

He is as energetic and eloquent an adversary of the half-hearted doctrine of the "respectfuls" of the *Conseil d'état* as one can desire to meet with.

In the case of *Drummond*, I drew attention to the fact that the idea of indemnity on both sides runs through the whole of the Corporation Acts, and that particularly with regard to streets the proprietor might be actually made to pay, for the convenience or advantage accruing to his property by opening a street. The supposition that he might be obliged to pay for the opening to-day and be deprived of it to-morrow, without indemnity, is too monstrous to require comment.

To these remarks I have only to add that I think the Corporation has the power by the statute to alter the level of the street. I also think the Corporation had the right to do so without the special authority of the act. From the moment it was vested with the charge of the streets, it inherited the privileges as well as the liability of the State with regard to them. But neither the State nor the Corporation has a right so to alter them as to make the foot-path inaccessible from the road. Such an alteration is *faute* to all intents and purposes, and if it gives rise to special damage to anyone, that damage gives right of action. For all practical purposes, it may be laid down as the rule of our law that where there is special damage to the property of an individual, there is either *faute* or interference with a right of property, consequently there is right to indemnity. So that whether the question be envisaged from the side of fault or from that of interference with a material right of property, the result is the same, and the plain equity of the law triumphs.

This was fully admitted by the Corporation in this very case, and they paid certain damages to the proprietors near the place of this alteration, and bought off their demand in demolition by undertaking to make the foot-path a suitable height above the roadway.

The only question, then, that remains is whether Lady Lafontaine has suffered from loss of rent alone. If we turn to the facts, the right of action seems undeniable. Prior to 1868 it was thought desirable to convert Little St. James street from a narrow into a wide street. For this purpose Commissioners were appointed,

and proceeded to value the losses of those expropriated, and to assess those who were supposed to profit by the alteration. There was no indemnity to appellant, for the enlargement of the street took place on the north side, while her property was situated on the south side; but her two houses were assessed, one to an amount of \$774, and the other to the amount of \$981, equal to \$1,755, or more than the rental for a year and a half of the whole property. It then became apparent that by widening the north side of the street the approach by St. Lambert's Hill was rendered more abrupt, and a by-law was passed to lower the level of the roadway of St. James street. Appellant's counsel say that this was so done in order to avoid the law, which specially reserves indemnity for lowering a footpath. Be this as it may, the lowering the level of the roadway had the effect of leaving the footpath on the south side from 2 feet 6 inches to 4 feet above the level of the road. It was evidently impossible to leave a precipice of this kind, and the Corporation engineers devised the brilliant scheme of making a slope stretching three feet into the street, and diminishing by so much the breadth of the roadway for which appellant had just been mulcted in the whole of her revenues for over a year and a half. The street was thus cut down, the new part between the 7th August and the 9th October, 1868, and the old portion was cut down between the 17th June and the 12th July, 1869. In June, 1871, the action was brought. On the 5th November, 1873, the Corporation came in and agreed to pay the appellant \$2,728.41 damages to her property, save and except any damages she might have incurred for loss of rent, which last the Corporation refused to acknowledge. The effect of this transaction was to give appellant an indemnity of \$973.47 over and above all she had to pay for widening the street. Thus reduced, Lady Lafontaine's action appears to me to be a very narrow one, requiring very special proof, and that I find totally wanting. We have, it is true, evidence that the property is diminished in value from 25 to 30 per cent. by reason of this state of the footpath, but it seems to me that this is covered by the general indemnity. She has not shown that one tenant left her houses on that account, or that she lost any rent on that account. One witness, who