

carters by the Grand Trunk is incidental, if not absolutely essential, to their business of common carriers, and that, therefore, the Company does not, in this particular instance, stand charged with an illegal act. This I hold to be true under the facts proved in this case, in so far as this exclusive employment of Mr. Shedden goes. I think, moreover, that this right rests upon principles of the common law. But, by a provision in the Railway Clauses Consolidation Act, the Company are empowered to do all things necessary or requisite for the more effectually fulfilling and carrying out the objects of their charter, and I incline strongly to the opinion that this is one of the means of attaining such a result, impliedly granted to the Company. It has been said that although this course may be essential in other localities, yet that it is not so in the city of Montreal, where hundreds of carters are ready and willing effectually to perform all the cartage in collecting and delivering for the Company. In point of fact, this may be true, but in my view of the law, it is clearly incidental to their business as common carriers, and if so, the Company must, in the administration of the important interests confided to their charge, and in their extended responsible relations to the public, be the sole judges, whether they will follow their present system or revert to the old course of business. They collect and deliver now under special contracts with their customers. In my opinion these contracts are legal, and I cannot declare them illegal. So long as the public at large are not injured, and do not complain, I cannot interfere by injunction as prayed for by the petitioners. The motives of this decision, as embodied in the final judgment of record, will concisely disclose the grounds in law and in fact, upon which my refusal to issue the injunction rests."

The motives of the judgment are as follows:

"Considering that the petitioner has not established by legal and sufficient evidence, such a case of public interest as is required by the statute, authorizing the present proceeding; considering, moreover, that it is not proved by the evidence adduced in this cause that the complainants have suffered or have been directly aggrieved to such an extent as would justify the issuing of an injunction in the present case as prayed by their petition: seeing that it results from the evidence adduced that the fact of collecting and delivering by carters, exclusively employed to that effect by the defendants, is not injurious, but, on the contrary, advantageous to the public; considering that the defendants

have the right, as common carriers, and in the prosecution of their lawful business as such, to employ exclusively any carter or carters they may, in their discretion, select to collect from and deliver freight to their customers; and that such exclusive employment of particular carters is not a violation of their charter, inasmuch as the act itself is essential or incidental to their business as common carriers: considering that no injunction can by law issue in this case to restrain the defendants from illegal acts, by and from which the petitioners are not shewn to have been distinctly aggrieved, and which are not, at the same time, proved to be injurious to the public; and considering that none of the individuals or parties using the defendant's road and paying their charges for cartage, have complained in the present case, I, the said Judge, do refuse the said petition with costs."

Messrs. Stuart, Q. C., Roy, Q. C., and Dorion, Q. C. Counsel for the Petitioners; Mr. Ritchie, Counsel for the Defendants.

LIABILITY OF MUNICIPALITIES.

A decision was rendered on the 31st Oct. last, in the Circuit Court at Sherbrooke, by Mr. Justice Sicotte, in the case of Harvey v. Municipality of Hereford, holding that Municipal Corporations are not liable for the acts of their agents, but that these agents are alone responsible for their own acts. The following are some extracts from the judgment:—

"The plaintiff complains that the Municipality of Hereford, by their Secretary, agents and servants, caused, prior to Feb. 1861, taxes to be assessed upon lot No. 9, Township of Hereford, as land belonging to a private person, and not to the Government and that the land was sent up from the Secretary of this local municipality to the Secretary of the County to be advertised for sale for unpaid taxes; that the land was sold for taxes and purchased by him for \$3.85, and that he took the deed after the expiration of the two years. Subsequently the same land was advertised for sale by the Crown, and to prevent the ejection of one Washburn, to whom plaintiff had sold the land, he, the plaintiff, was obliged to buy it from Government for \$120. The plaintiff further alleges that by reason of the negligence and the irregularities of the Corporation of Hereford, their agents and servants, in causing this land belonging to the Government to be sold as the land of indi-