

Harold,
and
The Mayor,
Aldermen, and
Citizens of the
City of
Montreal.

claim from the Corporation. After this date, the Corporation took the work into their own hands, and finally completed it in the autumn of the year.

These documents from which these references have been taken are authentic and are filed of record; they are the acts and deeds of the Corporation themselves and have not been disputed by them, they are explicit in character and statement, and have afforded evidence and admissions which are beyond controversy. These documents were drawn up and used whilst the works were progressing within the cognizance of the Corporation through the Road Committee and City Surveyor, who had both sight and knowledge of the matters complained of, and they were, moreover, officially executed at the particular times when the state of the work occasioned the complaints themselves and gave existence to the documents.

It may now be observed, as matter of fact, that McGill street is one of the most busy and frequented thoroughfares of this city, having on both sides extensive and thriving warehouses and large retail shops, the latter of which derive much of their support from the custom of passengers through the street. Any interruption to this traffic would of necessity be sensibly felt by those whose business depended upon it, and amongst the number of such traders was the plaintiff who had a large shoe shop situated in the block of houses facing the street on the south side lying between St. Joseph and St. Maurice streets, which latter were included between Notre Dame and St. Paul streets. Feeling aggrieved by the obstructions of the street, and his business in particular, he instituted this action against the Corporation, the defendants, by which he has claimed from them an indemnification of \$10,000 for the loss and damage suffered by him in his trade and business for a period of eight calendar months, from June, 1862, inclusive. The declaration charges the defendants with having by their agents and servants made large excavations in the said street, and heaped and piled up large quantities of earth taken out of such excavations in and upon the said street, and upon the sidewalks and foot paths thereof opposite to and against and nearest to the plaintiff's shop and premises, and with having kept and continued that part of the street lying between Notre Dame and St. Paul streets, in which were situated the plaintiff's premises and those premises themselves, obstructed and partially closed, and thereby with having during all that time, the same being an unreasonable and unnecessary length of time, obstructed the street and the sidewalks thereof, and hindered and prevented the plaintiff from carrying on his business in as ample and beneficial a manner as he would have done and had been accustomed to do and did in previous years, &c.

The defendants have pleaded substantially the general issue, denying their liability to indemnify the plaintiff, if in fact he should have suffered damage. With such an issue it would have been sufficient to examine the evidence adduced, had not the opposing counsel, in their arguments on either side, extended their contention beyond mere facts to disputed points of law as to the liability of the Corporation under any circumstances, and in relation to the legal positions assumed by them respectively in their contention. It is proper therefore to examine these points *in limine*. Amongst them some admit of no discussion, namely,

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