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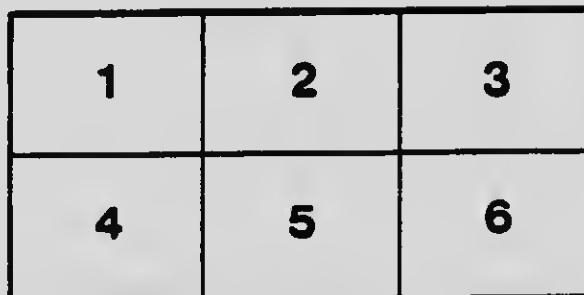
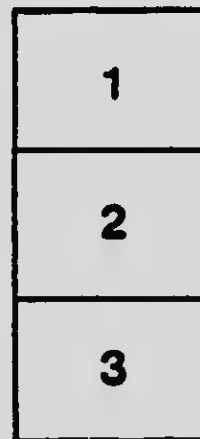
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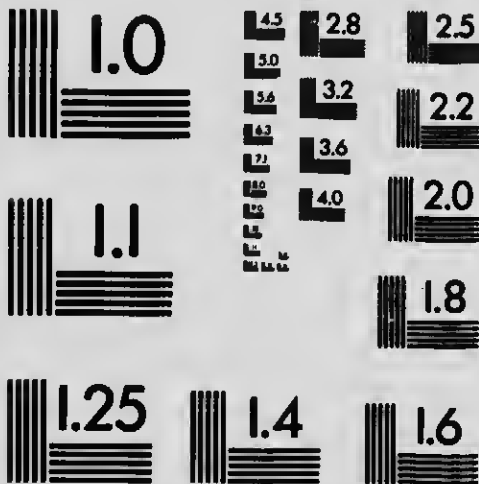
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**TWO WEIGHTS:
TWO MEASURES.**

MONTREAL, March 2nd, 1904

In the matter of

THE CITY OF MONTREAL,

Petitioner in respect of the improvement of the approaches to Wellington Bridge on the North Side;

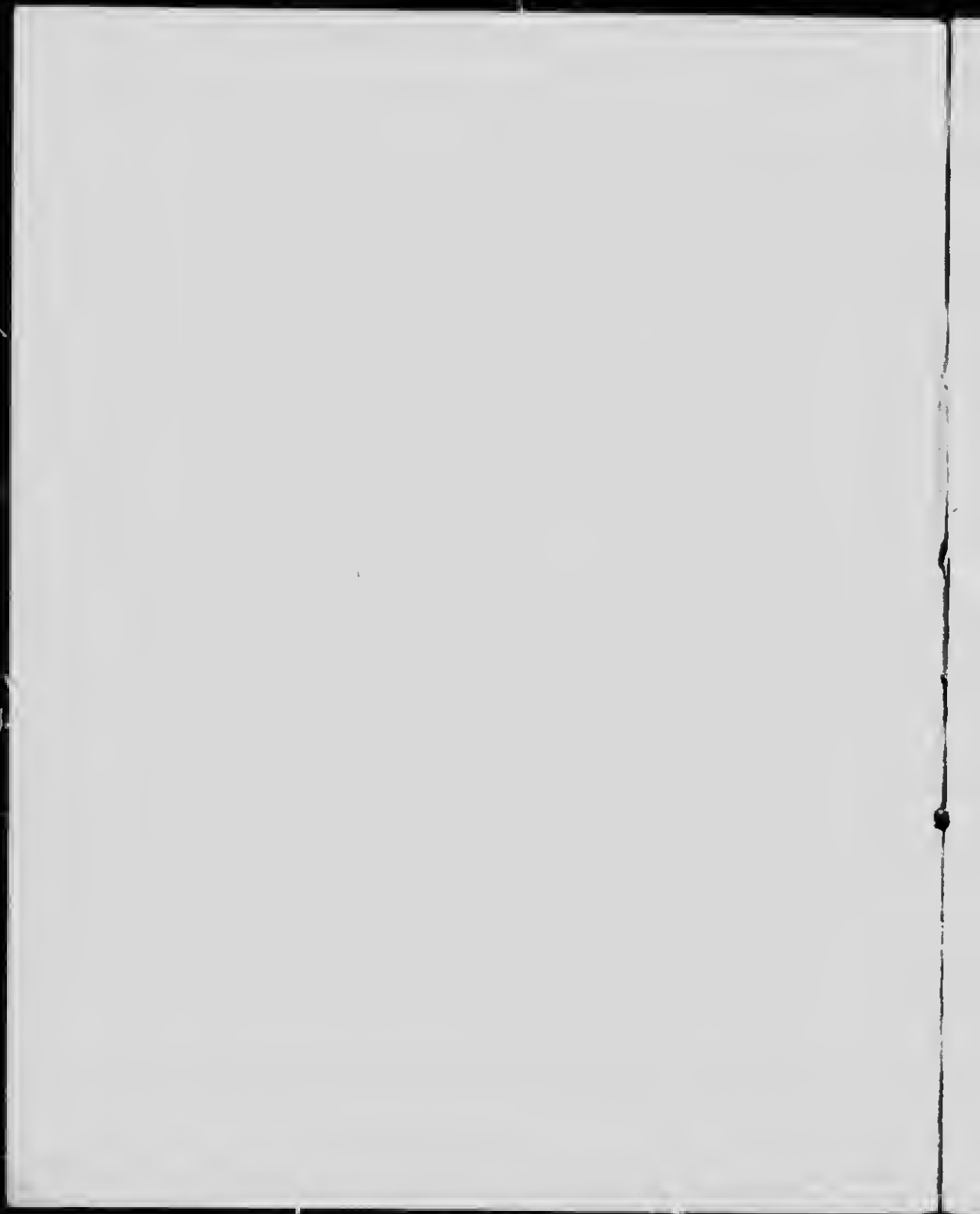
AND

The acquisition of the property of Dame Margaret Brennan, widow of the late Michael Patrick Ryan, in his lifetime of the City of Montreal, Esquire, and Collector of Her Majesty's Customs at the Port of Montreal ;

AND

THE SAID MARGARET BRENNAN RYAN

Proprietor of Lot No. 1414 of the Official Plan and Book of Reference of St. Ann's Ward in the said City of Montreal.



TO THE HONORABLE L. O. DAVID,
City Clerk of the City of Montreal.

Dear Sir,—The undersigned beg, respectfully, to make to you the following report in regard to the proceedings herein:—

1. Mrs. Ryan is the owner of vacant land in St. Ann's Ward, in the City of Montreal, adjacent to the Wellington Bridge, bounded on one side by St. Leon Street, on another side by McCord Street, on a third side by Olier Street, and on the fourth side by the property of Peter Donovan, Esquire,—said piece of land being No. 1414 on the said Official Plan, and comprising, according to measurements made by the City of Montreal, 33,082 square feet, of which the City is seeking to acquire from the proprietor, 32,058 square feet.

2. The City applied to the Court by petition, for the appointment of Commis-

sioners to value the said land, and asked that the Recorder of the City of Montreal, and A. Langevin, and John Hamilton Ferns, two of the Assessors and employees of the said City should be the three Commissioners on behalf of the City, and they were accordingly appointed. The undersigned were appointed the Commissioners on behalf of Mrs. Ryan.

3. At the first meeting of the said Commissioners on the 13th January, 1904, Counsel for Mrs. Ryan took exception to the jurisdiction of the Commission and filed, in writing, the following protest:

" On behalf of the said Petitioner, Mrs. Ryan, the undersigned respectfully except to the jurisdiction of the Commission to fix the price to be paid for the property of the said Petitioner to be taken by the City of Montreal for the improvement of the approaches to Wellington Street Bridge on the north side.

MONTREAL, 13th January, 1904.

(Sgd.) MACMASTER & HICKSON,
Attorneys for Petitioner."

No vote was taken as to whether this exception was well founded or not, but the Recorder ruled that there was jurisdiction and required the parties to proceed.

4. Counsel for the proprietor then called the attention of the Commissioners to the law under which the acquisition of this property was authorized, namely, 3 Edward VII., chapter 2, section 52, subsection 16, and pointed out that no part of the said Act contained any authorization to the Commissioners to determine the amount that should be paid for the property to the Proprietor, and that the provisions of the City Charter applicable to expropriations in the general interest, namely Articles 421 to 445, were not applicable to the present case (which was an excepted case)—the statute simply authorizing the City to make the improvements, the cost of which would be approximately, \$15,672.00 and to purchase the land at the market value of land in the vicinity.

5. Counsel for the Proprietor, therefore, asked the Commissioners to state whether in determining the market value of the land, they felt themselves in any way bound by the sum mentioned (\$15,672.00), for the cost of the improvement. Counsel thereupon read the section, subsection 16 of the said Act 3, Edward VII., chapter 62, section 52, which is as follows:

“ To improve the approaches to Wellington bridge on the north side, in accordance with the plan marked Y, and deposited in the office of the city surveyor, at an approximate cost of \$15,672.00.

The cost of such improvement shall be paid two-fifths by the proprietors of St. Ann's Ward, and the other three-fifths by the city, *the amount to be paid for the property to be the market value of the property in that vicinity.*

6. The undersigned there and then expressed the opinion that all they had to do, assuming they had jurisdiction, was to determine the market value of the property which the City was seeking to acquire, uninfluenced by the consideration that the

City was authorized to expend \$15,672 as the cost of the improvement.

7. The Recorder, on behalf of himself and the other Commissioners appointed by the City, declined to make any decision upon that question, stating that it might turn out to be unnecessary so to do after hearing the evidence. The Recorder further stated that there was a judgment of the Court ordering them to proceed and that they must go forward with the evidence.

8. Counsel for the Proprietor then stated that, of course, his client must submit to the ruling, but that it must be understood that they proceeded under reserve of all their rights, and under the exception filed.

9. No evidence was taken that day (13th January), and the consideration of Mrs. Ryan's case was not resumed until the 2nd day of February, the three other cases having been heard in the meantime.

10. The hearing of Mrs. Ryan's case commenced on the 2nd February, when the City started to make its proof. Two witnesses were examined on behalf of the City, James Nelson, architect, and R. Chartrand. Both these witnesses submitted schedules and statements showing the actual market sales of property in the vicinity. After producing these statements and schedules, they each swore that having regard to the value of property in the vicinity, the property of this proprietor was worth 80 cents per foot, which rate for 32,058 square feet of land would amount to \$25,646.40, to which they added

“for 107.20 lin. feet of rough fence to
enclose the residue of the lot at \$1.25 \$ 134.00
making a total sum of..... 25,780.40”

They signed this as “our valuations,” and Mr. Emil Lavigne, a witness also called on behalf of the City, signed the statement, but he was not examined under oath in this case.

Mr. Nelson, who was the principal witness for the City, admitted, on cross-examination, that a neighbouring property, The Steel & Paint Works, used for manufacturing purposes, had been purchased at \$1.73 per square foot, for the land, exclusive of some buildings erected upon it, and for the other part, at \$2.45 per square foot for the land, including old buildings upon it. Mr. Nelson, in addition, on cross-examination, made the important statement that the Steel & Paint property was only 1,000 feet distant from the property of Mrs. Ryan, that Mrs. Ryan's property, as to situation, proximity, adaptability for development and size, had a greater resemblance to the Steel & Paint property than any other property in the vicinity, and he also established that the purchase of the Steel & Paint properties took place at or about the date of the passing of the Act, 3 Edward VII., chapter 62, section 52, subsection 16, authorizing the acquisition of the property in

question, and that he knew of no other sales of property in the vicinity that had taken place at or about the date of the Act authorizing the purchase in this case, except the sales and purchases of the Steel & Paint properties.

Apart from Mr. Chartrand, who gave evidence on the same lines as Mr. Nelson, no other witnesses were called for the City and the Proprietor then proceeded to make her proof.

II. Among the witnesses examined for Mrs. Ryan, and who valued her property according to the standard prescribed in the Statute, namely, the market value of the property in the vicinity, were:—

I. Bernard Tansey, Esquire, a large proprietor of real estate in the City of Montreal, who valued the property at from \$1.25 to \$1.50 per square foot.

II. Henry Ward, a real estate agent of large experience, with an intimate know-

ledge of sales of property in the vicinity, who valued it at from \$1.25 to \$1.50 per square foot.

III. G. W. Parent, a real estate agent of large experience, with an intimate knowledge of the sales in the vicinity, and a gentleman who has frequently acted as a commissioner to value property in different parts of the City. He valued the property at from \$1.25 to \$1.50 per square foot.

IV. A. E. Merrill, also a real estate agent of experience, who valued the property at from \$1.25 to \$1.50 per square foot.

V. Kenneth Blackwell, the President of the Canada Steel Company, to wit, the Company which purchased the land of the like character and like situation in the immediate vicinity, for in part, \$1.73 per square foot, exclusive of buildings, and in part, \$2.45 per square foot, inclusive of buildings. He valued Mrs. Ryan's land at \$1.25 per square foot.

VI. Charles F. Smith, the head of The James McCready Co., Limited, a Director of the Merchants Bank and a manufacturer of very large experience, who, with others, testified that Mrs. Ryan's land was exceedingly well situated for manufacturing and commercial purposes, possessing accessibility on three sides and light from three streets that bounded it, as well as from Gallery Square opposite it. He testified that the property was admirably situated for a manufacturing establishment and was worth \$1.25 per square foot.

VII. James Reid Wilson, of the firm of Thos. Robertson & Co., a Director of the Canada Steel Company, who, personally, made the purchases of the land referred to for the Steel Company, a gentleman largely connected with manufacturing business and familiar with the value of land in the vicinity, testified to the adaptability of Mrs. Ryan's property for manufacturing and commercial purposes owing to its accessibil-

ity on three sides and the certainty of good light from the open character of the surroundings—a street on each of three sides and an open square in front.

Mr. Wilson testified that the fair market value of the property was \$1.25 per square foot. He also testified that in his opinion the Steel Company had paid more than the market value for the Steel Company's premises, owing to the necessity of acquiring it to enlarge their business. But, making allowance for this, he testified that the land of the Steel Company was worth at least \$1.25 per square foot, and that Mrs. Ryan's land was quite as valuable and as well adapted for commercial and manufacturing development as the land of the Steel Company.

Mr. Wilson does not know Mrs. Ryan personally, and neither he, Mr. Smith, Mr. Blackwell, nor any of the other witnesses have any business relations with her. She is an aged lady and, being stricken with ill-

ness, was not able to leave her house or instruct her Counsel during the conduct of the inquiry.

12. In addition to the foregoing, it was established by several witnesses that the property was well adapted for a Hotel site, that a great concourse of people passed it on the thoroughfares bounding it, and that it had the advantage, over the Steel property, of being on the north or City side of the Canal, and thus free from the obstruction arising from the frequent opening of the Wellington Bridge during the season of navigation. It was also established that the labor market was as good, if not better, on the north side of the Canal as on the south side, that it would be easy to connect the property by a spur with the Grand Trunk Railway, and that its being situated nearer to the centre of the City than the Steel Company property, which was beyond the Bridge on the south side of the Canal, gave it a corresponding advantage over that land.

13. Counsel for the Proprietor urged that it was unfair to take as a standard of value the prices realized from small properties in the vicinity, only suitable for small structures or tenement houses, and with limited accessibility and light, and that the true test was a comparison of the prices realized from the sales of property of the like character and those similarly situated and of similar adaptability. In addition to the Steel Company property, they established that a property somewhat nearer the City, namely, at the corner of Queen and Common Streets, was sold about four years ago to the City for \$1.65 per square foot, and that the rear portion of this same property was afterwards sold to one, Desormeau, for the purposes of a hotel or restaurant, for the sum of \$2.72½ per square foot, though there was not at that point the crowds that congregate opposite the property of Mrs. Ryan, at every opening and closing of Wellington Bridge.

14. At the conclusion of the second day of the evidence, the Counsel for the Proprietor stated that they desired to call the particular attention of the Commissioners to the true construction of subsection 16 above referred to (paragraph 5), and submitted that it was the obligation of the Commissioners to determine the price that should be paid for the property according to the market value of land in the vicinity, of the like character and like adaptability, regardless of the amount specified in the first clause of subsection 16 as being applicable to the improvement of the approaches to the Bridge. Subsection 16 may be repeated:

"16. To improve the approaches to Wellington bridge on the north side, in accordance with the plan marked Y and deposited in the office of the City Surveyor, at an approximate cost of \$15,672.00.

The cost of such improvement shall be paid two-fifths by the proprietors of St. Ann's Ward, and the other three-fifths by the city, the amount to be paid for the property to be the market value of the property in that vicinity;"

Counsel submitted that the true meaning of these two clauses was that the City was authorized to pay to the proprietor the market value of the property, and having thus acquired it, the City was authorized to spend, approximately, \$15,672.00 in improving the approaches, that is to say, in reducing the land acquired to proper levels; in laying down drains and proper foundations, in macadamizing and grading the approaches; in constructing the appropriate sidewalks on either sides of these approaches leading to the Bridge; in building boundary walls; and it may be in planting trees for shade, in keeping with the park on one side of the road—all such constituting the improvements contemplated to cost \$15,672.00, as distinguished from the price to be paid for the land, which was to be the market price thereof, irrespective of any sum set aside for improvements.

15. It could not be expected that the Legislature could, for the value of the

land, set up two standards, one controlling the other and restricting the action of the Commissioners, who were sworn truly and faithfully to perform their duties. What the Legislature intended to set up and did set up in plain terms, is that the Proprietor should be paid the fair market value of her land, that the City would have the power to acquire the land on paying that price, and that when it acquired the land it should be authorized to improve it by the expenditure of a sum specified to be the cost of improvement.

16. In addition to the testimony referred to above, it was established that part of the adjoining property of Peter Donovan, Esquire, was sold to the Government of the Dominion of Canada in 1877 for the sum of \$1.10 per square foot, and that a portion of the next adjoining property, that of Jacob Henry Joseph, Esquire, had been

purchased by the Government of the Dominion of Canada, in 1877, for the sum of \$1.25 per square foot. It was not pretended that property there had declined in value. None of the witnesses examined could cite any sale having taken place, of property on the banks of the Canal, for less than \$1.00 per foot, even as far out as the City limits, and the present property is situated near the centre of the commercial life of Montreal. On the contrary, the only property there that had been sold in recent years of the like character, had sold at, at least 75 per cent. advance on the prices of a quarter of a century ago. The prices so paid are matters of public record, not merely in the Registry offices, but in the Public Records of the Dominion of Canada. That being so, Mrs. Ryan, alone, for the portion of her land proposed to be taken, would at the moderate price of \$1.25 per square foot, the price paid to Mr. Joseph, have been entitled to

\$40,072.50. Mr. Donovan would have been entitled to \$4,641.25, and leaving out of account the other two proprietors to be expropriated, Mr. McGurn and Mr. Gallery, Mrs. Ryan and Mr. Donovan together, might most reasonably claim the sum of \$44,713.75.

17. In view of these facts and matters of public record it is inconceivable that the Legislature could have intended that not only the improvements could be made, but that the land could be purchased for the sum of \$15,672. The construction of the section of the Statute proposed by the Counsel for the Proprietor at once gave a reasonable interpretation to the intention of the Legislature, and relieved the Commissioners, if they would be relieved, from the embarrassment to which they imagined they were subjected.

18. The case was taken *en délibéré* on 11th February, 1904.

19. No meeting of the Commissioners took place until the 15th February, 1904, when after a short *delibéré*, it was moved by Mr. J. Hamilton Ferns, and seconded by Mr. Langevin (Commissioners for the City), that the price for Mrs. Ryan's land should be 50 cents per square foot.

An adjournment took place until 24th February, 1904, when it was moved by the undersigned, Mr. Guerin, and seconded by Mr. Ford, that the price should be \$1.25 per square foot.

The Recorder thereupon stated that he had come to the conclusion, having regard to the two standards set up in the clause, subsection 16, that the price should be 60 cents per square foot.

20. After discussion, the undersigned asked that the proceedings of the Commission should be adjourned till another day in order to give all parties an opportunity of fully considering the evidence and arriving at a proper conclusion. The under-

signed, Michael Guerin, moved, seconded by Mr. Ford, that the *delibéré* or advisement should be adjourned until another day for the purpose of further consideration. Messrs. Ferns and Langevin both were against this, and the Recorder also gave his casting vote against it.

21. A few minutes before five p.m. on the same day, the undersigned and the other Commissioners representing the Proprietors, left the meeting believing that the Commission would be again summoned to meet, when a report would be submitted and they would have the opportunity of further discussing the matter and of either signing or putting in their dissent, but the undersigned have since ascertained that after they left, the Recorder and the two Assessors representing the City, sent to an office upstairs in the City Hall, for a report which had previously been prepared under the instructions of the majority, but which was never submitted to the undersigned, and

that in the absence of the undersigned they proceeded to sign the said report and to cause it to be delivered at the City Clerk's Office, as appeared from the endorsation thereon, at four minutes to five o'clock. The undersigned never saw the said Report, or a copy of it, until to-day.

22. The majority of the said Commissioners, in arriving at the conclusion as above indicated, have deprived the Proprietor of the opportunity of urging the just grounds upon which the Commission might, on the evidence, come to a conclusion to grant a much larger sum to the Proprietor than that stated in the majority report, and also of the opportunity for asserting and demonstrating that the true standard of value of the property was its market value, uncontrolled by the consideration that a sum fixed approximately, was authorized for improvements.

23. From a letter addressed by the Recorder to yourself, and concurred in by the

two City Assessors, it appears that the representatives of the City found it necessary to explain the contents of their Report. In one paragraph the Recorder says:

"The Commissioners were perplexed to a certain extent by the fact that the law authorizing this expropriation *fixed two standards which proved to be different.* In the first place the improvements were sanctioned at an approximate cost of \$15,672, but this was immediately followed by a clause which stated that the price to be paid for the property was "the market value of the property in the vicinity." The Commissioners have found a discrepancy between these two standards, and while feeling bound to a certain degree by the first limitation, as an estimate approved by the Legislature, have nevertheless striven to do justice to the indemnitaries in the terms of the second standard."

From this statement it is clear that the Recorder and the City Assessors felt that in fixing a market value of the property, they were "bound to a certain degree by the first limitation" (that is the amount stated for the cost of the improvement), "as an estimate approved by the Legislature." The

Legislature has made no estimate whatever of the market value of the land and the Recorder and the Commissioners on behalf of the City, have treated the sum stated as costs of improvements as the estimate made by the Legislature of the market value of the land. If the sum stated as the cost of the improvement, is the estimate of the Legislature, of the market value of the land, there would be no sum left applicable to the making of the improvements. The Recorder and the Commissioners for the City have labored under the impression that they were to apply two standards in valuing the land—standards which they, themselves, admit to be “different,” and between which there is a “discrepancy.” It is respectfully submitted that the only standard provided by the Legislature is the market value of the land, and that the Commissioners should have completely disregarded the sum mentioned as being applicable to the costs of improvements. Had further discussion of

the Report been permitted, the misconception of the majority of the Commissioners in this respect might have been removed. In fact the undersigned were deprived of the opportunity of considering the Report, which was never submitted to them, and of pointing out that in other respects the said Commissioners have fallen into error of law in stating that "the residue of the above described piece of land could be acquired by the City of Montreal, for the sum of \$637.20, making in all \$19,872,"—being also at 60 cents per foot. The undersigned are advised that no such right or option appertains by law to the City.

24. Moreover, the majority of the said Commissioners, in arriving at a conclusion, not only failed to submit any report for the approval or dissent of their fellow-commissioners, but they also put aside all the evidence taken in the case, and substituted their own personal opinions for the sworn and uncontradicted testimony of several of

the most respectable men in the City of Montreal. They have substituted their personal opinions, though none of them can claim to be experts, that the market value of Mrs. Ryan's land is only 60 cents per square foot, for that of the Experts for the City, Mr. Nelson and Mr. Chartrand (of whom it can be said that neither failed in devotion to the City's interest), who valued it at 80 cents per foot, making a difference to the Proprietor of 20 cents per square foot, or \$6,411.60; and not only did they disregard the evidence of the witnesses for the City, but they disregarded the evidence of the sales to the Government above referred to, at \$1.10 and \$1.25—the sales to the Steel Company at \$1.73 and \$2.45 per square foot, and they also disregarded the weighty testimony of Mr. James Reid Wilson, Mr. Charles F. Smith, Mr. Kenneth Blackwell—all of whom are connected with manufacturing enterprises—two of them with the great enterprises in the immediate

vicinity, and who not only knew the market values of land in the vicinity, but were competent to judge of the adaptability of this particular property for commercial and manufacturing purposes. They have also disregarded the testimony of the Estate Agents, based upon their personal experience, and of Mr. Tansey, who is a large estate owner in the ward.

25. If the Commissioners may put aside all the testimony of respectable men on both sides of the case then the taking of evidence is a mere farce and an expense to both the proprietors and to the City. It would be far easier to dispense with the useless ceremony of administering the oath and hearing testimony at length, and to say at once to the Commissioners for the City who are, too, the paid employees of the City: "You are masters of the situation; you have the right to give us what you please; we are in your hands and at your mercy." It is bad enough that in an arbitration proceeding

the proprietor should be handicapped from the outset, by a majority vote against him, but it is intolerable that that majority should clandestinely prepare a report, sign it and forward it to the City Clerk without ever giving the opportunity to their co-Commissioners to examine it, and that in arriving at their conclusions they should treat, as an utter nullity, the whole of the evidence given under oath, and adopt two standards of valuing, which they themselves admit are "different," and which the undersigned are advised, are utterly at variance with the law.

26. The undersigned respectfully submit that the Report and Proceedings of the majority are not only illegal and should be set aside, but that they constitute a great injustice to the Proprietor, from which she should be relieved.

Will you have the goodness to have this communication brought to the attention of His Worship the Mayor, the Chairman of

the Finance Committee, and the City Attorneys.

We have the honour to be, Sir,

Your obedient servants,

(Sgd.) MICHAEL GUERIN,
DANIEL FORD,

Commissioners for
Dame Margaret Brennan,
(Mrs M. P. Ryan.)

The undersigned, who sat as Commissioners in the cases of Peter Donovan, Michael McGurn and Daniel Gallery, and who were present at all the sitting of the Commission in connection with the City's acquisition of the properties of Mr. Donovan and Mrs. Ryan, concurred in the foregoing statement.

(Sgd.) J. H. KENNEDY,
Commissioner for Daniel Gallery
and Michael McGurn.

(Sgd.) G. W. PARENT.
Commissioner for Peter Donovan,
Daniel Gallery and Michael McGurn.

I first saw the contents of the said Report by reading a copy of it on Monday afternoon, 29th February, 1904.

(Sgd.) G. W. PARENT.

IN THE MATTER OF PETER DONOVAN, ESQUIRE,

(Another Proprietor.)

Mr. Donovan's land is No. 1413 on the Official Plan, and fronts on Wellington Street on the one side, and on the street bordering the Canal on the other. It is vacant land and exceptionally well situated. The City propose to acquire 3,713 square feet of it. The award of the majority of the Commissioners in his case allowed 65 cents per square foot. His land adjoins Mrs. Ryan's, and the testimony, as well as the observations, applicable to the one, are applicable to the other.

His Counsel made the same exceptions to the jurisdiction and the same suggestions

as to the true construction of the Statutes as in the case of Mrs. Ryan.

Mr. Donovan himself filed a protest substantially in the same terms as that of Mrs. Ryan.

As stated above, paragraph 16, Mr. Donovan sold a portion of the same block of land to the Federal Government in 1877 for the sum of \$1.10 a foot, and, in the same year, Mr. J. H. Joseph sold a portion of the adjoining land to the Government at \$1.25 per square foot—nearly double the price allowed Mr. Donovan now by the majority of the Commissioners, though the pieces then taken were further removed from the Bridge than that now sought to be acquired, which is the nearest piece of private property to the ~~North~~ side of the Wellington Bridge. There is no proof of a decrease in values of land near the Canal: on the contrary, there are abundant instances of increases.

Some of the witnesses (including all the witnesses for the City) thought that this piece of land had an advantage over Mrs. Ryan's, in that it adjoined the road that separated the Canal from it, whereas others considered that the greater advantage lay with Mrs. Ryan's land on account of its size, accessibility and general adaptability for a large establishment, commercial or manufacturing, or for a hotel. Three witnesses, and three only, were examined on behalf of the City to value Mr. Donovan's property, namely, Messrs. Nelson, Lavigne and Chartrand. They appraised it at a market value of \$1.00 per square foot. The witnesses for the Proprietor appraised it at from \$1.25 to \$1.50. The overwhelming weight of testimony in this, as in Mrs. Ryan's case, was that the land taken at its market value was worth, at least, \$1.25 per square foot. The Commissioners allowed 65 cents per square foot, "perplexed" and controlled as they were

by what they call two standards, the legislative valuation and the "market value." (See paragraph 23, ante.) Two weights and two measures!

The two Commissioners named by Mr. Donovan—proceeding under protest—were overruled in their proposal that the sum to be paid was the "market value," and that the evidence clearly showed that the market value was, at least,, \$1.25 per square foot.

In other words, the majority of the Commissioners, all employees of the City, none of whom can claim to be an expert in market values of real estate, have put aside the sworn testimony of all the witnesses—those called by the City, as well as those of the Proprietor,—including men of the highest standing in the City of Montreal, with the most accurate knowledge of the locality and of the adaptability of the land in question for development, and have substituted their own individual opinions therefor.

Mr. Donovan's Commissioners were Daniel Ford and G. W. Parent, Esquires, and they were subjected to the same treatment as the Commissioners in Mrs. Ryan's case.

If such a state of things can exist, there is no security for the land owner in the City of Montreal, against rapacious aggression—all the more intolerable because there is no appeal from the homologated report of a majority of the Commissioners.

