

Quebec.]

[Jan. 25

CITY OF QUEBEC v. NORTH SHORE RY. CO.

*Construction of deed—Ambiguous expressions—Conduct of parties—Presumptions.*

On the 21st of August, 1882, the Government of Quebec acquired by deed from the City of Quebec all the proprietary rights that the city had in lands designated on the cadastre as No. 1937, "situated between St. Paul, St. Roch and Henderson streets and the river St. Charles, with the wharves and buildings thereon erected," concerning which there had previously been negotiations and some correspondence between the Government and the city, but the deed, however, did not follow precisely the designations or terms referred to in the correspondence. On the same day, by another deed, the Government conveyed the same property to the respondent, and subsequently the property passed to the Canadian Pacific Railway under the provisions of 47 Vict. (D) c. 87, s. 3, 48 and 49 Vict. (D.) c. 58, s. 3. Upon the execution of the deeds mentioned the respondent took possession of the grounds and wharves which have been occupied firstly by the respondent and then by the Canadian Pacific Railway ever since that time. In August, 1894, the respondent brought an action to recover part of the lands alleged by them to have been included in the description contained in the deed, which had not been delivered to them, but had remained in the possession and occupation of the city and others to whom the city had sold the same. The difficulty arose from the ambiguity in the description arising from the fact that Henderson street did not run to the river, but only to a public highway known as Orleans Place, the limits of which were not in direct prolongation of Henderson street as actually used for a thoroughfare. The respondent claimed that from the correspondence pending the negotiations it appeared that the intention of the parties to the deed was that the boundary should be by Henderson street and the line of the western limit of that street as then in use prolonged into the River St. Charles, which would entitle them to an additional strip of land and a wharf commonly called the Gas Wharf, of which they had been improperly deprived during a period of over twelve years through unlawful occupation by the city, and those to whom the city sold the property after having conveyed it to the Government by that description.

*Held*, that in the absence of other means of ascertaining the intention of the parties, ambiguities in the designation of lands should be interpreted against the vendee, and in favor of the vendor and his assigns.

*Held* also, that the prior correspondence did not contain a concluded agreement between the parties and could not be used to contradict or modify the deed.

In cases of ambiguous descriptions in deeds of lands, the manner in which the parties to the deed have occupied and dealt with property which might be affected thereby is strong proof of the boundaries of the land intended to be conveyed, and sufficient in law to justify the presumption that the parties by their subsequent occupations correctly executed their intentions at the time of the passing of the deed.