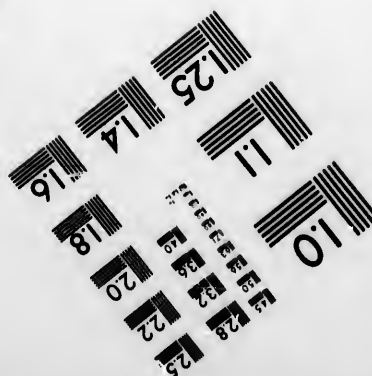
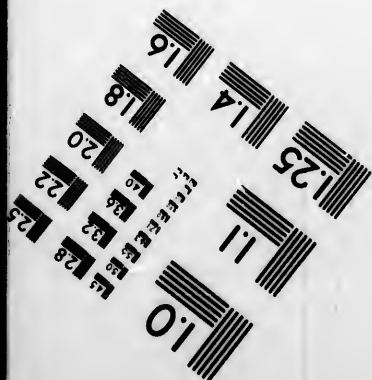
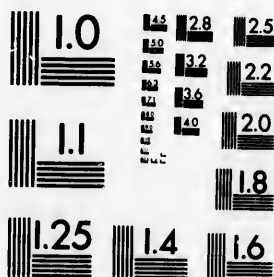
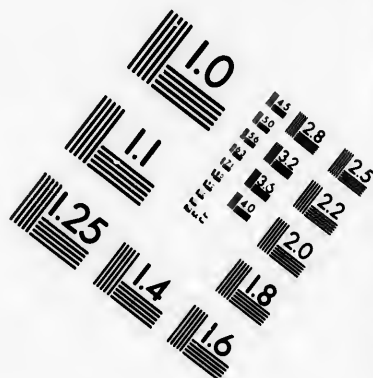


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EXTRACTS
FROM THE
MINUTES
OF THE
HARBOUR COMMISSIONERS
OF MONTREAL,
AND OTHER DOCUMENTS,
WITH REFERENCE TO
HYDRAULIC LOTS ON MILL STREET.

Printed by order of the Harbour Commissioners.

Montreal :
MONTREAL HERALD PRINTING AND PUBLISHING COMPANY.

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EXTRACTS FROM THE MINUTES
OF THE
HARBOUR COMMISSIONERS OF MONTREAL,
AND OTHER DOCUMENTS WITH REFERENCE TO
HYDRAULIC LOTS ON MILL STREET.

MONTREAL, 19th July, 1861.

Meeting of the Board of Harbour Commissioners.

*Present :—*H. H. WHITNEY, ESQ., *Chairman.*

C. S. RODIER, *Mayor of Montreal.*

HON. JOHN YOUNG.

A. M. DELISLE.

E. ATWATER, *P. est. Board of Trade.*

The Chairman stated, that in consequence of an urgent note having been sent to the Secretary last Saturday, from Messrs A. & W. Robertson, Advocates, he (the Chairman,) with Mr. Young and Mr. Atwater, had considered it advisable, without waiting for a meeting of the Board, to authorize the Messrs Robertson to appeal from the judgments rendered in the Supreme Court, in the cases of the Harbour Commissioners *vs*: Grant *et al.*, and Lyman *et al.*: for encroaching on the limits of the Harbour. This is now submitted for the formal approval of the Board.

Whereupon it was directed to bring the matter up at the next meeting.

MONTREAL, 5th April, 1862.

Special Meeting of the Board of Harbour Commissioners.

Present :—H. H. WHITNEY, ESQ., Chairman.

A. M. DELISLE, ESQ.

EDWIN ATWATER, ESQ., Prest. Board of Trade.

J. L. BEAUDRY, ESQ., Mayor of Montreal.

Present also, Ira Gould and John Grant, representing themselves and the other proprietors of hydraulic lots on the Lachine Canal.

The question of determining the boundary line between said proprietors in that locality and the property of the Harbour Commissioners, was duly discussed, upon which the following resolution was moved by Mr. Delisle, seconded by His Worship the Mayor, and adopted unanimously :—

“Whereas, it is highly desirable that the Boundary Line, separating the properties of proprietors of hydraulic lots on Mill Street, the Lachine Canal, and that of the Harbour Commissioners, should be clearly and satisfactorily defined and established, and that the lawsuits now pending between the Commissioners and certain of the proprietors in question, be discontinued and amicably settled upon each individual party paying the whole costs of such suits, which up to the present time may have been incurred by him or them respectively; and whereas, the plan defining the boundary line now before the Board, as proposed by the Mill Street proprietors, having been duly considered, it is hereby resolved that with the view of affording said proprietors every possible facility and accommodation consistent with a due regard for the paramount interests of the Harbour, the Commissioners hereby direct their engineer to prepare a plan in accordance with the views expressed by them this day, in the presence of Ira Gould and John Grant. The plan that is to be prepared shall simply define the boundary line between the proprietors of property on Mill Street and the Harbour Commissioners, and shall in no manner indicate any works or improvements on the River side obligatory on the Commissioners, either now or in time to come.

"That on being furnished with said plan, the Harbour Commissioners will be prepared, in accordance therewith, to enter into a Notarial Contract with each individual proprietor on Mill Street, defining permanently and conclusively the boundary of his or their property or properties,—the Harbour Commissioners in such contracts reserving to themselves the sole and exclusive right to construct whatever works or buildings they may see fit, outside of said boundary line.

"With the further understanding that the reserve to be noted in said plan under the designation of "*Harbour Reserve*," dividing the property of Messrs Grant, Hall & Co., shall remain the property of the Harbour Commissioners for railway purposes, or for the purpose of forming a passage to communicate with the Harbour property. Further, that no agreement as to boundary line shall be assented to by the Commissioners without the clear understanding that each and every proprietor on Mill Street shall become a party thereto. Further, that the width of Mill Street shall not be less than sixty-five feet, and that fifteen feet more shall be granted to said proprietors beyond what their plan now exhibited shows, the said fifteen feet to compensate for the additional width required for Mill Street. Further, that all structures which may be erected by proprietors of property on Mill Street, upon the boundary line established, shall be exclusively of stone work, and built uniformly and to the level of Mill Street, and that rights to land which may be granted to them by the Harbour Commissioners shall be precisely on the same terms and conditions as the property now leased to them by the Provincial Government. Finally, that all national or other expenses which may be incurred in settling the question of a boundary line shall be paid by the proprietors of property on Mill Street, with whom a deed, as aforesaid, shall be formally executed. The whole, however, subject to the sanction and ratification of the Provincial Government."

The Board then adjourned until Monday next, the 7th instant, at noon, when all now present agreed to meet again.

(Signed,)

H. H. WHITNEY,

Chairman Harbour Commissioners..

(Signed,)

ALEX. CLERK, *Secretary.*

MONTREAL, 7th April, 1862.

Special Meeting of the Board of Harbour Commissioners, by adjournment from Saturday, the 5th instant.

Present :—H. H. WHITNEY, Esq., *Chairman.*

A. M. DELISLE, Esq.

EDWIN ATWATER, *President Board of Trade.*

J. L. BEAUDRY, Esq., *Mayor of Montreal.*

Messrs. Ira Gould and John Grant were also again present.

The Harbour Engineer's plan, ordered to be prepared at the meeting on 5th instant, was laid before the Board, and received the approval and sanction of the Commissioners, as well as of Messrs. Ira Gould and John Grant.

The *Resolution* passed at the meeting on the 5th instant was also read over, and received the concurrence and assent of all present.

The Secretary was thereupon directed to enclose a copy of the Plan and Resolution to the Honourable the Provincial Secretary, with a request that the same may be submitted, as early as possible, for the consideration and sanction of His Excellency the Governor-General-in-Council.

(Signed), H. H. WHITNEY,
Chairman Harbour Commissioners.

(Signed) ALEX. CLERK,
Secretary.

MONTREAL, 5th June, 1862.

Meeting of the Board of Harbour Commissioners.

Present :—The HON. L. H. HOLTON, *President Board of Trade.*

A. M. DELISLE, Esq.

J. L. BEAUDRY, Esq., *Mayor of Montreal.*

HON. JOHN YOUNG.

Abstract from business of this day's Meeting :

Mr. Young drew attention to the proceedings of this Board on 5th April last, and the proceedings also at the meeting on 7th

April, when a resolution was passed agreeing to define the boundary line between the Harbour Commissioners and owners of hydraulic lots on Mill Street, according to a certain plan, which plan and agreement had been transmitted to Quebec for the approval of the Government.

Mr. Young expressed it, as his opinion, that matters of great public interest were involved in this question, and considered that before the Board agreed to cede any portion of the Harbour property, it was important that the suit now pending be proceeded with, by the advice of Mr. Andrew Robertson, in order that the power of the Commissioners in this respect be clearly defined, and also that in the interval the letters and plans sent to the Government should be recalled.

Mr. Young made a motion to the above effect, which was lost, the Chairman having expressed himself in favor of it.

MONTREAL, 5TH JULY, 1862.

Abstract from business of this day's Meeting :

A letter dated 23rd ultimo was received from the Provincial Secretary, stating that the memorandum of agreement with proprietors of water lots on the Lachine Canal, transmitted by this Board on the 8th of April last for the sanction of the Government, had not been ratified, but that from the facts stated, and as the case is now before the Court of Appeals, this Board is recommended to press for a decision in that Court.

The Secretary was directed to convey the above information to Mr. Ira Gould and Mr. John Hall, representing themselves and the other hydraulic lot proprietors on the Lachine Canal, and that the matter of going on with the Appeal will be discussed at a further meeting of this Board.

MONTREAL, 11TH MARCH, 1863.

Abstract from business of this day's Meeting :

Read a letter dated 6th inst., announcing that the cases in Appeal of the Harbour Commissioners *vs.* Grant, Hall & Co.; Lyman & Co. *et al*, had been again decided against us.

The Secretary was directed to inform Mr. Robertson that we do not intend instituting any appeal to the Privy Council.

The following is the newspaper report of the judgment in the Appeal :—

AYLWIN, J. dissenting.—After stating the grounds on which the actions had been dismissed in the Court below, entered upon the consideration of the right of the Harbour Commissioners to bring a petitory action. The Commissioners were empowered by the Statute to make laws for the purposes of this Act, not repugnant to the laws of the Province; to remove incumbrances; to keep order in the Harbour; to acquire property for the purpose of extending and improving the accommodation, &c. It was the duty of the Commissioners to prevent encroachments, therefore they must have power to do what was necessary to fulfil this duty. It did not seem reasonable that they should be bound to prove an ownership to the soil. The right of the Commissioners to bring this action is no way detracted from the right in the soil. In respect to this point His Honor dissented from the views of the majority

MEREDITH, J. said.—The 16th Vic. enacted that the Harbour should be under the control and management of the Harbour Commissioners, but there was nothing in the Statute to vest either the property or possession of the Harbour in them; His Honor thought, therefore, that the Commissioners had no power to bring a petitory action. He was not prepared to say, however, that they could not bring an action in their own right to prevent encroachments on the Harbour. They discharged a public duty, and in the discharge of that duty ought to have the right to act in their own name. He did not concur in the opinion that the action should have been an action *en bornage*, but believed if the Harbour Commissioners had brought a petitory action in the name of the Crown, it would have been good.

MONDELET, J. also took the view that the Commissioners were only Administrators in the name of the Crown.

Judgment confirmed.

Further Abstract from same day's Meeting :

It was decided to inform the Government, with reference to

their letter of 23rd June last, urging the Commissioners to press for a decision in the Appeal cases *versus* Lyman & Co., and Grant, Hall & Co., that, as already noted on the minutes of this day's meeting, we have lost the cases, and that we do not intend trying them any further, and that possibly the Government will now see fit to insist on the position of the Commissioners being properly defined in respect of these boundaries of the Harbour. (*See minutes of meeting 5th July last*).

MONTREAL, 16th June, 1864.

Abstract from business of this day's meeting :

It was ordered that a statement of the whole question of the boundary of lots on Mill Street be prepared and laid before the Government, with a view to having the boundary of these properties defined. The Secretary was authorized to obtain the assistance of Mr. Robertson Q. C., in preparing the same.

MONTREAL, 11th August, 1864.

Abstract from business of this day's meeting :

The Chairman laid on the table the papers ordered by the Board at a meeting held on the 16th of June last, relating to the boundary of properties on Mill Street and encroachments in the Harbour.

MONTREAL, 9th March, 1865.

Abstract from business of this day's meeting :

A note was read from Ira Gould, Esq., asking for an interview with the Board concerning the Mill Street property. After considerable discussion the subject was postponed without taking any action thereon.

MONTREAL, 12th May, 1866.

Abstract from business of this day's meeting :

Messrs Brydges, Gould, Grant, and McDougall appeared before the Board and explained the object they had in view in asking for

an interview with the Commissioners, which was to consider the question of widening Mill Street, to admit of the Grand Trunk Railway connecting their rails with the Harbour, as agreed upon with the Trust in April, 1862. With some modification in the original plan, after some conversation on the subject, it was understood that the deputation would submit a written proposition for the consideration of the Board.

MONTREAL, 30th June, 1866.

Abstract from business of this day's meeting :

Ira Gould and J. S. Hall, Esquires, were introduced, and had a conversation with the Board with reference to the intended widening of Mill Street, for the purpose of laying down the necessary railway tracks, in order that the Grand Trunk Co. may be enabled to communicate with the wharf at Wind-mill Point.

These gentlemen handed in a paper, of which the following is a copy :—

To H. H. WHITNEY, Esq.,

Secretary,

Harbour Commissioners, Montreal.

SIR,

“ Referring to the conversation had with the Harbour Commissioners on the 12th inst., in relation to establishing the southern boundary of the lots lying on Mill Street. : the undersigned being proprietors of lots on said street, beg to state that in view of the desirableness of establishing their boundary, removing from it the indefiniteness of the phrase “River St. Lawrence,” as well as to secure the accomplishment of that other great and paramount object so vital to the interests of the trade and commerce of the Province, and particularly that of the City of Montreal, to wit :— the bringing of the track of the railroads on the wharves of the Harbour, and for removing all objections, so far as the undersigned are concerned, to laying all the necessary tracks required for the traffic of the road within the limits of Mill Street ; we therefore agree to carry out the plan suggested, which is in substance the

"same as agreed on in the Fall of 1861, except that Mill Street shall
 "now be widened to 100 feet instead of 65, as then agreed, in order
 "to make room for the lines of railway, and, at the same time, not
 "obstruct the ordinary business of the street, when the southern
 "boundary of their lots, which are still to adjoin the River St. Lawrence,
 "shall be the same distance from Mill Street as then agreed
 "upon, and as shown on a plan in the office of the Commissioners,
 "and which is to form the basis of this understanding or agreement.

"It being, however, understood and agreed, the undersigned
 "are not to be charged, or in any way responsible for any portion of
 "the expenses in grading or laying the rails in Mill Street.

"A notarial document will be signed by us, when presented, to
 "the effect as above.

"Dated, MONTREAL, May 18th, 1866."

(Signed,)

IRA GOULD,
 GRANT, HALL & Co.,
 JAS. McDUGALL,
 W. B. CUMMING,
 ROBT. HAVEY,

For JONATHAN FINLAY.

It was *resolved* that, "inasmuch as the proposed widening of
 Mill Street involved changes on the original plan of 1862, the
 Harbour Engineer do prepare a new plan showing the contemplated
 change." The subject was then postponed for some future meeting
 of the Board.

MONTREAL, 5th September, 1866.

Abstract from business of this day's meeting :

The question of widening Mill Street and determining the River
 boundary of lots there, postponed from the meeting of the 30th
 June last, was then taken up, and after much discussion was further
 postponed, without any action being taken. After the meeting the
 Commissioners proceeded to Mill Street, where they met several of
 the proprietors, who fully explained their views.

MONTREAL, 24th January, 1867.

Abstract from business of this day's meeting :

Mr. Gould, representing proprietors on Mill Street, was introduced to the meeting, when the subject was discussed at considerable length, without, however, coming to any decision. The Chairman said he would prepare resolutions, and submit them at the next meeting of the Board.

MONTREAL, 4th February, 1867.

Abstract from business of this day's meeting :

The following resolutions, submitted by the Chairman for the widening of Mill Street, and bringing the railway track down to the new wharf at Windmill Point, postponed from last meeting, were read and unanimously adopted, viz :—

The Harbour Commissioners of Montreal, having duly considered the application of certain proprietors of hydraulic lots on Mill Street, to widen said Street to one hundred feet, dated 18th May, 1866, in order that a branch of the Grand Trunk Railway, to connect with the new wharf at Windmill Point, may be constructed ; and whereas the improvement in question will necessitate the surrender by the owners of land in said Street sixty feet of their property on the south-east side, thereof, and it would be fair and equitable that they should receive an equivalent, the Harbour Commissioners are prepared to give to the said proprietors, as such equivalent, the extension of their property up to the line bounding them in rear of their lots, as laid down on the plan or chart made and prepared by Mr. E. P. Hannaford, Engineer of the Grand Trunk Railway, and A. G. Nish, Engineer of the Harbour Commissioners, dated " Montreal, 15th January 1867," and signed by them in duplicate, on the distinct understanding that the Harbour Commissioners shall retain and have the exclusive power of constructing wharves, or any other

Note.—The Harbour Engineer submitted a plan showing the proposed way of bringing the Rails on to the Wharf by the G. T. Railway, and also the proposed widening of Mill Street.

works, outside the said line marked on the said plan "space reserved by the Harbour Commissioners of Montreal for the extension of " wharves" and lettered A, B, C, D, E, F; the whole as laid down on said plan, which is hereby approved. That all structures which may be erected by proprietors of property on Mill Street upon the boundary line established shall be constructed on a uniform level.

The Harbour Commissioners shall in nowise be held to contribute anything towards the works to be done in the said street, and on the property of the proprietors, or in grading and laying down the railway track; and the right to land which may be granted to them, the said proprietors, by the Harbour Commissioners, shall be precisely on the same terms and conditions as the property leased to the said proprietors by the Provincial Government.

The proprietors of lots on Mill Street shall be obliged to fill up the land in the rear or river side of their present lots to the level of any wharf or structure the Harbour Commissioners may see fit to erect on or beyond the rear line of said lots, whenever called upon to do so, and they, the said proprietors, shall not be entitled to any compensation in consequence of any structure which may be so built by the Harbour Commissioners or the Government.

The Harbour Commissioners will require, as a part of this agreement, that the Grand Trunk Railway Company shall properly grade the roadway and lay down, at their own cost and expense, to the satisfaction of the Harbour Commissioners, the rails through Mill Street, down to the wharf at Wind-mill Point, as shown on the plan above referred to, so as to be available for traffic with sea-going vessels, the whole to be completed within two years from the first of May next. No proprietor on Mill Street is to extend his boundary line in the rear facing the river, or make any improvement thereon, until he, or they, shall first have become a party to this agreement.

Finally, all notarial and other legal expenses which may be incurred in this matter, shall be paid by the proprietors of property on Mill Street, with whom a deed, as aforesaid, will be executed. The whole subject to the sanction and confirmation of the Provincial Government.

MONTREAL, 11th January, 1868.

Abstract from business of this day's meeting :

The following letters were then read, submitted by Ira Gould, Esq., postponed from last meeting, having reference to the laying of a railway track in connection with the Grand Trunk Railway, to his property on Mill Street, viz. :—

(Copy.)

" MONTREAL, December 10th, 1867.

"A. M. DELISLE, ESQ.,

"*President,*

"Harbour Commissioners, Montreal.

" DEAR SIR,

" I beg to hand you herewith a communication from the
" Secretary of the Board of Works, and also a plan made by J. G.
" Sippell, Esq., Engineer, for a railway track to be laid by the Grand
" Trunk Railway Company to my premises on Mill Street, showing
" also its connection with the Harbour, for the concurrence of your
" Board.

" The concurrence of the proprietors alluded to in the communi-
" cation has already been obtained in writing, and is ready to
" forward to the Department. A letter from you to the Department
" at Ottawa, representing the views of your Board, would be
" sufficient, which, I trust, will be accorded with the respectful
" request of

" Your humble servant,

(Signed,) "IRA GOULD."

" P. S.—All the former plans have failed for want of unanimity
" amongst the proprietors, and I beg to withdraw my requests in
" relation to the same, stating now, that, so far as I know, no one is
" opposed to this plan, which secures the approach of the rail track
" so far to the Harbour."

(Signed,) "I. G."

(Copy.)

"DEPARTMENT OF PUBLIC WORKS.

"OTTAWA, 7th November, 1867.

"SIR,

"The Hon. the Minister of Public Works has had under consideration your letter of 16th September last, requesting that the Grand Trunk Railway Company may be permitted to lay a track from their station at Point St. Charles to your Elevator and Mills, Basin 2, Lachine Canal. The Minister directs me to inform you that he will be prepared to take this subject into further consideration when the lessees of lots 15, 16, 17, 18, 19 and the Harbour Commissioners have signified to the Department in writing their concurrence in the plan proposed by you.

"I have the honor to be, sir,

"Your obedient servant,

(Signed,) "T. BRAUN,
"Secretary."

The Harbour Engineer, to whom this subject had been referred, reports under date of 27th ultimo.—"After giving the subject the consideration its importance requires, I would recommend the Board to grant Mr. Gould the privileges he asks for, but at the same time would suggest to the Board that they remind him that the permission is for the objects above mentioned solely, and has no reference whatever to the disputed boundary line between the proprietors along Mill Street and the Harbour Commissioners."

Whereupon the Board adopted the following:—

Resolution.—"The Harbour Commissioners approve of the plan submitted by Mr. Gould, made by John G. Sippell Esq., dated 19th October 1867, and signed by the Secretary of this Trust, under date 11th January, 1868, for the introduction of a railway track in rear of the lots on Mill Street, bounded by the River St. Lawrence, and recommend its adoption by the Government. In doing so, however, provision should be made that the privilege granted shall not at all interfere with the present boundaries of said lots on Mill

"Street, and shall in nowise prevent the Government or the Harbour Commissioners from erecting any work outside or inside of such track as they may see fit in future, where such track runs over their property.

MONTREAL, 14th February 1868.

Abstract from business of this day's meeting :

The meeting was called for the purpose of conferring with the Hon. Mr. McDougall, Minister of the Department of Public Works, and Ira Gould Esq., in reference to the laying of the rails of the Grand Trunk Railway, from Point St. Charles to Mill Street, as shown on the plan referred to in the minutes of this Board at a meeting held on the 11th January last ; both of the above named gentlemen were present, when, after discussion, the resolution passed at the meeting of the 11th January was altered so as to read as follows, viz :—

Resolved :—"The Harbour Commissioners approve of the plan submitted by Mr. Gould, made by John G. Sippell, dated 19th October 1867, and signed by the Secretary of the Trust under date, 11th January, 1868, for the introduction of a railway track in rear of the lots on Mill Street, bounded by the River St. Lawrence, and recommend its adoption by the Government.

"In doing so, however, provision should be made that the privilege granted shall in nowise prevent the Government or Harbour Commissioners from erecting any work outside of such track as they may see fit in future".

MONTREAL, 25th February, 1868.

Abstract from business of this day's meeting :

In reference to the Resolution passed at the last meeting of the Board, it was deemed advisable, before transmitting the same to the Government, to ascertain from Mr. Brydges, Managing Director of the Grand Trunk Railway Company, whether he, on behalf of that

Company, approved of the plan submitted by Mr. Gould for bringing the rails from Point St. Charles to Mill Street ; and further, in the event of his Company declining to lay such rails, he would be disposed to connect and run the cars of the Company over the proposed branch, should the same be built by Mr. Gould or any-one else. And the Secretary was directed to write to Mr. Brydges to obtain the information desired.

MONTREAL, 20th March, 1873.

Abstract from business of this day's meeting :

A letter was read from the Secretary of the Department of Public Works, enclosing an application on behalf of the " Montreal Warehousing Company " for a lease of a portion of the Point St. Charles property, and for permission to make a railway connection on the south side of Basin No. 2, Lachine Canal; also Mr. Sippell's report thereon, and requesting the views of the Harbour Commissioners on this subject.

The Commissioners, having duly considered the plan submitted by the " Montreal Warehousing Company," find that the track proposed to be erected on the property of the Harbour Trust is objectionable, as it would have the effect of rendering almost useless a portion of it intended for the benefit of the trade of the port, and therefore deem it their duty to object to it. They also examined the plan submitted by Mr. Sippell, and consider that whilst it would appear to subserve the interest of the " Montreal Warehousing Co.," equally, it does not offer the same objections as contained in the first. The Secretary was directed to communicate the views of the Commissioners to the Department of Public Works

MONTREAL, 31st May, 1873.

Abstract from business of this day's meeting :

This meeting having been called for the purpose of determining the boundary of the water lots on Mill Street, which was

considered advisable before commencing the contemplated improvements in that portion of the Harbour.

Notices having been previously issued to the proprietors or representatives of these lots, to meet the Commissioners this day at their office, the following gentlemen were present :—Messrs C. J. Brydges, H. Lyman, B. Lyman Hall, Thos. Cramp, Thos. Pock, Hugh McLennan, Hersey, Gould and McDougall.

The Commissioners submitted a plan of the proposed works, showing a line which they suggested should hereafter be the boundary between the said proprietors and the Harbour Commissioners. After a good deal of discussion it was unanimously resolved, “ that the said boundary line be accepted, and that a Notarial document be prepared in accordance therewith, to be signed by all parties interested in the same, together with the plan exhibiting the proposed improvement and the said boundary line.”

MONTREAL, 19th July, 1873.

Abstract from business of this day's meeting :

With reference to that part of the Engineer's report just read, calling attention to the fact that the Grand Trunk Railway Company are presently constructing crib work over the property of the Harbour Commissioners, to connect with the new warehouse of the Montreal Warehousing Company, which will interfere with the intended works proposed to be erected there by this Board. and which have received the approval of the Government.

It is ordered that the Secretary do write to that Company, intimating that they must discontinue any such works immediately, as otherwise the necessary legal proceedings will be adopted to attain that end.
(See Letter.)

MONTREAL, 23rd July, 1873.

Abstract from business of this day's meeting :

Mr. Brydges, representing the Grand Trunk Railway Company, Mr. Starnes and Mr. Cramp, the Montreal Warehousing Com-

pany, met the Commissioners in reference to the crib-work alluded to at the last meeting of the Board, now being constructed by the former Company in the upper end of the Harbour, to connect by rail with the Warehousing Company.

After discussion, and explanations by the parties interested, it was agreed that Mr. Brydges should address a letter to the Commissioners regarding their works, agreeing on behalf of the Grand Trunk Railway Company that hereafter, should the improvements in the Harbour require any change or alteration in the said works, they should be made by and at the expense of the said Railway Company, as the Harbour Commissioners may direct.

MONTREAL, 5th August, 1873.

Abstract of the business of this day's meeting.

A letter was read from C. J. Brydges, Esq., on matters referred to at the last meeting of the Board. This letter, in the opinion of the Commissioners, was not sufficiently explicit, and the Secretary was directed to write to Mr. Brydges, stating that any works constructed within the limits of the Harbour to connect the rails of the Grand Trunk Railway with the Montreal Warehousing Company, must be with the distinct understanding, and so expressed by a Notarial agreement that, hereafter, whenever improvements in the Harbour shall require it, the said works to be removed or so altered as may meet the views of the Commissioners. (See letter to Mr. Brydges.)

HARBOUR COMMISSIONERS' OFFICE,

MONTREAL, 15th December, 1876.

BERNARD DEVLIN, Esq., M.P.

DEAR SIR,

The Harbour Commissioners have requested me to bring under your notice the following statement, and desire your opinion thereon.

A certain number of Hydraulic Lots, on the south side of the Lachine Canal, were leased by the Government to the late Ira Gould, and Grant, Hall & Co., a plan of which, signed by the lessees, as

well as a copy of the Deeds, I herewith send to you. These leases were entered into in the year 1851.

Differences of opinion arose as to the boundary of these lots on the river front, the Harbour Commissioners contending for the line, as given by the Government, and a suit was entered into, in order that the boundary should be defined, but through some informality in bringing the action, no decision was arrived at. Attempts from 1861, as you will observe by the minutes of the Harbour Trust, which I now enclose, were made to define the boundary line, all of which failed until in June, 1873, an agreement was arrived at between the Harbour Commissioners and the Proprietors of the leases, by which the Commissioners consented to a line of boundary 190 feet outside of Mill Street, on condition that "all" of the Proprietors should become parties to the agreement. This, however, has not been carried out, as one of the parties has not yet signed. The present Commissioners believe that a public right exists, and has always existed around the Island of Montreal, since its cession to the present Seigneurs, of a certain width from the river bank, and by all the statutes defining the limits of the Harbour, this right has been recognized and their boundary declared to be up to high water mark. This public right has been further recognized by a Board of three sworn Provincial Surveyors, who in a plan submitted to the Commissioners, shew, that by the line adopted by the then Commissioners in 1873, giving to the lessee on the canal, 190 feet outside of Mill Street, a great injury has been done to the Harbour interests and to the public.

I desire, therefore, to ask your opinion, whether the Harbour Commissioners, without the consent of the Legislature or of the Government, possesses now, or did ever possess the right under their Acts of Incorporation, to cede to others any portion of the public property, or to make a boundary of the Harbour limits, contrary to the line of boundary provided for in the Statutes as well as in the cession of the Island to the Seigneurs.

Your early reply will oblige,

Yours respectfully,

(Signed.)

JOHN YOUNG, *Chairman.*

Mr. Devlin, Q.C. and Hon. W. Badgley's Opinions.

MONTREAL, 19th December 1876.

[Copy.]

HON. JOHN YOUNG,

Chairman of the Harbour Commissioners.

SIR,—I have the honor to acknowledge receipt of your letter of the 15th inst., informing me that the Harbour Commissioners have requested you to bring under my notice the statement contained in your said letter, and requesting me to give my opinion upon the case therein disclosed, and which is embraced in the following :

Question.—Do the Harbour Commissioners, without the consent of the Legislature or of the Government, possess now, or did they ever possess the rights under their Acts of incorporation to cede to others any portion of the public property, or to make a boundary of the Harbour limits contrary to the Statutes, as well as in the cession of the Island to the Seigneurs ?

Opinion.—I have carefully examined all the proceedings had and taken by the Harbour Commissioners, as disclosed in the recorded minutes of their several meetings, touching the questions now under consideration, with the following result :

I find that upon the 5th April, 1862, a resolution was moved by Mr. Delisle, seconded by the then Mayor, averring that it was highly desirable that the boundary line separating the properties of proprietors of hydraulic lots on Mill Street, Lachine canal, and that of the Harbour Commissioners, should be clearly and satisfactorily defined and established ; that certain lawsuits then pending between the Commissioners and certain of the proprietors at that time in question should be discontinued and amicably settled ; that a plan be prepared defining the boundary between the Commissioners and the proprietors of property on Mill Street, and that upon being furnished by the Harbour Commissioners with said plan, they, the Commissioners, would be prepared, in accordance therewith, to enter into a Notarial contract with each individual proprietor on Mill Street defining permanently and conclusively the boundary of his, or their properties, with the understanding that the reserve to be noted in

said plan, under the designation of *Harbour Reserve*, dividing the property of Grant, Hall and Company, shall remain the property of the Commissioners; further, that this agreement as to boundary line to be effective, must be consented to, signed by each and every proprietor on Mill Street, that the the width of Mill Street shall be 65 feet, and that 15 feet more shall be granted to said proprietors beyond what their plan now exhibited shows, as compensation for the additional width required for Mill Street, and that *rights to land which might be granted* to said proprietors by the Commissioners should be precisely upon the same terms and conditions as the property then leased to them by the Provincial Government. *The whole, however, subject to the sanction and ratification of the Provincial Government.*

At a subsequent meeting of the Commissioners held on the 7th April, 1862, the plan referred to in the foregoing resolution was laid before the Board, and was approved by them and Messrs Ira Gould and John Grant; the resolution of the 5th April was also read and assented to by all present, after which the Secretary was instructed to transmit a copy of the said plan to the then Provincial Secretary, with a request that it might be submitted as early as possible for the consideration and sanction of His Excellency the Governor-General-in-Council.

Upon the 5th June, 1862, the Honorable Mr. Young opposed, at a meeting held upon that day, the cession of any portion of the Harbour property, and urged that the suits then pending should be proceeded with, in order that the powers of the Commissioners over Harbour property should be clearly defined; and that, in the meantime, the letters and plans sent to the Government should be recalled. Mr. Young moved accordingly, but his motion was rejected.

Upon the 5th April, 1862, at the meeting of the Board, a letter from the Provincial Secretary was read, declining to sanction the resolution of the Harbour Commissioners of the 5th April, 1862, and recommending them to press for a decision of the case then pending in Court, as had been previously suggested by the Honorable Mr. Young.

This refusal by the Government to approve the agreement proposed to be entered into, as provided for in the foregoing resolu-

tion, left the boundary line untouched ; and all further proceedings regarding it were accordingly suspended, The Commissioners under these circumstances, instructed their Attorneys to press to judgment the pending suits referred to in the Provincial Secretary's letter ; these actions, as you are aware, were all decided in the Superior Court and in the Court of Appeals against the pretensions of the then Commissioners. Now what were these pretensions ? The Commissioners in their declarations in said cases, set up that the defendants had leased from the Government certain lots of land, but that they had usurped and illegally obtained possession of a greater portion of land than was so leased ; and further, that they gradually usurped possession of the bed of the river beyond the limits in said lease, and in the plan therein referred to. They, therefore concluded by asking that they, the Commissioners, be by the Judgment to be rendered declared *the true and lawful owners and proprietors of and vested, with the tracts and portions of land and property encroached upon by the defendants* ; and also, that defendants be ordered to restore and deliver up the said portion of land and property to them, the Commissioners ; and further, that they be condemned to pay to the Commissioners the sum of £1,500, as damages for this alleged encroachment.

To these actions the defendants, amongst other things, pleaded that the Commissioners were not proprietors of the land in question ; and that, therefore, they had no right of action.

The Court adopted this view, holding that, inasmuch as the Commissioners claimed to exercise proprietary rights over Harbour property, the position taken by them was unsustainable. A minority of the Judges dissented from this judgment ; but simply upon the grounds that, as the Commissioners were charged with the management and improvement of the Harbour, etc., they must also have the right to bring actions to prevent encroachments. This judgment is interesting, as defining the rights and duties of the Harbour Commissioners, and as showing, as it does conclusively, that they never had the power to sell or dispose of any part or portion of the property included within the Harbour limits.

The next proceeding took place upon the 16th June, 1864,

when it was ordered by the Commissioners that the whole question of the boundary of lots on Mill Street be prepared and laid before the Government, with a view to having the boundary of these properties defined. Now this was a step taken in the right direction, and if it had been followed up and acted upon, the past and present Commissioners would have been saved much trouble, as well as no doubt the fatiguing importunities of the interested proprietors who had to be dealt with. I have, however, failed to discover, in the minutes or otherwise, that the question was submitted to the Government, as suggested at the meeting of the 16th June, 1864, and indeed, from what follows I am inclined to believe that the Commissioners did not give effect to that resolution as they proposed to do. Several other meetings were subsequently held, at which the boundary question and the widening of Mill Street were discussed, but nothing practical or definite was done until the meeting of the 4th February, 1867, when Mr. Delisle submitted a long resolution, in which he, amongst other things, set forth that the Commissioners had duly considered the application of certain proprietors of Hydraulic lots on Mill Street, to widen said street to 100 feet, and that as this improvement would necessitate the surrender by the owners of land in said Street 60 feet of their property on the south-east side thereof, it would be fair and equitable that they should receive an equivalent, and it was accordingly resolved that they, the Commissioners, give the said proprietors, as such equivalent, the extension of their property up to the line bounding them in rear of their lots, as laid down on a plan made by Mr. Hannaford and Mr. Nish.

After the adoption of this resolution, no further step was taken towards the settlement of the disputed boundary question, until the 31st May, 1873, when another meeting was held for the purpose of determining the boundary of the water lots on Mill Street. At this meeting several of the proprietors were present; a plan was exhibited by the Commissioners, showing a line which they suggested should hereafter be the boundary between the said proprietors and the Harbour Commissioners. This plan, the minutes tell us, was, after much discussion, unanimously accepted,

and a notarial document, founded upon said plan, was ordered to be prepared for the signatures of all the parties, and it was accordingly prepared and signed under the agreement thus perfected; the Commissioners gave to the proprietors named in the said deed all right or claim they had to the land lying between Mill Street and the division line, marked A on the said plan, and there, I understand, the matter has rested ever since.

I have felt it to be necessary to bring the proceedings in connection with this transaction thus prominently before the Commissioners, in order that they might the better judge of the means employed by their predecessors to meet the views of the proprietors. And now I shall proceed to state my opinion as to the legality of the act of cession contained in the said deed, and of the resolutions upon which it is founded. For this purpose I have carefully examined the several Statutes concerning the harbour of Montreal, and defining its boundaries, as also the powers and duties of the Commissioners, and I now state it to be my opinion that the late Commissioners, in ceding to the Mill Street proprietors, without the express sanction of the Government, any part or portion of the property included within the limits of the harbour defined by Statute, transcended their powers, acted illegally and in violation of the conditions of the trust reposed in them. The boundaries of the harbour are fixed by the Legislature of the country, and no other power can alter, amend, increase or diminish them. This power is certainly not conferred upon the Commissioners by their Act of Incorporation; they hold the property in trust. It is subject to their control and management, it is true, but, as Judge Meredith remarked, in disposing the cases before referred to, there was nothing in the Statutes to vest either the property or the possession of the harbour in the Commissioners. And this the late Commissioners well know, for we find that their first resolution, of date April 5th, 1862, having for its object a settlement of the boundary question between the Mill Street proprietors and the Commissioners, was passed, subject to ratification by the Government, which ratification was, however, refused; why the same reference was not made of the resolution of the 4th of July, 1867, by which it was

resolved to give to these proprietors an extension of their properties up to the line bounding them in rear of their lots, I am at a loss to understand. I also observe that it does not appear by the notarial agreement of December, 1873, that the Commissioners who signed that deed were authorised by any resolution to do so. But, if I am correct in my opinion, it is useless to discuss this branch of the case further, as the deed in question conveys no valid title to the property ceded, and is, therefore, absolutely worthless for such purpose.

The Harbour Commissioners were incorporated under the 16 Vic., and by the 3rd Section of Cap. 24 of that Act they were given the power to hold, take and purchase immovable property for the purposes of the harbour, but they were not authorized to sell, or otherwise dispose of any portion of the property so by them acquired. By the 18 Vic., Cap. 143, which operated as a repeal of the 16 Vic., the power to purchase immovable property, for the accommodation of the harbour was continued, and with the right to sell this said immovable property whenever the Corporation deemed it to be in the interest of the harbor: to do so. But I remark that this power to sell was confined to the property acquired for the accommodation of the harbour, and gave no right whatever to dispose of any part within the boundaries fixed by the Legislature. It is, however, scarcely necessary to refer to these Acts for an answer to the questions now submitted me. What the present Commissioners are interested in knowing is, what was the law at the time of the passing of the deed above referred to—and namely, upon the 26th December 1873, the date of its execution,—what were the powers of the Commissioners? The answer is, that the 36 Vic. was then in force, and became law on the 1st July of that year. Under the provisions of this Act, Cap. 6, the powers of the Commissioners are greatly restricted. As before noticed, they received authority from the 18 Vic. to hold, take and purchase immovable property for the purposes of that Act, and to dispose of it as often as they saw fit to do so, without the intervention of the Government. Now, and ever since the said 1st of July, 1873, the Commissioners cannot acquire or purchase any real estate, no

matter how much it may be needed for harbour purposes, without a strict compliance with the conditions contained in Section 24 of Cap. 61, 36 Vic., which says: Whenever the Harbour Commissioners of Montreal desire to acquire any immovable property for the improvement or extension of the harbour, or the accommodations thereof, they shall cause to be prepared a plan of such immovable property in triplicate, one triplicate whereof shall be deposited in the office of the Clerk of the Peace of Montreal, another in the office of the Minister of Marine and Fisheries, and the third in the office of the Minister of Public Works. And such plan shall be submitted to the Governor-in-Council, and upon being duly approved the Corporation may then, and only then, acquire the same, but no power is given to them, as was given in the 18 Vic., to sell any portion of the property so acquired. On the contrary they are forbidden to do so. Can it then be supposed that Commissioners who could not purchase a foot of ground without the direct sanction of the Governor-in-Council, could cede or dispose of any part or portion of the harbour property described in the Statutes, without the permission and authority of the Government or of Parliament. It is beyond all doubt certain that they could not legally do so, and because it is the property of the Crown, and because as Section 25 of the Act from which I am quoting distinctly enacts that all the land lying within the limits of the harbour of Montreal, as defined by law, is declared to be vested in and to be the property of the said Corporation *in trust* for all purposes for which the said Corporation was created.

I could adduce many other reasons to support my opinion, but I think enough has been said to show that it is well founded, and that the cession of harbour property complained of was and is an illegal act, *ultra vires*, and one which in no way commits the present Commissioners to its observance, as they could not, even if they were disposed by their own act to ratify it, do so without falling into the error which has made a nullity of the proceedings adopted by their predecessors.

I have the honor to remain,

Your obedient servant,

(Signed)

B. DEVLIN,

The undersigned fully concurs in the accompanying opinion, prepared by B. Devlin, Esq., Q. C., upon the question submitted to him by the Montreal Harbour Commissioners, as to the legality of the cession made in 1873 of harbour property to Mill Street proprietors, and takes the liberty of corroborating his concurrence with the following remarks:—

By the common law for the Kingdom of France, which covered her foreign possessions, all navigable rivers, with their beaches to the highest water-mark, were in principle in possession of the king, requiring no special act of dedication therefor, and being always regarded as public highways and dependencies of the public domain vested in the Crown, as its absolute property for all purposes of public utility, communication and navigation.

With the above, a roadway of a certain breadth always existed along the margins of the rivers, from high water mark, for the same purposes of public convenience and navigation, recognized and declared as a general rule, in accordance with long admitted public right, and expressly enjoined to be observed and enforced by the Royal Ordonnance of May, 1520, followed by the Edict of 1607, and the Ordonnance 1669.

This French public law was brought into New France with its acquisition and occupation by the Mother Country, and was acted upon by its Supreme Colonial authority, the Superior Council of Quebec, in 1665, which, by its ordonnance recognizing the admitted exercise of the public right to such road, settled the breadth of the road at two toises or 36 feet French standard, from high water mark upwards in front of all Riparian concessions.

This reserved breadth has since been acknowledged and maintained as the true regulation. Therefore, as regards the River St. Lawrence, drawn from a line, contiguous to the shore, or margin of the River, from high water mark, not only by the French Colonial authorities, but, since the English dominion, by the highest Colonial Courts, upon the principle that the bed of the River St. Lawrence, and, by natural consequence, its beaches from high water mark, with the appurtenant roadway, were in the nature of State or Crown property required for the public use, upon none of which could Riparian proprietors have either title or claim.

Without particularizing the provisions of the various statutes connected with the River harbour or its improvements, it will be sufficient to observe that in 1850 the harbour of Montreal was limited upwards along the river bank to Point St. Anne, extending in 1849 to and including Point St. Charles, and in 1851 reaching to the mouth of the River St. Pierre, where it continued in 1852 and in 1873, and has since continued to the present time, being gradually and naturally extended along the shore of the river, as the exigencies of public commerce and navigation required, and, at the same time, being gradually improved for public purposes under the charge and management of the Commissioners, long since appointed to carry the improvements into effect.

Previous to the Act of 1832 the Port of Quebec comprehended all the river, with its beaches, from Bic to Point St. Anne, at the City of Montreal, but by that Act and subsequent Act of 1837, the river from Bic to the province line was divided between the two ports of Quebec and Montreal, the latter comprehending the part of the river from Port Neuf to the province line, a public distinction and dedication which has not since been disturbed.

During all these years the river, with its beaches, with its appurtenant reserved road, have continued to be dedicated to the purpose of public utility and navigation mentioned above, whether as comprehended within the extent of the constituted ports, or in the more limited areas of the harbours of Montreal and Quebec. Some of the Provincial Statutes, in connection with these public works, making explicit mention, not only of the river itself and its beaches, but also especially of the reserved public roadway above referred to.

The fourth section of the Act of 1851, defining the limit of the harbour of Montreal, under the control and management of the Commissioners, enacts "that it shall be, &c., commencing at the "mouth of the little River St. Pierre, thence downwards, following "the course of the bank of the River St. Lawrence, and including "the beach of the said river, as far back as high water mark, and "*the ground above high water mark reserved for a public road down to "the lower extremity of the Lachine Canal, thence, &c., following the*

"course of the bank of the river, &c., including the beach, &c., as far back as high water mark, reserved for a public road as far as Ruisseau Migeon."

The Fifth Section of the Act of 1855 contains the same definition in precisely the same terms, and the Act of 1873 adopts them in its Fifth Section, in its amended definition of the harbour limits as "comprising the present limits, as defined in the then existing Acts relating to the harbour, &c., to wit, the above two cited Acts."

Now, in connection with the foregoing, reference may be had to the titles of the hydraulic grantees on the south side of the public work, the Lachine Canal, to ascertain the extent of the grant. By the Hall title, grant is made of "two lots, bounded in front, to the north by the canal dock wall, &c., and in the rear, to the south by the River St. Lawrence, whatever depth may be found between the said dock wall and the medium high water level of the said River St. Lawrence, *save and except the land necessary for a street forty feet in width, across the entire breadth of the said two lots.*" Now comparing the old public law beach line to high water mark, and its adjoining reserved roadway of two toises or 36 feet French standard measure, with the exception of 40 feet road in width, English measure, above mentioned, it is manifest that the Board of Works did not contemplate to extend, and did not extend their grant to the high water mark, nor eject from the public use the public right and servitude of the said road, which remained free for the public purposes as stated. The high water mark of the river, and the roadway of 36 French feet, were, therefore, continued within the protection of the public law, and did not fall to the grantee Hall, by his grant from the Board of Works.

Even without the exception stipulated in the grant, the Riparian proprietors could have no claim to the full extent mentioned, because it was against public right and utility, and not within the competence of the mere prerogative, without a special Legislative enactment, to grant such property already dedicated and approximated for public purposes, to the obstruction and prejudice of public convenience and navigation. The Board

of Works were of course vested, for public disposal, with the Lachine Canal lots and their hydraulic appurtenances, but their ministerial powers were in that respect a *speciality*, and limited to the canal itself and its necessary dependencies, but giving no right of alienation over property, or rights outside of that public work.

As the Board of Works, as such grantors, found themselves restricted within their speciality, and limited by public law within the reserved public right of the river and the road above mentioned, in like manner the Harbour Commissioners are also limited and restricted. Their statutory powers extend no further than the trusts which they control and administer for the benefit and advantage of the public, and if the pretensions contained in their deed of 1873, with the Mill Street proprietors, are valid and binding, there is no restrictive power without new express Legislative restraint upon them to prevent their making grants between the revetment wall of the Harbour and the River, covering the old reserved public road of two toises or 36 French feet, covered by the wharves.

It is unnecessary to add anything to what has already been stated by Mr. Devlin, as to the incapacity of the Commissioners to alienate in any way the public property intrusted to their charge.

(Signed)

W. BADGLEY.

MONTREAL, 22nd December, 1876.

