

"Considering that on or about the 22nd of November, 1877, the petitioner was deprived of the use of an important portion of the said street, to wit: along the whole ten arpents in depth, in consequence of a faculty granted by the said seizing party to one Dame Brien dite Desrochers, wife of Henri Girard, in and by her deeds of title, duly registered;

"Considering that the petitioner has been deprived of his roadway and means of communication from the lots by him purchased to the public highway;

"Considering further that the description of the property sold in this cause and given in the minutes of seizure and advertisement of sale do not agree with the plan deposited in the registry office, nor with the facts, the said lots being given with a depth of only 148 feet with a street of 20 feet wide in front, while they should read as having 178 feet with a street 20 feet wide, or 148 feet, with a street of 50 feet wide;

"Considering that the said variances are material, and that for the said reasons the petitioner had and hath a right to ask that the said sale by the sheriff be vacated;

"It is ordered and adjudged that the sale and adjudication by the sheriff made in this cause to the petitioner on the 14th of April, 1875, of the lots of land above described be, and the same are, vacated and set aside to all intents and purposes;

"And it is also ordered and adjudged that the said Robert Moat and John Moat do jointly and severally reimburse and pay to the petitioner the sum of \$1200 with interest from the 20th August, 1875, being the amount by them received as having been collocated therefor out of the proceeds of the sale of the said real estate; and the said John Fair, in his capacity of assignee to Joel C. Baker, is adjudged and condemned to reimburse to the petitioner the sum of \$2,150, part of the sum collocated to him and received as proceeds of the said real estate, amounting with the above sum of \$1,200 to the total amount of the purchase money paid by petitioner, with interest on the said sum of \$2,150 from the 20th August, 1875;

"And the plaintiffs *en garantie* are also condemned jointly and severally to reimburse and pay to the petitioner the said two sums, with interest as aforesaid, as *garants* of the solvency of the said John Fair *es qualité* and Robert Moat

and John Moat; and also the interest on the said sum of \$3,350 from the 14th of April aforesaid to the 28th of August, 1875, less a sum of \$110 as the revenues of the said real estate during that space of time; and they are also condemned to pay petitioner \$11 for the costs of the deed of sale and registration thereof, \$50 for an *allonge*, \$20 for a well, and \$12 for the taxes for the year 1875;

"The Court reserving to the petitioner his recourse for any further sum he may have expended since 1875; the whole with costs, etc."

In rendering judgment, his honor made the following observations:—

"This is a *requête en nullité de décret*, and the petitioner is the *adjudicataire*. The land sold is situated at Hochelaga, and the price was \$3,350. He alleges, and it is not disputed, that a piece of land, two arpents wide by thirty deep, fronting on the highway, was sub-divided by the plaintiffs *en garantie* (Moat et al.) into building lots to the number of 364. Part of those lots, extending from the highway to a depth of about ten arpents, were sold to one Mrs. Girard by the plaintiffs *en garantie*, and the balance of the land remained the property of the defendants *en garantie* (the Guano Co.), who became insolvent, and Brunet was appointed curator to administer their affairs. An action being instituted by the former proprietors for a part of the purchase money against Moat et al., the first purchasers, they called in as their *garants* the Guano Company, to whom they had sold the balance of the land, and afterwards Brunet, their curator. The remnant of the land was seized and advertised to be sold in three parts, number one being next to the lots sold to Mrs. Girard; number two being the lots adjudged to the petitioner; and number three, at the extremity of the land to another party. There had been a plan deposited at the Registry Office together with a book of reference, showing all the sub-divided lots, with a projected street fifty feet wide, the whole length of the south side of the land from the highway. At the time of the sale, and even before, there had been, where this street was projected, a sort of roadway common to the different owners of the lots. This road remained open until about the middle of November, 1877, when Mrs. Girard closed it by putting up a fence across it at the extremity of her lots, cutting off the other pro-