

The 17th. September 1857.

PRESENT

The Honorable Mr. Justice Day
" " Mr. Justice Smith
" " " " Mondelet

This cause is continued over to the Nineteenth day of October Next for hearing on the merits therein.

The 19th. 20th. 21st and the 22d October 1857.

PRESENT

The Honorable Mr. Justice Smith
" Mr. Justice Mondelet
" Mr. Justice Badgley

The Parties being heard by their counsel upon the merits of this cause.

CURIA ADVISARE VULT.

The 23rd November 1857.

PRESENT:

The Honorable Mr. Justice Smith
" Mr. Justice Mondelet
" Mr. Justice Badgley

The Court having heard the parties by their counsel upon the merits of this cause, examined the proceedings proof of Record and having deliberated, Considering that the deed of agreement in the Plaintiff's declaration mentioned is not in law a sale or its equivalent *acte acte equipotent à vente* nor an *Acte translatif de propriété* of the realty therein described to the defendant; considering, that the union of the St. Lawrence and Atlantic Railroad Company with the Grand Trunk Railway Company of Canada, and the other Railway Companies, all parties to the said deed of agreement as in the said agreement and declaration stated, is not in law such mutation and alienation as rendered the Defendant liable for the *indemnité* and *lots et ventes* demanded in this action by the Plaintiff; considering that the defendant is not in law *mortmain* or *gens de main morte* subject to the payment of Seigniorial *indemnité* for acquisitions by the defendant of Real Estate for the purposes of such defendant, and that the lands in the Plaintiff's declaration therein alleged to be held by the Defendant in *mortmain* were not by law so held in *mortmain*; considering that the Defendant even if such *Mortmain* or and if such acquirer of said Realty and lands previous to the legal operation and effect of the Seigniorial tenures act was by the said last act declared to be relieved and freed from the payment of seigniorial *indemnité* for such acquisitions made by the defendant directly from another *mortmain* or previous to the legal operation of the said act, such acquisitions being held by the defendant at the time of the operation of the said Act; considering that the sums of money demanded by the Plaintiff in this action are not in law for arrears of seigniorial dues accrued and due by the defendant to the Plaintiff previous to the legal operation in that respect of the said Seigniorial Tenures Act; And further considering that the Grand Trunk Railway including therein the said Realty and lands is by Law a Work of public utility, and that the Acquisition of the said lands did not in law render the defendant liable for the payment of the *lots et ventes* demanded by the Plaintiff in this action, doth maintain the peremptory Exceptions of the defendant, and doth dismiss the Plaintiff's action with costs.

His Honor Mr. Justice Smith dissents from this Judgment.

Montreal 10th. February 1858.

(Signed)

MONK, COFFIN & PAPINEAU

P. S. C.

SCHEDULE No. 1.

SUPERIOR COURT
FOR LOWER CANADA,
District of Montreal

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

No. 2079.

TO ALL AND EVERY THE BAILIFFS of the said Court, appointed for the District of Montreal,

GREETING:—



WE COMMAND YOU, to summon, within the limits of our District of Montreal, The Grand Trunk Railway Company of Canada, to be and appear before Us, in our said SUPERIOR COURT for Lower Canada, in our City of Montreal, in our said District, on Tuesday the Ninth day of December next to answer Alexandre Edouard Kierzkowski, esquire, Seignior in possession as usufructuary of the Seignior of St. François le Neuf, in the district of Montreal, residing in the parish of St. Charles, in the Said district, of the *demande* contained in the annexed declaration; and have you then and there this Writ.

IN WITNESS WHEREOF, we have caused the Seal of Our said Court to be hereunto affixed at Montreal, this twenty fourth day of November in the year of our Lord one thousand eight hundred and fifty-six and in the twentieth year of our Reign.

(Signed)

MONK COFFIN & PAPINEAU

Prothonotary of the said Court.

(Endorsed)

No. 2079.

(On the back of the writ)