

The petitioner set up the incorporation of the defendants, and alleged that under certain statutes mentioned, defendants had received from the Crown, by the Provincial Government, subsidies amounting to over \$100,000; that defendants cannot change the course and direction of their railway without approval of the Legislature of Quebec; that they are subject to the provisions of subsections 4, 5, 6, 7 and 8 of section 5 of the Provincial Act 32 Vic. cap. 52, which gives the Lieutenant-Governor in Council the right to order a special inspection of the road, and provides that upon refusal to make required reparation after inspection, or upon interposing or allowing any obstruction to such inspection, the entire railway and all its appurtenances and franchises shall, *ipso facto*, become and be vested in the Crown for the public uses of the province. The petitioner then alleged that the Crown had, therefore, a large interest in the railway which might become its property, should defendants refuse to conform to law, and charged that defendants "now intend and are immediately about to change the present location of their railway, its grades and alignments and to remove the rails and materials, and discontinue the use of certain portions for railway purposes; and that in fact it is the intention of defendants to remove entirely its railway and to destroy and remove the road, rails and property in which the Crown has an interest and a lien for the subsidies granted to defendants."

The defendants pleaded, first, a demurrer, upon which an order, *preuve avant faire droit*, was made, and in which they stated in substance that the petitioner was not entitled to the writ because the Crown did not show sufficient interest, or that it had suffered or was liable to suffer irreparable injury, by any act done or being done, or contemplated by defendants.

By other pleas the defendants denied that they intended doing as charged, or that they had violated any provincial law; and they alleged affirmatively that the subsidy was granted upon the representation that the road might, at some future time, become a part of the transcontinental railroad, extending from the Atlantic to the Pacific; that after the

subsidy was granted, defendants were given authority by the Quebec Legislature to sell their railway with that object in view, and all they have been contemplating is the sale of it to the Atlantic and Northwest Railway Co., which company, if the sale was carried out, would make such changes only as would be an improvement to the road, and such as are permitted by the Provincial and Dominion railway acts, and are for the public advantage, in accordance with plans and surveys which have been made and filed according to law; that the principal change contemplated, is to the north side of "Little Magog lake" between Magog and Sherbrooke, which change is in the interest of the railway, and was the intended location at the time the provincial subsidy was granted.

Defendants further pleaded that their railway had been declared by the Federal Parliament to be a work for the general advantage of Canada, and that it is now under Federal authority and was authorized by Dominion Act 50 Vic. cap. 69, to change the location thereof, at any points where it might be necessary or desirable to improve its grades and alignments.

The petitioner replied, putting in issue defendants' affirmative allegations and alleging that the Dominion Act referred to was *ultra vires*.

By section 1 of the Injunction Act it is provided that a writ of injunction may issue to prevent a corporation from acting or taking any proceeding beyond its powers, or without having fulfilled the formalities prescribed by law or its act of incorporation, and to prevent any corporation from destroying or removing any property belonging to the Crown or in which the Crown has any right or interest. The interest of the Crown in defendants' railway is based upon the payment of the subsidy and the right of inspection and forfeiture resulting therefrom. It has been proved that the defendants received a subsidy of \$4,000 per mile, amounting to \$172,000, but I feel it is unnecessary for me to discuss whether or no the Crown has, under the particular statutes cited in the petition, the right of inspection and lien claimed, because I am satisfied that whatever lien or rights may, in ordinary cases, follow the payment of sub-