

orreal property necessary to be acquired for the purpose of such work will not come to an amicable settlement, the "price or compensation shall be fixed and determined in the following manner," (sec. 13), that is to say, Commissioners shall be appointed by the Superior Court. The Statute then goes on to enact (sec. 18) as follows:—"All the provisions contained in the thirteenth section of the present Act, with regard to the appointment of Commissioners and the mode of ascertaining the value of the pieces or parcels of land or real estate taken by the Corporation of the said city, shall be and are hereby extended to all cases in which it shall become necessary to ascertain the amount of compensation to be paid by the said Corporation to any proprietor of real estate, or his representatives, for any damage he or they may have sustained by reason of any alteration, made by order of the said Council, in the level of any footpath or sidewalk, or by reason of the removal of any establishment subject to be removed by reason of any other act of the said Council for which they are bound to make compensation, and with regard to the amount of compensation for which damage the party sustaining the same and the said corporation shall not agree; and the amount of such compensation shall be paid at once by the said Corporation to the party having a right to the same, without further formality." Now, it is contended by the Corporation that by this section compensation for damages done and not acknowledged are placed on precisely the same footing as compensation for lands to be expropriated. I think this is a misinterpretation of the section, for it would follow that no action of damage would lie against the Corporation for any act attributable to the Council;—the words are: "or to any party by reason of any other act of the said Council for which they are bound to make compensation." Not only there would be no direct action, but there would be no mode by which the party aggrieved could set the law in motion. It is the Council and its officers that give the notices, and move the Court or Judge for the order. If they don't acknowledge that there is any ground of indebtedness, of course they don't move. I think, therefore, that where the Corporation does not take any action, the common law remedy remains to the party aggrieved. Further to illustrate my

meaning, let me suggest another case, which does not entirely turn upon Article 18. Suppose the Council of the city resolved to expropriate from lands for the purpose of widening a street, without any amicable settlement, and without any nomination of Commissioners, will it be seriously contended that the party expropriated would not have a common law action, as well for the loss of his land, if he be content not to revendicate it, as for the damage specially arising from the dispossession without due notice? I have heard no attempt to answer this but by saying the party aggrieved could proceed by *mandamus*. Now, let us examine the depth of this suggestion.

I do not propose to enter minutely into a consideration of the limits of the jurisdiction of the writ of *mandamus*, about which there has often been some difficulty in England, a difficulty perhaps complicated in a self-governing possession of the Crown by the question of the effect of recent legislation. Suffice it to say, that it appears very questionable indeed whether the writ would lie to compel the Corporation of Montreal to affect to come to the conclusion that they "are bound to make compensation," in order to give the party complaining an opportunity of testing his case. The words of the Statute only oblige the Corporation to proceed in this way where they "are bound to make compensation, and with regard to the amount of compensation for which damage the party sustaining the loss and the said Corporation cannot agree." The first step, then, the Court, on application for *mandamus*, would have to perform would be to determine that at all events there was a *prima facie* case of damages made out. That is to decide an important part of the issue. If the Court can determine this, owing to the reticence of the Corporation, why should it not decide the whole? Again, what would be the object of the *mandamus*? It would be to get an order from the Superior Court to compel the Corporation to make an application to the Superior Court, after a useless notice to the public. No case of a *mandamus* being granted under such circumstances has been brought under our notice. Generally the writ will not be granted to compel the exercise of a discretionary power; nevertheless, even where a power is discretionary, if it be used with manifest injustice, the Court will grant