

## The Legal News.

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### DAMAGES AGAINST CORPORATIONS.

In order to present the judgment in *Morrison & The Mayor, etc.*, entire in the present issue, we defer other matters till next week.

### NOTES OF CASES.

#### COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 21, 1880.

MONK, RAMSAY, JJ., BABY, A. J., DOHERTY and  
JETTE, JJ., *ad hoc*.

MORRISON (plff. below), Appellant, and THE  
MAYOR et al. OF MONTREAL (defts. below), Re-  
spondents.

*Damages—Municipal Corporation—Alteration of  
Street Level.*

*Under the jurisprudence of the Province of Quebec,  
the damage occasioned to adjoining proprietors  
by the alteration by the City Council of the  
level of a roadway in the City of Montreal  
gives rise to an action of indemnity against the  
City.*

*The Statute 27 & 28 Vict., c. 60, s. 18, does not ex-  
clude such action of indemnity, but merely pro-  
vides a mode of procedure, and if the corpora-  
tion desires to have the compensation estimated  
by commissioners, it must move the Court to  
appoint them. If it fails to do so, it acquiesces  
in the ordinary procedure, and is foreclosed  
from raising the objection afterwards.*

*The case of Mayor & Drummond (22 L. C. J. 1)  
commented on.*

There were two appeals (Nos. 58 and 59) under the above title, and arising from the same matter. The action in each case was instituted for the recovery of damages for loss of rent, alleged to have been suffered by the appellant, Lady Lafontaine, in consequence of the alteration by the Corporation of the level of Little St. James street. The first action was brought 16th June, 1871, and the second action on the 3rd December, 1873; the damages claimed by the second action being

for the two years which elapsed after the bringing of the first action. Both actions were dismissed in the Court below by Mr. Justice Mackay, on the following grounds:

"Considering that plaintiff has not proved her allegations material, and that she has not proved and shown right to have any damages from defendants for any of the causes mentioned in her declaration;

"Considering that all that defendants did in the matter of Little St. James Street, altering of level of roadway, was within the scope of defendants' authority, and not wrongously or negligently done, and that no compensation was or is due to plaintiff as claimed by her from defendants;

"Considering further the exceptions of defendants well founded and proved;

"Considering that even if plaintiff could have claimed any compensation for the altering of the level of the street or roadway of Little St. James street, it had to be sought by other process than this action, to wit, by resort to the tribunal provided by the 27-28 Victoria chapter 60."

RAMSAY, J. This is an action of damages for lowering the roadway of Little St. James street, by which the access to appellant's property was interrupted, and by which, she alleges, she suffered material damage, and particularly by loss of rent of her property situated on that street, also for an injunction to compel the respondents to restore the street to its former level. With the latter part of this action we have nothing to do, for by a deed of the 6th November, 1873, a compromise was effected, by which the Corporation paid to the parties aggrieved, and among others to the appellant, Dame Julie Morrison, Lady Lafontaine, certain sums of money for damages, and agreed to lower the footpath or "sidewalk" within a reasonable time, on the condition that they would discontinue their actions. There was, however, a reservation that Lady Lafontaine should have the right to continue her action for damages for "loss of rent." The conclusions of this action are, therefore, reduced to a claim for damages "for loss of rent," and for no other cause.

The respondent contends that the ordinary Courts have no jurisdiction over the matter in litigation. The Court below held, if there be