?—A. From our own property.

Q. What part of your own property?—A. We could build from our own property right along with supports.

RECORD.

*In the
Superior
Court.*No. 55.
Deposition of
Charles
Cushing for
proprietors,
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continued.

Q. Where would you get your supports?—A. From the side of the lane.

Q. I want to know where you would get your supports without encumbering the lane?—A. We could get supports, six inches in width, iron posts going up there without any encumbrance at all.

Q. Do you mean to swear that the church trustees had contemplated building in that lane?—A. I certainly do not make any such solemn declaration; I simply say such are our rights, we do not know what future needs the church may be.

Q. I am not asking you questions of law, I am only asking you questions of fact?—A. Well, the church develops, we have continued ours since we have built it, and we do not know what the future may require of us. 10

Q. So you consider a piece of land which has been granted like this for a lane, with rights of passage to third parties, is as valuable as unencumbered portions of the property?—A. More valuable. We could do without some other portions of the church property, but not that.

Q. This plan, Exhibit number 10, shows the homologated line of Guy Street on the westerly side, as running through the church, can you explain that?—A. I can. We were not aware of any such homologated line when we built the church. If such a line was then in existence, we were not made aware of it by the City or by other parties. 20

Q. You are aware now that the line is in existence?—A. I am not aware of it, except that I see it marked on the plan.

Q. What did the church building cost to erect?—A. The church building, including such things as pews and shelving and one thing or another of that sort, has cost altogether the sum of sixteen thousand eight hundred and seventy-two dollars and ninety-six cents (\$16,872.96), as appears by a statement of moneys paid, extracted by me from the records of the church, and a copy of which I file herewith as Exhibit 29. For the due understanding of that statement, I should remark here that the church was not built all at one time. That the building was erected and the basement completed, but the church proper was not finished for a year or two later, and therefore there were two sets of contracts given out, under competition, and superintended by Messrs. Hutchinson and Steele, architects, of this City. It is, however, my belief that the cost of a similar building to-day would be twenty thousand dollars, as I have already stated, as the materials and work both having advanced. If necessary, I could produce either the cheques for all those amounts or receipted accounts for the same, probably both, and I have notarial contracts for more or less all the work done. 30

Q. Please give us the cost of the land?—A. The original price of the property for Calvary Church was ten thousand six hundred and twenty-five dollars, mentioned in the Deed, and twenty-five dollars for the cost of the Deed connected with it, making altogether ten thousand six hundred and fifty dollars. Subsequently the Hannah and Lawson houses were sold for the sum of twenty-four hundred and fifty dollars each, that would make forty-nine hundred dollars, leaving the cost of the land to be fifty-seven hundred and fifty dollars. 40

By *Mr. Trenholme.*

RECORD.

*In the
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No. 55.
Deposition of
Charles
Cushing for
proprietors,
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continued.

10 *Q.* Was that without the interest accrued?—*A.* Not including any interest, which would make the cost of the land average very close in the neighbourhood of fifty cents a foot more or less, which is considered a low valuation. I would give evidence in support that the lots to the south, fronting on the narrow avenue known as Richmond Avenue, were sold by me at fifty cents a foot, and they were by no means as well situated. The land was purchased in eighteen hundred and seventy-four, and the sale I speak of at fifty cents a foot, on the low land, Richmond Avenue, was made in eighteen hundred and seventy-six,

Mr. Abbott.

Q. But you say that the land has increased in value in this neighbourhood since?—*A.* Yes, since. We had very hard times.

Q. The only instances you have given are sales to this Railway Company; is it not a fact that the prices given by the Railway Company included damages?—*A.* No. In a case I mentioned on Bisson Street the whole lot was taken, and there could be no case for damages. If the arbitrators desire to have evidence of the lands in the neighbourhood, I can easily obtain it.

20 *Q.* You were asked by Mr. Trenholme to give instances of sales in that neighbourhood before the railway was determined upon as coming in that section?—*A.* I am not able to at the moment, because I did not look them up with that view, and it is rather difficult to obtain buying and selling prices of land in that neighbourhood which was bought as vacant land and sold as vacant land. Almost the whole extent of land that had been bought in that neighbourhood has been bought and built upon. I simply gave mention of sales which were to my knowledge, because they have been passed in my own office, and I did not go to any trouble about them. I did not go to hunt them up especially.

30 *Q.* Well, the lot you mention on Bisson Street was vacant. The other lots you mention, were they vacant?—*A.* The lot I mentioned on the corner of Guy and St. Antoine Streets had a building on the corner there, which had been damaged by fire. I do not know what the value of it was.

Q. Was that the one bought by McDougall?—*A.* I cannot tell you at the moment, but it is only recently that the building has been put in a good state of repair, and I do not think that it interfered materially with the value of the property.

Q. That property was bought and sold in eighteen hundred and seventy-three and eighteen hundred and seventy-four; is it not a fact that there was a boom in real estate, and the prices subsequently very much depreciated?—

40 *A.* Yes, I believe the prices depreciated to a certain degree after that time, in eighteen hundred and seventy-three or eighteen hundred and seventy-four, as you state.

Q. Do you mean to say that the prices have more than recovered what they were in eighteen hundred and seventy-three and eighteen hundred and seventy-four?—*A.* I think so, with the exception of perhaps portions here and there

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No. 55.
 Deposition of
 Charles
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 proprietors,
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throughout the City. At large, the prices are much in excess of what they were in eighteen hundred and seventy-three or eighteen hundred and seventy-four. In some places they have gone ahead enormously.

Q. Is it not a fact that to your knowledge that since the railway has been determined upon and in course of construction in this neighbourhood that numbers of sales have taken place at greatly advanced prices, and there has been a demand for property in the neighbourhood of the railway?—*A.* Yes, there is no doubt that the railway has increased the property not immediately upon its borders, not touching the railway, but bordering at some little distance, so as not to interfere with the value of the land, because of the intervention of the railway. I do not hesitate to admit that. 10

Q. But I am speaking of the neighbourhood, between the railway and Dorchester Street, for instance?—*A.* Between the railway and Dorchester Street, I consider that the railway has severely damaged property.

Q. You do not know of any sales at enhanced prices between Dorchester Street and the railway since the railway has been in course of construction?—*A.* No, I do not indeed. I know of a property on Seigneurs Street it was almost impossible to sell, because the railway was there, a large lot of land known as "Cherry Hill," a fine lot of land covered with magnificent trees, just on the slope of the hill, and although it is more than twice the distance that Calvary Church is, yet it has been very materially injured by the railway, so much so, that they were obliged to sell it at what they considered half its value. 20

Q. What was it sold for?—*A.* For about twenty-two cents a foot, by the Montreal Building Association, to Mr. Hugh Graham, of the "Star," and he has since been anxious to dispose of it, I am told. It can be ascertained from Mr. Graham, of course.

Q. You consider that that was a low price?—*A.* Twenty-two cents for property so situated. I believe that that property would not have sold for less than fifty cents had it not been for the railway. 30

Q. Is it not a fact that there is a very steep slope just where that property is?—*A.* Not at all. I had a plan showing how that property could be used to build lots on either side, and I went to the sale with a view of building property, and I actually engaged builders to put up terraces there.

Q. And you could not get it?—*A.* I declined to go as high as Mr. Graham; for the same reason the railway is what prevented either of us from thinking it a desirable property.

Q. When did this sale take place?—*A.* This sale took place perhaps about four or five months since. You will understand that the property I speak of that I was going to build was of the cheapest kind, for mechanics. 40

Q. And how long previous to the sale had you made your plans for building, &c.?—*A.* Well, within perhaps a month or six weeks.

Q. So you apparently were not frightened by the railway; you were prepared to build on this property?—*A.* I anticipated getting it at half its value, and putting up a cheap class of buildings for mechanics. It was a speculation, and I thought I could see some money in it. It never occurred to me until the

railway was determined upon and in course of construction, and I thought I could get it at a bargain.

Q. Are you aware of a sale of property on the corner of Dorchester and Aqueduct Streets, which has taken place since the railway is in course of construction?—A. Yes.

Q. Do you know what price that property brought?—A. I am not sure, but about one dollar and twenty cents a foot. I am not positive about that. That is my impression.

Q. How deep does that property run from Dorchester?—A. It runs about
10 one hundred and thirty to one hundred and forty feet I think. I do not know.

Q. The only buildings on that property were some old lath and plaster faced cottages, were they not?—A. Yes.

Q. Do you know how long that property, or the Cherry Hill property, had been on the market?—A. Well, the Cherry Hill property had been on the market for months, if not years. That property had not been long on the market, that is the property corner of Aqueduct Street.

Q. How long had the Building Association held the Cherry Hill property before they sold it?—A. They had been holding it for years, I believe, but they did not try to sell it. The Company had not been wound up. It has just been
20 coming to a final settlement of affairs, hence they tried to push the sale, and found themselves subjected to a heavy loss owing to the proximity of the railway.

Q. Do you consider the Cherry Hill property as valuable for building purposes as the Block A, on which the church is built?—A. Very much more so.

Q. Cherry Hill more so?—A. Well, Cherry Hill I consider, apart from the railway, more so for the class of residences built there, had it not been for the railway.

Q. In view of the railway?—A. Cherry Hill property was suitable for
30 first class residences, like Senator Ogilvie's, for instance. It was considered a high class property.

Q. You consider it has been destroyed for that purpose?—A. Yes.

Q. In view of the railway, which property do you consider the most valuable?—A. Well, I am still disposed to think the Cherry Hill property the more valuable.

Q. You stated in your evidence-in-chief on Friday, you would value that property at thirty cents, Block A, after the railway had passed, and you consider the Cherry Hill property not worth more than twenty cents?—A. The
40 Cherry Hill property in order to be utilized, as I have mentioned, required that the street should be taken right through the centre of it, which would have increased the average value of the land per foot. The average cost of land per foot valued more than the Guy Street property.

Q. This price that Mr. Graham paid, twenty-two cents, would include the trees which would have to be deducted?—A. Yes.

Q. So that the price he paid for the land was really more than he was going to use?—A. Yes. It would bring it up to about thirty cents.

RECORD.

*In the
Superior
Court.*

No. 55.
Deposition of
Charles
Cushing for
proprietors,
dated 26th
Oct. 1888—
continued.

RECORD.

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*In the
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 Court.*
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No. 55.
 Deposition of
 Charles
 Cushing for
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 dated 26th
 Oct. 1888—
continued.

Q. I would like you to state again, Mr. Cushing, in detail, your reasons for saying you consider the railway affected the church property, so that it would be valueless for church purposes?—A. First, destruction of the appearance, character, and residential nature of the neighbourhood; its beauty being taken away, and itself rendered a place to which people would not like to go for quiet, or for worship, or for enjoyment in social life, owing to the excessive noise of the greatest railway, probably, in the world, with a double track, in incessant operation as it must be. Then, in addition to the noise, there was a continual hissing of the steam, which anyone who has been on railway tracks is aware of, there is the smoke, and the ashes and cinders, and the discomfort which has been experienced by anyone who has travelled on a railway or who has been on a track, then there are the obnoxious gases which are most intolerable, and the unsightliness of the trestle work, which would not only hold the snow and render the sub-basement worthless, but would interfere with the light of the basement, and in a measure, with that of the church, I daresay. 10

Q. I think you mentioned whistling too?—A. Well, I do not know. Escaping steam would make a kind of whistling or hissing, I do not know that whistling is allowed in the City limits.

Q. Suppose, Mr. Cushing, that a block of land lying below the church, between Richmond Avenue and the church property, were bounded on one side by the lane, number 68, in Guy Street, had been purchased for manufacturing purposes, such as a boiler factory for instance, would it not have had very much the same effect, as it had (the railway) upon the residential nature and character of the surroundings, causing noise, destroying appearance of the place, and giving annoyance through the smoke, cinders, ashes, obnoxious gases, taking away air, light, &c.?—A. I presume if a boiler factory had been established there it would, but no fool would think of putting up there a factory, because it is not fitted in any respect whatever. It may be in some senses as obnoxious as a railway, but there was no probability of a boiler factory being put up there, nor anything to lead us to suppose such a thing. 20 30

Q. You never supposed there would have been a railway there either?—A. No, certainly not.

Q. As far as you know, there were no other resolutions of the trustees regarding this purchase of the property and protest, &c. than you have produced?—A. Yes, there were a large number of meetings held. We went over property after property in this City, and this property was talked of again and again, and it was casually referred to in the minutes of other meetings, but I am not aware of any other special resolutions.

Q. Is there any indication on the resolutions of the size or shape of the lot of land required for the church?—A. Not that I am aware of. A great deal occurred in our discussions about the church as to the size of the land we would require, which it was not necessary to fix in the minutes. 40

Q. Is there any resolution, Mr. Cushing, referring to the Deed of Sale from you to the trustees, on the eighteenth of March eighteen hundred and eighty-seven, Exhibit 13?—A. I would have to refer to the church books to find out. That would come before the church itself. I failed to read the resolution, and the Deed was asked for and executed.

Q. Is it a fact that the Railway Company had filed their plan, showing that they were going to take this piece of lane, that caused the execution of this Deed?—A. I believe it was the intervention of the railway, that caused us to learn of the omission. When a representative of the Railway Company came to see me to find out about that church property, but nevertheless, that representative did not mark it as church property when he put it down, although he had it distinctly from me. He went to work and put it in as being a common lane.

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No. 55.
 Deposition of
 Charles
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continued.

Q. It was a common lane?—A. He had been told by me that it was church
 10 property. I thought at the time the Deed covered it, and it was only on
 examination afterwards I found that it did not.

Q. It was your property, it was not the church property; was it not a
 common lane, common to all the joint proprietors as a matter of fact?—A. As
 a matter of fact the proprietors had right of way over it, but they had no
 ownership whatever in it.

Q. At the time the railway plan was filed, the church had in the lane all
 the rights of passage in common with other proprietors?—A. Certainly not,
 only the right of passage.

Q. You were the registered owner?—A. So far as I know, when the plan
 20 was deposited with the Clerk of the Peace.

Q. If it was the owner, why did you pass that Deed?—A. It was the owner by
 the church resolutions. The Deed was passed because it had been omitted in
 the resolution.

Q. At the time the plan was deposited with the Railway Company, the
 church was not the registered owner of that piece of land covered by the lane,
 but it had all the rights of passage in it?—A. It was not the registered owner,
 but it was entitled to the land.

Q. I understand your position as the owner. I am asking you if it is
 not a fact that it had at that time, according to the Deeds registered, right of
 30 passage?—A. Not by Deeds registered, except there is a mention made of right
 of way by the modes of approach to Richmond Square.

Q. Does it not state in the Deed passed by you on the tenth of April
 eighteen hundred and seventy-nine, that the church would have right of way
 over the land in question?—A. It would certainly include the lane in question,
 but the idea that that lane was not the property of the church then, did not
 occur to any person. The Deed was prepared like that by the writer in the
 office.

Q. Then at that time when the plan was filed by the railway, the church
 had the right of way over that lane—ingress and egress?—A. When the Deed
 40 was executed, the church authorities did not look upon that lane as a lane, it
 was looked upon as the property of the church, and it was, because it escaped
 them and me, that it was not in the Deed. I am merely telling you the
 understanding of the church people.

Q. I am asking you, at the time the plan was filed by the railway, deposited
 in the office of the Clerk of the Peace, is it not a fact that the church had then
 under that Deed, that is on the tenth of April eighteen hundred and seventy-

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nine, a right of way over the lane in question?—*A.* They would have it certainly under that Deed, but they had it still more as proprietors.

Q. Well then, that is, as you said in your evidence, that the right of way—right of ingress and egress—is what makes the lane valuable to the church?—

A. They got the right of way because they own the lane.

Q. I am asking you this question; is it not a fact, as you have stated already, that it is the right of way that gives the value to the church?—*A.* Very largely. I would not like to say entirely.

Q. So that at that time, when the plan was deposited, the church had the right of way in that lane, which, according to your opinion, is what gives the lane its greatest value to the church?—*A.* The church had, incidentally by that Deed the right of way, but they had the ownership of the property at the time the Deed was made. Although the Deed did not give it, the church had the right to compel it. 10

Re-examined by *Mr. Trenholme.*

Q. Under the Deed from Foster to you, you say that you had no interest in the Deed, and were acting only for the church?—*A.* Precisely.

Q. Then they were the owners of the whole lot?—*A.* The church were the owners of the whole lot under that Deed.

Q. They paid for the whole lot?—*A.* Yes. 20

Q. And they paid for this lane?—*A.* Yes.

Q. The subsequent Deeds were little more than formal declarations of their ownership—both the first and the second from you to the church?—*A.* They were really the owners on both occasions, and not only the owners, but a board was put up saying this was for the church.

Q. These Deeds were passed and put on record, and the Deed of the church property on which the church is built, and the Deed of the lane were put on record, was actually the case before that?—*A.* Precisely.

Q. Now, you have been asked about the inconvenience, supposing a boiler house were erected there; are you aware whether a boiler house would be at work and in operation at night or on Sundays the same as a railway, at the times you use the church most?—*A.* No, there would have been that difference, of course, between a boiler factory and a railway. A boiler factory would only work during the day, but even in the day it would give us serious inconvenience. Boiler factories do not work on Sundays. 30

Q. Most factories do not work at night or on Sundays as a rule, do they?—*A.* They do not work on Saturday afternoons, nor evenings, nor on Sundays, but, nevertheless, it would have been an inconvenience during the time they do work, as our services are going on there at all times of the day.

Q. And a railway running on Sundays and at night would still be a greater inconvenience?—*A.* Undoubtedly. 40

Q. Are you aware whether the Cherry Hill property was withdrawn from sale, two or three years ago, for thirty-five or forty cents a foot, do you remember?—*A.* I was told something to that effect by the manager of the Company.

Q. Are you aware, of your own knowledge, that building has very materially increased from twenty-five to forty per cent. since the time that church was

built?—*A.* A number of builders with whom I have been speaking from time to time in connexion with other property in the City, have told me buildings have increased about forty per cent.—most kind of buildings in the City—during the last few years.

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Question by *Mr. Brodie.*

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10 *Q.* Is there any measurement that would indicate on the notice of expropriation that the Company encroached on the church property?—*A.* Yes, the notice of expropriation declares that the southern boundary of the so-called lane is fifty feet four inches in length, that brings the railway line two feet four inches
beyond the depth of the lane, as given in my deposition formerly, which is two feet four inches more than as described by me previously.

Question by *Mr. Trenholme.*

Q. The church has land alongside of that lane so that it could afford a clear passage of ten feet wide if it wanted to build over without changing materially the location of the lane?—*A.* Certainly.

By *Mr. Abbott.*

20 *Q.* In the proportion of the lane in rear of Lawson and Hannah's properties you could not give any more than ten feet?—*A.* No, save that we have the right to use the land—this mitoyen land on the side of Lawson's house. We could use that which would give us support.

Q. You could simply use the line, the easterly line?—*A.* Yes, but when I hold we could put a post in the lane as long as it did not obstruct the lane, and if it did not obstruct the lane, we could put what we liked there. Eight feet is wide enough for a lane for practical purposes and we left it ten feet for mere superabundance, but we could use that lane if we chose.

By *Mr. Brodie.*

Q. Where is the greater part of the church congregation situated—where are the residents that come to this church?—*A.* The greater portion of the congregation come west of Guy Street and south of the church.

30 *Q.* Has the church been in a flourishing condition within the last few years?—*A.* Very much so.

Q. What in your opinion would be the effect on the church attendance after the passage of the railway?—*A.* It would merely compel removal elsewhere. The church in my opinion would be dissolved.

By *Mr. Abbott.*

Q. Now as to this question asked by Mr. Brodie as to the length of the lane in the rear of Lawson's and Hannah's properties: is it not a fact, according

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to the plan annexed to the notice of expropriation shows that the length of that lane from the main lane as you may call it lane number 68, to the easterly end of Lawson's property, taking the easterly line of Lawson's property, continued across the lane, is fifty feet four inches and not forty-eight feet?—*A.* No, the plan attached to the notice of expropriation is incorrect.

Q. I asked you if the plan shows that?—*A.* The plan shows a straight line, but it is not declared to be the line of Lawson's property.

Q. According to the plan the railway does not encroach at all upon the Block A, Calvary Church property, where the church is built?

Q. Do you swear, Mr. Cushing, that the length of that lane, from lane number 68 to the easterly limit of Lawson's property, is not fifty feet four inches?—*A.* I swear positively that it is forty-eight feet.

Q. Have you measured it yourself?—*A.* I have based it over again and again, and I have the Deeds giving the measurement, and the width of each of the brick houses is twenty-four feet, according to all the Deeds.

Q. You say that a portion of the congregation will discontinue attending the church after the railway has passed; has any opinion been expressed on the matter, or is it simply your opinion?—*A.* Yes, I have heard a good many opinions expressed. I may state that so far as I am personally concerned, I feel that I cannot work in that church after that railway there, which it has always been my delight to do. I have been there more than fifteen years, and spent a great part of my spare time outside of business, in connexion with that church, and after the passage of the railway I cannot spend my time in any church organisations in that locality, after the railway is in operation I cannot remain there.

Q. Others differ from you?—*A.* I do not know if they differ. They have not found out the inconvenience of it. They have not worked so much in connexion with a railway as I have, and I know what it is.

Q. At the present time they do not differ?—*A.* I do not know that they differ. I said they do not know.

Q. You said there would be a split in the church?—*A.* Yes, because the people above the hill will not go down, and the people below will not go up.

Q. How do you mean below the hill, what hill?—*A.* The ridge along there that stands between St. Antoine and Dorchester Streets.

Q. The church is below the ridge now, is it not?—*A.* It is mid-way on the slope of the hill.

Q. You say that people object to coming down to the church?—*A.* They would object to coming right down to the end of the hill. If we had a church on Richmond Square or lower, the people who would come from Guy Street would not want to walk past the railway and below the hill, they would not like to come below Seigneur Street. It would deter people.

Q. People living below would not come up?—*A.* No, we could not expect that they would go to the church higher up in the City. You will find this pretty much so in the west end.

Q. There must be a considerable number of your congregation residing below on St. Antoine Street?—*A.* West of Guy and St. Antoine is the majority of our congregation. They are particularly attached to that side.

By *Mr. Trenholme.*

Q. I would like to know if you moved this church up or down, it would be so inconveniently removed from the people who attend it, who are below or above, that one or the other would not attend?—*A.* That is precisely my opinion. And if it remains there, there are many who are attending it now, who will gradually break off on account of the proximity of the railway.

Q. If you are moving down you will lose the attendance of the people above, and if you move up, the attendance of the people below?—*A.* That was my opinion when I said there would be a division in the church.

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By *Mr. Brodie.*

Q. Please examine that plan, Exhibit 30, and state if the church property is affected in any way whatever?—*A.* I recognise this to be a true extract from the plan deposited in the office of the Clerk of the Peace, duly certified by Mr. Sicotte, Clerk of the Peace. By this plan, the railway takes the property of the church, both what is marked thereon as a lane and a portion that is not marked as a lane.

By *Mr. Abbott.*

Q. Will you please take communication of the affidavit of Mr. Shaughnessy, filed in the injunction proceedings taken by the trustees against this railway, and say whether that is not a copy of the affidavit produced in those proceedings, Exhibit number 30, produced by the Company?—*A.* This appears to be a true copy of the affidavit by Mr. Shaughnessy, sworn before Mr. Heneker, and certified as a true copy by Messrs. Abbotts and Campbell, Attorneys for the Respondents.

Q. You say you admit that to be a true copy?—*A.* Yes.

(The Proprietors admit said document to be a true copy of the affidavit in question, but do not admit its relevancy.)

By *Mr. McGibbon.*

Q. By Exhibits, numbers 19 and 20, you appear to have sold portions of the property of lot 1,605 to Mr. Allan and Mr. Tolmie and Bell?—*A.* Yes.

Q. Lot 1,605 was your own personal property, was it not?—*A.* It was my own personal property.

Q. By these Deeds you appear to have conveyed at the same time to these purchasers rights in the lane 1,604—rights of passage?—*A.* Yes; I explained all that in my examination on Friday.

Q. Was there any resolution of the trustees of the church authorising you to convey rights in that lane to Allan, Tolmie, and Bell?—*A.* I do not believe there was any resolution. I do not believe that the church was aware of it. As I told you on Friday, I acquired that property in the interest of the church because it adjoined the property there, and there was some difficulty pending, and I disposed of it, but I acquired it in my own name without any reference to the church at all. The only other person I know acquainted with these facts

RECORD. is the late Mr. John Ritchie. I am sorry he is not living to-day. I gave the rights over that lane, and in doing so I think I put myself in the way of being censured by the church, in giving rights I had no business to give. It did not occur to me at the time.

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continued.

Q. The extension of the lane, 1,604, to the easterly boundary of McCrudden's lot, as appears on this plan, number 10, that was created by yourself, was it not—the right of passage over that lane?—A. I gave right of way over that. There was no lane there. As I explained before, the lane was so shallow they could not be disposed of except by means of people going out, so I said, "Well, go out by that way," and I gave them that right. I did not see 10 any material injury to the church there.

By Mr. Abbott.

Q. Will you please produce a copy of the Deed from Mr. Mullarky, dated eighth June eighteen hundred and seventy-six, by which you acquired this part of lot 1,605?—A. Yes, with pleasure.

And at a quarter past ten o'clock on Wednesday, the thirty-first of October, the examination of Mr. Cushing was continued:—

I produce the affidavit of Mr. Thomas Shaughnessy and plan attached, as Exhibit 31, and also Deed of Sale, dated eighth June eighteen hundred and seventy-six, from Thomas C. Mullarky to Charles Cushing, Notary Public, as 20 Exhibit 32.

And further Deponent saith not.

Schedule No. 67.

DEPOSITION OF REV. EDWARD M. HILL.

No. 56.
Deposition of
Rev. Edward
M. Hill for
proprietor,
dated 31st
Oct. 1888.

On this thirty-first day of October eighteen hundred and eighty-eight, appeared Rev. Edward M. Hill, of the City of Montreal, Pastor of Calvary Congregational Church, aged over thirty, who, being duly sworn, deposeth and saith:—

Examined by Mr. Trenholme.

Q. I believe you are the Pastor of Calvary Congregational Church in 30 question in this cause?—A. I am.

Q. And have been for four or five years?—A. Yes.

Q. You know how the railroad is going to pass this church?—A. I am aware of the manner in which the railway is going to pass said church.

Q. Will you please state what effect the passage of that railway, in the manner in which it is indicated to pass the church, will have, will it affect the suitability of the church for church purposes, for which it is intended?

(Objected to by Counsel for the Railway Company. Objection reserved.)

A. I consider the most important objection to be that the trains will interfere with the regular services that are held, the noise at any time would be 40

disagreeable for worshippers. People generally wish a quiet place for worship, and in coming into a City will choose a quiet place for their church home, but particularly will it be objectionable for any speaker, for a public speaker makes oftentimes a great deal of movements in working up his discourse, to bring a certain impression, and a railway train passing at a certain moment would destroy all the impression that he has made preparatory to the particular point, and oftentimes, as a part of the church service, music is brought in to influence hearers, and a train coming in at the wrong time would very much interfere with the effort to influence the hearer.

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continued.

10 Q. I suppose the same would be the case in the other portions of the service?—A. Yes; the prayers, very much so. At the close of a sermon or at any other time. When a prayer is being made, the effort is to get the thoughts of the audience away from secular things for a little while, and the rumbling of a train going by at that time would immediately send the mind off on to other things, and it would take some time to get those minds back again. Anyone knows how easily the thought is turned off any subject by an interruption. And then in our church we make use of week days, evenings for concerts and lectures, and we have readings and soft music, which would all be interfered very much with by trains coming in. We would, of course, have evening trains
 20 coming in during the week even if we did not on Sundays.

Q. And you would regard the railway there as very injuriously tending to interrupt all the services of the church?—A. Very materially. If I was to look at such a church with a view of accepting a call to-day, I should immediately say, "Why, my ministry would be very much interfered with by the "proximity of the railway, and I should prefer to work elsewhere, where there "is less opposition."

Q. Is it your opinion that it renders the place unsuitable for church purposes and undesirable?—A. I do strongly feel that.

30 Q. You think also it would have the effect of diminishing the attendance on the church and the attractiveness of the church, owing to its situation?—A. Already a number of families have moved away from our neighbourhood who were adherents of our church, being driven away by the railroad. They have gone to Cote St. Antoine and out at the east end. Then, besides that, when strangers come into the City they go into several churches generally before they settle their church home, and if they come into Calvary Church and find the worship so much disturbed, and another Sunday go into a quiet place, they naturally would be driven away from our place of worship.

40 Q. Does a church like Calvary Church change its membership: is it dependent largely upon new members coming in?—A. It is very dependent upon that. We have a stable element of membership, but we have a great floating—we have a changeable class.

Q. There is constant tendency to change?—A. Yes. Many people come to this country from the old country, and will stay here for a year or two and pass on, and then about the first of May we have changes.

Q. Then the success of the church largely depends upon its attractiveness, and its capacity to gain new members, new attendance, both the church and congregation?—A. I consider it depends very much upon that, and that is

RECORD. especially true where there are many churches around us that are just as easy of access as ours.

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No. 56.
Deposition of
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M. Hill for
proprietors,
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continued.

Q. And free from the objectionable feature?—*A.* Free from the objectionable features attached to this on account of the railroad.

Q. Then I understand the conclusion you have come to in this matter is, that the passage of the railway renders the place unsuitable for a church?—

A. Yes, I can say with confidence that it renders it unsuitable. I have often watched a congregation moving along with the progress of the minute until a certain stage of the sermon or of a prayer, when a hush came over the congregation which made it very seasonable for the impression I wish to make, and a noise at that time would spoil it. That makes it objectionable, as well as driving away the population. 10

Q. The reasons you have already mentioned?—*A.* Yes.

Cross-examined by *Mr. Abbott* under reserve of objections.

Q. I suppose you have known of churches that have been situated near railways, have you not, even in Montreal?—*A.* No, not in Montreal.

Q. Is there not one at Point St. Charles—I think they call it Grace Church, which is pretty near the railway?—*A.* Yes. I do not know the effect.

Q. You have had no actual experience?—*A.* No.

Q. Is it not a fact that churches have often been built, or if not built, have 20 to remain built in the midst of the noise of all kinds of manufactories, railway trains, steam boats, and all sorts of things of that kind, particularly populated districts?—*A.* Yes, but the interference is as great if they have to stay, and then when other churches are in the same condition, the rivalry or competition among churches will not be so great when others have the same inconvenience.

Q. In the City of New York, the lower portion, there are rumblings on pavements and noises outside, I suppose, constantly—street cars, elevated railway, &c.?—*A.* Yes, and regular traffic, but no street in New York is free from that.

Q. Of course there are streets on which there are churches, and near which 30 there are no elevated railways and no street cars on Sundays in New York?—*A.* I suppose so.

Q. The pastors of the churches in New York, where there are street cars, &c. seem to do their work without having to give up and go elsewhere, and the congregation seem to remain, is not that the case?—*A.* Well, a man will do a thing when he is forced to, even much hampered in his work.

Q. Now, for instance, there is Trinity Church in New York, away down the City, quite near the Sixth Avenue elevated railway, Broadway on the other side of it, I think it is very near all sorts of traffic, and yet it is one of the most fashionable churches in New York; do you know the place?—*A.* Yes. Well, 40 the circumstances are dissimilar.

Q. Your chief objection, as I understand it, is, that a sudden noise will disturb the mind of the congregation, and recall them to secular matters, and prevent your impression when the congregation has got into a particular state of feeling, but would not any outside thing have the same effect, for instance,

a cart passing close to the building on Guy Street?—*A.* The noise would not be so great.

Q. You think a train passing, as it will there, would make more noise than an empty Scotch cart on a street?—*A.* Yes. The hill will be bad and the train moves very rapidly, and no cart is going to run uphill, and they do not run very hard.

Q. How fast do you expect the train to run past there?—*A.* I do not know.

Q. You said very fast?—*A.* Well, a railway train will make more noise than a cart.

10 *Q.* Well, it would have the same effect to a lesser degree, it is a matter of degree?—*A.* Yes, and the matter of degree is a great point.

Q. You say the success of a church depends largely upon its situation and attractiveness, &c.; does it not depend somewhat upon doctrine and what religious sect the church belongs to?—*A.* It does somewhat, but Calvary Church has people of all denominations gathered in it, and the circumstances too are somewhat different from what they are in Trinity Church, New York, where it has the prestige and antiquity, &c.

Q. Is there any other Congregational Church in the neighbourhood?—*A.* No, except Emmanuel Church

20 *Q.* What distance is Emmanuel Church?—*A.* It is four or five blocks from us. Some people in our neighbourhood pass us to go to Emmanuel Church, and do not think it is too far.

Re-examined.

Q. Are you aware, Mr. Hill, that other Protestant churches are nearly all in quiet places in this City, distant from railways, and they have, in fact, moved up to these quiet places within the last few years—just think over all the churches—that is the general rule, is it not?—*A.* Yes, I see that tendency.

30 *Q.* When you said you had not experienced the effect of noise from a railway in Montreal, you did not mean to say you had no experience of the noise a railway would make passing within the same distance as the passage from this church?—*A.* No, I did not mean that. I have not had experience as pastor of such a church, but I have sat in congregations when trains were rumbling by at certain hours, and coming away with friends I remember often having remarked, “What a great noise that train makes.”

Q. And you do know the noise a train would make passing as close as that?—*A.* Yes, I do.

Q. I think I understood you to say with regard to these New York churches, that these churches are practically fixed, and it is almost impossible, in your opinion, for them to move?—*A.* Yes, they would have to move miles away to 40 get anything better, and in that way move entirely away from their parishes.

Q. Therefore they are forced to remain there?—*A.* Yes.

Q. And a good many of them are in the same predicament?—*A.* Yes, all in that part of the City are in the same position.

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By *Mr. Abbott.**In the
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No. 56.

Deposition of
Rev. Edward
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continued.

Q. What about St. George's Church in this City? Do you consider there is much damage caused to it, as much as to your church?—A. St. George's Church is further from the moving trains, and being at the terminus the noise would not be so great.

Q. You don't think then that the noise at the terminus of a great railway of this kind is as great as the passing of trains along the way?—A. I should consider not, and there is more distance between the railway and St. George's, and many buildings between it would deaden any sound that would pass.

Q. Is it not a fact that the railway terminus and station meets opposite 10 St. George's Church, right opposite Osborne Street?—A. Yes.

Q. Trains will be backing and shunting there besides the regular trains coming in and out?—A. The shunting will not be very near the station.

By *Mr. Trenholme.*

Q. You consider it would be an injury to St. George's Church?—A. Certainly, but in a lesser degree only.

Q. Not so great as to Calvary Church?—A. No.

By *Mr. Abbott.*

Q. Has there been any discussion amongst the congregation themselves as to the necessity or advisability of changing the position of the church?—A. Yes.

Q. What has the feeling been in that respect?—A. Well, the feeling is divided. Our congregation is scattered below the hill and above the hill, and they naturally divide in their opinions as to where the church would be moved to, but I often hear them talking about where the church will probably go.

Q. Is there any division of opinion as to the necessity of some change under the circumstances?—A. I do not know that you could call it division of opinion. In any three or four hundred people some will be more interested than others; some are careless in the matter, and some talk earnestly about changing, and there are all grades of feeling.

Q. What is the feeling of the trustees on that point?—A. Well, the closer the road comes to us the more I find the trustees talk definitely about the needed change. When the road first began to approach us we began to tremble, but as I meet with them in business I find the feeling growing stronger, as they see what is coming, that we shall have to fly from it. But that is just the growing of the realisation.

By *Mr. Trenholme.*

Q. As they see this road growing they grow stronger in their opinion that the church must move?—A. Yes.

By *Mr. Fleet.*

Q. Do you think it possible to carry on the work of the church effectively with the road running in the present position?—A. A certain class of people would cling to the church for old association's sake, but we have so many who have not been with us long and the attachment is not so strong, and they would easily detach themselves by annoying features. It would cripple very much the work of the church.

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*In the
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No. 56.
Deposition of
Rev. Edward
M. Hill for
proprietors,
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continued.

Q. Has there been any question of moving the church or changing the position before there was any intention of placing the road in this position?—

10 A. No.

Q. The congregation were perfectly satisfied with its position?—A. Yes.

By *Mr. Trenholme.*

Q. You have said something about the congregation being of divided opinion; did you mean there was any division of opinion as to the injury done to the church by the passage of the road?—A. No. I said the only division was between the natural characteristics of the people, some being careless, not talking about it at all, and others talking earnestly.

Q. There is no division of opinion as to its being an injury to the church?—A. No, no feeling in that respect.

20

By *Mr. Abbott.*

Q. I suppose you have not heard any member of your congregation express an opinion that the railway would be a benefit to them?—A. I have never been privileged to hear such a thing.

Q. At the same time you have not heard the opinions of all of your congregation, have you?—A. No, I have not.

And further Deponent saith not.

Schedule No. 68.

DEPOSITION OF DR. GEORGE WELLS.

30 On this thirty-first day of October eighteen hundred and eighty-eight, personally came and appeared Dr. GEORGE WELLS, of the City of Montreal, Pastor of the American Presbyterian Church, and witness produced on the part of the proprietors, aged over forty years, who, being duly sworn, deposes and saith:—

No. 57.
Deposition of
Dr. George
Wells for
proprietors,
dated 31st
Oct. 1888.

Examined by *Mr. Trenholme.*

Q. I believe you have been for a number of years, and you are still, the Pastor of the American Presbyterian Church in the City of Montreal?—A. Yes.

Q. For about how many years?—A. Nearly eighteen.

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Q

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No. 57.
 Deposition of
 Dr. George
 Wells for
 proprietors,
 dated 31st
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continued.

Q. You know Calvary Church, in question in this matter, and its locality ?

—A. I have known it from the beginning.

Q. And about its position as regards this railway mentioned in this case ?

—A. Yes.

Q. Would you state what, in your opinion, the effect the passage of the railway will have upon the suitability of Calvary Church for church purposes, for which it was intended ?

(Objected to by Counsel for Railway Company. Objection reserved.)

A. My opinion is that the railway will seriously disturb the services of the church and render it undesirable for church purposes. Were I the pastor I 10 should want to move.

Q. Will you be good enough to state some of the reasons on which you base your opinion?—A. The railway is somewhat peculiar at that point; it runs upon a high trestle work. The church is high upon that side, three stories in height; owing to the sloping nature of the ground the church is a peculiar one in its shape, and the railway passing upon a high trestle work, I should think twenty feet high, perhaps, just looking at it without any measurement; trains running upon a trestle work make more noise than running upon the ground. Were the railway upon the level ground, it would be far less objectionable; but it passes right before the windows of the main story of the church 20 and the Sunday school immediately below, and it passes the side of the church instead of the rear. Trinity Church, in New York, which has been referred to, the railway is at the back of the church, and there is a space between, a considerable space across the churchyard.

Q. Will you be good enough to state in what way it would interfere with the church?—A. In the same way in which Mr. Hill has intimated; it would be a disturbance to the services of the church. Something has been said about the trains running fast; it would be almost worse to have them running slow than fast, because the noise would be prolonged, and it would not be merely momentary interference. 30

Q. But in whatever way the trains pass, it will be a serious interference with the effectiveness of the church services?—A. That is my honest opinion.

Q. Correspondingly interfering with the success and work of the church, there is something in having a church in a quiet and retired place?—A. Yes, that is of importance.

Cross-examined by *Mr. Abbott* under reserve of objections.

Q. Do you agree with Mr. Hill as to the effect that he describes of the noise caused by a railway, for instance, at inopportune moments of the service as being a serious matter?—A. Yes.

Q. Won't you find in your own church, the American Presbyterian Church, 40 I believe, on Dorchester Street, that you will hear this noise from the railway, in a less degree of course?—A. I do not know whether we will hear the trains. There is a block of houses or buildings along Osborne which intervenes between, and I hope we shall not. I think we are injured by the coming of the railway to that position as well.

Q. But in a less degree?—A. Not so much for that reason. I have not thought of the nuisance of the trains but the injury on the neighbourhood, making it an undesirable locality in the future for church purposes. I do not think we will be annoyed by the trains.

Q. You think Calvary Church will be affected also by the injury to the neighbourhood?—A. I do not know, I have not thought of that whether it would injure the neighbourhood much or not.

Re-examined by *Mr. Trenholme.*

Q. A cart going by Calvary Church up Guy Street would not be apt to
10 make a noise that would interfere with the church services?—A. It cannot make a noise going up street, it could going down if it is empty.

Q. And on Sunday the objectionable carts do not run?—A. No.

Q. Nor in the evenings?—A. I suppose not very much. I presume the church has been a tolerably quiet one.

By *Mr. Abbott.*

Q. In New York are there not some churches much frequented, very near Forty-seventh Street Station?—A. There is the Holy Trinity which is near the station, but not very near the trains. It is cut off by the buildings or offices on the west side of the river, and the trains are in a covered shed, though the
20 inconvenience of being near the station, it would be similarly placed to St. George's Church here.

Q. As near?—A. Not so badly placed, as it is the rear, instead of the front next to the station.

Q. But as close?—A. If I remember, there is only a street between. I am not quite sure as to that. I cannot say exactly.

Q. It is a largely frequented church?—A. Yes.

Q. Your own church in this City is at a much greater distance from the railway?—A. Yes. We are the length of a block away from it—it is corner of
30 Dorchester and Drummond. Something like a block and a half away, and buildings intervene in such a way that we will not be disturbed by the noise of the trains.

Q. You think that the trains will be some disturbance to St. George's Church, do you not?—A. The station will, I do not know about the trains. The trains run into the station without much noise. I do not know how near they are to come.

Q. But the station and its embankments?—A. Oh, certainly; I think it is very unfortunate in being opposite the station, but it is not St. George's Church that is in question.

By *Mr. Fleet.*

Q. Would the passing of trains be as great an inconvenience in the con-
40 ducting of the Sunday school as to the church?—A. I should think so, and the Wednesday evening prayer meeting, and a church like Mr. Hill's usually

RECORD. occupies its church edifice for one object or another three or four evenings of the week, I presume.
 And further Deponent saith not.

*In the
 Superior
 Court.*

No. 57—
 continued.

Schedule No. 69.

DEPOSITION OF EX-ALDERMAN RICHARD HOLLAND.

No. 58.
 Deposition of
 ex-Alderman
 Richard
 Holland for
 the proprie-
 tors, dated
 31st Oct.
 1888.

On this thirty-first day of October one thousand eight hundred and eighty-eight, personally came and appeared ex-Alderman RICHARD HOLLAND, of the City of Montreal, witness produced on the part of the proprietors, aged sixty-eight years, who being duly sworn deposeth and saith :—

Examined by *Mr. Trenholme.*

10

I am not interested in the event of this suit, and am in no way connected with Calvary Church.

Q. How many years, Mr. Holland, have you been a resident of Montreal?—

A. I have been a resident for over fifty years, and a proprietor for over thirty years.

Q. You own a good deal of property in the west end of the City?—A. Yes, I own a good deal of property in the City, especially in the west end, in St. Antoine Ward, in which the church in question is situated.

Q. You know the Calvary Church property in question in this matter?—A. Yes, I looked at it. I went down to see the progress that the road was making, and take notes particularly of this church and how it was situated. 20

Q. With reference to the railway?—A. With reference to the railway.

Q. Might I ask you, Mr. Holland, are you connected with any other church in the City?—A. I am connected with the Methodist Church on St. James Street, but I am not a trustee.

Q. Well, what effect, according to your judgment, will the passage of the railway in question have upon Calvary Church, as regards its suitability for church purposes, for which it was intended?

(Objected to by Counsel for Railway Company. Objection reserved.)

A. In my opinion it will totally unfit it for divine services. 30

Q. What use could be made of that property?—A. Well, I think it would be available for a factory.

Q. It would not be worth anything like a factory that it would cost for a church?—A. No, I should say the depreciation in value between a church and a factory would be about one-third less, at least one-third less.

Q. You have not gone into calculation on that, you say?—A. No.

Q. But largely less?—A. After Mr. Cushing spoke to me, when I intended to come up here, I turned the thing over in my mind, and I formed a kind of estimate in my mind of the value of the church and then the value of a factory, and I concluded it would depreciate the property about one-third. 40

Q. Are you aware that in the case of Old Zion Church, for instance, that when they had to sell it for business purposes, that it did not realise one-half

of what it had cost for the church?—*A.* No; it realised very much less than it cost. I think, in fact am sure, it sold very low.

Q. Do you remember about the figure you considered this property worth as a church? What would it cost say to duplicate that property?—*A.* From an outside view, I estimate the value of the church between twenty and twenty-four thousand dollars. I think that it could not be replaced at less than that and fitted up as a church. That is including land and everything. As a factory I certainly would not consider the building worth over fourteen thousand dollars.

10 *Q.* Land and all?—*A.* Yes, land and all, for factory purposes.

Q. You think fourteen thousand, after the railroad passes, is as much as they could hope to realise on it?—*A.* I know it is as much as I would give if I was buying it.

Q. They might have difficulty in getting it?—*A.* I think a little difficulty to get fourteen thousand dollars for the whole property.

Q. Are you aware that there has been, apart from the railway, in that quarter of the City, a very considerable advance in real estate, say since eighteen hundred and seventy-six?—*A.* Well, not close to the railway.

20 *Q.* Apart from the railway?—*A.* Yes. Along St. Catherine Street I know there has been a very large increase, and in some of the cross streets.

Q. And generally in that ward there has been an advance?—*A.* Yes, I should say there has been an advance in the last two years of twenty-five per cent.

Q. Since eighteen hundred and seventy-four, has there not been a large advance generally in the west end?—*A.* Well, I would not trace it back so far as that, but certainly there is a very large advance from what it was in eighteen hundred and seventy-four.

Q. In the west end generally?—*A.* Yes.

30 *Q.* You believe that on Guy Street where there are churches, it has advanced since eighteen hundred and seventy-four, generally?—*A.* Of course, now I am just giving an opinion; I would like to give it conscientiously. In Guy Street, well a part of it, has advanced considerably. I may mention here, that I noticed that the track runs quite close to the rear of the church along the side, and, in my opinion, no congregation could worship there with the trains running so close. That is, of course, my personal opinion.

Q. Besides the noise, there would be soot, and gas, &c.?—*A.* Yes, there is the noise.

40 *Q.* The general consequences of a railway passing?—*A.* I recollect sleeping in one or two hotels next to a railway track for convenience, and I did not sleep a wink the whole night through.

Cross-examined by *Mr. Abbott* under reserve of objections.

Q. As to the increase in value of the property, is it not a fact that there was a considerable boom in real estate in eighteen hundred and seventy-four, and the prices declined very severely afterwards?—*A.* I do not recollect just the dates, but I know that several years ago there was a boom in property lying

RECORD.

—
*In the
Superior
Court.*
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No. 58.
Deposition of
ex-Alderman
Richard
Holland for
the proprie-
tors, dated
31st Oct.
1888—
continued.

RECORD.

*In the
Superior
Court.*

No. 58.
Deposition of
ex-Alderman
Richard
Holland for
the proprie-
tors, dated
31st Oct.
1888—
continued.

at the outskirts of the City. I cannot trace the date, but that property depreciated afterwards. I do not think, as well as I can recollect, that it affected property much in the City proper.

Q. There was some effect on the City proper?—*A.* It may have; I would not say that it did not.

Q. Leaving out the property on St. Catherine Street, in that portion of the town, would you be prepared to swear that property on the lower levels is worth in the market to-day as much as it was in eighteen hundred and seventy-four?—*A.* I would not care to give an opinion on that. My memory is not clear upon it. I know that the lower levels have not increased as the upper levels have. 10

Q. At how much per foot do you value that church property in making your estimate of twenty or twenty-four thousand dollars for the whole thing?—*A.* Well, I suppose, in that situation it would be worth about one dollar a foot.

Q. The area of the lot on which the church is built is ten thousand seven hundred and fifty-two feet; that would leave a balance of somewhere between ten and thirteen thousand dollars?—*A.* Yes, about twelve or fourteen thousand dollars for the building as a church.

Q. You stated with the fittings and so on in it?—*A.* Yes, probably a little more. 20

Q. Could not those fittings be moved out if the building was sold?—*A.* I could not say anything about that. It would require a mechanic who knows the work to say anything about that. But I knew a couple of churches that were pulled down, and never knew the fittings to be worth anything. In the St. James Street Methodist Church it was carted away as lumber, and in the old Trinity Church it was pretty much the same way, I think.

Q. But these were very old churches, where the fittings had probably become valueless?—*A.* There may be something in that. I am not acquainted with the condition of the fittings; I was never inside of the church.

Q. Now, as to St. James Methodist Church, was not that sold pretty well?—*A.* It was not sold. 30

Q. The proprietors preferred to pull down the church and keep the land?—*A.* They pulled down the church and put up a new building on it.

Q. They moved the church because it was in an unsuitable position. There were no residents in that part of the town?—*A.* And the property had become very valuable.

Q. You think that the property on Guy Street will not become very valuable for business purposes very soon?—*A.* I do not know.

Q. Do you know, since the railway has been in course of construction, the property in the neighbourhood of the railway, especially between the railway and Dorchester, has been sold at enhanced prices?—*A.* I heard of none except what was taken for railway purposes. I thought that the prices obtained—that the railway paid—were pretty high; it is my impression that other property has not increased since. 40

Q. You are not aware then, apart from the railway, from what the railway acquired, that there has been considerable activity in the sales of real estate

along Dorchester Street, or in that neighbourhood, since the railway has been in course of construction?—*A.* I think there has been on Dorchester Street.

Q. Do you not think the prices have been enhanced?—*A.* I have an impression that they have gone up, particularly along Dorchester Street.

Q. You don't think it will affect Guy Street?—*A.* I do not think it will affect Guy Street, in the neighbourhood of the railway especially; so very close as this property is to it, I think it will affect it adversely.

Q. In your experience in Montreal, have you found that the property along the Grand Trunk Railway and side streets from it has increased in value?—

10 *A.* I do not think it has improved in value. I have frequently stated to friends that I think that the neighbourhood of the railway track is a great disadvantage to property in the immediate neighbourhood.

Q. Have you ever noticed any gentlemen building private residences close to the Grand Trunk Railway?—*A.* I do not think our better class of gentlemen would.

Q. Perhaps you have not been out along the Grand Trunk Railway, near the tanneries, near where Mr. Liggett, of Liggett and Hamilton's, has put up three villas close to the track, that is, on the property adjoining the Grand Trunk Railway?—*A.* I am not aware of that. I know within the City limits it
20 is a poor class of property along the line of the road.

Q. Are there no other purposes except a factory to which this church could be put?—*A.* I suppose there are many others, but there is no other that occurs to my mind. There is one thing, it will not be taken for a church except at a very low value.

Q. There are three stories in this building, are there not?—*A.* There is the basement, I think, and the usual church auditorium.

Q. I understand there are two basements, the basement, sub-basement, and the auditorium?—*A.* Perhaps there may be; I never went through the building.

30 *Q.* You have not examined the interior of the building?—*A.* No.

Q. Nor ascertained if it could be used for other purposes?—*A.* No.

Q. The property that you own in St. Antoine Ward, is it anywhere in the neighbourhood of this church?—*A.* No, sir, it is all situated on St. Catherine Street.

Q. West or east?—*A.* It is all between the English Cathedral and Peel Street.

Q. That is what we would call the central part of St. Catherine Street?—

A. Yes, and my own residence is out on St. Matthew Street.

40 *Q.* St. Catherine Street out as far as Guy Street has been built up pretty much in shops?—*A.* Yes, vacant property there.

Q. But there are shops all along?—*A.* They are increasing.

Q. Don't you look upon it as a likely thing to happen, that Dorchester Street and St. Catherine Street as far as Guy Street will become largely a retail business portion of the town?—*A.* Well, my opinion is that St. Catherine Street out through its whole length will eventually be a leading retail business street. Not only east of Guy, but west. Dorchester Street will remain, I think, for a very long time, I think, a street for private residences.

RECORD.

—
*In the
Superior
Court.*

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No. 58.
Deposition of
ex-Alderman
Richard
Holland for
the proprie-
tors, dated
31st Oct.
1888—
continued.

RECORD.

By *Mr. Fleet.*

*In the
Superior
Court.*

No. 58.

Deposition of
ex-Alderman
Richard
Holland for
the proprie-
tors, dated
31st Oct.
1888—
continued.

Q. Do you think that the church itself could be made available for tenement houses?—*A.* You can make almost any building into tenement houses, but the expense for altering would be very large, and then it is doubtful if it would yield a revenue sufficient to pay the cost.

Q. And you think it would be more available for a factory than tenement houses?—*A.* I think by spending something on it to alter it, it would be available for a factory.

Q. More than for tenement houses?—*A.* Oh yes, I think it would pay better. It would require less outlay to begin with. 10

Q. When you spoke of the value of the church property as being about one dollar a foot in that locality, you were speaking merely of the lot of land upon which the church itself is situated?—*A.* Yes, I spoke of the land upon which it is situated, provided the value was not marred by the passage of the railway. Land in that neighbourhood a little further removed would be worth, I daresay, about one dollar a foot.

Q. Were you aware that there was a lane running beside the land which is in question in this cause?—*A.* No. I know nothing about it.

Q. And you did not place any value on that piece of property by itself, you knew nothing about it?—*A.* I knew nothing about the lane, in fact, I did not take into consideration any of the accessories. Of course, there are certain rights to the property which never entered into my calculation at all. 20

By *Mr. Trenholme.*

Q. I suppose, Mr. Holland, there is a difference between the proximity of a depôt and the proximity of a railway line as affecting the value of real estate?—*A.* Decidedly. There are no cars pass through a depôt.

Q. And the property in the vicinity of this depôt is sought after by a certain class of business?—*A.* Yes, for houses of entertainment, &c.

Q. There is some reason for the railway affecting the property favourably in the vicinity of the depôt?—*A.* Yes, in the immediate vicinity of the depôt. 30

Q. Any advance in real estate connected with this railway would really be in connexion with the vicinity of the depôt, on account of it?—*A.* If there has been any advance in the value I would say so decidedly, because it would offer location for business purposes.

Q. The mere vicinity of the railway line you consider an injury and depreciation to property generally?—*A.* I do, undoubtedly, for private residences.

Q. Does not this railway line, in the way it is constructed at a height of twenty or twenty-five feet, cause a little more than ordinary injury to the church, in view of the fact that it is on a slope?—*A.* I think it is apparent to anyone without my answering the question that a high embankment must injure the property very much. 40

Q. Should this building prove not strong enough for manufacturing, would that not still be a further reason for regarding the church of little value?—*A.*

Well, there are light manufactories that it would be available for without incurring extra cost. RECORD.

Q. You have been asked in cross-examination with regard to your own properties; is it not a fact that your own properties on St. Catherine Street have, some of them at least, advanced since eighteen hundred and seventy-four three-fold—more than three hundred per cent.?—*A.* They have certainly doubled, anyway.

*In the
Superior
Court.*

No. 58.
Deposition of
ex-Alderman
Richard
Holland for
the proprie-
tors, dated
31st Oct.
1888—
continued.

By Mr. Abbott.

Q. Would you consider that property, say, on the corner of Aqueduct and
10 Dorchester Street was in the vicinity of the depôt so as to be enhanced in value
by its nearness to the depôt?—*A.* Well, I do not think the railway would affect
it one way or the other.

Q. Is it not in the vicinity of the depôt?—*A.* No, I think it is about half
way between Mountain and Guy Streets. On looking at the map, I find that
Guy Street is between two and three times as far from the depôt as from
Mountain Street. I do not think the depôt will affect this property at the
corner of Aqueduct and Dorchester Streets. Aqueduct Street is about half-way
between Guy Street and the depôt.

By Mr. Abbott.

Q. Did you observe in your cross-examination how close the railway goes
20 to the Olivet Baptist Church?—*A.* Yes.

Q. Do you think it would interfere with the church, the Baptist Church?—
A. I think it does.

Q. Seriously?—*A.* Not so bad as the other, because in this, Calvary Church,
it runs quite close to the corner of the building and along the side, but the noise
can be prevented by building up the street between the Baptist Church and the
railway. There is an open space there.

Q. Of what distance?—*A.* Well, I should say there would be close on one
hundred feet.

Q. Is it not the case that the railway passes the Olivet Baptist Church not
30 only at a much greater distance but at a lower level compared with its passage
past Calvary Church?—*A.* I do not think that the damage to Olivet Baptist
Church can be so great for two or three reasons; one is, that the distance of
the track from the church is much greater, and in the next place, the cars run
upon the stone viaduct there, and of course it would make much less noise.
The church is above the level of the track.

By Mr. Brodie.

Q. Are you aware a notice of expropriation was served on Olivet Baptist
Church. and damages paid to that church?—*A.* I am not aware of it.

40 And further Deponent saith not.

RECORD.

Schedule No. 70.

*In the
Superior
Court.*

No. 59.
Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888.

DEPOSITION OF ROBERT MACAULAY.

And on this tenth day of November one thousand eight hundred and eighty-eight, appeared ROBERT MACAULAY, of the City of Montreal, Insurance Manager, aged fifty-five years, a witness produced on the part of the proprietors, who, being duly sworn, deposed and saith :—I am not interested in the event of this arbitration. I am not a member of the church in question.

Examined by *Mr. Trenholme.*

Q. Are you one of the trustees of Calvary Church?—A. No, sir. I know the Calvary Church property in question in this matter. 10

Q. What will be the effect of the passage of the railroad, mentioned in this matter, passing the said Calvary Church, passing over its lane in the way in which it does?

(Objected to by Counsel for the Company. Objection reserved.)

A. I am very certain that the railway passing so close to the church will be very hurtful to it as a place of worship.

Q. Well, what is your opinion as to the suitability of that church after the construction of the railway, for church purposes?—A. When it was merely being talked about as a probable thing, I spoke to more than one of the deacons and trustees saying, that they had better be looking out for another site, so 20 strongly did I feel on that point.

Q. You felt what?—A. It would really be destructive to it as a place of worship.

Q. And you think that the construction and passage of the railroad destroys it for church purposes?—A. Yes, for church purposes.

Q. Would that property bring as much for any other purpose as it is worth for church purposes, before the railroad passed?—A. Do you refer to the land or the whole building?

Q. The whole property. Have you thought if that property has to be sold for other purposes, you can realise for that property all that it would cost to 30 replace that church?—A. Nothing of the kind. It could never realise the same figure. To buy that property and rebuild it for church purposes, I think that anyone who rightly understands what a place of worship is for, would never think of accepting that or any other site similar to that for a church.

Q. The point is, could that church be sold after the railway has passed for enough money to get another equal church property?—A. I understand you want to know whether the passage actually depreciates that property.

Q. That is not my question. The question is, whether the church could take the money that they could sell that church property for now, and get another property equally good with the money that they could get for this 40 church property now, after the railroad has passed?—A. So far as the building is concerned, that would be an impossibility. That would be a question of location; you might go far enough and get land cheap enough, but if you were

to buy land equally situated as that was before the railroad, you would have to pay a great deal more for it.

Q. Than you could get for that land?—*A.* Yes.

Q. Have you thought, Mr. Macaulay, over the question as to how much that property would be worth now if sold; how much it would bring?—*A.* As it stands, land and all?

Q. Yes, just as it stands?—*A.* I have not thought much of it. I did have a conversation about it some little time ago, but have not given it any serious consideration, but I question if you could realise ten or twelve thousand dollars, 10 even if that much.

Q. Have you thought how much it would cost to replace that church with an equally good church and equally eligible site?—*A.* I have no doubt it would cost from twenty to thirty thousand dollars.

Q. You think that the deterioration is caused by the construction and passage of the railway entirely?—*A.* Nothing else has occurred within my knowledge to cause any deterioration but that.

Q. Did you refer to the building only?—*A.* It would depend upon the location of the land.

Q. When you stated that it would cost from twenty to thirty thousand 20 dollars to replace that church, did you mean replace the church building only, or the church and land?—*A.* The church building alone for many reasons. A large amount of money was expended in making the basement and other parts of it. It was a very comfortable and solid place for the size of it, and it cost a great deal of money I know, and a good one as equally comfortable, as equally substantial, would cost a large sum of money, because everyone knows the value to-day is much greater than it was some years ago when this church was built.

Cross-examined by *Mr. Meredith* under reserve of objections.

Q. You said you were not a member of this church, I understand?— 30 *A.* No, sir.

Q. Do any of your family belong to this church?—*A.* Yes.

Q. What members of your family?—*A.* One of my sons and daughter.

Q. Is your son married?—*A.* Both married.

Q. Both their families go to this church?—*A.* Yes, so far as are able to.

Q. Does your son hold any position in the church, that is to say, is he a churchwarden or anything of that kind?—*A.* I am not sure, but I think he is a trustee. I am not positive. I know that he is connected with the Sunday School, but I do not know what position he holds further than he is a teacher in the Sunday School. What more he is I am not sure.

Q. You mean he is a teacher in the Sunday School connected with this 40 church?—*A.* Yes.

Q. And which is held in this church?—*A.* Yes.

Q. I understand you to say that you have had conversations with certain people as to the effect the railway has had or will have on this property; would

RECORD.

—
*In the
Superior
Court.*
—

No. 59.
Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888—
continued.

RECORD. you mind stating with whom you had those conversations and at what times?—

A. I had a brief conversation once with Mr. Cushing.

Q. When?—A. I could hardly tell you, it was within the last week or two.

Q. He is the Notary?—A. He is a Notary. It is possible and very likely that we may have had conversations before, but I cannot recollect especially. I know I addressed my son, I referred to, previously on the matter. I had a conversation with Mr. Peter Wood.

Q. The minister?—A. No, he is a watch maker.

Q. One of the trustees?—A. He used to be a deacon. I think he is still, 10 but I am not sure.

Q. He is one of the trustees of the church?—A. I cannot tell you. I know he is a deacon.

Q. Of this church?—A. Yes.

Q. In these conversations you had with Mr. Wood and with Mr. Cushing did the question of what this property would realise after the railway had passed come up?—A. With Mr. Wood; Mr. Wood was one who was very anxious, from a religious point of view, that as little as possible should be urged upon the Company, he urged that upon me, time and time again. I repeatedly told him that the proper way to do, would be to ascertain the real depreciation, from the 20 fact of the railway passing so closely, and to realise what would be got for it now, and to ask no more than what in his own conscience he believed the church was entitled to. He never in any conversation urged that we should ask for more than what he believed it was entitled to.

Q. Did he state what amount at that time. He did not give you any idea of what he thought right?—A. Somewhere between ten to fifteen thousand dollars, I think, was the amount, if I am not mistaken.

Q. He said he, himself, thought that?—A. Yes; he urged that the parties representing the church should see someone representing the Company and endeavour to sell it at a figure, to take five or six thousand dollars for it and 30 quit it altogether; that is the conversation I had with Mr. Wood.

Q. In the conversation you had with Mr. Cushing, did the question of what this property would realise after the railway passed come up?—A. I cannot recollect. It was a rather hurried conversation. He asked me if I would be willing to come as a witness, but with regard to the value I don't remember any distinct remark he made. I cannot recall now what his views were.

Q. Then, in arriving at this depreciation you have given of twenty thousand dollars, you have come to that conclusion from conversations you have had with different people, amongst whom were Mr. Cushing and Mr. Wood?—A. No, 40 sir.

Q. How have you arrived at it then?—A. My opinions are formed without discussing with anyone. Instead of that, I have seen myself that the church would be entirely destroyed, as a church, without any hints from anybody else, and I am firmly of that opinion still.

Q. Have you lived in the close vicinity of a railway?—A. Occasionally I have. I have had to leave my boarding house for no other reason, than simply the disturbance arising from railways.

Q. Where was that?—A. London, Ontario.

Q. How near were you to the railway?—A. I was probably within twelve feet of it, and I left the hotel to go to another. There was no such thing as getting rest. Anyone who has been there will understand it.

Q. Have you owned property adjacent to a railway track?—A. Never owned any.

Q. Apart from that one circumstance at London, Ontario, have you ever lived in the close vicinity of a railway?—A. I have had occasion to value land for many years.

16 Q. I did not ask you that; I asked you, apart from that one occasion in London, Ontario, whether you have ever lived in the close vicinity of a railway?—A. Not very close, but close enough to be annoyed.

Q. How near?—A. I have never lived very near, that is permanently.

Q. What do you mean by very near?—A. That is within, perhaps, three or four hundred feet.

Q. You have lived within that distance?—A. No, I have not.

Q. Have you lived within one thousand feet, apart from that one occasion you have mentioned?—A. I do not know that I have, except in the summer months, for any length of time. I have been for a month then, perhaps two or 20 three months close enough, but have not owned property nor taken any houses within that distance.

Q. Did you ever hear of the owners of Congregational Church talking, or hear the idea brought up that they should remove that church even before the railway was thought of?—A. The matter had been so often discussed of late since this matter came up, as to whether it was before the railway I do not know. I have heard the remark made that it was not the most suitable place for a church, but as to removing it before this matter of the railway was brought in, I cannot recollect any distinct remark like that. But it is in my memory that I heard it said, that it was not the most suitable place for a church.

30 Q. Was not this often thought of and spoken of amongst the congregation, as a matter of fact, before the C. P. Ry., or before it was ever known that the Atlantic and North-west Railway would pass in the close vicinity of that church; that they were dissatisfied with the location of the church?—A. I never heard, as I said, remarks made —

Q. I want to know whether it was before the railway came in there or whether it was after the railroad came in there that you heard those remarks?—A. I believe I heard them before, but who from I cannot say. It is in my memory now that I heard the remark, that it was not the most suitable place for a church, but nothing about removing.

40 Q. Is it not a fact that it was before the plans for the railway were made?—A. Yes, I heard it some years ago.

Q. Is it not a fact that you have heard that from some of the trustees of the church?—A. I cannot charge any officer of the church with it, but I know I heard it.

Q. You cannot say you did not hear it from any of the trustees of the church?—A. I am not prepared to say I did or did not.

RECORD.

—
In the
Superior
Court.

—
No. 59.

Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888—

continued.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 59.

Deposition of
 Robert
 Macaulay
 for proprietors,
 dated
 10th Nov.
 1888—
continued.

Q. You did not hear it from your son?—A. I could not say, I would give the name if I could think of it, but I cannot charge anyone in particular with having said so, but I have heard it.

Q. From members of the church?—A. Parties in the circle of those connected with the church somehow, because I would not have heard it outside.

Q. As a matter of fact, what was your own opinion as to the situation of the church, I do not mean at the present moment, I mean before the railway came there, was that the best situation for the church in your opinion?—A. No, there are much more eligible situations in the City.

Q. And more desirable situation for that church?—A. For any church.

Q. But for that church?—A. I could not say for that more than for any others, and for any church.

Q. You have visited this property lately, I presume?—A. Not for probably two or three months.

Q. Have you seen how the Company intend to pass over that lane?—A. I have not been there since they have been actually at work there. They may have been, when I went there on Sunday, about three months ago, been doing something there, but I did not go down to look.

Q. Could you tell us how you understand the Company intend to pass over this lane?—A. I don't undertake to say how. I don't think that would be material so far as the injury to the church is concerned.

Q. Do you know the way in which they are going to cross over this lane?—A. All I know, at least I have been told, that they are to cross at a distance from the level on piers.

Q. In giving this estimate, you have taken into consideration that the Company put certain of their trestle work or beams on the property belonging to the church?—A. I have not taken that into consideration.

Q. Do you know whether or not they do or do not?—A. I do not.

Q. You have given your estimate independent of the fact as to whether the Company have taken any church land or not?—A. Without any knowledge of that at all, knowing this would simply damage the church, without knowing whether it interfered or not with their property.

Q. How far does the Grand Trunk Railway pass from this church?—A. Well, that I cannot tell you.

Q. I just want to know to the best of your knowledge?—A. I have no idea. I never gave it any consideration. There is no use my jumping at a thing. I have never thought of it.

Q. I don't want you to jump; I want you to estimate to the best of your knowledge?—A. Well, if I was going down to look at it, I would simply have to take the matter guess-work. It is not a quarter of a mile, but what it really is I cannot tell you.

Q. Now this church as I understand it, is fronting on Guy Street?—A. Yes.

Q. Is it right on Guy Street, or is there a piece of ground in front of the church?—A. There is a small bit of ground on front.

10

Q. How much?—A. I cannot tell you, six or eight, or ten or twelve feet. I do not know exactly.

Q. There is no large space of land or anything of that kind in front of the church?—A. No, I do not think so.

Q. Are there not workshops or factories in the vicinity of this church?—A. There is a building on the other side. I am not sure if it is to be used as a factory. There is no factory there that I can think of beyond the workshop. The fact is, I do not know of any workshop there. There is a wood yard a little further down on the opposite side, but I do not know that there is any
10 workshop.

Q. Are you prepared to say there are no factories in the vicinity?—A. I am not prepared to say.

Q. Do you know the vicinity well?—A. Yes.

Q. What do you consider the value of that property the church is built on, to-day?—A. Do you mean the property itself?

Q. The land; how much per foot?—A. To-day?

Q. I mean to-day, as the railway is there, after the railway has passed through; what do you think it is worth for the land per foot, not including the building?—A. Well, for commercial purposes, I have no doubt it is worth
20 twenty cents a foot.

Q. What do you give as the value of the church and land belonging to the church before the railway passed there; the value of the land and church?—A. I have no doubt that that church and property was worth from twenty to twenty-five thousand dollars.

Q. What do you think it would be worth with the railway passing as it does?—A. I have already told you the land would be worth just as much as you could sell the material for, because I don't think it would be sold for church purposes. I question if there is any school that would buy it. It would have to be taken down if used for dwellings or stores. I know of no use to
30 which it could be put except to be used for a factory.

Q. What would that bring?—A. I question if it would bring a couple of thousand dollars as a building to-day. I do not know if it would get anything like two thousand dollars.

Q. If I understand you rightly, the value of that property, land and everything on it to-day, when the railway will pass, will be worth twelve thousand dollars?—A. I do not know that you could realise that.

Q. What do you think it will realise?—A. Twenty cents a foot, and put the building down at fifteen hundred or two thousand dollars.

Q. You don't know how many feet there are there?—A. No, I do not
40 know; it is not necessary for anyone to know the amount of feet. You would get nothing like ten or twelve thousand dollars. I withdraw what I said before; I thought there was more land.

Q. In your opinion, that property with everything, after the railway is passed, is worth about four thousand dollars?—A. Four or five thousand dollars, I believe.

Q. Therefore the depreciation that the railway has caused, in your opinion from what you have said, would be about twenty-six thousand dollars?—

RECORD.

In the
Superior
Court.

No. 59.

Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888—
continued.

RECORD.

In the
Superior
Court.

No. 59.

Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov:
1888—
continued.

A. The full difference between what it would have brought and what it will bring to-day. I do not think the depreciation could be more than twenty thousand dollars.

Q. Do you think as far as the land is concerned, do you think that has depreciated in value owing to the passing of the railway?—A. Most assuredly.

Q. How much?—A. For commercial purposes, I am sure it has lost one half.

Q. The land before was worth forty cents a foot?—A. I do not know what it was worth; I do not know what it was selling for; I am only putting a value on it to-day.

Q. You will put a value on it to-day of twenty cents?—A. Yes.

Q. Do you know of any land that has depreciated to that extent, owing to the railway coming through there?—A. I have not had occasion to know anything in regard to depreciation in other cases. I have not been brought particularly in contact with any of them.

Q. Do you know any sales in the close vicinity there?—A. No.

Q. Do you know of any sales that have taken place lately since the railway has come in along that line?—A. I am not aware; I know of sales, but know nothing of them.

Q. Do you know what they brought, those sales?—A. No.

Q. Do you know of any houses being rented in the close vicinity of that railway since it came in?—A. No sir.

Q. Do you know whether the rental of houses and buildings have gone down since the coming of the railway?—A. I do not know; I have not had occasion to inquire.

Q. How did you arrive at this depreciation of the value of the land?—

A. In the first place there is a prejudice in my mind that is in common with everyone I have spoken with living in the vicinity of the railway, but as to using it for a church, no one would ever think—

Q. I am not asking you about the church, I am asking about the land?—

A. If it were offered me to take a lot in the neighbourhood for nothing or to pay a good round figure to build in a more eligible spot, I would sooner pay a figure and build where I should have satisfaction, than take that for nothing.

Q. Then if I understand you right, you arrived at this conclusion from your opinion, not from any sales that have taken place?—A. From my own opinion, and from the pretty extensive experience in valuing lands in almost any part of the City, and in lending money for at least twelve years.

Q. But not from any sales since the railway came in, or from the fact that rents have gone down since the railway came in?—A. I am not aware whether they have gone up or down.

Q. Why is it that the railway is going to cause all this trouble to the church?—A. Anyone who appreciates the proper object, or the object of a place of worship, would never put that question, or would have any difficulty in understanding the difficulties connected with it. No one during any religious act would like to be disturbed, whether as an individual act or as a congregational act, and anything that will molest or disturb parties engaged at worship will necessarily lose the entire benefit of it. When we go to church, I think we like to be left there in that seclusion in our own minds that must

be very much disturbed by such a thing as a train passing by in the close vicinity. Then again, any person that might be nervous or an invalid, or anything in that way, would certainly never think of going there as a place of worship.

Q. Are those the only reasons you have got for giving this amount of damage to the church?—A. These are the only things that present themselves to my mind. I have not given the matter any attention.

Q. I want to know if these are your principal reasons for giving these damages to the church?—A. I believe the chief reasons are for disqualifying
10 the place as a place of worship.

Q. Is it not a fact that churches have been built and are being built lately, in close proximity to the railway track?—A. That may be, but I am not aware of it.

Q. Have you not noticed any church being built lately in the close proximity of railway tracks?—A. I am not aware of any church having been raised in the close proximity of the C. P. R. recently, unless you refer to the one down at St. Cunegonde or St. Henri, which I think was begun before this matter was mooted. I think the foundation of that church has been up as long
20 as I remember, and it was completed within the last year or two. It was simply left in a state of half completeness for I suppose probably six, ten, or twelve, or more years.

Q. I did not ask you in reference to this church, I ask you if you know anywhere, churches being erected in the close proximity of railway tracks?—A. None occurs to me at the present moment. There may be without my knowing it.

Q. Do you not think that a street railway is considerable trouble to a church?—A. I do not think so. That would of course depend very largely upon the situation of the church itself and the manner in which it would be built. I don't think the noise from that would affect churches in the least. I don't
30 think they would make so much noise as a cab.

Q. Do you go to Emmanuel Church?—A. No.

Q. What church do you go to?—A. Now to one and now to another.

Q. Do you go to Christ Church Cathedral?—A. No.

Q. Would you think that the street railway would cause any annoyance to Christ Church Cathedral from its situation? Do you think it would cause any inconvenience or damage?—A. I have had no experience in that building to be able to say, but I should imagine it would scarcely be possible to be much annoyance there. The church itself is so far off the street and sufficiently raised, the car itself could not be seen. I do not think that the cars make more noise
40 than a cab does.

Q. Supposing a church to be bordering on a street, do you think that the fact of the Montreal City Passenger Railway passing, would cause inconvenience and damage to the church, provided the walls are of the same thickness as Calvary Church?—A. I would require some experience before passing an opinion. All knowledge to be accurate is to be based upon actual experience of some sort.

RECORD.

—
*In the
Superior
Court.*

No. 59.

Deposition of
RobertMacaulay
for proprietors,
dated
10th Nov.

1888—

continued.

RECORD.

Q. You are not prepared to say there would not be any damage?—A. I would not.

*In the
Superior
Court.*

Q. Would you allow any damages?—A. I am not prepared to state.

Q. You said it was almost impossible, in your mind, to worship in a church when a row was going on?—A. I don't think that either you or I could perform our devotions very correctly.

No. 59.
Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888—
continued.

Q. Do you think that services held on board ship that there is not just as much good derived and the prayers just as well offered up as in Calvary Church or any other church?—A. The mind is capable of being educated to almost anything. Sailors can find their lines, can be adapted to noise in a manner that neither you nor I nor any other sensitive person in a City could possibly get at. 10

Q. I did not refer to the sailors, I referred to the passengers?—A. The passengers on board of a steamer can be as a rule sufficiently protected from the noise. I think it is customary for the captain to insist upon, during the act, the most perfect quiet as far as possible.

Q. Is it not a fact that there are other denominations, apart from the congregational, where it is considered essential to have silence in the church during service or during prayer in this City?—A. I am not aware of any church denomination that does not insist upon quiet during the ceremonies. 20

Q. Is it to your knowledge that all denominations in this City think that complete silence in a church is necessary for church worship?—A. That is a strange question to put to anyone.

Q. You must know exactly what I am driving at?—A. I am not aware that any church can or does insist upon complete silence. That would be a very absolute term to employ. The wind itself, rain, one's breathing, and many things will disturb what might be called complete silence, but it is a rule, as far as I have ever heard, that the congregation in common with every church that I have ever known, requires quietness during worship.

Q. In the Congregational Church, people come in at certain hours for their prayers?—A. They go in on Wednesday evening. 30

Q. At a certain hour?—A. Yes.

Q. The services are held at a fixed hour?—A. Yes.

Q. People are supposed to assemble there at a fixed hour?—A. Yes.

Q. Is it not a fact that there are other denominations in the City where it is customary for people to come in and out during the day?—A. I believe that is so in the Roman Catholic Church. I am not aware of any other. In that church the people go in pretty near all hours.

Re-examined.

Q. When you spoke of having heard it stated that the situation of the church in question was not the best for church purposes, do you know whether any such expression of opinion existed at the time, or about the time the church was to be constructed?—A. About to be constructed?

Q. Yes?—A. I was not in a position then to know anything of what was going on in connexion with it.

Q. Was this anything more than an informal opinion—an opinion of individuals—or was it an expression that emanated from the church generally, or anybody authorised from the church?—A. All that I remember, in an indirect way, is a vague recollection of having heard it somehow or somewhere, and I am perfectly sure it was before this railway.

Q. Was it a mere individual expression of opinion, or was it an expression on the part of the church?—A. I have nothing definite in my mind but a vague impression.

Q. You do not remember where or who?—A. I could not tell you.

10 Q. I suppose you are aware that there are very few churches where there are some members who do not think the church in the most eligible position; is not that the case?—A. I can only, of course, answer within my knowledge. I have been more or less connected with three or four churches, and I think I have met with dissenters in regard to every one of them.

Q. There was nothing more than the usual dissent in the matter that you recollect with regard to this church?—A. Nothing beyond what I say. It may have been much or it may have been little, or it may have come from the deacons, or minister, or anyone else. It is very vague in my mind.

20 Q. Having reference to the portion of the City from which the congregation come who go to this church, how is that church situated?—A. I don't think to-day that Calvary Church could be in any more convenient spot for the membership both of the church and of the congregation itself.

Q. You have been asked the reason why the church was injured or destroyed as a place of worship; in your opinion does the fact, the mere fact of a railway being constructed or passing within twenty or thirty feet of a property itself carry deterioration to the adjoining property?—A. Well, I cannot imagine any other reason than the fact of its being close to the property.

30 Q. It is your opinion that the construction and passage of a railway deteriorates the property near to it, as a rule?—A. In my mind it cannot help but deteriorate the adjoining property.

Q. It is the general rule, no matter for what purpose you use the property?—A. No matter for what purpose you use the property.

Q. But more especially for residential or church purposes?—A. More especially for that.

Q. Would you lend ten or twelve thousand dollars on security of that property as it stands?—A. No, I would not.

40 Q. When you were asked as to the distance the line ran from the road, you had a general idea, I imagine, that it was within a few feet, twenty or thirty feet or so. You had a general idea without being too express?—A. I know the property, and I know the access by the lower side, and I understand its crossing must be within from fifteen to twenty feet any way.

Q. You have a general idea without being able to tell the exact number of feet?—A. I may as well say I worshipped there for many years.

Q. You are not connected with the church in any way now?—A. No.

Q. You have no interest in it?—A. No.

RECORD.

—
In the
Superior
Court.
—

No. 59.
Deposition of
Robert
Macaulay
for proprie-
tors, dated
10th Nov.
1888—
continued.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 59.
 Deposition of
 Robert
 Macaulay
 for proprietors,
 dated
 10th Nov.
 1888—
continued.

Q. You have been asked, or you have spoken, about another church as being near the railway; are you aware of the distance of that other church you have referred to from the railway?—*A.* No, sir, I have not.

Q. Is it not a distance of several blocks away, the church down at St. Cunegonde?—*A.* It is immediately west of Sir Francis Hicks house; that is the church I referred to.

Q. Is not that several hundred feet from the railway track?—*A.* I am not sure of the distance, but it strikes me there must be one or two or more trees between it, but I am not sure.

Re-cross-examined.

10

Q. Do you know, Mr. Macaulay, of a little Presbyterian Church that has been built lately, bordering right on the Grand Trunk Railway track; it must be about a mile from the station on the right-hand side as you go out of the City westward; it has been built bordering right on the Grand Trunk Railway track?—*A.* I am not aware of any such church. There may be, but I am not aware of it.

Q. It may be a Methodist Church?—*A.* I am not aware of any church there.

By *Mr. Fleet.*

Q. Were you ever identified with this church, as an officer or trustee?—*A.* I was identified as a deacon; I think also I was a trustee once. 20

Q. I suppose you are the Mr. Macaulay who appears in this Deed of Trust, Exhibit number 12?—*A.* Yes.

Q. When you had that interview with Mr. Wood, did he express any opinion as to the necessity of removing the church on account of the damage that the railway would do it, or did he express his opinion that it would be possible to carry on the church?—*A.* I do not know that that question was gone into. Whether it was understood or not it was an understood thing between us. Whether it was really discussed or not, whether it would be necessary, or whether we really went into it or not I am not sure. In fact it was kind of 30 taken for granted.

Q. Do I understand you to say that in your opinion it would be absolutely necessary to remove the church, or that the passage of the railway would merely have the effect of inconveniencing the congregation and possibly impairing its usefulness as a place of worship?—*A.* I wish to be understood as saying that the effect of this railway passing so closely to it would have the effect of rendering it necessary for the church to go elsewhere.

Q. Have you ever heard a contrary view to that which you have now expressed stated by any of the members of the church or any of the trustees of the church. I mean to say, have you ever heard any of the trustees of the church or the members express the opinion that it would be possible to carry 40 on the church in its present site?—*A.* That has not come within my hearing or knowledge. In fact I think it is taken for granted that they will have to remove.

And further deponent saith not.

Schedule No. 70.

DEPOSITION OF LINUS ORTON THAYER.

On this tenth day of November, in the year of our Lord One thousand eight hundred and eighty-eight, personally came and appeared Linus Orton Thayer, of the City of Montreal, doctor of medicine, aged forty-nine, and a witness produced on the part of the proprietors, who, being duly sworn, deposes and saith :—

Examined by *Mr. Trenholme.*

RECORD.

*In the
Superior
Court.*

No. 60.
Deposition of
Linus Orton
Thayer for
proprietors,
dated 10th
Nov. 1888.

Q. You have lived many years in Montreal?—A. Well, I have travelled a
10 great deal, about fifteen years I have been away from Montreal, off and on, but
I have lived here pretty continually, I may say, nearly all my life.

Q. You are a proprietor in this City?—A. Yes.

Q. Do you know the Calvary Church property in question in this matter,
and have you seen how the railway passes the church?—A. I know the property
very well, my father's house was on Seigneurs Street, a short distance away
from there.

Q. And you know how the railway passes?—A. Yes.

Q. Will the passage and construction of that railway past the church
injuriously affect Calvary Church property?—A. I should say so, most
20 decidedly.

Q. Will it have any effect upon the value of property apart from all con-
siderations in this church?—A. My idea is that the nearer a railway the more
destructive it is to a property.

Q. You consider the property has deteriorated by being in the close
proximity of the railway?—A. Yes.

Q. How does it affect the property for church property?—A. Very
seriously.

Q. How seriously?—A. I should be sorry to attend a church so near to
the railway.

30 Q. Does it not render it unsuitable for church purposes?—A. Yes, for the
service is held while the trains are passing.

Q. Even apart from the train, does not there always follow in the line of
the railway objectionable features that would render it undesirable for church
purposes?—A. In elevated railways there are people on the track or the line
examining the rails and other things, and the railway employes generally are
not of a class that are very good church-goers, and I should say the language
they might use, if they find anything wrong, might not do good to the church.
It would disturb the congregation.

40 Q. You are aware that the passage of the railway renders it unsuitable for
church purposes?—A. Entirely.

RECORD.

Cross-examined.

*In the
Superior
Court.*

No. 60.

Deposition of
Linus Orton
Thayer for
proprietors,
dated 10th
Nov. 1888—
continued.

Q. How does the railway pass over this property? I understand you to say that you knew to a certain extent in what way it was passing over this line; how does it pass?—A. I think the rails of the track are on a line with the floor of the church and above the schoolroom.

Q. How do you know?—A. Well, I pass there very frequently. I passed there day before yesterday.

Q. Are you aware whether any of the beams or trestle work of the railway take up any part of the lane?—A. I am not aware whether the lane is on the other side of the church. The lower side of the church is where the track passes in close proximity to the church, within twenty feet. 10

Q. Have you ever attended church in the close proximity of a railway?—A. I have, in London.

Q. Do you know whether that church in London was built before or after the construction of the railway?—A. The church was built before.

Q. How do you know?—A. From its age and from its appearance.

Q. There were very few people in the congregation I suppose?—A. There were a great many people.

Q. Was the church full?—A. Never filled right up.

Q. Still there were a great many people in the congregation?—A. Strangers came to see it. 20

Q. The day you were there were there a great many people there?—A. No.

Q. Was the church filled?—A. No, not filled.

Q. Have you had any other experience?—A. Yes, certainly, I have; in Bayswater, I was in a house and the railway passed close to the house, and the wine glasses were sent off the side of the table.

Q. I ask you in a church?—A. No, not in a church.

Q. Were your prayers or your feelings in any way troubled or put about by the fact of the railway passing in the close proximity of the church in London?—A. I am an admirer of music, and as the train passed just when the music was going on, it disturbed me. 30

Q. As a matter of fact, would you think the effect of your prayers were in any way troubled by this railway?—A. I did not happen to be praying just then.

Q. That was on Sunday?—A. Yes.

Q. Do the trains run on Sunday in London?—A. Yes, every day of the year.

Q. What reasons do you think this church will be rendered unfit for its present use?—A. I think a great part of the congregation will leave on account of its close proximity to the railway track. 40

Q. What other reasons?—A. On account of the noise and on account of the smoke coming in through the open windows. In summer the windows are obliged to be left open and the smoke and cinders would come in.

Q. Have you any other reason for thinking it would be rendered unfit?—
 A. As a medical man, I should think that it would prevent anybody who is at all nervous from going to a church where trains pass.

Q. In your experience as a doctor, are there many such persons in a congregation; on the whole, how many would there be on an average that you would have to prevent from going to church on account of nervous debility?—

A. It depends upon whether they are male or female.

Q. How many?—A. It is a fact I have not gone into.

Q. You have stated nothing about the depreciation in the value for any other purposes than church purposes, I understand. You have just spoken in
 10 your examination-in-chief about the depreciation it will do to the property as a church property?—A. And as any other kind of property.

Q. It is not fit for anything then?—A. It might be for manufacturing or anything else that a person would choose.

Q. Do you know of any sales in the close proximity of the track?—A. Not since the track has been laid.

Q. Well how long before?—A. My father's house was sold.

Q. How long ago was that?—A. Last year.

Q. Your father bought that property you say?—A. He built it, and it was
 20 sold to the Canadian Pacific Railway.

Q. What did he pay for it?—A. He built it himself.

Q. When did he buy the land?—A. Oh, about eighty years ago.

Q. Do you know how much he paid for it?—A. Five hundred dollars for the land.

Q. About how much land?—A. About two acres I think.

Q. I understand you to say you know of no sales since the railway passed through; do you know of any one apart from the Canadian Pacific Railway, before the railway passed in this vicinity?—A. No, I do not.

Q. Do you know what houses rent for, or do you know of any houses
 30 that were rented in the vicinity of this track?—A. No, I never had occasion to rent houses there.

Q. Do you know whether the value of land has gone up or gone down, or whether the rents have gone up or down since the railway has gone there, as a matter of fact?—A. No.

Q. You don't own any property yourself in the close vicinity of the railway?—A. No.

Q. Have you ever lived in the close vicinity of the railway?—A. I live now.

Q. Where?—A. On Notre Dame Street east, near the Canadian Pacific
 40 Railway Station.

Q. How long have you lived there?—A. Five years.

Q. You live there still?—A. Yes.

Q. Do you intend to leave there?—A. As soon as I can go away I will. I have tried to move several times.

Q. Have you made any arrangements—you have not taken any other house?—A. No.

RECORD.

In the
 Superior
 Court.

No. 60.

Deposition of
 Linus Orton
 Thayer for
 proprietors,
 dated 10th
 Nov. 1888—
 continued.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 60.
 Deposition of
 Linus Orton
 Thayer for
 proprietors,
 dated 10th
 Nov. 1888—
continued.

Q. Do you know of any churches that have been built lately in the close vicinity of a railway track?—A. I do not.

Q. You have not noticed any?—A. No.

Q. Has your attention been brought to this fact before?—A. No. The way my attention was drawn to this church is, I pass there very frequently down Guy Street, and I noticed the angle of the railway going so close to the church, and I said to myself: That church is done for. I would not live there myself and I would not allow my wife to go.

Q. Do you attend this church?—A. No.

Q. Do any of your family attend this church?—A. We are all 10 Presbyterians.

Q. Who asked you to be a witness in this case?—A. I think it was Mr. Cushing.

Q. Did you have any conversation with him as to the uses the church might be put to afterwards?—A. No, I never did.

Q. No conversation as to the church being rendered useless by the railway?—A. No, he simply asked me to come up as a witness if I knew the church and knew where it was situated. I said I did, and that was the sole conversation that passed between him and me.

Q. Where are your properties? You said you own property?—A. Beaver 20 Hall Hill and Notre Dame Street.

Q. Do you own the property on Notre Dame Street?—A. For my wife, it is the same thing.

Q. Any other property besides those two?—A. Not in Montreal.

Re-examined by *Mr. Trenholme.*

Q. How near do you live to the railway yourself?—A. I should say about two hundred and fifty feet from the railway track.

Q. And have for five years?—A. Yes.

Q. At that distance what inconvenience have you experienced from the railroad?—A. From the smoke, from the noise, and the row of the men passing 30 up and down the track.

Q. To what extent does it inconvenience you?—A. Terribly. We have got to keep our front windows shut all the time in summer and winter.

Q. If you come within twenty or thirty feet, would it make any difference?—A. Yes, so much the worse.

Q. You speak from experience?—A. Yes, personal experience.

Q. What about the effect of the railroad in creating vibration?—A. Well as I have already said, I was in a house in Bayswater, in London, where the vibration of the railroad was sufficient to throw the wine glasses off the table.

Q. Is this Calvary Church situated as badly for that purpose as the house 40 you referred to?—A. I should think so.

Q. Is there sure to be a certain amount of vibration?—A. Certainly.

By *Mr. McGibbon.*

Q. You have had some difficulties in the east end in addition to the railway?—*A.* None whatever.

Q. Did you not have some dispute with a neighbour?—*A.* That has nothing to do with it.

Q. The railway is the only reason you have?—*A.* Yes.

Q. Is it not a fact that you have had a law suit with your next door neighbour, Dr. Cheevy, who lived next door to you, in connexion with certain trade marks and certain good-will of the drug business you supposed you had purchased from him down there?—*A.* Yes.

Q. In which you claimed that his refusal to carry out the agreement had damaged your business very much?—*A.* It did.

Q. What damages did you claim?—Five thousand dollars.

By *Mr. Trenholme.*

Q. You state that had nothing to do with your desire to leave the place, but simply the railway causes you to leave?—*A.* Yes. We cannot use our front windows at all, and we cannot keep a thing in the house.

And further Deponent saith not.

Schedule No. 72.

20

DEPOSITION OF THOMAS MOODIE.

On this seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared, THOMAS MOODIE, of the City of Montreal, Merchant, aged forty-three and witness produced on the part of the proprietors, who, being duly sworn, deposed as follows:—

Examined by *Mr. Trenholme.*

Q. Do you attend this church?—*A.* No.

Q. I understand you have lived for some time at Cote St. Antoine, in the house belonging to the Moodie Estate, near the railway?—*A.* Yes.

Q. Have the rails been laid down and has the track been in use for engines and cars for some time past?—*A.* Yes.

Q. How near is the railway line and house in which you lived?—*A.* The dividing fence is about eighteen feet from the house.

Q. That is the right of way—the line taken by the railway is within eighteen feet of the house?—*A.* Yes.

Q. And the track is how far from the house?—*A.* Well, I have not measured it, but there is just the ditch between the fence and the track. There is only the ditch between the fence and the track and the rails. The ditch is more than six feet, I suppose.

Q. The rails are in on the embankment, I suppose, a little bit below?—*A.* It would not be more than ten feet at the outside.

U p. 3310.

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RECORD.

*In the
Superior
Court.*

No. 60.
Deposition of
Linus Orton
Thayer for
proprietors,
dated 10th
Nov. 1888—
continued.

No. 61.
Deposition of
Thomas
Moodie for
proprietors,
dated 17th
Nov. 1888.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 61.
 Deposition of
 Thomas
 Moodie for
 proprietors,
 dated 17th
 Nov. 1888—
continued.

Q. How has that line of railway been used while you have lived there?—
 A. For ballast trains.

Q. Going by?—Yes, slow trains.

Q. How long were you there while they were so using the road?—A. At least two months. I forget now exactly the time the rails were laid, but at least two months.

Q. What effect upon the house had the railway?—A. The vibration was very great. The windows rattled through the passage of the trains, and smoke would drive right against the house unless the wind was blowing strong in the opposite direction.

Q. Did it inconvenience you in any way?—A. Very much.

Q. How?—A. The vibration was so great we had to leave the house.

Q. As to the smoke, was there smoke, cinders, &c.?—A. It was late in the season, and the windows were not open, but if it had been summer time everything would have been dirty.

Q. Did you keep your doors open?—A. No, not all.

Q. You say you had to leave the house on account of the railway?—

A. Yes.

Q. You have left it, then?—A. Yes.

Q. Was it on that account?—A. That was the principal reason—that reason 20
 and no other.

Q. It is now vacant?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. To whom does this house belong now?—A. To the Estate William Moodie.

Q. And under what title were you occupying it?—A. Tenant.

Q. When did your lease run to?—A. I had no lease.

Q. I would like to know under what conditions you were occupying the house?—A. As one of the legatees.

Q. What rental did you pay for the house?—A. I did not pay any rent 30
 except as a legatee.

Q. How do you mean as a legatee?—A. Well, I got the use of the house.

Q. Where have you moved to, Mr. Moodie?—A. Into the City.

Q. Whereabouts?—A. McGill College Avenue.

Q. Did you occupy that house before the railway passed?—A. Yes.

Q. For how long?—A. I was there for a year the last time, and I was there for a number of years before that.

Q. These trains that you speak of are construction trains, I suppose?—A.
 Yes.

Q. Did you notice what kind of smoke stacks these engines had?—A. They 40
 seemed to me to be the ordinary stacks.

Q. Are they broad at the top?—A. Yes.

Q. Of course you don't know whether they are fitted with the more modern appliances for preventing the escape of smoke?—A. I could not say.

Q. Are you aware that the passenger trains are supplied with what you call smoke stacks and extension smoke boxes, so that the smoke can escape?—

A. I have not seen the smoke stacks in them, but they do not seem to make much difference in the smoke; there seemed to be as much smoke whatever the stack was there. There may not have been so many cinders though.

Q. These trains are continually moving about from point to point, for what distances?—A. Some of them go as far as the Athletic Grounds and some from Lachine Bank, back and forward.

Q. Are you not aware that trains moving in that way—stopping frequently and moving short distances—make much more smoke than regular trains running a small distance, they have to fire up very frequently?—A. I do not know.

Q. The road bed is not ballasted yet?—A. Partly. It has not got the finishing touches.

Q. Do the trains run on a level with the house, or below or above it?—A. On a level.

By *Mr. Brodie.*

Q. Are you aware that there are two tracks?—A. The second track has been laid lately, since I left.

Q. Don't you think the annoyance would be greater with trains running on two tracks than on one?—A. Of course if more trains were run there would be. Of course at present the trains are only running slow, but when they are running fast the vibration will still be greater.

And further Deponent saith not.

Schedule No. 73.

DEPOSITION OF ROBERT WALLACE McLACHLAN.

On this seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared ROBERT WALLACE McLACHLAN, of the City of Montreal, aged forty-three, and witness produced on the part of the proprietors, who, being duly sworn, deposeth as follows:—

Examined by *Mr. Trenholme.*

Q. Have you any interest in this contestation?—A. I am one of the trustees of Calvary Church.

Q. Have you any personal interest in it?—A. None at all.

Q. Have you long been connected with Calvary Church in question?—A. Yes.

Q. How long?—A. Ever since it was organised into a church.

Q. You then, of course, know the property, and you know how the railroad passes the church?—A. Yes.

RECORD.

—
*In the
Superior
Court.*
—

No. 61.
Deposition of
Thomas
Moodie for
proprietors,
dated 17th
Nov. 1888—
continua.

No. 62.
Deposition of
Robert
Wallace
McLachlan
for pro-
prietors,
dated 17th
Nov. 1888.

RECORD.

*In the
Superior
Court.*

No. 62.

Deposition of
Robert
Wallace
McLachlan
for pro-
priators,
dated 17th
Nov. 1888—
continued.

Q. You know how the trustees of the church generally were satisfied with the church property before the railroad passed there?—A. Well, the trustees believed that there was no more suitable spot in the City for a congregation, as one half of the congregation—one half of the revenue of the church—was received from members living up the hill and the other half from those living down, and to move to any other spot in the City we would remove from either one half of the revenue or from the other, and that much would be lost to us without gaining a sufficient quantity, except perhaps through the course of a number of years.

Q. The trustees were perfectly satisfied with the situation of the church before the railway came?—A. Yes.

Q. Was there any intention of moving before the railway?—A. There was no possibility of moving before the railway to a better position.

Q. I suppose there are always individuals who thought there were other places better for the church?—A. There must be some, those who lived at a great distance, who, I suppose, would liked to have the church nearer to their residence, but apart from that there was no dissatisfaction at all.

Q. You are acquainted with property in that section?—A. Yes.

Q. You have lived a great many years in Montreal?—A. Yes.

Q. What do you consider the present value of that property, as it stands now, with the railroad passing it as it does?—A. After the depreciation caused by the railway?

Q. Yes?—A. Somewhere about thirty cents.

Q. That is for the land?—A. Yes.

Q. Taking the whole property, what value would you put upon it?—A. Well, the building to me is worthless, because, knowing the building as I do, it seems impossible for me to make use of it for any other purpose than for a church.

Q. You say the building to you; you mean the building in your opinion?—A. Yes.

Q. You think it is unfit for other purposes?—A. I know the building so well that I cannot see how it can be used for any other purpose.

Q. Why cannot it be made available in the same way as Zion Church was for business?—A. It might be. If I give you the history of Zion Church, you will understand that the value of the building does not amount to anything.

Q. Is there any difference between the structure of the two buildings?—A. Yes, Zion Church was built of stone, with very strong walls, that were sufficiently strong after the fire without any improvement to rebuild on.

Q. And the walls in this case?—A. They are built of brick; they have no buttresses, and they would have to be fortified to be put to use for any manufacturing purposes whatever, and the building is totally unfit for turning into tenements, because it does not occupy the ground properly at all. It is built in the middle of the lot, and it could only be used for tenements at the most; it would not pay.

Q. What would you put on the whole property; what do you think it is really worth?—A. Well, the land is worth thirty cents a foot. The cost of

alteration would be such that the building as it stands, the value of it, would not count for anything. RECORD.

Q. You might happen to get some one who might want a place of that kind for manufacturing purposes who would buy it?—A. That is just possible. But in any case where a building is for sale I have noticed that you get nothing but the value of land for it.

*In the
Superior
Court.*

No. 62.

Deposition of
Robert
Wallace
McLachlan
for pro-
priators,
dated 17th
Nov. 1888—
continued.

Q. Well, now, do you know that in the case of Zion Church, which was formerly used for a church, corner of Radegonde and Beaver Hall Hill, that after it was abandoned as a church it was sold?—A. I know the history of that transaction very well, because my brother was one of the syndicate who purchased it. It was sold for twenty thousand six hundred dollars.

Q. What did it cost?—A. I have not been able to get at the cost of the building, but after the fire it was twenty-six thousand dollars, the cost to rebuild it after the fire. The wall was standing as good as ever.

Q. The building after the fire cost twenty-six thousand dollars, besides what the land and walls were worth?—A. Yes, the walls were as good as ever.

Q. That is larger than the one in the case of Calvary Church?—A. The lot was sold one dollar and a half a foot.

Q. The land?—A. Yes.

Q. There was more land in the case of Calvary Church, was there not?—A. I think there was.

Q. How much did the building count for in the sale of twenty thousand dollars?—A. It counted for nothing, the land would have sold better without the building on it, for the land was sold across the street about the same time, better than the church did.

Q. And you say that the building was a better building than the building in the case of Calvary Church?—It was better, because without the walls at all it cost twenty-six thousand dollars, simply the wood work—the internal work and the roof. The walls, I think, are fully two feet in thickness. It was a building put up in eighteen hundred and forty-six, and the walls were then put up stronger than they are now, as a rule.

Q. What is to be the effect of the passage of this railway on the church?—A. It will simply make it unfit for public worship.

Q. How does it place the church—this railway?—A. Well, coming in within twenty feet of the church, the noise will be such as to disturb the speakers. Those who listen will lose every now and then, perhaps a sentence, or even a word—a word will spoil a sentence—and in that way it would so annoy the members that they would leave the church.

Q. Apart from the noise, are there any other deteriorations?—A. The smoke and the vibration, the windows will rattle. They rattle even with the wind slightly.

Q. Does it affect the light of the church in any way, and the ventilation?—A. It will affect the light of the basement but not of the upper part—the auditorium.

Q. The ventilation?—A. The windows will have to be shut on account of the smoke, and make the church very uncomfortable in summer not to have those windows open.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 62.
 Deposition of
 Robert
 Wallace
 McLachlan
 for pro-
 priators,
 dated 17th
 Nov 1888—
continued.

Q. As to the situation caused by that high embankment, trestle work?—

A. Well, a number of our church people delighted in the place as it was—rather away from most other buildings, it had a rural character with green banks on either side, and it was a pleasant place for a church, away from the noise and bustle of a busy street, and stores, and manufactories, and it was really pleasant. Now the passage of the railway and the high embankment will deteriorate the appearance of the place, and will cause those who lived in the vicinity, who sought that vicinity for its retiredness to live in, to leave, for an inferior class of people, and in that way interfere.

Q. Does the railway obstruct the access to the church in any way?—A. It will obstruct it in one way, that those coming in carriages to church, who have to get their horses to wait for them on account of the high embankment. 10

Q. But the access to the basement through the lane?—A. Well, if they give a passage underneath, I don't think it will interfere much with the access in that way.

Q. Still it will be an inferior access to an open lane, impairing the access in that respect. Horses will hardly pass under a railroad, I suppose, with the same safety?—A. Yes.

Q. Is the building in good condition?—A. Yes, in good repair.

Q. It has not deteriorated?—A. None. It has been kept in good repair. 20

Q. And the feeling now among the trustees generally is that the railroad will spoil the church?—A. It will make it unfit for public worship.

Q. That is the feeling among the trustees in the church?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. I understand from you that there has been some difference of opinion about the suitability of this site among the members of the congregation before the railway?—A. There may have been, as there is about all churches. There are always one or two dissatisfied with the church.

Q. I don't ask you what may have been. I ask you what has been?—A. That is the only answer I can give you. 30

Q. Do you mean to say you have no knowledge at all of any difference of opinion?—A. Yes, except such an expression may have been uttered by one or so.

Q. I do not ask you if it may have been uttered, but if such an opinion has been uttered to your knowledge?—A. I cannot recall anything further than an impression.

Q. That impression could only be created by your having heard some one express the opinion?—A. I did not listen—if the expression was made I did not listen to remember it.

Q. You can only remember it by having heard it, so you must have heard it?—A. There is in every case —

Q. Never mind about other cases, I only care about this one. Did any considerable number of persons express this opinion?—A. I could not answer that. My previous answer involves that I know no one expressed that personally, I could not mention any one.

Q. I don't want you to mention the names, you stated you got this impression from what you heard the members say. I want to know if there was any considerable number expressed such an opinion?—A. Very small, very slight indeed.

Q. Where did these members reside who expressed this opinion?—A. They resided at a distance.

Q. In which direction?—A. I cannot tell you that.

Q. You heard the opinion expressed both by those below and above the church?—A. I do not think so.

10 Q. Which side, above or below?—A. Above.

Q. Towards Sherbrooke Street?—A. No, we have none in that direction.

Q. In what direction?—A. We have only got them towards the west end.

Q. West of Guy Street do you mean?—A. Yes. I answer that way because that is the only place that it could come from.

Q. Are there no manufactories in the immediate neighbourhood of this church?—A. Not until one was erected since the road was laid out.

Q. What manufactory was that?—A. Manufactory of furniture, built by one of the directors of the Canadian Pacific Railway.

20 Q. Whom?—A. Built by McIntyre.

Q. By McIntyre, for Thompson, the furniture man?—A. Yes.

Q. On what property is that?—A. Property bought by the company to save a small piece that had to be cut off to deflect the street.

Q. On what property?—A. Below the track from the church.

Q. Fronting on Guy Street?—A. Yes.

Q. You know of no other manufactory in the neighbourhood?—A. I don't know any at all near it.

Q. Within what distance?—A. I cannot recollect, the nearest is the Davis and Lawrence manufactory.

30 Q. St. Antoine Street?—A. Yes, that is the nearest I know of. It is a quarter of a mile distant.

Q. Zion Church was built, was it not?—A. Yes.

Q. And the sale took place that you have spoken of?—A. Yes.

Q. The roof fell in I believe?—A. Yes.

Q. There was nothing left but the wall standing?—A. Yes.

Q. Would you give us the prices of those properties sold in the immediate neighbourhood about the same time?—A. I think, the property that was sold to O'Brien—it was sometime afterwards—was sold for three dollars.

Q. Where was that?—A. Right opposite, on the other corner.

40 Q. Can you tell us of any other property sold at the time that Zion Church was sold?—A. The Evans property were sold there. I cannot remember the price. On Victoria Square.

Q. Those properties on Victoria Square would be much more valuable than the old site of Zion Church?—A. I do not think so. My reason for saying that is that the bulk of the traffic passes that way. It is a much better site than away across Victoria Square, where so few people pass.

RECORD.

—
In the
Superior
Court.

—
No. 62.

Deposition of
Robert
Wallace
McLachlan
for pro-
priators,
dated 17th
Nov. 1888—
continued.

RECORD.

Q. Zion Church you refer to, is on Beaver Hall Hill, where the Herald is now?—*A.* Yes.

*In the
Superior
Court.*

Q. It has not been built within your time?—*A.* Yes, because we attended Zion Church.

No. 62.
Deposition of
Robert
Wallace
McLachlan
for pro-
prietors,
dated 17th
Nov. 1888—
continued.

Q. How long ago was it; you say it was rebuilt as a church?—*A.* Yes, rebuilt as Zion Church again.

Q. That was the refitting that cost twenty-six thousand dollars?—*A.* Yes. If you want to know the cost of the refitting that was done by the syndicate that bought it, I can give you that.

Q. That church has been used for several purposes since, has it not, a concert hall for instance?—*A.* It was, and there were stores built in front of it.

Q. It has never been used as a factory?—*A.* No.

Q. Do you know of any church in the City which was burnt and afterwards used as a factory?—*A.* I do not know of any church that was burnt and used as a factory. I know of some that were burnt and refitted as churches again, for instance, St. Andrews Church was burnt.

Q. I am speaking now of a church that was used for a factory on St. Joseph Street, or somewhere down there?—*A.* Old Cote Street Church was turned into a cigar factory.

Q. There was another one in my mind, on St. Joseph Street?—*A.* That was turned into a store. 20

Q. So in the history of Montreal, it is not an usual thing for churches to be abandoned and used for other purposes?—*A.* When their congregation moved away from the place they had to move—that is about it.

Q. Is it not a fact, that in a growing city like Montreal, in the course of time that churches have to move sometimes, for instance, such as the St. James Street Methodist Church, which has moved up to St. Catherine Street?—*A.* Yes.

Q. None of these churches you speak of have been affected by railways at all, except in an indirect way, inasmuch as the railways would bring traffic and increase the growth of the City?—*A.* They would be affected when the congregation went away, and then from their buildings becoming so valuable, it would be much cheaper to sell out. 30

Q. That was the result, what was the cause?—*A.* The cause was their congregation moving westward.

Q. What caused the congregation to move westward?—*A.* The locality becoming filled up with business places or factories.

Q. That was the cause?—*A.* Yes.

Q. We will take the present church. If that locality was to become built up with business buildings, factories, and other things, the congregation would have to move, no doubt?—*A.* The people move or the church move. 40

Q. The church?—*A.* If the residence of the people were so far removed that it would be inconvenient for them to attend the church, of course they would have to move.

Q. You don't attach much importance to the mere surroundings of the church, provided the congregation was within a reasonable distance, then?—*A.* I do not understand your question.

Q. Even if the church was surrounded by business buildings, factories, and workshops, and all that sort of thing, provided the congregation continued to reside within a near distance, you think it would not affect the church?—A. It would affect the church, but not to such an extent that they would have to move.

Q. I understand that you consider it a matter of importance to a church in retaining its congregation, that the service should not be interrupted by noises?—A. Yes, very great importance.

Q. Still a great many churches have to suffer this inconvenience, have they not?—A. I do not know of any in the City.

Q. You know no churches where the street cars pass close by?—A. Yes.

Q. Don't they make a noise that can be heard during the service, especially in summer?—A. Nothing like the noise from a railway train.

Q. You don't know any churches that are near the railway?—A. I never attended any church near the railway.

Q. Do you know of any?—A. I have seen some Catholic Churches.

Q. There are several along the line of the Grand Trunk Railway near St. Henri or in St. Henri?—A. One or two; I don't know how close they come.

Q. Then in Point St. Charles, or near Point St. Charles, is there not an English Church pretty close to the railway—Mr. Belcher's church, Grace Church, I think?—A. I suppose there is, but it is not anything like as near as our church is.

Q. Still they would hear the noises, though in a less degree?—A. Yes, in a less degree.

Q. Loud enough to cause the audience to lose a word or sentence?—A. I cannot tell you that at all. I cannot tell you how near they are, or anything about it.

Q. Would not the rattling of an empty coal cart past a church drown the speaker's voice for a moment?—A. If it were passing the side of the church with the windows open it would. But in our case it does not bother us, because we are removed, in the first place, by twelve feet from the road, and there is a vestibule of ten or twelve feet, which altogether smothers the sound.

Q. There are no windows opening on Guy Street?—A. No.

Q. None?—A. They are not capable of being opened on Guy Street.

Q. Have you had any trains passing there since the railway is in operation?—A. The viaduct crossing Seigneur Street is not finished, and therefore they cannot pass that.

Q. I asked you if any trains ran as far as the church yet?—A. No. The viaduct has not been built over Seigneur Street, and they could not possibly get there yet.

Q. Have the trustees passed any resolution determining to abandon the church?—A. No.

Q. Have the trustees the power to abandon the church?—A. No.

Q. How could it be done?—A. They could recommend it to the congregation, or it could be brought up directly in the meeting of the church members rather, and it is their vote that is final in all cases.

Q. The majority of votes?—A. Yes. Two-thirds majority, I think.

RECORD.

*In the
Superior
Court.*

No. 62.
Deposition of
Robert
Wallace
McLachlan
for pro-
priators,
dated 17th
Nov. 1888—
continued.

Q. What constitutes the church members?—A. Those who have been admitted by the regular rules of the church, to be found in the trust deed.

Q. They are the only ones who have the power of voting?—A. Yes.

Q. Have the trustees taken any steps recently which would tend to show a disposition either to remain or abandon the church?—A. It has been talked over among the trustees that there is no doubt that we will have to abandon the church on account of the railway.

Q. That is your opinion?—A. Of the trustees.

Q. Is it your opinion?—A. Yes.

Q. And the trustees have taken no steps, one way or the other?—A. They cannot take any steps just yet.

Q. You said that they could recommend it to the congregation?—A. During this litigation we cannot do anything.

Q. You have taken no steps any way?—A. The statement has been made at a public meeting that there is no doubt that the church will have to be removed.

Q. Who made the statement?—A. Mr. Cushing.

Q. A public meeting of the congregation called to consider this question?—A. It was announced that this question would be submitted to them.

Q. Did they take any action on it?—A. No, it was not a meeting for action, it was simply to listen to the state of affairs.

Q. Who were the speakers at that meeting?—A. There was only one speaker on the subject.

Q. Mr. Cushing?—A. No. It was not a meeting for discussion. It was simply to state how affairs stood.

Q. That is all that has taken place, simply a statement made to the congregation by Mr. Cushing?—A. That is all, and action was taken at the previous meeting to secure our rights in this matter, proper action in the church meeting.

Q. I don't understand what you mean by secure your rights, how?—A. We were simply appropriating our property.

Q. You mean you instructed your legal adviser?—A. The church took action in the matter, calling first legal advice, and, second, mapping out the action we should take with regard to the Canadian Pacific Railway, and then appointing a legal adviser.

Q. That is not at all an answer to my question. Has no action been taken with regard to deciding whether you would move the church or not, except the statement made at the public meeting by Mr. Cushing?—A. None whatever.

Q. You say neither the congregation nor the trustees have taken any steps which would show a disposition one way or another?—A. I did not say that, we have taken no action as yet.

Q. Taken no steps?—A. They cannot take steps during the litigation.

Q. That is your opinion?—A. As soon as we have the matter settled, and get the amount of money, we will take action.

Q. Then you will decide whether you will move or not?—A. We cannot afford to sell. If we sell the church, we would probably get five or six

thousand dollars for it, and we have got that much debt on the church at present, which would leave us simply without anything.

Q. So unless you get a considerable amount of damages from the railway you will keep the church where it is?—A. The church will go to pieces.

Q. You will not be able to move it?—A. We cannot; we have nothing to move with.

Q. If you can get a good round sum of money out of the company, then you will move the church?—A. The church will have to be abandoned altogether, as the congregation will be dispersed. We will have to move.

10 That is the position of affairs.

Q. It will depend on two things; first, the amount of compensation you may get from the railway, and secondly, whether the congregation do abandon the church?—A. Well, the congregation may not abandon the church as a congregation, but one by one will so drop off that in the course of two or three years —

Q. It depends upon that; whether they do that or do not?—A. Whether we are able to move or not.

Q. It depends upon whether the congregation does leave, or whether the church move; if it continues as full as ever, will you move?—A. We have an

20 announcement from a number that they will not remain.

Q. If they do remain, and the congregation keeps up to its full number, do you intend to remain any way?—A. I cannot answer that question. You ask me a question with an “if” in it.

Q. But you have been giving evidence with an “if” in it. You say that the church will have to move if the congregation leave it?—A. I did not say that. If the congregation leave it the church will disband. Because the revenue we now receive from the congregation we have is hardly sufficient to meet the expenditure.

30 Q. If the congregation goes down, the revenue will be diminished?—A. It will be so diminished that they will have to abandon the church.

Q. Therefore it depends upon whether the congregation do leave it or not?—A. The trustees have received letters stating that if the church is not removed, the members, who are some of the largest contributors, will cease to attend the church.

Q. When did they receive these?—A. Since the trestle work was put alongside of the building.

Q. Therefore it depends entirely as to whether you move or not—it depends upon whether the congregation remain or not?—A. It depends upon whether the congregation move. If we have sufficient money to move we will move,

40 there is no doubt about that.

Q. It is your opinion?—A. Of the trustees. They will bring in a statement like that before the church, and the congregation will simply accept the report of the trustees, and vote removal.

Q. You think so?—A. There is no doubt about it.

Q. Then the matter remains entirely with the trustees?—A. No, the church generally accept the reports from the trustees. As you know, if you are in the committee of any institution, if the Board of Directors bring in a

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report, the report is usually accepted. The trustees are for that purpose, to take charge. They bring in a report, which is usually accepted.

Q. But if you were to find after the railway had been completed that you are mistaken in your opinions, and that the congregation were quite satisfied to remain where they were, you would not move the church, would you, provided the congregation remain?—A. That requires a little explanation. Our congregation is made up of, say, three hundred. Of that three hundred a certain proportion move from that district every year. Now, the suitability of the building is such that it attracts quite a little larger number than remove, because our congregation has been growing all the time. The attractions of the building is such that it draws a larger number than leave it to it, and in that way the congregation has been growing ever since it has been organized. Now, from all our experience, these people who are attracted, these new comers to take the place of those who have removed, would not be drawn into such a building, where their clothes are soiled every time they come into the church. 10

Q. You are still giving us your opinion. Supposing your opinion is entirely mistaken, and the congregation does remain in full force, and perhaps continue to increase, would you move the church; would that be the opinion of the trustees?—A. You ask me that if the congregation would remain—was to be as large as ever—if the disturbance was so slight from the railway — 20

Q. No matter if it was slight or great. If the congregation were satisfied to remain?—A. If the congregation were satisfied to remain, we could not remove, of course.

Q. Your opinion is that the congregation would not be satisfied to remain?—A. From all the conversation I have had with every one I have talked with has been in the direction that there is no doubt about it, and with outsiders it is the same way, that we cannot carry on the church.

Q. You have had no practical experience yourself?—A. Except as having travelled and stayed in hotels in close proximity to the railway.

Q. You have never worshipped in a church in the close proximity to a railway?—A. No, I never did. 30

Q. Mr. Trenholme asked you about the access by the lane; do any members of the congregation come to church by that lane?—A. No.

Q. No horses come through that lane except horses for drawing coal?—A. No.

Q. So that if the railway leaves a clear opening, with headway of twelve feet, it ought not to interfere with the access by the lane?—A. I answered the question, that it would not interfere very materially.

Q. How would it at all?—A. Well, it is never as good as an open lane, there is no doubt about that.

Q. Why is it not as good as an open lane?—A. I cannot bring any great 40 reasons why, but an open lane is better than a closed one any day. It may be a very small difference, but still there is a difference.

Re-examined by *Mr. Trenholme.*

Q. Would it make any difference in the availability of the lane for access; can you pass horses as safely and conveniently under a railway that way as through an open lane; is it as good?—A. It is not as good as an open lane.

Q. Do you ever drive horses under trestle work like that, with cars overhead?—A. No.

By *Mr. Brodie.*

Q. Zion Church and these churches that have been turned into business places, were they not situated more in the central part of the city?—A. Yes.

Q. More desirable places for business establishments?—A. Much more so.

Q. Is it mostly people who live there?—A. Private residences, and very little business carried on in the immediate vicinity.

10 Q. There is hardly any?—A. No.

Q. Are you aware that these churches—let us imagine, for instance, the Presbyterian Church at Point St. Charles, and Roman Catholic Churches, that they are over two hundred yards distant from the railway track?—A. I know they were a good deal further, but that is all I can say.

Q. Do you know any churches as near as this one?—A. No, there are none.

Q. Have you examined the official plan that was deposited as an exhibit in this case?—A. Yes.

20 Q. Did you take notice in that plan if there is any part of the church property expropriated?—A. The whole of the lane that was behind the two houses of Hannah and Lawson, and about two or three feet across the Square of the lot proper of the church, on which the church was built.

And further Deponent saith not.

Schedule No. 74.

DEPOSITION OF ROBERT GEORGE HOOD.

30 On this twenty-first day of November, in the year of our Lord one thousand eight hundred and eighty-eight, appeared ROBERT GEORGE HOOD, of the City of Montreal, builder and contractor, aged twenty-eight, and a witness produced on the part of the proprietors, who being duly sworn, deposeseth and saith :—

Examined by *Mr. Cushing.*

Q. You are a member of Calvary Church?—A. I am.

Q. What is your opinion of the effect the railway will have upon the property of the church?—A. In my opinion, the railway running so close to the church will spoil it for church purposes.

Q. Do you consider that it would be necessary for the people worshipping there to look out for another place?—A. I believe that it will render the locality so unfit for church purposes that the congregation will have to move.

40 Q. You have had a good deal to do with putting up buildings, both private and public, I believe, and you have looked over the plans of that building and

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specifications and the material for its construction and so on; could you tell us what in your opinion would be the cost of putting up a building similar to that of Calvary Church, and on what you found your opinion?—*A.* I have examined the building, and the conclusion I have come to is, that the building would cost to re-build it about twenty-one thousand six hundred dollars, that is for the builder's price. Then you would have to add to that the architect's fees. Of course, I am not an architect.

Q. What do architects generally charge for their fees for that sort of a building?—*A.* I enquired what they were for church buildings and they are five per cent. That five per cent. added would bring it up to twenty-two thousand seven hundred dollars. 10

Q. What means have you taken to arrive at these conclusions; have you gone into the matter minutely at all, or is it only a rough calculation?—*A.* I have taken off the quantities on the building in the way we generally do when preparing a tender for a contract, and after taking off the quantities and considering the price of all the items as near as I could get at, this is the amount I arrived at. I have done it in the ordinary way in preparing tenders for church work or any other work.

Q. You have been in that building recently; what is your opinion of the present condition of the building, which has been built now for some years; do you consider that building to-day in good condition, or how does it appear to you?—*A.* I consider the building in fairly good condition now. 20

Q. Would it stand without much repairs for years to come, or otherwise?—*A.* I think that the shaking of the ground on account of the railway running so close to it will in time injure a building of that kind. It is a building that has evidently been built without taking the precautions necessary for a railway running beside it that way. I think it would probably be all right if there was nothing to shake around there. I am afraid that the railway running so close will in time injure the building.

Q. You know something about buildings; supposing the church to be vacated by the congregation, are you of opinion that it could be put to good use for any other purposes; how would it do, for instance, for manufacturing purposes, or tenement houses, or anything of that sort?—*A.* It would be, of course, but it is a church building, and not built in the right shape or anything of that kind; take it for manufacturing purposes and put machinery in there, and it would be sure to injure it. It is not the right shape for manufacturing purposes or machinery of any kind. It is not built strong enough for that, that is certain. And then, to make good use of the whole of the land, the church is not in the right position. 30

Q. How do you mean not in the right position?—*A.* It is in the centre of the lot, and if you want to use the full extent of the lot for manufacturing purposes, why, you would have to pull down the building and build it up different. 40

Q. Apart from the injury which you state would be caused to the building by vibration, do you consider that that property in that locality is injured by that great curving construction passing by it on this high embankment, and so on; do you think that affects materially that property?—*A.* I do. I have

already said I consider it affects it so seriously that it will spoil it to be used as a church property, and I think it injures it more as church property than it would for anything else, if it was built in any other shape. While I think it would injure it for any other property, it would be a greater injury for a church than any other kind of a building.

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Q. You have given us your opinion of the cost of a building for church purposes; are you accustomed to putting up buildings; have you put up large buildings, or buildings of that sort, so as to give you some means of judging of the cost?—A. Yes, I have been in company with my father for the last seven
10 or eight years, and I have prepared the estimates for most of the work that we have tendered for and taken in that time, and we have just finished the carpenter and joiner work of the Mountain Street Methodist Church here. There is the Canadian Pacific Railway freight sheds that we built at a cost of about thirty thousand dollars altogether, and the Canadian Pacific Station at Peterboro, and another one at Perth. I just mention these to you to give you some idea of the work we have done, and we have also built for the wire works at Lachine to the extent of about twenty-five thousand dollars. This Methodist Church at Mountain Street, we only had the carpentering and joining work. The Dominion Barb Wire Works, we built the entire building, including all the departments,
20 and we are now building this French Institute at Cote St. Antoine, but we have only carpentering and joining work of that, about eleven thousand dollars. I could mention others if necessary.

Cross-examined by *Mr. Meredith.*

Q. How long have you been a member of this church?—A. I think about five years.

Q. Your father and family belong to that church?—A. Yes, but my father is not a member.

Q. Does he go to the church?—A. Yes.

Q. What position do you occupy in the church; have you any position at
30 all?—A. I am the choir leader and I am a trustee.

Q. You said in your examination-in-chief that you knew the manner in which the railway passed over the lane; will you please to describe it to the best of your knowledge?—A. It passes over just at the corner of the lane, and passes about on a level with the church floor, the church proper floor, and it would be only a short distance from the church, I should say perhaps it may be thirty feet. I think there is a plan that would give it.

Q. I want to know your own idea? What is the distance?—A. From the nearest point of the church about thirty feet, just gazing at it as I can now.

Q. Does any part of the railway, construction timbers or otherwise, touch
40 the property of the church?—A. The timber or otherwise?

Q. Yes?—A. I am inclined to think they do at one point, but I would not be positive about it.

Q. That is your opinion?—A. Yes; I am not saying now that I know.

Q. Will you state what you think, from your experience, that church would have brought if brought to sale before the railway was ever thought of or

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entered the City, for church purposes, or if it were being sold at private sale?—

A. I have given you what I consider the value of the church. Now, what it might sell for, of course, would be a difficult matter to say. It might not bring its value, and if it did I should say it would sell for this amount in addition to the price of land added, but I do not know what would be the exact amount.

Q. What price did you say you thought it would bring?—*A.* Twenty-two thousand seven hundred dollars was the figure.

By Mr Fleet.

Q. I did not understand you to say that was the present value, I understood 10 that that was what it could be re-built for?—*A.* Yes, supposing I was called upon to re-build it.

By Mr. Meredith.

Q. I wanted to know from you what you thought, or what you think, that church would have brought if sold for church purposes before the railway ever came in; I do not want to know its actual cost; but what it would cost to re-build it, and what it would bring at a private sale before the railway came in? —*A.* Well, then, I say like this; unless it was by some means sold below its value, that it would be sold for this price with the price of the land added to it, because anyone would say, if that church was not there, and they wanted to 20 build a church there, they would say, if we can buy this property cheaper, and land, we will buy it and build.

Q. That is your opinion that it would bring on the market?—*A.* That it would bring in addition to the land. That is before the railway was there, because I do not think now it could be sold for a church property at all at the present day.

Q. Do you know what that church cost?—*A.* I do not know exactly. I have heard what it cost; I think, seventeen thousand dollars. I do not know exactly.

Q. Do you mean to say you were not told, and you do not know that 30 church was not seventeen thousand dollars?—*A.* I do not know. I had the figures before me. I am speaking from memory, but I do not know.

Q. To the best of your knowledge it cost seventeen thousand dollars?—*A.* I think it was sixteen or seventeen thousand dollars, but I would not be sure what it was. I am speaking from memory. I do not mean to say I have not seen it at all, I am only speaking from memory now. I have heard what it cost, and had the amounts before me.

Q. You said that you made an examination of that church lately, did you not?—*A.* Yes, sir.

Q. Did you not find, as a matter of fact, that the foundations were not 40 good?—*A.* I found that as far as the foundations were concerned, if there was nothing like a railway running by, that there was nothing there that I thought would injure the church, but I considered the foundation was not good enough to stand the extra strain that church would have if the railway ran beside it.

Q. That is not what I want; I want to know, as a matter of fact, without taking into consideration the railway passing as it does, would you to-day, from your experience, build a church with a foundation like that one has, as a contractor?—I think that probably I would build them a little bit different myself, but I believe at the same time if there was no shaking and no vibration there of trains that they would stand all right as they were, but still if I was building myself I would probably build different. I want you to understand exactly what I mean.

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Q. Did you notice when you made that examination that there were certain
10 parts of that foundation that would not be passed by an inspector as sound, as good?—A. I noticed in some places cracks in the foundations that I did not consider serious at all.

Q. Do you think, as a matter of fact, that they would pass?—A. How do you mean?

Q. If that building was inspected?—A. To pass as what.

Q. Pass the inspection it would be put through by experts?—A. For what purpose?

Q. For a building. I am not taking into consideration what the railway is going to do?—A. You see I want to have it understood when I say this, that if
20 I was called upon to inspect that, to say the building was all right for church purposes if no railway was there, I would say the building would pass in my inspection. If I was called upon to inspect it, I would say as far as this building was concerned, if this railway were out of the way, I would say it was safe.

Q. Do you mean to say that that building would stand shaking of any kind?—A. I do not think that the building would stand a great deal of shaking of any kind. I do not believe it will.

Q. What about the cracks that you saw there?—A. They were small cracks in the stone work in the walls and different places as you see in most any
30 building.

Q. Do I understand you to say that the cracks you saw there are no more than you have seen in an ordinary building?—A. I did not see any more than I have seen in lots of buildings.

Q. I want to know, as a matter of fact, you would consider it a good foundation that would show those cracks?—A. I have seen very good foundations so cracked, but still it depends upon the extent of them. If the cracks are very large and serious, then we say they would be dangerous, but if the cracks are small and do not extend very far, we say they do not amount to much, that is the way.

Q. How about the beams and wood-work; did you make a thorough
40 examination of those?—A. As far as I could I examined.

Q. How long were you there?—A. I was there three times three different days, perhaps altogether about a day altogether.

Q. Who was with you?—A. I had one of my men to help me take the measurements.

Q. Who else?—A. That is all.

Q. Nobody belonging to the church with you?—A. No.

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Q. I refer more particularly to the foundations ; did you go right over that as far as you could, and make a thorough examination of those?—A. No, I did not. I might have crawled in around the foundations under the floors, but I did not do so. I only examined where I could see, without going into the thing very closely.

Q. Did you notice whether certain beams in the church were not defective?—A. I did not pay special attention to it. I just looked over the building in a general way, and not knowing anything of the kind, I did not look for it. I just looked to see everything I could see was all right. The matter of the beams, and even the foundations, would stand a closer inspection, and perhaps it 10 would be better with a closer examination.

Q. Will you state what you mean when you say the church is in very good condition?—A. Well I say like this; what I mean by stating the church is in fairly good condition, I believe that it is all right for the purposes for which it is intended, that is for church property.

Q. That is what you mean by fairly good condition?—A. Yes.

Q. You said that churches were not generally suitable for factories; I suppose that you are aware that Zion Church, here in Beaver Hall Hill, was sold to the Herald Company?—A. I am aware it was bought by the Herald 20 Company.

Q. As a printing establishment?—A. Yes.

Q. Are you aware that the Military Chapel down town, in Gosford Street, is used at present as a vinegar factory?—A. I do not know anything about it.

Q. You say that the property is useless for church purposes; how about any other purpose? Have you had any experience in land in the vicinity of railways?—A. Well, I own a property, number ten Richmond Square, and that is not a great distance from there, but as far as saying I know the value of land right there, I could not be considered as a very good authority.

Q. Have you lived in close vicinity to the railway?—A. I am living now on Richmond Square. 30

Q. How far is that?—A. That would be about two hundred yards from the railway there.

Q. Have you any personal knowledge as to whether land has increased or decreased in value in the close vicinity of the Canadian Pacific Railway line since its entry into the City, personal knowledge?—A. I have no direct or positive knowledge. I have a general opinion from conversations I have had with people that the railway running along there has decreased the value of the property along the line of the railway to a considerable extent, but to what extent I could not say.

Q. Has it come under your notice, that is to say, any Deeds, or have you 40 any personal knowledge?—A. I could not say.

Q. How about rents; do you know if they have gone up or down since the coming of the railway into the city, that is property near the railway?—A. I cannot say that I know that, although I know of a party living on Plymouth Grove, who says now, since the railway has started running there, that he finds there is going to be considerable noise, and he will leave his place on the first of May next.

Q. That is all the personal knowledge you know?—A. Yes; and two or three parties speaking about property close to there. That is all I can say about it.

Q. Now, in making these tenders—you say you made out tenders for different buildings—is it not a fact that you referred them to your father?—A. No.

Q. Nor to anybody before you passed them through?—A. No. Three-quarters of all the tenders that go in my father never sees at all until after the contract is awarded. That is my part of the work.

10 Q. Nobody sees apart from yourself?—A. No. Sometimes my father checks over with me, but that is very seldom. That is my part of the work, to prepare estimates and give tenders. I have been doing it for about seven or eight years.

Q. Then, if I understand you well, you are not in a position to say what the value of that church and church property would be worth to-day for any purpose whatsoever; you only say it will not be useful for church purposes?—

A. I could not exactly say what the value of the property would be for any other purpose, because it would be difficult to know what use you could put it to, and after you find out you have to arrive at some value for it.

20 Q. Why do you think it is useless for church purposes?—A. Because the noise is going to be so great from the railway running so close to it that the congregation will not like it. It will be very objectionable during week night services and Sunday services. Now, for instance, I am connected with the choir, and my experience is that it will have a very bad effect on the singing to have a train passing there while they were singing. During a concert if anyone happened to be singing a solo while the trains was passing along there, it would have a bad effect on the solo or of any kind of music. It would certainly have a very bad effect on it, and for that reason people will not want to go to a church what will have these objections to it when there are lots of

30 churches to go to that have not these objections. I think it would make it so objectionable that the congregation would leave, and it would compel the church to move. That is about the way it strikes me.

Q. Have you ever been a member of a church near a railway?—A. No sir.

Q. Do you know as to what service there is going to be on the line that is going to pass near the church?—A. I do not. I have an idea that the passenger traffic of the Canadian Pacific Railway will come in there, and I imagine that is going to be considerable, but as to what extent I do not know.

40 Q. Do you base the damages you think will be caused by the Canadian Pacific Railway on what you have seen or known of the Grand Trunk Railway, the damages that it has caused to property in the vicinity?—A. Not so much that, as I have been on the Canadian Pacific Railway, and know pretty well the way the trains are run there, and from an idea that I have of how they will run into that new station. That is the reason I give for thinking that it will unfit it for church purposes.

Q. Do you think that the damage, if any, that the Canadian Pacific Railway will cause by coming into the City will be anything as great as the Grand Trunk Railway, the noise and that kind of thing and smoke?—A. I do

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Q. Apart from the crossings?—A. I don't see, apart from the crossings, that it will make a great deal of difference. In fact I am inclined to think that the Grand Trunk Railway will make a little more damage than the Canadian Pacific Railway.

Re-examined by *Mr. Cushing.*

Q. You mentioned, Mr. Hood, in speaking of the foundations, that you would build them a little differently; I suppose you are aware that if you got a number of contractors together they might each have their own opinions?— 10
A. We most of us have our own hobbies, in different ways.

Q. In looking over the building and making your estimates of the cost there, you have mentioned that the building had one or two minor cracks, or something of that sort about it, and something about the property being out of repair; do you make any allowance for that in your estimate for the cost of the building?—A. I did. I can mention one that will give you a little idea. Now in estimating for the curbing and fencing at the front I allowed twenty-five dollars in my estimate for repairing the fence. I just mention that to give you an idea.

Q. In making your estimate, you made your estimate of the building, 20 allowing what it would require to put it up in proper order; now these cracks that are referred to, they are cracks covered by your statement; they do not amount to much; they do not endanger the building?—A. Yes, they do not endanger the building.

Q. In going over this building you made what you call a fair examination of the building?—A. I examined it as much as I thought was necessary.

Q. You were one of the trustees, and therefore you would naturally be in a position to know what they would say, and if there was anything wrong with the building, no doubt the trustees would fire up about it? Have you heard anything in the meetings of the trustees about the building being in 30 danger, or anything of that kind?—A. No, I have not.

Re-cross-examined by *Mr. Meredith.*

Q. As a matter of fact, Mr. Hood, was there not some talk before the Canadian Pacific Railway ever came in of a desire to move that church, not perhaps on account of its not being safe, but for other reasons?—A. I never heard of any.

Q. Do you know of a desire being expressed by certain members of the church or trustees to that effect, that the locality was not as desirable as it might be?—A. I cannot say that I ever heard of the desire being expressed by either the trustees, deacons, or anyone to move the church. 40

Q. How long have you been a trustee?—A. I think about two years.

By *Mr. Brodie.*

Q. Have you made an estimate of the damages to the building and depreciation to the property in this case?—*A.* I have not.

Q. Where a railway train runs across a bridge the same as on Guy Street, is not the noise much greater than if running on the ground?—*A.* Much greater; both on trestlework and on ironwork, the noise is greater than running on the ground, and then it is greater again in cases of curves the same as there is around Calvary Church.

Q. In filling up this trestlework with earth, don't you consider that that
10 will be a nuisance to church property, encroaching on their lane or on their land?—*A.* I cannot see how they can fill it up with earth without filling up the lane.

By *Mr. Flect.*

Q. When you made this examination of the property, you took a memorandum of the different quantities?—*A.* Yes sir.

Q. And the prices for different quantities?—*A.* Yes.

Q. Have you got that with you?—*A.* No; I made it in the ordinary way that I do in preparing tenders from drawings, only I had not the full drawings,
20 and had to examine the building instead.

Q. You have not any memorandum with you that would show the prices you arrived at for the brickwork and woodwork and stonework?—*A.* I have not got them with me.

Q. Supposing that a new building costing twenty-two thousand seven hundred dollars were put up by you upon this present lot, would there be any difference between the value of the new building and lot and the value of the old building and lot?—*No,* there would not be, because in making my valuation, I have made the deductions in the prices of the new building which would make it equal in value to the old building; that is, the new building and lot would be equal to the old building and lot.

Q. Then if they had the twenty-two thousand dollars and got a lot
30 at the same price elsewhere, they would be exactly in the same financial position as they are to-day?—*A.* I believe so, because the building they would build for that would not be quite so good as that as when it was new, because I have deducted from it these repairs.

Q. You mean that they would get no better building than the present for the twenty-two thousand dollars, apart from the land?—*A.* That is my idea.

Q. And to put up a building exactly like this one it would cost a little more?—*A.* Yes.

Q. With the difference of the deduction?—*A.* Yes.
40

By *Mr. McGibbon.*

Q. What do you consider that building has reduced since it was built, for reasonable wear and tear; how much less valuable is it than when it was erected?—*A.* Well, I suppose if I had all my memoranda with me I could come

RECORD.

*In the
Superior
Court.*

No. 63.

Deposition of
Robert
George Hood
for proprietors, dated
18th Nov.
1888—
continued.

RECORD. at that pretty close by taking off these deductions, the deductions what I have got for the wear and tear, so I cannot say exactly what it would be.

*In the
Superior
Court.*

By Mr. Brodie.

No. 63.
Deposition of
Robert
George Hood
for proprie-
tors, dated
21st Nov.
1888—
continued.

Q. How much more would the cost to put up a building of that kind be at the present time, and what would be the difference of putting up a building of that kind at the present time than a ten or twelve years ago?—A. Ten or twelve years ago I was not making estimates for buildings, so I cannot tell you the value of buildings at that time.

Q. In your idea, as a business man, don't they cost a great deal more to put up buildings at the present time than a few years ago?—A. I believe that it costs a good deal more than it did ten or twelve years ago, but the exact difference is more than I can tell, because I was not old enough to know at that time. I have heard some of the contractors say that there is a difference of twenty-five per cent., but whether that is correct, I cannot say. It is only hearsay, and I am not going to give that as what I know. 10

By Mr. Fleet.

Q. In your estimate of twenty-two thousand seven hundred dollars, did you include the buildings and interior arrangements of the church?—A. I did, and all the fixtures. Of course I do not include chairs or organs or anything of that kind not built into the church, but benches, that form a part of the church. 20

Q. Are these seats and internal fixtures of such a character that the church, in the case of removal, could use them with profit in a new church, or are they permanent in their character, attached to the building?—A. They are permanent in their character, being nailed down to the floors all through the building.

Q. Would they suffer deterioration in removing?—A. Certainly. Taking them up when nailed down, it would spoil the painting, and probably break them in a good many cases, and while they would be of some value it would simply decrease their value to take them out. 30

Q. Could you give any idea of their present value, of what their loss would be under present circumstances?—A. I could find out.

By Mr. Trenholme.

Q. Perhaps you could give us some idea of the per-centage you think they are worth; did you form some idea of what these seats and things could be removed for?—A. All the seats in the church are in the shape of pews, and are nailed down.

Q. They could be taken up?—A. Yes.

Q. Could it be done with advantage?—A. They would be worth something. 40

Q. What part of the original cost?—A. Perhaps they would be worth thirty or forty per cent. of the original cost.

Q. You have not an idea of what proportion of the twenty-two thousand dollars is represented by things of that kind?—A. I have not here. I can arrive at it if necessary.

By *Mr. Meredith.*

Q. I understand you to say that you could not give us the figures of the depreciation for wear and tear of that church from the time it was built up to the time the railway came in; is that so?—A. To-day I could not give it.

Q. About how much?—A. I could not say.

10 Q. About how much; you must know pretty well; you examined the church—to the best of your knowledge?—A. It might cost two hundred dollars to put it in as good repair as when it was perfectly new. There is nothing seriously wrong with it as far as I can see.

Q. How long ago was it built?—A. I do not know exactly how long. And further Deponent saith not.

Schedule No. 75.

DEPOSITION OF WILLIAM RITCHIE HIBBARD.

On this twenty-first day of November, in the year of our Lord one thousand eight hundred and eighty-eight, appeared WILLIAM RITCHIE HIBBARD, of Ottawa, who, being duly sworn as a witness on the part of the proprietors, deposed as follows:—

Examined by *Mr. Trenholme.*

Q. I believe you have had a good deal of experience in connexion with expropriations for railways?—A. I have had some.

Q. For some length of time?—A. During the past eight years. I purchased two-thirds of the right of way of the Canada Atlantic Railway, and defended all the arbitrations.

30 Q. Are you acquainted with the Calvary Church property, and have you seen how it is passed by the line of the Railway Company mentioned in this case?—A. I am and I have.

Q. You are acquainted with the position?—A. I am.

Q. What is your experience as to the effect of the passage of the railway on property of that kind?—A. Property of that kind is universally depreciated.

Q. Would you mention some of the grounds on which you consider that property is injured by the passage of the railroad for the purpose for which it was built?—A. First, I should say the vibration from the passage of trains; the noise made by trains in passing, consequent disturbance to public worship; the annoyance of smoke during the summer season, when windows must be opened.

RECORD.

*In the
Superior
Court.*

No. 63.

Deposition of
Robert
George Hood
for proprie-
tors, dated
21st Nov.
1888—
continued.

No. 64.

Deposition of
W. R.
Hibbard for
proprietors,
dated 21st
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RECORD.

—
*In the
 Superior
 Court*
 —

No. 64.
 Deposition of
 W. R.
 Hibbard for
 proprietors,
 dated 21st
 Nov. 1888.—
continued.

Q. Does the railroad, apart from the incises, does the construction of the road in the way it passes this church, does it itself deteriorate it—the mere construction?—A. The special way in which it passes is a serious injury.

Q. You refer to its passing high?—A. Passing on a level with the windows of the church.

Q. It throws the church into a hollow, does it not?—A. Yes.

Q. It obstructs its light?—A. It is more serious than if it passed on the foundations of the church on the same level.

Q. Is there anything about the structure of the road there, that would make it especially objectionable?—A. I should like to see the plan. I have not seen it.

Q. You will notice the curves?—A. There has been so many changes.

Q. If the railway passed the church on a curve, would that have any effect as to the amount of disturbance the noise would create,?—A. If it passes on a curve, there is no possibility of avoiding a grinding noise on the rails, if it passes on a curve, which is the most serious part of the whole thing.

Q. Have you looked at that property with a view to say how it might be utilized for other purposes than a church, and of its availability and value for other purposes than a church?—A. I have.

Q. Will you just state how?—A. It could be changed into either 20 residences or for manufacturing purposes. In either case, the vacant land, up hill or down hill on either side, could not be utilized without removing the present building—it could not be utilized without moving the present building.

Q. In your judgment what value would the present building have for other purposes than a church?—A. It must be for either an inferior class of residences or for manufacturing purposes.

Q. Have you thought of what figure the church would be worth to become available for one or other of these purposes?—A. That is very difficult to establish. From my experience, I would say that the fair way would be to sell 30 the property, and let the railway pay the difference between its present value and what it would bring. That is what I have done in many cases on the Canada Atlantic.

Q. Have you formed any idea as to what the present value of the property is as a church, apart from the railway?—A. Yes, I consider it worth an amount much more than the actual cost, provided there was no railway there. It is worth all the advance which can be established upon property since that was built.

Q. And what about the advance in cost?—A. The advance in cost is covered partially by what may be called wear and tear, but I am not a builder, 40 and therefore cannot tell you what the difference is between twelve years ago and now. I think it a fair thing to take the present value and deduct what is for wear and tear and establish the value that way.

Q. You are not at all interested in this matter, pecuniarily?—A. No, in no way whatever.

Q. You are a member of the church?—A. I am.

Cross-examined by *Mr. Meredith.*

RECORD.

Q. How long have you been a member of the church?—A. About three years.

Q. Are you a trustee?—A. No, I am not living in this City.

Q. Then you occupy no position at all, as a deacon?—A. I do not know whether I do or not. I was elected and resigned it, being out of the City. I don't know how it stands.

Q. Now sir, I understand from what you said that you had sold certain lands over which the Canada Atlantic Railway passed, and the difference in the amount they brought, that the Railway Company had to pay it; in what capacity did you act?—A. As agent for the company.

Q. Well now, in cases where you have done that, is it not a fact, that the railway in question always took some land, is that not a fact?—A. Not in every case.

Q. Will you mention some cases in which they did not?—A. In the case of Robert Lees, outside of the City of Ottawa. We made a special curve to avoid touching his property, finding that he reduced his claim from two thousand to two hundred, and we then resumed the old line.

Q. You actually went over his land?—A. Yes, and he settled for two hundred dollars.

Q. Is there any other case?—A. There have been other cases. There were several cases where we took part of the land and part of the street, and part of the approach to the house.

Q. Is it not a fact that in every one of those cases that they took some of the land, a piece of the land?—A. Yes, in every case, either the lane or the property itself.

Q. And the lane in such cases belonged to the proprietor?—A. Yes.

Q. It was the property of the proprietor who actually owned the land?—A. Yes.

Q. You say you cannot mention these cases?—A. I can if you give me a moment to reflect. There was Michael Levi, of the County of Chateauguay—we passed over his lane—and Stephen Letraille, of Coteau Station

Q. Is it not a fact that in those two cases the company actually expropriated a part of the land, corner of one lot in one case and some other point?—A. Corner of a lane and some other—a lane leading up to his house.

Q. You mean by that lane the avenue to his house?—A. Yes.

Q. Of his own property?—A. Yes.

Q. On the other side of the avenue?—A. On one side I think the lane joined the neighbour's property.

Q. The lane was entirely on his own property?—A. Yes.

Q. Will you look at this plan shown you, which appears to have been produced by the proprietor as exhibit number eight (8) in the case lately pending before the Superior Court, and state whether there is any curve, any actual curve shown on the plan—on the land belonging to the church?—A. This plan does not show any curve on the church property, or near it.

RECORD.

—
*In the
 Superior
 Court.*

No. 64.

Deposition of
 W. B.

Hibbard for
 proprietors,
 dated 21st
 Nov. 1888—
continued.

Q. The plan referred to is marked exhibit 33; would you mind stating whether you know, or whether it has come under your notice, that churches are built as often near a railway as otherwise, that is to say a railway does not seem to cause any depreciation in the value of the land for church purposes?—
 A. My experience shows me that they are built as far away from the railway as possible.

Q. That is your experience, but as a matter of fact have you noticed that churches have been built in the close vicinity of the Grand Trunk Railway since its construction near the City here?—
 A. I know of one that may be perhaps two acres away built near the City on a level with the Grand Trunk Railway. 10

Q. You have not noticed any other?—
 A. I do not think of any other that is built recently but that one.

Q. The one you refer to is where?—
 A. At Ste Cunegonde.

Q. Have you noticed any in St. Henri?—
 A. Yes, a little brick church there.

Q. That is right on the railway?—
 A. I do not know when it was built. I noticed there is one.

Q. Is there not now, as a matter of fact, a large building, a large church, at St. Henri near the railway?—
 A. That is the one I referred to, but I call it Ste. Cunegonde, a beautiful church about two acres away. 20

Q. The one I refer to is one nearer the City?—
 A. That is at St. Henri, a brick church west, when you go west.

Q. The one I refer to is a stone faced church on the right hand side going west, a considerable distance nearer town than the one at St. Henri?—
 A. You mean the cathedral. It has been built some years ago.

Q. Was it built before the Grand Trunk Railway passed?—
 A. No, built since.

Q. Do you know what distance that is from the track?—
 A. I should think that was from one to two hundred feet. 30

Q. Did you say that this church has depreciated for church purposes on account of the passing of the railway?—
 A. Most decidedly.

Q. Why?—
 A. By the passing of trains, vibration from the passing of trains, and the smoke.

Q. As a matter of fact, would you leave that church on account of that if you were a member of it yourself?—
 A. I have a little more catholic spirit than some people. I do not think I would leave, because I would sacrifice my own comfort, but I say it would depreciate the church from a first-class to a mission church, that is my idea. People who can afford to leave will leave.

Q. Have you ever attended a church in the close vicinity of a railway track?—
 A. Yes I have, both in the States and in Canada, and I have been a good deal disturbed by the noise of passing trains. 40

Q. Have you ever lived near a railway?—
 A. Temporarily; not for any length of time.

Q. Why did you leave; did you leave specially on account of the proximity of the railway or for other reasons?—
 A. I changed my hotel on account of the railway causing disturbance.

Q. Would you state whether in your experience as agent for the Canada Atlantic, you have ever paid anything to a proprietor because you have passed over a lane, that is to say a common lane—a lane practically open to the public, —not open to the public, but to a number of individuals?—A. I do not know that I have had such experience.

RECORD.
—
*In the
Superior
Court.*

No. 64.
Deposition of
W. R.
Hibbard for
proprietors,
dated 21st
Nov. 1888—
continued.

Q. Would you mind stating, to the best of your knowledge, how far distant from the railway were these churches you attended in the States?—A. I should think the nearest one would be just about what Calvary Church is now. I have not the measurements, but judging from experience, I think it
10 passes within twenty or thirty feet from the church building.

Q. What is the name of that church, do you remember?—A. I could not tell you.

Q. Is it a large church?—A. I should think it is a little larger than Calvary Church.

Q. What denomination?—A. I think it is a Presbyterian Church. I may be mistaken.

Q. What sort of a congregation had they there?—A. I could not tell you that.

Q. Was it pretty full when you attended?—A. Perhaps two-thirds full, or
20 something like that. Regarding your former question, I have an answer now; we are expropriating a property at Chaudiere at the present time, and there are five different parties interested in it, the Bank of Montreal amongst others. All these parties claim their relative damages for the injury to their portion of the adjoining property. It is a mixed up thing.

Q. What kind of property is it you have taken?—A. Commercial property.

Q. It is not a lane?—A. Lane, property and public street.

Q. You are taking land from each of these individuals?—A. Yes, I do not know exactly how it is divided.

Q. There happens to be a lane amongst this property?—A. Yes.

Q. Now these churches in Canada? what is the one you mean?—A. One
30 on this side of Canada, it is in Ottawa. They claim damages for passing over a corner of their land. The land is divided, a portion as a graveyard, and we pass between the graveyard and church, and they claim damages for that.

Q. On the church property?—A. Yes, on the property.

Q. You did not quite understand my question; you said you have attended churches, if I understand you right, close to a railway in Canada?—A. I don't think I said in Canada, I said in the States.

Re-examined.

Q. Do you know of indemnity being paid to the fabrique or church
40 authorities at St. Anne's for damage to their property?—A. I do.

Q. What was it?—A. I consider it was one of the most exorbitant and outrageous things that have been done. It was twelve thousand dollars.

Q. There was twelve thousand dollars paid; what was that for?—A. For taking a portion of the land, as near as I know, sixty feet, and also the putting

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In the
Superior
Court.

No. 64.
Deposition of
W. R.
Hibbard for
proprietors,
dated 21st
Nov. 1888—
continued.

up of a retaining wall, I should think about seven feet high, and the earthwork fits in against that retaining wall, and it overflows sometimes into the garden. It is for the land, and for damages, and a lot, part is what I call *prix d'amour*.

Q. How near is that to the church?—A. I have not measured that, but I should say the priests' house would occupy, and the land, one hundred and eighty or two hundred feet, and then the church.

Q. The line of railway is how far from the building?—A. I should think it is, perhaps—it is, of course, only guesswork, but I should say forty feet from the retaining wall to the priest's house. I may be a little out there. I hardly think it is one hundred and eighty feet from the track, I would be safer to say 10
one hundred and fifty feet.

Q. And twelve thousand dollars any way was paid for indemnity?—A. Yes, and the house did not cost that.

Q. Was it paid for, the church, at all?—A. It is hard to say that. I imagine the church property and presbytery is all one lot, and there if you touch a part of the property you touch the whole.

Q. But the church was not affected anything in the same way as this Calvary Church?—A. No, it was one hundred and fifty feet at least away. And, besides, I make a difference between a Protestant Church, where a minister is preaching, and a Catholic Church, where the services are in Latin. 20

Q. Is the Catholic Church in question at St. Anne's very valuable?—A. Yes, I should think that the church might be worth probably twelve or fifteen thousand dollars.

Q. Not so valuable as Calvary?—A. No, but if it were in Montreal it would be worth more.

Re-cross-examined by *Mr. Abbott*.

Q. Are you aware whether the church authorities in the St. Anne's case claim any damages?—A. I do not know anything about the details, all I know is the facts.

Q. You are not aware then that the church authorities simply claimed 30
damages to the presbytery and the lot of land on which the presbytery stood, and that the arbitrators only awarded that twelve thousand dollars to the land on which the presbytery stood?—A. I could not say, except I supposed the property was all one lot.

Q. You have been under the impression that that included damages to the church?—A. I supposed it would.

Q. You have spoken of the indemnity being paid; are you aware that the company have only paid under an order of the court, and have contested that award?—A. I believe that is understood; I do not know if they have contested or not, but they claimed the right to; I do not know about that. 40

Q. That the presbytery was a new cut stone building; do you know how much it cost?—A. No, I know what it would be in the country—a very fair value?

Q. What?—A. I am told that everything is exquisite inside. In the country it might be put up for six thousand dollars, for the building. My

knowledge is derived from actual experience in looking at buildings; it is not an expert's estimate.

By *Mr. Trenholme.*

Q. You think the award of twelve thousand dollars would pay for the whole property?—A. Yes.

By *Mr. Brodie.*

Q. Are you aware that this company takes part of the church property?—

A. Yes, I know it does.

Q. Could you identify a corner on the plan that it takes?—A. This lane is
10 the property of the church?

Q. Are you aware that there is a small corner here on the lot that the church property is built on?—A. I do not think that the company designed to come there, but they did come there.

Q. In your experience, when the company finishes putting the ballast on the trestle work, will that affect the lane?—A. They cannot put ballast there without encroaching on the property unless they put up a retaining wall, and if they put up that they will make a perfect cellar of the church.

By *Mr. Abbott.*

Q. You cannot put ballast on the trestle work?—A. Not ballast but
20 filling.

Q. But if the railway crosses that on iron girders or wooden trestles there is no question about filling in?—A. If you put iron girders there it will be very noisy.

Q. But talking about filling in?—A. Someone asked the question about filling in just now, one of the arbitrators in this case, they cannot do that unless they put up a retaining wall.

Q. You have no idea that they have any intention of filling in?—A. I cannot say anything about their intention.

By *Mr. Brodie.*

Q. Are you aware that they are filling in? Is it not probable that they
30 will fill in in this case, seeing it is only a wooden structure?—A. I cannot answer that.

Q. At the present time what is it?—A. It is a very ugly timberwork. I do not think it is going to be a permanent structure.

And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 64.
Deposition of
W. R.
Hibbard for
proprietors,
dated 21st
Nov. 1888—
continued.

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Schedule No. 76.

*In the
Superior
Court.*

No. 65.

Deposition of
Hon.
Rodolphe
Laflamme for
proprietors,
dated 26th
Nov. 1888.

DEPOSITION OF HONORABLE RODOLPHE LAFLAMME.

On this twenty-sixth day of November, one thousand eight hundred and eighty-eight, personally appeared Honorable RODOLPHE LAFLAMME, of the City of Montreal, aged over sixty years, a witness produced on the part of the proprietors, who, being duly sworn, deposed as follows:—

Examined by *Mr. Trenholme.*

Q. You have lived all your life in Montreal?—*A.* Yes.

Q. You occupied a house, I believe, in the vicinity of the Canadian Pacific Railway, in the east end?—*A.* I occupied Park House, fronting Commissioner Street and Notre Dame and Panet Streets, the residence of Hugh Taylor, and formerly the residence of Chief Justice Reed for four years. 10

Q. Will you please state what your experience is as to the effect of the passage and construction of a railway on the property?—*A.* The railway passes at that place about forty feet below Commissioner Street, alongside the river, and at a distance from the house on the property of about one hundred and twenty feet, I should say, approximately, that is, from that portion of the house fronting the river.

Q. Fronting towards the railway?—*A.* Yes. I have had experience of the passage of a railway within that distance. The inconveniences are numerous 20 and very great. Every train coming in at about that distance from the station whistles at every time of the night and day. Then every in-coming train represents the double passage of a locomotive; the locomotive leaving the cars in the station and returning to, I suppose, what you call the yard. The same for every out-going train. The smoke thrown by the stacks by the locomotives is sometimes intolerable and unbearable, and when the wind is within the compass, one half of the compass, that is, from the east to west, taking that semi-circle, it blows the smoke over the house, and it was impossible for me to remain in the premises on this account. Every fruit in the garden was covered with coal dust. The leaves, the benches, and everything was 30 covered with coal dust, and no child or lady could remain with a light coloured dress without soiling it, and sometimes in summer time we have had to close the windows in order to protect ourselves from the smoke.

Q. Was there anything peculiar about the smoke from these engines?—*A.* There is this; when you live at a great distance from the station, the locomotives are charged with coal—lit up. The coal is in its original state, full of smoke, and then when they come in for the trains they throw a much heavier smoke than a train that has been on the track for some time, as it is exhausted, when it is fired up.

Q. Is not this coal obnoxious on account of gas in it?—*A.* It smells of 40 sulphur, there is a great deal of sulphur.

Q. What value would you put upon property within reach of a railway; what depreciation would you put upon property?—*A.* Well, for my part, as a

resident, I would certainly not purchase any property within that distance of a railway. RECORD.

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Superior
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No. 65.
Deposition of
Hon.

Rodolphe
Laflamme for
proprietors,
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continued.

Q. In the case of the church in question, assuming that the road passes it at a distance of twenty or thirty-five feet at one end and forty or forty-five feet at another, and on a level with the windows of the main part of the church; what effect do you imagine that would have upon the church?—A. I do not believe that the congregation would consent to remain there if the locomotives pass during the service. The whistling, the smoke, the noise, the rolling of the cars, would certainly, in my opinion, render carrying out of any service there
10 impractical. That is my opinion.

By *Mr. Fleet.*

Q. Was there any vibration at that distance?—A. Where I was the vibration there was very considerable.

By *Mr. Trenholme.*

Q. How far was this place that you refer to from the dépôt?—A. Well, it is, I would say, one-third of a mile. I should think it is about one-third of a mile. It is from Dalhousie Square to Panet Street.

Q. You say you left the house on account of the nuisance?—A. I left it on that ground chiefly. I certainly would not remain there, although it is the
20 prettiest spot in Montreal. For private residences I should certainly say it had diminished one-half or three-quarters. That is, residences of a good class.

And further Deponent saith not.

Schedule No. 77.

DEPOSITION OF JOSEPH ALPHONSE UBALDE BEAUDRY.

On this third day of December, eighteen hundred and eighty-eight, personally came and appeared JOSEPH ALPHONSE UBALDE BEAUDRY, of the City of Montreal, aged forty-seven years, a witness produced on the part of the proprietors, who, being duly sworn, deposeth and saith:—

No. 66.
Deposition of
Joseph
Alphonse
Ubalde
Beaudry for
proprietors,
dated 3rd
Dec. 1888.

Examined by *Mr. Trenholme*, of Counsel for the Proprietors.

30 Q. You are an architect and provincial land surveyor?—A. Yes.

Q. For how many years have you been such?—A. Twenty-seven years in practice.

Q. In the City of Montreal?—A. Yes, in the City of Montreal.

Q. Have you seen and examined the property of Calvary Church mentioned in this cause?—A. I did.

Q. And have you seen how the railway passed the property?—A. I did.

Q. Are you able to give us an estimate of what that church is worth?—A. I can. I have made some figures about it.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 66.
 Deposition of
 Joseph
 Alphonse
 Ubalde
 Beaudry for
 proprietors,
 dated 3rd
 Dec. 1888—
continued.

Q. First, the building alone?—Q. I value the building alone at twenty-two thousand five hundred and forty dollars. I took measurements, and also the quantities, and made an estimate which amounted to the sum I have stated.

Q. Is it your opinion that it would cost that sum to build as good a church to-day?—A. It is.

Q. How does the cost of building compare with building eleven or twelve years ago, when that church was built?—A. I suppose between twenty-five and thirty per cent. more.

Q. In what state do you find the church at present?—A. I found it in a pretty good state. 10

Q. Are there any serious defects about the church?—A. There is certainly a defect in the way of a crack that has spread from the south corner, but I do not consider it a serious defect.

Q. There is nothing more than a usual defect in a thing of that kind?—A. It might be a little more, but this crack has spread out several feet there. It is not more than a usual defect. It is not a large defect.

Q. You mean several feet in length, you do not mean in width?—A. Yes, the south corner on the front.

Q. Would it be a serious matter to remedy any defects in that church?—A. A matter of two hundred or two hundred and fifty dollars. 20

Q. That would put it as good as new?—A. Yes.

Q. That is the only defect you say?—A. The only one I could see.

Q. Otherwise the church is in a good state of repair?—A. Yes.

Q. Are the constructions adequate for a church of that kind?—A. They are.

Q. Have you formed an idea of the value of that land if the railroad were not there?—A. Yes, I value the land at fifty cents a foot.

Q. Apart from the railway?—A. Yes.

Q. Has not land gone up there this last ten or fifteen years?—A. It has, particularly in this last year or so.

Q. What do you value the land at after the railroad has passed?—A. Deteriorated fifty per cent. of its value. 30

Q. One half of its value?—A. Yes, twenty-five cents a foot.

Q. Have you been accustomed to make valuations in the City of properties?—A. Yes.

Q. It is part of your business?—A. Yes.

Q. For many years?—A. I cannot say. Nearly from my starting business.

Q. Are you able to give an opinion as to the effect of the railway upon that property?—A. As to value?

Q. As to the injury to the church; what effect do you think it has on it for church purposes?—A. The presence of trains there passing at all hours would certainly render the church valueless as a church. No services could be held there whilst the trains were passing. 40

Q. You think then it destroys it as a church?—A. Yes, I think so.

Q. What value would you put upon the property now for any other purpose?—A. Well, I should value the land at present only what I would call second-hand property—second class lots—small lots of twenty or twenty-four

feet, and I would value it about twenty-five cents a foot. I do not think anything more could be realised on it.

Q. The church building itself, might it not bring something if you found some purchaser who wanted it for light factory purposes?—A. Unless it was very light, because walls made for a church are not supposed to bear the weight of machinery and the jar of machines and so on.

Q. Are the walls like Zion Church?—A. No.

Q. They are ordinary brick walls?—A. Yes.

10 Q. Will the presence of the road so close to the church have a tendency to affect those walls?—A. I think so, particularly in the condition it is now.

Q. What would you be disposed to say that building is worth now, after the railroad passes?—A. I suppose we could get, by selling the material at auction, about a couple of hundred dollars, one hundred and fifty or two hundred dollars.

Q. You think to make the property available for other purposes it would amount to pulling down the building?—A. I think so.

Q. Are you aware whether there is a curve in the railway near the building of the church?—A. No, I did not remark it particularly.

20 Q. You noticed how the railroad runs by the church?—A. Yes, I saw it on the trestles. I did not go on top of the trestles. I will file a copy of my estimates on which I based my value marked exhibit 34.

Q. Have you got by you the dimensions of the church, Mr. Beaudry?—A. No, I do not think I have got them here. I have got them in my field book at the office. I will file a copy of my estimate together with the dimensions of the church.

Cross-examined by *Mr. Abbott* under reserve of objections.

Q. Were you asked to make any measurements of the distance of the church from the railway?—A. I was.

Q. Did you make them?—A. I did from the front and back.

30 Q. What is the distance?—A. It is out of my memory now. I have got it in my field book. If you wish to know I can get it for you. What I measured was the distance from the nearest track to the building.

Q. Did you make any measurement to ascertain whether the railway encroached in any way upon what might be called the church land proper besides the lane?—A. I did not take particular attention, but I don't think it takes any of the church property proper as it is now constructed. It strikes me that way, I am not quite certain.

40 Q. Kindly explain, Mr. Beaudry, this statement that you produce, exhibit 34: how do you arrive at this?—A. The first is the quantities taken for carpenters and joiners work, the number of pieces, their sizes and the quantity of wood in them by board measure; and in the second last column is the price per thousand feet; and the last column is the extension showing the number of dollars it will amount to.

Q. How did you arrive at the number of feet?—By the sizes of the pieces of wood.

RECORD.

*In the
Superior
Court.*

No. 66.
Deposition of
Joseph
Alphonse
Ubalde
Beaudry for
proprietors,
dated 3rd
Dec. 1888—
continued.

Q. Did you measure all the pieces of wood in the building?—A. I measured them from the plan.

Q. Where did you get the plan?—A. I have a plan which I have made myself from the measurements of the building, and the number of pieces it would take, to build a similar church.

Q. The number of pieces in your opinion it would take to build a similar church?—A. Yes.

Q. That does not represent the actual woodwork in the church now?—
A. No.

Q. Is that the same with regard to the stone and other materials?—
A. Yes. 10

Q. So this estimate is not an estimate of the building as it stands, but the estimate of what it would cost to build a similar building?—A. Yes.

Q. Did you make any measurements of the wood-work in the interior of the church?—A. By these.

Q. The measurements of the plan you made?—A. Yes.

Q. Did you make any measurements of the woodwork actually in the building?—A. No.

Q. You cannot then say what is the quantity?—A. No, only in the ordinary way. It is made in this style. It would take the quantity of wood as the 20 quantities I have taken.

Q. Did you ever build a church, Mr. Beaudry?—A. No.

Q. Please describe the nature and the situation of this crack you have spoken of; is it in the foundations or where?—A. No, it is in the front of the building.

Q. South front?—A. Yes, front of the building on the south corner, and it takes about, I should say, eight feet from the ground.

Q. It begins there?—A. Yes, it begins there and runs in an oblique direction towards the centre for, I should say, about eight or ten feet more—not that—about six feet more. 30

Q. Is this in the stone or brickwork?—A. Brickwork.

Q. What is the width of that crack?—A. I did not measure it; I suppose it is about three-quarters of an inch to an inch.

Q. You observed no cracks in the foundations?—A. No.

Q. Did you look at the foundations specially for that purpose?—A. Yes, I looked right around.

Q. You say that the railway will affect the walls of that building, particularly in the condition in which they now are; do you refer to the crack?—
A. Yes, on account of that crack.

Q. If the walls were sound the railway would not affect it?—A. It would 40 affect it, but less than at present, when there is a settled foundation.

Q. You attribute this crack to the unsettled foundation?—A. I do.

Q. Do you know the nature of the ground there?—A. No.

Q. Have you ever attended a church close to a railway where trains are in the custom and habit of passing frequently?—A. No.

Q. You have no actual experience of what the effect would be?—A. No.

Q. Do you know that there are a number of churches situated close to a railway besides the Grand Trunk Railway?—A. I think there are some, but not very close. Not so close as this one.

Q. Do you remember the one in the village of St. Cunegonde; I think it is on the north side of the Grand Trunk Railway, about half way to St. Henri?—A. I do.

Q. Do you remember the name of the church?—A. St. Cunegonde Parish Church. I suppose it is about one hundred and seventy-five feet from the track.

10 Q. The front of it is towards the track?—A. Yes.

Q. Do you know of any other churches near the track?—A. St. Henri Church. I suppose that is about the same distance, a little more may be.

Q. Any other?—A. St. Joseph's Church, Richmond Street, which would be about four hundred or five hundred feet from the track on the south side.

Q. Do you know that those churches you have mentioned have been built since the railway was constructed?—A. I think so; some of them.

Q. I suppose what you say would apply with greater force to a school or collegiate institute, where scholars are there every day?—A. Yes.

20 Q. Are you aware that there is a Methodist College being built near to the line of the Canadian Pacific Railway line out near Green Avenue?—A. I am not aware of that.

Q. What is the thickness of the walls of this church?—A. They are sixteen inches and a foot as far as I can remember.

Q. Some are a foot and some are wider?—A. A foot at the top and sixteen inches below.

Re-examined by *Mr. Trenholme.*

Q. Did you actually measure the crack, do you remember?—A. No, it is just by my eye.

Q. It may be less than you stated?—A. It may be less.

30 Q. Now, with regard to the other churches that you have been asked about, as being near the railway, are you aware that in St. Henri, at least, the railroad runs through the village, that you could not put the church anywhere in the village, which is a long narrow strip, without being within a small distance from it?—A. I do not see any other place where it could be put to be in the town.

Q. You don't know whether that was built after the Grand Trunk Railway?—I know the existing church has been built after the Grand Trunk Railway, because it is not quite finished yet. The first church there was built.

Q. That is the St. Cunegonde?—A. No, St. Henri.

40 Q. But in St. Henri, it was about in the only available place for a church?—A. Yes.

Q. And it was a great deal further from the line—many times further away—than the Calvary Church?—A. Yes, nearly four times.

RECORD.

—
*In the
Superior
Court.*

—
No. 66.

Deposition of
Joseph
Alphonse
Ubalde
Beaudry for
proprietors,
dated 3rd
Dec. 1888—
continued.

RECORD.

*In the
Superior
Court.*

No. 66.
Deposition of
Joseph
Alphonse
Ubalde
Beaudry for
proprietors,
dated 3rd
Dec. 1888—
continued.

By *Mr. Brodie.*

Q. Did you remark that the Town Hall of St. Henri is between the railway and the church?—*A.* Yes.

Q. Would not that have the effect of deadening the noise?—*A.* Of course all building constructions of any kind, trees or anything, between a railway and another building would deaden the sound.

Q. Did you remark in St. Cunegonde that Bonaventure Street was between the railway and the church?—*A.* Yes.

Q. And some large blocks of buildings between the railway and Bonaventure Street?—*A.* There is a public square there I believe. 10

Q. A public square there?—*A.* Yes, between the Railway and St. Cunegonde Church.

By *Mr. Abbott.*

Q. It is open?—*A.* Yes.

By *Mr. Brodie.*

Q. Are you aware what is the width of Bonaventure Street?—*A.* I think it is sixty feet there.

Q. Are you aware that the trains coming from Lachine, for instance, that there are a large block of buildings there that would deaden the sound between the church and the railway?—*A.* There is on both sides of the church blocks of 20 buildings, both east and west, which would deaden the sound.

By *Mr. Abbott.*

Q. Is it not a fact, that the church faces on the railway, and there is no intervening building?—*A.* Immediately between the church and the building, no.

Q. How close is the St. Henri Town Hall to the railway?—*A.* Just touching it, I believe.

Q. Closer than Calvary Church?—*A.* Yes.

Q. It has been built since the railway was constructed?—*A.* Yes, since the railway was constructed.

By *Mr. Fleet.*

Q. For speculative purposes, what do you consider the land and the 30 building worth now, as they stand to-day? How many thousand dollars?—*A.* I do not exactly know the size of the land, but I would value it at twenty-five cents. The building there, I would only value it for the material that is there.

Q. Well, in speaking of this twenty-two thousand dollars, I understand you to say that that would put up a new building corresponding in every respect to the present building when it was new?—*A.* Yes.

Q. Taking into consideration the wear and tear, you don't think that a building corresponding to the present building, in its present condition, could be put up for a less figure than you have mentioned?—A. I think it would cost more to put up another new building, even in the present state of wear and tear of this one, because you would have to make it good.

Q. But as a matter of value, the new building would be worth more than the old building to-day?—A. Because the labor and material is worth more.

By *Mr. Trenholme.*

Q. How much* would you consider it would be worth than the present building?—A. Between twenty-five and thirty per cent. more.

Q. That is, this building is worth twenty-five or thirty per cent. now less than it was when it was put up; it has depreciated that amount for wear and tear, has it, or would you consider the wear and tear was off-set by the increased value of the labour?—A. No; for church purposes wear and tear does not come to a great deal. To put a building the same way it would cost about twenty or thirty per cent. more than it would when originally built.

Q. What I want to know is, if the building as it stands now is of less value than a building you would put up, on account of its age?—A. Certainly, on account of its age, but not very much.

Q. How much less would you say?—A. May be ten per cent.

Q. A couple of thousand dollars?—A. Yes.

By *Mr. Abbott.*

Q. Do I understand you to say that the new building would cost you to erect it twenty-two thousand dollars, as it would be worth twenty-five or thirty per cent. more than the building at the present time?—A. No; I mean to say that the twenty-two thousand dollars is about twenty-five or thirty per cent. more than the building may have cost at that time.

By *Mr. Trenholme.*

Q. But it is not worth that much more?—A. It is to-day.

Q. To build it, but it is not actually worth that much more than the old building?—A. No.

Q. It would be worth ten per cent. more.

Q. You have been asked about the measurements, and stated that they are the measurements for a similar building; from what you saw of that building have you any doubt that the measurements you are giving are substantially the quantities in that building?—A. Not in the least.

Q. It did not necessitate your measuring every plank in that building to know how much material there was?—A. No.

And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 66.
Deposition of
Joseph
Alphonse
Ubalde
Beaudry for
proprietors,
dated 3rd
Dec. 1888—
continued.

* (*Sic.*)

RECORD.

Schedule No. 78.

DEPOSITION OF ROBERT B. MACAULAY.

In the
Superior
Court.

No. 67.
Deposition of
Robert B
Macaulay for
proprietors,
dated 3rd
Dec. 1888.

On this third day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared, Robert B. Macaulay, of the City of Montreal, Insurance Manager, aged twenty-eight years, and witness produced on the part of the proprietors, who, being duly sworn, deposeth and saith :—

Examined by *Mr. Trenholme* of Counsel for Proprietors.

Q. What is your calling?—*A.* I am a member of the church, and an office bearer of it. 10

Q. What is your occupation?—*A.* I am the actuary of the Sun Life Insurance Company.

Q. In that connexion have you anything to do with making yourself acquainted with the value of properties in the City of Montreal?—*A.* A great deal to do with it.

Q. In what way?—*A.* The Company lends large sums of money on mortgage, chiefly on property in the City of Montreal, and almost without exception every property on which we have in this way lent money is examined by me, and the larger portion of them examined before the loan was made, in order to form an opinion as to whether the loan would be a desirable one 20 or not.

Q. You act then largely as valuator for the company?—*A.* We have our regular valuator, but we do not rely exclusively upon him, but endeavour as far as possible to see every property on which we lend in addition to him.

Q. You know the property of Calvary Church, and how it was passed by the railway in question in this matter?—*A.* I do.

Q. Do you know whether there is a curve in the railway near the church?
A.—There are two curves.

Q. Where?—*A.* One is to the east of the church and the other is to the 30 west. The one on the east begins opposite to the church and curves off into the City. The other one begins about one hundred yards west of the church, on Richmond Square. The one that curves to the east begins at about the most westerly part of the church.

Q. What will be the effect of the construction and passage of that railway past the church in the manner in which it passes?—*A.* I believe it will entirely ruin the church as a church.

Q. What depreciation would you estimate on the property from that cause?—*A.* The land, before the railway passed there, would be worth a good 40 sixty-five cents a square foot as vacant land, but since the railway has passed there, land which lies as close to the railway as the church land does would be entirely valueless for most purposes which it could have been used for before. The better class of residences could not be built upon it to-day, and it is fit only for a foundry site or for the very cheapest and poorest class of tenements, and for such properties it would not be worth more than twenty-five cents a

square foot at the outside, which would make a depreciation on the land of about forty cents a square foot, or between four thousand or four thousand five hundred dollars on the land, apart from the building. The building I consider almost valueless on account of the railroad passing by it. It is fit for nothing but to be used as a church, and by the passing of the railway it is rendered entirely unfit for that purpose.

Cross-examined by *Mr. Abbott.*

Q Who is your valuator?—*A.* Mr. Rielle.

Q. Joseph Rielle?—*A.* Yes.

10 Q. Did you not put implicit confidence in him?—*A.* We think that two heads are better than one, and we should not trust any man with our money, and it is wiser to examine things for ourselves as well as having Mr. Rielle there.

Q. You generally approve of Mr. Rielle's examination?—*A.* Generally. Sometimes we think them too low and sometimes too high.

Q. How long has he been valuator for your company?—*A.* About six or eight years I should say, roughly speaking.

Q. The directors, I suppose, would not pass a loan unless Mr. Rielle had given his examination?—*A.* Not as a rule.

20 Q. Do you approve of that valuation before it goes before the directors?—*A.* We generally report upon it whether we believe the loan to be a good one or not.

Q. Who do you mean by "we"?—*A.* My father and myself, or one of us. I may add that we have many hundreds of loans on the company's books.

Q. Have you made any loans recently on property in this vicinity?—*A.* In the vicinity of Calvary Church?

Q. Yes?—*A.* Not that I can recollect at the moment.

30 Q. Do you know any property in that vicinity which has been sold at sixty-five cents a foot?—*A.* I believe our own church cost over fifty cents many years ago, and land would certainly be more valuable there to-day than it was when bought but for the passage of the railway. But I have a pretty good idea of the value of land in the neighbouring localities, and think that that is about a fair price to put upon land in that locality if the railway had not gone by.

Q. Do you mean to say, Mr. Macaulay, that the market price of that property to-day is greater than it was in eighteen hundred and seventy-four?—*A.* As vacant land?

Q. Yes?—*A.* I do. That is the price we paid for it; taking the price we paid for it as the value of the land, I consider it is, apart from the passage of the railway.

40 Q. What have you to base yourself in saying that? There are no sales in that vicinity, and you have made no loans there?—*A.* I know the value of land up above there on Bishop Street, and I live myself on Fort Street, and the land on Guy Street should be worth as much as those streets and other streets around there. It is a large wide street, one of the leading streets in the City, with fine buildings on it, and there is no reason why it should not sell nearly as much as other streets in the neighbourhood.

RECORD.

*In the
Superior
Court.*

No. 67

Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

RECORD.

*In the
Superior
Court.*

No. 67.

Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

Q. Do you mean to say property on Guy Street, below Dorchester, is as valuable as on the streets you have mentioned?—A. I said nearly as valuable.

Q. What difference do you make in values?—A. I would put down a difference of ten cents a square foot between the value of land where our church is and the value of land higher up.

Q. In the locality you mentioned, Fort Street?—A. Yes.

Q. I understood you to say, in giving a reason for putting the value of this property at sixty-five cents, it was because the property was bought at fifty cents, and you consider property has risen since it was bought?—A. I did not give that as a cause; I formed that idea before knowing what the church cost. 10

Q. Is it your opinion that property in that vicinity where the church now is has risen in price since eighteen hundred and seventy-four?—A. I know comparatively little about what the value of land was in eighteen hundred and seventy-four, but I know that the value of land is worth more now than we paid for it in eighteen hundred and seventy-four, and that the general tendency of the City is to fill up, and land will become more valuable.

Q. Are you not aware that there was what was called a boom in real estate in eighteen hundred and seventy-three and seventy-four, and prices became very much inflated?—A. I do not know personally; I heard there was. It did not affect the centre of the City as much as the outskirts. In any case, I am certain 20 that this land is worth sixty-five cents good. I am sure of it.

Q. Do you call Guy Street the centre of the City?—A. No, but it is within the centre and outside of the suburbs.

Q. You mean outside the centre?—A. Not in the centres; in the part of the City which is constantly improving. I sold a piece of land myself at forty cents a foot on Green Avenue, Cote St. Antoine, and between the two sites there is no comparison. I would a great deal rather have the one site at sixty-five or seventy cents than the other at forty.

Q. When did you sell that?—A. A few months ago.

Q. On Green Avenue; it was not a corner lot?—A. No.

Q. Below Dorchester Street?—A. No, above Dorchester, and it is by no means as valuable as the other. 30

Q. What did you pay for that property on Green Avenue?—A. Thirty-one and a half cents.

Q. When?—A. About six months ago. I may say I got it as a bargain from a friend who was hard up at the time, and he was selling it to another person and I gave him a little increase on the price and got it.

Q. Is that the same property that was sold by auction previously?—A. No.

Q. Are you aware that increase in the value of property is taking place in the neighbourhood recently on account of the railway?—A. Not as far as I am aware in that neighbourhood. There may have been further out, but not as far as I know. 40

Q. Not in Green Avenue?—A. Not in the neighbourhood of that lot, as far as I am aware.

Q. What are your reasons for saying the building is rendered unfit for Church purposes by the passing of the railway?—A. The passing of the railway

so close to the church renders the church unfit for use as a church for several reasons—one of the most important is smoke. The smoke from the engines alone will be quite sufficient, in my opinion, to kill the church as a church. The buildings and the fences and land will certainly become grimy and dirty. The windows will always be more or less grimy, and in the summer time, when it is necessary to open the church windows, the smoke from the engines will come in and deposit a layer of soot upon the seats of the church and render it so dirty that ladies with light coloured dresses, and in fact any person who cares for personal appearance, would not care to attend the church, and in addition to
10 that the noise and the disturbance would cause a diversion of the attention from the services; and the alteration in the character of the neighbourhood will entirely render it unfit for use as a church.

Q. Have you ever worshipped in a church near a railway?—A. No.

Q. Or occupied a house or building or office near a railway?—A. No.

Q. Then, what you say about the effects to the church are merely a matter of opinion with you—not of actual experience?—A. They are a matter of
experience. When I was out in the country, at St. Hilaire, last year for the
summer, I was frequently in the water fishing and boating; I noticed that the
smoke from the engines as they passed along the Grand Trunk Railway line and
20 over the bridge used to deposit a perfect layer of soot on the water like flakes
of snow, except they were black, and in many cases you could hardly get a square
inch where there was not this black soot on the water, caused by the settlings
from the smoke of the trains.

Q. You swear that was from the smoke?—A. Certainly; I could see it
settling around me from the smoke.

Q. It did not come down from the fire-box?—A. From the engines; that is
all I know; I do not know what the fire-box is.

Q. Won't the noise of a train passing, or whistling, and so on disturb
other churches in the neighbourhood to a less degree which are further distant
30 from the railway?—A. They will, certainly, but to a very much less degree.

Q. It depends upon the distance?—A. Not the distance, but to a much
larger extent than the mere distance. A church that is twice as far away as
ours or four times as far away as ours, would not probably have one-fourth of
the noise. The dirt and the noise would be much greater close at hand than
further off.

Q. You have spoken of the railway changing the character of the locality;
in what way would that happen?—A. Before the railway passed there lands
could be built upon for residences for well to do people, and that is the class of
40 people on whom the church relies for its support. But since the railway has
passed, no person will live where there is so much smoke, and noise, and dirt,
unless it be very poor people, who in consideration of the lowness of the rent
they will put up with any amount of noise for the sake of cheapness, but the
better class of people would not live in such a locality.

Q. One of the reasons you have for saying that the passing of the railway
would ruin the church is that the locality would change in such a way as to
drive a number of people, who would otherwise live there, and on whom the

RECORD. church would depend?—*A.* Exactly; that is a minor reason—that is one of the reasons.

*In the
Superior
Court.*

No. 67.

Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

Q. Do you know any persons of the wealthy class who live near the line of the railway at the present time?—*A.* Do you mean railways generally, or this railway?

Q. In the neighbourhood of this church?—*A.* There were people living in the terraces both on Richmond Avenue and on Guy Street, some of whom went to our church, and which terraces have been pulled down. I do not know if they were wealthy; they were simply of the better class, as distinguished from the lower classes.

Q. They left because the buildings were pulled down?—*A.* Yes.

Q. Do you know any who have left, independently of these, who have lived in houses that were pulled down by reason of the railway?—*A.* I have been told that the people who lived in the terrace on Plymouth Grove, which belonged to Donnelly, have, to a large extent, left, and that the rents have been reduced from sixteen to twelve dollars, and from fourteen to ten dollars a month, and a poorer class of people altogether have moved in, who do not stay as long as the other.

Q. Belonging to whom?—*A.* Donnelly.

Q. Would not the building of factories have much the same effect on the locality?—*A.* Not to the same extent, because there are factories on St. Antoine Street, and there are still good houses near them. Perry Davis' factory is along-side of a nice terrace.

Q. You don't think it would affect the terrace?—*A.* Not to a great extent.

Q. That is a patent medicine factory; I am speaking of boiler factories and things of that kind, iron works, or anything of that sort, by which a great deal of smoke and noise is caused?—*A.* Factories of that kind generally go to parts of the City where land is cheap, and they do not go into the parts of the City where the better class of residents are, because it is too expensive.

Q. Is Perry Davis' factory the only one in the neighbourhood?—*A.* There has been one there lately, built on Guy Street—Thompson's furniture factory.

Q. How far from the church?—*A.* About one hundred feet. There is a house and a railway track between it and the church.

Q. West or east?—*A.* South.

Q. Below the railway?—*A.* Yes.

Q. Fronting on Guy Street?—*A.* Yes.

Q. You knew that the railway was going there; did you ever hear any talk about moving the church?—*A.* No, never.

Q. You were never on the Board of Trustees?—*A.* I was for three years.

Q. Are you now?—*A.* No.

Q. How long is it since you have been on the board?—*A.* About a year ago, I think, I left it. My office was changed.

Q. Did you ever hear any talk by any of the members of the church about leaving the church for another locality?—*A.* Some moved away, but I have not heard of any people leaving the church on account of the church being where it is unless they have moved away from the neighbourhood.

Q. Unless they moved away from the neighbourhood?—*A.* Yes.

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Q. Is there not a large section of your congregation resident above Dorchester Street?—Probably one-third.

Q. Have that section ever expressed any opinion as to the desirability of going elsewhere, independent of the railway?—A. Some of us might have wished to see the church built somewhere else if the church had not been built, or if the congregation had not been got together. But we all recognised the fact that for the congregation which we have it is impossible to have another site which would hold the congregation together.

Q. And even in the present site you were in danger—before the railway came at all—of losing one section of your congregation, were you not?—A. Only if they moved away.

Q. I mean the section living some distance from the church?—A. I live on Fort Street myself, above Dorchester, and had no intention of leaving the church. I don't think the church would run the risk of losing any of its members in that way, unless the members moved away from the neighbourhood.

Re-examined by *Mr. Trenholme.*

Q. Does the trestle work rising up in that way at the side of the church injure it, apart from the noise?—I believe the passing of the railway so close will seriously affect the foundation of the church. Those foundations at present are in first class order. If there are any flaws in them they are simply trifling, and I have never heard any complaint whatever, in the least degree, about them; but I don't know that they will stand the vibration of the railway.

Q. But as regards obstructing the light and accumulating snow, &c.?—A. It will have a great effect that way, in obstructing light and in accumulating snow.

Q. And affect it as regards the attractiveness of the church—the position of the church?—A. It makes it a most unsightly place. It makes it exceedingly inappropriate as a site.

Q. Is it your opinion that the construction of the railway ruins the church apart from changing the character of the residences in the locality?—A. I decidedly think so. If the locality were not altered to the extent of one iota in its character by the passing of the railway, I still think that the church would be ruined as a church building, as a place in which to worship, and the changing of the character is merely one of the incidental damages to the church, and by no means one of the greatest, although it is an incidental damage.

By *Mr. Abbott.*

Q. Have the foundations of the church been affected so far?—A. I have not noticed it, but trains have not been running much yet.

Q. You don't pretend to be a builder, I suppose—a practical man?—A. No.

Q. You have not had any practical experience in that way?—A. No, I have never built a house as a builder.

RECORD.

*In the
Superior
Court.*

No. 67.
Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 67.
 Deposition of
 Robert B.
 Macaulay for
 proprietors,
 dated 3rd
 Dec. 1888.—
continued.

Q. You consider that the unsightly nature of the erection, and spoiling the appearance of the site for church purposes, is a serious matter?—*A.* I make no comment on the beauty of the construction as compared with other railway structures, but I hold that the passing of any railway structure, no matter how it is built, so close to the church, makes it unsuitable for a church.

Q. I am speaking of spoiling the appearance of a church, do you consider that a serious matter?—*A.* I do.

Q. You think it will have an influence on the members of the church, and make them leave the church?—*A.* I am not speaking so much of people who leave the church, but there are always a certain number of people who will 10 move from the locality, and unless a church can be attractive new people will not move in, and the congregation will gradually die out. It is necessary for the church to be attractive.

Q. You don't apprehend you will lose the present members of the church owing either to the smoke, and dirt, and noise, or the unsightliness of the place?—*A.* I do not know that we would lose them on the ground of unsightliness alone, but I consider we will lose them on account of the smoke and more important damages to the church, and on account of the damages the congregation will either have to move away or die out.

Q. But you say it will die out merely because the new class will not come 20 in?—*A.* And because old ones will move away.

Q. They will not move away unless they leave the locality?—*A.* I stated, not on account of the unsightliness alone, but they will on account of the other objections.

Q. I am not talking about moving away?—They will leave the church on account of the other objections.

Q. You say then you expect to lose a considerable portion of your congregation by members leaving the church on account of the railway coming there?—*A.* I do not know.

Q. You will stick to the shop as long as you can?—*A.* I will decide 30 whether we can go to it or not. If it is favourable —

Q. If you find it favourable you will remain?—*A.* I might; I cannot tell; but if I did, it will be solely on account of my personal attachment to the church.

Q. It may turn out to be quite favourable after all?—*A.* I do not think so. It might be for a short while, but when trains begin to run regularly I don't believe it will be.

Q. But still it may be favourable?—*A.* So long as it is favourable, and we don't consider it will be favourable when the trains commence running.

By *Mr. Fleet.*

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Q. Do you consider the land where the railway passes will be as valuable as those lots that are situated on the line of the Grand Trunk Railway there, say near Seigneur Street—near Chatham Street where they are, if as close to the railway as this land will be?—*A.* They will probably be about the same in

value, I should think, although they are a little further away from the places where the people live who have to work.

Q. And the probability is that this property will be occupied eventually by people of the same class—working in connexion with this road?—*A.* Occupied by people of the same class as people along the lower parts of the Grand Trunk Railway.

Q. Do you think any of that property there, butting on the road, could be bought for twenty-five cents a foot, taking into consideration the depth of the frontage of this lot here?—*A.* Facing the Grand Trunk Railway?

10 *Q.* Yes?—*A.* I do not think it will bring much or any more, close to the railway track as our church is.

Q. If it were proved to you that the land in that vicinity is sold for a figure in excess of twenty-five cents, would you be satisfied to accept that excess as the value of this particular lot—the commercial value of this lot?—*A.* It might be sold for some special purpose, as, for instance, a factory.

Q. I am speaking of those terraces of houses that are really built quite as close to the track as this building is?—*A.* I consider it would be about the same value.

20 *Q.* As a matter of fact, if proofs were laid before you that the property in that vicinity, near Seigneur Street, sold for more than twenty-five cents, would you accept the additional value as applicable to this particular lot of land?—*A.* I consider if sold for that down town there it sold for more than its value. I consider twenty-five cents the value of Calvary Church land, and if the other sold for more than that, it sold for more than its value.

30 *Q.* If twenty-five cents could be got for those lots down there in excess of twenty-five cents for that down there, for say thirty-five cents, would you not look upon that as fixing a value that would be applicable to this piece of land?—*A.* It would depend upon whether that was the regular value or not. A piece of land might bring a price above the ordinary value, but I consider twenty-five cents the full value of the land on the line of the Grand Trunk Railway there.

By *Mr. Trenholme.*

Q. Have any people requiring the low class of tenements that are required, yet taken their residences above St. Antoine Street?—*A.* The site of Calvary Church is further from the workshops and factories, and to that extent less valuable than most of the sites along the Grand Trunk Railway line for ordinary building purposes—for tenements.

Q. I mean to say, is there any considerable class of the operative or labouring class above St. Antoine Street in the neighbourhood of Guy Street?—*A.* No.

RECORD.

*In the
Superior
Court.*

No. 67.

Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

40

By *Mr. McGibbon.*

Q. Don't you think the danger of floods would counterbalance that?—*A.* No.

RECORD.

By *Mr. Abbott.*

*In the
Superior
Court.*

No. 67.

Deposition of
Robert B.
Macaulay for
proprietors,
dated 3rd
Dec. 1888—
continued.

Q. Did you not say just now, there is a factory within one hundred feet of this church?—Yes.

Q. New building just built?—*A.* It is the only one in the neighborhood, with the exception of Perry Davis', a quarter of a mile off.

Q. What is the nearest factory on the line of the Grand Trunk Railway, nearer here?—*A.* There are foundries below, though most of them are further down towards the canal.

By *Mr. McGibbon.*

Q. If you had that lot of land on which the church is situated now, consisting of some eleven thousand odd feet, are you prepared to say you would be willing to take twenty-eight hundred or three thousand dollars for it?—*A.* I would.

Q. You would not give more for it?—*A.* No, I would not.

By *Mr. Brodie.*

Q. Are you aware, in the vicinity of Chatham Street to the south, near the Grand Trunk Railway, there are a large number of factories there, tin-ware houses and boiler factories and so on?—*A.* I know there are some factories on the south side of the Grand Trunk Railway line, and nearly all the factories are on the Grand Trunk Railway line.

And further Deponent saith not.

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Schedule No. 79.

DEPOSITION OF MATTHEW HUTCHINSON.

No. 68.
Deposition of
Matthew
Hutchinson
for proprietors,
dated 3rd
Dec. 1888.

On this third day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared Matthew Hutchinson, of the City of Montreal, esquire, advocate, aged forty years, and witness produced on the part of the proprietors, who, being duly sworn, deposeth and saith:—

Examined by *Mr. Trenholme.*

Q. You know the church property in question in this matter and also the railway; will you please state what effect the construction and passage of this railway will have upon that church property, in your opinion?—*A.* In my opinion the property is valueless for a church property. I don't think it is possible for any church to be continued in that place with any degree of success. I am not interested in any way, nor in any way connected with the church.

Q. Would that church be rendered valueless by the railway?—Yes, it is destroyed for church purposes by the railway. I don't say it has no commercial

value, but for church purposes it is destroyed by the railway. The members of that church may hold together and worship together out of deference to their present minister, but I venture to say that as soon as the minister is changed they will leave that church. They may stay for personal reasons—deference to the minister largely, but whenever an opportunity offers they will separate and abandon the church, so that is only a question of time as to when the property is abandoned as a church. I am satisfied of that. In fact, I think it is very probable that they will be obliged to vacate it, as they will find they cannot worship in that building with trains running so close to them.

RECORD,
—
*In the
Superior
Court.*
—

No. 68.
Deposition of
Matthew
Hutchinson
for proprie-
tors, dated 3rd
Dec. 1888--
continued.

10 Q. Have you formed any idea of the present value of that property?—A. It is difficult for me to speak with any degree of accuracy as to the commercial value of the property in that particular locality, but in my opinion the building would only be valuable for some light manufacturing purpose—furniture or sewing machine factories, or something of that kind—but not being a builder, I do not know if the building would be strong enough, but it is my opinion that it would be for some light manufacturing purposes.

Q. I believe you are one of the trustees, are you not, of Melville Church, Cote St. Antoine?—A. Yes.

Q. And a member?—A. Yes.

20 Q. That is a Presbyterian Church?—A. Yes.

Q. You are a property holder?—A. Yes, in Cote St. Antoine, the west part of the City.

Cross-examined by *Mr. Abbott.*

Q. Is Melville Church situated near the railway?—A. No.

Q. It is not affected by the railway?—A. No,

30 Q. How near do you think a church would have to be to be affected by the railway injuriously?—A. Well, it should be far enough away so that the windows would not rattle with the passing trains, and so that the smoke of the engines would not come in at the windows, and so that people worshipping in church would not be interrupted by the noise.

Q. About how far away would that be, what is the nearest distance?—A. I could not say with accuracy as to the distance, but certainly a longer distance away than this church.

Q. But suppose that the church were two or three hundred feet from the railway, would not the smoke still be apt to come into the windows and the noise disturb the worshippers?—A. Well, the injury would graduate owing to the distance.

Q. There would be the same inconvenience in a less degree?—A. Yes, in a less degree. When you get a certain distance the inconvenience would cease.

40 Q. You know Olivet Baptist Church?—A. Yes.

Q. You know how close that is to the railway?—A. I could not speak accurately.

Q. Near enough to be affected in the way you have described?—A. I fancy it would to some extent, but not so much, as the end is towards the railway, and not the side, as in this case.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 68
 Deposition of
 Matthew
 Hutchinson
 for proprietors,
 dated 3rd
 Dec. 1888—
continued.

Q. You say the property will be rendered useless for church purposes?—
A. I mean the church will in time vacate, and that place will be totally unfit for church purposes.

Q. I suppose you have heard of a number of people who will leave when the minister was changed without any of these other causes?—*A.* Oh yes.

Q. That is a matter of frequent occurrence?—*A.* Yes, in a City church they are coming and going all the time, and as this church will have to be supplanted with new members, in a short time the membership will cease. The old members will disappear.

Q. They may be replaced by a different class?—*A.* Well, I don't think 10
 even the poorest class will go there. New people coming to the City I don't think will go there. People when they go to a church want to be uninterrupted.

Q. Don't you know of a church at Point St. Charles near the track?—*A.*
 You mean St. Matthew's Church

Q. I think Grace Church?—*A.* It is some distance this way off the track.

Q. You hear the noise of trains passing there all the time?—*A.* I have no doubt. But that church, if it is the one that I have in mind, the English Church, I think it is on this side of the church, on Wellington Street, that 20
 must be two or three hundred yards away. There is one nearer, St. Matthew's Church, on the other side of the track.

Q. How near is that to the railway?—*A.* There are buildings between it and the track, it is back off the street.

Q. Your idea is that the church would not be a financial success?—*A.*
 I think it will be abandoned in time, perhaps not immediately, but it will be vacated before long.

Q. Have you not known of other churches being abandoned where the City has grown up around them without any outside cause from the railway, the proximity of the railway?—*A.* Yes. There is the case of the St. James Street 30
 Methodist Church, and St. Gabriel Church at the foot of the street.

Q. The locality became unsuitable?—*A.* Yes, and people moved their residences away. I don't think that would apply in this case, people attending that church live both east and west.

Q. That would apply if they built down town?—*A.* Perhaps fifty years from now that locality may be stores and factories.

Q. How long is it since the St. James Street Methodist Church was built?—*A.* Before my time.

Q. And the churches on Beaver Hall Hill?—*A.* They were all built before my recollection.

Q. You have known churches here, Mr. Hutchinson, to be used as theatres and music halls?—*A.* Yes. I know that old Zion Church. It was used subsequently as a printing office. Cote Street Church is now a tobacco factory. I don't think in these cases they got much for the buildings. They are not suitable for anything after

By *Mr. Trenholme.*

Q. In the case of these churches, Zion and Cote Street, they were used a great number of years as churches?—A. Yes, I suppose forty or fifty years.

RECORD.

*In the
Superior
Court.*

By *Mr. Doran.*

Q. Are you aware that St. Matthew's Church, Point St. Charles, is moved away from the position?—A. Oh, it is farther away from the railway.

Q. Are you aware that one of the reasons to move further away was on account of the noise of the railway?—A. I have no doubt that was an inducement. They have gone considerable further from the railway.

No. 68.
Deposition of
Matthew
Hutchinson
for proprietors,
dated 3rd
Dec. 1888—
continued.

10 Q. Concerning that Baptist Church: are you aware there is a building intervening between the church and the railway?—A. I believe there is.

Q. Is there any comparison between the two churches in its situation between the railway, the Olivet Baptist, and Calvary Church?—A. They are not situated the same.

Q. Calvary Church has its side running lengthways with the railway and much closer than the Olivet Church, and the Olivet has its end toward the railway and is further removed from the railway.

Q. Are you aware that there was an expropriation there on Olivet Baptist Church?—A. I cannot pretend to speak about Olivet; I have not examined it.

20

By *Mr. Fleet.*

Q. Do you think that the fact that the church is now standing there might be made available for the purposes of a light manufacturing business, as you stated it would enhance the value of the land for speculative or commercial purposes in the event of the church having to abandon it. Do you think it could sell for more from that fact than if the land were vacant?—A. Oh yes, I think so. I think the building is certainly worth something. It is a comparatively new building, but how far it would be available for a factory I cannot say, but I should say it is worth something.

30 Q. If you were contemplating purchasing, you would look upon it as an element?—A. I would certainly consider it of some value.

And further Deponent saith not.

Schedule No. 79½.

DEPOSITION OF HON. RODOLPHE LAFLAMME.

On the sixth day of December in the year of our Lord one thousand eight hundred and eighty-eight, reappeared Hon. Rodolphe Laflamme, and was cross-examined by Mr. Meredith, as follows:—

Q. How long did you occupy this house that you refer to?—A. Four years.

No. 69.
Deposition of
Hon. R.
Laflamme for
proprietors
(recalled),
dated 6th
Dec. 1888.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 69.

Deposition of
 Hon. R.
 Laflamme for
 proprietors
 (recalled),
 dated 6th
 Dec. 1888—
continued.

Q. How was that house situated; was it between two railways?—A. No, it was situated—well, the frontage is on the river side—fronting the railway.

Q. Mr. Laflamme, did I understand you to say in that house in the east end you were not troubled much by the vibration of the railway?—A. There was vibration. People do not complain much about that at all, but there was a great deal of vibration when there was heavy carts.

Q. Who do you say occupies this place now?—A. Miss Cronyn. If you have westerly winds, as in summer time, you don't. It is only when the wind comes from the east, the south-east, or direct from the south.

Q. How was the rental of that house?—It was rented for nothing almost. 10
 It was rented at four hundred dollars without taxes. It was in a very dilapidated condition, and it was occupied as a Home, I think; it was a Refuge or something of that kind.

Q. Before you took it?—The spot is the prettiest place in Montreal, the grandest place.

Q. As a matter of fact, do you know property that has depreciated on account of the railway, personally; any property in the city that has depreciated owing to its proximity to the railway track?—A. I am not aware of it.

Q. Do you know of any sales, for instance, since the coming in of the 20
 Canadian Pacific Railway, or rather, the Atlantic and North-West Railway into the City; do you know whether the prices have gone up or down in the close vicinity of the railway track?—A. I could not tell you. I have had no experience.

Q. Have you had any personal experience; do you know of any property in the vicinity of the Atlantic and North-West Railway whose rentals have gone up?—A. All I know is hearsay. I have heard of some property close to it that has fallen off considerably.

Q. What property was that?—A. I was told that those houses on St. Antoine Street, Dr. Leprohon's. There are six houses, two by two. I believe they 30
 built up the intermediate streets. I have not heard of any offers for property in that immediate vicinity.

Q. You heard that certain property, like Dr. Leprohon's, has gone down in rental; do you know to what extent?—A. I cannot tell you, it is only hearsay.

Q. In giving your values as to the damage the railway will cause to the church, is it mainly from your experience of the railway which is close to your former residence?—A. Not only there, but I have had occasion to live for some time in houses which were close to the railway, and I find that the noise is a great annoyance. 40

Q. Where was that?—A. I spent some time in St. Hyacinthe, in a house close to the railway, during the summer time; they say one gets accustomed to it, but every train that came in would wake me up.

Q. Did you leave that house to go to another in St. Hyacinthe?—A. No, I was there on a visit. I remained there about a fortnight.

Q. Was this a hotel?—A. No.

Q. What was it?—A. It was not absolutely so close, it was a house that was about fifty yards away.

Q. The place you formerly occupied was close to the railway track, where freight was carried over?—Freight and everything. The fact of it is there was always a train in sight.

Q. You stated, Mr. Laflamme, that you did not think the congregation would remain in that church, or something to that effect?—A. If, during the service, the trains pass there the minister would have to suspend his prayers or his sermon during the passage of the train. Because I know that whilst a train is passing you cannot carry on a conversation. You would have to suspend at the distance I was, through the noise.

Q. Have you ever been a member of a church close to a railway?—A. Not that church.

Q. Or any church near a railway?—A. No, I have never been a member of a church near a railway.

Q. As a matter of fact, have you ever been in a church near a railway at any place?—A. No.

And further Deponent saith not.

RECORD.

In the
Superior
Court.

No. 69.
Deposition of
Hon. R.
Laflamme for
proprietors
(recalled),
dated 6th
Dec. 1888—
continued.

Schedule No. 80.

DEPOSITION OF GEORGE W. WOOD.

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On the eleventh day of December, in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared GEORGE W. WOOD, of the city of Montreal, Architect, a witness produced on the part of the the proprietors, aged twenty-five years, who, being duly sworn, deposeth and saith:—

No. 70.
Deposition of
G. W. Wood
for proprie-
tors, (dated
11th Dec.
1888.

Examined by *Mr. Trenholme.*

Q. You are an architect?—A. Yes.

I now produce, marked exhibit number 35, showing the railroad near Calvary Church, in question in this cause, the distance of the trestle work of the railroad at the nearest point from the church is twenty-three feet; the track about twenty-seven feet from the church. I also produced, marked exhibit 36, a section showing the elevation of the trestle work relative to the church, and which shows that the trestle work of the railway will be nearly on a line with the floor of the church proper. I have with me the original plans of the said Calvary Church, but which I cannot part with. The size of the measurements of the said church are as follows: length seventy-eight feet six inches; breadth forty-five feet three inches, apart from the tower, which projects eleven feet, three side-ways, and three feet in front. The total height of the church from the ground to the top of the roof is sixty-nine feet, made up as follows: the sub basement nine feet clear between the floors. The basement, I think, is figured on the plan fourteen feet ten inches, and the main auditorium is

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RECORD.

*In the
Superior
Court.*

No. 70.

Deposition of
G. W. Wood
for proprie-
tors, dated
11th Dec.
1888—
continued.

twenty-nine feet. The height of the walls from the ground to the underside of the roof is forty feet. The foundation extends four feet down, making the total height of the wall about forty-four feet at the lowest point.

Q. Are you aware that buildings in eighteen hundred and seventy-six or eighteen hundred and seventy-seven, about the time this church was built, were lower than at present?—*A.* I was not in business at the time the church was built. I was just at the completion of the building, and have never compared prices at all.

And further, for the present, the Deponent saith not.

And on this twenty-first day of December 1888, re-appeared said witness, 10
and was cross-examined by *Mr. Abbott* as follows:—

Q. It would appear from this ground plan, exhibit number 35, that the lane over which the railway passes extend to the point marked "gate" on this plan in rear of this church?—*A.* That is the way the fence indicates the passage.

Q. The porch shown at the side of the church is the entrance to the caretaker's residence, I suppose?—*A.* Yes.

Q. Which is underneath the church?—*A.* Yes; underneath the Sunday school.

Q. According to this plan none of the trestle work extends over any 20
portion of the lane until it comes past the line of the next proprietor, *Mr. Lawson*?—*A.* Yes.

Q. Are you aware, *Mr. Wood*, that the sheds of the houses fronting on Richmond Avenue, before the railway was erected there, came back to the line of this lane?—*A.* No, I did not examine the property before then. I had no idea where they came from or how they were situated.

Q. What is the height from the ground, from the floor of the auditorium?—*A.* Twenty-four feet six, from the level of the yard to the floor of the church.

Q. That is on the lower side of the church?—*A.* Yes. 30

Q. Is this plan taken from actual measurements made by yourself?—*A.* Yes.

Q. Did you measure the height of the trestle work too?—*A.* Yes.

Q. What was the height of the trestle?—*A.* The ground varies.

Q. Take it from the sill up to the rail; the sill would add how much more to the height?—*A.* The sill would be somewhere about a foot.

Q. But are not the sills laid flush with the ground, or even sunk in the ground in places where there is any elevation?—*A.* I did not take notice of that.

Q. Did you ascertain the comparative level of the railway on top of the 40
trestle work and the floor of the auditorium; did you take the levels between the two?—*A.* The way I took the levels; I took the levels of the church and the levels of the ground, and took the height from the ground to the underside of the rail.

Q. That is when you made the measurement, just now?—*A.* Yes; and when I took the measurements on the ground.

Q. Do you mean to say that this plan shows the comparative level between the floor of the church and the level of the ground?—A. Yes.
And further Deponent saith not.

RECORD.

—
*In the
Superior
Court.*
—

No. 70—
continued.

No. 71.
Deposition of
Wm. T.
Thomas for
proprietors,
dated 21st
Dec. 1888.

Schedule No. 81.

DEPOSITION OF WILLIAM T. THOMAS.

10 On this twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-eight, appeared WILLIAM T. THOMAS, of the City of Montreal, Architect, a witness produced on the part of the proprietors, who, being duly sworn, deposeseth and saith :—

Examined by *Mr. Trenholme.*

I am practising architect in the City of Montreal, and have been for about twenty-five years.

Q. You know the Calvary Church property in question in this case?—A. Yes, sir.

Q. You have seen how the railway passes the church?—A. Yes.

20 Q. What, in your opinion, will be the effect of the construction and passage of the railway past that church in the manner in which it passes it now?—A. I should say for the purposes of a church it is rendered almost useless.

Q. Have you an idea of what it would cost to build a church like that at the present time—just the structure?—A. Building proper?

Q. Yes?—A. Twenty-six to thirty thousand dollars.

Q. You include in that the land?—A. No, the building, spire, and all, close on twenty-eight thousand dollars.

Q. You have not gone into the details, that is just your general estimate from the aspect of the building?—A. No. I have built a good many churches,
30 and know pretty well what they cost.

Q. Including the spire?—A. Yes, as it stands there. I did not go into details, and I have built a good many churches, and know pretty well the cost.

Q. To what extent would you say that the land there is deteriorated or depreciated, if any, by the construction and passage of the railway?—A. About one half.

Q. Would that property be available for other purposes, as things now are, with the railroad there?—A. It would be available, of course, for a factory, but it is rather close to the railroad. They would have to put cheap tenements of some kind on it; it would require cheap land in order to make it pay.

40 Q. Would it require a good deal of expenditure to make it available for something else?—A. Oh, yes.

Q. Have you any idea what may be reasonably counted upon to be obtained for that property now, as it stands, suppose it were sold?—A. For the land and all?

Q. Yes?—A. I should think the land is worth about thirty-seven cents.

RECORD.

*In the
Superior
Court.*

No. 71.

Deposition of
Wm. T.
Thomas for
proprietors,
dated 21st
Dec. 1888—
continued.

By *Mr. McGibbon.*

Q. After the passage of the railway?—*A.* Yes. The building to be sold would only average about the price of the brick.

By *Mr. Trenholme.*

Q. Why is that, Mr. Thomas?—*A.* It would cost more to change and alter it than the other material is worth.

Q. You think the land, in the absence of the railroad, would be worth about seventy-four or seventy-five cents—in the absence of the railroad?—*A.* About seventy cents.

Q. If the railroad were not there you think it would be worth about seventy 10 cents?—*A.* Yes, perhaps a little more—seventy-two cents.

Cross-examined by *Mr. Abbott.*

Q. What are your reasons, Mr. Thomas, for saying that this property would be useless for church purposes after the construction of the railway?—*A.* I should say it would, because of the noise and smoke and so on.

Q. On account of the noise and smoke?—*A.* Yes. The railroad is pretty high up, and the church is pretty close to it.

Q. Do you know of any other churches close to a railway—any railway?—*A.* No. St. George's Church will be pretty close to it.

Q. Other churches have been built close to the existing railway?—*A.* No, I 20 do not know of any.

Q. You do not know some along the line of the Grand Trunk Railway?—*A.* No, I do not know of any. I do not say there are not any.

Q. Do you know that a new church has been built near the Mountain Street Market within the last two years, within quite a short distance of the Grand Trunk Railway?—*A.* It is four times the distance that this is.

Q. You know of that church?—*A.* Now I do.

Q. What church do you refer to?—*A.* The Mountain Street Methodist Church. It is a good long way off the Grand Trunk Railway.

Q. How far?—*A.* Two streets and a market between. 30

Q. Do you think they don't hear the noise of the railway?—*A.* Yes, I have no doubt they do.

Q. It is simply a matter of degree, as to distance?—*A.* Yes, the disagreeable sounds are on account of the nearness of the distance off.

Q. What is your idea about this noise; what effect would it have on the church?—*A.* Well, they could not hear themselves I don't suppose easily, singing and praying and so on. It must distract the attention of the minister and the congregation, I should think.

Q. You say they would not hear a noise sufficient to interrupt the services in the Mountain Street Methodist Church?—*A.* I do not think so. 40

Q. You think not?—*A.* I think not. I have no doubt it is a nuisance to them. I daresay it is an inconvenience to them, but not so great.

Q. It is just a matter of degree?—A. Yes.

Q. Now, your idea of the damage is on account of the noise and smoke and the interruptions which will be caused to the services?—A. Yes.

Q. Then in order to cause that damage it would have to happen that the trains were passing at the time the services were held?—A. Yes. But in these kind of churches services are being held every day, of one kind or another.

Q. Every day, you say?—A. They generally are; there is something going on there nearly every evening.

10 Q. What churches have you built, Mr. Thomas?—A. About twenty, I think.

Q. Let us know some of those churches you have built?—A. St. George's Church, St. Martin's Church, Emmanuel, Wesleyan Church, &c.

Q. Are those churches of the same class of building as the one in question?—A. They are better churches than this.

Q. Those are stone churches?—A. Yes, sir.

Q. If you were building a church would you build it of the character of this church--the walls and so on?—A. Perhaps I would, if I had no more money to lay out.

Q. You never have built a church of that kind?—A. Yes.

20 Q. Where?—A. In the country, but not in town.

Q. You have no actual knowledge of what it would cost to build a church of that character in Montreal from actual experience?—A. Yes, I know.

Q. How, you have not built any?—A. No, but I know the difference between the cost of a brick and a stone church without any trouble. You could build that church for twenty-six or twenty-eight thousand dollars I am certain.

Q. Have you made any detailed estimate of the cost?—A. No; I don't require to.

30 Q. If the trustees of this church were to ask you for an estimate to build a new church, would not you take out the quantities and make a detailed estimate before you gave your opinion?—A. No.

Q. You have not done it in this case?—A. No; I have too large an experience in that kind of thing.

Q. You might be out a few thousand dollars?—A. Oh, it is possible.

Q. What knowledge have you of the value of land in this neighbourhood?—A. Well, I have no absolute positive knowledge, only general knowledge, of the value of the land in that neighbourhood.

40 Q. You speak of land being worth seventy to seventy-two cents a foot without the railway; you speak of its value at the time the railway plan was deposited?—A. I do not know when that was.

Q. You are speaking of its value to-day if there was no railway there?—A. Yes.

Q. What would you say its value was two years ago?—A. It would be the same.

Q. The same two years ago as to-day?—A. Yes.

RECORD.

—
In the
Superior
Court.

—
No. 71.

Deposition of
Wm. T.

Thomas for

proprietor,

dated 21st

Dec. 1888—

continued.

RECORD.

*In the
Superior
Court.*

No. 71.
Deposition of
Wm. T.
Thomas for
proprietors,
dated 21st
Dec. 1888—
continued.

Q. So there has been no increase in the value of properties in the last two years?—*A.* I do not think so. All over the City property increases in value in different places.

Q. Not there?—*A.* If a man buys a lot now he will not buy it two years hence, no matter where he buys it.

Q. He might not get the piece he wants. Do you know of any actual sales that have taken place in that neighborhood in the last five years?—*A.* Mr. McIntyre bought the corner.

Q. That is, before the railway?—*A.* I do not know.

Q. Do you know of any sales that have taken place since the railway, 10 besides the one purchased by McIntyre?—*A.* There is some property on the other side, on St. Antoine Street, sold by Mr. Bishop there, pretty close to the corner of Guy Street in the neighborhood there.

Q. Sold by Mr. Bishop?—*A.* Yes.

Q. To whom?—*A.* I do not remember.

Q. Do you know how much he sold it for?—*A.* I could not swear to it; I did know.

Q. Did that property sell for half its value?—*A.* Well, I suppose he sold it for what he thought the full value.

Q. Was there any depreciation on that property since the railway came?— 20
A. Not that I am aware of.

Q. You know of no other sale?—*A.* No.

Q. What would be the disadvantage of having a factory built on this property so near to the railway?—*A.* Disadvantage?

Q. Yes, you said the land might be available, but rather close to the railway?
—*A.* The same cause.

Q. You think the noise would be as much disadvantage to a factory as to a church?—*A.* No.

Q. I do not understand your answer at all?—*A.* There would be no absolute disadvantage to a factory except the noise. There would be a certain 30 disadvantage in the noise, but not equal to the church. You do not require to be so quiet.

Q. Don't you know factories close to the railway all over Montreal?—
A. Yes.

Q. They are generally built near a railway?—*A.* No, they have not been; they are obliged to now.

Q. Are you aware that Mr. Thompson is building a furniture factory there?
—*A.* Yes, sir.

Q. Quite close to the railway?—*A.* Yes. There is not so much drawback 40 for a factory as for a church.

Q. If you had to remove that church from there, you would build tenements, would you?—*A.* I think that is what I would build.

Q. How many tenements could you build on that property?—*A.* Two double tenements.

Q. Is that all?—*A.* Well, it is a fifty foot lot, fifty feet inside the church. You cannot build them alongside the railroad; you could only build them on the street.

Q. On what street?—A. You could only build them on Guy Street.

Q. You could not build them along that lane on the north side?—A. Underneath the railroad.

Q. The lane opens on Guy Street?—A. That is another property; you would have to go along the lane to go out. You could not build tenements on the back; if they did, they would be very common.

Q. I am speaking of tenements facing on the lane?—A. I do not think so; you would have to build very poor tenements to do that. You could build two double tenements on the street; of course, they would have to have yards to
10 them. They would be cheap tenements too.

Q. What return do you generally get on cheap tenements, including the value of the land; what return do you generally get?—A. I do not know.

Q. Is it not a fact that the revenue is much greater in proportion to the capital invested in cheap tenements than in more elaborate buildings?—A. It may be per annum, but it is not in the long run.

Re-examined by *Mr. Trenholme.*

Q. In addition to the objection arising from injury and noise and smoke does not the mere construction of the road in that way past the church, at an elevation, affect the church, its light and its attractiveness?—A. Oh, yes, as far
20 as that is concerned, it does.

Q. It puts it in an unsightly position, does it not?—A. Yes.

Q. It will obstruct the light, will it not?—A. A little.

Q. And if that is filled in now—a solid embankment—won't it have the tendency to make the church property damp, accumulating snow and dampness there?—A. If it is filled up, it would have that tendency, of course.

Q. You have been asked about Mr. Bishop's property; is that as near to the railroad?—A. Oh, no, nothing like it. It is only in the neighbourhood.

Q. It is several hundred feet away?—A. Yes, across on the other street, a good long way off.

30 Q. It is beyond the immediate influence of the railway upon it?—A. Yes.

By *Mr. Fleet.*

Q. If you bought that property, Mr. Thomas, and proposed to use it as a factory, do not you think the fact of the building being there would add more than two thousand dollars to the value of the lot? You said you considered the lot worth about thirty-seven cents, and that the building was worth about two thousand dollars for the building, but if the building was used for a factory?
—A. I would not get more for it.

Q. It would not be worth more than that?—A. No, it is only the value of the brick.

40 Q. And even if it was used as a factory you don't think the building would be worth any more than two thousand dollars that you have spoken of?—A. To be turned into a factory?

Q. Yes?—A. You would have to take the roof off for a factory, it is not high enough for a factory.

RECORD.

—
*In the
 Superior
 Court.*

No. 71.

Deposition of
 Wm. T.
 Thomas for
 proprietors,
 dated 21st
 Dec. 1888—
continued.

Q. For manufacturing purposes, a furniture shop, or anything like that, you would not have to take the roof off; could not it be utilised for a furniture factory?—*A.* Of course.

Q. If it was, do you think it would be worth more than two thousand dollars under those circumstances?—*A.* Under those circumstances it might.

Q. How much more would you put for it?—*A.* Another thousand dollars. It would have to be altered to suit.

By Mr. Trenholme.

Q. No matter for what manufacturing purpose?—*A.* Yes.

By Mr. Fleet.

10

Q. You cannot suggest any purpose to which it could be put that would make it worth more than three thousand dollars for speculative purposes?—*A.* No, sir.

By Mr. Brodie.

Q. You are quite well aware where the Mountain Street Methodist Church is?—*Yes.*

Q. Are you aware there is a vacant lot between it and the street, and the Mountain Street Market and another street?—*A.* Yes.

Q. Are you aware there is a block of buildings between the Bonaventure Street and the Grand Trunk Railway, some buildings there opposite the Mountain Street Market?—*A.* Yes, there are several blocks of buildings, and the market and another block besides.

Q. Would not these buildings have the effect of deadening the sound?—*A.* Yes.

By Mr. Abbott.

Q. On which side of the street is this church?—*A.* The far side.

Q. The right hand side going down?—*A.* Yes.

Q. The west side?—*A.* Yes.

Q. There is no building on the same side of the street, between it and the railway, except the market?—*A.* Yes, there is. There are some buildings on the other side of Bonaventure Street, between the market and the railroad, a whole block, and the market itself and the two streets and a vacant lot.

By Mr. Fleet.

Q. What rent, do you suppose, could be got for that place for manufacturing purposes, or for other purposes. Suppose you owned that lot of land and the building lot, what rent do you suppose you could get for it?—*A.* Turn it into a factory? About 10 per cent. on the outlay.

Q. But you cannot give me any idea of what it would be per annum?—*A.* No, you could easily reckon it up.

Q. That would be about seven thousand dollars?—I don't suppose you would get that. RECORD.

By *Mr. Trenholme.*

Q. You think that place could be rented now for eight hundred or seven hundred dollars a year?—A. For a factory?

Q. For any purpose?—A. No. As it is now.
And further Deponent saith not.

*In the
Superior
Court.*

No. 71.
Deposition of
Wm. T.
Thomas for
proprietors,
dated 21st
Dec. 1888—
continued.

Schedule No. 82.

DEPOSITION OF JOSEPH CADIEUX.

No. 72.
Deposition of
Joseph
Cadieux for
proprietors,
dated 21st
Dec. 1888.

10 On this twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared JOSEPH CADIEUX, of the City of Montreal, Builder, aged thirty-two years, and witness produced on the part of the proprietors, who, being duly sworn, deposes and saith:—

I am a builder and contractor, doing business in the City of Montreal and have been for some years past.

Examined by *Mr. Trenholme.*

20 Q. You have built a good many buildings in Montreal?—A. Yes sir, I guess I have built about one hundred and twenty-five or one hundred and fifty houses, and I have built several good buildings. I have built the Waddell building, Notre Dame Street; I have built the O'Brien building on Victoria Square; I have built the college on University Street, near McGill College; I have built the Estate Wilson's building, corner of Craig Street, and going up the hill there; I am building twelve houses there at present, and I am also building a church in Lachine.

Q. Do you know Calvary Church in question in this cause, and how the railway in question passes that church?—A. Yes, sir.

Q. You have examined the property?—A. Yes.

30 Q. Have you formed any estimate of what the church building is worth, and would cost to build?—A. Yes, sir, I did, on the request of Mr. Macaulay and Mr. Cushing.

Q. You have made an estimate?—A. I did.

Q. You have got it with you?—A. Yes, sir. I now produce and file as number 37, an estimate which I have made of what it would cost to build the church now.

Q. It would cost how much?—A. The total amounts to twenty thousand one hundred and ninety-nine dollars and sixty-one cents, that is the total I made.

Q. Have you included the heating in that?—A. Yes, sir, I did.

RECORD.

*In the
Superior
Court.*

No. 72.
Deposition of
Joseph
Cadieux for
proprietors,
dated 21st
Dec. 1888—
continued.

Q. And you, as a builder, are of opinion that it would cost that amount to build the church to-day?—A. Yes, sure, it would cost that amount, perhaps a little more, because I figured down as close as I would figure if I were tendering to build.

Q. What use could be made of that building to-day apart from church purposes?—A. Well, with a good deal of alterations—I suppose it would depend upon what kind of a factory. I don't think it will be good for anything else than a factory or tenements, but I really think for tenements it would, not be advantageous, because it would be a good deal of expense to put that into tenements, and it is not fit. It is too high stories, and other 10
inconvenience.

Q. It would require a great deal of alterations and expenditure?—A. Yes.

Q. Would that be the same if it was used for factory purposes?—A. Oh no, for factory purposes, that depends a good deal upon what kind of a factory it would be suitable for, but it would require a good deal less expense to turn it into a factory.

Q. But it still would require expense and alteration?—A. Probably. That of course depends altogether upon what kind of a factory. I don't think it would be fit for a very heavy purpose, because the building might not sustain 20
great weight.

Cross-examined by *Mr. Abbott.*

Q. Did you make this estimate from a personal examination of the building?—A. Yes, sir.

Q. Could not the gas fittings and gas fixtures be used in another similar church if it was built?—A. Well, a good part of it would be probably destroyed in pulling down and tearing down.

Q. Is there necessity for destroying gas fixtures; cannot they be taken out first before they pull down the building?—A. Part of the fixtures might, but I know very well when they are taken down they are destroyed more or 30
less.

Q. Don't you know for a fact, Mr. Cadieux, that most householders, when they remove, move their gas fixtures with them every year?—A. Yes.

Q. You know that. When you say they would be more or less destroyed it would be in the same sense as one's furniture would be when they move from one place to another?—A. There is always some depreciation.

Q. The same as in ordinary moving?—A. Yes.

Q. What additional value would the building give to the lot of land, suppose it was bought for manufacturing purposes—light manufacturing purposes, such as a furniture factory?—A. That means what would the building alone be worth for a factory? 40

Q. What would you pay if you were buying that property for a factory; how much would you estimate you would pay for the building. What do you think it would be worth in addition to the land?—A. My opinion is that it is not worth more than three thousand dollars for manufacturing purposes.

By *Mr. Fleet.*

Q. If you had twenty-two thousand dollars given you to put up a new church would it not be in a better condition and more valuable than the present church is to day?—*A.* Yes, it would be called a fresh building. There must be a certain per cent. I suppose between a fresh building and a building that has been built for a certain time; there might be a difference of about five or seven per cent., or something like that.

Q. You would put it between five and seven per cent., the difference?—

A. Yes, I suppose so. The building is in a good condition.

10 Q. That would be about twelve hundred dollars?—*A.* Yes.

Q. Twelve or fourteen hundred dollars?—*A.* Yes, about.

Q. That is, that the estimate that you have filed here as exhibit number 37, is the estimate for a building that would exceed the present building in actual value about twelve or fourteen hundred dollars?—*A.* Yes.

By *Mr. Abbott.*

Q. You made this estimate on the presumption that that present building is in good order and a good state of preservation?—*A.* The present building, except a few little things, is in very good order.

Q. Did you notice the walls were cracked on the outside?—*A.* Yes.

20 Q. You don't consider that of much importance?—*A.* I do not consider that of much importance. I really think that the wall could be put in good order for perhaps twenty or twenty-five dollars, because it is nothing at all—that little crack is nothing at all.

By *Mr. Trenholme.*

Q. You were a practical builder before you entered upon contracting, were you not?—*A.* I am a builder since ten years. I built my first building about ten years ago.

And further Deponent saith not.

Schedule No. 83.

DEPOSITION OF CHARLES FYFE.

30 On this twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared CHARLES FYFE, of the City of Montreal, Builder, aged thirty-five, a witness produced on the part of the proprietors, who, being duly sworn, deposeth and saith :—

Examined by *Mr. Trenholme.*

I am a builder and contractor, doing business in Montreal, and have been for about seven years past. I know the Calvary Church in question in this matter, and also how the railway passes it.

RECORD.

*In the
Superior
Court.*

No. 72.

Deposition of
Joseph
Cadioux for
proprietors,
dated 21st
Dec. 1888—
continued.

No. 73.

Deposition of
Chas. Fyfe
for proprie-
tors, dated
21st Dec.
1888.

RECORD.

*In the
Superior
Court.*

No. 73.

Deposition of
Chas. Fyfe
for proprie-
tors, dated
21st Dec.
1888—
continued.

Q. You have examined the church building?—A. I have.

Q. Lately?—A. Yes.

Q. Did you examine it with the previous witness, Mr. Cadieux, or alone?—

A. I examined it alone.

Q. Did you go with him over his figures?—A. Yes, I went over the figures with him.

Q. What do you say with regard to his estimate and your own estimate of the cost of the building?—A. Well, I thought, without going right into the thing in detail, I thought about twenty thousand or twenty-two thousand dollars would be the figure that it could be built for.

Q. You think it would cost that?—A. I think it would.

Q. Would that include the architect's fees?—A. No, just putting up the building.

Q. What effect will that railway have upon that church?—A. I think it will unsuit it for a church altogether. I don't think it will be very suitable for a church with the railway passing so close to it.

Q. For what other purpose could it be made available, and what value would you put upon it?—A. I do not think it would be available for anything unless it is pulled down, but the ground would be available, that is all. The old material might be available for something.

Q. What depreciation, if any, would you put upon the land in consequence of the railway passing?—A. It would depreciate about half, I should think; as far as church property is concerned it could not be used at all.

Q. For any purpose you think it has depreciated a half?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. You did not go into the details with Mr. Cadieux in making your estimate?—A. I just went over the figures.

Q. You think they are about correct?—A. Yes.

Q. Do you not think that that building could be used for manufacturing purposes without pulling it down?—A. Not to advantage. I do not think it would.

Q. You think it would be worth nothing for that purpose?—A. Well, it would be worth very little. I think the material could be used in other work, for a light manufacturing business. No matter how light the manufacturing business is, you would have to pull the roof off, and it was not built for that. I think you would have to take it down; you might leave the foundations.

Q. You think for making a furniture factory you would have to take the roof off?—A. Yes, I do not think it would stand the vibration of the engines very well.

Q. Mr. Fyfe, Mr. Cadieux was of opinion that that building would be worth about three thousand dollars if the property was purchased for light manufacturing purposes; in your opinion would the material be worth as much as that, as old material?—A. Old material, if they were going to retain it on the ground, might be worth two or three thousand dollars, but if they were

going to cart it away, you could not put down that figure for it, because at auction I do not think it would bring any such figure.

Q. Could the wood-work about the building, such as the doors and so forth, be used in any way afterwards if the building was taken down?—Yes, but you can get old doors so cheap.

Q. I am speaking about the character of this front door, for instance, which Mr. Cadieux estimated at one hundred dollars?—A. I have seen doors bought for three and four dollars not worth a cent at all.

10 Q. As to the depreciation of the land, have you known of any property in that neighbourhood that has depreciated by the railway?—A. No, but I know for a general fact, that the railway running through depreciates the value of land.

Q. Where have you experienced that?—A. In every place I have known where a railway has passed parties that owned property, for instance, right along the line of the Pacific there, Walker, the blacksmith, and several others told me their property depreciated on account of the railway.

Q. That is their opinion; have they sold their property since, and got less price for it?—A. I do not know.

20 Q. You don't know of any case where an actual sale has taken place that was depreciated in price since the passage of the railway?—A. I could not bring to my mind at once.

Q. It is purely a matter of opinion with you?—A. No; I know what class of houses would go up, and what it is worth to put up a certain class of houses, and the rent in that locality.

Q. You are going upon the supposition that the church will be abandoned?—A. I do not see how they can stay in with the smoke coming in through the windows and the noise.

Q. You are giving your opinion on that supposition?—A. Yes, certainly.

By *Mr. Trenholme.*

30 Q. Have you any experience of being or living near a railway?—A. Yes.

Q. What?—A. In Toronto I lived near a railway, and found it a great nuisance—the smoke and the noise—and I could not sleep at night at all hours.

Q. How near was that?—A. Further than the church is from this railway.

Q. How long did you live there?—A. About six months.

By *Mr. Abbott.*

Q. How much further?—A. I could not tell you that; I know it was further than that.

Q. One hundred yards?—A. Yes, one hundred or one hundred and fifty yards.

40 And further Deponent saith not.

RECORD.

—
*In the
Superior
Court.*

—
No. 73.
Deposition of
Charles Fyfe
for proprietors,
dated
21st Dec.
1888—
continued.

RECORD.

Schedule No. 84.

*In the
Superior
Court.*

DEPOSITION OF PIERRE BEAUCHEMIN.

No. 74.
Deposition of
Pierre
Beauchemin
for proprie-
tors, dated
22nd Dec.
1888.

On this twenty-second day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared PIERRE BEAUCHEMIN, of the City of Montreal, Baggage Master of the Grand Trunk Railway Company, aged over fifty years, and a witness produced on the part of the proprietors, who, being duly sworn, deposeth and saith :—

Examined by *Mr. Trenholme.*

I am one of the trustees of the St. Gabriell Roman Catholic Church, near the City of Montreal, at St. Cunegonde. 10

Q. And you have been for how many years?—A. Three years.

Q. Have you attended that church for many years?—A. Yes, for about fifteen, since that church went there. Since there has been a basement then—since it was built.

Q. How far is that church from the Grand Trunk Railway track?—A. It is about two hundred feet from the railway track.

Q. What is the effect of that railway upon the church, and the services being held in it?—A. When the preacher is in the pulpit preaching he is obliged to stop when the train passes; this is more particularly the case in summer time, because it is so hot and the windows are open. 20

Q. Do you know the Calvary Church in question in this case?—A. Yes, I have seen the Calvary Church in question in this case, and how the railway passes it, and I am of opinion that the railway spoils it for a church, and it is only of use as a shop.

Cross-examined by *Mr. Abbott.*

Q. When was that church, St. Cunegonde Church, built?—A. We began to build it about eighteen or twenty years ago, I guess, the foundations, to the best of my knowledge and belief. But I was not connected with it then. At that time they were holding services in the basement.

Q. The railway was there then?—A. Yes, but only the line to Lachine. 30

Q. The railway line to Lachine was the only one in existence?—A. I think, to the best of my recollection, the Grand Trunk Railway had begun to run their trains on the main line at that time, about the time they began to build this church.

Q. They only built the basement first, did not they?—A. Yes.

A. And carried on the services in that basement for a number of years?—A. Yes.

Q. During those years the Grand Trunk Railway main line was running where it is now, was it not?—A. Yes.

Q. How long is it since they completed the church, and move into the upper part, and held services in the main part of the church?—A. I think it is about five years, I guess. 40

Q. About five years ago?—A. Yes.

Examined by *Mr. Trenholme.*

Q. Where the preacher stands in that church, is it at the end closest to the railway, or furthest from the railway?—*A.* Furthest.

Q. How many feet would he be from the railway; about what is the depth of the church?—*A.* The length of the church is about eighty feet.

Q. It fronts the railway?—*A.* Yes.

By *Mr. Fleet.*

Q. Did you experience any annoyance from the smoke at all of the trains passing?—*A.* Not the church.

10 Q. Have you experienced any annoyance from the jarring or shaking?—*A.* No, only the noise from the trains, and ringing of the bell; they do not whistle now.

By *Mr. Abbott.*

Q. They ring the bell there all the way out, don't they?—*A.* Yes.

Q. And in coming in also, on account of the crossings?—*A.* Yes.

Q. If the railway was elevated, so that there would be no streets to cross, there would be no necessity to ring the bell?—*A.* The rule says they have got to ring the bell to prevent a man coming with a horse.

20 Q. If there were no streets to pass over, there would be no necessity to ring the bell?—*A.* I do not know, the rule of the Grand Trunk Railway makes them do so.

Q. That is on account of the crossings?—*A.* Yes. They have to prevent the people coming when the trains are coming.

And further Deponent saith not.

Schedule No. 85.

DEPOSITION OF CHARLES CUSHING.

And on this twenty-second day of December 1888, re-appeared CHARLES CUSHING, of the City of Montreal, Notary, already sworn, re-called with the consent of the arbitrators, and continued his examination as follows:—

30

By *Mr. Trenholme.*

Q. Do you know the distance between the Ste. Cunegonde Roman Catholic Church and the railway track?—*A.* Yes, I went there specially one morning with a tape measure, and found it to be, between the railway track and the front wall of the church, rather more than two hundred feet.

Q. Have you heard the trains pass Calvary Church, or the engines, since this expropriation began?—*A.* Yes, several times, both within the church and without.

U p. 3310.

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RECORD.

*In the
Superior
Court.*

No. 74.

Deposition of
Pierre
Beauchemin
for proprietors,
dated 22nd Dec.
1888—

continued.

No. 75.

Further
deposition of
Charles
Cushing for
proprietors
(recalled),
dated 22nd
Dec. 1888.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 75.
 Deposition of
 Charles
 Cushing for
 proprietors
 (recalled),
 dated 22nd
 Dec. 1888—
continued.

Q. What is the effect?—A. Well, when I have been in the church it has simply been an engine with one or two trucks, and the noise has been sufficient to make it almost impossible to hear the minister, and the attention of the congregation has been wholly turned aside, so that the effect of the service was entirely lost. The minister did not absolutely stop speaking, but, as far as I should judge, none paid any attention.

Q. Does that curve have any effect?—A. Well, I did not notice any special sounds from the curve. I do not know whether, going so slowly as the engine did, it would make such, but I heard on Dorchester Street, beyond Seigneur Street, coming down one morning, a shrill, screeching sound, and thinking it might proceed from the cars on the railway track, I climbed up on the track at 10
 Seigneur Street, and walked over to about the end of Richmond Square, where the curve is, and stood by the side of the curve while the train passed, and the grating and screeching were exceedingly loud and troublesome. I heard the same grating and screeching on the curves from St. Anne's Street on several occasions walking down in the morning.

Q. That is, these curves near the church?—A. Yes.

By *Mr. Fleet.*

Q. How many cars were there in that dumping train?—A. I think there were only two or three empty trucks. If it had been a heavy train it might have 20
 been very different.

And further Deponent saith not.

No. 76.
 Deposition of
 Eliza Lusty
 for pro-
 prietor in
 rebuttal,
 dated 29th
 April 1889.

Schedule No. 86.

DEPOSITION OF ELIZA LUSTY.

On this twenty-ninth day of April, eighteen hundred and eighty-nine, appeared Eliza Lusty, wife of John Hampton, of the City of Montreal, a witness on the part of the proprietors, in rebuttal, who, being duly sworn, deposeth and saith:—

Examined by *Mr. Trenholme.*

Q. You live with your husband, I believe, in the basement of Calvary 30
 Church?—A. Yes, my husband and myself are the caretakers of Calvary Church, mentioned in this case, and we live in the basement of the church.

Q. And have for how long?—A. Four years.

Q. I believe your husband is deaf, is he not?—A. Yes, he is very deaf.

Q. Since the trains have begun to pass that church have you noticed whether they have any effect on the building or not?—A. Yes, it has a good deal.

(Objected to this evidence as not being proper rebuttal evidence, but simply to strengthen the evidence in chief.)

Q. What have you noticed from the trains passing first, does it make any noise?—A. Yes, it makes very great noise.

Q. Have you ever been in the church when the train passed?—A. Yes, sir.

Q. Besides making a noise, what else have you noticed?—A. There was a heavy train going past when we had the furnace very hot one Saturday, and it shook down the pipes.

Q. Throughout the building, what effect have you noticed the passing of the trains have?—A. It is all cracked on the ceiling of the church.

10 Q. That is since the trains began to pass?—A. Yes, sir, and then about six weeks ago I was reading, and I heard a great smash. A train was going past. I said to my family in the morning at breakfast “There is some accident on the train last night near the church,” and my daughter went up and it was the plaster that had fell down in the gallery—some of the plaster—the ceiling. It was that that made the noise that I heard.

Q. Is that in the main body of the church?—A. Yes, the body of the church—the main part of the building.

(Counsel for the Railway Company renews his objection to this evidence as not being evidence in rebuttal.)

20 (The Arbitrators admit the evidence subject to the Company’s right to rebut the same, on the ground that the evidence is newly discovered evidence, and did not exist at the time the proprietors case was closed.)

Q. When the train passes at night does it disturb you?—A. Yes, it does; the bed shakes and wakes us up. Mr. Hampton feels it, and he always knows when the train passes.

Q. You say you have been wakened up by the train?—A. Yes, wakened up by the train.

30 Q. Has it any effect upon things in the building?—A. Yes, sir. I went up one morning and there was the cupboard doors lying down on the floor—the train had shook them down on the floor of the Bible-class room, and then there is another large crack that was not there before the trains started, right down in the Bible-class room.

Q. What about the clocks?—A. Oh, they stop, the whole four—two downstairs and two upstairs. They all stop by the passing of the trains.

Q. Did this happen before the passing of the train?—A. Never before.

Cross-examined by *Mr. Abbott.*

Q. Were you ever in the church when the minister had to stop?—A. Yes, sir.

40 Q. When?—A. About six weeks ago. He had to stand still when the cars stopped.

Q. How long did he stop?—A. He stopped for a few minutes.

Q. Did he make any remark about it on that occasion?—A. Well, no he did not make any remark about it, because he has got to do it very often.

Q. You say you saw it on that occasion?—A. Yes, I was in the church at the time.

RECORD.

*In the
Superior
Court.*

No. 76.
Deposition of
Eliza Lusty
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—continued.

RECORD.

*In the
Superior
Court.*

No. 76.

Deposition of
Eliza Lusty
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. You never saw it on any other occasion therefore why do you say he has to stop often?—A. My daughter goes to church, and she knows.

Q. As far as your own personal knowledge goes, it was only once?—A. Yes, about six weeks ago.

Q. When was it that you noticed the pipes of the furnace fall down?—

A. In February, I could not tell you the date, as I did not take any notice; it was on a Saturday; we heat the furnace to get the church warm for Sunday, and I went up between five and six o'clock in the evening, and we heard the noise and I went up and the train had just passed and the pipes had come right down. We had to hurry up to get new pipes, as these were all bruised. 10

Q. So you got new pipes?—A. Yes, we had to get some new pipes.

Q. They have not come down since?—A. No.

Q. There was a very hot fire on you said?—A. Yes, because it was Saturday; they never fell down before.

Q. How long have they been up?—A. They were fixed the year before that; they were all fixed.

Q. Had they fallen down the time you put the new pipes in?—A. No, not at all. The tinsmith took them down because we thought they wanted new pipes, that was the year before that.

Q. You are sure about the hour—about five o'clock?—A. About five or six 20 in the evening, a heavy train passed at that time.

Q. What kind of a train was it?—A. I could not say what kind of a train it was, but we went to see what the noise was, and it was the pipes had fallen down and the train had just passed. There was another time a heavy train had just passed, and there was such a rattling of the windows upstairs and the doors—it was a terrible rattling. It is not like that all the time, but it shakes very much.

Q. What time do you notice this shaking in the night?—A. Just when the trains pass.

Q. When you are in bed?—A. Yes. 30

Q. What hour do you generally go to bed?—A. About ten o'clock.

Q. It is after ten o'clock that you hear these trains?—A. Yes, sometimes it is about ten and sometimes after ten.

Q. What time do you generally hear these trains passing—is it after eleven or twelve?—A. We wake up with the shaking of the building and the noise of cars.

Q. What hour?—A. We go to bed about ten o'clock.

Q. What time do you wake up?—A. It is the passing of the train.

Q. What hour?—A. I could not exactly say—we are in bed.

Q. Is it long after you have gone to bed?—A. Yes, it must be some time 40 after we have been to sleep.

Q. It must be about half-past eleven?—A. It might be.

Q. As late as twelve?—A. We never get up to see what o'clock it is, but we wake up with the train shaking the building. Mr. Hampton says when a train is passing that he can feel the shaking, although he is deaf.

Q How often has that happened?—A. Very often we would wake up like that.

Q. Lately?—A. Yes.

Q. Within the last two weeks?—A. Yes, sir.

Q. Did you ever notice any cracks in the ceiling of that church before?—A. No, sir, I did not.

Q. Did you ever look for them?—A. My daughter made a remark two weeks ago —

10 —A. Yes, I did.

Q. When?—A. We are always looking, because we dust around the church.

Q. You dust the ceiling?—A. Gas parts, and all that. Mr. Hampton says himself that he never saw any before, nor I never saw any until now.

Q. Did you ever see a crack on the outside wall of the church?—A. Yes, sir, there was a crack on the outside of the wall, but the other new cracks in the Bible-class room were not there before.

Q. You say you never knew the clocks to stop before?—A. No, never all stop at once.

Q. Did you ever know of any of them to stop before?—A. No.

20 Q. You were always careful to wind them up?—A. They are always wound up every eight days.

Q. You never missed them?—A. No, because I have got to have them ready for Sunday.

Q. What day was it they stopped?—A. Well, they stopped often—I could not tell you exactly what day, but they are often stopped.

Q. When did you last notice it?—A. A short time ago—not many days ago we noticed it. When the vibration of the church is more than other times, that is when they stop—when it shakes more.

30 Q. When did those clocks last stop, or any of them?—A. I could not tell you exactly the day, but it is not long ago. Ours stopped about two days ago, ours downstairs. I did not go upstairs to see the others.

Q. Did you set it coming down?—A. Yes.

Q. Did you wind it up?—A. No, it was wound up before.

Q. It has gone ever since?—A. I have not noticed it stop since. Perhaps there were no heavy trains passing.

Q. When did you notice the church clock stopped?—A. It is not very long ago since Mr. Hampton came down and told me the clocks were both stopped upstairs.

40 Q. So all you know is what Mr. Hampton told you?—A. I know he would not tell me a story.

Q. You never saw them before?—A. During the winter, during the time from February, we have had them stopped very often since the trains passed.

Q. Do you remember three gentlemen coming to the church one day, Mr. Charlebois and two other gentlemen with him?—A. Yes, Mr. Charlebois, and two other gentlemen with him.

RECORD.

*In the
Superior
Court.*
—
No. 76.
Deposition of
Eliza Lusty
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. Did they ask you on that occasion whether you noticed the trains much?—A. Yes.

Q. And did you not tell them that you did not notice the trains?—A. No, I did not tell them that; I told them they shook the building very much, and that the minister had to stop in his sermon, and told them about the stove pipes falling down.

Q. Who did you tell that to?—A. Mr. Charlebois.

Q. You swear you did not tell Mr. Charlebois it did not amount to anything?—A. I swear I did not tell him any such thing; I did not tell him that, because I could not.

Q. What did you say on that point about the noise?—A. I said downstairs we did not feel it as much as upstairs.

Q. What did you say about the noise?—A. I said the noise was very bad. I said the minister had to stop in his sermon.

Q. Will you swear you did not tell him the noise was only a mere trifle?—A. I never said such a thing, I could swear that.

10

Re-examined by *Mr. Trenholme.*

Q. How many times have you been in the church when the minister was preaching and the train passed?—A. Only once, and the minister had to stop.

Q. You don't attend the church yourself?—A. No, because I sit down in the library. I sit up in the library and hear the minister there, and I was in the church when I saw him stop. My daughter stayed down for me.

Q. The time that the minister stopped—the time you saw him—was that the only time you were up in the church?—A. Yes.

By *Mr. McGibbon.*

Q. Were you in the church building yesterday?—A. No, sir.

Q. In the building?—A. I was in my own building.

Q. Did any trains pass during the service in the morning?—A. Only in the evening.

Q. During the evening how many passed?—A. I think there were two, one when the service was going on, other just when they were going to close.

And further Deponent saith not.

30

Schedule No. 87.

DEPOSITION OF R. W. McLAUGHLIN.

On this twenty-ninth day of April, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared R. W. McLAUGHLIN, a witness on the part of the proprietors, in rebuttal, who deposes as follows:—

I have already been sworn in this case.

Examined by *Mr. Trenholme*.

10 Q. Do you know whether since the evidence has been closed for the church in this matter that the trains have begun to run past the church?—A. There are about three or four trains run on week evenings when we hold our service—I think about four trains pass during the service.

Q. You know the Company have only begun to use that depôt and to run trains past there since our evidence was closed?—A. Yes.

Q. Before that I think there were only construction trains?—A. There was no trains going past when I was examined before.

Q. It is only since then that they have begun to use that depôt?—A. Yes

20 Q. Have you noticed any effect of the trains passing that church?—A. I notice that the pastor has to stop, every time the train passes, in his sermon, because people even now, while the double windows are removed and the windows open, those right up close to him cannot hear, and I notice too, and some others have spoken to me in the same way, that people are anticipating the train coming along, and it bothers them, and they cannot hear so well. You can hear the rumbling about half a minute perhaps before the train comes along. One week-day night I was passing in the evening about eight o'clock, and a train passed, and where the steam escaped the noise was so great that I could not hear anyone else speaking on St. Antoine Street, when the train was passing. I was on St. Antoine Street passing along at the time, just at the corner of Guy Street, and I could not hear what the people said on the street, the escape of the steam
30 made so much noise, and was so great.

Q. Have you had the windows open on any occasion when the trains were passing?—A. Yes, we had an ordination service for two young men who were going out as missionaries.

Q. About how many weeks ago?—A. I think it was in the beginning of this month, and there were at least four or five trains passed during that service. One of the ministers tried to continue his address, but I could not hear a word, and I was pretty near him. Dr. Barbour stopped altogether, and Mr. Hill stopped, and one or two others tried to continue, but we lost everything they were saying while the train was passing, and some pretty long trains to.

40 Q. Have you noticed the effects of the passage of the train on the vibration of the building?—A. The building shakes when the train passes.

Q. Did you notice whether it caused any cracks?—A. I have not taken any particular notice.

RECORD.

—
*In the
Superior
Court.*

—
No. 77.

Further
deposition
of R. W.
McLaughlin
for pro-
prietors in
rebuttal,
dated 29th
April 1889.

RECORD.

*In the
Superior
Court.*No. 77.
Deposition
of R. W.
McLaughlin
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. Do you remember whether on the third of March—Sunday I think it was—on the occasion of Mr. Massey, and I think Mr. Howard, being in that church, whether the windows were closed or open?—*A.* I am positive they were closed, because I was standing in the vestibule when they came in, and showed them seats, and someone mentioned these were spies on the part of the Canadian Pacific Railway. Mr. Macaulay, Mr. Cushing, and myself only wished the windows had been open, so I am positive the windows were closed. The three of us spoke in that way, and wished they were open.

Q. How did it compare with the evening the windows were open—the noise?—*A.* The noise was nothing in comparison with the noise on other 10 evenings, still it was sufficient to disturb the sermon—it was after the sermon that night. There was two or three members being received into the church. It was after the sermon, and he was simply speaking to those three members at the time. Of course he was not speaking to the whole of the church at the time. It was enough noise that he stopped as he usually does when the train passes. He always stops, because people don't hear him when the train was passing.

Cross-examined by *Mr. Abbott.*

Q. What time of the evening do you have your week-day evening service?—*A.* At eight o'clock. 20

Q. And they last until when?—*A.* Supposed to last until nine, but they continue until half past nine and sometimes until ten o'clock; that evening we continued until nearly eleven o'clock.

Q. That is the ordination meeting?—*A.* Yes.

Q. You say at least three trains passed during that service?—*A.* At least four. I know four did, if not more.

Q. Do you know which way they were going—in-coming or out-going?—*A.* Both directions I think.

Q. Towards the beginning or towards the end?—*A.* Continued through the service, at intervals. That meeting commenced at seven o'clock. 30

Q. During your ordinary week-day service, do you swear four trains passed?—*A.* No, at least three.

Q. When were the double windows taken off the church?—*A.* On that night.

Q. What night?—*A.* The night of the ordination service.

Q. When was that?—*A.* It was on the eleventh of April.

Q. When was the week-day service that you were at?—*A.* I was there last Wednesday.

Q. Were you there the previous Wednesday?—*A.* Yes, I think I was.

Q. What distance are you from the train, when you are on St. Antoine 40 Street?—*A.* I should say about three hundred feet at least.

Q. And even there, from the escape of the steam, you could not hear people talking to you?—*A.* That special train—I don't say all the trains.

Q. When you are in the church, is it the escape of steam or the rumbling of the trains you hear?—*A.* It is the rumbling. We often hear the puffing and

the air-brakes passing the church. Coming down grade they put them on. These trains coming in.

Q. You have heard these coming in trains on Sunday?—A. No, week nights. I do not know whether the train comes in or goes out on Sunday.

Q. What do you hear on Sunday?—A. The train coming in. I do not know whether it is coming in or going out. It is the rumbling, I think, that causes most of the disturbance.

Q. You don't hear the escape from the steam brakes on Sunday?—A. I don't notice that so much on Sundays.

Q. Did you ever hear the trains in the morning?—A. I did when under construction. Last Sunday three or four hand cars passed.

Q. You don't hear any regular trains?—A. No.

Q. Would the noise of a hand car compel the minister to stop speaking?—A. No.

Q. You are positive the minister stopped in his address to these gentlemen, on the evening that Messrs. Howard and Massey were there?—A. Every time the train had passed, I have noticed that he stopped speaking.

Q. Please answer yes or no to my question; will you swear that the minister stopped on the Sunday evening that Howard and Massey were there?—A. All I know is, that I never noticed a train passing but he would stop in his sermon.

Q. But you cannot swear that he stopped that night?—A. I am not positive.

Q. Will you swear whether you are positive or not?—A. No, I won't swear, but I have not noticed him in speaking when a train passed but what he stopped.

Q. Were the double windows up on the evening Messrs. Howard and Massey were there?—A. No, they are shoved up and down.

Q. Were they on the building?—A. Yes, they were not removed until the night of the eleventh of April.

Q. Was not one set of windows opened on that evening?—A. No, they were all closed.

Q. Both inside and outside windows?—A. Yes.

Q. Did you go around to inspect that evening and see whether they were closed or not?—A. I know particularly, because we spoke together, Macaulay, Cushing, and myself, and wished that they had been open on that night, but I know they were not.

Q. I am asking you if one set, either inside or outside windows, were not open?—A. The inside windows are French and the outside are English, and if the inside windows are not open the outside windows could not be.

Q. Were not the inside windows open?—A. No.

Q. If Mr. Howard swore that they were, you would say he was telling a falsehood?—A. Yes, I would swear he was telling a falsehood, because we paid particular attention to notice, and we did not want to open them after they came in.

Q. Why not?—A. It would not look well in the middle of the service to open the windows when there was no necessity.

RECORD.

*In the
Superior
Court.*No. 77.
Deposition
of R. W.
McLaughlin
for pro-
prieters in
rebuttal,
dated 29th
April 1889
—continued.

Q. These gentlemen came in the middle of the service?—A. No, they came in just before the service.

Q. What time does your service begin on Sunday night?—A. Seven o'clock.

Q. What hour is it over?—A. Between quarter to half-past eight.

Q. When does the clergyman preach—what stage of the service does he commence his sermon?—A. About twenty minutes to eight. Somewhere between half past seven and twenty minutes to eight.

Q. And there is about half an hour's service before he begins?—A. Yes.

Q. Does his sermon close the proceedings?—A. There is prayer, and singing, and benediction afterwards.

Q. How long does he generally preach?—A. The orthodox sermon, about half an hour.

Q. I thought twenty minutes was the orthodox sermon?—A. That is in a Church of England.

And further Deponent said not.

No. 78.
Deposition
of Wm. M.
Barbour for
proprietors in
rebuttal,
dated 29th
April 1889.

Schedule No. 88.

DEPOSITION OF REVEREND WILLIAM M. BARBOUR.

On this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared Reverend WILLIAM M. BARBOUR, of the City of Montreal, a witness on the part of the Proprietors, in rebuttal, who being duly sworn, deposes and said.

Examined by *Mr. Trenholme.*

I am principal of the Congregational College of Canada.

Q. You are not a member nor attendant at Calvary Church, mentioned in this case?—A. No.

Q. You remember on the evening of the eleventh April taking part in the ordination service in that church?—A. Yes, sir.

Q. The service was longer than the ordinary church service?—A. Yes, sir, I think they would be a little longer.

Q. Do you remember noticing on that occasion any trains passing that church?—Yes, sir.

Q. Would you just state what you remember, and what you noticed in connection with the passing of the trains?—A. At the evening service while I was speaking the trains passed, and I observed that there was a great deal of noise.

Q. Were you able to continue your discourse?—A. I did continue it, but I question if the people heard anything. I was in a hurry, speaking rapidly, and did not stop, but I remember the interruption.

Q. It was a serious interruption?—A. It was to me.

40

Q. Your impression is that the affect to the address would be materially marred by the passing of the train?—A. Yes, to those who were listening.

Q. Do you remember being downstairs with the windows closed, also at the time the train was passing?—A. I remember being down at a festival in the evening.

Q. Did you notice the train passing?—A. Yes, it was more marked there than upstairs.

Q. What effect the passing of the trains have?—A. Well, there was the shaking of the building, it seemed to me a very great amount of noise, so I spoke to the Rev. Mr. McCaddy, who was by me at the table, and said if there was any evidence wanted it was too bad the Canadian Pacific Railway Corporation is not here. I remember making that remark.

Q. You have no doubt, from what you saw that night, that the passing of the train was a very serious disturbance?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. Did you notice how many trains passed on the evening of the ordination service?—A. I don't remember hearing but one while I was speaking and one while I was at the table downstairs. I judge one was a very heavy train from the amount of the disturbance.

Q. You were present during the whole service while the other speakers were speaking?—A. I was speaking during the ordination service, yes, sir.

Q. You were present while the others were speaking?—A. Yes.

Q. You did not notice any trains while they were speaking?—A. I don't recollect.

Q. You do not recollect any gentlemen having to stop?—A. No.

Q. The speaker, I mean?—A. No, if I had been the minister, I would have stopped, but I was in a hurry.

Q. Have you ever been in churches elsewhere where the trains passed?—A. I don't recollect.

Q. In New York or Boston?—A. No, sir. I heard the noise from street cars sometimes.

Q. I suppose from passing carts too?—A. Yes, sir, and sometimes street cars on a summer's day when the windows and doors are open.

Q. It is a sort of disturbance, I suppose, the noise from the street?—A. Yes.

Q. Did you ever attend Trinity Church, New York?—A. Yes, I have been in the building, but never during the service.

Q. Did you ever notice how close the elevated railway passes near the church?—A. No, I never noticed. I know it is near the building, but I cannot exactly say the distance.

Q. This question of noise is largely one of degree, depending upon the nature of the noise, depending upon street cars or railway and the distance?—A. Yes, and a steam car makes more noise.

Q. If the railway were one hundred feet away you could still hear it if the windows were open?—A. Yes, it might not jar the building, but it would make a noise.

RECORD.

*In the
Superior
Court.*

No. 78.
Deposition
of Wm. M.
Barbour for
proprietors
in rebuttal,
dated 29th
April 1889
—continued.

RECORD.

*In the
Superior
Court.*No. 78.
Deposition
of Wm. M.
Barbour for
proprietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. In a less degree?—*A.* Yes, I should think so. A great deal depends on the weight of the train.

Q. I mean the same sized weight, a train passing about one hundred feet away would still be heard in the church?—*A.* I should think it would.

Q. Do you know of a college being put up near the line of railway in Cote St. Antoine?—*A.* No, sir. I am a comparative stranger in Montreal. I have only been here a year or two, and am not acquainted with the building in the City.

Q. I suppose it would be as great a drawback to an educational institution, such as the Methodist College, to have a railway passing it, as to a church?—*A.* I should think so. 10

Q. Do you know of a new Roman Catholic Church being built close to the railway?—*A.* No, sir, I do not.

And further Deponent saith not.

No. 79.
Deposition
of F. H.
Marling for
proprietors in
rebuttal,
dated 25th
April 1889.

Schedule No. 89.

DEPOSITION OF REVEREND FRANCIS HENRY MARLING.

On this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared Reverend FRANCIS HENRY MARLING, of the City of Montreal, a witness produced on the part of the proprietors in rebuttal, who, being duly sworn, depose and saith:— 20

Examined by *Mr. Trenholme.*

Q. You are at present the minister of Emmanuel Congregational Church in Montreal?—*A.* Yes.

Q. You were present, I think, at the ordination service in Calvary Church on the eleventh of April?—*A.* Yes, sir.

Q. Just state, Mr. Marling, whether you noticed any train or trains passing while there that evening, and what effect it had on the building?—*A.* I was present at other meetings that were held during that day as well as the ordination services. There was a meeting of what we call an association—an ecclesiastical body, consisting of ministers and representatives of churches. It was a meeting during the day, a small meeting. We were meeting in the basement—the rear room—the light being derived from the back window, and this took place before the ordination, but I remember distinctly noticing when trains were passing that our proceedings were so interrupted that we almost always ceased speaking; whoever was taking part in the deliberations had to wait until the trains had gone by. We made remarks to one another about the serious disturbance it was to anything going on in the church to have this railway so very near to them 30

Q. Did you notice anything similar in the evening?—*A.* Certainly. It had a similar effect. I have heard Dr. Barbour's evidence, and I should confirm that in every particular. I think, he has stated it exactly as it struck me. 40

Cross-examined by *Mr. Abbott.*

RECORD.

*In the
Superior
Court.*

No. 79.
Deposition
of F. H.
Marling for
proprietor in
rebuttal,
dated 29th
April 1889
—*continued.*

Q. At what time was the association meeting previous to the ordination service?—*A.* It was through the day, in the morning, also in the afternoon.

Q. At what hour was it in the morning?—*A.* I do not know whether I could give you the precise hours. It was not later than ten and not earlier than nine. I could not exactly say.

Q. It lasted how long?—*A.* Until noon.

Q. Do you know how many trains passed during that time?—*A.* I do not know.

10 Q. Did you notice any in the morning?—*A.* I was not taking any notes for any purpose at all, and I could not be sure what time of the day they passed, and I was there through the day and there were trains passing from time to time. I could not be quite sure as to the hours of the day.

Q. About how long would it take a train to pass—the noise cease to be a disturbance to the service?—*A.* Well, of course, during the time of the actual passage, I could hardly undertake to define; it would depend upon the nature of the train; it might be a shunting engine or a car.

20 Q. On that day it did not take more than a few seconds for the noise?—*A.* I don't know; about half a minute. I remember making the remark to those who were around me, that if such a position were offered me to build a church, supposing there was no church there, the question was, if we should take such a lot as that, that this noise should instantly settle the question that we should not take it.

Q. You are aware that other churches are built right close to the Grand Trunk Railway and Canadian Pacific Railway?—*A.* I do not know any case since the railway has been built; I do not remember any case.

Q. Don't you know that church in Ste Cunegonde, which is built particularly close to the Grand Trunk Railway?—*A.* I do not know.

30 Q. You know the new Roman Catholic Church, St. Anthony's, which has been built on the property close to the railway?—*A.* I do not know where it is.

Q. In summer, in your church, can you not notice the sound of the train sometimes?—*A.* No, I cannot recall anything of the kind. But I should say that the Canadian Pacific Railway has not been open in summer when the windows were open. Whether we hear the railway whistle or not I would not undertake to say.

40 Q. Is it not a fact from your own experience that the noise of trains heard at some distance, it is a simple question of degree as to how near you might be to the train as to the extent of the noise?—*A.* The further you are the less noise.

Q. Still you get a certain amount of noise even if you were three hundred feet from the railway?—*A.* Once I was in a church in London, forty or fifty years ago, where the viaduct was built almost against the wall of the church, and the minister had to stop while the train went by quite a number of times during the service.

Q. What church was that?—*A.* Congregational.

RECORD.

*In the
Superior
Court.*

No. 79.
Deposition
of F. H.
Marling for
proprietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. How long had the church been in that position next to the railway?—

A. The railway succeeded the church.

Q. How long in juxtaposition?—A. I was a boy at the time, but I remember it struck me, this noise stopping the service.

Q. Do you know how long that church remained there?—A. I came to Canada immediately after.

Q. I suppose you could tell from your experience of things that that railway had been there for some time alongside of that church?—A. My own conviction is; I was on a visit to this gentlemen for a few days, and went to church with him on Sunday, and that is all I remember in relation to it, but as I understood it, the viaduct was put up since the church was there. 10

Q. In your church on St. Catherine Street here, do you notice the street cars passing?—A. Hardly. I have no front windows open; we have small windows on the side, on Stanley Street. The windows don't open. There may be a pane in the centre windows in front, but I could not say that the noise there has been any trouble to us.

Q. Have you ever visited New York?—A. Yes, I had a church there for many years.

Q. Did you ever notice the noise of the passing of busses on Fifth Avenue, the noise they make there?—A. I was on Second Avenue, on Fourteenth Street. 20

Q. Did you notice the noise they make?—A. Yes, a vehicle in New York always makes a noise upon the stone pavement.

Q. Don't you think that would disturb the service?—A. The churches there are built with a vestibule, which intercepts a noise of that sort a great deal, but certainly it would if the church opened directly on the street; the thundering of the omnibuses would make a great deal of disturbance.

Q. Would it not be nearly, if not quite, as great a disturbance as the passing of the railway trains in this case?—A. It is very hard to compare noises of that kind.

Q. I mean the effect in disturbing the congregation or the minister?—A. 30 With the omnibusses you have not the additional noise of the whistle.

Q. You did not hear the whistle on this railway, did you?—A. I do not know.

Q. Would not the effect be much the same, the rattling of a vehicle on a stone pavement have very much the effect of disturbing a congregation as the railways trains passing?—A. It is very difficult to compare noises, and of course it would depend on the train, the nature of the train, so I would not undertake to say.

Q. Even the noise caused by an empty Scotch cart on an ordinary macadamized street would make a serious disturbance, would it not, in passing a church with windows open?—A. I would rather it did not go by. 40

Q. You have noticed the elevated railways in New York?—A. Yes.

Q. They make a considerable noise?—A. Yes.

Q. Did you ever notice they pass close to a number of churches?—A. Yes.

Q. Will you mention some?—A. Dr. Taylor's church—Tabernacle Church—on Broadway.

Q. How far is that from the railway?—A. The railway passes up on 6th Avenue Broadway, and Sixth Avenue both meet there; it passes right in front of that church there; the church is built a little way back.

Q. Did you notice that the passing of the train disturbed the service at all?—A. They have double windows in that church all the time, I think to keep the sound out. There is, of course, that rumbling sound every time a train passes.

Q. But the church is not deserted, is it?—A. No.

Q. It is a very crowded church on Sundays, I think?—A. Yes, of course
10 the equipment of an elevated railway is very light compared with the ordinary railway.

Q. Is it not a fact that the trains on that light trestle makes more clatter and noise than a train passing on a solid embankment or viaduct?—A. I think the weight of the other train compensates the latter.

Q. Do you know how near the train passes the church on Sixth Avenue, to the rear of Trinity Church?—A. Well, there is a deep graveyard between it and the road; the graveyard is on three sides of the church.

Q. In the rear of the church?—A. Yes, down to the other street.

Q. The church property runs from Broadway to Sixth Avenue?—A. It is
20 not Sixth Avenue, there. I think it is called Church Street. It takes the entire depth.

Q. As a matter of fact, the church is a very deep building; is there more than 30 feet of graveyard behind the railway?—A. I should think so.

Q. Were you ever in Trinity Church when the trains were passing?—A. No, I never attended service.

Q. Did you ever notice the effect of the train passing?—A. No, I have only been very occasionally at Trinity Church.

Q. There are a number of other churches where the elevated railway passes close by?—A. Yes, there are several.

Q. You don't find the congregation desert the churches?—A. There is one
30 case occurs to me—the Allan Street Presbyterian Church, built on a narrow street where the elevated road runs up, going up to First Avenue. The road almost covers the street, it was so narrow, and ran right across the front of this church. When it was first put up they did not run on Sunday any trains. But when they began to run them on the Second Avenue road the noise became intolerable to that congregation. I heard that a number of times from the minister and members of the congregation.

Q. Has the church been given up?—A. Yes, that church has been given up and used for business purposes. I won't say only for that reason.

Q. It is very far down in the City?—A. It is just below Grand Street, I
40 think.

Q. To where has the church moved?—A. They were going to build in that neighbourhood, but I don't know whether they have done so or not—the congregation was rather declining. They sold out their property to a merchant there, and are going to buy a new place on another street. Their property was entirely hidden by the structure of the road, and the noise as well as that.

RECORD.

—
In the
Superior
Court.

—
No. 79.
Deposition
of F. H.
Marling for
proprietors in
rebuttal,
dated 29th
April 1889
—continued.

RECORD.

*In the
Superior
Court.*

No. 79.

Deposition
of F. H.
Marling for
proprietors in
rebuttal,
dated 29th
April 1889
—*continued.*

Q. You say the congregation was declining, I suppose on account of the growth of the City?—A. Yes.

Q. Have you known that to happen in Montreal churches—given up on account of the growth of the City?—A. Yes.

Q. Several instances in Montreal?—A. Yes, I think so. I know in this case the annoyance of the railway was very serious to all their work, it darkened the house and lower floor, and the noise interrupted their services very much. Of course there are a great many trains on these elevated roads. I think in Dr. Taylor's church the annoyance was less than they feared.

Q. They feared it very much in the beginning?—A. Yes. 10

Q. They found afterwards, by experience, that it was not so great as they expected?—A. In the case of Dr. Taylor's church, I should say these two streets, Sixth Avenue and 34th Street, intersect each other at right angles, and then at the same point Broadway comes in too, just stretching an angle with other streets, so that there are corners made in the lots that are not built upon; there is a large open space there.

Q. The railway comes up Sixth Avenue and crosses right near the centre of that open space, does it not?—A. At 34th Street, and Broadway stretches in just at the same point.

Q. 34th Street and Sixth Avenue intersect each other, and Broadway comes 20 through the point formed by the junction of those two streets, so the railway passes through the centre of the open space?—A. Yes.

Q. About how far from Dr. Taylor's church?—A. I could not say.

Q. Somewhere between 40 or 50 feet?—A. I should think so.

Q. Would not using double windows on this Calvary Church throughout the year tend to diminish the noise?—A. I presume it would diminish the noise and fresh air too.

Q. There are other means of ventilating the church besides the windows?
—A. I suppose so.

And further Deponent saith not. 30

No. 80.

Deposition
of Thos. G.
Shaughnessy
for pro-
prietors in
rebuttal,
dated 29th
April 1889.

Schedule No. 90.

DEPOSITION OF THOMAS G. SHAUGHNESSY.

On this twenty-ninth day of April, 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 Atlantic and North-West Railway Company, and a witness produced on the part of the proprietors is rebutted, who, being duly sworn, deposes and saith:—

Examined by *Mr. Trenholme.*

Q. You are assistant general manager of the Atlantic and North-West 40 Railway?—A. Yes.

Q. The time table, Exhibit 40, is the time table of that company?—A. Yes, of the Canadian Pacific Railway Company.

Q. Running trains over the Atlantic and North-West Railway Company?—A. Yes.

Q. Coming in to the depôt on Windsor Street?—A. Yes.

Q. Does that time table contain provision for your suburban service?—A. No.

Q. That has not been established?—A. Not yet.

Q. It is contemplated to establish a suburban service?—A. Yes.

10 Q. You cannot, I suppose, at the present say what that is to be?—A. Yes.

Q. And to what point?—A. Yes.

Q. I suppose Cote St. Antoine will be the first station outside of the City?—A. Possibly.

Q. Do you contemplate having a suburban service to Cote St. Antoine?—

A. It would be rather premature for me to say.

Q. There is nothing said about that yet?—A. No.

Q. Besides the trains that you bring in now to that passenger depôt, there will be a considerable augmentation of the number when your suburban service is established?—A. There will be an addition to the service.

20 Q. Don't you contemplate bringing in trains from other parts, additional to those that you bring in now?—A. I imagine in the future the number of trains will be increased, yes.

Q. Have you an idea how many the Grand Trunk Railway bring in—how many trains—to their depôt every day?—A. I have not an idea.

Q. Do you think they bring in sixty or seventy—that is, pass out?—A. Somewhere in that vicinity.

30 Q. Are you likely to have such a large passenger service?—A. A large part of our line will be shared by the other station, and for that reason the number will be less than the whole number coming to the Grand Trunk, but the combined service of the two stations will be equal to theirs.

Q. The number of trains this year will be no criterion of what there will be, say ten years from now; you cannot speak of that, can you?—A. It is difficult to speak of that without having some foreknowledge of the growth of the country.

Q. I suppose you know the Grand Trunk Railway service has increased largely during the last ten or fifteen years?—A. It did for a time; I don't think it has increased so rapidly during the last five or six years.

Q. The natural tendency is, of course, in a country, for the service to increase in the number of trains?—A. In some countries; yes.

40 Q. You could not undertake to say what number of trains you will bring in and out of that depôt, the next five or ten years?—A. I should not like to say on oath.

Q. Nor about how many?—A. No.

Q. Where are you going to make up your trains that come in and go out of that depôt?—A. I don't think at the present we have had any plans for making up the trains in the vicinity of the station.

RECORD.

*In the
Superior
Court.*

No. 80.
Deposition
of Thos. G.
Shaughnessy
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—continued.

Q. Are you not going to have some grounds outside of the present station?

—A. We have not definite intentions with regard to that at present.

Q. But you have a pretty good idea whether you are likely to have switches with shunting grounds placed where you can put grounds outside of the present station grounds; I don't ask you to definitely tell me where, but it is likely the company may have?—A. In the future we may have to do that.

Q. It is probable?—A. It is possible at any rate.

Q. Is it not really spoken of now?—A. I suppose we shall require more grounds either outside or inside in the future, but we have not determined where those grounds would be most convenient. 10

Q. From your present knowledge of the probable policy of the company it is not likely you are going to have grounds west of Guy Street for that purpose, and is not that the most probable place to have them?—A. I don't know that it is; the most convenient place would be east of Guy Street.

Q. From what you know now, is it not probable you will have your grounds west of Guy Street?—A. That will be determined from the price we can get property inside.

Q. Have you not been looking for property outside, west of Guy Street, for that purpose?—A. No.

Q. You have not considered that matter?—A. We may have discussed it 20 in a sort of way.

Q. Have you not talked about sidings at Cote St. Antoine somewhere?—A. Yes.

Q. Have you made any steps towards that?—A. No.

Q. Is not that a likely place to have sidings?—A. Yes, there are one or two places there where sidings may be required for traffic services.

Q. In what connexion will these sidings be required, for what purposes?—A. The Athletic Association are very anxious to have us put a siding adjoining their place, so that trains may come there when they have lacrosse matches.

Q. Don't you use these sidings for shunting cars on and making up trains? 30 —A. We would hardly be likely to use those sidings for that purpose.

Q. The most I suppose you would say then is this, that the company will probably require this accommodation, but whether it will be east or west of Guy Street, you cannot say?—A. It has not been determined.

Q. You don't know which side the probability is they will have these sidings?—A. No, I do not know. It is possible for some purposes we may require grounds outside, for instance, for coaling our locomotives; we might prefer to do that there rather than in the vicinity of the other stations, but as to the yard for making up the trains, it would be more convenient if we could have it east of Guy Street. It would save long hauls on our cars and keep 40 the business more concentrated there. When the time comes it may be possible that we cannot get property there, and we may have to go out beyond.

Q. From what you see now, as I understand it, the company would rather have their making up grounds east of Guy Street, but the probability is that they would have their coaling grounds outside—west of Guy Street?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. With the ground you have got now—the width of right of way that you actually require—would it be possible to largely increase the number of trains coming in and going out of that station?—A. We might increase them somewhat. I do not know just about how much increase we could stand.

By *Mr. Trenholme.*

Q. Why could you not bring in as many as the Grand Trunk, for instance?—A. They have got a larger number of tracks than we have, and of course we did not contemplate that number of trains when we constructed stations. We would have to enlarge to handle a number of trains conveniently, but still we could do more work by handling our trains rapidly.

By *Mr. Abbott.*

Q. You have acquired some grounds west or east of Guy Street?—A. Yes.

Q. Some church property?—A. The Torrance property.

Q. Did you take the Mosely property?—A. Yes.

Q. The width there is considerably greater than the point where you pass Calvary Church?—A. Yes.

Q. If that width was extended out, it would take Calvary Church altogether, would it not?—A. Yes.

Q. So if you were in the future to wish very largely to increase the traffic coming in to that station you would probably have to take the whole property of the church in, encroach on their land?—A. Probably.

Q. But a very large increase of traffic could be made there with the width required?—A. Yes.

Q. On one side or the other?—A. Yes.

Q. Please look at the time table in your hand and tell us what trains arrive and leave the Windsor Street Station at the present time on Sundays?—A. On Sundays we have the train arriving in the morning from Boston, at 7.25. The train from Toronto arrives at eight o'clock in the morning.

Q. Are those the only two trains that arrives at that station on Sunday?—A. Yes, all in the morning.

Q. Are there any arrivals during the day?—A. No. Those are the only two arrivals on Sunday.

Q. Now going out?—A. Going out we have the Boston express, which leaves at 8.05 in the evening, and the Toronto express, which leaves at 8.45 in the evening.

Q. Those are the only two going out?—A. Yes.

Q. About what time would those trains pass the church?—A. Two minutes after they leave the station.

Q. On week days, could you give us the trains?—A. Yes, I could tell from memory. The trains which I have mentioned arrive and depart every day at the same hours; then, in addition, on week days we have the train from Sherbrooke, which arrives at 11.35 in the morning on week days, and the same train leaves

RECORD.

*In the
Superior
Court.*

No. 80.

Deposition
of Thos. G.
Shaughnessy
for prop-
rietors in
rebuttal,
dated 29th
April 1889
—continued.

RECORD.

—
*In the
 Superior
 Court.*

—
 No. 80.
 Deposition
 of Thos. G.
 Shaughnessy
 for pro-
 priors in
 rebuttal,
 dated 29th
 April 1889
 —continued.

for Sherbrooke at 3.40 in the afternoon. Then, in addition to those trains, we have the transfer train, which runs around from Windsor Street Station to Mile End once or twice a day, I am not quite sure which, and make connexion with the Ottawa train.

Q. About what hour of the day?—*A.* Well, it arrives about four o'clock in the afternoon, and about 7.30 in the morning.

Q. Are there any other trains arriving or leaving?—*A.* I think not; I think those are the only ones. There is the Newport Local, arriving at 9.45 in the morning, and that same train leaves the station at 5.40 in the evening. We have got a train which leaves the station at 9 in the morning for Boston, and one which leaves at 9.20 in the morning for Toronto. There is a train arrives at 7.25 from Boston, and 8 from Toronto in the morning. The day trains that arrive in the evening are: the train which leaves Boston in the morning and arrives in Montreal at 8.30 in the evening, and the train which leaves Toronto in the morning and arrives in Montreal at 7.55 in the evening.

Q. Your suburban traffic, about what hours does the train start?—*A.* Our position is to have the train arriving at 8.40 in the morning, and 9.40 a.m. and 2.30 p.m. The departing trains will be at 12 noon, and 5.15 and 6.15.

Q. Will any of those trains run on Sundays?—*A.* It is not intended they shall.

Q. It is not the practice, is it, in this country at any rate, to run suburban trains on Sundays?—*A.* No, indeed the practice is becoming pretty general in the States to run no trains on Sundays, and that feeling is strongly growing—to give up Sunday service in the United States.

Q. Therefore it is not likely, is it, that the number of trains arriving and departing from this station on Sunday will increase in the future?—*A.* I should say the probability is that they will decrease, and if our connexions on the other side of the line do not run Sunday trains we will have no occasion to do it.

Q. There are no trains in the suburban service leaving after 6.15 in the night?—*A.* No.

Q. No arriving after 2.30?—*A.* No.

By Mr. Trenholme.

Q. I think from what you have said there are four trains pass that church between seven and nine, a week—two incoming and two outgoing?—*A.* Yes.

Q. Every evening except Sundays?—*A.* Yes.

Q. In addition to that you have, I suppose, special trains?—*A.* Well, there may be a special train run sometimes.

Q. Transfer trains?—*A.* It does not come in the evening at all; it only comes to the junction at Mile End.

Q. Do not these trains sometimes in switching go past that church, in and out?—*A.* I hardly think so. It is beyond the yard. There would scarcely be any occasion to do so, to go so far. I do not think they reached that point.

Q. And on Sunday evening there are between eight and nine trains—two trains go out?—*A.* Yes.

Q Of course you don't pretend to say that the time you go now is fixed for future years?—A. Oh no, we do not bind ourselves at all.

By *Mr. Brodie.*

Q. Is it your intention to bring in the Winnipeg passenger service at Windsor Depôt?—A. We have not decided how we will do it, the probability is we shall make a connexion with the Winnipeg train.

Q. Does the Winnipeg train come in Montreal and leave on Sunday?—A. No.

Q. Is it your intention to bring the North Shore around by the western depôt?—A. We will probably make connexion, indeed, we are doing that now.

Q. In the future, is it not the intention to bring the passenger traffic trains from Winnipeg in?—A. No, we never had such intentions.

And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 80.
Deposition
of Thos. G.
Shaughnessy
for pro-
prieters in
rebuttal,
dated 29th
April 1889
—continued.

Schedule No. 91.

DEPOSITION OF THOMAS R. MACAULAY.

On this twenty-ninth day of April, One thousand eight hundred and eighty-nine, personally came and appeared THOMAS R. MACAULAY, of the City of Montreal, a witness re-called on the part of the proprietors in rebuttal, already sworn, who deposeth as follows:—

No. 81.
Further
deposition
of Thomas
R. Macaulay
for pro-
prieters,
dated 29th
April 1889.

20

Examined by *Mr. Trenholme.*

Q. Will you please state whether you have noticed the trains passing the Calvary Church since the closing of the church *enquête*?—A. I have.

Q. And what the effect has been?—A. I have noticed the trains passing, and there has been a great deal of noise as they passed. There has been a shaking of the building, and the shaking of the building has caused the cracks which have appeared since then. I have noticed a number of cracks in the ceiling of the building. I noticed a large piece of plaster from the ceiling over the choir loft had fallen down, and I noticed also a large crack in the vestry.

Q. These were not there before the trains began to run?—A. No, I am certain that none of them were there before the trains began to run, with the exception, perhaps, of part of the crack in the vestry, but which I never noticed before.

Q. Do you remember whether the windows were closed or open on the evening of the third of March?—A. I remember the evening when Mr. Massey was present—I am not positive about the date—and I am positive that the windows were not open. I remember distinctly because I recognised Mr. Massey, and knew he was there for the purpose of getting evidence for the Canadian Pacific Railway Company, and I made some remarks on the subject to Mr. Cushing, and stated I was very sorry that the windows were not open,

RECORD.

*In the
Superior
Court.*

No 81.

Further
deposition
of Thomas
R. Macaulay
for pro-
priators,
dated 29th
April 1889
—continued.

as otherwise the noise would not be as great as it would otherwise have been. I am speaking now of the windows on the flat of the church.

Q. Neither the inside nor outside windows?—*A.* Neither were open.

Q. I suppose the noise differs according to the state of the atmosphere or the weather?—*A.* I don't know what causes the difference, but there are differences.

Q. Were you there on the evening of the eleventh of April, of the present month?—I was; I went to the church building about eight o'clock. I was not at any of the meetings before then, and cannot say what happened, but on that evening I remember distinctly the service. It was the first time that the windows had been taken off, and there were three trains passed after eight o'clock—I counted them; and there was another train which did not pass, but which was shunting up and down during a good part of the time; it seemed to be very close to the church, and seemed, as far as I could judge from the sound, up to Guy Street; I suppose it was a construction train. The first train that passed, passed while the Rev. Mr. Brown of Melbourne was praying, that was at 8.30; the bells were ringing and the steam was being let off, and it made a great noise, and although I was in the front half of the church I could not hear a word that Mr. Brown was saying during all that time. Afterwards there was another train passed while the Reverend Mr. Wood, of Ottawa, was preaching. It gave a loud puff as it passed, and I was particularly careful to listen to see if I could hear anything Mr. Wood was saying, and I could not hear anything. I could see by the motion of his lips that he was proceeding with his discourse. Then there was a third train passed while Mr. Barbour was speaking. I could not hear him at all. He stopped for a short while—for a few seconds—as the train was passing, and I could hear nothing whatever he said. Between these trains there was the other train, which was apparently shunting around and making a great noise.

Cross-examined by *Mr. Abbott.*

Q. You noticed a considerable difference in the noise when the windows were open and when they were closed?—*A.* I did.

Q. And after the double windows were down?—*A.* I did.

Q. Do you think it makes a considerable difference?—*A.* I do.

Q. Not very much, surely?—*A.* Considerable.

Q. Do you think the annoyance will be very much greater in summer when the windows are open?—*A.* I do.

Q. Now, on the night of the eleventh you could distinctly hear this train, and there was a great noise from this train that was shunting east of Guy Street?—*A.* You could going backwards or forwards, and then the sound would gradually recede again, and I could tell it was moving by the sound getting louder and then getting slighter. It was out of sound altogether at some part of the time.

Q. While you could not hear it, it must have been some little distance east of Guy Street?—*A.* Yes, I suppose so.

Q. Did that shunting train cause interruption?—A. It was distinctly heard and was an annoyance, but not sufficient to cause interruption.

Q. Diverge the attention of the congregation?—A. Yes.

Q. You are quite sure about the time this train passed?—Yes, I noticed it at the time.

Q. You were taking notes?—A. I was.

Q. You were paying special attention to these trains?—A. I was. I jotted it down so that my memory could not fail me.

10 Q. You jotted it down at the time the train was passing?—A. At the moment, at the same time, at the very time the train was passing, or within a minute or two afterwards.

Q. You seemed to be paying more attention to the train than you were to the minister?—A. I did pay considerable attention to the trains, and I tried to pay attention to the minister also, but as this was the first time the windows had been off I was curious to know what the effect would be, and I thought my evidence might be required, and wanted to be particular on the point.

Q. Did you note down the passing the second time?—A. I noted down the first time, which was at 8.30. The second may have been somewhat later.

Q. That was on a week day?—A. On Thursday.

20 And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 81.
Further
deposition
of Thomas
R. Macaulay
for pro-
prieters,
dated 29th
April 1889
—continued.

Schedule No. 92.

DEPOSITION OF GEORGE MCGARRY.

On this twenty-ninth day of April, personally came and appeared GEORGE MCGARRY, of the City of Montreal, Provision Merchant, a witness produced on the part of the proprietors in rebuttal, who, being duly sworn, deposeth and saith:—

No. 82.
Deposition
of George
McGarry for
proprietors
in rebuttal,
dated 29th
April 1889.

Examined by *Mr. Trenholme.*

30 Q. Were you present in Calvary Church on the evening of the third of March last, the occasion when Mr. Massey and another gentleman were present?—A. Yes.

Q. Do you remember whether there were any trains passed?—A. There was.

Q. Were the windows of the church all closed?—A. They were closed.

Q. Do the trains when passing, even when the windows are closed, create any disturbance or interruption in the church?—A. At all times when they pass we notice it, whether the windows are open or close.

Q. Did they that evening?—A. Yes.

Q. To what extent was there any interruption that evening?—A. It stopped the minister to stop, as far as I could hear.

40 Q. Where were you sitting in this church?—A. I think one or two seats below the middle.

RECORD.

*In the
Superior
Court.*

No. 82.

Deposition
of George
McGarry for
proprietors
in rebuttal,
dated 29th
April 1889
—continued.

Q. Behind or in front of Mr. Massey?—A. Right behind them. The seat behind them.

Q. The minister was the Reverend Mr. Hill?—A. Yes.

Cross-examined by *Mr. Abbott.*

Q. What part of the service was the minister in when the train passed?—
A. He was receiving two members.

Q. What was the minister doing?—A. He was reading the covenant.

Q. Will you swear that the inside windows were not open that evening?—
A. Yes, I am positive they were not.

Q. Did you examine them?—A. I took particular notice.

Q. Did you examine them?—You cannot help examining them if you are
in the church. 10

Q. Are there windows on both sides of the church?—A. Yes.

Q. Did you look at each window?—A. I will swear none were open.

Q. What made you look particularly?—A. Because we had two men that
came to take observation.

Q. So you took observation too?—A. I did.

Q. Would it make any particular difference whether the windows were
open or not?—A. Yes, quite a material difference in my mind.

Q. I am speaking of the inside windows being open; does it make any
difference if they are open or shut, provided the outside are shut?—A. Yes,
it would make a considerable difference. 20

Q. Did you notice that the noise is much greater since the double windows
have been taken off?—A. A good deal more so. Last night, for instance, the
minister had to stop, although the windows were all closed.

Q. Still you have no double windows on?—A. It would make a good deal
of difference then if there were double windows.

Q. You were in church yesterday morning?—A. Yes.

Q. Did any train pass?—A. No, except a small hand car.

And further Deponent saith not. 30

No. 83.

Further
deposition
of the Rev.
E. M. Hill
for pro-
prietors in
rebuttal,
dated 29th
April 1889.

Schedule No. 93.

DEPOSITION OF REVEREND MR. HILL.

On this twenty-ninth day of April, in the year of our Lord one thousand
eight hundred and eighty-nine, personally came and appeared Reverend Mr.
HILL, a witness recalled on the part of the proprietors in rebuttal, already sworn,
who deposes as follows:—

Examined by *Mr. Trenholme.*

Q. Since you were examined before, I believe the trains have been passing
Calvary Church?—A. Yes, sir.

Q. Would you just state now what effect you have noticed the passing of the trains have had?—A. There has been so much noise as to oblige me generally to stop when the train was going past, in my sermon. The morning trains do not pass, but in the evening, and that day that has been alluded to, when the association met, I was in the church morning, afternoon, and evening, with a number of other ministers, and there was such a succession of trains as to grow very tiresome before the day was over, and I was very glad when the day was over.

10 Q. Very serious interruption to the proceedings?—A. Yes. Last evening another minister was preaching, and in order to listen to him I took my seat in the audience, and I felt, what I had not noticed before, a tremble in the building when the train was going through. I have generally been standing and busy talking, so I had not noticed that.

Q.—You were present and took part in measuring that crack that there is in that wall of the church, outside?—A. Yes.

Q. When?—A. Yesterday.

Q. What is the size of that crack?—A. About half an inch, or less. We were walking in, and allusion was made to the crack, and having a measuring line in my pocket, I took it out while we were there. I noticed that.

20 Q. It is not over half an inch?—A. No, sir.

Q. Does that include the mortar?—A. That is from stone to stone.

Cross-examined by *Mr. Abbott.*

Q. You say last evening was the first occasion on which you noticed the trembling of the church, because on other occasions you were busy talking?—A. Yes.

Q. You mean you were talking while the train was passing?—A. Yes.

30 Q. You did not stop in your discourse while the train was passing; you said you stopped in your sermon?—A. Certainly, I consider the remark quite right. I am in the midst of a discourse; I might have stopped that particular instant.

Q. Would not the trembling of the building be during the passing of a train?—A. When anyone is warmed up in a discourse, and is troubled by what is going by, he does not think so much of his physical sensation.

Q. You generally have to stop; you don't always have to stop?—A. It is true; sometimes I try to make the least disturbance possible, and see if I can make myself heard. I remember distinctly an occasion, I cannot tell what night, I think it was last Wednesday evening at the prayer meeting, but a train stopped in front of the building to let off steam for some time, and I stopped to let it go by, but it stopped so long that I went on again.

40 Q. What was the occasion?—A. Prayer meeting.

Q. What days of the week do you hold your meeting?—A. Wednesday.

Q. In the evening?—A. Yes.

Q. Therefore it must have been Wednesday?—A. Well, it may have been some other entertainment.

RECORD.

By *Mr. Fleet.**In the
Superior
Court.*

No. 83.

Further
deposition
of the Rev.
E. M. Hill
for pro-
prietors in
rebuttal,
dated 29th
April 1889
—*continued.*

Q. When you were examined before, you said you felt the passage of the railroad was seriously going to interfere with the useful working of the church; have you had any reason to change your mind since that time?—*A.* No, sir, I have not.

Q. Do you not find that more a sentimental objection than a reality?—*A.* No, sir.

Q. Do you think the inconvenience is going to be so great as to necessitate a change of location or removal of the church?—*A.* It looks very much like it from the remarks I hear the people making here and there.

Q. Without referring to the people, do you, as pastor, feel that it will be necessary, an absolute necessity, to remove that church, or that you can conduct it with a fair degree of success under the existing circumstances?—*A.* It is hard to prophesy, but it looks dark.

10

By *Mr. McGibbon.*

Q. Have any of the parishioners left the church since the railway?—*A.* I do not know of any. The coming first of May some of the families are moving away.

By *Mr. Fleet.*

Q. You have no idea yourself of severing your connexion owing to the 20 inconvenience to the church?—*A.* Oh, no.

By *Mr. Trenholme.*

Q. Do I understand you to be of the same opinion as before, that the church cannot be successfully carried on with the railway in close proximity to it as it is?—*A.* Yes, sir.

Q. You have not changed your opinion on that?—*A.* No.

Q. You don't think you can make it a permanent successful working church the way it is?—*A.* Well, there are so many elements that enter into that, that I dislike to commit myself. You never know how loyally some people will cling to an institution in spite of obstacles. I know the people to 30 be warmly attached to the church.

Q. With regard to accessions to the church to take the place of those who die and naturally leave?—*A.* I fully expect to find as people come into the neighbourhood that they will seek connexion elsewhere.

Q. Do you think, Mr. Hill, that the drawback is so great that it would be a desirable move on the part of that church to go somewhere else and build another church?—*A.* Yes, decidedly.

Q. You have no doubt of that, that the interest of the church would call for that?—*A.* Yes.

Q. On account of this railway?—*A.* Yes.

40

By *Mr. Abbott.*

Q. How many new members have you had since the railway was there?—

A. I can only think of three or four young men.

Q. You had some joined quite lately, had not you, on the third of March?

—A. They have been attending the church for some time.

Q. New tenants coming into the neighbourhood?—A. Just a few young men.

Q. Have you had intimation from families going to join after the first of May?—A.—No.

10 Q. Besides the persons admitted to the full membership at that meeting, have you had any others who have been permitted to the full membership since the railway had been there?—A. I think there may have been one or two.

Q. It shows their definite intention to keep to the church?—A. With the hope to move elsewhere.

By *Mr. Trenholme.*

Q. Is there any expectation to move?—A. Yes. For instance, the question came up whether there should be a new organ or not, and I said wait until we know what is to be done.

By *Mr. Abbott.*

20 Q. Won't the widening of Guy Street necessitate the moving of that church?—A. I cannot tell.

Q. You don't know the fact that the homologated line runs part of the church building?—A. No, I do not know that. The question had been in my mind, but it has never been settled. I knew that there was an homologated line that was different from the existing line, but I did not know just where it would run. It was a curiosity in my mind; I never ascertained the exact location of the homologated line.

By *Mr. Fleet.*

30 Q. Were these young men who joined strangers in the City or persons who had any connexion with the church previously?—A. Well, one of them had connexion with Congregational Church in the Old Country and was living near us, so he came to the church, and another was a young man who happened to be boarding with him and came with him, and another who happened to be boarding with one of our families, and he naturally came with that family.

And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 83.

Further
deposition
of the Rev.
E. M. Hill
for pro-
prietors in
rebuttal,
dated 29th
April 1889

—continued.

RECORD.
*In the
 Superior
 Court.*

The Railway Company admit that the Exhibit number 42 refers to the church in question, and Exhibit 43 is the time table of the Grand Trunk Railway coming in force on the 28th day of April Eighteen hundred and eighty-nine.

No. 84.
 Deposition
 of Rev. Dr.
 Barbour
 (recalled by
 Arbitrators),
 dated 22nd
 May 1889

Schedule No. 94.

Atlantic and North-West Railway Company	Expropriators
and	
Calvary Church	Proprietors.

DEPOSITION OF REV. DR. BARBOUR.

On this twenty-second day of May, eighteen hundred and eighty-nine, 10
 appeared Rev. Dr. BARBOUR, a witness recalled by the Arbitrators.

Examined by the *Chairman*.

Q. Did you consider the inconvenience that you noticed on the evening to which you have alluded—I think it was the evening that there was an ordination of young ministers—was of so serious a character as to interfere with the successful working of a church?—A. I should say so, as far as I was concerned. I would find it impossible to preach with any satisfaction.

Q. Supposing you had been the minister of Calvary Church, and the railroad had passed in the position which it now occupies, and from what you noticed of the inconvenience on that occasion to which you have alluded, would 20
 you have considered it necessary to remove the church or remove the minister?

A. I don't think that a minister who has been used to a quiet church could use it.

Q. You don't think it is a matter that you could get used to in any way?—

A. I do not think it. I would not get used to it. I have always been used to quiet.

Q. How far do you think it would affect the attendance of the church; do you think it would tend to drive people from the church, or prevent people from coming to the church?—A. I could not judge, not knowing the Calvary Church people well enough, but I should say it would be a great drawback to the 30
 prosperity of the church in securing a congregation, that is clear to me.

Q. Had you any discussion with the Rev. Mr. Hill, who is the pastor of the church, on that occasion as to the inconvenience? I do not recall speaking to him at all about it. I spoke to the Rev. Mr. McCaddy at the festival below, because the passing of the train was so marked that everything was interrupted then, and I said I wished that the corporation of the Canadian Pacific Railway would see for themselves whether it was not an interruption. I do not recall speaking to Mr. Hill on the matter.

Q. When you spoke of your conversation with Mr. McCaddy "below," you mean in the schoolroom below the church?—A. I mean the vestry. The other interruption I spoke of was when I was in the pulpit during the service.

Q. From what you saw on that occasion you do not think that the ministry of that church could be effectively carried on under the circumstances?—A. I certainly think, in my judgment, it could not. That was my impression. This was a peculiar occasion, it was an ordination service.

10 Q. You have stated that the occasion to which you refer was a peculiar occasion, but I am now speaking of the general conduct of the church and the general ministry of the church, from year in and year out, whether you think that in itself would be permanently interfered with by the present position of the road?—A. Yes, I would say that; my judgment is that it would.

RECORD.
—
*In the
Superior
Court.*
—
No. 84.
Deposition
of Rev. Dr.
Barbour
(recalled by
Arbitrators),
dated 22nd
May 1889—
continued

Questions by *Mr. Abbott.*

Q. Would you go so far as to say that it would be impossible to carry on that church there?—A. It would if I were its minister. I can only answer for myself.

Q. But you personally, being of a nervous disposition, would not be able to stand the noise and wear and tear and inconvenience of a train?—A. I would not, and I fail to see how anybody could.

20 Q. Has it been in your experience that churches have been carried on near railways and near large manufactories, such as boiler shops and so on, where there is necessarily an amount of noise?—A. I have had no experience to testify in that matter.

Q. Are you not aware that churches have to be carried on sometimes very close to railways, or where there was noise which would interrupt the service as greatly as the noise would in this case?—A. It may be, but I cannot testify in regard to the matter because I have never been in a church where I heard noise, nor have I any knowledge of a church near a railway.

And further Deponent saith not.

Schedule No. 95.

DEPOSITION OF REV. MR. MARLING.

30 On this twenty-second day of May, appeared REV. MR. MARLING, recalled by the Arbitrators.

Examined by the *Chairman.*

Q. Referring to the occasion of which you have spoken in your former examination, that is, the ordination of certain young ministers at Calvary Church, and the inconvenience that you noticed on that occasion caused by the passage of the railway, do you think that the present position of the railway will cause an inconvenience which will seriously interfere with the conduct and

No. 85.
Deposition
of Rev. Mr.
Marling
(recalled by
Arbitrators),
dated 22nd
May 1889

RECORD.

*In the
Superior
Court.*

No. 85.

Deposition
of Rev. Mr.
Marling
(recalled by
Arbitrators),
dated 22nd
May 1889—
continued

ministry of the church?—*A.* I do. The thing might be borne once on a special occasion like that, but when it becomes an habitual matter, and is to be counted on at every service, then the annoyance is far worse than that which only existed on one occasion.

Q. Will you please state the different points of annoyance which would arise?—*A.* It would be an annoyance to everything but singing. And then there are many portions of the service of course when a man is in full tide of speech, and is in what may be called an exalted state of mind, and he speaks out loudly and fully, but that is rather the exception. There are a great many portions of the service, and especially during prayer, when the natural language of reverence is that of a subdued tone of voice, also any announcement, or any plan exposition of his subject, when his voice is on a level, and in all those cases you want quietness, and if there is noise you have to shout when it is unnatural to do so, and it is a source of very great annoyance to the preacher and also to the hearers. I think the disturbance to a nervous man, as Mr. Barbour has spoken of, is a great hindrance to him, and on the other hand a great many persons would fail to catch what he was saying, even if the noise were not so overpowering as to compel him to stop altogether. I could not tell from that one instance whether the noise would be as great as that, but it might be, and the instance I quoted when I was here before, in that church in London, it was utterly impossible to do anything; you would have to stop absolutely. I don't know whether in this case it would be so serious as that.

Q. If you had been the pastor of the church at the time the railway passed would you have considered that the passage of it necessitated the removal of the church in order to carry on the church successfully?—*A.* I certainly would want to take it away. These are very much matters of degree, and I would hesitate to use so strong an expression as to say it was utterly impossible to go on. One might live next door to a boiler shop, and it would not be impossible to live, but it would be undesirable. Supposing the railway were standing there, and I were in Mr. Hill's place, the pastor of that church, and I were offered a lot such as the one he now occupies, I should not dream of taking such a site as that or accepting it for a church in that position.

Q. Do you think that Mr. Hill can under the circumstances carry on that church as efficiently as he could have done before the railway was there?—*A.* Certainly not as efficiently. I am sure on that point.

Q. Do you think it would be a discouragement to persons joining and would interfere with the growth of the church?—*A.* I think so.

Q. Now, the inconvenience which you suffered, was it so great that you think it would be felt by most preachers. You don't think that you are specially nervous and specially inclined to be put out by any slight noise; it was an inconvenience which would be felt by any people?—*A.* Yes. I think I am more indifferent to most of those things, as I do not feel the annoyance of children or people coughing in church as seriously as some people do.

Q. Was the inconvenience more noticeable when you were in the school room below or in the auditorium or church proper; did you notice any distinction in that respect?—*A.* We were first in the room at the back of the

church; there was the light there, right against the railway. The windows in the main body of the church are out of sight, and I think we got more of it in the small room downstairs where the Bible class is held.

Question by *Mr. Abbott.*

Q. If I understand you right, Mr. Marling, in your opinion the pastor will not be able to carry on the service as efficiently, but in your opinion it would not be impossible to conduct the service?—*A.* I could not go the length of saying it would be an utter impossibility.

10 Q. As a matter of fact, you are aware that service has been conducted since, and not been given up?—*A.* Yes.

Q. Now supposing that one or two trains passed that church every Sunday in the course of each service—the morning and evening services—would you consider that that would cause more than a temporary interruption to the service, even supposing the noise was such as to cause the preacher or person speaking at the time to stop?—*A.* Well, of course if the noise was so great as that, and the preacher had to stop, he could begin again; it would not so paralyze him that he could not begin again.

20 Q. Supposing that the preacher would be so interrupted not more than twice during each service, would you consider that that would seriously interfere with the conduct of the church?—*A.* I do, because, in the first place, a man loses the whole of his thread very likely, and he loses the whole attention of the people, which is * a very easy thing to get, and if it is shaken out of his hand * *Sic.* it is not very easy to get it back again.

Q. Of course, I understand if such an interruption occurred the pastor would not be able to carry on his service as efficiently as before, but it seems to me it would be only a temporary interruption?—*A.* And a temporary interruption occurring every Sunday becomes a very serious matter.

Q. It means that the service will be temporarily interrupted every Sunday?—*A.* Yes.

30 Q. Do you think that the result of such interruptions would be losing of the congregation, or any material part of it?—*A.* If it depends upon individual feeling I would rather not judge in that way. The question has not come before me. In any case I have no experience on the subject, and old members of the church who are attached to it and attached to the minister will often stay in spite of very serious objections, but suppose a new person were coming in there the remark would most likely be, "I don't want to go there, because the service is interrupted by the trains."

10 Q. In the case of the church that you mentioned, in London, I think that the congregation there did not fall off, did it, to any extent?—*A.* I have no means of knowing. I was a lad, and visiting London for two or three weeks, and I attended the service, but the general condition and history of the church I do not know.

By *Mr. Fleet.*

Q. Would you yourself personally accept the charge of a church so situated?—*A.* Well, sir, it would take a great deal on the other hand to outweigh

RECORD.

*In the
Superior
Court.*

No. 85.

Deposition
of Rev. Mr.
Marling
(recalled by
Arbitrators),
dated 22nd
May 1889—
continued.

RECORD. that. I don't make any such strong affirmations in regard to such matters. There might be circumstances which would make me feel it was a duty in spite of all that. Sometimes a man is called to save a congregation from being broken up, would go.

*In the
Superior
Court.*

No. 85.
Deposition
of Rev. Mr.
Marling
(recalled by
Arbitrators),
dated 22nd
May 1889—
continued.

By *Mr. Abbott.*

Q. If the call was made upon you to serve in such a church and you felt it was your duty to do so, you would do it?—A. I would do it with a view of changing as soon as I could.

Q. Do you think it would be desirable for the success of the church?—

A. Yes.

And further Deponent saith not.

10

No. 86.
Deposition
of Charles
Dodwell for
the Com-
pany, dated
19th Jan.
1889.

Schedule No. 96.

In the matter of

The Atlantic and North-west Railway Company

Expropriators

v.

Calvary Church

Proprietors.

On this nineteenth day of January, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared,

Charles Dodwell, of the City of Montreal, Civil Engineer, in the employ of the Canadian Pacific Railway Company, aged thirty-five years, and a witness produced on the part of the Company, who, being duly sworn, deposeseth and saith :—

Examined by *Mr. McGibbon.*

Q. Have you made an examination of the premises adjacent to the Calvary Church property?—A. Yes.

Q. And of the lane which is passed by the railway track there?—A. Yes.

Q. Would you please state the distance from the nearest part of the church structure to the rails?—A. Twenty-nine feet four inches, that is from the nearest point of the church to the rails.

Q. What is the height of the trestle-work from the ground?—A. From the top rail to the ground about 27 feet, that is from the top of the rail to the surface of the ground. It may be a little less—between 25 to 27.

Q. Have you examined the structure?—A. Yes. I designed the structure and built it.

Q. Will you please state whether, as a matter of fact, the trestle-work touches any portion of the lane?—A. No, it does not.

Q. Where are the supports of the trestle-work placed?—A. They are placed as shown on the plan. There are two supports on the property acquired from Hannah, and the next supports are on the south side of the lane. No part of the lane is touched by the trestle work.

40

Q. What is the height of the trestle work above the lane?—A. A minimum of twelve feet.

Q. There is a clear passage way of ten feet wide and twelve feet high right along?—A. Yes, mostly more.

Q. Do you know, having seen the plans of the Company, what their intention is with reference to the future maintenance of the trestle work there?—

A. The intention of the Company is to replace that trestle work by a permanent stone viaduct similar to that now built between Guy Street and Aqueduct Street, which at this point will be so designed so as to afford the same clear
10 passage for this lane as at present arranged.

Q. That is quite feasible?—A. Yes, quite feasible.

Q. This trestle work will not take any part of the lane any more than the trestle work does now?—A. No.

Q. There is no talk of an embankment or filling up of this trestle work—that is, not contemplated at all?—A. No, it is not contemplated at all. We have not room.

Q. Do you know anything about the line of Guy Street having been homologated?—A. Yes, there was an homologated line increasing the width of the street to seventy feet. The line passes right through the church.

20 Q. How do you know that?—A. Because at my formal request the City authorities of the Surveyors' Department laid down that line, in order that I might build the west abutment on Guy Street on the homologated line.

Q. Which you have done?—A. Yes.

Q. And that line of the street would pass through the church?—A. Yes.

Q. How far back from the present line of Guy street is this homologated line?—A. About thirty feet.

Cross-examined by *Mr. Trenholme.*

Q. It is the Canadian Pacific Railway, as the lessors of the Atlantic and North-west Railway Company, that are building this line into the City, is it not?
30 —A. I cannot say.

Q. How do you come to be working upon and planning a line for the Canada Atlantic and North-west Railway Company when you are in the employ of the Canada Pacific Railway?—A. These are technical points that I know nothing about.

Q. You understand the two companies' interests to be identical?—A. Yes, I know that; it does not matter a bit to me.

Q. Did you ascertain the shortest distance between the church and the trestle work?—A. What part to the trestle work do you mean?

40 Q. The nearest part to the church?—A. I have stated the nearest point to the rail.

Q. But the trestle work?—A. Yes, I have.

Q. What is it?—A. Twenty-one feet eight inches. That is the shortest distance between the church and any portion of our trestle work.

Q. When you say that the trestle work does not touch the lane, you mean that the supports are not planted; but you do not mean to say that the trestle

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*In the
Superior
Court.*

No. 86.
Deposition
of Charles
Dodwell for
the Com-
pany, dated
19th Jan.
1889—
continued.

work is not carried over the lane?—*A.* Yes, it is carried over the lane, but no supports of the trestle work occupy ground upon the lane.

Q. In what ground are the supports placed, on the side of the lane nearest to the church?—*A.* On a piece of ground expropriated by the company from a proprietor, John Hannah.

Q. Do you know that there is a curve in the road, near the church, there?—*A.* Yes.

Q. How near is that curve to the church?—*A.* The curve begins at a point about twenty feet west of a point at right angles to the church.

Q. To the west end of the church?—*A.* Yes, it begins about twenty feet west from the church.

Q. It is all east of that line, is it?—*A.* Yes, it is all east of that line.

Q. Is there not another curve west of the church, running west?—*A.* Yes, it is a short curve.

Q. How far is that from the church?—*A.* It is five or six hundred feet.

Q. But it begins nearer than that, does it not?—*A.* No.

Q. The new homologated line of Guy Street, which you have spoken of, is a line which has been homologated quite lately?—*A.* Of that I have no knowledge; I do not know the date of the homologation.

Q. I thought you said it was done on your own representation?—*A.* The homologation was made I do not know how long ago; I said that the City authorities, at my request, defined that homologated line.

Q. You don't know when the line was laid down?—*A.* No, I have not the least idea.

And further Deponent saith not.

G. H. EATON,
Stenographer.

No. 87.
Deposition
of J. H.
Wood for the
company,
dated 12th
February
1889.

Schedule No. 97.

On this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared, 30

J. H. WOOD, of the City of Montreal, Builder and Contractor, who being duly sworn as a witness on the part of the Railway Company, deposeth and saith :—

Examined by *Mr. Abbott.*

Q. You are a builder and contractor in the City of Montreal?—*A.* Yes.

Q. For how many years?—*A.* Thirty or forty years.

Q. You know the premises in question—Calvary Church?—*A.* Yes.

Q. And the manner in which the railway passes by there?—*A.* Yes.

Q. Can you make an estimate of the value of the property on which the church is built, the square block marked A on the plan exhibit No. 10?—*A.* 40 Yes, I have estimated that land as worth about fifty cents a foot. I was

offered the corner of Guy and St. Antoine street last year at seventy-five cents a foot. RECORD.

Q. Would you consider that property more valuable than this one?—A. Far more valuable. This has only got a level front, and it is sixteen feet deeper behind than it is front.

*In the
Superior
Court.*

No. 87.

Deposition
of J. H.
Wood for the
Company,
dated 12th
February
1889—

continued.

Q. How much greater would you consider the value of the lot you were offered at seventy-five cents last year?—A. I would think it was worth two-thirds more anyway. It cost a lot of money to make this property fit for any other buildings to bring it level with Guy Street.

10 Q. It is on a hill?—A. Yes. Merely the front of it is on a level with Guy Street.

Q. You observe on the plan, Exhibit 10, that the homologated line of the street is shown there; did you take that into consideration at all?—A. Yes, because I suppose that would be paid back to the proprietors by the City.

Q. As to the value of the church building?—A. I consider the church worth about twelve thousand dollars—that is the outside valuation.

Q. Do you mean that is the actual value of it to-day, or is it what a new one could be built for?—A. A new one could be built for that to-day.

Q. It could be built for that?—A. Yes.

20 Q. As a contractor, would you be willing to do it yourself?—A. Yes.

Q. Did you observe any effect on the south corner wall of the church?—A. Yes, the south corner wall has got a crack in it; that is caused by reason of the foundations not being level. The foundation in the front is not on a level with the foundation in the back.

Q. Did you take that into consideration in making your estimate of the value of the church?—A. Yes, that is my opinion, and I suppose your plan would show that. The different stratas of earth will support a different weight, consequently, if you have got as much weight in the front on ground six or eight feet higher than it is in the back, either one or the other will settle more
30 than the other will.

Q. Do you consider that that property is damaged in any way by the railway?—A. I don't suppose there is any damage; there is no more annoyance than if a street car was passing. I have been in the building; I was there while three trains were passing.

Q. In the building?—A. Yes. I have been on three different occasions; the last occasion I went in there on Saturday, the 9th, and there were three trains passing. There was one standing there; it moved off, and I stopped there until two others had passed, and, of course, you could hear a little hum, the same as you hear with a street car passing, but nothing to annoy a service.

40 Q. You do not think it would be sufficient, such an annoyance, as would drive away a congregation and render the church valueless as a church building?—A. Oh, no. Of course it would be valueless, if you take off this difference for the width of the road.

Q. You are speaking of the City taking away the homologated increase of street?—A. Yes.

RECORD.

*In the
Superior
Court.*

No. 87.
Deposition
of J. H.
Wood for the
Company,
dated 12th
February
1889—
continued.

Q. In your opinion, Mr. Wood, you would not give any diminution from the value you have given on account of the passage of the railway?—A. I think not; the railway does not pass parallel with the building. It passes something like twenty-five or thirty feet from the corner—corner ways—the back corner of the building. It is considerable distance on the front from the railroad on the street.

Cross-examined by *Mr. Trenholme.*

Q. Were you in the building on Sunday, Mr. Wood?—A. I have been in the building several times on Sunday.

Q. Were you last Sunday?—A. I was not; on Saturday, the 9th, I was in the building last. 10

Q. You say there were three trains that passed?—A. Yes.

Q. How long were you there?—A. I was there about the building probably an hour and a half.

Q. Within that time did these three trains pass, that you speak of?—A. They all passed inside of half an hour.

Q. And one you say stopped?—A. Stood there.

Q. Where?—A. On the west side of Guy Street; the engine would be about on a line with Guy Street, on a line with the front of the church.

Q. Did it blow off steam there?—A. As they ordinarily do; it stood there for some time. 20

Q. Where were you when that engine was standing?—A. On Guy Street.

Q. In the church?—A. Yes.

Q. At the time it was stopping?—A. Yes.

Q. Did you hear it blow off steam inside?—A. No.

Q. You could not hear that?—A. No.

Q. You cannot hear the steam being blown off?—A. You might if very high steam, you might hear the pop valve go.

Q. I understand that the conclusion you come to is that the railroad is no damage at all to that property?—A. No, none whatever. 30

Q. Would you go further, and say it is an improvement to the property?—A. No.

Q. Just leaves it as it was. That trestle work is no disfigurement to the property at all?—A. No, because it is back off the street, stone wall in front. The trestle work is behind.

Q. You have spoken of it costing a good deal to fit that land for other purposes—filling it up and so on; at how much per foot would you estimate the value for making that property available for other purposes?—A. I would have to measure it to see how many thousand yards of clay it would take to fill that. 40

Q. You have no idea, approximately?—A. No, I did not measure that.

Q. You could not give an idea?—A. Not without measuring.

Q. You speak of being willing to build a church like that for twelve thousand dollars?—A. Yes.

Q. You have said that?—A. Yes.

Q. Have you ever built a church?—A. No.

Q. Is it not a fact you are a railway contractor?—A. Yes.

Q. How long have you been a railway contractor?—A. Thirty-five or forty years.

Q. Have you had any contract with the company in question or the Canadian Pacific Railway?—A. No.

Q. Neither railway nor otherwise?—A. Neither railway nor otherwise.

Q. Have you any freight arrangements with them?—A. Not now. I have had freight arrangements; I had a year ago.

10 Q. What is the last railway you have built; tell us the last road?—A. The last road I built was the Rockland road.

Q. Did you build that road?—A. Yes.

Q. Did you complete that road?—A. No.

Q. Why did you not complete it?—A. There was some difference between the proprietors and I.

Q. Is it not a fact that you completely broke down in that contract?—A. No, but your friends tried to make it so. I beat you four times in court, and expect to beat you the fifth time.

20 Q. You think the proprietors did not do right in that contract?—A. That is a question between them and me, to be decided by the courts.

Q. Who are the proprietors you refer to?—A. The owners of the road.

Q. Who are they?—A. Gentlemen in Montreal.

Q. Is it not a fact you went away from that contract without paying your men on it?—A. No, sir.

Q. It is not a fact?—A. No. I paid my men as far as money went. That was all settled afterwards, and that concern was glad to pay them.

Q. When you say that a building like that can be built for twelve thousand dollars, have you made an estimate of it?—A. No.

Q. Where is it?—A. In my head.

30 Q. How many bricks did you estimate?—A. I do not carry the number of bricks in my head.

Q. Do you know what price you allowed for them?—A. Yes, I have an idea.

Q. What did you allow?—A. The price of ordinary contract.

Q. What is that?—A. That is an unnecessary question.

Q. You decline to answer how much you allowed?—A. Yes.

Q. Do you remember what you allowed for the carpenter work?—A. Not exactly.

40 Q. Could you not give it approximately?—A. No; I made an estimate. I am an architect, contractor, and railway builder and pile driver, and a man that generally understands what buildings are.

By *Mr. Abbott.*

Q. Did you observe in examining the property whether there was a house on Guy Street, below the church, between it and the railway?—A. Yes.

Q. Will you look at the plan, exhibit No. 10, and show us whereabouts that house lies?—A. Between the church and the railway track.

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Superior
Court.*

No. 87.

Deposition
of J. H.
Wood for the
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continued.

Q. That would be on the lot marked "Peter Small," there?—A. Yes.

Q. Did you notice how deep that house was?—A. I should think that house is probably about thirty feet; I did not measure it, but I think about thirty feet.

By *Mr. Trenholme.*

Q. Have you not appeared a great many times as a witness for the company in connexion with these arbitrations?—A. I think I have appeared four times or five times, about some farm land.

Q. Do you know that your estimates of the damage have in some cases been exceeded by the awards by four or five or even ten times the amount you estimated?—A. Not to my knowledge. 10

Q. What was your estimate in the case of the farm of Thomas Trenholme?—A. I thought my estimate was something like what your award was. I could not bring to my mind exactly what it was, but it was not so much as that I think.

Q. Was it not about twelve hundred dollars?—A. I forget exactly what my estimate and what the award was.

Q. How long is it since you gave evidence there?—A. It might be perhaps six weeks.

Q. You have no idea what your estimate was?—A. I always leave my business behind me. I have no knowledge that my estimate was either higher or lower than the awards they got, for I never heard what the awards were. 20

And further Deponent saith not.

G. H. EATON,
Stenographer.

Schedule No. 98.

On this twenty-third day of February, in the year of our Lord one thousand eight hundred and eighty-nine, re-appeared the witness J. B. RESTHER, and produced exhibit 39, a statement of the detailed quantities, requested by Mr. Trenholme. 30

Schedule No. 99.

On this twenty-third day of February, in the year of our Lord one thousand eight hundred and eighty-nine, personally came and appeared,

HENRY IRWIN, of the City of Montreal, Civil engineer for the Company Defendant, and a witness produced on the part of the Railway Company, who being duly sworn, deposes and saith:—

Examined by *Mr. Abbott.*

Q. You are an engineer in the employ of the Defendants, are you not?—
A. Yes.

No. 88.
Production
of Exhibit
39 by J. B.
Resther
(recalled)
for the
Company,
dated 23rd
February
1889.

No. 89.
Deposition
of Henry
Irwin for the
Company,
dated 23rd
February
1889.

Q. Do you know whether the switch near this church is permanent or not?
—A. I believe not. It has never been shown on any of the plans I have made.

Q. It was part of your duty to make these plans?—A. Yes.

Q. And the switch which is now there and being used at the present time is not on those plans at all?—A. No; it is only used because the double track is not made from Guy Street out westerly, so we have the switch there to connect the two tracks.

Q. It is merely a temporary arrangement?—A. Yes.

Q. When will the new track be built?—A. The double track will not be
10 ready for running on until the spring.

Q. It will be ready for the spring?—A. Whenever they can ballast it and whenever the weather is good enough.

Q. Mr. Irwin, have you been in this church when the train was passing?
A. Yes, I was there last Sunday night when the train passed.

Q. During service?—Yes.

Q. Just describe what the effect of it was?—A. It did not make any very great noise, not sufficient to prevent me from hearing the clergyman who was speaking.

Q. Did it interrupt the service?—A. No.

Q. Did the clergyman stop speaking?—A. I do not think so. He had
20 just come to the end of a period in his sermon when the train was passing. He paused a few seconds, but whether it was on account of the train going passed I could not say.

Q. What would you compare the noise you heard of this train with—give us some comparison?—A. I have heard just as much noise during service at St. George's Church from the busses going up on Sunday evenings. They make sufficient noise sometimes to prevent us from hearing what the clergyman was saying.

Q. Then the noise of these busses would be even greater than there?—

30 A. About as great I should think.

Q. You are in the habit of attending St. George's Church regularly?—

A. Yes.

Q. And you frequently heard the busses passing?—A. Yes.

Q. How long could you hear the sound of the train in that church?—

A. I should not think we heard that sound for more than a minute; we seemed to lose sound of it very quickly as it got towards Seigneur Street.

Cross-examined by *Mr. Trenholme.*

Q. Do you know whether the company have any switching grounds west of this church, or intend to have any?—A. No, sir, I do not know.

40 Q. You do not know what their plan is?—A. Well, of course with regard to the company's intentions in general, of course I am not consulted, but there is no place for switching grounds west of the church; there is only room for the double track.

Q. But out further, is it not their intention of establishing switching grounds?—A. Not that I ever heard of; we have no grounds where there would be space.

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*In the
Superior
Court.*

No. 89.
Deposition
of Henry
Irwin for the
Company,
dated 23rd
February
1889—
continued.

RECORD.

*In the
Superior
Court.*

No. 89.
Deposition
of Henry
Irwin for the
Company,
dated 23rd
February
1889—
continued.

Q. Where will the trains be run as they come into the depôt; where will the cars and the engines be kept?—*A.* The engines would run into the round house, east of Aqueduct Street, and the only ground we have for cars is along east of Aqueduct Street.

Q. Will they all be kept east of Aqueduct Street?—*A.* I should think so; we could not block our main line with cars; we have only a double track west of Aqueduct Street.

Q. How far is the engine house from Guy Street now?—*A.* Somewhere about eight hundred or a little more feet.

Q. When have you heard the busses pass St. George's Church?—*A.* I have attended St. George's Church for about four or five years. 10

Q. Do they make much noise?—*A.* You can hear quite considerable noise.

Q. Enough to interrupt the service?—*A.* Yes, for the short time they are passing the church; it is not very easy to hear what is being said.

Q. Is it your opinion that a train passing within twenty or thirty feet of the building does not make more noise and commotion and disturbance than busses passing?—*A.* It was not my experience in that case.

Q. Would the noise be greater this season of the year, when the snow is on the track, or in the summer time?—*A.* The track just adjoining the church there is trestle work; I do not know that the weather would make very much difference, and immediately after that there is a bridge. 20

Q. Did you hear the train pass the bridge on Sunday night?—*A.* I could tell the difference in the noise passing the bridge.

Q. Did the clergyman suspend his service at all?—*A.* Not noticeably; he stopped for a few seconds, but what his reason was for stopping exactly, I could not say. I do not care to give much evidence in regard to the conduct of the services.

Q. You went there to listen, to see what the effect was?—*A.* That was my object in going there instead of St. George's Church. He had been preaching with regard to Sunday observance, and had been mentioning the running of trains and other things; and my impression was at the time he paused, was that he wished to emphasize the fact that this was breakage of Sunday observance; that was my impression at the time. There was no necessity to stop on account of the noise. 30

Q. Is it your opinion that that church is quite as well built within that distance of the track, in the way it is there, as if in a retired place?—*A.* I should not say so.

Q. You don't mean to say that?—*A.* I don't mean to say that some people may not wish to hear a train going past. 40

Q. Have you noticed along the Grand Trunk Railway, for instance, through the city part of the town, that within the distance of the Grand Trunk Railway, it is the most unsightly set of buildings, rubbish, and everything of that kind?—*A.* There are very few nice buildings along the Grand Trunk Railway, in fact I think they give a person a very poor impression on coming into the City.

Q. It has a very dilapidated bad look?—*A.* Yes, that is once you get into the part that is closely built on.

Q. You would not think along that range there a suitable place for a voluntary successful church?—*A.* I don't think so, though in one sense if people are willing to live at such a short distance as they do from the railway, I don't know if the people who live there and sleep there would object to having a church there.

Q. They would get used to it?—*A.* Yes, that is the people in that neighbourhood.

By *Mr. Abbott.*

Q. Do you know of some rather nicely built new villa residences built quite close to the Grand Trunk Railway at the Tanneries?—*A.* Yes, there are one or two very nice houses adjoining the Cote St. Paul Road.

Q. Do you refer to Mr. Leggatt's?—*A.* I could not say whose they are. I have seen a good many quite close to the track. There are one or two houses recently built quite close to the track.

Q. These are villa residences, are they not?—*A.* Yes.

Q. Of considerably better character than the ordinary houses in St. Henri?—*A.* Yes.

Q. What distance from the track?—*A.* Well, I could scarcely say. There was one of them there looks about one hundred feet from the track, as well as I could remember. I could not say exactly. There are two lots there immediately adjoining the railway.

Q. Did you observe that the proprietor of the property built a new house and new villa residence there about two years ago, and then another one this summer?—*A.* I know there was one built this summer. I do not know when the one previously was built. I don't know who built them.

Q. The same distance from the track?—*A.* I think the one that was built later is nearer to the track.

By *Mr. Trenholme.*

Q. Do you know under what circumstances those houses were built?—*A.* No.

Q. You don't know whether the proprietor owned those houses a long time and could not sell, but had to build on them?—*A.* I know nothing about the proprietorship.

By *Mr. Brodie.*

Q. Are you aware that the proprietor had great trouble in leasing one of these houses he had built?—*A.* No, I do not know anything about that.

Q. About these busses that you speak of, passing St. George's Church, was not that only in the summer?—*A.* Yes, that is the only time they run busses.

Q. It was only during the summer that the church service was affected?—*A.* Yes.

Q. You spoke about ballasting—what do you mean by that—is that in the close vicinity of the church?—*A.* No; you ballast a track all along,

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eighteen inches deep of ballast on top of the ground; that is what the ties are bedded in.

Q. Not opposite this church?—A. No. There is no ballast opposite the church because that is trestle.

Q. You don't know whether it is intended to ballast it?—A. Oh, no.

Q. Could not you fill it in and then ballast it; is not that the intention?—A. I know nothing about the intentions.

Q. Are you aware that the trains have been made up at the Canadian Pacific Railway Station, what section?—A. Coming into Windsor Street, they would be particularly made up at the depôt, but further I do not know. 10

Q. You are not aware that it was the purpose to make them up on the canal property which the Company acquired?—A. Quite the contrary, sir. I have made several plans of subdividing the canal property into building lots.

By Mr. McGibbon.

Q. Did the train passing on Sunday night create any general sensation in the church?—A. I did not notice any. I noticed no disturbance on account of that train at all.

Q. I suppose all the windows were closed at the time?—A. Yes, but it struck me we could hear sleigh bells.

By Mr. Fleet.

20

Q. Were the doors closed?—A. I should imagine so, but the weather was mild, and I thought the door might possibly be open as I heard sleigh bells plainly, just as plain as on the street. It was a mild night.

Q. What do you think would be the effect of the train upon the service passing there, on a summer evening with the windows all open?—A. I should imagine if the windows were all open the tendency would be to hear the sound somewhat plainer.

Q. Do you think the inconvenience would be so great under those circumstances; would it not interrupt the service?—A. I should scarcely think so. Our track there is not what you call a noisy track by any means.

Q. There was only one train passed there while you were there?—A. Yes. 30

Q. You have no idea how many trains they intended to run in and out a day on that track?—A. No, sir.

Q. Do you think the train, if stopped, in summer with the windows all open, to blow off steam there, would have the effect of interrupting the service?—A. I should think a good strong blow off of steam there would have the effect of interrupting the service.

Q. Now, in the event of the church being occupied, for instance, on a Wednesday evening or any other evening during service, during the time that the meeting was being held, do you think these trains would be sufficient in number and the noise sufficient to interrupt a service?—A. As far as my experience goes, I do not think the noise would be sufficient for rendering the voice from being heard. 40

Q. Well, I will put it on a personal ground; supposing you had been an attendant of that church for a great many years, would you consider that the passing of the trains in the way in which they do would be sufficient to interfere with your enjoyment of the church as a place of worship?—A. I should think that is a question that would depend a great deal on one's liability to be disturbed. My feeling in the matter, as far as my experience can go, and that is the only way I have to judge, is that the train did not make any disturbance as regards noise, but some people may object to hearing trains running backwards and forwards.

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—
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10 Q. Do you think the effect of the passage of the railroad in the position in which it does would be a character to lessen the attractiveness of the church as a church to people who might be thinking of joining the church?—A. That is a question that each man would have to answer for himself. As far as my experience went there was nothing in regard to the passage of that train on Sunday night that would prevent me going again, or even if two or three trains passed; there was not a succession of trains. There was nothing to prevent me from going on account of those trains going past.

20 Q. And I suppose during the course of a week it would be natural to expect there would be a succession of trains passing there; do you think that a succession of trains passing there would be a character to interfere with the service, with the quiet that is supposed to surround the service, of course, taken in connexion, that the possibility of stopping there to blow off steam?—A. With regard to that I have heard that orders have been given that there should be no disturbance made inside the City with regard to the traffic arrangements, and of course, once that switch is taken away, there is no necessity for trains stopping there to blow off steam. The orders are that there is no necessity for ringing bells, to begin with, because we cross no roads on the level, and there is no necessity for blowing off steam in that neighbourhood.

By *Mr. Abbott.*

30 Q. Will you state what the orders are?—A. I heard orders were given that there should be no unnecessary disturbance; the Company generally do their best to please their public.

By *Mr. Fleet.*

Q. I suppose it is a reasonable assumption to assume that in the course of an hour there are half a dozen trains passing one way or another during, for instance, the hour between seven and eight on a summer's evening?—A. One might assume so if the traffic is very great.

40 Q. Taking that as an assumption, do you think that the passage of these trains is likely to interfere with the service held there during the week or on Sunday if that number of trains passed?—A. I don't think there is much use raising the assumption on Sunday, because there is so little traffic on Sunday that there is no such thing as six trains passing. With regard to week days supposing three or four trains passed, people may object to hearing trains

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running past, but they have got to hear carriages and busses and all those things going past all the same. I am working more or less on assumption; it is not a question of fact. Can you get a place in the City where you can get that perfect quiet that some people wish to get? I don't think there is a place in the City like that; I think it is quite the contrary, and that is the reason it is so difficult to answer such a question.

Q. Do you think the passage of say six trains during the course of an hour past the church will aggravate the noise of the passage of carts and other noises that are incidental to the position of the church, and have been incidental to the position of the position of the church ever since it has been built?—A. Yes, there would be an increase of noise due to the trains going past.

Q. Do you think the increase of noise will be of such a character as in any degree to interfere with the conduct of the service during week days?—A. From the simple passage of the trains, as far as my experience goes, I don't think it would interfere with the service; it would not interfere with people hearing, and if there was singing going on, I don't think you could hear the passage of the train.

Q. Suppose the minister was in the middle of his sermon, as some gentlemen said here, making a special point in connexion with the sermon; do you think the passage of the train would so divert the attention as to interfere with the impression he proposed to make?—A. I scarcely think so. Of course if there was a lot of whistling and bell ringing and blowing off steam it would. I am referring to the train passing without that.

By Mr. McGibbon.

Q. How many trains on the average leave and arrive at the Windsor depôt between the hours of half past seven and ten o'clock at night on week days?—A. I do not know. You could get that by looking at the time table. I don't think there is more than one or two.

Q. And on Sunday evening?—A. Not more than two, I think, as far as I am aware—I am only aware of one train to Ottawa. Of course, our North Shore will always go down to Dalhousie, but the Winnipeg traffic will come in here. The double track would not necessarily bring in more trains, but the Winnipeg traffic has to come in.

Q. What trains come in there?—A. I am not posted with regard to the trains, and I could not say.

By Mr. Trenholme.

Q. Suppose half a dozen trains were to pass on a summer evening while service was going on there, and the windows and doors of that church were open, as they would be on a hot summer evening, would there not be disturbance from noise, and very considerable inconvenience from the smoke and gas coming in?—A. If the wind was blowing towards the church it is quite possible.

By *Mr. Abbott.*

Q. Would these annoyances that have been suggested be sufficient in your opinion to cause you, if you had been a member of that church for some years, to leave it?—*A.* Well, I should not think they would.

Q. What are the prevailing winds in summer, in what direction?—*A.* Always a westerly wind.

Q. Do you know how this church lies from the railway?—*A.* It lies north-west.

And further Deponent saith not.

RECORD.

*In the
Superior
Court.*

No. 89.
Deposition
of Henry
Irwin for the
Company,
dated 23rd
February
1889—
continued.

G. H. EATON.
Stenographer.

10

Schedule No. 100.

On this twenty-third day of February, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared,

CHARLES DODWELL, of the City of Montreal, Civil Engineer, aged thirty-five years, and a witness produced on the part of the Railway Company, who being duly sworn, deposeth and saith:—

No. 90.
Deposition
of Charles
Dodwell for
the Company
(recalled)
dated 23rd
February
1889.

Examined by *Mr. Abbott.*

Q. You have already been examined in this matter?—*A.* Yes.

Q. Can you tell us about this switch on the railway, whether that is a permanent structure or not?—*A.* No, it is a temporary arrangement.

Q. For what object at the present time?—*A.* To enable trains coming in and going out to cross over on to the running track.

Q. How is it proposed to obviate that?—*A.* When the double track is completed that switch will be taken up. There will no longer be any necessity for it.

Q. When is it the intention to build this double track?—*A.* In the spring.

Q. So, really, this switch is taking the part of the double track for the time being?—*A.* Yes.

Q. Now, once the double track is there, will there be any necessity for a train to come in, or any train to blow off steam near this church?—*A.* No, there would be no occasion at all for that, either for blowing off steam, or whistling, or bell ringing. In fact there are orders to the contrary issued by the Company.

Q. Engine drivers do not blow off steam unless it is necessary, unless they are stopped?—*A.* No, unless the arrangement comes to a standstill and the safety valve comes into operation the steam is blown off, but that is very rare, it is not often.

Q. Is this trestle work a permanent structure?—*A.* No, it is not intended to be a permanent structure.

30

RECORD.

*In the
Superior
Court.*No. 90.
Deposition
of Charles
Dodwell for
the Company
(recalled),
dated 23rd
February
1889—
continued.

Q. Is it intended to be filled in?—A. The intention of the Company is to rebuild this trestle work with stone arches similar to that between Guy and Aqueduct Street, solid stone arches.

Q. Why has that trestle work been put there instead of arches?—A. On account of the shortness of time; it would have taken a good deal of time to build these stone arches, and there was not time to build the arches all the way out, and so they decided to build trestle work from Guy Street westward until such time as they would be able to build those stone arches.

Q. This wooden trestle work is merely a temporary device in order to get the entrance into the City rapidly without waiting to build these permanent structures; now what would be the effect of the noise when you have the permanent arches there?—A. There will be less noise than there is now; a train will make less noise travelling over stone arches than over the trestle work. 10

Q. You have been the engineer in charge of this?—A. Yes.

Q. And you know it has always been the intention of the company to build these stone arches?—A. Yes.

Q. From the outset of the work you have had charge of it, and it is your official knowledge to know what was the intention of the Company?—A. Yes.

Q. You know where the passenger trains are made up?—A. Between Aqueduct Street and the station. 20

Q. That is east of Guy Street?—A. Yes.

Q. Between the church and the station; it is a considerable distance from the church?—Q. Yes, considerable distance from the church.

Q. The trains are now made up there?—A. Yes

Q. And you say that is the only place where they can be made up?—A. Yes.

Cross-examined by *Mr. Trenholme.*

Q. Did you say it was part of the plans of the Company to build stone arches past this church?—A. Yes, that was the original intention of the Company. 30

Q. Is that on the present plans of the company?—A. It was their intention to build stone arches.

Q. You have said that. Have you not got a plan of construction and the kind of work that each construction is made for the railway?—A. There is a plan of the arches, yes, but it does not show the arches stopping at any particular place; it is merely a standard drawing for each arch.

Q. On the plans of construction of that railway past the church, so the present plans show that the construction is trestle work or stone arches?—A. It shows it is trestle work because trestle work is built. The plans of the finished work show trestle work past the church because trestle work is built there. 40

Q. Have you any plan designed showing arches past the church?—A. No, because such were not required.

Q. That is a matter simply of the future intention and policy on the part of the Company; they may or may not do it?—A. I have it from the high official of the company that it was their definite intention.

Q. But they have not yet gone so far into making plans?—A. We would not require plans, because we have already plans made for arches such as would be required.

Q. The Company is not committed in any way to build stone arches past that church?—A. I do not know of any particular commitment about it; that is their intentions.

10 Q. They might fill it in with a clay embankment?—A. Not at all. We have not got sufficient right of way, we have not sufficient depth—only thirty-five feet in width, which shows it was not the Company's intention to put earth there.

Q. The Company took the narrow width and made a detour there purposely to avoid the church, did they not?—A. I do not know that.

Q. Did you lay the line out?—A. Not the first line.

Q. You don't know that they made a curve there purposely to avoid this church?—A. I know there is a curve, but I really cannot see, say with certainty, that the curve was put there specially to avoid the church.

20 Q. Do you know the distance from the engine house to this church?—A. Yes.

Q. What is the distance?—A. About nine hundred and fifty to a thousand feet.

Q. Will trains be all made up between the engine house and depôt?—A. Yes, for some time to come they will.

Q. But when the road is in full working condition will the trains be made up in that space?—A. Yes.

Q. All of them?—A. Yes.

30 Q. Is there no intention of having a shunting ground or switches further west?—A. As far as I am aware, there is no intention at all.

Q. You do not know?—A. No; I should know it if there was; I am in a position to say that.

By *Mr. Brodie.*

Q. Are you aware that it is the intention of the Company of bringing in the passenger traffic from the North Shore, Winnipeg, Ottawa, and all these other points?—A. The Company have not confided their intention with regard to the traffic to me.

40 Q. If this extra traffic from these places I mentioned was brought in, the space would be too small to make up the trains in the other depôt?—A. I do not know. It is not very large, but I have no experience of the making up of trains or the management of roads, so I cannot say.

By *Mr. McGibbon.*

Q. I think you explained when you were examined on a previous occasion that you merely had one plan for each particular kind of arch, and that could be

RECORD.

*In the
Superior
Court.*

No. 90.
Deposition
of Charles
Dodwell for
the Company
(recalled),
dated 23rd
February
1889—
continued.

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 9).

Deposition
 of Charles
 Dodwell for
 the Company
 (recalled),
 dated 23rd
 February
 1889—
continued.

extended or multiplied as often as you want; you never do have any special designed plans for any particular part of the road?—*A.* No. In Aqueduct Street we had a special arch, and across Mount St. Mary Avenue, and all the rest of the arches are either twelve or twenty feet span, and are used wherever they are wanted.

By *Mr. Fleet.*

Q. Will the stone arch affect the curve in any way?—*A.* No, there is a curve between Guy Street and Mount St. Mary Avenue on the arches themselves.

Q. Then there is a curve right opposite the church?—*A.* It ends about there. 10

Q. That won't be modified or affected by placing stone arches?—*A.* No.

Q. Will you give the number of trains passing there between the hours of seven and nine?—*A.* There is not more than one or two, I think. It is not a freight depôt.

By *Mr. Trenholme.*

Q. Don't you know it is the intention of the Company to have a suburban train service?—*A.* I do not know.

Q. Don't you think that is very probable?—*A.* Yes.

Q. That would multiply the train service?—*A.* No; a suburban service is not a Sunday service at all. 20

Q. But on week days?—*A.* Yes.

Q. Is that the case on the Grand Trunk Railway?—*A.* There are no trains on the Grand Trunk Railway on Sunday, suburban service.

By *Mr. Abbott.*

Q. There are no trains to Vaudreuil, Point Claire, on Sunday?—*A.* No.

By *Mr. Fleet.*

Q. There would be the necessity of sending down an engine to bring down every train that come in?—*A.* Not unless the train got off the track.

Q. They make them up between the church and the station?—*A.* Yes.

By *Mr. Abbott.*

Q. The engine house is situated between the church and the station?—*A.* Yes, about one thousand feet from the church.

Q. Is it not a fact that your own experience of the suburban traffic on the Grand Trunk Railway, that suburban trains must necessarily, in order to be of any use, run during the day or in the afternoon up to say shortly after six o'clock?—*A.* About twenty minutes past six is the last train from the Grand Trunk Railway Station, and after that the suburban service ceases.

Q. There would be no demand for suburban traffic after that hour?—*A.* No.

30

By *Mr. Brodie*.

Q. Are you aware that the suburban service of the Grand Trunk Railway running to Lachine lasts up to nine o'clock in the summer time on week days?—*A.* I believe it does, but the intervals between trains is longer after six o'clock; I have not a Grand Trunk time table here. There is a little church at Ste Cunegonde, a little Protestant church, and it has been enlarged lately.

By *Mr. Trenholme*.

Q. How far is the Protestant church that you refer to from the track?—*A.* I never measured it, but I should not judge it was more than thirty or forty feet.

10 *Q.* You don't know under what circumstances the church was built there?
—*A.* I know nothing about it.

Q. Or for what purposes?—*A.* No, I understood it was a Protestant church.

Q. I suppose you don't take the ground that a railway within thirty or forty feet of the track is additional attractiveness to the church?—*A.* No, perhaps not. And further Deponent saith not.

G. H. EATON,
Stenographer.

RECORD.

*In the
Superior
Court.*

No. 90.
Deposition
of Charles
Dodwell for
the Company
(recalled),
dated 23rd
February
1889—
continued.

Schedule No. 101.

On this twenty-fifth day of April, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared,

20 HENRY IRWIN, of the City of Montreal, a witness recalled on the part of the Railway Company, who deposeth as follows:—

Examined by *Mr. Abbott*.

I have already been sworn in this cause.

Q. You are one of the engineers of the Company?—*A.* Yes, one of the assistant-engineers of the Company.

Q. I think you had to do with preparing the plans, had you not, for the location of the road?—*A.* Yes, I had to do with preparing some plan; I was not employed by the Railway Company at that time directly, only indirectly.

30 *Q.* Did you make the calculations for the amount of land to be taken by the railway near this church?—*A.* Yes

Q. Was the location plan of the railway prepared by you, or under your directions, or had you to do with it?—*A.* I had to do with it, but I had nothing to do with it myself. The principal thing I had to do was making a survey of the portions of the property to be taken and the calculations of the areas to be taken; I had not so much to do with making the plans; it was making the measurements and calculating the areas from which the plans were made.

Q. That is the location plans?—*A.* Yes.

No. 91.
Deposition
of Henry
Irwin for
Company
(recalled),
dated 25th
April 1889.

RECORD.

*In the
Superior
Court.*No. 91.
Deposition
of Henry
Irwin for
Company
(recalled),
dated 25th
April 1889
—continued.

Q. Will you please look at the plan attached to Exhibit No. 10, and say whether that shows correctly the line of railway with reference to lot 1604 upon which the church in question is built?—A. That is the square on which the church is built.

Q. You calculated the area required yourself?—A. Yes.

Q. And it did not include that corner?—A. No.

Q. As a matter of fact, the railway has since been built and completed?—
A. Yes.

Q. Does it encroach in any way upon the square on which Calvary Church is built?—A. No, it does not. 10

Q. Is it correctly shown on this plan attached to Exhibit No. 9?—A. Yes; the northern limit of the railway is correctly shown across the property in question on the plan attached to Exhibit No. 9.

Q. That is to say the railway goes over the lane marked lot No. 67 on the plan of the railway?—A. Yes, excepting the consecutive numbers.

Q. It does not touch upon what is marked as the Calvary Church property?—A. No.

Q. In making the plan and book of reference of the railway, was there any number or lot made for the Calvary Church property, or any part of it?—
A. No. 20

Q. The only part of lot 1604 is that shown as No. 67?—A. No; No. 67 and a small portion of No. 67A, taken from John Hannah.

Q. That is the corner next to the large lane?—A. Yes.

Q. Aside from those two portions of 1604, no other part of 1604 is taken by the railway?—A. No.

Q. Is that the permanent width to be taken by the railway?—A. That is what I understand. We have not got enough width there at all to make an embankment. Of course the present wooden trestle is not permanent.

Q. How will it be replaced?—A. I could not say. We may replace it with stone arches or with iron trestle work, I do not know. 30

Q. In either case it will not encroach beyond the line on which it is now built?—A. That is not the intention.

Q. As a matter of fact, from the manner in which the abutments across Guy Street are built, could it be changed?—A. Not very well.

Q. There is no intention, then, to alter the location of the railway on that point?—A. Not that I know of. I am sure there is not.

Q. Will you look again at plan Exhibit No. 10, and state whether the homologated line of Guy Street is properly shown?—A. Yes.

Q. It passes through the Calvary Church portion?—A. Yes; through the building itself. 40

Q. Is the abutment of the bridge crossing Guy Street built on that homologated line, in accordance with the homologated line?—A. Yes.

Q. It does not extend further into the street than the homologated line?—
A. No.

Q. You are aware, I believe, that a large new building has been built—a furniture factory?—A. Yes; on the south side from Richmond Avenue.

Q. How is that built, on the present line of street or the homologated line?
—A. On the homologated line.

Cross-examined by *Mr. Trenholme*.

Q. Are you aware whether the plan deposited by the Company indicates the line of the railway as crossing one corner of the property in conformity with what is indicated on the plan attached to Mr. Drinkwater's affidavit, forming Exhibit No. 10— are you aware that the plan deposited with the clerk of the peace here corresponds with that?—A. Of course, I see that is certified as a copy, so I imagine it is the same

10 Q. Are you aware there is any other plan deposited different from that?—
A. No, I am not. In fact, it is two years ago since I saw those right of way plans, and I was always under the impression that they were not as shown there, until I happened to look at the point. If any one had asked me before I saw those copies there, I would have said I thought they were drawn right. It was a mistake of the draughtsman.

Q. Are you prepared to say it is a mistake of the draughtsman, the way it is drawn?—A. Yes, it was not my intention, nor the intention of the Company, they should be drawn that way.

Q. Who made that plan?—A. Who personally made it, I am sure I do not
20 know the draughtsman who made it. My work was to make the measurements and calculate the areas to be taken, and see that they were put correctly on the plan; that was my share of the business. But the original plan that was handed to me to make the measurements from was certainly made not according to the plan that is filed, but showing that the right of way did not take anything from the Calvary Church property. I was furnished with a small tracing showing where the railway intended their right of way to go, and on the basis of that plan I made my measurements. Those measurements were entered on the plan. We were pinched for time, and I had no time to prepare the plans entirely through, except the cadastral numbers and consecutive numbers
30 and so on.

Q. The basis of figures from which that plan was prepared did not contemplate taking that corner?—A. Not at all. I prepared a large scale plan of that entire block there—my method for finding out the areas. I made a survey of the property and jotted it on a large scale, and laid down the line as it was shown on the small tracing that I received, showing where they intended to have the line, and it was on the basis of that scale that I calculated all the areas; it was not calculated from the right of way plan. It is very easy on a small scale like that for a draughtsman to draw his line a trifle to one side or the other; if the plan was on a large scale he would have a better chance to see;
40 there is no consecutive number belonging to the Calvary Church, either on the plan or on the book of reference, nor is there any area given, so it was not the intention of the Company to take anything from them; if that had been their intention they would have put a consecutive number on them.

Q. What do you mean by consecutive numbers?—A. We number the first lot one, the next two, the next three, and so on.

RECORD.

*In the
Superior
Court.*

No. 91.
Deposition
of Henry
Irwin for
Company
(recalled),
dated 25th
April 1889
—continued.

RECORD.

*In the
Superior
Court.*No. 91.
Deposition
of Henry
Irwin for
Company
(recalled),
dated 25th
April 1889
—continued.

Q. If any part of this square had been taken it would have a consecutive number?—A. Yes; and it is not on the book of reference at all.

Q. You did not recognise the church as having any property in the lane at all?—A. I did not know that they had.

Q. Will you tell me who it was made out the description contained in the notice of expropriation, forming part of Exhibit 9?—A. I believe I made it cut; this was the notice that was given for this expropriation quite recently.

Q. Are you authorised to change the plan of that railroad?—A. No.

Q. Whatever the line is you have no authority to change it?—A. No; of course I had my instructions at the commencement. I could not change them. 10

By *Mr. Abbott.*

Q. You fixed the areas of the property to be taken?—A. Yes.

Q. And if any property is shown upon the plan which is not calculated in your areas, that is a mistake of the draughtsman, and not your mistake?—A. Yes.

And further Deponent saith not.

G. H. EATON,
Stenographer.

Schedule No. 102.

No. 92.
Deposition
of P. Lacroix
for the
Company
(recalled),
dated 25th
April 1889.

On this twenty-fifth day of April, in the year of our Lord One thousand and 20 eight hundred and eighty-nine, personally came and appeared,

P. LACROIX, of the City of Montreal, Building Inspector, a witness recalled on the part of the Railway Company, who deposeseth as follows:—

I have already been sworn in this case.

Examined by *Mr. Abbott.*

Q. Would you please look at the plan attached to Exhibit No. 10, and state whether the homologated line of Guy Street is properly shown on that plan?—A. It appears to me to be properly shown.

Q. At what date was that homologated line confirmed by the Superior Court?—A. On the twenty-seventh of March, eighteen hundred and seventy- 30 seven.

Q. That is in accordance with the Act 27 Vict. ch. 51?—A. Yes.

Cross-examined by *Mr. Trenholme.*

Q. I suppose you don't know whether that was after or before this church was built?—A. The church was built in eighteen hundred and seventy-six, I believe.

By *Mr. Abbott.*

Q. You swear it was built in Eighteen hundred and seventy-six?—A. All I know of it was by the book that was shown me by the lady-keeper of the church, and I saw that the church was begun then. I might be making a mistake, I am only speaking from recollection now.

And further Deponent saith not.

G. H. EATON,
Stenographer.

RECORD.

*In the
Superior
Court.*

No. 92.
Deposition
of P. Lacroix
for the
Company
(recalled),
dated 25th
April 1889
—continued.

Schedule No. 103.

10 On this twenty-fifth day of April, personally came and appeared,
J. B. RESTHER, of the City of Montreal, Architect, a witness recalled for the
Railway Company, to be cross-examined.

No. 93.
Deposition
of J. B.
Resther for
the Company
(recalled),
dated 25th
April 1889.

Cross-examined by *Mr. Trenholme.*

Q. Have you prepared a statement showing wherein your estimate of the quantities and prices differ from those of Mr. Beaudry?—A. Yes, sir, I did. It is filed as Exhibit No. 39.

Q. Do you indicate in your statement the values in so far as they differ from Mr. Baudry's?—A. If you ask the question upon each item I will give you the differences.

20 Q. I see in your estimate for brickwork, you deduct for the windows?—
A. Yes.

Q. Is that always done in the case of arched windows?—A. Yes. We never deduct the arched part. For the lower part of the arch, we always deduct it, but not for the arched part.

Q. Could you tell us what are the principal differences yourself, wherein does the principal difference come in between you and Mr. Beaudry?—A. Commencing by the excavation, I say that the excavation contained eight hundred and sixty-four yards in a foundation of eighty-one feet long, forty-eight feet wide, and six feet deep on an average, eight hundred and sixty-four yards at
30 forty-four cents. Then you may compare this quantity with the one of Mr. Beaudry's to see where is the difference. But in Beaudry's quantities, he does not give the measurements to show where he finds the number of yards that he has got, and in the measurements it is just the same. He does not say where he took those number of yards from, but in this statement of mine you have got all the different measures. The same for the brick and the same for the wood, and so forth.

Q. The result of actual measurements?—A. Yes, sir. It is very easy to go and compare the work done with those quantities, and you can do the same with Mr. Beaudry's. He does not state that there is a wall of such a length, so
40 many feet high, and the thickness of the wall, but in this quantity of mine you will find it different. For instance, you have got for the foundations two walls

RECORD. of thirty-one feet long, three feet thick, by one foot high. And then you have got two others.

*In the
Superior
Court.*

No. 93.
Deposition
of J. B.
Resther for
the Company
(recalled),
dated 25th
April 1889
—continued.

Q. Are you able to state wherein the principal differences are between you and Mr. Beaudry?—A. It is not very easy to find it, because Mr. Beaudry has not taken the quantities in a way as to show me if he has not made the wall too long or too high.

Q. You have acted as a witness or arbitrator for the Company very often?

—A. Yes, sir.

Q. I would like to test your judgment by results; do you remember what estimate you put upon the indemnity for Mr. Judah, for the crossing of his corner?—A. Yes, I think thirteen or fifteen thousand dollars. 10

Q. Do you know what the award was?—A. Yes; but I do not respect their word at all.

Q. It was thirty-two thousand dollars?—A. Yes.

Q. Do you know the judge added twenty thousand dollars to your estimate?—A. That is nothing to me.

Q. You have no respect for either the judgment or the award?—A. I don't respect his judgments.

Q. You know the judge added about twenty thousand dollars to the award?—A. Yes, I know that. I have my judgment about it. I have been there, and took the value of that property, and knew all about it. I know there is a great difference in the ideas of different people, and my judgment is different than the judgment of Judge Gill. 20

By Mr. Abbott.

Q. Are you aware that the arbitrators took into consideration, in making the award, damages to Mr. Fred Judah's private property that was not included in your estimate?—A. I do not know anything about that. I think they made damage to the property on top of the hill, but I did not find any damage in my estimate.

Q. You did not include that in your estimate?—A. No. 30

By Mr. Trenholme.

Q. You did not find any damage?—A. No.

Q. You considered there was no damage?—A. I considered there was no damage at all.

By Mr. Fleet.

Q. In the case of Mr. Judah's, was it a question of the valuation of the building or the cost of the building, or was it general damages done to Mr. Judah's property through the passing of the railroad?—A. There was no building. It was only on the line.

Q. Were you examined there in your quality as architect, as to the precise value of that particular building?—A. No, and it was the worst part of the line. 40

By *Mr. Trenholme.*

Q. I think you were examined as an architect?—*A.* No.

Q. Were you not examined as to the availability of that property for putting houses on it?—*A.* I was there and made a plan for all the lower part of that, from the level of the street to avoid all that piece, as building lots, but I had no buildings to value.

Q. The valuation of Mr. Judah's building did not come in your valuation?—*A.* No; I did not make any valuation on that.

By *Mr. Brodie.*

10 Q. Who was third arbitrator in that case of Mr. Judah's?—*A.* Mr. Archibald.

Q. Are you aware he was a nominee of the Company, and suggested several times by the Company?—*A.* I do not know anything about that.

And further Deponent saith not.

G. H. EATON,
Stenographer.

RECORD.

*In the
Superior
Court.*

No. 93.
Deposition
of J. B.
Resther for
the Company
(recalled),
dated 25th
April 1889
—*continued.*

Schedule No. 104.

On this twenty-fifth day of April, in the year of our Lord One thousand eight hundred and ninety-nine, personally came and appeared,

20 STUART HOWARD, of the City of Montreal, civil engineer, and a witness produced on the part of the Railway Company, who, being duly sworn deposed and saith:—

No. 94.
Deposition
of Stuart
Howard for
the Com-
pany, dated
25th April
1889.

Examined by *Mr. Abott.*

Q. You are an engineer in the employ of the Company Defendant?—*A.* No, I have been, but I am not now.

Q. You know the Calvary Church in question, in this matter?—*A.* I do.

Q. You know where the railway passes close to it?—*A.* Yes, I do.

30 Q. Have you been in that church, lately, when service was going on?—I was there on the evening of the third of March.

Q. Did any train pass during the service?—*A.* One train passed; I only heard one train.

Q. Will you describe what effect the train had on the service, or if there was any noise?—*A.* If I had not been listening particularly for it, I do not think I would have heard it at all; I had my ears open particularly.

Q. You went for that purpose?—*A.* Yes.

Q. It did not interrupt the services?—*A.* No, it did not seem to make any difference at all in the service.

40 Q. What was going on at the moment the train passed?—*A.* There were two strangers from the States, and the minister was talking to them and making them members of Calvary Church.

Q. Delivering a sort of exhortation to them?—*A.* Yes.

RECORD.

*In the
Superior
Court.*

No. 94.
Deposition
of Stuart
Howard for
the Com-
pany, dated
25th April
1889—
continued.

- Q. It was intended to be heard by the congregation?—*A.* Certainly.
 Q. Did the passage of the train prevent you from hearing what was said?—
A. Not at all; I just heard a slight rumbling for I think about ten seconds, that
 is all I heard.
 Q. Did it interrupt the minister; did he stop speaking?—*A.* No.
 Q. Were the windows open?—*A.* They had double windows on; some of
 the double windows were open.
 Q. Leaving only one window closed?—*A.* Yes.
 Q. Leaving a single window?—*A.* Yes.
 Q. You don't know if the ventilators were open or not?—*A.* No, I could not
 say.

Cross-examined by *Mr. Trenholme.*

- Q. On which side were these double windows open that you mention?—*A.*
 I think they were on the street side.
 Q. Next to the railway they were not?—*A.* I could not say.
 Q. Which side of the church were you on?—*A.* I was almost in the centre
 of the church; I was in the centre aisle. I think there are two seats in the
 centre, and I was right up at the end of the pew.
 Q. Do you know what kind of a train passed?—*A.* A passenger train, I
 presume; it was a few minutes after eight. I fancy it must have been the
 Boston express.
 Q. Do you remember whether the windows you refer to were on your right
 or your left?—*A.* I do not know whether there were any open on the right or
 not, but there were certainly some open on the left, because I was looking over
 that way, towards the clergyman; he was down the side on the left when he was
 talking to these strangers.
 Q. You mean there was only a single window up?—*A.* Yes.
 Q. Some of the double windows you think were open, and there was only
 the single window?—*A.* Yes.
 Q. Do you remember how these windows were opened?—*A.* No, I do not.
 Q. Were they shoved up, or opened out?—*A.* I do not remember now at
 the present time, but I fancy they were opening windows.
 Q. You were not very sleepy that night?—*A.* No.
 Q. You did not go to sleep?—*A.* No.

By *Mr. Abbott.*

- Q. You speak of the left side of the church; which side would that be?—
A. Next to the street, next to Guy Street; the windows must have been opened
 on the track side.
 Q. And your side next to the track?—*A.* Yes; I was facing the west, so
 that the windows were open on the south.

By *Mr. Trenholme.*

- Q. Do you know in what direction the wind was?—*A.* I could not
 tell you.

Q. Is it your experience that a train can pass twenty or thirty feet of a building without being heard?—A. I won't say it would not be heard, but nothing to disturb a congregation; it lasted such a few seconds.

Q. Do you remember any parties that were in church that night?—A. I saw Mr. Cushing there.

By *Mr. McGibbon.*

Q. That was the only train that passed during the service?—A. That was the only * train I heard.

Q. You are familiar with the time—the starting hour or the arrival of the
10 trains?—A. Yes, I think so.

Q. Do you know how many trains there are that leave the depôt on Windsor Street between the hours of half past ten in the morning and half past nine in the afternoon on Sundays; are there any arriving at those hours?—A. I do not think so.

Q. Are there any leaving then?—A. No, I think not. There is only one that arrives in the morning before that hour, about eight.

Q. In the evening is there any train arriving between half past six and nine?—A. I do not think so. There is only one train.

Q. That would be between half past ten and half past one?—A. Yes; there
20 is only * train that leaves in the evening.

Q. Does the Toronto express leave in the evening?—A. That is at 8.45; church is over then.

Q. What time was this church out?—A. About half past eight, I think.

By *Mr. Abbott.*

Q. You were there from the beginning of the service to the end?—A. Yes.

By *Mr. Trenholme.*

Q. Do you know anything about the suburban service that the Canadian Pacific Railway are going to have?—A. I do not.

By *Mr. Brodie.*

30 Q. Do you know how many trains run into the depôt for the Winnipeg, North Shore, Ottawa, and all these brought into the western entrance?—A. I could not tell you. The practice is they don't run any trains on Sundays. They never run trains on Sundays except starting the evening or night train coming in the morning.

Q. Does not the Grand Trunk Railway?—A. No.

Do you know any suburban traffic on any railway leaving Montreal on Sundays?—A. I do not.

And further Deponent saith not.

G. H. EATON,
Stenographer.

40

RECORD.

Schedule No. 105.

*In the
Superior
Court.*

No. 95.
Deposition
of G. H.
Massey for
the Com-
pany, dated
25th April
1889.

On this twenty-fifth day of April, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared,

GEORGE HUGH MASSEY, of the City of Montreal, Civil Engineer, a witness produced on the part of the Railway Company, who, being duly sworn, deposeth and saith :—

Examined by *Mr. Abbott.*

Q. Are you in the employ of the Company ?—*A.* No.

Q. You know the Calvary Church in question, in this matter ?—*A.* Yes.

Q. Did you attend service there on Sunday evening ?—*A.* Yes.

10

Q. When ?—*A.* On the third of March.

Q. The same evening as Mr. Howard ?—*A.* Yes.

Q. Did you remain to the end ?—*A.* Yes.

Q. Did you hear any trains pass ?—*A.* Yes.

Q. How many ?—*A.* One.

Q. Will you state whether that made a noise ?—*A.* Yes, it made just a rumbling noise.

Q. Did it make such a noise as to interrupt the service ?—*A.* Oh, no.

Q. Did it prevent you from hearing the minister ?—*A.* No.

Q. Was the minister speaking when it passed ?—*A.* Yes.

20

Q. Did he stop ?—*A.* No.

Q. Do you think it would make such a noise as to cause the congregation to leave the church ?—*A.* Not at all ; I do not think it would be any inconvenience.

Q. If you were a member of the church yourself, would you consider it an annoyance ?—*No.*

Q. Not sufficient to cause you to give up the church as a place of worship ?—*A.* No.

Cross-examined by *Mr. Trenholme.*

Q. You are an engineer, I believe, in the employ of the Company ?—*A.* No. 30
I am not now.

Q. You have been ?—*A.* No.

Q. You went there on purpose, I suppose, to listen ?—*A.* Yes.

Q. Would not the amount of noise that you would hear in a church that was near a railway depend a good deal upon the state of the atmosphere and the wind ; sometimes it would be much greater than others ?—*A.* I would not say so. If it were at a distance, it might ; but I think the state of the atmosphere would not make very much difference.

Q. Trains sometimes differ in the amount of noise they make, according to the rapidity with which they pass ?—*A.* Yes, and they vary a little.

40

Q. You are of opinion that a railway can pass within twenty or thirty feet of the church without disturbing the congregation ?—*A.* I said that the train that passed, I would not consider it disturbed the congregation in the least, what I heard.

Q. I am asking you whether it is your opinion that a railway within twenty or thirty feet of a church like that, can be used constantly for passing trains over without being any disturbance or annoyance to a congregation?—A. Under the same circumstances as this railway is here, I would not consider it any objection if I was a member of the congregation. I would not consider whether it passed or not.

Q. How does this railway differ from the Grand Trunk Railway in the amount of noise?—A. There is no whistling or ringing of bells, and the rate of speed will never be so great, on account of being so near the station, and it will
10 not make so much noise.

Q. You don't know what rate this train was going at?—A. I could not say.

Q. You don't know whether it was going rapidly or slowly?—A. I imagine it was going slowly, but I could not say positively.

Q. Was it inward or outward?—A. I suppose it was going outward, but I could not tell. I just heard the rumbling go by.

Q. Might it not be a hand car?—A. No, I heard it.

Q. You are sure it was not a hand car?—A. Yes.

Q. Tell me why you are sure it was not a hand car?—A. Because I know
20 the sound of a train going by.

Q. Might it not have been an engine?—A. No; it was a good deal of continuous rumbling; it was a train.

Q. Was there any snow on the track at the time?—A. No; it was trestle.

By *Mr. Abbott.*

Q. As an engineer, from your experience, I suppose you can tell by the sound whether it is a train passing or an engine?—A. It was a train.

Q. You can tell by the sound?—A. Yes.

Q. As to the difference between this railway and the Grand Trunk Railway, are you aware there are no freight trains on this portion of the railway?—
30 A. Yes.

By *Mr. Brodie.*

Q. In the summer season when the windows are open, don't you think the railway would be an inconvenience or an annoyance to the church on account of the smoke and other things, cinders and so on?—A. I don't think it would.

Q. For instance, if the wind was blowing from the south, and an engine passing there, would it not blow the smoke into the church?—A. I think the trestles are too high.

Q. What is the difference from the level of the track and the level of the church proper?—A. I could not say exactly. But if you take the smoke stack,
40 it would be higher than the windows.

Q. Don't it happen sometimes that the smoke will descend?—A. I don't think I have seen it.

RECORD.

—
*In the
Superior
Court.*
—

No. 95.

Deposition
of G. H.
Massey for
the Com-
pany, dated
25th April
1889—
continued.

RECORD.

*In the
Superior
Court.*No. 95.
Deposition
of G. H.
Massey for
the Com-
pany, dated
25th April
1889—
*continued.*By *Mr. Trenholme.*

Q. How do you get cinders in your eye standing on a car; did you ever stand on a railway platform and get dust and soot in your eye, and don't you think they would go into church?—A. I don't think the amount that would come in the church would be any inconvenience.

By *Mr Abbott.*

Q. Do you think an ordinary railway train going over a bridge or trestle work, such as the Canadian Pacific Railway passenger train, would make as much or more or less noise than an elevated railway—the elevated railway in New York?—A. I think it would make less noise on the trestle than on the elevated road. 10

By *Mr. Brodie.*

Q. In crossing over a bridge they would make a greater noise than on the level, on solid ground?—A. Yes.

Q. In crossing over this bridge at Guy Street, don't you think the noise would be augmented there?—A. I think there is more rumbling noise there than on the ground.

By *Mr. Fleet.*

Q. Did you notice whether the windows were open?—A. I could not say anything about that; I did not notice. 20

Q. Did you know any of the congregation there at all?—A. I do not know.

Q. What part of the church did you sit in?—A. About the centre, I suppose a little more than half way from the front.

Q. How far would you be from the minister?—Not quite half way down the church.

Q. Did you take that seat yourself or were you put into it?—A. I think we were shown into it.

Q. Who showed you into the seat?—A. I am not quite sure. I produce time table of the Canadian Pacific Railway, fifteenth April 1889, as Exhibit 40. 30

By *Mr. Trenholme.*

Q. Are you aware that this Company has yet established any suburban service?—A. I cannot say anything about the service they are going to have.

Q. They have not established any yet?—A. I could not say.

Q. They don't stop at Cote St. Antoine or Blue Bonnets; they have no station yet?—A. No.

Q. They have not got what you call a suburban service established?—A. I should say not.

Q. Are you aware that they are going to do that?—A. I hear so.

Q. Are you aware that they are going to bring additional western trains into that depôt?—A. I could not say. RECORD.

Q. Don't you know it is part of their policy?—A. I do not know anything about it. (The parties admit that the plans, profiles, and books of reference showing the land required for the Atlantic and North-west Railway Company for its entrance into the City of Montreal, were duly deposited in the Department of Railways and Canals, Ottawa, on the second of February, Eighteen hundred and eighty-seven, and that due notice of such deposit was inserted in "The Montreal Gazette," on the latter date).

10 And further Deponent saith not.

G. H. EATON,
Stenographer.

—
In the
Superior
Court.

—
No 95.
Deposition
of G. H.
Massey for
the Com-
pany, dated
25th April
1889—
continued.

Schedule No. 106.

On this twenty-ninth day of April, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared:—

THOMAS G. SHAUGHNESSY, Assistant General Manager of the Canadian Pacific Railway, and a witness examined on the part of the Railway Company, who, being duly sworn, deposeth and saith:—

No. 96.
Deposition of
Thomas G
Shaughnessy
for the
Company,
dated 29th
April 1889.

Examined by *Mr. Abbott.*

20 Q. Do the trains whistle in the City limits?—A. They have directions not to do so, and I don't think they do. We had a complaint one time, and orders were given that it was not to be done, and I don't think there is any whistling now.

Q. Do they ring the bell?—A. Coming over the trestle they do, because we have men working there, and it is to warn them. Of course, that is temporary.

Q. Is it the intention of the Company to replace the trestle by which the railway is carried past the church and over the lane there with some permanent structure in the future?—A. Yes.

30 Q. What is the present intention with regard to the structure?—A. Our intention is to continue the arches, the stone arches; we had almost intended to do it last year, but were afraid of the delay, and postponed it. It was quicker to build a trestle. We were anxious to get our service begun in the City.

Q. When did the regular train service begin to the present depôt, Windsor Street?—A. The first week in February.

Q. It was open for the carnival?—A. Yes.

Q. It was early in the first week in February?—A. Yes.

Q. Since that time the service has been regular to that station?—A. Yes.

40 Q. Can you mention any buildings which have been begun or now in course of construction along the line of your railway on its entrance into the

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 96.
 Deposition of
 Thomas G.
 Shaughnessy
 for the
 Company,
 dated 29th
 April 1889
 —continued.

City?—*A.* I know of the Methodist College, which has been constructed since the railway, near Cote St. Antoine.

Q. Just beyond Mr. Seargeant's?—*A.* Yes.

Q. Is it far from the railway?—*A.* No; I should say within eighty or ninety yards.

Q. About the same distance from the railway as Mr. Seargeant's house?—

A. I should say it was a little further than his house. I don't know that I could say accurately. And St. Anthony's Church, which is now being constructed—the work commenced this spring—is built on the property known as the O'Brien property.

Q. Above or below the railway?—*A.* Below, fronting on St. Antoine Street.

Q. How far will this church be from the railway?—*A.* The whole distance from the railway to St. Antoine Street is, I think, 232 feet. I should say that the church would not be more than 125 or 130 feet from the railway.

Q. At any rate it is built on that piece of property?—*A.* Yes, property purchased from the railway for the purpose of building the church after the railway had been built.

Q. Is it a large church?—My impression is that the width is to be about ninety feet. They bought one hundred feet of property for that purpose.

Q. Did you notice any private residence going up the line of the railway?—*A.* I noticed some houses going up but I do not know that I could specially mention their location.

Q. Did you notice a new wooden villa, and ornamental structure with a tower, being built close to the railway fence on Cote St. Antoine, near the Walker property?—*A.* Yes.

Q. The corner house almost touches the railway fence?—*A.* Yes, it is quite close to the fence. It is only one of many hundreds that will be built there in the next few years, I expect.

Cross-examined by *Mr. Trenholme.*

Q. You spoke of the intention to replace the present trestle work by something more permanent when the present trestle work is worn out?—*A.* Yes.

Q. What is the life of such trestle work?—*A.* Well, ordinarily the life is considered about nine years. In that locality we probably would not give it more than seven years life, considering the class of traffic passing over it. If we are flush, we may decide to replace it before the trestle has lived its life out.

By *Mr. Brodie.*

Q. Had you any transactions before the purchase of the property with St. Anthony's Church, any transactions with the church congregation, before the expropriation of their property?—*A.* Yes.

Q. Was part of their property expropriated by the Company?—*A.* No, it was not expropriated; notice of expropriation was served, but nothing went on.

Q. Was an amicable arrangement come to?—*A.* Yes.

Q. This house you spoke about in Cote St. Antoine, are you aware that the proprietor is a manufacturer, and accustomed to noise?—A. No.

RECORD.

*In the
Superior
Court.*

By *Mr. Trenholme.*

Q. About St. Anthony's Church, there is a sacristy near there like in all these Roman Catholic churches?—A. I do not know about that.

Q. Is there anything done in erecting this church?—A. Part of the foundation is done.

Q. You did not give them a big donation?—A. I contributed something towards it personally.

10 And further Deponent saith not.

No. 96.
Deposition of
Thomas G.
Shaughnessy
for the
Company,
dated 29th
April 1889
—continued.

G. H. EATON,
Stenographer.

Schedule No. 107.

On this third day of May, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared:—

PIERRE LACROIX, of the City of Montreal, already examined as a witness, and now recalled for the Railway Company, in sur-rebuttal, who deposes as follows:—

No. 97.
Further
deposition
of P. Lacroix
for the Com-
pany, dated
3rd May
1889.

Examined by *Mr. Abbott.*

20 Q. You have visited this church I understand lately, with a view of ascertaining whether there is any vibration which would affect the building?—
A. I have.

Q. Did you examine the place where the plaster is stated to have fallen down above the choir loft?—A. Yes.

Q. You went up there to look at it?—A. Yes; and I went above too.

Q. Were you accompanied by anybody else?—A. I was accompanied by Mr. Resther.

30 Q. Just state what you found with regard to this place?—A. I found a piece of plaster about two feet wide, and probably a foot in breadth, had dropped from the hatchway over the gallery of the church.

Q. The choir gallery?—A. Yes.

Q. Where does this hatchway lead?—A. Into the roof, from the ceiling of the church. The ceiling of the church has heavy pitch, and the ceiling of the church is rounded or octagon, and there is a large space between the ceiling and top of the roof.

Q. And the hatchway coming up to the roof?—A. Yes.

40 Q. What is the size of the opening?—A. About two feet square. The plaster had fallen from the ceiling at the side of the hatch between the opening of the hatch and the side of the wall, and the casing of this hatchway only rested upon the furrings. The cause of this plaster falling is due to the weakness, firstly of

RECORD.

*In the
Superior
Court.*

No. 97.

Further
deposition
of P. Lacroix
for the Com-
pany, dated
3rd May
1889—
continued.

the ceiling, and secondly by bulls-eye window over two feet high, resting right against it, which by the thaw and the ice forming on the windows has let the water drop on this part of the plaster, and has soaked that plaster, so that it has not the consistency sufficient to take it in your hands. I ascertained that personally.

Q. Were there marks of water there?—*A.* Yes; the roof has been bad formerly, and I am informed it has been repaired a year ago. The mark of water is yet on the ceiling.

Q. Was it wet at the time you were there?—*A.* No; it was dry, but you can see the stains . . .

Q. That water you state, from your knowledge of the building, had the effect of destroying the consistency of the plaster?—*A.* Yes.

Q. Is there furring over the piece of plaster that fell?—*A.* No; only the lathing on the furrings.

Q. There is the space and the roof?—*A.* Yes.

Q. Is there a ladder going up through this hatchway?—*A.* We have got to use a portable ladder, which two men had to hold on their shoulders for me to go on top of it.

Q. Do you know whether that hatchway is used?—*A.* I believe it is, because they have got a ladder right alongside of it.

Q. They had a ladder ready to use?—*A.* Yes.

Q. Would the effect of persons going up on to the roof through this hatchway affect the ceiling?—*A.* Yes; because you have got to rest upon this hatchway, and it only rested upon the furrings, and the shaking of it would affect the plaster, certainly.

Q. When the plaster is injured by water in that way will it take some time to fall?—*A.* Some time to fall, some years. It may fall at any moment, according to the shaking of it—the usage it gets and its weight. It might fall at any moment.

Q. Is plaster in that state apt to fall without any shaking?—*A.* Yes, by 30 the weight of the sand it would.

Q. You have known that to happen in houses occasionally?—*A.* Yes, it happens occasionally.

Q. Did you make any test when you were there to ascertain whether the trains passing caused any vibration to the building such as would bring down plaster?—*A.* I made a special test as to the vibration of the train passing at half past three o'clock in waiting for the train going to Boston at quarter to four. We took a bowl of water of the dimensions of about ten inches, filled it with water, and set it on the middle of the floor in the centre of the church on the side aisle nearest to the railway, and I put in a small piece of paper in the 40 centre of it, and the water was very still. I sat on the floor, and asked those with me to walk on the floor, and their walking was easily noticed on the vibration of the water—just walking along the aisle. When the train passed there was not the least vibration in that water, nor could I feel it upon my person.

Q. If there was a vibration of the building by the passing of the train, would it have been shown upon the surface of the water?—*A.* Yes, it would

have shown. The walking of a person upon the floor did move the water, certainly any vibration from the building would have shaken it.

Q. Is this a recognised method of testing vibration?—A. No; it was a special way of my own which I thought of at the time.

Q. From your experience and knowledge would you say it was an effectual test?—A. I think it was; I would call it so. A good deal more vibration would come from a heavy cart passing on the street than would come from a railway going past, like that special train.

Q. You could hear more?—A. I could hear and feel more.

10 Q. Some loaded cars passed down the street while you were there?
—A. Yes, although not such a heavy truck as I would have liked to have seen go past.

Q. Did they make much noise?—A. The noise was more than the noise of the train passing.

Q. Did you hear each other speak easily during the passing of this cart?
—A. Well, the noise made by the train was only a smooth noise, but it could not prevent any person from hearing.

Q. How was it when the cart passed?—A. It was a broken noise,

Q. Rattling?—A. Yes, rattling, more than the train made.

RECORD.

—
In the
Superior
Court.

—
No. 97.

Further
deposition
of P. Lacroix
for the Com-
pany, dated
3rd May
1889—
continued.

20

Cross-examined by *Mr. Trenholme*.

Q. Has this plaster fallen recently?—A. I believe it was not very long—it could not be very long since it fell. It might have been a month or two. It was there when I visited the place in February.

Q. That had fallen when you were there in February?—A. I don't think it did. I do not remember.

30 Q. Did you ascertain whether any person had gone through that hole or not lately; did you ask?—A. A ladder was there for the convenience of anyone wanting to go up. That hatchway is fixed up with pulleys and cord to give ventilation to the church, and any time that the string would get out of order they would have to go up in the roof to replace them or fix them up.

Q. Did you see any evidence of string being out of order?—A. There was no evidence to be seen. The strings were in good order when I saw them yesterday.

Q. Did you pay any attention to the train as it passed?—A. I went there specially for that purpose, and to meet one of the trains I was told would pass during the day, that is the train to Boston.

Q. Going out?—A. Yes.

40 Q. Did it go past rapidly or slowly?—A. It passed quite rapidly. We could not notice it for over a minute passing—that is from the time we heard it until we lost sound of it. I don't know how many cars there were or how many were in the train.

Q. The floor on which you put the water was the floor of the church?—
A. Yes; the floor of the church, where I was told by the old lady was most vibration felt.

RECORD.

By *Mr. Abbott.*

*In the
Superior
Court.*

No. 97.
Further
deposition
of P. Lacroix
for the Com-
pany, dated
3rd May
1889—
continued.

Q. Was this hatchway open or shut when you were there?—A. Open the last time I saw it—yesterday.

Q. Did you notice whether there were any new cracks in the plaster or in the building?—A. No, I noticed some old settlement boards in the library, the Sunday school. There are a few where the walls are settled down three-eighths of an inch, which is noticed in all buildings.

Q. Did you remark that when you went there before, in February?—A. My attention was not called to it, and I did not look at it, but I am positive they must have been there.

Q. This is due to the settlement of the buildings?—A. Yes.

Q. Nothing unusual about it?—A. No, nothing unusual, that we see in every building.

10

By *Mr. Brodie.*

Q. How can you account for the plaster falling before the railway passed if it was in bad order?—A. It stood sufficient until then.

Q. Was it not the railway caused it to fall?—A. No; I can swear to that.

Q. Are you aware that the half past three train is a very light train?—A. I am not aware of the train at all; I did not see it; I was told it was the heaviest train passed there.

Q. You were told it was the heaviest?—A. Yes; somebody told me there were six cars, but I do not know it.

And further Deponent saith not.

20

G. H. EATON.
Stenographer.

Schedule No. 108.

No. 98.
Deposition
of J. B.
Resther for
the Company
(recalled),
dated 3rd
May 1889.

On this third day of May, in the year of our Lord One thousand eight hundred and eighty-nine, personally came and appeared,

J. B. RESTHER, of the City of Montreal, a witness examined for the Company and now a witness recalled for the Railway Company in sur-rebuttal, who deposeth as follows:—

I was present with the last witness, Mr. Lacroix, on the occasion which he mentioned, and I have heard his evidence, and confirm the same in every particular.

By *Mr. Brodie.*

Q. Are you aware how many cars were on that train when it passed?—A. Not more than Mr. Lacroix, because I did not see it. I heard that generally it contains about five or six cars.

30

Q. Would you be surprised if there were only three?—A. I would not be surprised, but for the Boston train I think it must be not less than five or six.

By *Mr. Trenholme*.

Q. Do you know whether a train passing there goes more rapidly coming in than going out?—A. Well, the distance from the church to the station, it is long enough so as to take a good rate.

Q. That does not answer my question; do you know whether the train goes faster coming in or going out past that point?—A. I cannot say exactly.

By *Mr. Abbott*.

10 Q. Did you notice any other train passed while you were in the church that day?—A. Yes, sir, there was one coming from above to the station.

Q. What was that train—what did it consist of—did you see it?—A. I think it was box cars.

Q. You saw it then?—A. Yes.

Q. How many cars?—A. I think there were three or four cars.

Q. What time of day was it?—A. About three or half past three at the time.

Q. Box cars?—A. Yes; and the Boston train passed about quarter to four.

20 Q. When that train passed, the one you saw, did you perceive any vibration?—A. Not at all, not more than the others.

By *Mr. Fleet*.

Q. Do you think the passage of the train, from what you saw, would in time tend to injure the building in any way, the foundations of the church?—A. No.

Q. Or to cause cracks in it?—A. No.

Q. Do you consider the examination which you made of the building and the test which you applied enables you to speak positively on that point?—A. Yes, sir, I am certain that the church was not injured by the passing of the train.

30 Q. And will not be?—A. I do not think it will be.

Q. That is to the best of your judgment?—A. Yes, sir.

Q. Suppose the traffic were to increase very largely—supposing there should be many trains coming in over that into the station, and passing the church as there are running into the Grand Trunk Railway depôt, do you think it would seriously affect the stability of the building or the foundations in any way, or cause any cracks or material injury?—A. From what I have seen yesterday I feel certain that the church would not be injured by the passing of any train.

By *Mr. Trenholme*.

40 Q. Do you think that if that railway ran past this building, say within twenty feet of this wall, do you think it would affect this building twenty or

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Superior
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Resther for
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thirty feet away?—*A.* Well, I do not think it for this reason, because I was living at St. Hyacinthe near the Grand Trunk Railway, and the train was passing above the height of the roof of my house, and I never found any shaking.

Q. Which would be the most serious thing in the shaking, the passing of a heavy train twenty or thirty feet of a building or the running of a printing machine, which would be the most serious thing?—*A.* I do not understand the question.

Q. Suppose we had a newspaper twenty feet from here and they were running a printing press, do you think that would shake the building more than the passing of the train?—*A.* Yes, sir; because I am neighbour of a house in 10 which there is machinery, and very often in my office we are shaken.

Q. Is that heavier machinery than an engine either in the weight or the amount of machinery that is worked?—*A.* No; not as much.

Q. Don't you know that it is generally considered that a railway train does shake property within a considerable distance off?—*A.* Yes; but it is exactly the same, because in machinery it often knocks up and down, and the train passes right through.

Q. Don't you know it is the general experience that railway trains do shake houses and property within a considerable distance off?—*A.* Well, I am speaking on the oath that I have given. I was never off the Grand Trunk Railway 20 at St. Hyacinthe for about twenty years, and never feel any shaking in my house.

Q. If two gentlemen or more came here and swore they were in that church, and that it was seriously shaken by the passing of trains, do you think they would be telling what is false?—*A.* They could say whatever they liked. I am speaking for myself.

By Mr. Abbott.

Q. Would it not be possible for a person in that building to as hearing a train pass to have a feeling or impression that there was a vibration?—*A.* They might think that there is. 30

Q. You consider that the test you made by the water a sure test whether there was actually any vibration or not?—*A.* Well, as Mr. Lacroix said, the bowl was there full of water with a small piece of paper on the water, and then we walked, and when we were walking on the floor the vibration showed.

Q. Do you consider from your experience as a builder and architect, whether it is a sure test of vibration by the passing of a train, the one you tried by water?—*A.* I do.

Q. Is there any other test that would be more certain, any known test?—*A.* I do not know.

Q. Do you know of any other recognised test but that?—*A.* No, sir. 40

Q. Would you consider the stopping of a clock a more thorough test?—*A.* It must shake a good deal to stop a clock.

Q. Would the vibration which would stop a clock be perceptible upon a bowl of water placed as it was there in the middle of the floor?—*A.* I think that the water would move a great deal by the shaking that would stop a clock.

Q. What day were you there?—A. Yesterday.

Q. Would it be possible that that building could be shaken or moved as a whole from one side to the other, or any vibration caused by the railway train passing without being perceptible on the surface of the water in that bowl?—

A. No, sir.

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—continued.

G. H. EATON,
Stenographer.

IN THE COURT OF QUEEN'S BENCH.

Peter Wood *et al.* *vs qual.* (Respondents in the
Court below)

Appellants.

v.

The Atlantic and North-West Railway Company
(Petitioners in the Court below)

Respondents.

In the Court
of Queen's
Bench.

No. 99.
Appellants
case, dated
15th De-
cember 1892.

Document IV.

Factum of Appellants.

This Appeal is from a judgment of the Superior Court for the District of Montreal (Mr. Justice Mathieu), rendered on the 17th November 1891, on a petition in appeal to that Court from an award of Arbitrators under the Rail-
way Act. By this judgment the appeal of the Railway Company from the
20 award of the Arbitrators was sustained in part, the amount of the award,
\$16,308.00, being reduced to \$1,367.00.

Of this judgment the present Appellants complain, and have instituted the present appeal from it.

The facts of the Case are briefly as follows :

The Appellants are the trustees of Calvary Congregational Church, Mont-
real, and as such owners in possession of the property of that church, part of
lot 1,604 of St. Antoine Ward of the City of Montreal, fronting on Guy Street.
The purchase of the property for the church was decided upon and authorised
by a resolution of the church at a meeting held on June 22nd, 1874 (*see Ex-*
30 *hibit XIV. of Record*). In pursuance of this resolution the property was
originally acquired for the church in the name of Charles Cushing, notary, one
of the Respondents, under a Deed of Sale executed at Montreal on July 29th,
1874, before J. S Hunter, Notary, from Andrew Morton *et al.*, to him. A copy
of this deed is filed as Exhibit No. XI. of Record.

By this Deed the whole of lot official 1,604 of the said St. Antoine Ward
was acquired ninety-six (96) feet in width in front on Guy Street by one
hundred and sixty feet deep (160).

The congregation proceeded to erect a church upon the front portion of
the lot fronting on Guy Street, and subsequently Charles Cushing, still holding
40 for the church, sold two cottages and lots forming part of the rear of the lot to
Messrs. Lawson and Hannah respectively, a strip of land remaining extending
from the front portion of the lot to a lane in rear, on which strip a right of
passage was given to Lawson and Hannah. *See deposition of Charles Cushing.*

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In 1879, by Deed, April 10th, J. S. Hunter, Notary, Charles Cushing, who, as stated, had acquired the whole of lot 1,604 for the church, formally conveyed to the trustees of the church the remaining portion of said lot 1,604, that is to say, what remained after the sale to Lawson and Hannah already referred to (*see* deposition of Charles Cushing). Mr. Cushing had also bought part of the adjacent lot 1,605 from M. C. Mullarky. This is explained by him in his cross-examination.

In the Deed of April 10th, 1879, the part of the lot forming the lane or passage referred to is not specially mentioned, although it belonged to the church as part of the original purchase by Charles Cushing for the church, 10 under the resolution of June 22nd, 1874, already referred to.

By Deed, March 18th, 1887, J. S. Hunter, N.P., Exhibit XIII. of Record, Charles Cushing made a formal conveyance of this to the trustees.

(*See* deposition of C. Cushing.)

The position of the trustees was this, therefore: They were owners in possession of all lot 1,604 except the portions sold to Lawson and Hannah; their ownership of the lane or passage being subject to the servitude (right of way) existing in favour of the adjacent proprietors.

In 1887 the Company deposited the plan and book of reference of the properties required for their line entering the City of Montreal to the Windsor 20 Street terminus.

The Court is here specially referred to Exhibit X. of Record. This is a certified copy of the plan so deposited by the Company in accordance with the Railway Act in the office of the Clerk of the Peace for the District of Montreal.

On it the property of the church is shown as the front portion of lot 1,604, and is marked A; the portions of lot 1,604 sold to Hannah and Lawson are marked with their respective names.

The portion called the lane is shown as part of said lot 1,604, and the part of it crossed by the railway is marked number 67. 30

The Court will see by this plan that leaving out the question of the portion called the lane a small triangular piece of the south corner of what is absolutely the property of the church is taken by the railway.

See Deposition of Cushing, and the sketch Plan Exhibit No. 33.

The Court is also referred to the evidence of Henry Irwin, witness for the Company (*see* his deposition), where he states that the trestle work then existing is merely temporary. (*See* also same deposition on cross-examination.) This small triangular piece of land is entirely omitted in the reference numbers of the plan by which the properties intended to be expropriated are successively distinguished.

In the proceedings in expropriation which the Company instituted against 40 other properties for their line in that vicinity they entirely ignored the rights of the present Appellants. They took no steps to expropriate the portion of the church property which the Company had taken possession of under the plan. The idea of the Company apparently was that the trustees had only a right of passage, if any right at all in the lane, and that by its ingenious device of temporarily building their line on trestle work the Company could evade the payment of any compensation. Thus the rights of the trustees, now Appellants, as owners of the lane, were ignored, and the fact that a part of the

church property, distinct and separate from the lane, is taken by the railway was entirely disregarded.

The trustees, now Appellants, served a protest on the Company on March 30th, 1887, Exhibit number 28 of Record, and the Company still disregarding their rights, the trustees applied to the Superior Court for an injunction, which was granted by the Honourable Mr. Justice Mathieu, and the Company were ordered to institute proceedings in expropriation under the Railway Act. Thus forced so to do, the Company instituted proceedings in expropriation herein by giving a notice as required by section 146 of the Railway Act, 1888.

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10 By this notice in expropriation, Exhibit No. IX. of Record, they still ignored the fact that the Company had taken the triangular piece of land already referred to, and still attempted to evade the compensation due to the trustees as owners of the lane by the trestle work scheme. They offered twenty-five dollars as compensation, and named Mr. R. D. McGibbon as their arbitrator. The trustees appointed Mr. John I. Brodie as their arbitrator. Mr. Charles J. Fleet, advocate, was agreed upon as third arbitrator, and then followed the usual arbitration proceedings, ending in the award to the proprietors, the present appellants, of the sum of sixteen thousand three hundred and eight dollars (\$16,308.00). This award was made on February
20 14th, 1890, before W. de M. Marler, Notary.

From the award of the Arbitrators the Company appealed to the Superior Court, under section 161 of the Railway Act, 1888.

The Appeal was heard before the Honourable Mr. Justice Mathieu. The principle contention of the Company in the Court below was that no land of the trustees, the present Appellants, being taken, they were not entitled to any indemnity, and that the nominal sum of twenty-five dollars offered by the Company was sufficient. The point on which the argument on both sides chiefly turned in the Court below, therefore, was not so much the amount of the indemnity, as the right of the trustees to any indemnity. The Appellants
30 claimed :

First.—That as owners of the strip of land used as a lane, they were, notwithstanding any servitude (right of way) existing thereon in favour of the adjacent proprietors, entitled to indemnity for being deprived of the land occupied by the lane, and damage to their remaining property.

Secondly.—That a portion of their land, apart from this lane, namely, a small triangle at the south corner, was taken by the Company, and that for that they were entitled to indemnity and damage to their remaining property. The judgment of the Court below decided in favour of the Appellants as to the land taken, on both points, and held that the trustees were entitled to
40 damages for the land actually taken, and for certain damage to their remaining property.

There is no cross appeal on the part of the Company Respondents, and it must be considered therefore that the Company acquiesce in the right of the Appellants as owner of the lane and of the small triangle of land taken to come under the Railway Act, and to be entitled to damages for being deprived of this land and any consequent damages contemplated by the Act.

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From the remarks of the learned Judge in the Court below, it will be seen that, although the formal judgment does not set it forth, the Court was of opinion that, outside the question of the lane, part of the property of the trustees was taken by the Company, namely, the small triangular piece at the south corner of what may be called the church property proper. This has not so much importance in view of the fact already stated, that the judgment decides that as owner of the lane the trustees were entitled to indemnity. But the question is of some importance, specially as bearing incidentally on the questions of the damages, and the Appellants submit that this pretension was clearly borne out by the evidence, and that they are entitled to have it formally declared that in addition to the part of the lane expropriated, the Company has also taken possession of this small piece of land. 10

To ascertain what the Company has taken, we can only have recourse to the notice in expropriation Exhibit IX. of Record, and to

The plan deposited by the Company, Exhibit X. of Record.

Now, both of these show conclusively that not only is the lane owned by the trustees (subject only to the existing servitude of right of way) taken by the Company, but also a small corner of the plot on which the church building itself is erected. The notice of expropriation states that the portion of the land taken by the railway (marked as No. 67 on plan, Exhibit X.), measures along the south-eastern side fifty feet four inches. This shows two feet four inches beyond the line of the lots sold to Hannah and Lawson, which are each twenty-four feet, making forty-eight feet in all. 20

The plan deposited by the Company, of which authentic copy is filed as Exhibit X., agrees with this.

The Appellants would also refer the Court to the evidence of Mr. Cushing, and also to the affidavit of Mr. Shaughnessy, Schedule 49 of Record, in which it is expressly stated that the plan includes this small piece of land.

It would appear that by the trestle scheme, which has already been referred to, the Company did not at the time actually encroach on the Trustees' property at this corner, but the plan shows that, taking the full width of their line at that point, this triangular piece is included, and if at any time the Company filled in an embankment instead of leaving the bare trestles, the line would take the triangular piece, and what would become of the alleged free passage under the trestle work? What remedy could the trustees resort to if this is done? The land is included in the plan, which is a general notice to the proprietors interested. It is included in the special notice as already shown, and must be held to be included in the Award. The Appellants claim, therefore, that it is clear that the small piece of land is taken in addition to the lane, and that part of their property being taken, as well by the taking of the lane as by the taking of this triangular piece, they are entitled to compensation for the land taken, and for the damages arising from the exercise of the powers of the railway. The Appellants also claim that independent of the Railway Company taking the lane or the small piece of land in question, they are entitled to have the damage 30 40

to their property estimated under the Act. See *Pion and The North Shore Railway Company*, XIV. L. R. H. L., 512.

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This leads to the main ground of complaint against the judgment, namely, the reduction of the amount awarded by the Arbitrators. The Appellants respectfully submit that the award of the Arbitrators was right, and should have been confirmed. They claim that no principle of law has been violated in the award, that no damages not contemplated by the Act have been allowed, and that this being the case, the award should not have been disturbed. The learned Judge in the Court below has not, the Appellants submit, rightly interpreted
10 the Railway Act on this question of damages. The *considérants* of the judgment in which it lays down the principal as to the extent of the damages contemplated by the Act are as follows :—

“ Considérant que les dits Syndics ont aussi droit à des dommages comme
“ indemnité pour privation de lumière et d’air, par suite de la construction du
“ chemin sur la partie du terrain exproprié et pour les obstacles à la communi-
“ cation du reste de la propriété à la voie publique, et que ces dommages
“ n’excèdent pas la somme de mille piastres ;

“ Considérant que les dits Syndics n’ont pas droit à des dommages qui
“ pourraient leur être imposés par la mise en opération du chemin tel que ceux
20 “ qui pourraient leur résulter de la vibration et le bruit causés par le passage
“ des trains et la fumée des locomotives ;

“ Considérant que ces dommages ne résultent pas de l’expropriation, et que
“ si les Syndics ont un recours à cet égard, ils devront l’exercer suivant le
“ cours ordinaire de la loi, et qu’il n’y a pas de dispositions dans l’acte des
“ chemins de fer pour déterminer ces dommages par l’arbitrage ;

“ Considérant qu’il résulte de la preuve que presque tous les dommages
“ accordés par les arbitres aux dits Syndics résulteraient de la mise en opération
“ du chemin et qu’il y a lieu de réduire cette sentence à la somme de mille trois
“ cent soixante-et-sept piastres, montant réuni des divers items ci-dessus
30 “ mentionnés ;”

The Appellants respectfully urge that these *considérants* are erroneous and that the Court below has taken a narrow and restricted view of this question of damages and placed a wrong interpretation upon the provisions of the Railway Act respecting the damages to be allowed in such a case. The proceedings were instituted under the Railway Act 1888, and the Appellants submit that the provisions of that Statute clearly show that the damages to be allowed include not only those arising from the construction but from the use of the railway ; in other words, that the limited and restricted scope assigned by the judgment to the damages is erroneous.

40 The Court below considers that there is a claim on the part of the Appellants under the common law for these further damages which it refuses to allow under the Statute. But as the trustees here clearly come under the Statute which authorises the taking and using of the lands by the railway on its giving compensation in the manner provided for by the Statute, are not the trustees limited to such compensation, and is not the common law remedy taken away ? In other words, after an award under the Statute if action were instituted by

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the trustee for further compensation for damages arising from the use of the lands by the railway, would not the expropriation proceedings and the award thereon be a bar to any such action. If part of a proprietor's land is actually taken it undoubtedly brings his case under the Statute, and Appellants claim that under it they are entitled to have all the damages sustained by them assessed under the Act, and even if none of their land was taken, the Appellants submit that under the authority of Pion's case they would still come under the Statute.

In the case of *Chamberlain v. The West End of London Crystal Palace Railway Co.* (1863) Earle, C. J., said:—

“A person seeking to obtain compensation under these Acts of Parliament must once for all make one claim for all damages which can be reasonably foreseen. . . . The party claiming compensation must bring forward his claim in unity, as far as he can foresee the damages which will arise, estimating them as having as much permanency as the railway.”

In *Croft v. The London and North-western Railway Co.* (1863), Cockburn, C. J., on an action claiming damages accrued since the arbitration, said:—

“As far as we can gather from the language of the various enactments relating to the assessment of compensation, the Legislature contemplated that compensation should be settled once for all.”

And Crompton, J. said:—

“These injuries must have been in the contemplation of the parties and are foreseen damages; and, as far as such damages are concerned, there is to be one inquiry, and compensation is to be given once for all. . . . When the damage can be ascertained at the time of inquiry, there can be no further compensation.”

These authorities are clearly applicable to our Act, and it has been so expressly held by our Courts. On this point the Appellants would refer to the case of *Paradis vs. The Queen*, Exchequer Court Reports (Canada), volume 1, page 191, where the question is fully discussed. (See specially page 210.)

Our Act, Appellants claim, goes much further than the English Acts, including as it does provision for all damages caused by the exercise of the Company's powers, and extending, as the case of *Pion* and *The North Shore Railway Company* shows, even to cases where no land is taken.

Appellants claim that full compensation for all damages sustained by reason of the exercise of the Company's powers is provided for under the Statute.

The first reference in the Act to compensation and damages is in section 92, which is as follows:—

“The Company shall, in the exercise of the powers by this or the special Act granted, do as little damage as possible, and shall make full compensation in the manner herein and in the special Act provided to all parties interested for all damage by them sustained by reason of the exercise of such powers.”

Here it is clearly provided that the Company shall make full compensation in the manner prescribed in the Act for all damage sustained by reason of the

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exercise by the Company, not only of its power to construct, but of all the powers conferred on it.

The interpretation clause of the Act, section 2, provides as follows :—

“(k)—The expression ‘lands’ means the lands, the acquiring, taking, or using of which is incident to the exercise of the powers given by this or the special Act.

“(q)—The expression ‘railway’ means any railway which the Company has authority to construct or operate.

“(t)—The expression ‘special Act’ means any Act under which the Company has authority to construct or operate a railway.

“(w)—The expression ‘the undertaking’ means the railways and works of whatsoever description which the Company has authority to construct or operate.”

The general powers of a Company are found in section 90. The following are sub-sections :—

“(c)—Purchase, take, and hold of and from any person, any lands or other property necessary for the construction, maintenance, accommodation, and use of the railway, and also alienate, sell or dispose of so much thereof as is not necessary for the purposes of the railway.

“(o)—Take, transport, carry and convey persons and goods on the railway, regulate the time and manner in which the same shall be transported, and the tolls and compensation to be paid therefor, and receive such tolls and compensation.

“(g)—Do all other acts necessary for making, maintaining, altering, or repairing, and using the railway.”

The powers of the Company are clearly to construct and operate. It is to do as little damage as possible in the exercise of its powers and to give full compensation for all damage sustained by any one interested by reason of the exercise of such powers.

Section 144 provides that after the deposit of the map or plan “application may be made to the owners of lands or interested in lands which may suffer damages from the taking of materials or the exercise of any of the powers granted for the railway, and thereupon, agreements and contracts may be made with such persons, touching the said lands, or the compensation to be paid for the same, or for the damages or as to the mode in which compensation shall be ascertained, as seems expedient to both parties; and in case of disagreement between them, or any of them, all questions which arise between them shall be settled as herein-after provided.”

The cases of disagreement which are to be settled by arbitration as provided in the Act are clearly disagreement with owners of lands or persons empowered to convey lands, or interested in lands which may suffer damage from the exercise of any of the powers granted for the railway and not from the mere construction. The Appellants would again refer to the interpretation clause already cited as to the meaning of the word “lands.”

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Again, by section 147, it is provided that the notice to the proprietor shall be accompanied by a certificate of a sworn land surveyor, stating :—

“ (a.) That the land . . . is required . . .

“ (b.) That he knows the land or the amount of damage likely to arise from the exercise of the powers, and

“ (c.) That the sum so offered is in his opinion a fair compensation for the land and damage aforesaid.”

A fair compensation for the land (clearly the value of the land taken) and damage as aforesaid. As aforesaid refers back to the preceding paragraph, and evidently means, “ the amount of damage likely to arise from the exercise of the powers ” of the Company. What limitation is there here to the provisions of section 92, enacting that full compensation shall be made to all parties interested “ for all damage by them sustained by reason of the exercise ” of the Company’s powers? The words of section 147 are if anything more general. “ Likely to arise from the exercise of the powers of the Company.” The surveyor is to give his opinion of the damage likely to arise, and when the offer based on his opinion is refused and Arbitrators are appointed, it is for the Arbitrators to determine what in their opinion, on the evidence adduced, is the value of the land and the amount of damage likely to arise from the exercise of the powers of the Company. This surely means, if we are to take the plain and natural meaning of the words, the damage that will in ordinary circumstances arise from the taking of the land, the construction of the railway and its operation by the Company. 10 20

In the Buccleuch case, referred to below, the Arbitrator allowed a large sum by way of compensation for depreciation in the value of Claimant’s mansion which he expected to result from the use for traffic, with its attendant dust and noise, of the embankment and roadway formed upon land taken from the claimant. In other words, the “ damage likely to arise,” and his award was sustained by the House of Lords.

In the Essex case, referred to below, it was held that the tribunal (Arbitrators or Jury) which assesses compensation is bound to take into consideration the purposes of the undertaking and the consequences likely to result therefrom. 30

The Appellants also respectfully direct the attention of the Court to section 153, which is as follows :—

“ The Arbitrators, in deciding on such value or compensation, shall take into consideration the increased value that will be given to any lands through or over which the railway will pass, by reason of the passage of the railway through or over the same, or by reason of the construction of the railway, and shall set off the increased value that will attach to the said lands or grounds, against the inconveniences, loss, or damage that might be suffered or sustained by reason of the Company taking possession of or using the said lands as aforesaid.” 40

The damages again are those suffered or sustained by reason of the Company taking possession of or using the lands as aforesaid. As aforesaid here clearly means in the exercise of any of the powers of the Company. This section too provides that if any increased value be given to any lands through

which the railway passes by reason of the passage of the railway, such increased value may be set off against the loss and damage. There are few cases, if any, where the mere building of a line of railway, that is, the mere grading and laying rails without any operation or use of it, could give an increased value to any lands. It is evident that the increased value is that arising from the building and operation of the railway, and the Company is to get the benefit of this. The Appellants submit that this makes it still more clear that the damages which the Company must pay cover those arising from the operation as well as the mere construction of the railway. In other words, that full com-
 10 pensation must be made by the Company for all damages sustained by persons interested by reason of the exercise of all its powers. The Appellants respectfully submit therefore that the provisions of the Statute clearly provide that the amount awarded shall make full compensation for all damages done by the Company in the exercise of all its powers. That in the present instance part of the land of the trustees, now Appellants, being taken, they come under the Statute, and that under it full compensation must be accorded to them for all damages sustained by them by the construction and operation of the railway.

The judgment appealed from is fully reported in the *Revue Legale*, vol. 21, p. 246. It will be seen from that report that the Court considered the provi-
 20 sions of section 92 of the Act limited by the provision that the compensation there provided for should be determined in the manner prescribed by the Act. Why should the general provision and principal of section 92 be limited by the sections of the Act relating to the procedure for arbitration. The right to full compensation is enacted in section 92. The manner of determining the damages cannot limit the right. But the Appellants claim that there is nothing in the other section of the Act that in any way limits or restricts the provisions of section 92, but that on the contrary, the other sections already referred confirm the provisions of section 92.

The principal case cited in support of the judgment does not, Appellants
 30 submit, bear out the narrow interpretation of the provisions of the Statute as to damages set forth in the *considérants* complained of.

The case is that of *Brand & The Hammersmith Railway Company*, 1 L. R., Q. B. 130 and 4 L. R. Eng. and Irish App. 171.

It was held in that case :

“ That the Lands Clauses Consolidation Act and the Railway Clauses Con-
 “ solidation Act do not contain any provision under which a person whose land
 “ had not been taken for the purpose of a railway can recover statutory com-
 “ pensation from the Railway Company in respect of damage or annoyance
 “ arising from vibration occasioned (without negligence) by the passing of
 40 “ trains, after the railway is brought in use.”

Sections 6, 16, and 86 of the Railway Clauses Consolidation Act are strikingly like the corresponding clauses of our Act. In clause 6 of the English Act, however, the words “ in the construction of ” are used, which are not those of section 92 of our Act, which is much more comprehensive and lays down the general principle as to the damages to be allowed.

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In citing the English Act and the cases under it, the Appellants would point out that our Act is, as already shown, more comprehensive, and provides generally for all damages caused by the exercises of the Company's powers. This being the case, the fact that the English cases under the English Act fully maintain the pretensions of Appellants and the award of the Arbitrators, makes Appellants' position under our Act all the stronger.

The provisions of section 16 of the Railway Clauses Consolidation Act are as follows:—

“Subject to the provisions in this and the special Act, &c., contained, the Company may, for the purpose of constructing the railway, &c., execute the following works.” (The works are then mentioned). “They may do all other acts necessary for making, maintaining, altering or repairing, and using the railway. Provided that, in the exercise of these powers, the Company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special Act, &c., provided, to all parties interested for all damage by them sustained by reason of the exercise of the powers of this or the special Act,” &c.

Section 53 of the Land Clauses Act reads as follows:—“In estimating the purchase money or compensation regard shall be had not only to the value of the land, but also, to the damage, if any, to be sustained by the owner of the land by reason of the severing, &c., or otherwise injuriously affecting such other lands by reason of the exercise of the powers of this or the special Act, &c.”

Section 92 of our Railway Act, already cited, is almost word for word the same as the concluding part of section 16 of the English Act.

Sections 144 to 147 of our Act all provide for the compensation for the value of the land and the damage. (See specially section 147 already cited in full.)

Even in the case of Brand, there was a striking difference of opinion, although the majority of the Law Lords, notwithstanding the fact that four of the five Judges called to advise were of the contrary opinion, came to the conclusion already given. But it is perfectly clear that the case of Brand is not analogous to the present case, as in it no land was taken. In the present case the Appellants are in an entirely different position, for part of their land is taken, as already shown, and as the judgment of the Court below expressly sets forth, part of the indemnity allowed by the judgment being for the value of the land actually taken. To show how evidently the decision in the Brand case turned on “no land being taken,” and how clearly it cannot apply in the present instance, it is only necessary to refer to the cases of the Duke of Buccleuch, and the Metropolitan Board of Works, V. L. R. H. L. 418, and the case of Essex and the Local Board of Acton; XIV. L. R. H. L. 153. In the case of the Duke of Buccleuch, Mr. Justice Hannen, referring to Brand's case, said

“It is, however, to be observed that both the noble Lords who gave judgment in favour of the Railway Company in that case, agree that the sections of the Land Clauses Act referred to, including section 63, were not applicable.”

Lord Colonsay gives the reason, namely: "that no land belonging to the Plaintiffs, or in which they were interested, was taken or touched by the railway," and Lord Chelmsford expresses his regret that he is "compelled very reluctantly to come to the conclusion that the Legislature has not provided a remedy for the case of the Respondents, but has left them without remedy, I respectfully submit, therefore, that that decision is not an authority applicable to the present cause where as land of the claimant has been taken. the 63rd section of the Land Clauses Act is applicable, and where, therefore, the omission to provide a remedy for real damages which my Lord Chelmsford regretted in Brand's case does not apply."

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And yet in the present case the learned Judge decides that land is taken and gives compensation for its value, but on the authority of the judgment in Brand's case, rejects any claim for damages occasioned by the use by the Company of the land so taken.

In the case of Essex, certain lands were expropriated for sewage works, and it was held that part of the Appellants' land being taken for the sewage works, compensation might be awarded for damages to be sustained by reason of the injuriously affecting his other lands, not only by the construction of the sewage works but by their use.

This case of Essex is referred to fully below on the general question of the right of Appellants in the present cause to damages, as well from the construction of the railway, as from its use by Respondents; in other words, damages sustained by the Appellants by reason of the exercise of the Company's powers.

The appellants would here, however, respectfully cite to the Court as showing that Brand's case cannot apply to the present case, the remarks of Mr. Justice Mathews (14 Q. B. D. 753), where, referring to Brand's cases, he says:

"None of these cases appear to me either to deal or to be intended to deal with a case where land has been taken. and where damage follows upon the use of that land to other lands, forming part of the same estate." Appellants also cite the words of Lord Watson, which will be found at page 165 of the report of the judgment in the House of Lords.

"The noble lord in his judgment uses these words:

"In *Buckleuch v. Metropolitan Board of Works*, Lord Chelmsford, in whose judgment Lord Colonsay concurred, said with reference to Brand's case and the subsequent case of *City of Glasgow Railway Company v. Hunter*: 'In neither of these cases was any land taken by the Railway Company connected with the lands which were alleged to have been so injured, and the claim for compensation was for damage caused by the use and not the construction of the railway. But if in each of the cases, lands of the parties had been taken for the railway, I do not see why a claim for compensation in respect to injury to adjoining premises might not have been successfully made on account of their probable depreciation by reason of vibration, or smoke, or noise occasioned by passing trains.' I do not think that either Lord Westbury or Lord Cairns appreciated the distinction thus taken. These

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“ learned Lords were prepared to hold injury arising from the execution of the works included in all cases, not only injury occasioned by their structural form, but injury to arise from their subsequent use. That difference of opinion is for the purposes of the present case immaterial; the fact remains, that noble and learned Lords, entertaining different views with respect to the construction of the Statute, concurred in upholding the Landowner's right to compensation, not merely in respect of the construction of works upon land taken from him, but of the subsequent use of these works authorised by Statute.”

“ In *Caledonian Railway Company vs. Ogilvy*, and also in *City of Glasgow* 10
Union Building Company re Hunter, land had been taken from the Claimant for railway purposes; but the use complained of as injurious was not of that part of the railway constructed on the land so taken, and was held in both cases to afford no ground for statutory compensation. It appears to me to be the result of these authorities which are binding upon this House, that a proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers. The construction of the Act which has been thus adopted by the House, had previously been enforced by Mr. Justice Crompton 20
 “ in the Stockport case.”

These cases of *Essex*, and of the Duke of Buccleuch, above cited, and to both of which further reference will be made, show that the case of *Brand* is in no sense applicable to the present case.

The case of *Rex vs. Pease* is clearly not in point. In it a railway company was indicted for a nuisance by running their engines along their lines adjoining a highroad. They pleaded their right under Statute, and the plea was held good.

The case of *Brodew & the Corporation of Roxton* is not in point, as in that case no land was taken, and the injury complained of was one common to all. 30

The cases of *Parkdale vs. West*, and of *Pion & The N. S. R. Co.*, are manifestly cited as supporting the part of the judgment in favor of Appellants. The only authority therefore really bearing on the *considérants* of the judgment complained of is that of *Brand*, and that case, as already pointed out, is not applicable to the present case as in it no land was taken, and again it was under an Act less favourable to the proprietor than our own Act.

The Appellants would respectfully direct the attention of the Court to the following cases, which the Appellants claim clearly support the position which they take as regards the damages to which they are entitled:—

Metropolitan Board of Works & McCarthy, VII. L. R. H. L. Eng. & Irish 40
 Appeals, 243.

Caledonian Railway Company & Walker's Trustees, VII. L. R. App. Cases
 259.

Stockport Timperley & Altringham Railway, 33 L. J. Q. B. 251.

In the *Stockport* case a railway company took some land of L. under their Act and proposed to make their railway on it, so close to a cotton mill belonging

to L. that by reason of the proximity of the railway and the danger of fire from the trains using the line the building was less suitable for a cotton mill, could only be insured at an increased premium, and was rendered of less saleable value. *Held*, that L. was entitled to compensation in respect of the mill being so injuriously affected, and that the rule that compensation would only be given for that which unless sanctioned by the private statute would otherwise have been an actionable wrong, had no application to cases where the act complained of was done on complainant's own land taken from him by the Company by force of their statute.

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10 See also the argument of Manisty for the proprietors, page 252, and the remarks of Crompton J., at page 253.

The *Duke of Buccleuch v. Metropolitan Board of Works*, 5 L. R. English and Irish Appeals, 418, it was held though compensation may not be granted to a person annoyed by the smoke and vibration occasioned by trains passing along a railway constructed under the authority of an Act of Parliament, when no part of his land has been taken, compensation may be given for deterioration in the value of his property occasioned in a similar manner when a part of his land has been taken for the construction of a work authorised by the Act.

20 That the loss of the use of the river frontage and consequent loss of privacy, and the increase of dust and noise by the creation of the embankment and road were subjects for the Arbitrator to consider as occasioning deterioration in the selling value of the property for which he was to determine the amount of compensation. Its amount was entirely in his discretion and his award could not be impeached on the ground that he must have considered all these subjects in making up his mind as to the extent of the money deterioration of the property and the amount of compensation therefore to be given. (See specially the remarks of Lord Chelmsford at page 458.)

Essex v. The Local Board of Acton, XIV. L.R.H.L., page 153.

30 The attention of the Court is specially asked to this case. It is the latest of the English decisions on the matter, and as a decision of the highest Court must be regarded as establishing beyond dispute the principle that a person, part of whose land is taken, is entitled to damages, not only for the land taken but for the injuriously affecting his other lands forming part of or held with the land taken by the use as well as by the construction of the works for which the land is taken, and if this be the case under the English Act it is even more so under ours.

40 This case of Essex has already been referred to as distinguishing completely the case of Brand from the present, by the judgment in it stating clearly that in Brand's case no land being taken, statutory damages could not be allowed, while in the case of Essex, land being taken damages were allowed. Now the Appellants cite the case as fully supporting their contention that part of their land being taken they are entitled to damages as well arising from the operation of the railway as its construction, in other words, from the use of the land by the railway as well as the mere taking of the land and building the line upon it.

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In this case of Essex certain land was taken for sewage works. The Jury gives a verdict of 8,737*l.* for the value of the land taken, and a further sum of 4,000*l.* for all damage sustained or to be sustained by reason of the injuriously affecting the other lands by the exercise of the statutory powers of the Board.

Mathew & Day, J.J. gave a judgment on this verdict (14 Q.B.D. 753).

The Court of Appeals (Lord Esher, M.R. & Lindley & Lopes, J.J.) reversed this decision and quashed the verdict and judgment.

The House of Lords by a unanimous judgment (Lords Halsbury, L.C. Watson, Bramwell, Fitzgerald, & Macnaghten) reversed the judgment of the Court of Appeals, and held:

“Firstly. That the Jury had not exceeded their jurisdiction in awarding the further sum. For part of the Appellants land being taken for the sewage works, compensation might be awarded for damage sustained or to be sustained by reason of the injuriously affecting his other lands not only by the construction of the sewage works but by their use.

“Secondly. That the damage was not too remote to form the subject of compensation even though no nuisance might be caused.”

Sir Richard Webster, for the Board—Respondents, argued that the only subject of compensation is damage caused by the construction or execution of the works and not that caused by use, and cited the case of Penny and the case of Brand. That the future use or abuse of the works could not be considered. He also urged that the Stockport case (cited above) was bad law, and should be overruled as contradicting the well established principle that damages from use are not the subject of compensation.

The Lord Chancellor in his judgment (page 161 of the report) uses these words:

“I have, therefore, come to the conclusion that it was open to the Jury to find that the Appellants land not taken by the Local Board would be injuriously affected by the construction and use of the sewage works.”

“My Lords, with reference to the main question I have had less difficulty, since I take it that two propositions have now been conclusively established. One is that land taken under the Lands Clauses Act, and applied to any use authorised by the Statute, cannot by its mere use, as distinguished from the construction of works upon it, give rise to a claim for compensation. But a second proposition is, it appears to me, not less conclusively established, and that is, that where part of a proprietor's land is taken from him, and the future use of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the lands of neighbouring proprietors from whom nothing had been taken for the purpose of the intended works.”

“It may seem at first sight a little strange that what is injurious affecting in one case should not be in the other. But it is possible to explain that apparent contradiction by the consideration that the injurious affecting by the use, as distinguished from the construction, is a particular injury suffered

“ by the proprietor from whom some portion of his land is taken different in kind from that which is suffered by the rest of Her Majesty’s subjects.”

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Lord Watson, after referring to the facts of the case, proceeds at page 164 of the report as follows:—

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“ In the case of a proprietor from whom nothing has been taken by the promoters, it has been settled by a series of decisions in this House that although his land in the vicinity will necessarily be injured by the use of their works, yet it is not thereby ‘injuriously affected’ within the meaning of the Act of 1845; and that he is not entitled to statutory compensation for injury so occasioned. The Respondents argued that upon a sound construction of the Act, the same rule ought to apply in cases where the promoters have acquired part of the claimants lands for the purposes of their undertaking. I should have regarded the question thus raised as one of great nicety and difficulty, if I had not been of opinion that it has already been determined in *Buccleuch v. Metropolitan Board of Works*. The Arbiter in that case allowed a large sum by way of compensation for depreciation in the value of claimant’s mansion, which he expected to result from the use for traffic, with its attendant dust and noise, of an embankment and roadway formed upon land taken from the claimant, and his award was sustained by Lords Chelmsford, Colonsay, Westbury, and Cairns. Although the noble and learned Lords agreed in results, they did not arrive at that result upon the same general construction of the provisions of the Act with respect to compensation. Lords Chelmsford and Colonsay constituted the majority in *Hammersmith and City Ry. Co. v. Brand*; but Lord Cairns, who constituted the minority, following the opinion which had been expressed by Lord Westbury in previous cases, disapproved of the limited meaning which the House, in that case, attached to the words, ‘injuriously affected by the execution of the works.’ ”

Then follows his remarks already cited distinguishing the case of *Essex* from that of *Brand*, and the subsequent case of *Hunter*

The Appellants would also cite the following words at the end of the judgment of Lord Bramwell.

“ But supposing *Rex. v. Pease* and *Vaughan v. Taff Vale Ry. Co.* to be rightly decided, I should draw, not the conclusion that the Attorney-General wishes us to draw, but this; that while the Legislature thought that persons whose lands were injured by the operations on other lands of the same ownership which were taken should have compensation, that right should not be extended to other cases, as that would give opportunity for vague and unfounded claims.

“ Now a word as to the authorities. The *Stockport* case is, I think, in point. I hope and think I meant no more than I said about it, viz.: that I should like to think the matter over before I agreed to it. I have thought it over, over and over again, and do agree. I think also that the *Duke of Buccleuch’s* case is in point. It is indeed strange that in the judgments in the House of Lords in that case no reference is made to the *Stockport* case, but I think that the principle is the same. As to *Hammersmith Ry. Co. v. Brand*, I own I think it was rightly decided in this House. I said that I thought

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“ *Rex. v. Pease and Vaughan v. Taff Ry. Co.* wrong; that the right of way was not taken away, nor compensation given; I added that if the House agreed with those cases, I thought they should affirm the judgment on the footing that if no action lay, there must be a right to compensation, and that as the erection of the railway must be followed by its use, therefore, the erection of the works injuriously affected the Plaintiffs.”

Lord Fitzgerald referring to the Stockport case speaks as follows:—

“ It cannot be doubted that the Stockport case is in point on this question of jurisdiction. It was vigorously assailed in the Court of Appeal, and one of the Lords Justices suggested that the rule laid down in that case ought to be considered by the House of Lords, with a view to its being probably overruled. My Lords, that case has been the subject of much adverse criticism, but it has not been overruled, and up to the present moment the rule laid down by it has regulated right and liability in similar cases. It is said to have been adopted in principle in the *Buceleuch* case, and if that is so, your Lordships should follow the latter case. I confess that I have some difficulty in adopting that view of the *Buceleuch* case, and prefer considering the Stockport case on its own legal merits.”

“ My Lords, I feel bound to say that had I been a colleague of Crompton J., at the time, I should probably come to the conclusion that his interpretation of the Statute was correct and in accordance with its language; and now, looking back at that decision through a quarter of a century that has since elapsed, and aided by the light of additional experience, I think that it was a sound decision and certainly not now to be disturbed.”

Lord Macnaghten at the close of his remarks uses the most emphatic language in laying down the principle that damages from the user as well as the construction are payable. The Appellants, in concluding their references to this case of *Essex*, respectfully cite the following sentences:—

“ The promoters of an undertaking can only take land for the purpose authorised by their Act. When the lands are taken, the promoters can only use them for that purpose. It is the purpose of the undertaking and that alone which justifies its existence, and directs and controls the exercise of its powers. And yet it is said that on a question of disputed compensation the Arbitrators or the Jury, as the case may be, are to shut their eyes to the purpose of the undertaking, and to make believe that the intended works are some innocent and meaningless folly. I do not think that there is anything in the Act which leads to a conclusion so absurd and so contrary to common sense. Where lands are required for the purpose of a public undertaking, and the owner claims compensation for injury to other lands held therewith, I think the tribunal which assesses compensation is bound to take into consideration the purpose of the undertaking, the consequences likely to result from the execution of the work on the lands required, and any alteration in the character of the property which those works are calculated to bring about.”

“ The Stockport case is precisely in point. It has been much criticised, but I think it has stood the test of criticism. In practice I believe it has always been followed, and I think it is perfectly right.”

The Court is also referred to the judgment of the Court of Queen's Bench in the same case (XIV., Q.B.D., 753), where Day J. says:

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“It has been said that the present case does not fall within the terms of the Act, and that the injury is not in the execution of the works. I am myself of opinion, that it is even in the strictest sense in the execution of the works. It is clear to my mind that the injury in this particular case is done in the execution of the works reasonably understood, that is to say, as the execution of the works coupled with the necessary incidents of the works. People do not create works for sewage purposes unless they intend to use them for sewage purposes. We must look at sewage work, not as a mere erection of bricks and mortar, and so on, in the form of sewage works, but as being sewage works with every ordinary incident natural to sewage works. In my opinion, the proper view was taken of the case at the hearing before the under-sheriff. I cannot find that the jurisdiction was in any way exceeded in awarding compensation for the injury done to the remaining property—the building property—by a portion of the building property being used, not for building purposes, but for the purposes of carrying on upon those premises what are called sewage works.”

If we substitute the word railway here for sewage works the argument is precisely in point. A railway is not a mere embankment with a line of rails on top, but a railway with all the ordinary incidents natural to a railway, and which its statutory powers under its special or the general Act enable it to carry out.

The Appellants confidently submit that the above authorities, and specially the case of Essex, fully sustain their pretention that they are entitled to damages to the rest of their land, arising from the use of the land taken by the Company, as well as damages arising from the mere construction; and that the provisions of section 92 of our Statute that full compensation shall be made for all damages sustained by interested parties by reason of the exercise by the Company of its powers, must be interpreted in this sense, which is Appellants' claim, the natural and logical meaning of the words used. The Appellants' claim, therefore, that the judgment appealed from is wrong in the restricted and narrow interpretation which it gives to the expression “full compensation to all parties interested for all damage by them sustained by reason of the exercise of such powers used in section 92.” To use the words of Lord Macnaghten, “to ignore the contemplated use of the works and the damages to be caused by such use leads to a conclusion absurd and contrary to common sense.” And Appellants again point out that the English Act is less favourable to the landowner than our own.

This being the case, the Appellants claim that the award of the Arbitrators did not include any damages not allowed by the Act, and that in the award made by them no principle of law was violated. It was for them a question of the appreciation of the evidence and of the damages to be allowed, and the majority came to the conclusion that \$16,308 was a reasonable sum. Can it be pretended that this amount is so exaggerated or so unreasonable as to justify the award being set aside. There is abundant evidence to support the amount

RECORD. of the award assuming that they were right in allowing damages for the use of
 the land taken by the Company, which Appellants submit they have conclusively
 established. The evidence of the Company's own witnesses would justify far
 more than the amount of the judgment.

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In these circumstances the Appellants submit that the principle laid down
 by this Court in the case of Lavallée and The Atlantic and North-west Railway
 Company apply. In that case, which does not appear to be reported, the
 Appellants cite the following remarks of Mr Justice Bossé, as given in the
Montreal Gazette.

“Bossé, J. rendering the judgment in appeal, considered that the principle 10
 “on which the Court below had proceeded was not sound. His Honour had
 “endeavoured by two different modes to form an estimate of the damages, and
 “had arrived at conclusions about \$1,300 less than the amount of the award.

“The question arose whether the award should be set aside because of this
 “difference. The Arbitrators had more knowledge of the value of the property
 “than the Court could have, and the conclusion at which the Court had arrived
 “was that the judgment should be reversed, and the award of the Arbitrators
 “maintained. The cross appeal of the proprietor would be dismissed.”

Having, the Appellants claim, clearly established their right in law as
 parties interested, part of their land being expropriated, to full compensation for 20
 the land taken and all damages done in the exercise by the Company of its
 powers generally, and to cite the words of section 147, “liberty to arise,” the
 Appellants beg in conclusion to submit the salient points of the evidence of the
 facts as to the value of their property and the damages caused by the railway
 and incidentally to cite authorities bearing on the question of the amount of
 damages that should be allowed in the circumstances.

The Appellants claim.

Firstly.—That the evidence adduced before the Arbitrators clearly establishes
 that the value of the property of the trustees, consisting as already stated of the
 front portion of lot 1,604 of the St. Antoine Ward, of a frontage of ninety-six 30
 feet on Guy Street, with the church thereon erected, was before the construction
 of the railway of a value of at least thirty thousand dollars (\$30,000) and could
 not be replaced for less in any locality equally suitable for the church.

The land, with a superficial area of twelve thousand two hundred and thirty-
 two feet (12,232 feet), has an exceptionally large frontage on a good street, and
 is admirably situated in all respects for the church. It cost fifty cents a foot in
 1874, and a very moderate participation in the general advance in the value of
 real estate in the west end of the City would make it worth seventy-five cents a
 foot in 1888.

See Depositions of C. Cushing and of Mr. Beaudry.

The evidence fully establishes it to be worth seventy-five cents a foot, and 40
 it would be hard to indicate as good or as suitable a site for the church even at
 that price.

In this, as well as all other questions of value and idemnity, there should be
 no doubt after the thing is done that the proprietor injured is entitled to
 liberal* consideration. The old French law, as Merlin states, required twenty per

**Sic.*

cent. to be added to the actual value, and the English practice is even more liberal. This is not asked for here, but the Respondents claim that in a case of conflict of opinion or doubt, if there be such here, that a liberal view should be taken so that no mistakes may be made and the proprietors not adequately compensated.

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Taking the value of the land then as nine thousand one hundred and seventy-four dollars (\$9,174·00), being at the rate of seventy-five cents per foot, there remains the value of the church building to be added. This has been estimated by experienced and disinterested men after careful examination,
 10 measurements, and estimates as follows:—

R. G. Hood, Contractor, \$22,700.

J. A. U. Beaudry, Architect, \$22,540.—See Exhibit 34, showing detailed estimates and quantities prepared by Mr. Beaudry and filed by him with his evidence.

W. T. Thomas, Architect, \$25,000.

Joseph Cadieux, Builder, \$20,199.—See Exhibit No. 37, being detailed estimates produced by him with his evidence.

Charles Fyfe, Builder, \$20,000 to \$22,000.

The average cost as shown by the evidence of these witnesses is thus about
 20 \$23,000·00 to rebuild a similar building at present, which would be worth at least five per cent. more.

Vide *Dalloz*, Expropriation No. 582.

The Respondents submit \$21,000 therefore for the building as a proper and reasonable valuation.

This value is also exactly corroborated by the actual cost of the building, and the difference in the cost of building in 1877 and 1887. Mr. Cushing establishes the actual cost of the building by the accounts paid by him as \$16,872. It is proved by Mr Beaudry specially and by the other architects and builders, and it is not contradicted in any way, that when the church
 30 was built, the cost of building was 25 to 30 per cent. lower than at the time of the Expropriation. If then to this \$16,872 we add even 25 per cent. or \$4,218, we have \$21,090, or nearly the figures arrived at by the witnesses already referred to. To contradict this there is nothing but the evidence of Mr. Resther and Mr. Lacroix, witnesses examined by the Company, who admit that the brick, for instance, could not be bought at the time they gave their evidence for the price they allowed for, and the actual contract for the roof of the building is produced to show that it cost considerably more than they allowed.

40	Estimating the land at - - -	\$	9,174·00
	Estimating the building at - - -		21,000·00
	Makes a total of - - -		\$30,174·00

and this does not include the organ and some other articles in the church.

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The church property is therefore worth thirty thousand dollars (\$30,000) to the congregation, for they cannot replace it for less. And that, namely at what the property could be replaced for, is the correct test of the value.

Dalloz, verbo Expropriation, No. 582—"The value is the value to the owner." Lloyd, Compensation, 49, 50, 64 and 96. Lloyd at page 64 says: "The best course, however, is to have constantly in mind that the intent of the Legislature seems to have been that complete compensation should be given to these parties whose land is either taken or injured by the execution or construction of the works. The question is what is the value of the land to the claimant, not what the value is to the Company, when the land is taken 10
"by the latter."

Penny vs. Penny, 37 L. J. Ch. page 340.

Paradis vs. The Queen, 1 Exchequer Reports 191.

Secondly.—The Respondents submit that the property is destroyed as a church. The concurrent testimony on this point is remarkable. It is established by men who speak from experience. The following witnesses particularly prove this point.

Honorable R. Laflamme.

Alderman Holland.

Reverend Dr. Wells. 20

Rev. Mr. Hill, the pastor of the church.

Rev. Dr. Barbour.

Rev. Mr. Marling.

Mr. Beaudry, Architect.

Mr. Beauchemin, Churchwarden of Ste Cunegonde Church.

Mr. Thomas, Architect.

Mr. Hibbard.

Mr. Cushing, Notary.

Mr. Robert Macaulay. 30

Mrs. Hampton.

Robert B. Maucaulay.

And also the evidence of the Rev. Dr. Barbour and Mr. Marling specially recalled by the Arbitrators.

(See evidence of George McGarry and Mr. Hill.)

In fact all the witnesses for the proprietors testify to this point.

The Appellants would cite here the following cases.

Baltimore & Potomac Railway and 5th Baptist Church, 108 U.S.S.C., 317. In this case damages were awarded to the Church, and it was laid down (see page 335) that a religious congregation has the same right to a comfortable enjoyment of its church for its own purposes that a private individual has to the 40
comfortable enjoyment of his house.

See also page 319 * as to the similarity of the facts in that case to the present, and also page 331 * at foot, "It is the case of the use by the Railroad

**Sic.*

Company of its property in such a way as to disturb and annoy the Plaintiff in the occupation of its church to an extent rendering it uncomfortable as a place of worship.

Duke of Buccleuch and The Metropolitan Board of Works already referred to.
Pion & The North Shore Railway Company.

Thirdly.—The Respondents submit that the present value of the church does not exceed eight to ten thousand dollars. Many of the witnesses make it less, and say that the building is unfit for any other purpose, and only worth the old material.

10 Putting it at ten thousand dollars, we have twenty thousand dollars as the loss to the church caused by the Company, and in this is included no allowance for costs of removal and other incidental charges. It was submitted by the Respondents before the Arbitrators, that this was a reasonable indemnity in the circumstances.

The Arbitrators after a long arbitration, where both parties were represented by Counsel, have awarded the sum of sixteen thousand three hundred and eight dollars (\$16,308·00). This award, it is respectfully submitted, should be confirmed. No reason in law can be urged against it, and on the facts and evidence before the Arbitrators, it is submitted that the award was reasonable
20 and moderate. The Appellants would again respectfully refer the Court to the case of *The Atlantic and North-west Railway Company* and *Lavallée*, already cited, and submit that there being no principle of law violated by and no manifest injustice in the award, which is, on the contrary, fully supported by the evidence, that the award should not have been disturbed.

The Appellants therefore respectfully claim that their Appeal should be allowed, the judgment of the Superior Court reversed, and the award of the Arbitrators restored, and for this with costs the Appellants humbly pray.

Montreal, December 15th, 1892.

TAYLOR & BUCHAN,
Attorneys for Appellants.

30

(Endorsed.)
Appellants Case. Filed. 21st January, 1893.
(Paraphed.) M. & D.

RECORD.
In the Court
of Queen's
Bench.

No. 99.
Appellants
case, dated
15th De-
cember 1892
—continued.

RECORD

*In the Court
of Queen's
Bench.*

No. 100.
Respondents
case, dated
23rd January
1893.

Document V.

In the Court of Queen's Bench.

Peter Wood et al., *ès qual.*, (*Respondents in the
Court below*) - - - Appellants

and

The Atlantic and North-West Railway Company,
(*Petitioners in the Court below*) - - - Respondents.

Respondents' Factum.

This is an Appeal from a Judgment rendered by the Superior Court, Mathieu, J., upon an appeal by the Respondents from an award of Arbitrators, 10 under the Railway Act. The majority of the Arbitrators awarded the sum of \$16,308, and the judgment reduced this amount to \$1,367.

The Appellants, who are the trustees for the congregation of Calvary Church, appeal from this judgment.

The main question to be decided upon this appeal is as to whether the Appellants were entitled to any compensation at the hands of the Arbitrators under the Act, for damages caused by the working and operation of the railway as distinguished from those caused by its construction.

The Appellants, as trustees for the Calvary Church, were owners of a lot of land upon which the church was situated, being part of lot 1,604 of 20 St. Antoine Ward, which property fronted on Guy Street, and had in rear a lane ten feet in width, being also part of lot 1,604, running from the rear part of the lot at right angles to Guy Street and communicating with another lane running down to Richmond Avenue, thus giving the church ingress and egress to and from the rear of its property by these two lanes to Richmond Avenue. The Company Respondents, on the second of October 1888, gave a notice of expropriation to the Appellants, by which they notified them that they intended, in the exercise of the powers conferred upon them under the Railway Act, to build and maintain over this lane a structure on which their railway was to be carried, the supports of the structure to be erected not on the said lane, but on 30 adjoining land, and no part of the structure to be nearer the surface of the lane than twelve feet, leaving the said lane free and clear with an opening to its full width of ten feet up to the said height.

Previous to this date, namely, on the twelfth of February 1887, the Respondents had deposited, in accordance with the Act, a plan of their railway in the office of the Clerk of the Peace for the City of Montreal, this plan having been previously certified to and approved of by the Minister of Railways and Canals, in accordance with the provisions of the Act. This plan also showed that it was not the intention of the Company to take any part of the property of the land upon which the church was built, but merely to build their railway 40

over the lane. It is provided by Section 145 of the Act that the deposit of the map or plan, and the notice of such deposit, which had been duly given, shall be deemed a general notice to all parties of the land which would be required for the railway, and that the date of such deposit shall be the date with reference to which the compensation or damage shall be ascertained.

At this date, the Appellants were not the owners of the property in the lane, but merely had rights of passage over it, as will be seen by reference to the deed of sale from Charles Cushing to the trustees of the 10th April, 1879; but afterwards, by a Deed of the 18th March 1887, Mr. Cushing sold the property in
 10 the lane to the trustees, subject to the right of way of the abutting proprietors. By this Deed it is declared that the sale is made in accordance with a resolution of the Managing Board of Trustees of the Church, passed on the 22nd June 1874 Mr. Cushing swears that he purchased the whole of lot 1,604 in accordance with this resolution. He subsequently sold two lots in rear to one John Hannah and one Lawson, giving them rights of way in this lane. He also purchased about the same time lot 1,605 to the south of the lane, and sold that in lots to various parties, including Messrs. Cook, Allen, Neilson, and McCrudden, to whom he also gave rights of way in the lane. In the Deed of the property
 20 to the church, as has been pointed out, he likewise stipulates that they should have the rights of passage in this lane. In his evidence, he swears that it was by inadvertence that he had not conveyed the absolute property in the lane to the church, and that it had always been his intention to do so, but admits that it was not till after the deposit of the plan came to the knowledge of the Appellants that it was decided to pass the deed of March 1887.

The Respondents, considering that the damage to the Appellants would be merely nominal, inasmuch as they would not interfere with their right of way, and would leave the lane free and clear, merely passing over the top of it, offered a nominal sum of \$25 of compensation. This the Appellants refused, and Arbitrators were appointed in the usual way under the Act, who proceeded
 30 to take evidence and assess the compensation.

It was at first contended on the part of the Appellants that the Railway Company had actually encroached upon and taken a small portion of the lot occupied by the church, namely, the extreme south-west corner. They claimed this in consequence of a slight error in the copy of a plan which was produced by Mr. Drinkwater, the secretary of the Company, attached to an affidavit which he made on an application by the Appellants for an injunction. This plan is filed as Schedule 28 of the record. It was, however, proved clearly that this was an error in the copying, and that as a matter of fact, the original plan
 40 did not show that it was the intention of the Company to take any portion of the land upon which the church was built; and it was also proved that in its construction the railway did not encroach upon this portion of lot 1,604, but that the posts supporting the structure over the lane were built upon the lot of J. M. Hannah shown upon the said plan, and upon the lots of Cook, Allen, Neilson & McCrudden, which had been purchased by the Company; and by these purchases the Company acquired the rights of way of all these parties over the lane in question.

RECORD.

—
*In the Court
 of Queen's
 Bench.*

—
 No. 100.
 Respondents
 case, dated
 23rd January
 1893—
continued.

RECORD.

*In the Court
of Queen's
Bench.*No. 100.
Respondents
case, dated
23rd January
1893—
continued.

It should be mentioned that the lane in question runs back upon the property actually occupied by the church, as far as the western boundary line of McCrudden's property, as will be seen by reference to the Schedule (No. 28); and the Company, as assigns of McCrudden and Neilson, would have a right of way upon this part of the lane.

From these facts, it will be seen that the Appellants were not the owners of this lane when the plan was deposited, and had only a right of passage over it in common with others, and if they had desired to do so, could not have themselves built any structure over the lane in question, as they were bound to leave the lane open as far as the eastern boundary line of McCrudden's property, and owned no property on either side of the lane from which they could get support. 10

As a matter of fact, therefore, the rights of the Appellants in the lane, even if taken at the date of the notice of expropriation in October 1888, amounted only to the bare ownership of the ground, subject to the rights of passage of the adjoining proprietors, and without any means of exercising any right which they might have of building over the lane.

The damage suffered by the Appellants, therefore, it is submitted amounted merely to such inconvenience as they might suffer in the exercise of their own rights of passage in the lane, in so far as the exercise of those rights was rendered 20 less convenient by the superstructure erected by the Railway Company.

It was claimed, however, by the Appellants, that great damage had been caused to their property as a church property by reason of the operation of the railway and the running of trains so close to their building; and an immense mass of evidence was put in on their behalf tending to show that great inconvenience was caused from the noise and smoke of passing trains, which interfered with and interrupted the holding of religious services and various meetings in connexion with the church; and an attempt was also made to show that the vibrations of passing trains affected the building. The Judge in the Court below rejected these pretensions of the Appellants, and holding as a 30 matter of fact that the Company had not encroached upon the property occupied by them for their church building, nor upon the property occupied by the lane, decided that they were not entitled to any such damages; but he held that the Respondents, by constructing their railway as they did, had deprived the Appellants of the right which they had of building over the lane, though it was proved that practically they had no means of exercising this right. On this ground, however, he allowed the Appellants \$367, being equivalent to \$1.00 per foot for the area of the lane expropriated.

He further held that they were entitled to compensation for the deprivation of light and air caused by the construction of the railway, and for the obstacles 40 caused by its construction in the communication between the Appellants' property and Richmond Avenue. The Respondents, while considering the amount of compensation awarded by the learned Judge as excessive, have not appealed from his judgment; and consequently, the only question before the Court now is as to whether the Appellants are entitled to damages caused to

the rest of their property by the operation of the railway; and if so, to what amount.

It is submitted that they are not entitled to any such damages. The Respondents are authorised by their charter and the Railway Act to operate and run locomotives and trains by steam power. It is a necessary consequence of such operation that there should be noise, smoke, and vibration, which would extend to a certain distance on both sides of the railway. It is submitted that as long as the Railway Company exercise these powers without negligence, the resulting inconvenience to adjoining property, if any, is a *damnum absque in*
 10 *juridâ* for which no action in damages would lie. (*North Shore Ry. Coy. v. McWillie*, M.L.R. 5 Q.B. 130).

The Respondents further submit that whether an action for the recovery of such damages would lie or not, it is not within the powers of Arbitrators to award compensation for such damages. It is clear from the provisions of the Railway Act that the Arbitrators are to award compensation for lands taken, and for damages caused to such lands by the exercise of the Railway Company's powers upon such lands in the construction of the road. This interpretation has been placed upon the English Act, which is even broader in its terms than
 20 our Act, inasmuch as it allows compensation not only in the case of land taken by the railway, but in the case of lands injuriously affected. (*Brand vs. Hammersmith Ry. Co.*, L.R. 1 Q.B. 130; L.R. 2 Q.B. 223; L.R. 4 H.L. 171. *City of Glasgow Ry. Co. vs. Hunter*, L.R. 2 Scotch App., 79. *Caledonian Ry. Co. v. Walker's Trustees*, 7 App. Cases, 276. *Cowper-Essex v. Acton Local Board*, 14 App. Cases, 165.) It has been held by the Privy Council that our Railway Act is the same as the English Act (*North Shore Ry. Co. vs. Pion*, 14 App. Cases, 628). The interpretation which the Respondents contend should be put upon this Act has been applied in the last mentioned case, and in *Jones vs. Stanstead Ry. Co.*, L.R. 4 P.C. 117, and the case of the *Atlantic & N. W. Ry. vs. Judah*, lately decided by this Court.

30 The Respondents do not propose to discuss the evidence in this factum. It is sufficient to point that the inconveniences claimed to have arisen through the operation of the railway would appear to be of the most fanciful description, and the damage claimed to rest entirely upon hypothesis and supposition. The grounds of damage, as laid before the Arbitrators by the Appellants, may be shortly stated to be that the noise of passing trains so interferes with the holding of services and meetings in the church that the congregation would desert the church and it would be eventually necessary to remove and rebuild in some more congenial locality. There is no evidence, however, to show that
 40 a single member of the church had left on this ground, and the church is proved to have been in full operation up to the close of the Arbitration proceedings, which lasted until the end of May 1889, and during which the railway was in full operation.

On this supposition that the church would have to be abandoned, exaggerated estimates of the value of the building, cost of re-building, and other grounds of damage were submitted to the Arbitrators, and it was upon such estimates that the award was rendered.

RECORD.

—
*In the Court
 of Queen's
 Bench.*

—
 No. 100.
 Respondents
 case, dated
 23rd January
 1893—
continued.

RECORD.
 In the Court
 of Queen's
 Bench.
 No. 100.
 Respondents
 case, dated
 23rd January
 1893—
continued.

It is shown by the evidence that there did exist a real ground for the future removal of the church, which was not affected in any way by the building of the railway, and that is that the church is built beyond the homologated line of Guy Street, as will appear by reference to the Schedule 28 of the record. It is evident from this plan that whenever Guy Street is widened, the church building will have to be demolished; and it was doubtless in view of this contingency that the Appellants sought to obtain the cost of a new building from the Railway Company.

It is also pretended that there was considerable damage done by reason of the vibration caused by passing trains. The evidence as to the existence of this vibration is extremely contradictory. Witnesses on the part of the Appellants prove that they have felt and noticed the vibration, whereas on the other hand two experts of great experience, Messrs. Pierre Lacroix, building inspector of the City, and Mr. A. B. Resther, an architect of long standing, prove by the most conclusive tests that no such vibration took place on the passing of trains. It is for the Court to judge as to the weight to be given to the respective testimony of these witnesses; but in any event, the Respondents would point out that there is an absolute want of proof of any damage having been caused to the building through this alleged vibration.

Upon the whole the Respondents submit that the damages claimed by the Appellants are in the main remote and hypothetical, and that the amount awarded by the Superior Court was ample compensation for whatever damage may have been caused by the erection of the Company's works; and they ask that the Judgment of the Court below should be confirmed.

Montreal, January 23rd 1893.

ABBOTTS, CAMPBELL, & MEREDITH,
 Attorneys for Respondents.

(Endorsed.)
 Respondents case. Filed. 25th January 1893.
 (Paraphed.) M. & D.

· Document VI.

Transcript of all the proceedings had and entries made in the register of the Court of Queen's Bench.

RECORD.

*In the Court
of Queen's
Bench.*

4th December 1891.

An inscription in appeal and notice for security filed by the Appellants (Peter W. Wood *ès qual et al*).

No. 101.

Summary of
proceedings
in the Court
of Queen's
Bench from
4th De-
cember 1891
to 26th April
1893.

31st March 1892.

Messrs. Abbotts, Campbell, and Meredith appear for the Respondent.

14th April 1892.

10 The record is received from the Superior Court.

21st January 1893.

Messrs. Taylor and Buchan appear for the Appellants and file factum.

25th January 1893.

The Respondents file their factum.

27th January 1893.

Present :

The Honourable Sir Alexandre Lacoste Knight, Chief Justice.

„ Mr. Justice Bossé.
„ „ „ Blanchet.
20 „ „ „ Hall.
„ „ „ Wurtele.

The parties having been heard by their Counsel respectively on the merits.
Curia advisare vult.

RECORD.

*In the Court
of Queen's
Bench.*

No. 102.
Judgment of
the Court
of Queen's
Bench ren-
dered 26th
April 1893.

Document VII.

26th April 1893.

Present :

The Honourable Sir Alexandre Lacoste Knight, Chief Justice.

„ „ Mr. Justice Bossé.
„ „ „ „ Blanchet.
„ „ „ „ Hall.
„ „ „ „ Wurtele.

No. 526.

Peter W. Wood, Benjamin Lane, Robert W. McLachlan, George McGarry, Robert Allan Short, Robert Hood and James O'Richardson all of the City and District of Montreal, in their quality of trustees, duly appointed of and for the congregation of Christians of the Congregational denomination known as Calvary Church, worshipping in the said City of Montreal, and individually for the rights they may have, and Charles Cushing of Montreal, aforesaid, Notary Public. (Respondents in the Court below) 10
Appellants

and

The Atlantic and North-west Railway Company, a body politic and corporate duly incorporated, having its chief office and place of business in the City and District of Montreal. (Petitioners in the Court below) 20
Respondents

and

Charles James Fleet and Robert D. McGibbon, both of Montreal aforesaid, Advocates, and John L. Brodie of the Parish of Notre Dame de Grace, Farmer. (Mis-en-cause in the Court below.)

The Court of Our Lady the Queen now here having heard the Appellant and Respondent by their Counsel respectively examined as well the record of proceedings had in the Court below and mature deliberation on the whole being had. 30

Considering that although by the notice of intended expropriation given by said Railway Company to said trustees, the powers to be exercised by said Railway Company are nominally restricted to the limits of the law mentioned in said notice, yet by the measurement specifically given in said notice of fifty feet and four inches as the length of the southern boundary of said expropriated land from which measurement said Company have never desisted, there is an infringement of two feet and four inches upon the land of said trustees in addition to that expropriated within the limits of said lanc. 40

Considering that it is stipulated by section 92 of said Railway Act that for all damage sustained by the expropriated party in consequence of the exercise

by the Railway Company of the powers conferred by said Act, full compensation shall be made by said Company.

Considering that amongst the powers thus conferred is the right not only of expropriating the land of third parties and of laying tracks upon such expropriated land, but of operating a train service thereon.

10 Considering that in the present case the maintenance of such train service will cause direct damage, loss, and inconvenience to said trustees, and greatly injure the use and enjoyment of their remaining property for church purposes to which use it had been applied and dedicated for many years prior to the date of said expropriation notice, and that the Arbitrators acted within their legal powers and functions in taking into consideration not only the value of the expropriated premises, but the direct damage caused and to be caused to the remainder of the property by the intended use of such expropriated real right by said Railway Company.

20 Considering that in the judgment appealed from, to wit, the judgment of the Superior Court rendered on the seventeenth day of November 1891, there is error doth maintain the said appeal with costs against said Respondents and doth dismiss the appeal from said award to the Superior Court with costs against the said Atlantic and North-west Railway Company, distraction of which said costs is granted to Messrs. Taylor and Buchan, Attorneys for the said Peter Wood et al respondents in the Superior Court.

(The Honourable Mr. Justice Bossé, dissenting.)

And on motion of Messrs. Taylor and Buchan, Attorneys for the Appellants, the Court doth grant them distraction of costs.

Document VIII.

12th May 1893.

Pursuant to notice given, there is filed a petition on behalf of Respondents for the allowance of an appeal to the Supreme Court from the judgment rendered by this Court on the 26th of April last.

30 The Petition is continued to the 16th of May by consent.

16th May 1893.

The Petition of Respondent to be allowed to appeal to the Supreme Court is continued to the 18th May by consent.

18th May 1893.

The Petition of Respondent to be allowed to appeal to the Supreme Court is continued to the 19th instant.

RECORD.

*In the Court
of Queen's
Bench.*

No. 102.
Judgment of
the Court
of Queen's
Bench, ren-
dered 26th
April 1893
—continued.

No. 103.
Proceedings
on Respon-
dents' peti-
tion for leave
to appeal
to Supreme
Court from
12th May to
19th May
1893.

RECORD.

*In the Court
of Queen's
Bench.*

No. 104.
Order grant-
ing leave to
appeal to
Her Majesty
in Council,
dated 19th
May 1893.

Document IX.
19th May 1893.

Present :

The Honourable Sir Alexandre Lacoste Knight, Chief Justice.
" " Mr. Justice Baby.
" " " " Bossé.
" " " " Blanchet.
" " " " Hall.

The Respondents file a desistment from their Petition for leave to appeal to the Supreme Court. 10

And pursuant to notice given the Respondents present a motion for leave to appeal to Her Majesty in Her Privy Council.

The Court doth grant said motion and the said Respondents are hereby permitted to appeal to Her Majesty's Privy Council on their giving within six weeks the security required by law and in default it is ordered that the record be remitted to the Court below without any further order.

4th July 1893.

Notice of giving security for appeal to Her Majesty's Privy Council is filed.

Same day.

Document X. 20

No. 105.
Bail Bond,
dated 4th
July 1893.

Canada :—Province of Quebec.
In the Court of Queen's Bench.
(Appeal side.)

In a cause between :

Peter W. Wood, Benjamin Lane, Robert W. McLachlan, George McGarry, Robert Allan Short, Robert Hood, and James O'Richardson, all of the City and District of Montreal, in their quality of trustees, duly appointed of and for the Congregation of Christians of the Congregational denomination known as Calvary Church, worshipping in the said City of Montreal, and individually for the rights they may have, and Charles Cushing of Montreal aforesaid, Notary Public (Respondents in the Court below) - - Appellants, 30

and

The Atlantic and North-west Railway Company, a body politic and corporate duly incorporated, having its chief office and place of business in the City and District of Montreal (Petitioners in the Court below) - - Respondents,

and

Charles James Fleet and Robert D. McGibbon, both of Montreal aforesaid Advocates, and John L. Brodie of the Parish of Notre Dame de Graces, Farmer (Mis-en-cause in the Court below).

RECORD.
In the Court
of Queen's
Bench.

No. 105.
Bail Bond,
dated 4th
July 1893
—continued.

* Sic.

Be it remembered that on the fourth day of July in the year of Our Lord One thousand eight hundred and ninety-three at the City of Montreal before me, the Honourable Jonathan G. C. Wurtele, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared Edward Rawlings* of the
10 City and District of Montreal, Manager, who declares himself bound and liable unto and in favour of the said Peter W. Wood, Benjamin Lane, Robert W. McLachlan, George McGarry, Robert Allan Short, Robert Hood, and James O'Richardson in their said quality and individually, and Charles Cushing, their heirs, assigns, and representatives in the sum of two thousand dollars, current money of Canada, for costs and in the sum of twenty-two thousand dollars said currency, to satisfy the condemnation in principal, interest and costs to be made and levied of the several goods and chattels, lands, and tenements of him the said Edward Rawlings, to the use of the said Peter W. Wood, Benjamin Lane,
20 Robert W. McLachlan, George McGarry, Robert Allan Short, Robert Hood, and James O'Richardson, in their quality and individually, and Charles Cushing, their heirs, assigns, and representatives, and more especially to be made and levied of the following real property belonging to the said Edward Rawlings, in the District of Montreal being of the value of twenty-four thousand dollars and upwards, over and above all charges, hypothecs, and incumbrances thereon.

Whereas judgment was rendered in the said cause in the said Court of Queen's Bench on the twenty-sixth day of April One thousand eight hundred and ninety-three on the appeal instituted in this cause, and whereas the said The Atlantic and North-west Railway Company have obtained leave to appeal therefrom to Her Majesty in Her Privy Council. Now the condition is such
30 that if the said The Atlantic and North-west Railway Company do prosecute effectually the said appeal to Her Majesty, satisfy the condemnation and pay unto the said Peter W. Wood, Benjamin Lane, Robert W. McLachlan, George McGarry, Robert Allan Short, Robert Hood, and James O'Richardson, in their said quality and individually, and Charles Cushing, 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 present obligation shall be null and void, otherwise the same shall be and remain in full force and effect. And the said Edward Rawlings hath signed.

40 (Signed) E. RAWLING.

Taken and acknowledged before me at the City of Montreal, the day and year first above written, the said surety having first duly justified as to his solvency.

(Signed) J. WURTELE.
J.Q.B.

RECORD.

—
*In the Court
of Queen's
Bench.*

—
No 105.
Bail Bond,
dated 4th
July 1893
—continued.

The said Edward Rawling 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 twenty-four 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.

Sworn before me, at Montreal, this fourth day }
of July One thousand eight hundred and ninety- }
three. }

(Signed)
E. RAWLING.

(Signed) J. WURTELE.
J.Q.B.

10

True Copy,
MARCHAND and DUGGAN,
Clerk of Appeals.

We, L. F. W. Marchand and W. E. Duggan, Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the foregoing pages, from page one to page five hundred and twenty contain true and faithful copies of all and every the original 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. Peter Wood et
 10 al. ès qual, Respondents in the Court below, were Appellants in the Court of Queen's Bench (Appeal side), and The Atlantic and North-west Railway Company, Petitioner in the Superior Court, was Respondent in the Court of Queen's Bench (Appeal side), and also of all the proceedings and documents had and filed 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 Peter Wood et al. ès qual.

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's Bench
 20 (Appeal side).

Given at the City of Montreal in that part of the Dominion of Canada called the Province of Quebec, this fifth day of October in the year of our Lord One thousand eight hundred and ninety-three.

(Seal.)

MARCHAND and DUGGAN,
 Clerk of Appeals.

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
 30 signature "Marchand and 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 and 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.

In testimony whereof, I have hereunto set my hand and seal, at the City of Montreal, in the Province of Quebec, the fifth day of October in the year of our
 40 Lord One thousand eight hundred and ninety-three, and of Her Majesty's reign the fifty-seventh.

(Seal.)

A. LACOSTE,
 Chief Justice, Queen's Bench,
 Province of Quebec.

RECORD.

In the Court
 of Queen's
 Bench.

No. 106.
 Certificate of
 Clerk of
 Appeals.

No. 107.
 Certificate
 of Chief
 Justice.

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the papers
comprising
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IN THE PRIVY COUNCIL.

No. 70 of 1893.

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

BETWEEN

THE ATLANTIC AND NORTH-WEST
RAILWAY COMPANY *Appellants,*

AND

PETER WOOD et al. ès, qual. *Respondents.*

RECORD OF PROCEEDINGS.

BOMPAS, BISCHOFF, DODGSON, COXE, AND
BOMPAS,
4, Great Winchester Street, E.C.,
for Appellants.

BIRCHAM & CO.,
46, Parliament Street, S.W.,
for Respondents.