

ceeding in the name of the Attorney-General, to force the City Passenger Railway Company to abate a nuisance alleged to exist on the road from the Church at Coteau St. Louis to the station of the Q., M., O. & O. Railway. The Company, it was alleged, had abused and exceeded their powers, by laying their track too near the property of the late Stanley C. Bagg on one side, thereby injuring the value of the estate. The action had been dismissed by the Court below, on the ground that the Company were authorized by their Act of incorporation to lay their track along the highway, and, although they might have done so in a manner inconvenient to some of the proprietors adjoining, they had nevertheless acted within the scope of the powers conferred upon them by the Legislature. The evidence showed that the Company had placed their rails on the west side of the road, in a manner highly inconvenient to the occupiers of Mr. Bagg's property. The Company had received a franchise or privilege to lay their track along the highway, but this gave them the right only to place it on the portion of the road used by vehicles, and not where foot passengers walked. The franchise should be used so as to cause the least possible inconvenience to the public. The trustees of the Turnpike Company had no authority to permit the track to be so laid. The judgment would, therefore, be reversed, and the Company condemned, within thirty days, to remove their rails, reserving their right to place the rails in the usual manner in the centre of the street.

The judgment was as follows :

"The Court, etc. . . .

"Considering that the Company, respondents, to wit, the Montreal City Passenger Railway Company, are authorized by their charter, to wit, their Act of Incorporation, 24 Vic. cap. 84, to construct a double or single track iron railway, the cars whereof to be drawn by horses upon and along any of the streets in the city of Montreal which are mentioned in by-law No. 265 of the Corporation of the city of Montreal, and upon and along the highways of the parish of Montreal leading into the said streets ; and to use and occupy any such parts of said streets or highways as may be required for the purpose of their railway track, the laying of the rails, and the running of their cars and carriages ;

"And considering that this grant, constituting as it does a privilege in favor of the Company, whether viewed as a franchise, a right of user, *un droit d'usage*, or a personal servitude, must be exercised according to the ordinary mode of using such rights and in such manner as to cause the least possible inconvenience or injury to the public and to the adjoining proprietors in the use of the said streets and roads, consistent with the exercise of such privilege ;

"And considering that it appears by the evidence adduced in this cause, that in and over that portion of the highway situate in the parish of Montreal which is a continuation of St. Lawrence Main street of the city of Montreal, extending from the place in the said highway where it is intersected by St. Louis street, to the place where a road leaves the said highway opposite and leading to the station of the Quebec, Montreal, Ottawa & Western Railway, known as the Mile End Station, the said Company have placed their track and rails on the western side of the said highway, so as to encroach upon, encumber and inconvenience that portion thereof usually appropriated for and used by the public as a footpath for foot passengers, and not on that portion thereof used for carriages ;

"And considering that it is in evidence in this cause that said placing of said track and rails, and the running of cars thereon, adjacent and in such near proximity to the properties situate on the westerly side of such highway, is injurious and detrimental to said properties, and particularly to that of the representatives of the late Stanley Clarke Bagg, the relators in the present case ;

"And considering that it is proved in this cause that there is ample space for the placing of said track and rails upon the said highway, to the eastward of the line they now occupy, without injury to the proprietors of the adjoining properties, and that there was no necessity for placing them in their present position ;

"And considering that the trustees of the Montreal Turnpike Roads, parties in this cause, who have the control of said highway, could not by any permission or authority given by them, empower or justify the said City Passenger Railway Company in placing their said track and rails in the manner they have done, so as