Province of Nova Scotia.

SUPREME COURT.

EN BANC.] [Nov. 30, 1895.

MACDONALD *v.* CITY OF HALIFAX.

Interpretation of written document—Admissibility of extrinsic evidence to vary or explain.

Where a written contract contains common words free from all ambiguity, the meaning of which is plain, and which do not appear from the context to have been used in a peculiar or unusual sense, evidence *dehors* the writing is not admissible to show that such words bear a surmised or alleged signification.

Plaintiff, who had contracted with defendant for the construction of a sewer "upon such grade lines as the city engineer might direct," received instructions from defendants' engineer by letter containing the following directions: "The grade of sewer at Esplanade will be 2 feet in 100, starting from general level of invert of old sewer. . . . . The grade at electric light pole will be 1 ft. 10⅛ in. below the mark made this morning on old granite boulder . . . ." Plaintiff understood the word "grade," as used in the second instance, to mark "depth of excavation" instead of the fall from surface to inclined plane—which latter signification the word was admitted to bear as used in the first instance—and proceeded to construct the sewer accordingly. Afterwards discovering the impossibility of executing the work on this basis, plaintiff adopted the true plan of construction. On the trial of an action for the additional cost of construction thereby caused, plaintiff offered expert evidence to show that his understanding of the word "grade" was correct, but it was rejected by the judge.

Held (MACDONALD, C.J., dissenting), that the plaintiff having failed to satisfy the Court that the word "grade" was not used in both instances in its primary signification the evidence was rightly rejected.

Appeal dismissed with costs.

C. D. Macdonald for appellant.

MacCoy, Q.C., for respondents.

WEATHERBE, J. In Chambers. [Nov. 19, 1895.

GRAY *v.* HARDMAN.

Practice—Service of notice—Inspection of locus—Ex parte motion.

In an action of trespass against H. & T., joint owners of a mining property, after service on H. and appearance by him, but before service on T., plaintiff obtained an order for inspection of the property. Notice of motion had been served upon H. only. That order T. now moved to set aside on the general ground that as against defendant H., it had been granted *ex parte*. Plaintiff pleaded the urgency of the occasion on which the order had been granted, and the mischief that would have been occasioned by delay, and further argued