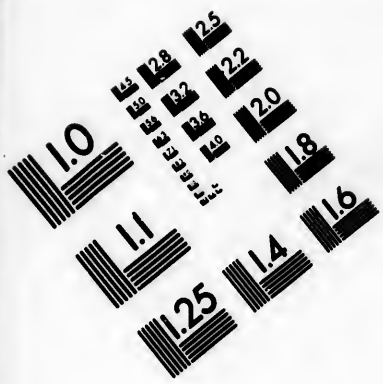

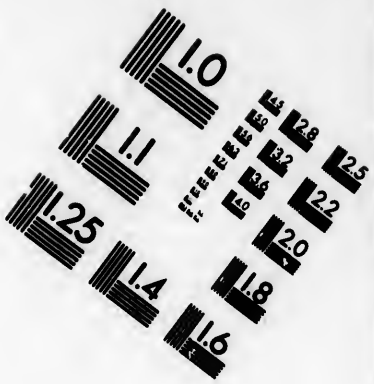

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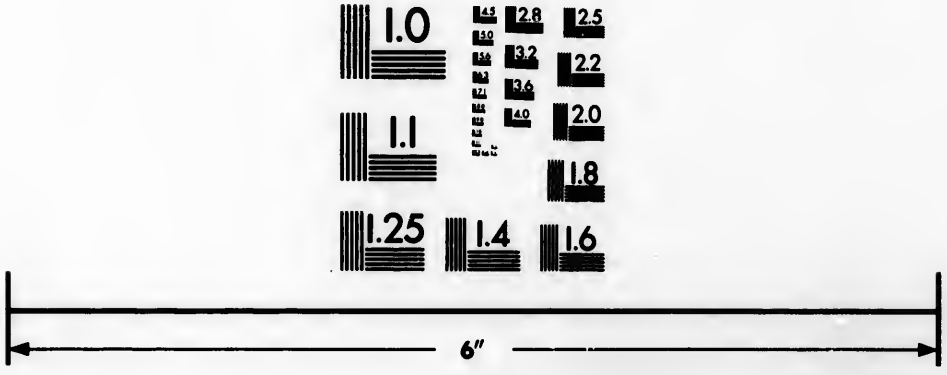

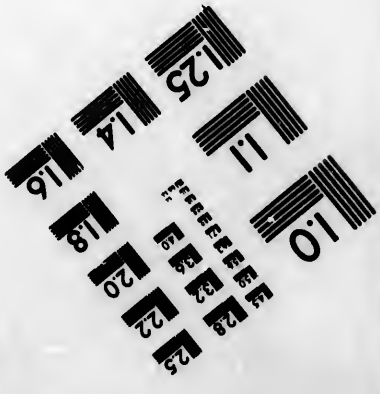

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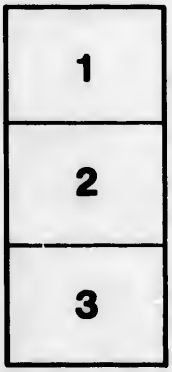

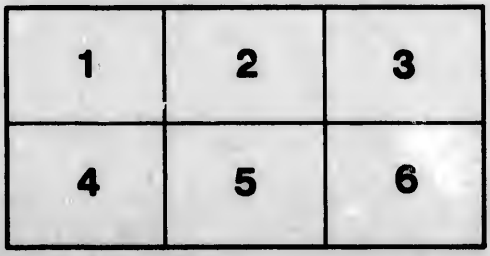

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Before H. M. Privy Council.

TRANSCRIPT

OF

RECORD AND PROCEEDINGS

In the Courts of Lower Canada, appealed from in a cause

BETWEEN

A. E. KIERZKOWSKI,

Appellant;

AND

The Grand Trunk Rail-Way of Canada,

Respondents.

AND

The Grand Trunk Rail-Way of Canada,

Appellants:

AND

A. E. KIERZKOWSKI,

Respondent.

LOUIS PERRAULT & Co., PRINTERS, MONTREAL.

Before H. M. Privy Council.

TRANSCRIPT

OF

RECORD AND PROCEEDINGS

In the Courts of Lower Canada, appealed from in a cause

BETWEEN

A. E. KIERZKOWSKI,

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Appellants;

AND

A. E. KIERZKOWSKI,

Respondent.

LOUIS PERRAULT & Co., PRINTERS, MONTREAL.

PROVINCE OF CANADA,
Lower Canada, to wit:

In the Court of Queen's Bench

FOR LOWER CANADA,

APPEAL SIDE.

TRANSCRIPT

Of all the Rules, Orders and Proceedings found in the Record or Register of Her Majesty's Court of Queen's Bench for Lower Canada, in the Province of Canada, (Appeal Side) in a certain cause lately pending in the said Court, and wherein Alexandre Edouard Kierzkowski, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François-le-Neuf, in the District of Montreal, residing in the parish of St. Charles in the said District, was Appellant and The Grand Trunk Railway Company of Canada, were Respondents: to be transmitted on the appeals to Her Majesty in Her Privy Council, from the judgment rendered in the said Court of Queen's Bench for Lower Canada.

DOCUMENT NO. II.

PROVINCE OF CANADA,
Lower Canada, to wit:

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

To the Chief Justice, and Justices of Our Superior Court in and for that part of Our Province of Canada, called Lower Canada, GREETING:—

WHEREAS In the Plaint lately pending in Our Superior Court, in and for that part of Our said Province of Canada, called Lower Canada, sitting in the City of Montreal in the District of Montreal before you, between Alexandre Edouard Kierzkowski, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François-le-Neuf in the District of Montreal, residing in the parish of St. Charles in the said District, Plaintiff in the Court below—& The Grand Trunk Railway Company of Canada, Defendants in the Court below—He the said Alexandre Edouard Kierzkowski as by his complaint, (We are informed) is aggrieved by the final Judgment therein given, WE WILLING that the said Judgment should be revised and examined by our Court of Queen's Bench for Lower Canada, and full and speedy Justice done in the premises, DO COMMAND YOU, that you, or two of you, do send under your signatures, and the Seal of Our said Superior Court, all the original Papers and Proceedings in the Cause, and a Transcript of all the Rules, Orders and Proceedings found in the Record or Register of Our said Superior Court, concerning the same, to Our said Court of Queen's Bench, that the Judges thereof may have them, before them, at their Court-House, in our City of Montreal in that part Our said Province, called Lower Canada, on Friday the Twelfth day of February next that, revising and examining the same, they may cause further to be done thereupon what of right, according to the Laws and Custom of that part of Our said Province, called Lower Canada, is meet to be done.

IN WITNESS Whereof, We have caused the Seal of Our said Court of Queen's Bench *to be hereunto* affixed.

AT Our City of Montreal in that part of our said Province of Canada, called Lower Canada, this Twenty-eighth day of January in the year of Our Lord, one thousand eight hundred and fifty-eight and in the Twenty first year of Our Reign.

(*Signed*) J. U. BEAUDRY
Clerk of Appeals.

(*Signed*) CHERRIER DORION & DORION
Atty. for Appt

(*Endorsed*)

The Execution of this Writ appears by the Schedules hereunto annexed.

(*Signed*) CHS D DAY *J. S. C*
J. SMITH *J. S. C.*

Endorsed)

Returned, and filed in the Appeal-Office, in the City of Montreal this ninth day of April 1858

(*Paraphed*) J U B

(*Endorsed*)

Je, Louis Moyse Sylvestre, un des huissiers Jurés de la Cour du Banc de la Reine en appel, appointé et agissant dans et pour le district de Montréal, faisant élection de domicile en ma demeure actuelle en la Cité de Montréal, rue Campeau No. 3. Certifie sous mon serment doffice, que le troisième Jour de Février, mil huit cent cinquante huit, entre quatre & cinq heures de l'après midi, J'ai signifié le présent Writ d'appel et l'avis d'appel y annexé, à Messieurs Cartier & Berthelot Avocats, des Intimés en cette cause, en leur laissant une vraie copie dûement certifiée diceux, à leur Bureau d'affaires en la Cité de Montréal, en parlant à J. A. Berthelot, Ecuier, l'un des dits avocats en personne.

Montréal le 3 Février 1858.

(*Signed*) L. M SYLVESTRE

Emolument 5s. *H. C. B. R*

SCHEDULES ANNEXED TO THE WRIT:

SCHEDULE A.

PROVINCE OF CANADA
District of Montreal

SUPERIOR COURT

Transcript of all the Rules, Orders and proceedings found in the Record or Register of Her Majesty's Superior Court for Lower Canada, sitting in the district of Montreal, in a certain Cause lately adjudged in the said Court and Wherein, Alexandre Edouard Kierzkowski, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François le Neuf, in the district of Montreal, residing in the Parish of St. Charles, in the said district Plaintiff and, The Grand Trunk Railway Company of Canada, Defendants, transmitted to The Honorable The Court of Queen's Bench for Lower Canada, upon the appeal Side thereof, in virtue of the Writ of Appeal sued out in this cause.

ALEXANDRE EDOUARD KIERZKOWSKI, ESQUIRE,

No. 2079

Seignior in possession as usufructuary of the Seigniory of St. François le Neuf, in the District of Montreal residing in the Parish of St. Charles, in the said District

Plaintiff

vs

THE GRAND TRUNK RAILWAY COMPANY OF CANADA

Defendant

The 9th. December 1856.—F. M. Le Pallieur a sworn Bailiff of this Court, returns into the office of the Prothonotary of the Said Court the Writ of summons issued in this cause with the declaration thereunto annexed.

Messieurs Cherrier Dorion & Dorion appear for the Plaintiff and file a list and One Exhibit.

Messieurs Cartier & Berthelot appear for the defendant in this cause under all legal reservations.

The 11th February 1857.—The defendant files Exceptions *péremptoire* and a *défense en fait* to the action and demand of the Plaintiff in this cause together with a list of Exhibits, but without any Exhibit.

The 24th February 1857.—The Plaintiff files *Réponses et Répliques* to the said defendants peremptory Exceptions & *défense* in this cause filed

Le 14. *Février* 1857.—Le Demandeur Inscrit cette cause sur le Rôle d'Enquête pour procéder à la preuve en icelle le deux Mars prochain, la dite Inscription dument Notifié aux Avocats de la défenderesse.

Pierre R. Lafrenaye Ecuier comparait pour le demandeur en cette cause comme Conseil à l'Enquête.

Le 3*e Mars* 1857.—Rodolphe Laflamme & Arthur Mondelet témoins produits de la part du demandeur sont assermentés & examinés

Le 3*e. Avril* 1857.—William MacBean & L. P. Renault Blanchard témoins produits de la part du demandeur sont assermentés et examinés

Le 8*e. Avril* 1857.—William Henry A Davies témoins produits de la part du dit demandeur est assermenté et examiné.

Le 1*er Septembre* 1857.—The Defendant produces and files at the Enquête in this cause a list and five Exhibits William Henry A. Davies witness produced on the part of the defendants is sworn and examined. Certain admissions made and given by the parties are this day filed in this cause

The 2d September 1857.—William MacBean a witness produced on the part of the defendant is sworn and examined.

The 8th September 1857.—Benjamin Holmes a witness produced on the part of the defendant is sworn and examined, and files with his deposition a paper writing marked with the letter Z and thereupon the Enquête in this cause is declared closed on both sides.

The 9th September 1857.—The Plaintiff Inscribes this cause upon the *Rôle de droit* for hearing on the merits therein on the seventeenth instant, the said Inscription duly Notified to the said defendants' Attornies.

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 équipolent 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 Plaintiffs declaration therein alledged 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 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 *lods et ventes* demanded by the Plaintiff in this action, doth maintain the peremptory Exceptions of the defendant, and doth dismiss the Plaintiffs 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 :—

L.S.

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 Seigniory 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)

Je Huissier Soussigné de la Cour Supérieur, du Bas Canada immatriculé pour le District de Montréal, Certifie, sous mon serment d'office, avoir Signifié à la Compagnie du Chemins à lisses du Garnd Trone du Canada, ayant son principal bureau D'affaire à Montréal dans le dit District, le Présent ordre et Déclaration ci annexé en cette Cause en laissant une vraie Copie d'iceux à la dite Compagnie du Grand Trone du Canada à leurs Bureau en la Cité de Montréal en parlant à William Maebean, un des Employés du Bureau le Vingt sixième Jour de Novembre mil huit Cent Cinquante Six à onze heures de l'avant midi, Je certifie de plus que la distance depuis la Chambre d'audiance en la Cité de Montréal au Bureau de la Compagnie du Grand Trone du Canada est moins dun Mille.

Daté à Montréal ce 26me. Jour de Novembre 1856.

Emolument
3/3

F. M. LE PALLIEUR.
Huissier de la C. S.

Annexed to the Writ is the following Declaration :—

District of Montreal

IN THE SUPERIOR COURT.

A. E. KIERZKOWSKI

Plaintiff

vs

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,

Defendants.

Alexandre Edouard Kierzkowski, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François le Neuf in the District of Montreal, residing in the parish of St. Charles in the said District, Plaintiff, complains of the Grand Trunk Railway Company of Canada,

Defendants ;

For that whereas at all and every the time and times hereinafter mentioned the said Plaintiff was and is still Seignior in possession as usufructuary of the Seigniory of St. François le Neuf, lying and being on the south side of River Richelieu in the District of Montreal bounded in front by the said River Richelieu, in rear by the Seigniory of St. Hyacinthe, on one Side by the Seigniory of St. Denis and on the other Side by the Seigniory of St. Hilaire de Rouville."—And the said Plaintiff as such Seignior in possession of the said Seigniory was entitled to claim all Seigniorial rights accruing within the said Seigniory and more particularly the rights of indemnity (indemnité) on alienations made of property within the Seigniory in favor of Mortmain or parties holding in Mortmain and also of all lods & ventes.

That on the twelfth day of April one thousand eight hundred and fifty three and for more than three years previous thereto the Saint Lawrence and Atlantic Rail-Road Company a body politic and corporate duly incorporated by an act of the Provincial Parliament was possessed as proprietor of a certain Railroad known as the Saint Lawrence & Atlantic Rail-road, running from the River St. Lawrence opposite the city of Montreal in the District of Montreal and passing through several Seigniories and Townships to the Province line when it Joined the Atlantic and St. Lawrence Railway, together with that portion of the said Atlantic and St. Lawrence Railway extending from the said Province line to a place called Island Pond in the State of Maine, altogether a distance of one hundred and twenty six miles, more or less, which Rail-road ran through the said Seigniory of St. François-le-Neuf for a distance of one mile and sixty three hundredths of a mile in length, from the Eastern line of the Seigniory of St. Hilaire, to the northern line of the Seigniory of St. Hyacinthe.

That on the said twelfth day of the month of April one thousand eight hundred and fifty three, by a certain deed made and executed at the City of London, in Great Britain, between the Grand Trunk Railway Company of Canada of the first part ; The Grand Junction Rail-road Company of the second part ; the Grand Trunk Railway Company of Canada East of the third part ; The Quebec & Richmond Railway Company of the fourth part ; The St. Lawrence and Atlantic Railroad Company of the fifth part ; The Toronto and Guelph Rail-road Company of the sixth part and the Atlantic and St. Lawrence Railway Company of the seventh part ; and William Jackson, of Betkenhead, England, Esquire and The Honorable John Ross of Belleville, Canada, of the eighth part ; the said parties after reciting in part the acts of the Provincial Legislature of Canada incorporating Several of the above mentioned Railway Companies did refer to the Several Acts incorporating the Saint Lawrence and Atlantic Rail Road Company and declare as follows ; " And Whereas, an act passed in the " eighth year of the Reign of Her present Majesty, intituled " An act to incorporate The St. Lawrence and Atlantic Railroad Company" under which a Company was incorporated and empowered to construct a Railroad from the River St. Lawrence, opposite the City of Montreal, in the general direction of St. Hyacinthe and Sherbrooke, to the boundary line between Canada and the United-States-at such a point as would best connect with the Atlantic and St Lawrence Railway and by such Act the Company was empowered to raise a Capital of six hundred thousand pounds currency, with a power to raise an additional sum of five hundred thousand pounds currency. And whereas, An Act was passed in the tenth and eleventh years of the reign of Her present Majesty, intituled " An act to amend the act incorporating the Saint Lawrence and Atlantic Railroad Company and to extend the powers of the said company, and three other acts have since been passed for the purpose of amending and enlarging the powers of the St. Lawrence and Atlantic Railway Company, under the last of which Acts, and an agreement executed in pursuance thereof, the Saint Lawrence and Atlantic Railway Company are now entitled to that portion of the Atlantic and Saint Lawrence Railway which lies between Island Pond and the Boundary line of the Province of Canada. And Whereas, the said Saint Lawrence and Atlantic Railway is nearly completed and the capital which they are authorised to raise is one million two hundred and twenty five thousand pounds currency, of which the sum of two hundred and forty six thousand one hundred pounds or thereabouts ; has been raised by Shares and six hundred and thirty three thousand pounds sterling or thereabouts ; by

borrowing; and it is anticipated that the sum of three hundred thousand pounds will be required for the purpose of fully completing and equipping the said Railway. And whereas Provincial Debentures to the amount of sixty seven thousand eight hundred pounds have been issued to the said Saint Lawrence and Atlantic Railway Company, and are now held by them. And whereas by an act of the Provincial Legislature of Canada, passed in the fifteenth and sixteenth years of the Reign of Her present Majesty, intituled, " An Act to empower any Railway Company whose Railway forms part " of the Main Trunk Line of Railway throughout the Province, to unite with any other such Compa- " ny or to purchase the property and rights of any such Company, and to repeal certain Acts therein " mentioned, incorporating Railway Companies," it is provided that it shall be lawful for any two or more Companies formed, or to be hereafter formed for the purpose of constructing any Railway which shall form part of the Main Trunk Line of Railway, contemplated by the Legislature in passing An Act of the fourteenth and fifteenth years of Her present Majesty intituled, " An Act to make provisions " for the construction of a Main Trunk Line of Railway throughout the whole length of this Province, to unite together as one Company or for any one of such Companies to purchase and acquire the property and rights of any one or more of such Companies. And it is thereby declared, that the provisions of the now reciting Act shall apply to, and include the Saint Lawrence and Atlantic Railroad Company, and the whole of the Railway which that Company are empowered to construct, and shall apply to, and include any Company which may have been formed by the union of any two or more Companies under this Act. And it is thereby also provided, that it shall be lawful for the directors of any such Company as aforesaid, to agree, with the Directors of any other such Company or Companies that the Companies they respectively represent shall be united as one company, and by such agreement, to fix the terms upon which such union shall take place, the rights which the Shareholders of each Company shall possess, after such union, the Number of Directors of the Company after such union, and who shall be such Directors until the then next election, the period at which such next election Shall be held, the number of votes which the Shareholders of either Company shall respectively have thereat, the Corporate name of the Company after any such union, the time when the agreement shall take effect, the By-Laws which shall apply to the united Company, and generally, to make such conditions and stipulations touching the terms upon which such union shall take place as may be found necessary for the determining the rights of the said Companies respectively and of the Shareholders thereof after any such union, and the mode in which the business of the Company shall be managed and conducted after any such union. And it is thereby also provided, that whenever any such agreement shall have been made, as aforesaid, the Directors of each of the Companies which it is to affect, shall call a special general meeting of the Shareholders of the Company they represent, in the manner provided by Law for calling such general meetings, stating particularly that such meeting is called for the purpose of considering the said agreement and of ratifying or disallowing the same, and if at such meeting of the shareholders of each of the Companies concerned, respectively, three-fourth or more of the votes of the Shareholders attending the same, either in person or by proxy, be given for ratifying the said agreement, then the same shall have full effect accordingly, as if all the terms and clauses thereof not inconsistent with the now reciting Act were enacted in an act of the Legislature of this Province; and if less than three fourths of the votes of the Shareholders present at such meeting in person or by proxy, be given in favor of ratifying such agrement, then the same shall be void and of no effect, and no other meeting shall be called to consider any agreement for a like purpose, within six months thereafter, provided always, that the first meeting of the Shareholders of any Company for considering any such agreement, shall be held within three months of the time when the same shall be made by the Directors thereof, and not afterwards. And it is thereby further provided that from and after the time when any such ratified agreement for the union of two or more Companies shall take effect, the Companies intended to be united shall become one Company and one Corporation by the Corporate name assigned to it in such agreement, and shall be invested with, and have all the rights and property, and be responsible for all the liabilities of the respective Companies, parties to such agreement, and shall be held to be the same Corporation with each of them, so that any right or claim which would be enforced by or against either of them, may after such union be enforced, by or against the Company formed by their union, and any suit action or proceeding pending at the time of such union, by or against either of such Companies may be continued and completed by or against the Company formed by their union, by the corporate name assigned to it by the agreement. And it is thereby further provided, that in the case of any such union, as aforesaid, the capital of the company formed thereby, shall be equal to the combined Capitals of the Companies united, and they may raise by loan or otherwise any sum not exceeding the total amount which such Company might raise. And it is thereby further provided, that the Legislature of the Province will make any further Legislative Provision which may be required for the purpose of giving full effect to the now reciting Act, and to any agreement made under it, and ratified, as aforesaid, according to the true intent and purport thereof. And whereas, by an Act of the Provincial Legislature of Canada passed in the sixteenth year of Her present Majesty, intituled, " An Act to extend the provisions of the Railway Companies " Union Act, to Companies whose Railways intersect the Main Trunk Line or touch places which the " said Line also touches." It is provided that the herein before recited Act, intituled. " An Act to empower any Railway Company whose Railway forms part of the Main Trunk Line of Railway throughout this Province, to unite with any other such Company, or to purchase the property and rights of such Company, and to repeal certain Acts therein mentioned, incorporating Railway Companies," and all the enactments and provisions therein contained shall extend and apply to, and include any Railway Company whose Railway intersects the Main Trunk Line of Railway contemplated by the Legislature, in passing the Act of the now last Session of the Provincial Parliament, intituled, " An Act to make provisions for the construction of a Main Trunk Line of Railway through- " out the whole Province, or touches any City, Town or place which the said contemplated Main

Trunk Line of Railway also touches, subject always to the amendments and provisions therein contained."

And after reciting several other Acts and agreements each of the said several Companies of the second, third, fourth, fifth and sixth part subject to the approval of the Shareholders in accordance with the provisions of the thereinbefore recited Act of Parliament, did, amongst other things, covenant and declare with and to the said Company, parties thereto of the first part, and the said Company parties thereto of the first part, did thereby subject as aforesaid, Covenant and declare, with and to each of the said Companies, parties thereto of the second, third, fourth, fifth and sixth pars as follows, that is to say: From and after the first day of July on thousand eight hundred and fifty three, The Grand Trunk Railway Company of Canada East, the Quebec and Richmond Railway Company, The St. Lawrence and Atlantic Railway Company, the Grand Junction Railway Company, and the Toronto and Guelph Railway Company, shall be united with, and incorporated into the Grand Trunk Railway Company and shall, together, form one Company, to be called "*The Grand Trunk Railway Company of Canada*" and the undertakings of the said several Companies shall be united into one undertaking to be called "The Grand Trunk Railway of Canada," subject to the provisions of the hereinbefore recited Acts of Parliament and to the Assent of the Shareholders of the several Companies, as required by the hereinbefore recited Act to authorize the union of Companies on the the Grand Trunk Line. In the united Undertaking is also to be included, the construction and Maintenance of an Iron Tubular Bridge over the Saint Lawrence at Montreal, as projected by the Grand Trunk Railway Company, under the provisions of the Act and the Contract herein before recited.

2. The several clauses of the "Railway Clauses consolidation Act with such modifications "however, as regard "Plans and Surveys" and "general provivisions," as are contained in the several special Acts of the different Companies, shall apply to the Amalgamated Company and to the Directors and Shareholders thereof, as fully as if the same were herein repeated, except such of the clauses thereof as are inconsistent with the express provisions hereinafter contained.

3. The Capital of the United Company will consist of the aggregate amount of the respective Capitals; which the several Companies forming such union, may have raised or have been entitled to raise, under the authority of the several Acts of Parliament relating to such companies respectively together with such increase of such aggregate capital as may from time to time be made, under the provisions of the "Railway Clauses Consolidation Act."

4. The stock or shares of the Quebec and Richmond Railway Company shall become stock or shares of the same nominal amount in the capital of the United Company, and shall rank on the Register of the United Company, as stock or shares upon which to much is paid shall, at the time of the amalgamation, have been actually paid thereon.

5. The stock or shares of the Saint Lawrence and Atlantic Company shall (subject to such equalization as may be necessary for the conversion thereof from currency to sterling money) become stock or shares of the same nominal amount in the capital of the United Company, and shall rank on the register of the united Company as stock or shares upon which so much is paid as shall at the time of the Amalgamation have been actually paid thereon, and in addition, the United Company shall take upon itself as part of the liabilities and obligations of the united Company, the sum of seventy-five thousand pounds, being the estimated amount of the arrerars of interest due to the shareholders of the Saint Lawrence and Atlantic Company, and with which sum the arrears will be fully discharged.

That the said deed of the twelfth day of April one thousand eight hundred and fifty three, was afterwards duly ratified by the stockholders of the different Companies therein named at regular meetings of the said stockholders called for that purpose and that the stockholders of the said Saint Lawrence and Atlantic Railroad Company did duly ratify the same on or about the thirteth day of May one thousand eight hundred and fifty three.

That the Grand Trunk Railway Company of Canada have since the date of the said deed of the twelfth April one thousand eight hundred and fifty three—And Since the date of the said ratification entered into possession of the said Saint Lawrence and Atlantic Rail-road, which has by virtue of the said deed become part and portion of the Grand Trunk Railway of Canada and have possessed the same as proprietors ever since and are now in possession of the same, including that portion thereof which passed through the said Seigniory of St. François-le-Neuf.

That the real estate situate in the Seigniory of St. François-le-Neuf aforesaid acquired by the said Defendants from the said Saint Lawrence and Atlantic Railroad Company by and in virtue of the said deed of Covenant consists of that portion of the late St. Lawrence and Atlantic Railroad now forming part of the Grand Trunk Railway of Canada which passed through the said Seigniory of St. François le Neuf and comprised a lot of land of ninety feet in width more or less by one mile and sixty three hundredths of a mile in length, bounded on both sides by lands belonging to the censitaires of the said Seigniory of St. François le Neuf, and at one end by the line Separating the said Seigniory of St. François le Neuf from the Seigniory of St. Hilaire and at other end by the line between the said Seigniory of St. François le Neuf and the Seigniory of St. Hyacinthe.

That by virtue of the acquisition so made by the said Grand Trunk Railway Company of Canada from the said Saint Lawrence and Atlantic Railroad Company a mutation has taken place in the proprietorship of the said Saint Lawrence and Atlantic Rail-road and more particularly of that portion thereof passing through the said Seigniory of St. François le Neuf, and that the same has now become the absolute property of the Grand Trunk Railway Company of Canada, on which mutation the Plaintiff is entitled to and has a right to claim and demand a right of indemnity, in consequence of the said Property having by such mutation passed from the Saint Lawrence and Atlantic Rail road Company, into the hands and possession of the Defendants who hold it in mortmain.

That the said deed of the twelfth of April one thousand eight hundred and fifty three, by which

the said Defendants have acquired the said Saint Lawrence and Atlantic Rail road Company is a deed *à titre onéreux* equal to a deed of sale of the said Saint Lawrence and Atlantic Rail road and that lods & ventes have accrued on the said deed in favor of the Plaintiff for that portion of the said Saint Lawrence and Atlantic Railroad which was lying in the said Seigniory of St. François le Neuf.

That the consideration for the transfer by the Saint Lawrence and Atlantic Railroad Company to the Defendants of the Saint Lawrence and Atlantic Railroad and of that portion of the Atlantic and Saint Lawrence Railroad which belonged to the said Saint Lawrence and Atlantic Railroad Company consisted:

First.—Of the amount of the liabilities of the said Saint Lawrence and Atlantic Rail road Company, which said liabilities exceeded, at the time of the passing of said deed, the sum of eight hundred thousand pounds currency.

Secondly.—Of the sum of two hundred and forty six thousand and one hundred pounds, currency of stock and shares held by the Shareholders of the Saint Lawrence and Atlantic Railway Company which were converted in their favour for shares in the Grand Trunk Railway Company for the same amount.

Thirdly.—Of the Sum of seventy five thousand pounds sterling paid to the said Shareholders of the said St. Lawrence and Atlantic Railway Company for arrears of interest due them.

That the said three different sums form together that of one million one hundred and sixteen thousand one hundred pounds, currency, which the said defendants have paid to acquire the said Saint Lawrence and Atlantic Rail-road and the said portion and of the Atlantic and St. Lawrence Rail-road Company.

That the proportion of the said last mentioned sum appertaining to that portion of the Saint Lawrence and Atlantic Rail road which was situated and lying in the said Seigniory of St. François le Neuf, as the consideration or price thereof calculated according to the value which the said portion of the said Road bears to the whole of the said road would exceed the sum of ten thousand pounds currency but that the said Plaintiff, in order to avoid contestations is willing to consider the sum of six thousand five hundred and thirty eight pounds nine shillings currency as representing the price or conderation paid and given by the Defendants for the said portion of the St. Lawrence and Atlantic Rail-road lying within the said Seigniory of St. François le Neuf, though the said sum is far below the real value of the said portion of Rail-road lying within the said Seigniory of St. François le Neuf.

That the right of indemnity (droit d'indemnité) due to the said Plaintiff by the Defendants on their said acquisition of the said portion of the St. Lawrence and Atlantic Railroad lying within the St. François-le-Neuf consists of one fifth of the price or consideration paid for the same, to wit, of one fifth of the said sum of six thousand five hundred and thirty eight pounds nine shillings currency equal to the sum of one thousand three hundred and seven pounds five shillings and nine pence half penny, currency.

That the lods & ventes due to the Plaintiff by the Defendants on their said acquisition of that portion of the said Saint Lawrence and Atlantic Rail-road lying within the said Seigniory of St. François le Neuf, amount to another sum of five hundred and forty four pounds seventeen shillings and five pence currency which the said Plaintiff is entitled to claim from the said defendants for said lods & ventes.

And the said Plaintiff alledges that the Defendants though often requested to pay and satisfy to the Plaintiff the above two sums of one thousand three hundred and seven pounds five shillings and nine pence half penny and of five hundred and forty four pounds seventeen shillings and five pence currency amounting together to that of one thousand eight hundred and fifty two pounds three shillings and two pence half penny currency have hitherto neglected and refused so to do.

Wherefore the Plaintiff brings suit and prays that the said Defendants be condemned to pay and satisfy to the Plaintiff the said sum of one thousand eight hundred and fifty two pounds three shillings and two pence and a half penny currency, with interest and costs of suit.

Montreal 22 November 1856

CHERRIER DORION & DORION
Atties. for Plff

(*Endorsed*)

No. 2079—Superior Court December 1856—A. E. Kierzkowski Plaintiff—vs—The Grand Trunk Railway Company of Canada. Defendants—▲—Declaration £1852. 3 : 2½—*Seig. dues*—filed 9th. December 1856

(*Paraphed*) M C & P

SCHEDULE No. 3.

AMALGAMATION AGREEMENT.

THIS DEED is made on the twelfth day of April, one thousand eight hundred and fifty-three, Between the Grand Trunk Railway Company of Canada, of the first part; the Grand Junction Railroad Company of the second part; the Grand Trunk Railway Company of Canada East, of the third part; the Quebec and Richmond Railway Company, of the fourth part; the St. Lawrence and Atlantic Railroad Company, of the fifth part; the Toronto and Guelph Railroad Company, of the sixth part; the Atlantic and St. Lawrence Railway Company, of the seventh part; and William Jackson of Birkenhead, England, Esquire, and the Honorable John Ross, of Belleville, Canada, of the eighth part.

1. Date of Deed, 12th April, 1853.

2. Names of Parties assenting to deed of amalgamation.

3. Act 16, Vict. cap. 37, Incorporating The Grand Trunk Railway Company of Canada, recited.

WHEREAS by an Act of the Provincial Legislature of Canada, passed in the sixteenth year of Her Majesty's Reign, intituled, "An Act to incorporate the Grand Trunk Railway of Canada," certain persons were incorporated under the title of *The Grand Trunk Railway Company of Canada*, and were authorised to make and complete a railway from the City of Toronto, through the Towns of Port Hope, Cobourg and Belleville, to the City of Kingston, thence through the Towns of Brockville and Prescott to a point in the Eastern Boundary Line of the Township of Osnabruck, thence to St. Raphael's, and thence to the River Ottawa, and across the said River to a point between the lake of the Two Mountains and the Village of St. Ann's, and thence to to the City of Montreal; and by such Act it is provided, that it shall be lawful for the Company to raise and contribute among themselves,

4. Capital, £3,000,000 Sterling.

in such proportions as to them shall seem convenient, the necessary capital for making, completing and using the said railway and works, not exceeding the sum of Three Millions sterling, such sum to be divided in shares of Twenty-five Pounds sterling, each; and certain provisions are therein contained as to the number of Directors of the Company, and the appointment, election and qualification of such Directors; and by such Act it is also provided, that the guarantee of the Province may be

5. Provincial guarantee to be given to the extent of £3000, sterling, per mile, at the rate of £40,000 for every £100,000 expended on the Works.

given to the Company thereby incorporated, to an amount not exceeding the sum of Three Thousand Pounds for every mile in length of the said Railway, and that so soon as it shall be ascertained by the Report of any Engineer, to be appointed for the purpose by the Governor of the Province, that one hundred thousand pounds sterling has been actually, and with due regard to economy, expended on the said Railway by the Company, in works or materials delivered on the ground, or both conjointly, the guarantee of the said Province may be given to the extent of Forty Thousand Pounds sterling, and so *toties quoties* whenever it shall be ascertained in like manner that another sum of One Hundred Thousand Pounds sterling has been so expended, until such guarantee shall be given to the extent thereby limited. AND whereas, such Company has been formed, and the amount of Bonds of the

6. Amount of Provincial Bonds to be issued to the Grand Trunk Railway Company, £1,035,000 sterling.

Provincial Government which is authorised to be issued under the provisions of the said act and of the different acts recited therein, is One Million and Thirty-five Thousand Pounds. AND whereas by an agreement dated the fourteenth day of December, one thousand eight hundred and fifty-two,

7. Contract with Jackson, Peto, Brassey & Betts, dated 14th December, 1852, to construct the Grand Trunk Railway for £7625 sterling pr mile

between The Grand Trunk Railway Company of Canada, of the first part; and William Jackson, Samuel Morton Peto, Thomas Brassey and Edward Ladd Betts, all of the City of London, (hereinafter called the Contractors,) of the second part, the contractors agreed to make, construct, complete and equip the said Grand Trunk Railway, at the rate of seven thousand six hundred and twenty-five pounds sterling per mile, on the terms and conditions in such contract mentioned. AND whereas,

8. Second Contract with Jackson, Peto, Brassey and Betts, modifying the former Contract. The sum to be paid the Contractors to be £3,000,000 sterling, for construction and equipment of the road. date of Contract 23rd March, 1853.

by another agreement dated the twenty-third day of March, one thousand eight hundred and fifty-three, between the said Grand Trunk Railway Company of Canada, of the first part, and the said Contractors, of the second part, the last mentioned contract was modified, and it was thereby agreed, that instead of the rate per mile therein stipulated for, the price to be paid by the Company to the Contractors for making, completing and stocking the said Railway with all the incidents and appurtenances specified in the said recited agreement, should be the sum of Three millions pounds sterling, without additions or deductions of any kind, and that such contract sum should be paid as follows: one million and thirty-five thousand pounds sterling, in Canadian Provincial Government Debentures, payable

9. Payment to be as follows:—£1,035,000 in Provincial Debentures, £982,500, in Company's Debentures, £982,500 in Stock.

in twenty years, in London, and meantime bearing interest at Six per cent. payable half yearly in London; nine hundred and eighty-two thousand five hundred pounds in Debentures of the Company, payable in twenty-five years, in London, and meantime bearing interest at the rate of Six per cent. payable half yearly in London; and nine hundred and eighty-two thousand five hundred pounds, in Stock of the Company; and that such Debentures, and the certificates for the Stock, should be handed

10. Debentures and Stock to be lodged with G. C. Glyn, Tks. Baring, and S. M. Peto, and Thomas Brassey, and sold for account of the Contractors.

over to George Carr Glyn and Thomas Baring, Esquires, on behalf of the Company, and Samuel Morton Peto and Thomas Brassey, Esquires, on behalf of the Contractors, (therein and hereinafter called the Trustees,) to be sold or transferred, as the Contractors should direct, and the proceeds of such sales should be invested in such security as the Contractors should require, and should constitute the fund from which the payment should be made to the Contractors, as therein provided. And it was thereby also provided, that the interest on the Debentures and Stock so sold or

11. Contractors to pay interest on Debentures and Stock until the Railway is finished.

transferred, and also on the Provincial Government Debentures, should be paid by the Contractors, until the whole line of Railway should be completed and ready for opening; and that when the Engineer of the Company should certify that the Contractors had expended fifty thousand pounds in the purchase of land, or in works and materials, or plant brought on the line, and in payment of interest,

12. Payment to be made at the rate of 60 per cent of the Engineer monthly certificates.

an order should be given to the Trustees for payment of sixty per cent. of the amount of such certificate, and that at the end of each calendar month from the date of the first certificate, the Engineer should certify the value of the work done, and plant and materials provided during such previous month, and thereupon, in like manner, a like order should be given for a like payment, or transfer of a sum equal in nominal amount to sixty per cent. of the amount of such certificate; and so *toties quoties* when, and as each monthly certificate should be given, and on the final certificate of completion, the balance remaining in the hands of such Trustees, except so much of the sum of forty thousand

13. £10,000 set aside for the payment of Salaries, &c.

pounds, therein mentioned as set aside for the payment of the expenses of the Company, as had not been expended, should be paid over to the Contractors; and in such contract is contained a provision for payment, by the said Trustees, of the salaries and other expenses therein mentioned, out of the said sum of forty thousand pounds; and it is thereby also provided, that if any section of the line should be completed and stocked, so as to be ready for traffic, before the completion of the whole railway, it shall be at the option of the Company to accept such portion, and to work the same thenceforth at

14. If the Company receives any portion of the road before the whole is completed, the Contractors to be released from the payment of interest on

their own risk, and if they should decline to do so, the Contractors should be at liberty to open and work the same, and that, if the Company accepted such option, the Contractors should be relieved from the payment of interest on an amount of capital equal to the expenditure on the section or portion so opened, and on the plant provided for working the same; and it was thereby also provided, that the period for the completion of the railway might be extended on the contingencies, and subject to the

arbitration therein mentioned; and that the now reciting contract and the original contract should be subject to such modifications, as to the mode of payment and the nature of the securities, in and by which, payment was to be made, and as to the interim investment of the funds, as might become necessary or expedient in case of the union or amalgamation of any other Company with The Grand Trunk Railway Company, so that the terms and conditions as to the construction, and equipment, and price, should be retained and preserved. AND whereas, by another Act of the Provincial Legislature of Canada, passed in the sixteenth year of Her Majesty's Reign, intituled, "An Act to provide for the incorporation of a Company to construct a Railway from opposite Quebec to Trois Pistoles, and for the extension of such Railway to the Eastern Frontier of the Province," the Governor was authorised on the terms therein mentioned, to issue a Proclamation incorporating a Company to be called The Grand Trunk Railway Company of Canada East, for the construction of such Railway; and it is by such act provided, that the Company may raise for such purpose a capital not exceeding One million pounds; and by such act it is also provided, that the guarantee of the Province shall be given to such Company to the same extent and in the same manner as is provided under the last hereinbefore recited Act. AND whereas, such Company has been incorporated, and the amount of Government Bonds which the Company would be entitled to require, under the provisions of the before mentioned Act, is four hundred and fifty-nine thousand pounds. AND whereas, by a contract bearing date the twenty-third day of March, one thousand eight hundred and fifty-three, made between The Grand Trunk Railway Company of Canada East, of the first part, and the said William Jackson, Samuel Morton Peto, Thomas Brassey, and Edward Ladd Betts, hereinafter called the contractors, of the second part, the contractors agreed with the Company to purchase and provide the land necessary for the Railway, and to make, construct and equip the same, in manner therein mentioned, on or before the first November, one thousand eight hundred and fifty-eight, for the sum of one million, two hundred and twenty-four thousand pounds; and by such contract it is provided that, if any section of the Line should be completed and stocked before the entire Railway is finished, it should be at the option of the Company to accept such portion and to work the same at their own risk, and if they should decline to do so, the contractors should be at liberty to open such portion at their risk and for their benefit, and that, on such portion being opened by the Company, the contractors should be relieved from the payment of interest on an amount of Capital equal to the expenditure on the section so opened, and on the plant provided for working the same; and it is thereby provided, that such contract sum shall be paid as follows, namely, four hundred and fifty-nine thousand pounds sterling, in Canadian Provincial Debentures, three hundred and eighty-two thousand five hundred pounds sterling, in debentures of the Company, and three hundred and eighty-two thousand five hundred pounds, in stock or shares of the Company, and that such payments shall be made in the same manner as is provided by the hereinbefore recited agreement for the construction of The Grand Trunk Railway, with a provision for the retention by the Trustees therein named, (being the same Trustees as are named in the last recited contract,) of the sum of thirteen thousand pounds, for the payment of the salaries and other purposes therein mentioned, and a similar provision is contained in the now reciting agreement, for the modification thereof, in the event of the amalgamation with The Grand Trunk Railway, to that contained in the lastly hereinbefore recited agreement, and by such contract, after reciting the provisions of the Railway Clauses Consolidation Act, authorising an increase in the Capital of the Company, and that the contract with the contractors, amounted to a larger sum than the Company are at present authorized to raise, it is provided that the necessary steps shall be taken to enable an increase to be made in the capital of the Company, for the purpose of more effectually carrying into effect the provisions of the now reciting contract, and, that in case the Company shall not be authorised to create such additional capital, such equitable arrangement shall be made between the Contractors and the Company, as will relieve the contractors from the obligation to construct and equip the whole of the Railway, except on payment of the contract sum hereinbefore referred to. AND whereas, by an Act of the Provincial Legislature of Canada, passed in the sixteenth year of Her Majesty's Reign, and intituled, "An Act to incorporate the Grand Junction Railway Company," a Company was incorporated for the purpose, among other things, of laying out, making, constructing and finishing a Railway, on and over any part of the country laying between Belleville and Peterborough, with certain extensions thereof, subject, however, to the approval and sanction of the Government of Canada, and by such Act, the capital of the Company is fixed at the sum of One million pounds, to be divided into fifty thousand shares of twenty pounds each, and to be raised as therein mentioned. AND whereas, such Company has been formed, and by a contract dated the twenty-third March, one thousand eight hundred and fifty-three, between the Grand Junction Railway Company, by the Honorable John Ross, as their agent, duly authorised to act in their behalf, on the one part, and the said William Jackson, Samuel Morton Peto, Thomas Brassey and Edward Ladd Betts, hereinafter called the Contractors, of the other part: the Contractors have agreed to make, construct and complete the section or part of the said Railway lying between Belleville and Peterborough, being a distance of about fifty miles, in manner and character in such contract mentioned, for the sum of four hundred thousand pounds, which sum is provided to be paid: one half in Debentures of the Company, payable in London twenty-five years after the dates on which they are respectively issued, bearing interest, payable half-yearly in London, at the rate of Six per cent. per annum; and the remaining half, in Stock or Shares of the Company, to be entered on the register as fully paid up. And by such contract is is provided, that such railway shall be completed on or before the first day of January, in the year of our Lord one thousand eight hundred and fifty-nine; and that the payments to the Contractors shall be made as the works proceed, in shares and Debentures, on the certificates of the Engineer, in the manner and subject to the stipulations in such contract contained. And by such contract it is also provided, that the interest upon the Debentures or Stock to be from time to time sold or transferred to parties other than the Contractors, shall be from time to time paid by the

the amount of capital expended on such portions.

Contract subject to modification in case of union or amalgamation with other Companies.

Act 16, Vic. cap. 36, incorporating, The Grand Trunk Railway Company of Canada East.

Capital of the Grand Trunk Railway Company of Canada East, to be £1,000,000 sterling, with Provincial guarantee.

Amount of Provincial Bonds to be issued to the Grand Trunk Railway Company of Canada East, to be £459,000.

Contract with Jackson Peto, Brassey, and Betts, for the construction of the road, dated 23rd March, 1853, for £1,224,000, with same conditions as preceding contract.

Payment to be as follows: £459,000 sterling, in Provincial Debentures £382,500 sterling, in Company's Debentures, £382,500 sterling in Stock.

£13,000, sterling set aside for payment of salaries, &c.

In case the Company be not authorized to raise a larger amount of capital, equitable arrangements to be made between the Company and the Contractors.

Act 16, Vict. cap. 43, incorporating, the Grand Junction Railway Company recited.

Capital of the Company to be £1,000 sterling.

Contract for the construction of the Grand Junction Railway, by Jackson, Peto, Brassey and Betts, dated 23rd March, 1853, for the sum of £100,000, from Belleville to Peterborough.

Payment to be one half in Company's Debentures, and one half in Stock.

Railway be completed on or before 1st January, 1859.

Interest on Debentures and Stock to be paid by the Contractors, until completion of the Road.

29 £4000, set apart for the payment of salaries.

30 Act 14 and 15, Vict. cap. 148, incorporating The Toronto and Guelph Railway Company, recited.

31 Act 16, Vict. cap. 41, amending former Act, recited.

32 Capital £325,000 Cy. with powers to increase it.

33 Railway may be extended from Guelph to Sarnia with an increase of £1,000,000, cy., to the capital of the Company.

34 Contract with C. S. Gzowski, D. L. McPherson, Luther H. Holton and A. J. Galt, dated 26th November, 1852, to construct the Railway from Toronto to Guelph.

35 Another Contract with the same parties to construct the Railway from Guelph to Sarnia, dated 18th February, 1853.

36 Contracts of the 26th November, 1852, and 18th February, 1853, with C. S. Gzowski & Company, to be annulled in case of amalgamation, and a new one under date 22th March, 1853, for the construction of the Road from Toronto to Sarnia, to be made.

37. Railway to be completed by the 1st July, 1857, for the sum of £1,376,000 Sterling, with similar conditions as to payment of interest, &c. as inserted in the contracts of Messrs. Jackson & Co.

38 £13,000 to be reserved for the payment of salaries, &c.

39 Act 13 & 14 Vict. cap. 116, incorporating The Quebec & Richmond Railroad Company, recited.

40 Contract dated 20th October, 1852, with Jackson, Peto, Brassey and Betts, to construct and equip the Quebec & Richmond Railroad.

41 Road to be completed by the 1st Dec., 1855, for the sum of £650,000 Sterling.

Contractors, until the whole of the Railway shall have been stocked and ready to be opened for Traffic; and such contract also provides, that the sum of four thousand pounds shall be set aside for payment of the salaries, and other expenses therein mentioned. AND whereas, an Act was passed by the Provincial Legislature of Canada, in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, "An Act to incorporate the Toronto and Guelph Railway Company," under which a Company has been incorporated, for the purpose of constructing a Railway between Toronto and Guelph. AND whereas, another Act was passed by the Provincial Legislature of Canada, in the fifteenth and sixteenth years of Her present Majesty's Reign, intituled, "An Act to amend an Act to incorporate "the Toronto and Guelph Railway Company," whereby the capital of the said Company was declared to be the sum of three hundred and twenty-five thousand pounds, Provincial currency, divided into sixty-five thousand shares, of five pounds each; and it was provided, that such capital might, if necessary, from time to time be increased in the manner provided for by the Railway Clauses Consolidation Act. And by such Act it is also provided, that it should be lawful for the said Company to extend their Railway from the Town of Guelph, through the Village of Stratford to the waters of the River St. Claire, at Port Sarnia, and for that purpose to raise in such manner as the directors should think fit, a further sum of one million pounds Provincial Currency, or such further amount of capital as should from time to time be deemed to be necessary for the proper and efficient construction, maintenance and working of such extension. AND whereas, by an indenture, dated the twenty-sixth day of November, one thousand eight hundred and fifty-two, between the Toronto and Guelph Railway Company, of the first part, and Casimir Stanislaus Gzowski, David Lewis McPherson, Luther Hamilton Holton, and Alexander Tilloch Galt, hereinafter called the "Canadian Contractors," of the second part. The Canadian Contractors agreed to execute the portion of the Railway from Toronto to Guelph, on the terms and conditions therein mentioned. And by another indenture, dated the eighteenth of February, one thousand eight hundred and fifty-three, made between the same parties, the Canadian Contractors agreed on the conditions therein mentioned, to execute the remaining portion of the said Railway, being that from Guelph to the Port of Sarnia. AND whereas, by another agreement dated the twenty-fourth day of March, one thousand eight hundred and fifty-three, between the Toronto and Guelph Railway Company, represented by Alexander Gillespie, Esquire, of the one part, and the said Canadian Contractors, represented by Alexander Tilloch Galt, of the other part. After reciting the before last mentioned Contracts, and that an Act had lately passed authorising the amalgamation of The Grand Trunk Railway Company of Canada, with various other Companies, and that it had been agreed that in case such amalgamation should take place, the before mentioned Contracts with the Canadian Contractors, should be vacated, and that a new Contract should be made between them for the purchase of land for, and for the construction, completion and equipment of the Railway between Guelph and the Port of Sarnia on the terms and conditions in such contract contained, it is by the now reciting contract agreed, that in case the amalgamation should be effected within six Calendar months from the date thereof, the before recited Contracts should be annulled, and that present Contracts should come into effect, in case the now reciting Contract should come into operation, the Canadian Contractors agreed to complete the Railway from Toronto to Guelph, and from Guelph to the Port of Sarnia, being a distance of about one hundred and seventy-two miles, and all the stations thereof, and to equip and stock the same in accordance with the specifications therein referred to, on or before the first day of July, one thousand eight hundred and fifty-seven, for the sum of one million three hundred and seventy-six thousand pounds sterling, and by such contract it is provided that, if any portion of the line shall be completed and stocked so as to be ready for traffic before the completion of the whole Railway, it should be at the option of the Company to accept the same and to work it for their own benefit, and if they should decline so to do, the Contractors should be at liberty to open and work such portion at their risk and for their benefit, and that in case the Company should accept and open any such portion, the Contractors should be relieved from the payment of interest on an amount of capital equal to the expenditure on the section so opened, and on the plant provided for working the same; and by such contract it is provided, that the interest on the capital called up by the Company, for the purposes of the contract, should be paid by the Contractors, until the whole of the Railway should be completed and stocked, so as to be ready to be opened for traffic, and that the contract price should be paid to the Contractors on the certificates of the Engineer, in manner therein mentioned, subject, however, to the reservation of the sum of thirteen thousand pounds, to be applied in payment of the salaries and expenses therein mentioned; and by such contract it is provided, that the necessary steps shall be taken by the Company to enable them to make such increase of capital as would be necessary for the due fulfillment of the Contract. AND whereas, by an Act of the Provincial Legislature of Canada, passed in the thirteenth and fourteenth years of the Reign of Her present Majesty, intituled, "An Act to "incorporate Peter Patterson, Esq." and others, under the name of the "Quebec and Richmond Railway Company," a Company was incorporated for the construction of a Railroad from a point on the South shore of the River St. Lawrence, opposite the City of Quebec, to the village of Richmond or the neighbourhood thereof, there to connect with the Saint Lawrence and Atlantic Railway, and by such Act, the Company was autorised to raise a capital not exceeding six hundred and fifty thousand pounds, provincial currency, to be devided into fifty-two thousand shares, of twelve pounds, ten shillings each, and also to borrow the sum of one hundred and fifty thousand pounds, Provincial Currency. AND whereas, by a contract dated the twentieth day of October, one thousand eight hundred and fifty-two, between William Jackson, Samuel Morton Peto, Thomas Brassey and Edward Ladd Betts, hereinafter called the "Contractors," of the one part, and the Quebec and Richmond Railway Company, of the other part, the Contractors agreed to construct, complete and equip the Railway therein described, according to the plans and specifications therein referred to, by the thirty-first day of December, one thousand eight hundred and fifty-five, for the sum of six hundred and fifty thousand pounds sterling, to be paid as follows, *viddicet*, two hundred and fifty thousand pounds

sterling, in Debentures of the Government of the Province, one hundred thousand pounds in Debentures of the Company, two hundred and five thousand pounds in Cash, being the produce of shares subscribed for in England, and the balance after crediting the amount which might be paid upon shares subscribed for in Canada, in shares of the Company; and by such contract it is provided, that the contractors shall pay half-yearly, in sterling, in London, interest at the rate of six pounds per cent, on the amount of shares and debentures which may be issued by the Company. AND whereas, an Act of the Provincial Legislature of Canada, was passed in the eighth year of the reign of Her present Majesty, intituled, "An Act to incorporate the Saint Lawrence and Atlantic Railroad Company," under which a Company was incorporated and empowered to construct a Railroad from the River Saint Lawrence, opposite the City of Montreal, in the general direction of St. Hyacinthe and Sherbrooke, to the boundary line between Canada and the United States, at such point as would best connect with the Atlantic and Saint Lawrence Railway, and by such Act, the Company was empowered to raise a capital of six hundred thousand pounds currency, with a power to raise an additional sum of five hundred thousand pounds currency. AND whereas, an Act was passed in the tenth and eleventh years of the reign of Her present Majesty, entituled, "An Act to amend the Act incorporating the Saint Lawrence and Atlantic Railroad Company" and to extend the powers of the said Company, and three other Acts have been since passed for the purpose of amending and enlarging the powers of the Saint Lawrence and Atlantic Railway Company, under the last of which Acts, and an agreement executed in pursuance thereof, the Saint Lawrence and Atlantic Railway Company, are now entitled to that portion of the Atlantic and Saint Lawrence Railway, which lies between Island Pond and the boundary line of the Province of Canada. AND whereas, the said Saint Lawrence and Atlantic Railway is nearly completed, and the capital which they are authorised to raise, is one million, two hundred and twenty-five thousand pounds currency, of which, the sum of two hundred and forty-six thousand, one hundred pounds, or thereabouts, has been raised by shares, and six hundred and thirty-three thousand pounds sterling, or thereabouts, by borrowing; and it is anticipated that the sum of three hundred thousand pounds sterling, will be required for the purpose of fully completing and equipping the said Railway. AND whereas, Provincial Debentures to the amount of sixty-seven thousand, eight hundred pounds, have been issued to the said Saint Lawrence and Atlantic Railway Company, and are now held by them. AND whereas, by an Act of the Provincial Legislature of Canada, passed in the fifteenth and sixteenth years of the Reign of Her present Majesty, intituled, "An Act to empower any Railway Company whose Railway forms part of the "main Trunk Line of Railway throughout the Province, to unite with any other such Company or to "purchase the property and rights of any such Company, and to repeal certain Acts therein mentioned, "incorporating Railway Companies," it is provided that it shall be lawful for any two or more Companies formed, or to be hereafter formed for the purpose of constructing any Railway which shall form part of the Main Trunk Line of Railway, contemplated by the Legislature, in passing an Act of the fourteenth and fifteenth years of Her present Majesty, intituled, "An Act to make provisions for the "construction of a Main Trunk Line of Railway throughout the whole length of this Province," to unite together as one Company, or for any one of such Companies to purchase and acquire the property and rights of any one or more of such Companies. And it is thereby declared, that the provisions of the now reciting Act shall apply to, and include the Saint Lawrence and Atlantic Railroad Company, and the whole of the Railway which that Company are empowered to construct, and shall also apply to, and include any Company which may have been formed by the union of any two or more Companies under this Act. And it is thereby also provided, that it shall be lawful for the Directors of any such Company as aforesaid, to agree with the Directors of any other such Company or Companies that the Companies they respectively represent shall be united as one Company, and by such agreement, to fix the terms upon which such union shall take place, the rights which the Shareholders of each Company shall possess, after such union, the number of Directors of the Company after such union, and who shall be such Directors until the then next election, the period at which such next election shall be held, the number of votes which the Shareholders of either Company shall respectively have thereat, the Corporate name of the Company after any such union, the time when the agreement shall take effect, the By-Laws which shall apply to the united Company, and generally, to make such conditions and stipulations touching the terms upon which such union shall take place, as may be found necessary for the determining the rights of the said Companies respectively, and of the Shareholders thereof, after any such union, and the mode in which the business of the Company shall be managed and conducted after any such union. And it is thereby also provided, that whenever any such agreement shall have been made, as aforesaid, the Directors of each of the Companies which it is to effect, shall call a special general meeting of the Shareholders of the Company they represent, in the manner provided by law for calling such general meetings, stating particularly, that such meeting is called for the purpose of considering the said agreement and of ratifying or disallowing the same, and if at such meeting of the Shareholders of each of the Companies concerned, respectively, three-fourths or more of the votes of the Shareholders attending the same, either in person or by proxy, be given for ratifying the said agreement, then the same shall have full effect accordingly, as if all the terms and clauses thereof not inconsistent with the now reciting Act, were enacted in an Act of the Legislature of this Province; and if less than three-fourths of the votes of the Shareholders present at such meeting, in person or by proxy, be given in favor of ratifying such agreement, then the same shall be void and of no effect, and no other meeting shall be called to consider any agreement for a like purpose, within six months thereafter, provided always, that the first meeting of the Shareholders of any Company for considering any such agreement, shall be held within three months of the time when the same shall be made by the Directors thereof, and not afterwards. And it is thereby further provided that from and after the time when any such ratified agreement for the union of two or more Companies shall take effect, the Companies intended to be united shall become one Company and one Corporation by the corporate name assigned to it in such

42 Paymant to be made as follows:
£250,000 Sterling, in Provincial Debentures
£100,000 Sterling in Comp'y's Debentures
£205,000 stg. in Cash
£95,000 stg. in Stock

43 Contractors to pay interest on shares and Debentures.

44 Act 8 Vict. cap. 25, incorporating The St. Lawrence & Atlantic Railroad Company, recited.

45 Capital, £600,000 cy. with power to add £500,000 cy. more.

46 Act 10 & 11 Vict. cap. 65, amending former Act, and extending the powers of the Company.

47 Three subsequent Acts passed, extending powers of the Company, viz:
12 Vict. cap. 176.
13 & 14 Vict. cap. 118
16 Vict. cap. 47.

48 Total Capital of the St. Lawrence & Atlantic Railroad Company authorised to be raised by them, is £1,225,000 cy.

49 Provincial Debentures to the amount of £67,800 held by the St. Lawrence & Atlantic R. R. Co.

50 Act 16 Vict. cap. 39, empowering any railway forming part of the Main Trunk Line to purchase any other Line, recited.

51 Act to apply to the St. Lawrence & Atlantic Railway.

52 Provisions of the act 16 Vict. cap. 39, recited.

53 Meetings of Shareholders to be called for ratifying or disallowing such union or amalgamation.

54. Three-fourths of the votes of the Shareholders required to ratify the union.

55. When amalgamated the united Company to have all the rights of the respective Companies, and shall also assume their liabilities.

agreement, and shall be invested with, and have all the rights and property, and be responsible for all the liabilities of the respective Companies, parties to such agreement, and shall be held to be the same Corporation with each of them, so that any right or claim which would be enforced by or against either of them, may after such union be enforced, by or against the Company formed by their union, and any suit, action or proceeding pending at the time of such union, by or against either of such Companies, may be continued and completed by or against the Company formed by their union, by the corporate name assigned to it by the agreement. And it is thereby further provided, that in the case of any such union, as aforesaid, the capital of the Company formed thereby, shall be equal to the combined capitals of the Companies united, and they may raise by loan or otherwise, any sum not exceeding the total amount which such Company might raise. And it is thereby further provided, that the Legislature of the Province will make any further Legislative Provision, which may be required for the purpose of giving full effect to the now reciting Act, and to any agreement made under it, and ratified, as aforesaid, according to the true intent and purport thereof. AND whereas, by an Act of the Provincial Legislature of Canada, passed in the sixteenth year of Her present Majesty, intituled, "An Act to extent the provisions of the Railway Companies Union Act, to Companies whose Railways intersect the Main Trunk Line, or touch places which the said Line also touches." It is provided that the hereinbefore recited Act, intituled, "An Act to empower any Railway Company whose Railway forms part of the Main Trunk Line of Railway throughout this Province, to "unite with any other such Company, or to purchase the property and rights of such Company, and "to repeal certain Acts therein mentioned, incorporating Railway Companies," and all the enactments and provisions therein contained shall extend and apply to, and include any Railway Company whose Railway intersects the Main Trunk Line of Railway contemplated by the Legislature, in passing the Act of the now last session of the Provincial Parliament, intituled, "An Act to make provisions for the construction of a Main Trunk Line of Railway throughout the whole Province," or touches any City, Town or place which the said contemplated Main Trunk Line of Railway also touches, subject always to the amendments and provisions therein contained. And it is thereby further provided, that if one of the Railway Companies forming a union under the hereinbefore recited Act, be The Grand Trunk Railway of Canada, or any Company formed by the union of the said Company with any other, then the Corporate name of the Company, formed by such union shall be "The Grand Trunk Railway Company of Canada," and the Directors of the Company so formed, shall have the rights of voting by proxy, and other the rights and powers vested in the Directors of The Grand Trunk Railway Company of Canada, by the Act incorporating the same, and the number of the Directors of the Company formed by such union shall be eighteen, twelve of whom shall be elected by the Shareholders, and six appointed by the Governor of the Province of Canada, unless and until such Company shall renounce the benefit of the Provincial guarantee, in which case the number of Directors shall be reduced to twelve, by the retirement of the Directors appointed by the Governor, and if there shall be at any time of such union, Directors of more than one of the Companies forming the same, who have been appointed by the Governor, of Canada, then such of the said Directors as the Governor shall designate, shall retire from office so as to reduce the number of Government Directors to six, and the Directors elected by the Shareholders of each of the united Companies, who shall remain in office until others shall be elected in their stead, shall be determined according to agreement made by the said Companies under the Provincial Act first therein cited and extended. AND whereas, by another Act of the Provincial Legislature of Canada, passed in the sixteenth year of Her present Majesty, entituled, "An Act to provide for the construction of a general Railway Bridge over "the River Saint Lawrence, at or in the vicinity of the City of Montreal," it is provided, that The Grand Trunk Railway Company of Canada, or any Company which shall be formed by the union of the said Company with any one or more Railway Companies, under the Act in that behalf, shall have full power and authority to construct a Railway Bridge to be called and known as the "Victoria Bridge," across the River Saint Lawrence, from some point in the City or Parish of Montreal, to some point in the Parish of Antoine de Longueuil, or in the Parish of Laprairie de la Magdeleine, and to construct on either side of the said River and within the said City, or any of the said Parishes, such Branch Railways, wharves, embankments, piers, stations, inclined plains and other works of any kind, as may be necessary for the convenient using of the said Bridge. AND it is thereby further provided, that it shall be lawful for the Directors of the Company, constructing the said Bridge, to increase the capital stock of the said Company, by such sum not exceeding the sum of one million five hundred thousand pounds sterling, as might be requisite for the constructing thereof. AND whereas, by an agreement made, the twenty-third day of March, in the year of our Lord one thousand eight hundred and fifty-three, between The Grand Trunk Railway Company of Canada, by the Honorable John Ross, duly authorised to act on their behalf, of the one part, and William Jackson and Samuel Morton Peto, Thomas Brassey, and Edward Ladd Betts, hereinafter called the Contractors, of the other part, subject to the passing of the Bill therein recited, being the act lastly hereinbefore recited, and subject also to the amalgamation of the several Companies being carried into effect, the Contractors agreed to make, build, construct and complete the said Tubular Bridge over the River Saint Lawrence, at Montreal, with all works necessarily or properly appurtenant thereto, in accordance with the plans and sections and specifications thereunto annexed, and in case the payments thereinafter stipulated for, and duly and punctually made, to complete the said Bridge within the period or extended period therein mentioned. AND it is thereby further agreed, that, in consideration of one million, four hundred thousand pounds, to be increased to one million, five hundred thousand pounds on the contingencies therein mentioned, the Contractors undertake all risks and contingencies and that such Contract sum shall be paid to the Contractors by The Grand Trunk Railway Company, in cash, on the monthly certificates of the Engineer. AND whereas, only a small proportion of the shares in The Grand Trunk Railway Company, The Grand Trunk Railway Company of Canada East and The Grand Junction Railroad Company, have been issued. AND whereas, the

56. The Capital of the united Company to be equal to the combined capitals of the Companies forming such union.

57 Act 16. Vic. cap. 76, extending the Provisions of the union Act 16, Vict. cap. 39, recited.

58 The Companies union Act to apply to the Grand Trunk Railway Company of Canada.

59 The number of Directors of the amalgamated Grand Trunk Railway Company, to be 18-12 to be elect d by the Shareholders and 6 appointed by the Governor.

60 If the Company renounce the benefit of the Government guarantee the number of Directors to be only 12, elected by the Shareholders.

61 Act 16. Vict. cap. 75, authorising the construction of a Railway Bridge over the Saint Lawrence at Montreal recited.

62 The Grand Trunk Railway Company of Canada, may construct such Bridge.

63 To be called the "Victoria Bridge."

64 Capital stock of the Company constructing such Bridge to be increased £1,500,000 Sterling.

65 Contract, dated 23rd March, 1853, with Jackson, Peto, Brassey and Betts for construction of the Bridge

66 Price for a Tubular Bridge to be £1,400,000 sterling, to be increased if necessary to £1,500,000 sterling

amount of Government Bonds unissued in respect of The Grand Trunk Railway Company, The Grand Trunk Railway Company of Canada East, the Quebec and Richmond Railway Company, and the Saint Lawrence and Atlantic Railway Company, is one million, eight hundred and eleven thousand, five hundred pounds. AND whereas, the amalgamation of all the Companies whose Railways intersect or join the Main Trunk Railway through the province, is highly desirable with a view to economical and efficient management, by one body, and such amalgamation would be very beneficial to the public, and also the several Shareholders in each of the separate Companies, and such amalgamation has been agreed upon, between the Directors of the several Companies upon the terms and conditions hereinafter contained. NOW THESE PRESENTS WITNESS, that each of the said several Companies of the second, third, fourth, fifth, and sixth part, doth hereby subject to the approval of the Shareholders, in accordance with the provisions of the Act of Parliament hereinbefore recited, covenant and declare, with and to the said Company, parties hereto of the first part, and the said Company, parties hereto of the first part, doth hereby, subject as aforesaid, covenant and declare, with and to each of the said Companies, parties hereto of the second, third, fourth, fifth and sixth parts, as follows, that is to say :—

67 Amount of Provincial Bonds to be issued to the Companies forming the amalgamated Grand Trunk Railway Company of Canada, is £1,811,500 stg.

68 The amalgamation of the Companies intersecting or forming the Main Trunk Line of Railway through the Province is desirable.

69 From 1st July, 1853, the undermentioned Railway Companies agree to unite and amalgamate into one Railway Company, to be called *The Grand Trunk Railway Company of Canada*, viz: The Grand Trunk R W Co. of Canada, The Grand Trunk R. W. Co. of Canada East, The Quebec & Richmond R. R. Co. The St. Lawrence and Atlantic R. R. Co., The Toronto and Guelph Railway Co., The Grand Junction Railway Company.

FROM and after the first day of July, One thousand eight hundred and fifty-three, The Grand Trunk Railway Company of Canada East, the Quebec and Richmond Railway Company, the St Lawrence and Atlantic Railway Company, The Grand Junction Railway Company, and the Toronto and Guelph Railway Company, shall be united with, and incorporated into The Grand Trunk Railway Company, and shall, together, form one Company, to be called "*The Grand Trunk Railway Company of Canada*," and the undertakings of the said several Companies shall be united into undertaking, to be called "The Grand Trunk Railway of Canada," subject to the provisions of the hereinbefore recited Acts of Parliament, and to the assent of the Shareholders of the several Companies, as required by the hereinbefore recited Act to authorize the union of Companies on the Grand Trunk Line. IN the United Undertaking, is also to be included, the construction and maintenance of an Iron Tubular Bridge over the Saint Lawrence at Montreal, as projected by the Grand Trunk Railway Company, under the provisions of the Act and the contract hereinbefore recited.

70 The united undertaking to comprise the construction and maintenance of the Victoria Bridge.

71 The Railway clauses consolidation Act, to apply to the amalgamated Company.

2. THE several clauses of the "Railway clauses consolidation Act," with such modifications, however, as regards "Plans and Surveys," and "general provisions," as are contained in the several special Acts of the different Companies, shall apply to the amalgamated Company, and to the Directors and Shareholders thereof, as fully as if the same were herein repeated, except such of the clauses thereof as are inconsistent with the express provisions hereinafter contained.

72 The capital of the United Company to consist of the aggregate of the capital of the Companies forming it.

3. THE Capital of united Company will consist of the aggregate amount of the respective Capitals, which the several Companies forming such union, may have raised or have been entitled to raise, under the authority of the several Acts of Parliament relating to such Companies respectively, together with such increase of such aggregate Capital as may from time to time be made, under the provisions of the "Railway Clauses Consolidation Act."

73 The stock of the Quebec & Richmond Railway Company, to rank as stock of the United Company, with so much paid on it.

4. THE Stock or Shares of the Quebec and Richmond Railway Company, shall become stock or shares of the same nominal amount in the Capital of the United Company, and shall rank on the Register of the United Company, as stock or shares upon which so much is paid as shall, at the time of the amalgamation, have been actually paid thereon.

74 The stock of the St. Lawrence & Atlantic Railway Company, to rank as stock of the United Company with so much paid on it.

75 £75,000 sterling, to be paid to the stockholders of the Saint Lawrence & Atlantic Railroad Company, for arrears of interest.

5. THE Stock or Shares of the Saint Lawrence and Atlantic Company shall (subject to such equalization as may be necessary for the conversion thereof from currency to sterling money) become stock or shares of the same nominal amount, in the Capital of the United Company, and shall rank on the register of the United Company, as stock or shares upon which so much is paid as shall at the time of the amalgamation have been actually paid thereon, and in addition, the United Company shall take upon itself as part of the liabilities and obligations of the United Company, the sum of seventy-five thousand pounds, being the estimated amount of the arrears of interest due to the Shareholders of the Saint Lawrence and Atlantic Company, and with which sum the arrears will be fully discharged.

76 The stock of the Toronto and Guelph Railway Company, to rank as stock in the united Company with so much paid on it.

77 £2000 sterling to be paid to the stockholders of the Toronto and Guelph Railway Company.

6. SO much of the stock or shares of the Toronto and Guelph Railway Company, as have already been issued, shall also (subject to such equilization as shall be necessary for conversion from Currency to Sterling money,) become stock or shares of the same nominal amount in the Capital of the united Company, and shall rank on the Register of the United Company, as stock or shares upon which so much is paid as shall at the time of the amalgamation have been actually paid thereon, and in addition thereto, the United Company, shall take upon itself as part of the liabilities and obligations of the United Company, the sum of Two thousand pounds, as arrears of interest to the Shareholders in the Toronto and Guelph Railway Company.

78 The stock of the remaining Companies, to rank as stock in the United Company.

7. THE Stock or shares of the remaining Companies, together with the unissued capital of the three Companies last before mentioned, and any additional capital which any of the Companies may have authority to raise, shall (subject to the equalization of such portion as is Currency, into Sterling money) rank as stock or shares of the same nominal amount in the United Company, and be disposed of as part of such stock or shares.

79 Unissued Provincial Debentures belonging to any of the Companies, to become the property of the United Company.

8. ALL Provincial Debentures which at the time of the effecting of the said amalgamation, shall be held by any or either of the said Companies, and not issued to the Public, shall become the Property of the United Company, and shall be held at the disposal of such Company.

9. THE united capital shall be applied to the general purposes of the united undertaking.

80 The United Company to create stock to the amount of £4,864,800 sterling in shares of £25 sterling, each.

10. THE United Company shall forthwith create stock or shares to the aggregate amount of Four millions eight hundred and sixty-four thousand, eight hundred pounds sterling, in shares of twenty-five pounds each.

81 The United Company shall create "convertible" Debentures to the extent of £1,811,000 stg., to be hereafter exchanged for Provincial Debentures.

11. THE United Company shall also create Debentures hereinafter called "Convertible Debentures" to any aggregate amount, not exceeding One million, eight hundred and eleven thousand five hundred pounds sterling, in sums of One hundred pounds each, payable at twenty years, in London, bearing interest at six per cent, per annum, payable half-yearly, in London, such Debentures to be exchangeable by the holders thereof, for Bonds of the Provincial Government of Canada payable at the same period and place, and bearing a like interest, such exchange to be effected at such time or times, and in such manner as the Directors may direct, after the successive issues of such bonds of the Government.

82 Debentures to be called "Company's Debentures," to be created to the amount of £2,097,800 sterling convertible into stock on or before 1st January, 1863.

12. The United Company shall also create Debentures, hereinafter called "Company's Debentures," to an aggregate amount, not exceeding Two millions and ninety thousand, seven hundred pounds sterling, in sums of one hundred pounds each, payable at twenty-five years, in London, bearing interest at the rate of six per cent per annum, payable half-yearly in London, such debentures to be convertible at the option of the holders in stock of the Company, at Par, on or before the first day of January, one thousand eight hundred and sixty-three.

83 Of Company's Debentures the sum of £279,200 stg., are of the stock, the sum of £558,400 sterling, shall be reserved for certain share and bondholders.

13. OF the last mentioned Debentures, there shall be reserved, Debentures to the amount of Two hundred and seventy-nine thousand two hundred pounds sterling, and of the above mentioned stock or shares, there shall be reserved stock or shares to the amount of five hundred and fifty-eight thousand four hundred pounds sterling, which shall be assigned in the proportion of two hundred pounds of stock, for each one hundred pounds of Debentures, to and among the undermentioned parties, as follow:

To the Shareholders of the Quebec and Richmond Railway, Company, - - -	£105,000 0s. 0d.
To the shareholders in the St. Lawrence and Atlantic Railway Company, - -	£262,600 0s. 0d.
To the Bondholders of the Ontario and Simcoe Railway Company, - - - -	£170,000 0s. 0d.

84 Parties entitled to such debentures and stock, to signify their acceptance within 21 days from notification.

The several parties in whose favor such reserve is made, shall intimate their acceptance within twenty-one days from the notification by the United Company, that such shares and bonds are at their disposal, and in default of acceptance, the same shall be at the disposal of the Directors, who may dispose thereof in such manner as they think fit.

85 27,336 shares to be issued in exchange for Quebec and Richmond, St. Lawrence and Atlantic Shares, and Toronto and Guelph shares.

14. OF the remaining stock, twenty-seven thousand, three hundred and thirty-six shares, or such number not exceeding that quantity, as shall be required, having regard to the conversion from currency to sterling, shall be issued in exchange, for the existing stock already issued by the Quebec and Richmond Company, the Saint Lawrence and Atlantic, and Toronto and Guelph Companies.

86 Apportionment of remaining stock, viz: 141,924 shares, equal to £3,623,000 stg.

15. THE residue of the stock and shares, amounting to the sum of three million, six hundred and twenty-three thousand pounds, divided into one hundred and fifty-four thousand nine hundred and twenty shares, of twenty-five pounds each, shall be so apportioned that to every holder of two hundred pounds stock or shares, there shall be appropriated and issued a "Convertible Debenture," for one hundred pounds, and a "Company's Debenture" of one hundred pounds, bearing interest, and payable respectively, as before mentioned.

87 Existing shareholders in certain Companies entitled to shares in the United Company.

16. EVERY existing shareholder in the Grand Trunk Railway Company, the Grand Trunk Railwny Company of Canada East, and the Grand Junction Railway Company, shall be entitled to one of such one hundred and forty-four thousand, nine hundred and twenty shares of the United Company in respect of each share, which he holds in any of the last mentioned Railway Companies, and also, to the same proportion of Debentures as is provided by the last clause.

88 The shares may be issued in Canada or elsewhere.

17. THE shares and stock may be subscribed for and issued in Canada or elsewhere, either altogether, or from time to time, in such amounts as may be deemed advisable, and with such option to the subscribers for shares, to take all or any part of the unissued shares or stock or Debentures, as may be thought expedient, subject however, to the foregoing limitations and reservations.

89 Directors to have power to make arrangements for the issue of shares and Debentures, in England or elsewhere.

90 And also for the payment of Dividends or Interest.

91 And for the appointment of an agent or agents, &c.

92 No call after first allotment to exceed

18. THE Directors may from time to time, subject, however, to the foregoing limitations and reservations, make such arrangements for the issue of shares or stock, or Debentures, to be subscribed for in Canada, or elsewhere, either for the present or for any additional capital which they may be authorized to raise, as to such Directors shall seem fit, and for payment in England, of the Dividends and interest on the shares and Debentures, at such place or places, as such Directors shall from time to time determine; and they may from time to time appoint an agent or agents of the Company, in England, or elsewhere, and may delegate to such agent or agents, such powers as the Directors shall from time to time think fit, and they may make such rules and regulations, as to the issuing of such shares and Debentures, as to the mode, time, and place of transfer of such shares and Debentures, and as to the mode, time, and place of payment of the calls upon such shares and instalments upon such Debentures, and of the dividends or interest thereon, as shall be deemed requisite or beneficial, but no call

after the first allotment, shall exceed two pounds ten shillings per twenty-five pound share, or ten per cent on each Debenture, with intervals of not less than four months between each call.

£2 10s. on each share and 10 per cent on each debenture, such calls to be at intervals of not less than 4 months.

19. AS soon as conveniently may be, having regard to the different amounts paid on the shares in the different Companies, and to the necessity of equalizing the capital, by conversion of currency into sterling, a new register of shareholders shall be made, containing entries of the several amounts, and numbers of shares or stock to which the several shareholders of the United Company are entitled, and arrangements shall be made for the exchange of the certificates of the shares in each of the separate Companies, for certificates of shares in the United Company.

93 A new Register of shareholders to be made and arrangements to be made for the exchange of certificates.

20. THE Directors shall have the same rights and remedies for obtaining and enforcing the payment of calls on the shareholders in each of the separate Companies, as the Directors of each separate Company would have had, in case the amalgamation had not taken place.

94 The Directors may enforce the payment of calls.

21. THE profits of the United Company available for dividend, shall be divided among the several proprietors of stock and shares in the United Capital, rateably according to the nominal amount of their respective stock and shares.

95 The profits of the United Company, to be available for Dividend.

22. THE number of Directors, of the United Company as fixed by the Act, being eighteen, of whom, six are to be appointed by the Government and the remainder by the Company, six of the Board at least shall be persons resident in England, and the remainder in Canada.

96 Six of the Directors shall be resident in England.

23. SIX shall be a quorum of Directors, of whom not less than three shall be Government Directors, and at least two shall be English Directors, present in person or by proxy, and any Director may vote by proxy at any board meeting, such proxies being themselves Directors, but no Director shall act as proxy for more than three other Directors.

97 Six Directors shall be a quorum; Directors may vote by proxy.

24. THE following persons shall be the first Directors, namely, Thomas Baring and George Carr Glyn, of London, Esquires, The Honorable Etienne Paschal Taché, The Honorable James Morris, The Honorable Malcolm Cameron, and The Honorable René Edward Caron, all of Quebec, appointed by the Governor of Canada, in Council, and Henry Wollaston Blake, Robert McCalmont, Kirkman Daniel Hodgson, and William Thompson, of London, Esquires, and The Honorable John Ross of Brockville, The Honorable Francis Hincks, of Quebec, The Honorable Peter McGill, of Montreal, George Crawford of Brockville, Benjamin Holmes, of Montreal, William Hamilton Ponton, of Belleville, William Rhodes, of Quebec, and E. F. Whittemore, of Toronto, Esquires, shareholders, elective Directors.

98 Names of the first Directors.

25. THE stock qualification of shareholders, to be elected Directors of the United Company, shall be twenty-five shares of twenty-five pounds sterling each, in the United Stock, but any person may be appointed a Director by the Governor, whether he be so qualified or not, or whether he be or be not a shareholder.

99 Qualification of elective Directors to be 25 shares each, Government Directors not required to hold stock.

26. OF the elective Directors, one third to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office at the meeting hereinafter referred to, as the period at which the first election of new Directors is to take place, and at the next ordinary general meeting, which shall be held next after the first day of January following, one half of the remaining number of such elective Directors, to be determined in like manner, shall go out of office, and at the next ordinary general meeting, which shall be held after the 1st day of January, then following, the remainder of such elective Directors shall go out of office, and in each instance, the places of the retiring elective Directors, shall be supplied by an equal number of qualified shareholders; and at the ordinary general meeting held next after the first day of January, in each succeeding year, one third of the elective Directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless, every Director so retiring from office, may be re-elected immediately, or at any future time, and after such re-election shall, with reference to going out by rotation, be considered as new Director, and if, in consequence of any increase or decrease in the number of Directors, the number of elective Directors shall be some number not divisible by three, the Directors shall determine what number, as nearly one third as may be, shall go out of office, so that the whole number of elective Directors shall go out of office in three years, provided that no such going out of office by rotation hereinbefore mentioned, shall have effect, unless the shareholders at such meeting as before mentioned, shall proceed to fill up, and shall fill up the vacancies then occuring.

100 Retirement of Directors.

27. THE first ordinary general meeting of the shareholders in the United Company shall be held at such time and place in the Province of Canada, as the Directors may appoint, PROVIDED that public notice thereof be given, during one month, in the Canada Gazette, and in at least one other paper, published in each of the Cities of Toronto, Kingston, Montreal and Quebec, and at such first general meeting, the shareholders present in person or by proxy, and qualified to vote, shall determine the period at which the first election of new Directors shall take place, and the time or times when the yearly or half-yearly general meetings of the Company shall take place.

101 First Ordinary General Meeting of shareholders.

102 Notice of Meetings to be published for one month.

28. THE number of votes to which each shareholder in the united undertaking shall be entitled, on every occasion when the votes of the shareholders of the Company are to be given, shall be equal to the number of twenty-five pounds shares held by such shareholder, and in case such shareholder is a holder of shares which have not been converted into twenty-five pound shares of the United Company, then the number of votes to which each such shareholder shall be entitled, in respect of such unconverted shares, shall be as nearly as may be, equal to the number which such shareholder would have had, if such shares had been converted into twenty-five pound shares

103 Votes to be equal to the number of shares held.

104 Appointment of three Auditors.

29. THE Shareholders at the first ordinary General Meeting, shall appoint three Auditors, being shareholders, to auditall accounts of money laid out and disbursed on account of the united undertaking, and at each General Meeting at which Directors shall go out of office, one of such auditors (to be determined in the first and second instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority,) shall go out of office, and the shareholders shall elect an auditor to supply the place of the auditor retiring from office; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue an auditor until another be elected in his stead; and any auditor going out of office shall be immediately re-eligible, and after any re-election, shall, with respect to going out of office by rotation, be deemed a new auditor; and the auditors from time to time in office shall examine and report upon the accounts of the Company, for the year which shall elapse during their period of office, and shall have all necessary powers and facilities for that purpose.

105 Directors may make By-Laws.

30. THE Directors of the United Company may from time to time make By-laws for the management and disposition of the stock property and business affairs of the United Company, not inconsistent with the laws of Canada, and for the appointment of all officers, servants and artificers, and prescribing their respective duties.

106 The provisions of the several contracts with Jackson & Co., and Gzowski & Co., to be modified and new contracts to be entered into.

31. THE provisions of the several hereinbefore recited agreements, by the separate Companies, with Messrs. Jackson, Peto, Brassey and Betts, hereinafter called the Contractors, and with Messrs. Gzowski and Company, hereinafter called the Canadian Contractors, are to be modified, and a new contract or new contracts entered into with the amalgamated Company, upon the terms and to the effect contained in the Draft of such contract, hereunto annexed, by way of schedule, the adoption by the amalgamated Company of such new contract, being an essential condition of such amalgamation.

107 The United Company to pay interest on shares & debentures, from date of amalgamation to the final completion of the Road.

32. THE United Company shall bear and pay the interest payable on the Debentures and shares or stock of the Company, that is to say, at the rate of six per cent. per annum, upon the amount from time to time actually paid up from the date of the amalgamation, until the final completion of all the works comprised in the said recited agreements, and if the Fund derived from the payment of interest by the Contractors during construction, as provided in the said contract hereto annexed, and from the net earnings of the different Railways included in the amalgamation, as successively opened for traffic, shall, in any half-year exceed the amount required for payment of such interest, the excess shall be held in reserve, and if such fund shall in any half-year be insufficient for such payment of interest in full, the deficiency shall be made good out of such reserve, or, if necessary, out of Capital, and if made good out of Capital, the amount so advanced shall be repaid out of any future reserve, until final completion, as aforesaid.

108 The expenses of the Engineer and staff of the Victoria Bridge, to be borne by the Company.

33. The entire charges of the Engineers and Staff, in relation to the construction of the Tubular Bridge, hereinbefore mentioned, shall also be borne by, and paid out of the funds of the United Company.

109 An Act to be applied for if necessary, to confirm the provisions of this agreement, and for sundry and other purposes.

34. APPLICATION shall, if required, or considered expedient by the United Board, be made to the Provincial Parliament, in the next Session, for an act to confirm the amalgamation intended to be effected by this deed, and to confirm and legalise such of the provisions herein contained as to the legality whereof any doubts may be entertained, and to authorize an increase to be made in capital of the United Company, and in such act, a clause shall be inserted to authorize the Company from time to time to increase or to reduce the number of the Directors, and to determine the order of such increased or reduced number, and what number shall be a quorum, PROVIDED, that the relative proportions of English and Government Directors shall not be altered, and all such other clauses with relation to the holding of General Meetings, and the times of declaring dividends, or the like, as the Directors of the United Company shall think expedient.

110 If the agreement is not ratified by all the Companies it shall enure as to such of the Companies as shall ratify it.

35. THAT in case this agreement be not ratified and confirmed by the requisite proportion of Shareholders in each of the separate Companies, it shall nevertheless enure as to such of the Companies which do ratify the same, provided the Shareholders in three at least of the several Companies, determine to ratify the same. AND Whereas, the Atlantic and St. Lawrence Railway Company, was incorporated by an act of the Senate and House of Representatives of Maine, in the United States,

111 Incorporation of the Atlantic and Saint Lawrence Railroad Company.

for the purpose of locating, constructing and finally completing, altering and keeping in repair, a Railroad from some point or place in the City of Portland, through the counties of Cumberland and Oxford, and if deemed advisable, through the south westerly corner of Franklin, to the boundary line of the said State of Maine, and from thence through the States of New Hampshire and Vermont, to such place as would best connect with a Railroad to be constructed from such boundary to Montreal, in Canada. AND whereas, the said Atlantic and Saint Lawrence Railway Company, hereinafter called the Atlantic and Saint Lawrence Company, have granted a lease of one portion or section of their said Railway, being that from Island Pond, in the State of Vermont, to the boundary line of Canada, in perpetuity to Trustees, on behalf of the Saint Lawrence and Atlantic Railway Company. AND whereas, the said Company have constructed the other portion of their said Railway, being that from the City of Portland to Island Pond aforesaid, in accordance with the said Act, together

112 Capital of the Atlantic and St. Lawrence Railroad Company, $1,700,000 in shares, $3,000,000, in Bonds

with all the works and appurtenances thereof, and have opened the same for Public Traffic. AND whereas, for this purpose, the said Atlantic and Saint Lawrence Company have called upon their shares, a capital of one million seven hundred thousand dollars, and have also borrowed on bonds or debentures of the Company, a further sum of three million dollars. AND whereas, it has been agreed,

113 Recital of the lease entered into by the

that, the United Company shall have and take a lease of the said portion or section of the said Atlantic and Saint Lawrence Railway, from Portland to Island Pond, above mentioned, being a distance of

about one hundred and forty-eight miles, for a term of nine hundred and ninety-nine years from the date of the amalgamation of the said Canadian Railway Companies, and by agreement, dated the twenty-third March, one thousand eight hundred and fifty-three, between Alexander Tilloch Galt, as agent, duly authorized to act on behalf of the said Atlantic and Saint Lawrence Railway Company of the one part, and William Jackson, and The Honorable John Ross, of the other part, it is provided that, subject to the carrying into effect of such amalgamation, and also, subject to the assent of the Shareholders of and in both the said Companies, the said Atlantic and Saint Lawrence Company shall and will grant, and the said Grand Trunk Railway Company, will accept a Lease of the aforesaid portion or section of the Atlantic and Saint Lawrence Railway, from Portland to Island Pond, together with all and singular the stations, warehouses, bridges, culverts and other works, forming part of, or necessarily, or properly appurtenant to the said Railway, and all the Wharves belonging to the said Atlantic and Saint Lawrence Company, adjoining to, or connected with the said portion and section of the said Railway, and all the fixed and movable plant, rolling stock and stores of the said Atlantic and Saint Lawrence Company, and all vacant land to which the said Atlantic and Saint Lawrence Company are entitled, as Lessees, assignees of lessees or otherwise, and all and singular the shore rights, water rights and Harbor privileges, belonging to, or vested in the said Atlantic and Saint Lawrence Company, and all other the rights, privileges advantagements, ensemen and appurtenances which they the said Atlantic and Saint Lawrence Company now possess, and all the tolls, rates, fares, rents and income, which, under their Act of Incorporation, the said Atlantic and Saint Lawrence Company are, or at any time hereafter may be entitled to receive and take, and all the debts, credits, engagements, liabilities and benefits of the said Atlantic and Saint Lawrence Company, from the first day of July next ensuing, or such other day as may hereafter be agreed, for and during the full term of nine hundred and ninety-nine years from thence next ensuing, and by such agreement it is provided, that there shall be reserved and payable upon such Lease to the Atlantic and Saint Lawrence Company, a yearly sum or rent equal to interest at the rate of six pounds per cent, per annum, upon the share and stock capital of the said Atlantic and Saint Lawrence Company, so called up, being the said sum of One million, seven hundred thousand dollars, and to the total amount of interest payable by the Atlantic and Saint Lawrence Company, on all capital already borrowed by them on Debentures or Bonds, or otherwise, being the said sum of three million dollars, free of all deductions whatsoever, such annual sum or rent, being payable by equal half-yearly instalments, on the first day of January, and the first day of July, in each year, the payment of such rent to be made in the City of Portland, in the State of Maine, and the first of such payments to be made on such of the said days as shall happen first after the day of the date of the lease, to be hereafter executed, in pursuance of the now reciting agreement, but rateably according to the number of days which shall have elapsed from the day appointed for the commencement of the said lease, up to such first day of reservation; and it is thereby also provided, that upon the execution of the said intended lease, the said Grand Trunk Railway Company shall and will assume to take upon themselves, and guarantee and indemnify the said Atlantic and Saint Lawrence Company, against all mortgages of the said Atlantic and Saint Lawrence Company and all the provisions as to the creation of a sinking fund, and all other the liabilities and engagements of the said Atlantic and Saint Lawrence Company, to which they may then be subject, so far as the same are in accordance with the provisions of their Act of incorporation, in so much that the yearly rent payable to the said Atlantic and Saint Lawrence Company, may be applicable by them to dividends, without any deduction whatsoever, except for expenses of management; and it is thereby also provided, that the now reciting agreement is not to affect or alter the constitution of the said Atlantic and Saint Lawrence Company, or their engagements, or obligations contracted towards the State of Maine, and is to be provisional on the part of the Shareholders of the said Company. AND whereas, the said agreement was entered into by the said William Jackson and John Ross, as Trustees, on behalf of the Grand Trunk Railway Company, and with a view to an assignment of such lease to the Grand Trunk Railway Company, or to the United Company. NOW THESE PRESENTS FURTHER WITNESS, and it is hereby further covenanted, declared and agreed, by and between all the Companies, parties to these presents, and the said William Jackson and John Ross, for themselves, their heirs, executors and administrators, that the said agreement so entered into by the said William Jackson and John Ross, with the Atlantic and Saint Lawrence Railway Company, shall be carried out and completed for the benefit of the United Company, and such lease when obtained, shall be transferred to, or held on behalf of or for the benefit of the United Company, and that all the obligations and liabilities incurred by such agreement and by the lease to be granted in pursuance thereof, shall be borne and paid by the United Company.

tion. John Ross, and William Jackson, on the part of the United Company, with the Atlantic and Saint Lawrence Railroad Company for a term of 999 years.

THE SCHEDULE BEFORE REFERRED TO.

AN agreement made the day of in the year of our Lord one thousand eight hundred and fifty-three, between the Grand Trunk Railway Company of Canada, incorporated in accordance with the provisions of an act passed by the Provincial Legislature of of Canada, in the year one thousand eight hundred and fifty-two, intituled, "An Act to empower any Railway Company, whose railway forms part of the Main Trunk Line of Railway through this Province, to unite with any other such Company, or to purchase the property and rights of any such Company, and to repeal certain acts therein mentioned, incorporating Railway Companies," and of another act of the Provincial Legislature of Canada, passed in the present year, intituled, "An Act to extend the provisions of the Railway Companies Union Act, to Companies "whose Railways intersect the Main Trunk Line, or touch places which the said line also touches,"

of the first part, William Jackson, of Birkenhead, and Samuel Morton Peto, Thomas Brassey and Edward Ladd Betts, all of London, Contractors, of the second part, and Casimire Stanislaus Gzowski, of the City of Montreal, Civil Engineer, David Lewis McPherson, and Luther Hamilton Holton, both of Montreal aforesaid, Merchants, and Alexander Tilloch Galt, of the Town of Sherbrooke, in Canada, Esquire, of the third part.

WHEREAS, a Railway Company called the Grand Trunk Railway Company of Canada, was incorporated by an act of the said Provincial Legislature, passed in the sixteenth year of the Reign of Her Present Majesty, intituled, "An Act to incorporate the Grand Trunk Railway of Canada, for the purpose (amongst other things,) of making and maintaining a Railway from Toronto, through the towns of Port Hope, Cobourg, and Belleville, to the City of Kingston, and from the said City of Kingston, through the towns of Brockville and Prescott, to a point in the Eastern boundary line, of the Township of Osnabruck, thence to St. Raphaels, and thence to the River Ottawa, and across the said river to a point between the Lake of Two Mountains and the Village of St. Anns, and thence to the City of Montreal.

AND whereas, the Grand Trunk Railway Company of Canada East, was incorporated for the purpose (amongst other things,) of making and maintaining a Railway from some point on the Quebec and Richmond Railway, (hereinafter mentioned,) opposite or nearly opposite to Quebec, on the south shore of the Saint Lawrence, to Trois Pistoles. AND whereas, the Quebec and Richmond Railroad Company were incorporated for the purpose (amongst other things,) of making and maintaining a Railway from Hadlow Cove, in the Parish of Notre Dame de la Victoire, near Quebec, to Richmond, in the District of Saint Francis, in Lower Canada. AND whereas, the Grand Junction Railroad Company, were incorporated for the purpose (amongst other things,) of laying out, making, constructing and finishing a Railway on and over any part of the country lying between Belleville and Peterborough. AND whereas, the Toronto and Guelph Railway Company were incorporated for the purpose of making and maintaining a Railway from Toronto to Guelph, and were afterwards authorized to extend and continue their Railway to the Port of Sarnia. AND whereas, the Saint Lawrence and Atlantic Railway Company were incorporated for the purpose (amongst other things,) of making and maintaining a Railway from the River Saint Lawrence, opposite the City of Montreal, to a junction with the Atlantic and Saint Lawrence Railway, at or near the boundary of the State of Maine, in the United States, and they have constructed the said Railway accordingly. AND whereas, all the said Companies are now amalgamated into the said Grand Trunk Railway Company of Canada, party hereto, under the authority of the said Act, and by the assent of General Meetings of the said Companies respectively, with such majority of votes thereat respectively, as is by the said act required. AND whereas, the last mentioned Grand Trunk Railway Company of Canada, (hereinafter called "the Amalgamated Company,") now, or shortly will be the Lessees of the said Atlantic and Saint Lawrence Railway. AND whereas on the fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-two, and previously to such amalgamation, and agreement was entered into between the said first incorporated Grand Trunk Railway Company of Canada, and the parties hereto, of the second part, and on the twenty-third day of March, in the year of our Lord one thousand eight hundred and fifty-three, and also previously to such amalgamation, another agreement was entered into between the said parties, in some degree modifying and varying the first agreement, and by the said agreements respectively, the said parties hereto of the second part, (hereinafter called "The English Contractors,") undertook to construct and complete the line of Railway above mentioned, of the said Company, and to equip the same with Rolling Stock for the gross sum of three million pounds Sterling, and it was thereby agreed (amongst other things,) that of the said sum of three million pounds, one million and thirty-five thousand pounds, should be paid in Canadian Provincial Debentures guaranteed by the Government of the Province of Canada, of such description as was specified in the Act of Incorporation of the said Company, nine hundred and eighty-two thousand five hundred pounds, in Debentures of the Company, having twenty-five years to run, and of the description specified in the said agreement, and nine hundred and eighty-two thousand five hundred pounds, in shares or stock of the said Company, with certain special clauses and provisions, as to the mode of making such payments respectively, that out of the fund to be provided as therein mentioned, for payment of the English Contractors, a sum of forty thousand pounds should be set apart for payment of the expenses of the Company, until the said Railway should be ready to be opened for traffic, that the English Contractors should pay the interest on the said Provincial Debentures, and also upon all debentures and stock applied or appropriated to the payment of the contract sum, and sold or transferred, by order of the English Contractors, until the said Railway should be ready to be opened for traffic, and that the said agreements were to be subject to such modification as to the mode of payment and as to the nature of the securities, in and by which payment was to be made to the English Contractors, and as to the interim investment of such funds as might become necessary or expedient in case of the union or amalgamation of any other Railway Company or Companies, with the said first incorporated Grand Trunk Railway Company of Canada, so that the terms and conditions of the said agreements as to construction and equipment, and price, should be retained and preserved. AND whereas, also on the said twenty-third day of March, an agreement was entered into between the said Grand Trunk Railway Company of Canada East, and the parties hereto of the second part, whereby the said English Contractors undertook to construct and complete the above mentioned line of Railway of the said Company, and to equip the same with rolling stock for the gross sum of one million two hundred and twenty-four thousand pounds, and it was thereby agreed (amongst other things,) that of the said sum of one million two hundred and twenty-four thousand pounds, four hundred and fifty-nine thousand pounds, should be paid in Canadian Provincial Debentures, of the description above mentioned, three hundred and eighty-two thousand five hundred pounds in Bonds or Debentures of the Company, of the description above mentioned, and three hundred and eighty-

114 Contracts with Jackson and Co. for the construction of the Grand Trunk Railway of Canada, dated 14th December, 1852, and 23rd March, 1853.

115 Contract with Jackson & Co., for the construction of the Grand Trunk Railway of Canada East, dated, 23rd March, 1853.

two thousand five hundred pounds in Stock of the said Company, with certain special clauses and provisions as to the mode of making such payments, respectively; that out of the fund to be provided as therein mentioned for payment of the English Contractors, a sum of thirteen thousand pounds should be set apart for payment of the expenses of the said Company, until the said Railway shall be ready to be opened for traffic; that the English Contractors should pay the interest on the said Provincial Debentures, and also upon all Debentures and stock applied or appropriated to the payment of the said contract sum, and sold or transferred by order of the English Contractors, until the said Railway shall be ready to be opened for traffic, and the said Agreement should be subject to such modifications as to the mode of payment and as to the nature of the securities, in and by which payment was to be made to the Contractors, and as to the interim investment of such funds as might become necessary or expedient in case of the union or amalgamation of any other Railway Company or Companies, with the said Grand Trunk Railway Company of Canada East, so that the terms and conditions of this agreement, as to construction and equipment, should be retained and preserved.

116
Contracts with Jackson & Co., for the construction of the Quebec and Richmond Railroad, dated 22nd October, 1852.

AND whereas, also, on the twenty-second day of October, in the year of our Lord one thousand eight hundred and fifty-two, an agreement was entered into before Notaries Public at Quebec, between the said William Jackson, acting for the said parties hereto of the second part, and the said Quebec and Richmond Railroad Company, whereby, the said English Contractors undertook to construct and complete the above mentioned line of Railway of the said Company, and to equip the same with rolling stock, for the sum of six hundred and fifty thousand pounds, upon the terms and conditions in such contract mentioned; and it was thereby agreed that, the gross contract sum so made up, should be paid, as follows, two hundred and fifty thousand pounds, in Canadian Provincial Debentures, of the description above specified, one hundred thousand pounds, in Bonds or Debentures of the said Company, or in money proceeding from the sale of such bonds or debentures; two hundred and five thousand pounds, by the proceeds of shares to that amount, allotted to persons in England, as and when the calls and instalments thereon should be respectively paid, that the balance (if any) remaining due, should be paid by the proceeds of shares subscribed for and taken in Canada, as and when the calls and instalments thereon should be respectively paid, and the further balance if any, in shares or stock of the Company with certain special clauses and provisions, as to the mode of making such payments, respectively, that the English Contractors should pay all the necessary expenses of the said Company, up to the time that the said Railway should be ready to be opened for traffic, and that the said English Contractors should pay the interest on the said Canadian Provincial Debentures, and on the said Debentures of the Company, to the said extent of one hundred thousand pounds as aforesaid, and also on the shares or stock subscribed for and taken in Canada, as aforesaid, and upon any shares or stock sold or transferred by them.

117
Contract with Jackson & Co., for the construction of the Grand Junction Railway, dated 23rd March, 1853.

AND whereas, also, on the said twenty-third day of March, in the year of our Lord, one thousand eight hundred and fifty-three, an agreement was entered into between the said Grand Junction Railroad Company, and the said parties hereto of the second part, whereby, the said English Contractors undertook to construct and complete a portion of the said Railway between Belleville and Peterborough, a distance of fifty-miles, and to equip the same with rolling stock for the gross sum of four hundred thousand pounds, and it was thereby agreed (amongst other things) that of the said sum of four hundred thousand pounds, one half was to be paid in bonds or Debentures of the Company, of the description above specified, and the remaining half in stock of the Company, that out of the fund to be provided as therein mentioned for payment of the English Contractors, a sum of four thousand pounds should be set apart for payment of the expenses of the said Company, until the said Railway should be ready to be opened for traffic; that the English Contractors should pay the interest upon all Debentures and stock applied or appropriated to the payment of the said contract sum, and sold or transferred by order of the English Contractors, until the said Railway should be opened for traffic, and that the said agreement should be subject to such modifications as the mode of payments, and as to the nature of the securities in and by which payment was to be made to them, and as to the interim investment of such funds, as might become necessary or expedient in case of the union or amalgamation of any other Railway Company or Companies, with the said Grand Junction Railroad Company, so that the terms and conditions of the said agreement, as to construction, payment and equipment, should be retained and preserved.

118
Contract with C. S. Gzowski & Co., for the construction of the Railway from Toronto to Sarnia. Dated 24th March, 1853.

AND whereas, also, on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-three, an agreement was entered into between the said Toronto and Guelph Railway Company and the parties hereto of the third part, (hereinafter designated as "The Canadian Contractors,") conditional upon the said hereinbefore mentioned amalgamation taking place, whereby, the said Canadian Contractors undertook to construct and complete the above mentioned line of Railway of the said Company, and to equip the same with rolling stock, for the gross sum of one million three hundred and seventy-six thousand pounds, and it was thereby agreed, (amongst other things,) that the said Contract sum should be paid in money in the manner therein specified, that a sum of thirteen thousand pounds should be set apart, or the expenses of the said Company, until the said Railway should be ready to be opened for traffic, that the said Canadian Contractors should pay the interest on all the Capital called up by the said Company, for the purpose of the said contract, until the said Railway should be ready to be opened for traffic, and that the said agreement should be subject to such modification as to the mode of payment, and as to the nature of the securities, in and by which payment was to be made, as might become necessary or expedient, upon such amalgamation being effected, but that the terms and conditions of the said agreement, as to the price and construction, and equipment, were to be retained and preserved.

119
Contract with Jackson & Co., for the construction of the Victoria Bridge. Dated 23rd March, 1853.

AND whereas, also, on the said twenty-third day of March, an agreement was entered into between the said first incorporated Grand Trunk Railway Company of Canada, and the said English Contractors, conditionally, upon the said amalgamation taking place, for the construction by the said English Contractors, of a Tubular Iron Bridge over the River Saint Lawrence at Montreal, for the sum of one million four hundred thousand pounds, subject to a certain increase

as therein mentioned and it was thereby agreed, (amongst other things,) that the said Contract sum should be paid in cash, subject to certain special provisions, as to the mode of payment, and that the parties thereto should enter into all further deeds which might become necessary or expedient in consequence of such union or amalgamation, so that the general terms and conditions of the said agreement should be retained and preserved. AND whereas, it has in fact been found necessary or expedient, upon such amalgamation, to introduce the following modifications and alterations into the said contracts, *vedelicit*, that the parties hereto of the second and third part, shall be paid the said contract sum (all of which sums were calculated by the Contractors, as sterling and not currency,) respectively, in sterling money, in London, and not by Canadian Provincial Debentures, or Debentures or stock of the amalgamated Company, that in consideration of the English Contractors relinquishing the said Canadian Provincial Debentures, they shall be entitled to receive an addition of fifteen per cent upon the nominal amount of all sums which, under the said agreements, respectively, would have been paid in such Debentures, (the said fifteen per cent being the present premium upon the said Debentures,) that the parties of the second part, hereinafter called the English Contractors, shall, on the first day of July, one thousand eight hundred and fifty-four, subscribe for and take twenty-four thousand one hundred and fifty-three shares in the amalgamated undertaking, of the one hundred and forty-four thousand nine hundred and twenty-shares, referred to in the prospectus as offered to the Public, Debentures convertible into Government Debentures, to the extent of three hundred and one thousand nine hundred and twelve pounds, and Company's Debentures to the extent of three hundred and one thousand nine hundred and twelve pounds, that forty-eight thousand three hundred and seven shares of the one hundred and forty-four thousand nine hundred and twenty-shares, above mentioned Debentures, convertible into Government Debentures, to the extent of six hundred and three thousand eight hundred and thirty-eight pounds, and Company's Debentures to a like extent of six hundred and three thousand eight hundred and thirty-eight pounds, shall be retained by the Company with the option and privilege reserved to each holder of the seventy-two thousand four hundred and sixty-shares, now about to be issued, half of the one hundred and forty-four thousand nine hundred and twenty, above referred to, apply for and take in addition to the shares held by him, two-thirds of the number of shares held by him, and an equal amount in Debentures, one half in Debentures convertible into Provincial Government Debentures, and the other half in Debentures of the Company, so as such option be exercised before the first day of July, one thousand eight hundred and fifty-four, that so many of the shares and Debentures so retained by the Company, as shall not have been claimed and taken up by the actual shareholders so entitled to claim the same, respectively, under the privilege reserved to them, on or before the said first day of July, in the year of our Lord one thousand eight hundred and fifty-four, shall thereupon and forthwith after that day, be also subscribed for and taken by the English Contractors, that the parties hereto of the second and third part, shall provide the funds for the payment half-yearly, in London, of interest at the rate of six per cent per annum, on the amounts from time to time paid to them upon the certificates of the Engineer, under the several hereinbefore recited Contracts, and also on such additional sum, as the United Company may from time to time think it necessary to call up, for the purpose of providing for the current certificates and the expenditure of the Company, in reference to the Contracts any difference between the Contractors and the United Company, as to the amount to be kept in hand by the Company, for such purposes, to be settled by arbitration in manner hereinafter provided for, but as respects the Canadian Contractors, this obligation shall cease, when, and so soon as the Toronto and Guelph Railway, shall be opened throughout for traffic, to Sarnia.

120 Certain modifications and alterations made in the several contracts before recited.

121 Contractors to be paid in sterling money, instead of Provincial Bonds, and to receive an increase of 15 per cent upon the amount of such Provincial Débentures.

122 English Contractors to take on 1st July, 1854, 24,153 shares, (called subsequently B. shares) £301,912 of convertible Debentures, £301,912 of Company's Debentures.

123 The English Contractors shall also take the balance of B. shares, and Bonds not taken by the Stockholders on the 1st July, 1854, viz. 48,307 Shares, £603,838 Convertible Bonds, £603,838 Company's Bonds.

124 The Contractors to pay interest at the rate of 6 per cent. per annum on amount of capital called up to pay Engineer's certificate, &c. &c.

NOW THEREFORE, IT IS HEREBY AGREED AND DECLARED, by and between the parties hereto, as follows :—

125 The amalgamated Company bound by the preceding Contracts.

1. THE amalgamated Company, shall be bound by the clauses, covenants, stipulations and conditions of the said recited agreements, with the several Companies aforesaid, so far as the same are not directly or indirectly at variance or inconsistent with those of this agreement, and in all cases when there shall be any such variance or inconsistency, the clauses, covenants, stipulations and conditions of this agreement, shall be considered and taken as controlling, modifying and altering those of the said agreements respectively, and the clauses, covenants, stipulations and conditions, so at variance or inconsistent with this agreement, shall henceforth be wholly void and of no effect.

126 All payments to be made in sterling money.

2. THAT except, as hereinafter expressly provided, all payments to be made to the contractors on account of works, shall be made in sterling money, in London.

127 Contractors to have 15 per cent in addition, instead of Provincial Bonds.

3. That in respect of the amount or proportion of payments, which, under the provisions of any of the said agreements, would have to be made to the English Contractors, in Canadian Provincial Debentures, an addition of fifteen per cent shall be made to the nominal amount of each such payment, and shall be paid to the English Contractors at such times and periods, respectively, as under the provisions of the said agreements respectively relating thereto, such Debentures would have been deliverable to them.

128 In case of difficulty, Provincial Debentures to be received by the Contractors at Par.

PROVIDED, that, in case any difficulty should arise, as to the payment under any of the Contracts aforesaid, in Provincial Debentures, and in consideration thereof, the Contractors should accept and take such Debentures to any extent, instead of an equal nominal amount in cash, all such Debentures shall, if and when required by the amalgamated Company, be transferred to them at Par.

129 All the clauses in the preceding Contracts, relating to lodging of Shares and Debentures in the hands of Trustees &c. to be no longer in force.

4. THAT all the clauses and provisions in the said agreements, or either of them, relating to the creation of Debentures and stock by the respective Companies, with whom such agreements respectively, are made, and as to the registration of such stock in the names of the Contractors, and as to the handing over of Debentures and certificates of stock to the persons in such agreements, respectively named as trustees, and as to the sale, transfer or investment thereof, and as to the payment to be

made to the Contractors by the said Trustees, out of the monies or securities in their hands, and generally, as to the powers and functions of such Trustees, shall be no longer operative or in force, and the payments to be from time to time made to the Contractors, as provided in the said agreements, respectively, shall be made by the amalgamated Company directly to the Contractors, in sterling, in London, in such proportions and by such instalments, and upon such certificates respectively, as in the said agreements respectively specified.

130 Engineer to grant certificates for works done.

5. THAT all the provisions in the said agreements respectively, as to the granting of Certificates by the Engineer of the Company, and as to the principle on which such certificates are to be granted, and as to the neglect or refusal of such Engineer to certify, and as to the consequences of such neglect or refusal, shall be applicable "mutatis mutandis," to the payments to be made by the amalgamated Company to the Contractors, and to the chief Engineer of such amalgamated Company.

131 Company may receive portions of the Railways when completed, if they judge proper so to do.

6. THAT the provisions in the several recited agreements, as to the accepting and working by the Company, of a portion or portions of any Railway, after the same shall have been completed and stocked, and as to the opening and working thereof, by the Contractors, in case the Company shall decline so to do, shall be applicable to the Railways comprised in the United undertaking, and to the United Company.

132 English Contractors to pay a sum of £57,000 for salaries, instead of the various sums mentioned in the Contracts.

133 Canadian Contractors to pay £13,000 for salaries.

134 1 per cent to be deducted from the payments made to Contractors, to meet the sums set apart for salaries.

7. THAT instead of the provisions in said the agreements respectively, as to the setting apart of specific sums for payment of salaries and expenses, and paying such salaries and expenses, there shall be taken from, and allowed out of the whole Contract monies to be paid to the English Contractors, the sum of fifty-seven thousand pounds, and out of the whole Contract monies to be paid to the Canadian Contractors, the sum of thirteen thousand pounds, which two sums, making together seventy thousand pounds, shall be applicable to the payment of salaries and expenses by the amalgamated Company, and the several payments as aforesaid, shall be made out of the monies payable in cash to the said Contractors, respectively, at the rate of one per cent of the amount so payable, until such deductions shall amount in whole, to fifty-seven thousand pounds, in the case of the English Contractors, and thirteen thousand pounds, in the case of the Canadian Contractors.

135 Any balance remaining of the sums set apart for salaries, at the completion of the Works, to be re-paid to the Contractors.

8. IF on the completion of the works, there shall be any portion of the said seventy thousand pounds in the hands of the said Company, not applied to, or owing for such salaries and expenses, as aforesaid, the surplus is to be paid over to the Contractors, in the ratio of fifty-seven seventieths to the English Contractors, and thirteen seventieths to the Canadian Contractors.

136 The Company failing to pay the certificates the Contractors have the option of stopping the works.

9. THAT the Amalgamated Company will make such calls upon the holders of shares or stock, and of Debentures respectively, as may be required for payment to the Contractors of the amounts from time to time certified in respect of works. And if they shall fail to do so, and shall not pay to the Contractors the amounts from time to time certified, within one month, after the date of the respective certificates, it shall be at the option of the Contractors to suspend the further progress of the works, until such payment shall be made, and the period of such suspension shall be added to the time allowed by the contract for completion.

137 On the 1st July, 1854 the English Contractors, shall take the Shares and Debentures mentioned in the preceding clauses

10: THAT the English Contractors shall and will, on or before the first day of July, one thousand eight hundred and fifty-four, subscribe for, and take the before mentioned twenty-four thousand one hundred and fifty-three shares in the Capital Stock of the Amalgamated Company, Debentures of the Company, convertible into Provincial Debentures, to the nominal amount of three hundred and one thousand nine hundred and twelve pounds, and other Debentures of the Company, not so convertible, to like nominal amount of three hundred and one thousand nine hundred and twelve pounds.

138 The English Contractors shall, also, as soon after the 1st July, 1854, as they shall be required, to take the balance of the Shares and Debentures.

11. THAT the English Contractors shall and will, also, so soon after the said first day of July, one thousand eight hundred and fifty-four, as they shall be required by the Directors of the Amalgamated Company so to do, subscribe for, and take so many of the said number of shares and Debentures, so reserved as aforesaid, as shall not, on or before that day, have been claimed by the persons entitled to claim the same respectively, and on taking the several shares and Debentures aforesaid, shall and will at once pay up on such of the shares and Debentures so taken by them respectively, the amount which may then have been called up and be payable upon the other shares and Debentures in the said Amalgamated Company, previously offered.

139 The English Contractors shall 7 days before 1st January, and 1st July, in every year, provide for the payment of interest on the capital actually expended on the works.

12. THAT as from the date of the Amalgamation of the Company, the English Contractors shall, and will at least seven days before the first day of January and the first day of July, respectively, in each year, provide for, and pay over to the Amalgamated Company, at the Office of their Agent in London, a sum equal to Interest, at the rate of six per cent per annum, on the Capital then actually expended in the construction of the Railways and works comprised in the said recited agreement, and undertaken by the English Contractors, and not then opened for Traffic, the amount of Capital so expended to be ascertained from and determined by the certificates of the Engineer, as to such Railways respectively, and the payments made by the Company thereon.

140 The English Contractors shall, also, on the same days, provide for the payment of interest on two thirds of the amount called up, on the amount expended on works.

13. THAT the English Contractors shall and will, also, pay on the same days in each year, or as soon thereafter as the Amount can be ascertained, interest at the same rate, on two-thirds of the amount which the Company shall then have actually called up, beyond what may have been required for payment in respect of works, in order to provide for current certificates and expenditure, in reference to the contracts, and in case there shall be any dispute or difference between the Contractors and the Company as to the additional amount upon which such further interest is to be paid, every such dispute or difference, as and when it arises, shall be settled by Arbitration, in the manner

hereinafter provided. PROVIDED, that when the Toronto and Guelph Railway shall be opened through to Sarnia, the English Contractors shall pay the whole of such last mentioned additional Interest, and not two-thirds of it only.

141 In default of payment of interest, the Company authorized to deduct the amount from the certificates, for works with interest at 6 per cent.

14. THAT if default shall be made by the English Contractors in payment of the Interest on the said first mentioned amount, on the respective days appointed for payment thereof, or of the further interest on such additional amount as last mentioned, within one week after such amount shall have been agreed or settled by Arbitration as aforesaid, the Company may retain and deduct out of the next or any subsequent payments to be made to the said English Contractors, the amount so in arrear together with Interest thereon, at the rate of six per cent per annum, from the time of such default, and so as often as any such default shall be made.

142 Payment of interest to cease in proportion to the Line opened.

15. THAT the payment by the Contractors of interest upon the Capital expended in the construction of the said several Railways and works undertaken by them, shall cease as to the proportion thereof expended on any particular Railway, when and so soon as such Railway shall be completed, so as to be ready for opening, and in the case of partial openings of any such Railway, shall cease as to so much of the Capital as shall have been expended on the part so opened, a proportionate part of the Current Interest, being, however, in each of such cases, payable by them for any fraction of a half-year.

143 Canadian Contractors to pay 6 per cent, per annum, on amount expended on works, and to provide for the same 6 days before the 1st January, & 1st July, in each year, until opening of Road.

16. THAT the Canadian Contractors shall and will, as from the date of the Amalgamation and until the opening of the Toronto and Guelph Railway through to Sarnia, at least seven days before the first day of January and the first day of July, respectively, in each year, provide for and pay over to the Amalgamated Company, at the Office of their Agent in London, a sum equal to Interest at the rate of six per cent per annum, upon the Capital then actually expended on the construction of the Railway and works, comprised in the said recited agreement with them, the amount of Capital so expended to be ascertained in like manner as is provided in the case of the English Contractors.

144 Canadian Contractors shall also pay interest on one third the amount called up over and above the amount expended on works.

17. THAT the Canadian Contractors shall and will also pay, on the same days in each year or as soon thereafter as the amount can be ascertained, Interest at the same rate, on one third of the amount called up by the Company as mentioned in article 13, such amount to be ascertained in case of dispute or difference, in like manner as is provided in that article, and in case of default of payment, the Company shall have the like power to deduct and retain the amount in arrear, as is hereinbefore provided in the case of the English Contractors, PROVIDED, that when the Toronto and Guelph Railway shall be opened through to Sarnia, such last mentioned payment of Interest by the Canadian Contractors shall cease, a proportionate part of the Current Interest, being, however, payable by them for any fraction of a half-year.

145 Calls due by the Contractors, may be credited to them against an equivalent amount on certificates of work.

18. THAT all calls or instalments payable by the Contractors upon shares or Debentures of the Company may, from time to time be credited by the Company to them, against an equal amount on Certificates for works done.

146 Application to be made to the Provincial Legislature, for an Act, authorizing an extension of the time for completing the works and for other purposes.

19. THAT as soon as practicable after the Amalgamation shall be effected, the Amalgamated Company shall and will apply to the Provincial Parliament of Canada, for an Act or Acts, authorizing an extension of the time for completion of any the works included in any of the recited contracts, for such further period as may be necessary, having regard to the time by such contracts, respectively limited, for the completion of such works respectively, and also, if necessary, for authority to raise further Capital, and shall and will use their best endeavours to procure such Act or Acts, and in case they should fail to obtain such authority, and by reason thereof it shall be found impossible to complete any or some part of such works within the periods respectively prescribed, as to such works such equitable adjustment of this contract, as to the works so incomplete shall be made, as in case of difference between the English Contractors and the Amalgamated Company, shall be determined by Arbitration, under the general provisions for Arbitration herein contained.

147 In case of dispute, the matters in dispute to be referred to three Arbitrators, to be approved of by the Governor in Council.

20. THAT if any question or difference of opinion shall arise between the parties hereto, as to this agreement or the construction thereof, or the effect thereof in the said former agreements, or any matter or thing connected therewith, or with the carrying out thereof, every such question or difference of opinion, and also, all matters hereinbefore specially referred to Arbitration, whenever, and as often as any such shall arise, shall be referred to the decision of three Arbitrators, to be named, one by the Company, (such Arbitrator to be approved by the Governor in Council of Canada,) one by the Contractors, and the third by the two Arbitrators, before entering on the business of the reference, and the decision of these three Arbitrators, or of any two of them, shall be binding and conclusive upon both parties, as to the question or difference of opinion so referred to them.

21. THAT the parties hereto, will respectively make and enter into all such deeds as may be necessary for giving effect to such reference.

148 Interpretation clause.

22. LASTLY, that whenever, in this contract, the words, "The English Contractors" are used, they shall mean William Jackson, Samuel Morton Peto, Thomas Brassey, and Edward Ladd Betts, or the survivors or survivor of them, or three out of four of them, or two out of three of them, or the executors, administrators or assigns of the survivor of them, and that, in the event of the Bankruptcy or insolvency of any one or more of them, their or his Assignees shall be excluded from all control over or interest in this contract, and when any act is to be done by the English Contractors, it shall be sufficient if done by, or by the authority of the majority of them in person, or acting under power of Attorney from each to the other, or by the majority of the survivors of them, or by the survivors or survivor of them, or by the Executors, Administrators or Assigns of such survivor, and so "mutatis mutandis" in the case of the words, "The Canadian Contractors."

In Witness Whereof, the said Companies, parties to these presents, have caused their common Seals to be hereunto affixed, and the said William Jackson and John Ross, have hereunto set their Hands and Seals the day and year first above written.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

THE GRAND JUNCTION RAILROAD COMPANY.

A. T. GALT.
President St. Lawrence & Atlantic Railroad Company.
L. S.

GRAND TRUNK RAILWAY COMPANY OF CANADA EAST.

For the Quebec and Richmond Railway Company,
WILLIAM CHAPMAN,
Their Attorney.
L. S.

A. T. GALT,
Representing Atlantic and St. Lawrence Railroad Company.
L. S.

ALEX. GILLESPIE,
A. T. GALT,
Representing Toronto and Guelph Railway.
L. S.

William Jackson. *L. S.*
Jno. Ross. *L. S.*

The Seals of the Grand Trunk Railway Company of Canada, of the Grand Trunk Railway Company of Canada East, and of the Grand Junction Railway Company, were affixed by the undersigned, as the duly authorized Agent of each of the above Companies.

JNO. ROSS.

This Deed was executed by Alexander Tilloch Galt, as President of the St. Lawrence and Atlantic Railroad Company; and by Alexander Gillespie and Alexander Tilloch Galt, as representatives of the Toronto and Guelph Railway Company; and by William Jackson and John Ross, and the Seals of the Grand Trunk Railway Company of Canada, the Grand Trunk Railway Company of Canada East, and the Grand Junction Railway Company, were affixed by the said John Ross, in the presence of

WILLM. WAGSTAFF,
Of 30, Great George Street,
Westminster, Solicitor.
HENRY MOORE,
Of the same place, his Clerk.

The modified contract forming the Schedule to this Deed, has been submitted to and is approved by us.

Witness to the signatures of William Jackson Samuel Morton Peto, and Edward Ladd Betts,
WM. JACKSON.
SAML. M. PETO.
EDWD. L. BETTS,

William Wagstaff.
Henry Moore.

Witness to the signature of Alexander Tilloch Galt.
A. T. GALT,
For Self & Partners.

William H. Macaulay,
Clerk to Messrs. Swift and Wagstaff, 30, Great George Street, Westminster.

Witness to the signature of Thomas Brassey.
Willm. Wagstaff.
THOMAS BRASSEY.

Extract from the Proceedings of a Meeting of Shareholders of the St. Lawrence and Atlantic Railroad Company, held at their Office, in the City of Montreal, on Monday *the 30th day of May*, 1853.

Moved by William Molson, Esq., seconded by H. L. Routh, Esq. and

Resolved,—That the Saint Lawrence and Atlantic Railroad Company, by the vote of its proprietors now assembled, hereby ratifies, approves of, and in all respects confirms and adopts the

Amalgamation Agreement now submitted to this meeting, entered into by the Directors of this Company, acting by the President thereof; which agreement is dated *at London, the 12th April*, 1853, and is made between The Grand Trunk Railway Company of Canada, of the first part; The Grand Junction Railway Company, of the second part; The Grand Trunk Railway Company of Canada East, of the third part; The Quebec and Richmond Railroad Company, of the fourth part; The St. Lawrence and Atlantic Railroad Company, of the fifth part; The Toronto and Guelph Railway Company, of the sixth part; The Atlantic and St. Lawrence Railroad Company, of the seventh part; and William Jackson, of Birkenhead, England, Esquire, and the Honorable John Ross, of Belleville, Canada, of the eighth part; whereby this Company, on the conditions and for the considerations therein stated, amalgamates with the said Grand Trunk Railway Company of Canada.

Which was carried unanimously.

Extract from the Proceedings of a Meeting of the Shareholders of the Toronto and Guelph Railway Company, held at the Office of the Company, in the City of Toronto, on FRIDAY *the 3rd June*, 1853.

Moved by J. M. STRACHAN, Esq. seconded by WM. CLARKE, Esq.

That the Toronto and Guelph Railway Company, by the vote of its proprietors now assembled, hereby ratifies, approves of, and in all respects confirms and adopts the Amalgamation Agreement now submitted to the meeting.

Which was carried unanimously.

Extract from the Proceedings of a Meeting of the Stockholders of the Grand Trunk Railway Company of Canada, held at the Office of the Company, in the City of Quebec, on MONDAY *the 11th day of July*, 1853.

Moved by The Honorable PETER MCGILL, seconded by GEORGE CRAWFORD, Esq. and

Resolved,—That the Grand Trunk Railway Company of Canada, by the vote of its proprietors now assembled, hereby ratifies, approves of, and in all respects confirms the agreement for amalgamation now submitted to this Meeting, entered into by the Directors of the Company, acting by their Agent the President of the Company, and Chairman of the Board of Directors, which agreement is dated at London, the 12th April, 1853, and is made between the Grand Trunk Railway Company of Canada, of the first part; The Grand Junction Railroad Company, of the second part; The Quebec and Richmond Railroad Company of Canada East, of the third part; The Grand Trunk Railway Company of Canada East, of the fourth part; The St. Lawrence and Atlantic Railroad Company, of the fifth part; The Toronto and Guelph Railway Company, of the sixth part; The Atlantic and Saint Lawrence Railroad Company, of the seventh part; and William Jackson, of Birkenhead, England, Esquire, and The Honorable John Ross, of Belleville, Canada, of the eighth part; whereby, on the conditions and for the considerations therein stated, the above mentioned Railroads of the second, third, fourth, fifth and sixth parts, are united with and incorporated with this Company.

Extract from the Proceedings of a Meeting of the Stockholders of the Grand Trunk Railway Company of Canada East, held at the Office of the Grand Trunk Railway Company of Canada, in the City of Quebec, on MONDAY, *the 11th July*, 1853.

Moved by SIR H. J. CALDWELL, seconded by the HON. MR. BELLEAU, and

Unanimously Resolved,—That the Grand Trunk Railway Company of Canada East, by the vote of the Shareholders here assembled, hereby ratifies, approves of, and in all respects confirms the agreement for amalgamation, now submitted to this Meeting, entered into by the Directors of the Company, acting by their Agents, The Hon. John Ross, James Bell Forsyth, and William Rhodes, Esquires, which agreement is dated at London, the 12th April, 1853, and is made between The Grand Trunk Railway Company of Canada, of the first part; The Grand Junction Railroad Company, of the second part; The Grand Trunk Railway Company of Canada East, of the third part; The Quebec and Richmond Railway Company, of the fourth part; The Toronto and Guelph Railroad Company, of the fifth part; The St. Lawrence and Atlantic Railroad Company, of the sixth part; The Atlantic and Saint Lawrence Railroad Company, of the seventh part; and William Jackson, of Birkenhead, England, Esquire, and, the Honorable John Ross, of Belleville, Canada, of the eighth part; whereby, this Company, on the conditions and for the considerations therein stated, unites with and is incorporated with the said Grand Trunk Railway Company of Canada.

Extract from the Proceedings of a Meeting of the Shareholders of the Quebec and Richmond Railroad Company, held at the Office of the Company, in the City of Quebec, on TUESDAY, *the 19th July*, 1853.

It was moved and seconded, and unanimously

Resolved,—That the Report now read be received, and that the agreement executed provisionally, (under the authority of the Act 16, Vic. cap. 39, and the Act 16, Vic. cap. 76,) on the 12th day of April last, between the Grand Trunk Railway Company, the Grand Junction Railroad Company, the Grand Trunk Railway Company of Canada East, the Quebec and Richmond Railway Company, the Saint Lawrence and Atlantic Railway Company, the Toronto and Guelph Raiway Company, and the Atlantic and Saint Lawrence Railway Company, for the purpose of amalgamating the said Companies into one Company; under the name of the Grand Trunk Railway Company of Canada, be ratified and confirmed, and that the Directors be, and they are, hereby authorized and empowered, to take all such measures as they may deem advisable for carrying the same into effect.

Carried unanimously.

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Contract with C. S. Gzowski & Co. for the construction of the Railway from Toronto to Sarnia, dated 24th, March 1853. 118

Contract with Jackson & Co. for the construction of the Victoria Bridge, dated 23rd March, 1853. 119

Certain modification and alterations made in the several contracts before recited 120

Contractors to be paid in Sterling money instead of Provincial Bonds and to receive an increase of 15 per cent upon the amount of such Provincial Debentures. 121

English Contractors to take on 1st July, 1854, 24,153 Shares (called subsequently B shares) £301,912 of Convertible Debentures, £301,912 of Company's Debentures. 122

The English Contractors shall also take the balance of the B Shares and Bonds not taken by the Stockholders, on the 1st July, 1854, Viz:—48,307 Shares, £603,838 Convertible Bonds, £603,838 Company's Bonds 123

The Contractors to pay Interest at the rate of 6 per cent per annum on amount of Capital called up to pay Engineer's Certificates, &c. 124

The Amalgamated Company bound by the preceding contracts. 125

All payments to be made in Sterling money. 126

Contractors to have 15 per cent in addition instead of Provincial Bonds. 127

In case of difficulty, Provincial Debentures to be received by the contractors at par. 128

All the Clauses in the preceding contracts, relating to lodging of Shares and Debentures in the hands of Trustees, to be no longer in force. 129

Engineer to grant Certificates for works done. 130

Company may receive portions of the Railways when Completed, if they judge proper so to do. 131

English Contractors to pay a sum of £57,000 for Salaries, instead of the various sums mentioned in the contracts. .. 132

Canadian Contractors to pay £13,000 for Salaries. 133

One per cent to be deducted from the payments made to Contractors, to meet the sum set apart for salaries. 134

Any balance remaining of the sums set apart for salaries at the completion of the works, to be repaid to the Contractors. 135

The Company failing to pay the Certificates the Contractors, have the option of stopping the works. 136

On the 1st July, 1854, the English Contractors shall take the Shares and Debentures mentioned in the preceding Clauses. 137

The English Contractors shall also, as soon after the 1st July, 1854, as they shall be required to take the balance of shares and Debentures. 138

The English Contractors shall, seven days before 1st January and 1st July, in every year, provide for the payment of Interest on the capital actually expended on the works. 139

The English Contractors shall, also, on the same days, provide for the payment of interest on ⅓ of the amount called up over and above the amount expended on the works. 140

In default of payment of Interest, the Company authorized to deduct the amount from the Certificates for works with Interest, at 6 per cent. 141

Payment of Interest to cease in proportion to the Line opened. 142

Canadian Contractors to pay Interest at six per cent per annum, on amount expended on works, and to provide for the same 6 days before 1st January and 1st July in each year, until opening of Road. 143

Canadian Contractors shall also pay Interest on one third of the amount called up over and above the amount expended on the works. 144

Called due by the Contractors may be credited to them against an equivalent amount on Certificates for work. 145

Application to be made to the Provincial Legislature for an Act, authorizing an extension of the time for completing the works, and for other purposes. 146

In case of dispute, the matter in dispute to be referred to three Arbitrators, to be approved of by the Governor in Council. 147

Interpretation Clause. 148

(*Endorsed*)

Copy of agreement for Amalgamation between divers Railway Companies and the Grand Trunk Railway Company of Canada, entered into in London, the 12th April, 1853. (Plaintiff's Exhibit No. 1.)

SCHEDULE No. 5.

District de Montréal. }

COUR SUPÉRIEURE.

Février 1857.

A. E. KIERZKOWSKI,

Dem.

vs

LA COMPAGNIE DU GRAND TRONC DE CHEMIN DE FER DU CANADA,

Défenderesse.

Et la dite Défenderesse, sans admettre les Allégu. Demandeur en sa Déclaration, lesquels elle nie tous positivement, sauf ceux admis ci-après, pour Exceptions Péremptoires à l'action du Demandeur dit :

Que par la loi du Pays & notamment par un Statut de la Législature du canada passé dans la Session tenue dans les quatorzième & quinzième années du règne de Sa Majesté, sous le chapitre "73," intitulé : " Acte pour pourvoir à la construction d'un Grand Tronc de chemin de fer qui traversera toute l'étendue de cette Province", il est statué que vu qu'il est de la plus haute importance pour le progrès & le bien-être de cette Province qu'une ligne de Grand Tronc de chemin de fer soit construite dans toute sa longueur & s'étende & se continue depuis la frontière Est de cette dite Province à travers les Provinces du Nouveau Brunswick et de la Nouvelle Ecosse jusqu'à la Cité & port d'Halifax", tel chemin doit être fait au moyen de la garantie provinciale ; il est statué de plus que le chemin de fer du St. Laurent & de l'Atlantique construit par la dite Compagnie de Chemin de fer du St. Laurent et de l'Atlantique, lequel avait alors reçu la garantie Provinciale, devra être acquis par la Province comme devant être compris dans le dit Grand Tronc de Chemin de fer qui sera un ouvrage Provincial et sera à tous égards considéré comme tel.

Que par un certain acte d'union ou d'arrangement fait à Londres, en Angleterre, le douze Avril mil huit cent cinquante-trois entre " la Compagnie du Grand Tronc de chemin de fer du Canada, incorporée par l'acte de la Législature de cette Province de la seizième Victoria, Chapitre 37, et la Compagnie du Grand Chemin de fer de Jonction, la Compagnie du Grand Tronc de Chemin de fer du Canada Est, la Compagnie du Chemin de fer de Quebec & Richmond, la Compagnie du Chemin a lisses du St. Laurent et de l'Atlantique, autrement appelée " la Compagnie du Chemin de fer du St. Laurent & de l'Atlantique," et la Compagnie du Chemin de fer de Toronto et Guelph, toutes Compagnies incorporées en vertu d'actes de la législature de cette Province, icelles Compagnies furent réunies en une seule Compagnie sous le nom de Corporation : " La Compagnie du Grand Tronc de Chemin de fer du Canada," qui était le nom de corporation que devait prendre la dite Compagnie formée par la dite union ; et ce en vertu du dit acte de la Seizième Victoria, chapitre 76, dont parle le Demandeur et qui amende l'acte de la Seizième Victoria, Chapitre 39, relatif à la formation de l'union des sus-dites Compagnies, ou à l'achat de leurs propriétés et aussi mentionné par le Demandeur ; que par la seconde section du dit acte de la Seizième Victoria, Chapitre 76, il est statué que si " la Compagnie du Grand Tronc de chemin de fer du Canada," incorporée par le dit Acte de la seizième Victoria, Chapitre 37, forme partie de la dite union, le nom de corporation de la Compagnie formée par l'union de toutes les Compagnies comprises en icelle union devra être ; " La Compagnie du Grand Tronc de chemin de fer du Canada," et laquelle Compagnie est la Défenderesse en cette cause—

Que la dite Union des dites Compagnies a été confirmée par " l'acte du Grand Tronc de Chemin de fer de 1854," c'est-à-dire, par l'acte Provincial de la dix-huitième Victoria, chapitre 33, intitulé " Acte pour amender les actes relatifs à la Compagnie du Grand Tronc de chemin de fer du Canada," et par lequel acte, c'est à-dire, par la troisième section d'icelui, le nom de corporation de la Compagnie Défenderesse a été confirmé et que depuis le dit arrangement, passé à Londres, suivant une des conditions d'icelui devait être confirmé par la Législature suivant que cette dernière s'y était engagé par le dit acte de la seizième Victoria, chapitre 39.

Que la dite Union a été autorisée principalement dans un but d'utilité publique & générale ainsi qu'il appert par les termes & la teneur du dit acte de la Seizième Victoria, chapitre 39, qui comporte " qu'attendu qu'il serait avantageux à cette Province que la ligne du Grand Tronc de Chemin de fer qui doit la traverser dans toute sa longueur fut sous le contrôle et administration d'une seule Compagnie ou d'un aussi petit nombre de Compagnies différentes que possible, il sera loisible aux Compagnies formées ou à être formées aux fins de construire un chemin de fer formant partie de la ligne du Grand Tronc de Chemin de fer qu'avait en vue la législature en passant le dit acte de la quatorzième & quinzième Victoria, chapitre 73, de se réunir en une seule Compagnie ou à aucune des dites Compagnies d'acheter et acquérir la propriété & les droits d'une ou de plusieurs des dites Compagnies ; que six des Directeurs de la Compagnie Défenderesse sont nommés par le Gouverneur & que les travaux qui concernent le dit Grand Tronc de Chemin ont été & sont assujettis à l'action du Gouverneur en conseil.

Qu'ainsi l'Union des dites Compagnies ou l'achat par l'une d'elles des propriétés et droits des autres dites Compagnies a été autorisé par la législature dans un but d'intérêt public et entr'autres dans le but de faciliter & d'économiser par le moyen d'une seule et même administration, la construction, le fonctionnement et le maintien du Grand Tronc de Chemin de fer que la Législature a eu en vue en passant le dit acte de la quatorzième & quinzième Victoria, chapitre 73 ; et que par le dit acte de la Seizième Victoria, chapitre 39, comme dans l'acte qui vient d'être Cité, il est spécialement statué que le chemin de fer du St. Laurent & de l'Atlantique, autorisé d'être construit par la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique, pourra devenir & former partie du dit Grand Tronc de Chemin de fer devant traverser cette Province.

Que la dite Union, formée comme sus-dit, non seulement a été autorisée par la législature, mais qu'elle a été imposée et ce dans un but d'intérêt public comme sus-dit, puisqu'entr'autres choses, pouvoir a été donné à la majorité aux trois quarts des actionnaires d'aucune des Compagnies autorisées à la former de contraindre l'autre quart des actionnaires à en devenir partie :

Que la Défenderesse, la dite Compagnie du Grand Tronc de chemin de fer du Canada ou bien les actionnaires ou particuliers qui la composent ne sont & n'ont pas été ainsi qu'allégué par le Demandeur *des gens de main-morte*, qu'ils ne tiennent & n'ont pas tenu en main-morte les biens immeubles qu'ils ont acquis & possèdent et notamment le Grand Tronc de Chemin de fer du Canada en conformité des chartes & actes qui ont incorporé la dite Compagnie Défenderesse & qui la concernent ; qu'au contraire, ils possèdent & ont possédé à titre de propriétaires comme tous autres particuliers composant des Compagnies incorporées comme corps politique pour des fins industrielles les dits biens et notamment le dit Grand Tronc de chemin de fer, lesquels ont été et sont dans le commerce comme tous autres biens, qu'ils ont été et sont à toutes fins quelconques aliénables comme le sont les autres terres & biens immeubles situés dans le Bas-Canada ; qu'en vertu des divers actes de la Législature qui concernent la Compagnie Défenderesse & toutes les Compagnies Comprises dans la dite Union et qui Concernent la Construction du Grand Tronc de Chemin de fer et les différens chemins de fer qui le Composent, faculté & pouvoir sont donnés d'acquérir & acheter, de toute espèce de manière, tous immeubles qu'il sera jugé à propos d'acquérir, soit pour la construction du dit Grand Tronc de Chemin de fer ou des dits chemins qui en font partie, soit pour d'autres fins, et ensuite de les revendre et aliéner à qui que ce soit et par quelque mode que ce soit ; que faculté & pouvoir sont aussi donnés, d'engager & hypothéquer le dit Grand Tronc de Chemin de fer et les divers chemins qui le Composent envers qui que ce soit, qui aura prêté, avancé ou garanti des deniers pour sa construction ; que le dit Grand Tronc de Chemin de fer et les divers chemins qui le composent sont devenus affectés & hypothéqués pour des sommes considérables, tant envers la Province qu'envers divers individus et Corporation ; que partant le dit Grand Tronc de Chemin de fer, ainsi que les divers chemins & immeubles qui le composent sont devenus saisissables, vendables & aliénables et que de plus par les dits actes de la Législature qui concernent la dite Compagnie Défenderesse et les dites Compagnies comprises dans la dite Union, pouvoir est donné à la Province d'acquérir absolument le dit Grand Tronc de chemin de fer et les divers chemins qui le Composent.

Que de même la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique ou bien les particuliers ou actionnaires la composant n'ont pas été ainsi qu'allégué par le Demandeur des gens de main-morte, qu'ils n'ont pas tenu en main-morte les immeubles acquis & possédés par eux et formant le chemin de fer du St. Laurent et de l'Atlantique maintenant compris dans le Grand Tronc de chemin de fer du Canada ; qu'au contraire par & en vertu de l'acte d'incorporation de la Compagnie du chemin de fer du St. Laurent & de l'Atlantique & des divers actes de la législature subséquemment passés amendant l'acte d'incorporation de cette dernière Compagnie et la concernant & lesquels, ainsi que l'acte d'incorporation ont été déclarés être des actes publics, la dite Compagnie du St. Laurent et de l'Atlantique et les actionnaires la composant ont possédé à titre de propriétaires comme tous autres particuliers composent des compagnies incorporées comme Corps politique pour des fins industrielles le dit Chemin de fer du St. Laurent & de l'Atlantique aussi appelé le Chemin à lisses du St. Laurent et de l'Atlantique & tous les immeubles le composant & en dépendant, lequel chemin & tous les immeubles en dépendant ont été & sont dans le commerce comme tous autres biens, qu'icelui chemin et les immeubles en dépendant sont à toutes fins quelconques aliénables comme le sont les autres terres et biens immeubles situés dans le Bas-Canada ; que par les dits divers actes qui incorporent & qui concernent la dite compagnie du chemin de fer du St. Laurent & de l'Atlantique, faculté & pouvoir sont donnés d'acquérir & acheter de toute espèce de manière, tous immeubles, jugés à propos d'être acquis, soit pour la construction du dit chemin de fer du St. Laurent & de l'Atlantique, soit pour d'autres fins et ensuite de les revendre & aliéner à qui que ce soit, & par quelque mode que ce soit, que faculté & pouvoir sont aussi donnés d'engager & hypothéquer le dit chemin de fer du St. Laurent & de l'Atlantique envers quiconque aura prêté, avancé ou garanti des deniers pour sa construction, que de fait icelui chemin, durant sa construction est devenu et se trouve être affecté, engagé & hypothéqué pour des sommes considérables, tant envers la Province qu'envers divers individus et corporations ; que partant le dit chemin de fer du St. Laurent & de l'Atlantique et les immeubles en dépendant sont devenus saisissables, vendables & aliénables & que la Compagnie Défenderesse en vertu de la cinquième section du dit acte de la seizième Victoria, chapitre 39, est obligée de tenir des comptes séparés pour le dit Chemin de fer du St. Laurent & de l'Atlantique comme pour tous les chemins compris dans l'Union, de manière à reconnaître les propriétés ou les deniers auxquels devront s'attacher tous hypothéques & privilèges dûs par & sur chaque dit chemin de fer compris dans la dite Union.

Que par le dit acte d'Union ou d'arrangement ou par & en vertu de la dite Union entre les susdites Compagnies comprises en icelle, il n'y a pas eu et n'a pu y avoir acquisition et achat par la dite Compagnie Défenderesse, du chemin de fer, des propriétés et droits de la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique ; que par le dit acte d'union ou d'arrangement ou par la dite Union, la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique fait & n'a pu faire aucun acte de vente ou acte équipollent à vente et qu'elle n'a pas été dissoute ni cessé d'exister ; que la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique depuis la dite Union co-existe en icelle union avec toutes les autres Compagnies qui l'ont formée, et que par la dite Union elle n'a fait que prendre le nom de Corporation de la Compagnie Défenderesse, lequel est le nom de corporation commun à toutes les Compagnies comprises dans la dite Union et ce, en vertu du dit acte de la seizième Victoria, chapitre 76 ; que par la dite Union, il n'y a eu réellement qu'un changement de nom de corporation & de mode d'administration en ce qui concerne les compagnies comprises dans l'Union, lesquelles ont pris un nom commun de corporation et ont réduit par la dite

Union le nombre de Directeurs à dix-huit dont si [illegible] nommés par le Gouvernement, ainsi qu'il devait en être en vertu de la dite seconde section de [illegible]e Victoria, chapitre 70; que la dite Compagnie Défenderesse est la même corporation que la dite Com[illegible]gnie du chemin de fer du St. Laurent & de l'Atlantique, comme elle est la même corporation que chacune de celles comprises dans la dite Union; que par la quatrième section du dit acte de la seizième Victoria, chapitre 3[illegible] il est statué que la dite Compagnie Défenderesse devra être considérée comme étant la même Corporation que chacune de celles faisant partie de la dite Union; que par la dite Union, la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique n'a pas perdu la propriété du dit chemin de fer du St. St. Laurent [illegible] l'Atlantique et de l'actif mobilier & immobilier en dépendant, laquelle propriété, au contraire, par la dite Union elle a continué de détenir et posséder sous le nom de corporation de la Compagnie Défenderesse; que si par la dite Union les dites autres Compagnies comprises en icelle, ont obtenu des droits de propriété & de possession dans le dit chemin de fer du St. Laurent & de l'Atlantique et dans l'actif mobilier & immobilier en dépendant, ce n'est qu'accessoirement avec la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique qui a toujours conservé ses droits de propriété en iceux, et n'a jamais cessé de les détenir par suite de la dite Union; que, de même, par la dite Union la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique n'a pas été déchargée et déliée des dettes & hypothèques qu'elle devait & qu'après la dite Union elle a continué de devoir les mêmes dettes & hypothèques & que si les autres Compagnies comprises dans la dite Union les doivent ce n'est qu'accessoirement avec elle; qu'enfin la dite Compagnie du St. Laurent & de l'Atlantique a, depuis l'Union, l'exercice de tous ses droits & privilèges de corporation, comme ci-devant, excepté que l'exercice en est fait sous le nom de Corporation de la Compagnie Défenderesse, et sous un mode d'administration un peu différent, commun à toutes les Compagnies comprises dans l'Union; que les parts ou actions des actionnaires dans la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique n'ont pas été, par le dit acte d'union ou la dite Union radiées et anéanties, qu'au contraire, après la dite Union, les dites parts ou actions ont continué d'être comme elles l'étaient avant la propriété des actionnaires à qui elles appartenaient et elles ont, de plein droit, subsisté, comme parts, en leur faveur, dans la Compagnie Défenderesse, sans qu'il ait été besoin aux actionnaires de la Compagnie du chemin de fer du St.Laurent et de l'Atlantique de changer leurs certificats de parts et d'en prendre de nouveaux comme actionnaires dans la Compagnie Défenderesse; que par le dit acte d'Union passé à Londres, il est pourvu que les actionnaires des différentes compagnies comprises dans l'Union pouvaient échanger leurs certificats de parts en certificats de parts dans la Compagnie Défenderesse; mais que tel Echange de certificats n'est que facultatif aux actionnaires et qu'il a été autorisé dans le dit acte d'Union principalement dans le but de faire et d'avoir un seul livre ou Régistre d'Actions; qu'il est pourvu même par le dit acte d'Union ou d'arrangement que les actionnaires des Compagnies comprises dans l'Union, lesquels n'auront pas échangé leurs certificats de parts, comme sus-dit, pour des certificats d'actions dans la Compagnie Défenderesse auront toujours le droit de voter comme s'ils avaient fait tel échange de certicats.

Que le dit acte d'Union ou d'arrangement, passé à Londres, n'importe l'aspect sous lequel il peut être envisagé, ne comporte ni acte de vente ni acte équipollent à vente de la part de la dite Compagnie du Chemin de fer du St. Laurent et de l'Atlantique à la Compagnie Défenderesse; que l'obligation par la Compagnie Défenderesse de payer les dettes et hypothèques contractées par la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique ne peut être considéré comme un *prix ou retour*; que cette dernière Compagnie, ainsi que sus-mentionné, n'a jamais été libérée et déchargée de payer les dettes et hypothèques, qu'elle a toujours continué de les devoir après l'Union comme une des Compagnies comprises en icelle, que les autres Compagnies comprises dans la dite Union peuvent peut-être les devoir avec elle, mais que ce n'est et ce ne peut être qu'accessoirement; que les dites autres Compagnies comprises dans l'Union ne se sont pas obligées, par le dit acte d'Union de payer les dites dettes & hypothèques de la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique, à l'entière décharge de cette dernière et des immeubles & meubles à elle appartenant comme *cause, prix ou considération* de son entrée dans la dite Union; qu'au contraire, la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique en entrant dans la dite Union est avec tous ses biens meubles & immeubles restée débitrice des dettes, privilèges et hypothèques qu'elle devait avant; et pour le paiement desquels elle peut être poursuivie sous le nom de Corporation de la Compagnie Défenderesse, qui est, comme sus-dit, son nom actuel de corporation, comme ce nom l'est de toutes les Compagnies comprises dans la dite Union; que la stipulation de l'obligation par la dite Compagnie Défenderesse, contenue dans le dit acte d'Union ou d'arrangement, passé à Londres, de payer la dite somme de soixante quinze mille louis sterling, pour arrérages d'intérêt dûs aux actionnaires de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique n'est pas & ne peut être considéré comme prix ou retour à être payé par la dite Compagnie Défenderesse à la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique pour cause ou considération de l'entrée de cette dernière Compagnie dans la dite union; que d'abord, les dits arrérages d'intérêts étaient une dette de la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique qu'elle devait à ses actionnaires en vertu d'un des dits actes amendant l'acte l'incorporant, c'est-à-dire, en vertu de l'acte de la dixième & onzième Victoria, chapitre 65, dans lequel il est statué que la dite Compagnie qui vient d'être mentionnée pourra payer à ses actionnaires l'intérêt sur leurs parts ou actions, annuellement ou semi-annuellement et que ce payement d'intérêt sera continué jusqu'à l'entier parachevement du dit chemin de fer autorisé d'être construit par icelle dernière Compagnie que lors du dit acte d'Union, passé à Londres, le dit Chemin de fer du St Laurent & de l'Atlantique n'était pas construit en entier et qu'alors la dite Compagnie du Chemin de fer du St. Laurent & de l'Atlantique devait à ses actionnaires la somme plus haut mentionnée pour arrérages d'intérêt et lesquels intérêts elle s'était obligée et avait promis leur payer; qu'ainsi, les dits arrérages d'intérêts stipulés à être payés par la Compagnie Défenderesse Aux dits actionnaires de la Compagnie du che-

min de fer du St. Laurent & de l'Atlantique étaient une dette de cette dernière Compagnie, qui en vertu de la dite Union et du dit acte de la seizième Victoria, chapitre 39, était payable & était devenu payable comme toutes les autres dettes dûes par la dite Compagnie du St. Laurent et de l'Atlantique, sans qu'il fut nécessaire de stipuler, spécialement le paiement d'icelle dans le dit acte d'Union ou d'arrangement ; qu'ainsi qu'il vient d être expliqué la dite Compagnie du Chemin de fer du St. Laurent et de l'Atlantique n'a pas cessé par la dite Union de devoir ce qu'elle devait avant icelle, et que partant elle devait après l'Union comme elle les devait avant les dits arrérages d'intérêt, lesquels après l'Union ont pu devenir une dette des autres dites Compagnies comprises dans la dite Union, mais necessoirement seulement avec la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique ; que la stipulation du paiement des dits arrérages d'intérêts dans le dit Acte d'Union ou d'arrangement a été faite principalement dans le but de faire effectuer, sans délai, par la Compagnie Défenderesse le paiement des dits arrérages d'intérêts, lesquels ont été considérés lors de la dite Union comme une dette de la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique qui devait être payée et liquidée avant aucune autre ; qu'en outre, dans le dit acte d'Union il y a stipulation expresse pour la continuation du paiement des intérêts tant aux actionnaires de la dite Compagnie du Chemin de fer du St. Laurent et de l'Atlantique qu'aux actionnaires des autres compagnies comprises dans la dite Union ; et il convenait que les arrérages d'intérêts échus à la date du dit acte d'Union et nommément ceux dûs par la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique à ses actionnaires fussent immédiatement payés & liquidés.

Qu'il résulte de ce que dessus que le Demandeur n'a aucun droit de reclamer des lods et ventes de la Compagnie Défenderesse en conséquence et par suite du dit acte d'Union ou d'arrangement passé à Londres, puisqu'il ne comporte ni vente ni acte équipollent à vente et spécialement quant au dit chemin de fer du St. Laurent et de l'Atlantique et qu'en supposant même que le dit acte d'Union ou d'arrangement comporterait vente ou acte équipollent à vente en ce qui regarde le dit chemin de fer du St. Laurent et de l'Atlantique, le Demandeur, même dans ce cas, n'aurait aucun droit de reclamer des lots et ventes en conséquence de la passation d'icelui, vu qu'il n'a été passé et n'a eu lieu qu'en obéissance et pour donner suite aux divers actes de la législature ci-dessus mentionnés qui ont autorisé et imposé, dans un but d'intérêt public, comme sus-dit la formation de la dite Union qui en est résultée et qui devait comprendre la dite Compagnie du Chemin de fer du St. Laurent et de l'Atlantique & son dit chemin.

Qu'il suit de même de ce que dessus que le Demandeur n'a aucun droit de reclamer l'indemnité dont il parle, par suite de la passation du dit acte d'Union ou d'arrangement, puisque la Compagnie Défenderesse n'est point et n'a jamais été une *main-morte*, et ne détient et n'a jamais détenu, à titre de propriétaire en *main-morte*, le dit chemin de fer du St. Laurent & de l'Atlantique ni aucun des divers chemins de fer Compris dans la dite Union et qui forment le Grand Trone de Chemin de fer du Canada, et puis qu'aussi la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique n'a jamais été une *main-morte* et n'a jamais détenu, à titre de propriétaire en *main-morte* le dit Chemin de fer du St. Laurent et de l'Atlantique ni rien de ce qui en dépend.

Qu'en outre, il suit de ce que dessus, qu'en supposant que la Compagnie Défenderesse soit *main-morte* et détienne à titre de propriétaire en *main-morte* le dit chemin de fer du St. Laurent & de l'Atlantique et tous les autres divers chemins formant le dit Grand Trone de chemin de fer du Canada et en supposant aussi que la dite Compagnie du chemin de fer du St. Laurent & de l'Atlantique ait été une *main-morte* et ait détenu en *main-morte* le dit Chemin de fer du St. Laurent et de l'Atlantique et tout ce qui en dépend, le Demandeur n'aurait pas même droit dans telle hypothèse de reclamer aucune indemnité par suite de la passation du dit acte d'Union ou d'arrangement et de la formation de la dite Union entre les sus-dites Compagnies de chemin de fer, parce qu'ainsi qu'il a été ci-dessus allégué, la Compagnie du Chemin de fer du St. Laurent et de l'Atlantique n'a pas été dissoute par la dite Union, qu'elle co-existe comme corporation dans la dite Union sous le nom de corporation de la Compagnie Défenderesse qui est la même corporation qu'elle-même ; que nonobstant le dit acte d'Union ou d'arrangement et la dite Union elle a toujours Conservé ses droits de propriété dans le dit chemin de fer du St. Laurent et de l'Atlantique et dans tout ce qui en dépend et que par la dite Union il y a plutôt changement de nom de corporation que mutation de propriétaire en ce qui concerne le dit Chemin de fer du St. Laurent et de l'Atlantique.

Qu'il suit encore de ce que dessus allégué qu'en supposant la dite Compagnie Défenderesse et la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique avoir été et être des *mains-mortes*, et en supposant que le dit acte d'Union ou d'arrangement et la dite Union qui a été formée, aient opéré mutation de propriétaire quant au dit Chemin de fer du St. Laurent et de l'Atlantique, le Demandeur dans telles hypothèses n'aurait pas droit de reclamer une indemnité en conséquence du dit acte d'Union ou d'arrangement et de la formation de la dite Union, parce qu'ainsi, qu'il a été ci-dessus allégué, le dit acte d'union ou d'arrangement n'a été passé & n'a eu lieu qu'en obéissance et pour donner suite aux divers actes de la Législature ci-dessus mentionnés qui ont autorisé et imposé dans un but d'intérêt public, comme sus-dit, la formation de la dite Union qui en est résultée et qui devait comprendre la Compagnie du chemin de fer du St. Laurent & de l'Atlantique & son dit Chemin.

Dit encore, la dite Compagnie Défenderesse que le Demandeur par la construction du dit Chemin de fer du St. Laurent & de l'Atlantique à travers sa dite Seigneurie et par la formation de la dite Union qui en a assuré le parachevement et le complément sur une plus grande échelle, la propriété seigneuriale du Demandeur a centuplé de valeur ainsi bien que celle de ses censitaires, que ses revenus seigneuriaux ont augmenté, qu'il est beaucoup plus riche qu'il n'était avant et qu'il est bien mal fondé à reclamer une indemnité à raison d'actes qui, loin de diminuer sa fortune l'ont de beaucoup augmenté.

Dit encore la dite Compagnie Défenderesse, qu'en supposant que le dit chemin de fer du St. Laurent et de l'Atlantique ait été détenu comme propriété en *main-morte* par la dite Compagnie du

chemin de fer du St. Laurent et de l'Atlantique et qu'il soit de même détenu comme propriété en *main-morte* par la dite Compagnie Défenderesse, en supposant aussi que les dits actes incorporant et concernant la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique et la dite Compagnie Défenderesse aient fait des *mains-mortes* de ces deux Compagnies et en supposant encore qu'il y ait eu par le dit acte d'Union ou d'arrangement et par la dite Union qui a été formée, mutation de propriétaire quant au dit chemin de fer du St. Laurent et de l'Atlantique et acquisition d'icelui par la dite Compagnie Défenderesse de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique, le Demandeur n'aurait pas droit de reclamer soit lods & ventes, soit une indemnité en conséquence de la passation du dit acte d'union ou d'arrangement et de la dite Union qui a été formée, en autant que le dit acte d'arrangement et la dite Union affectent et concernent le dit Chemin de fer du St. Laurent et de l'Atlantique; que dans l'hypothèse ou les hypothèses ci-dessus, la dite Compagnie du Chemin de fer du St. Laurent et de l'Atlantique, considérée comme *main-morte* serait devenue débitrice de droits d'indemnités envers le Demandeur ou ses auteurs sur & à raison de toutes les expropriations et acquisitions faites par la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique des propriétaires ou censitaires du Demandeur ou de ses auteurs, à travers les terres ou propriétés desquels passe le dit chemin de fer du St. Laurent et de l'Atlantique dans la dite Seigneurie du Demandeur; que partant la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique serait devenue à détenir comme propriétaire en *main-morte* l'étendue ou la partie de terrein située dans la dite Seigneurie du Demandeur approprié et destiné à la construction et l'usage du dit chemin de fer du St. Laurent et de l'Atlantique et formée de tous les terreins expropriés et acquis soit des censitaires du Demandeur ou de ses auteurs, soit du Demandeur lui-même ou de ses auteurs; que, si, par le dit acte d'Union ou d'arrangement et par la dite Union, qui a été formée, il y a eu mutation de propriétaires quant au dit chemin de fer du St. Laurent et de l'Atlantique et acquisition d'icelui par la dite Compagnie Défenderesse de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique telle mutation et acquisition se trouveraient avoir eu lieu entre deux parties contractantes qui seraient *mains-mortes* et ce par rapport à un chemin de fer pour la construction de partie duquel la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique serait devenue [illegible] débitrice de droits d'indemnité envers le Demandeur ou ses auteurs, sur et à raison des expropriations et acquisitions faites dans la dite Seigneurie du Demandeur; qu'en conséquence nl droits d'indemnité ni lods et ventes ne pouvaient être réclamés par le Demandeur sur la mutation et l'acquisition peuvent avoir eu lieu par le dit acte d'arrangement ou la dite union entre la dite Compagnie défenderesse et la dite Compagnie du Chemin de fer du St. Laurent & de l'Atlantique qui [illegible] qui a rapport au dit Chemin de fer du St. Laurent et de l'Atlantique et notamment à la partie d'icelui, qui passe à travers la dite Seigneurie du Demandeur, attendu que par & en vertu de " *l'Acte Seigneurial de* 1854 " et des actes qui l'amendent il est statué expressément que tous fonds sur lesquels des droits d'indemnité ont déjà été payés à un Seigneur ou sur lesquels des droits d'indemnité sont devenus dûs et payables à un Seigneur et lesquels fonds n'ont pas été subséquemment vendus ou concédés à des personnes possédant autrement qu'en *main-morte* sont déclarés être et avoir été du jour de la date de tel payment de droits d'indemnité ou de tout acte ou contrat obligeant à paiement de tels droits, déchargés de toutes redevances, et charges Seigneuriales et tenus en *franc aleu roturier*, mais sujets seulement au paiement d'une rente constituée égale aux cens et rentes légalement dûs sur iceux, et attendu de plus qu'en vertu de cette disposition exprimée dans " l'Acte Seigneurial de 1854" et dans ceux qui l'amendent, la Défenderesse en la considérant comme *main-morte* et comme ayant [illegible]s d'une main-morte le dit chemin de fer du St. Laurent & de l'Atlantique, posséderait et détiendrait à titre de propriétaire en *main-morte* icelui chemin de fer et ses dépendances et nommément la partie d'icelui qui passe à travers la dite Seigneurie du Demandeur déchargés de toutes redevances et charges seigneuriales & tenues en *franc aleu roturier* à compter retroactivement depuis le paiement fait ou qu'a pu faire la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique des droits d'indemnités qui peuvent être devenus dûs au Demandeur ou à ses auteurs à raison des dites expropriations et acquisitions faites soit des censitaires du Demandeur ou de ses auteurs, soit du Demandeur lui-même ou de ses auteurs pour la construction de la dite partie du dit Chemin de fer qui passe à travers la dite Seigneurie du Demandeur ou à compter de la date où tels droits d'indemnité sont devenus dûs et payables au Demandeur ou à ses dits auteurs et de la date où ils sont devenus par lui ou par eux exigibles de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique.

Dit de plus la dite Compagnie Défenderesse que longtemps avant " l'Acte Seigneurial de 1854 " la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique avait payé & liquidé au Demandeur ou à ses auteurs, soit par paiement réel, soit par transaction équivalent à paiement, décharge ou remise, tous droits d'indemnité & lods & ventes qui ont pu être réclamés d'elle à raison des dites expropriations et acquisitions qui ont été faites dans la dite Seigneurie du Demandeur pour cette partie du dit chemin de fer du St. Laurent et de l'Atlantique qui la traverse; mais que le paiement et la liquidation des droits d'indemnité et *lods & ventes* qui viennent d'être mentionnés ont été faits par la dite Compagnie du chemin à lisses du St. Laurent & de l'Atlantique, sans qu'elle fut et se crut obligée à faire tels paiement et liquidation; et en conséquence la Défenderesse se réserve tels recours que de droit et s'il y a eu lieu, pour recouvrer et répéter les dits droits d'indemnité et lods et ventes qu'a pu payer par erreur et sans les devoir la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique.

Qu'en vertu de " l'Acte Seigneurial de 1854," la Défenderesse est donc devenue à toutes fins que de droit déchargée et déliée de payer au Demandeur soit des lods & ventes soit des droits d'indemnité dans le cas même où le dit acte d'union ou d'arrangement & la dite Union formée comme aus-dit comporteraient mutation, acquisition et vente ainsi que l'allègue le Demandeur quant à ce qui concerne le dit chemin de fer du St. Laurent et de l'Atlantique & notamment la partie d'icelui traversant la dite Seigneurie du Demandeur.

Dit en outre la Compagnie Défenderesse, qu'en supposant que par le dit Acte d'Union ou d'arrangement ou par la dite Union qui a été formée, il se trouverait y avoir eu mutation, acquisition ou achat entre la dite Compagnie Défenderesse & la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique, quant à ce qui concerne le dit chemin de fer construit par cette dernière et que telle mutation, acquisition ou vente aurait donné ouverture en faveur du Demandeur au droit de reclamer, soit une indemnité, soit des lods et ventes, soit indemnité et lods & ventes ensemble, quant à ce qui concernait la dite partie du dit chemin de fer du St. Laurent et de l'Atlantique située dans la dite Seigneurie du Demandeur, ce dernier n'aurait droit de reclamer & recouvrer telle indemnité ou tels lods & ventes (si toutefois il avait tel droit) que sur la valeur réelle et intrinsèque du terrain occupé par le parcours de cette partie du dit chemin de fer du St. Laurent et de l'Atlantique, située dans la dite Seigneurie du Demandeur, et laquelle valeur réelle et intrinsèque du dit terrain aurait à être estimée d'après la valeur moyenne des terres ou des terrains, dans la localité, et les environs d'icelle, ainsi que cela se pratique pour des fins municipales au regard de l'évaluation des terrains occupés par des chemins de fer, que la valeur réelle et intrinsèque du terrain occupé par la dite partie du dit chemin de fer, située dans la dite Seigneurie est et a toujours été au-dessous de la somme de cinquante louis, courant et incapables de donner droit à une indemnité et à des lods & ventes à un montant ou une somme qui soit de la Compétence de cette Cour.

A l'appui de ce que dessus la compagnie Défenderesse ajoute que si par le dit acte d'union ou d'arrangement ou par la dite union qui a été formée, il y a eu mutation, acquisition ou achat entr'elle et la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique quant à ce qui concerne le dit chemin de fer construit par cette dernière & les biens mobiliers & immobiliers & les privilèges et droit de corporation appartenant à cette dite dernière Compagnie, telle mutation acquisition ou achat ont dû porter & porteraient nécessairement tant sur la propriété immobilière que sur la propriété mobilière de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique et aussi sur les droits & privilèges de corporation de cette dernière Compagnie & sur la valeur commerciale de l'ensemble de son Entreprise & de tous ses travaux ; que par la mutation, l'acquisition ou l'achat qui ont pu avoir été la conséquence et la suite du dit acte d'Union ou d'arrangement et de la dite Union, si toutefois telle conséquence et telle suite ont eu lieu, la dite Compagnie Défenderesse se trouverait avoir acquis de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique : 1° tout le mobilier de cette compagnie valant alors au moins la somme de cinq cent mille louis, courant, et consistant principalement en chars de diverses espèces, trains, locomotives, engins, outils, effets & marchandises et tous effets & articles nécessaires et accessoires à l'équipement & au fonctionnement d'un chemin de fer, 2°. tous les rails & lisses en fer, avec le bois ou les pièces de bois sur lesquels ils étaient placés, le tout valant alors au moins les sommes de trois cent mille livres, courant ; 3°. les droits & privilèges de corporation appartenant à la dite Compagnie duchemin de fer du St. Laurent & de l'Atlantique, valant alors au moins la somme de quatre cent mille livres, courant & consistant entr'autres dans le droit & privilège de transporter du fret et des passagers, de prélever, exiger & recevoir des péages & revenus pour tel transport & dans les droits nécessaires & accessoires à l'existence d'une Compagnie de chemin de fer comme corporation et sans lesquels droits et privilèges, de prélever, exiger et recevoir des péages & revenus et sans ceux nécessaires & accessoires à l'existence d'une Compagnie de chemin de fer comme corporation la propriété et la possession d'un chemin de fer seraient sans valeur & seraient une source de perte & de ruine ; 4°. toute la valeur commerciale & l'ensemble de l'entreprise et des travaux de la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique, n'étant pas moins alors de quatre cent mille livres, courant et consistant principalement dans la facilité offerte pour le transport du fret & des passagers, dans l'avantage du parcours et de la position du dit chemin et des extrémités et points reliés par icelui ; toutes lesquelles dites sommes ci-dessus mentionnés formeraient réunies ensemble celle de un million, six cent mille livres, courant, qui nécessairement formerait partie de la mutation, acquisition ou achat qui ont pu intervenir entre la dite Compagnie Défenderesse et la Compagnie du chemin de fer du St. Laurent et de l'Atlantique, si toutefois telle mutation, acquisition ou achat sont intervenus, sur laquelle & à raison de laquelle aucuns des droits, soit d'indemnité, soit de lods & ventes ne seraient payables au Demandeur et par lui exigibles et laquelle en outre absorberait & dépasserait de beaucoup les montants réunis des actions souscrites par les actionnaires de la Compagnie du dit chemin de fer du St. Laurent & de l'Atlantique, des dits arrérages d'intérêts, dont parle le Demandeur et des dettes que pouvait devoir cette Compagnie, lors de la dite Union, qu'en conséquence les dites actions dans cette dernière Compagnie, les dits arrérages d'intérêts et dettes dûs par icelle, s'ils doivent être considérés comme prix, retour, charge ou considération sur la mutation, l'acquisition ou l'achat qui ont pu intervenir en vertu du dit acte d'union ou d'arrangement ou de la dite Union qui a été formée, ils ne doivent l'être qu'en acquis et en déduction de la dite somme de un million six cent mille livres, courant, et que partant le Demandeur n'a aucun droit de reclamer soit une indemnité, soit des lods & ventes, au regard & à raison d'iceux, s'ils peuvent être considérés, ainsi que sus-dit, comme prix, retour, charge ou considération.

Qu'enfin si le Demandeur a droit de reclamer soit une indemnité soit des lods & ventes en conséquence du dit acte d'arrangement et de la dite Union, ce ne pourrait être que sur la valeur réelle et intrinsèque du terrain occupé par la partie du dit chemin de fer, située dans la dite Seigneurie du Demandeur à être estimée d'après la valeur moyenne du terrain dans la localité et sans avoir égard aux travaux de construction du dit Chemin de fer sur icelui, et laquelle dite valeur du dit terrain est et a toujours été audessous de la dite somme de cinquante louis, dit cours, & incapable de donner ouverture à des droits d'indemnité et de lods & ventes à un montant ou une somme de la compétence de cette Cour ; la Défenderesse n'entendant point admettre par ce plaidoyer que le Demandeur aurait aucun droit de reclamer soit une indemnité soit des lods & ventes sur & à raison de la valeur intrinsèque & réelle du dit terrain occupé par le dit Chemin de fer dans la dite Seigneurie du Demandeur—

Qu'en dernier lieu, pour les raisons ci-dessus & pour plusieurs autres à déduire plus tard le

Demandeur n'a aucun droit de reclamer et recouvrer de la Compagnie Défenderesse l'indemnite et les lods et ventes à raison desquels il poursuit.

Pourquoi la dite Compagnie Défenderesse conclut au renvoi de la dite action du Demandeur, avec dépens, et conclut subsidiairement cette dernière à ce que dans le cas où il serait adjugé que le Demandeur a droit de reclamer soit une indemnité, soit des lods & ventes, en conséquence du dit acte d'Union ou d'arrangement ou de la dite Union que ce ne soit que sur & à raison de la valeur réelle et intrinsèque du dit terrein, dans la dite seigneurie du Demandeur occupé par le dit chemin de fer à être estimée, comme sus-dit, d'après la valeur moyenne des terreins dans la localité et sans égard à la construction du dit chemin de fer sur icelui et conclut de plus la Défenderesse à ce que dans le cas où la valeur du dit terrein ainsi estimée donnerait ouverture en faveur du Demandeur à des droits, soit en indemnité, soit en lods & ventes à un montant au dessous de la compétence de cette Cour, l'action du dit Demandeur soit renvoyée avec dépens: la dite Compagnie Défenderesse déclarant toutefois qu'en prenant les conclusions subsidiaires qui précèdent elle n'entend pas admettre que le Demandeur a le droit de reclamer soit une indemnité, soit des lods & ventes sur & à raison de la valeur réelle et intrinsèque du dit terrein occupé par le dit chemin de fer dans la dite Seigneurie du Demandeur et se réservant de soutenir & maintenir devant cette Cour, en Appel & partout où besoin sera que le Demandeur n'a pas tel droit.

Montréal 10 Février 1857

CARTIER & BERTHELOT,
Avts. de la Def.

Et la dite Compagnie Défenderesse, sans préjudice aux Exceptions Péremptoires par elle plaidées ci-desus, dont elle se réserve tout le bénéfice et avantage pour Défense au fonds en fait à la dite action du Demandeur dit que tous les allégués en sa Déclaration sont faux et non fondés en fait.

Pourquoi elle conclut au renvoi de la dite action du Demandeur, avec dépens.

Montréal 10 Février 1857

CARTIER & BERTHLOT,
Avts. de la Def.

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(Endorsed)
Exceptions Péremptoires & Défense en Fait.—B Produites le 11 Février 1857
(*Paraphed*) M C & P

SCHEDULE Nº 7.

District de Montréal }

COUR SUPÉRIEURE

A. E. KIERZKOWSKI, ECR
Demandeur
vs
LA COMPAGNIE DU GRAND TRONC DU CHEMIN DE FER DU CANADA
Defenderesse

Le Demandeur pour réponses aux Exceptions Péremptoires de la Défenderesse dit que tous les allégués y contenus sont faux & mal fondés en droit comme en fait & que nommément il est faux que la dite Compagnie du chemin de fer du St. Laurent et de l'Atlantique ait transporté par le dit acte du douze Avril mil huit cent cinquante trois à la Défenderesse des meubles, effets et articles qui ne faisait pas partie du dit chemin de fer et que ces meubles, effets et articles, droits, avantages et privilèges énumérés dans les Exceptions de la Defenderesse fussent de la valeur à laquelle ils sont estimés par la Défenderesse dans les dites Exceptions de la Défenderesse.

Pourquoi le Demandeur conclut au renvoi des dites Exceptions Péremptoires de la Défenderesse avec dépens.

Montréal 12 Février 1857

CHERRIER DORION & DORION
Avts. du Demd

Et le dit Demandeur pour Réplique à la défense au fonds en fait de la Défenderesse dit que les allégués de sa déclaration sont vrais et bien fondés en fait.

C'est pourquoi il persiste dans les conclusions de sa déclaration avec dépens.

Montréal 12 Février 1857

CHERRIER DORION & DORION
Avts du Demd

(Reçu copie)
CARTIER & BERTHELOT
At de la Défd

(*Endorsed*)
Réponses & Réplique—Filées 24 Février 1857
(*Paraphed*) M C & P

SCHEDULE No. 10.

PROVINCE DU CANADA, *District de Montréal.* } **COUR SUPERIEURE POUR LE BAS CANADA.**

PRESENT: l'Hon. Mr. le Juge CHABOT

No. 2079

A. E. KIERZKOWSKI, *Demandeur*

vs.

LA COMPAGNIE DU GRAND TRONC DU CHEMIN DE FER DU CANADA *Défend*

L'AN mil huit cent cinquante-sept le troisième jour de Mars est comparu Rodolphe Laflamme, Ecuier avocat, de la cité de Montréal, district de Montréal âgé de plus de vingt & un

ans témoin produit par le Demandeur lequel après serment prêté dépose et dit—Je ne suis point intéressé dans l'évènement de ce procès : je ne suis ni parent, ni allié, ni au service, d'aucune des parties en cette cause, je connais les parties en cette cause.

Je connais la Seigneurie St. François le Neuf désignée en la déclaration en cette cause Comme suit : " the seigniory of St. François le Neuf, lying and being on the south side of River Richelieu " in the District of Montreal bounded in front by the said River Richelieu, in rear by the Seigniory of " St. Hyacinthe on one side by the seigniory of St. Denis and on the other side by the Seigniory of " St. Hilaire de Rouville.

Je sais que le Demandeur en cette cause était aux époques mentionnées en la déclaration en cette cause et nommément le douze avril mil huit cent cinquante trois et est encore actuellement en possession de la dite Seigneurie ci-dessus désignée en jouissance des droits & revenus d'icelle.

TRANSQUESTIONNÉ PAR LA DÉFENDERESSE

Autant que je connais d'après les actes & titres de sa propriété il est propriétaire en usufruit de cette Seigneurie.

Et le dit déposant ne dit rien de plus la présente déposition lui ayant été communiquée il déclare qu'elle contient la vérité, y persiste & a signé.

Prise & assermentée devant nous aux séances régulières de cette Cour au jour, mois et an en premier lieu mentionné } R LAFLAMME

MONK COFFIN & PAPINEAU *P C S*

(*Endorsed*)
Deposition de Rodolphe Laflamme Ecr—pour le Demandeur—Filée 3e Mars 1857
(*Paraphed*) M C & P

SCHEDULE No. 11.

PROVINCE DU CANADA, *District de Montréal.* } **COUR SUPERIEURE POUR LE BAS CANADA.**

PRESENT: l'Hon. Mr. le Juge CHABOT

No. 2079

A. E. KIERZKOWSKI *Demandeur.*

vs.

LA COMPAGNIE DU GRAND TRONC DU CHEMIN DE FER DU CANADA *Défenderesse.*

L'AN mil huit cent cinquante sept le deuxième jour de mars est comparu—Arthur Mondelet Ecuyer Avocat de la Cité de Montréal dans le district de Montréal âgé de vingt & un ans et

plus témoin produit par le Demandeur, lequel après serment prêté dépose et dit :—Je ne suis point intéressé dans l'évènement de ce procès : je ne suis ni parent, ni allié, ni au service, d'aucune des parties en cette cause, je connais les parties en cette cause.

Je connais la Seigneurie St. François le Neuf désignée en la déclaration en cette cause comme suit : " The Seigniory of St. François le Neuf, lying and being on the south side of River Richelieu " in the District of Montreal bounded in front by the said River Richelieu, in rear by the Seigniory " of St. Hyacinthe, on one side by the Seigniory of St. Denis and on the other side by the Seigniory " of St. Hilaire de Rouville."

Je sais que le Demandeur était aux époques mentionnées en la déclaration en cette cause et nommément le douze Avril mil huit Cent cinquante trois et est encore actuellement en possession de la dite Seigneurie ci-dessus désignée en jouissance des droits et revenus d'icelle.

TRANSQUESTIONNÉ PAR LA DÉFENDERESSE.

Je ne puis dire en quelle qualité le Demandeur possède la dite Seigneurie, mais je sais que c'est lui qui en jouit.

Et le dit déposant ne dit rien de plus, la présente déposition lui ayant été lue il déclare qu'elle contient la vérité, y persiste et a signé.

Prise & assermentée devant nous aux séances régulières de cette Cour les jour, mois & an susmentionnés en premier lieu } A MONDELET

MONK COFFIN & PAPINEAU *P S C*

(*Endorsed*)
Déposition d'Arthur Mondelet, Ec—pour le Demandeur—Filée ce 3e mars 1857
(*Paraphed*) M C & P

SCHEDULE No. 12.

PROVINCE OF CANADA, *District of Montreal.* } SUPERIOR COURT FOR LOWER CANADA.

PRESENT: The Hon Mr. Justice

No. 2079

A. E. KIERZKOWSKI *Plaintiff*

vs.

THE GRAND TRUNK RAILWAY COMPANY *Defendants*

ON THIS Third day of April in the year of our Lord one thousand eight hundred and fifty-seven.—

PERSONALLY CAME AND APPEARED,

WILLIAM MACBEAN, of the City of Montreal Share Clerk—aged Fifty years, a witness produced on the part of the Plaintiff who being duly sworn, deposeth and saith:—I am not related, allied or of kin to, the parties in this cause; I am not interested in the event of this suit

I know the parties in this Cause as described in the Plaintiffs Declaration. I am in the employ of the Defendants in this Cause as Share Clerk for this City—I know the The Plaintiffs Seigniory as described in the Declaration in this Cause.

QUESTION.—Do you know what is the extent of the part of the said Seigniory through which the Grand Trunk Rail Road and, heretofore the St. Lawrence and Atlantic Rail Road passes and which is in the possession of the said Grand Trunk Railroad Company?

ANSWER.—I believe the line extends over that Seigniory for about Forty Three Arpents french As appears by the Plan in my possession belonging to the Grand Trunk Company by Ninety Nine feet English measure in breadth.—

QUESTION.—Do you know the amount of the liabilities of the St. Lawrence & Atlantic Rail Road Company at the time of the amalgamation there of with the Grand Trunk Rail Road Company, to wit, on the Twelfth day of April one thousand Eight hundred and Fifty Three?

ANSWER.—The liability to The Shareholders was, Two Hundred andThirty Five Thousand One Hundred Pounds Currency.—Second, to the Corporation of the City of Montreal, One Hundred and Twenty Five Thousand pounds, Currency—Third, The Gentlemen of the Seminary of St. Sulpice of Montreal, Twenty Five thousand pounds, Currency—Fourth, To British America Land Company, Twenty Five thousand pounds, Currency. Fifth, For money raised in England on Bonds for Completion of Island Pond Section of the Road, One Hundred & Three thousand Six Hundred and Seventy pounds, Nine Shillings and Three pence Currency—Sixth. To Provincial Government Five Hundred and Sixty Eight thousand, Seven Hundred and Ninety One pounds Thirteen shillings and Four pence Currency. We also owed Sundry individuals on Bills payable Thirty Eight thousand Seven Hundred and Ninety One pounds, Thirteen & Nine pence Currency,—The Grand Trunk Railway Company of Canada, Two Hundred and Fifty Nine thousand Nine Hundred and Thirty Eight pounds, Nineteen Shillings and One penny forming a Grand total of liabilities amounting to One Million Three Hundred and Eighty One thousand, Two Hundred and Ninety Two pounds Fifteen Shillings and Five pence, for which the Company held and One Hundred and Forty Three Miles of Railroad; also fuel on hand, for Four thousand Five Hundred and Thirty Six pounds Seventeen shillings and Four pence and other Assetts, consisting of Bonds not sold and accounts due to them amounting to Eighty Four thousand Five Hundred and Sixty Seven pounds Nine shillings And one penny Currency.

I have been the Company's Office, that is both Companies about nearly Eight years.—The above information has been taken by me from the Books of the St. Lawrence and Atlantic Rail Road Co.—& Grand Trunk Railway Co. at the time of the amalmagation and forms the basis of the said amalmagtion of the said two Companies.

QUESTION.—Can you state the proportionate value of that portion of the said St Lawrence and Atlantic Rail Road Co.—which was situated in the said Plaintiffs Seigniory?

ANSWER.—I cannot state precisely; but should say that that it does not bear a proportionate value to the Cost of the whole line, according to the extent, and to know its exact value it would require a *Ventilation* of the whole line and of that portion particularly.

CROSS EXAMINED.

The price at which lands there were acquired was from ten to Fifteen dollars per Arpent And further the Deponent saith not and this his Deposition having been read to him he declares the same contains the truth persists therein & hath signed—

Sworn & acknowledged at the Enqnête Sittings the day month & year first before written } WILL MACBEAN

MONK COFFIN & PAPINEAU *P C S*

(*Endorsed*)

Deposition of Mr.Wm. Macbean Filed 3d April 1857.

(*Paraphed*) M C & P

SCHEDULE No. 13

PROVINCE DU CANADA, *District de Montréal.*

COUR SUPERIEURE POUR LE BAS CANADA.

PRESENT: L'Hon. Mr. le Juge DAY

No. 2079

A. E. KIERZKOWSKI *Demandeur*

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA *Defenderesse*

L'AN mil huit cent cinquante Sept le troisième jour d'Avril EST COMPARU—L. P. Renault-Blanchard, Arpenteur et ingénieur civil, de la ville de St. Hyacinthe, District de Montréal, âgé de Quarante six ans témoin produit par le Demandeur lequel après serment prêté dépose et dit:—Je ne suis point intéressé dans l'évènement de ce procès: je ne suis ni parent, ni allié, ni au service, d'aucune des parties en cette cause, je connais les parties en cette Cause. J'ai été en différents temps employé par la ci devant Compagnie du Chemin de fer du St. Laurent et de l'Atlantique et par la Compagnie du Grand Trone de Chemin de fer du Canada, Défenderesse en cette cause, pour faire des mesurages et plans pour les dites Compagnies. Je sais que le Chemin de fer construit par la ci devant Compagnie du St. Laurent et de l'Atlantique et qui depuis l'amalgamation de cette Compagnie avec celle du Grand Trone appartient maintenant à la dite Compagnie du Grand Trone passe à travers la Seigneurie du Demandeur décrite en la Déclaration du Demandeur en cette Cause sur une étendue de quarante deux Arpents, Six perches et treize pieds de long, mesure française, sur quatre vingt treize pieds français ou quatre-vingt dix neuf pieds Anglais de largeur. D'après les informations que j'ai puisées sur les plans et notes des Ingénieurs, la longueur totale du dit Chemin de fer, jusqu'à la ligne provinciale était de Cent trente et un milles et demi; mais je ne puis dire la longueur de la partie du Chemin qui se trouvait entre la ligne Provinciale & Island Pond, Aux Etats-Unis, laquelle partie appartient à la Défenderesse en cette Cause depuis son Amalgamation Avec la dite Compagnie du St. Laurent et de l'Atlantique.

Je ne puis pas dire quelle était lors de la dite Amalgamation la valeur de la totalité du dit Chemin de fer du St. Laurent et de l'Atlantique ni la valeur proportionnelle de cette partie du dit Chemin de fer qui se trouve sur la seigneurie du Demandeur. Il faudrait une Ventilation faite par des personnes Compétentes pour pouvoir distinguer la proportion de valeur qui appartiendrait à la dite partie du Chemin de fer passant sur la Seigneurie du Demandeur en Cette Cause.

TRANSQUESTIONNÉ PAR LA DÉFENDERESSE.

Dans la partie où le dit Chemin de fer traverse la Seigneurie du Demandeur, les terrains sur lesquels passe le dit Chemin de fer ont été payés par la dite Compagnie du St. Laurent et l'Atlantique entre douze ou quinze piastres l'arpent.

Et le dit Déposant ne dit rien de plus. Lecture de sa présente Déposition lui ayant été faite, il déclare qu'elle Contient la vérité, y persiste et a signé.

Prise et assermentée aux Séances d'Enquête, les jour, mois et an susdits.

L. P. RENAULT—BLANCHARD

MONK COFFIN & PAPINEAU *P C S*

Taxd $13 . 50.

(*Endorsed*)

Dép: de R. Blanchard pour le Demandeur.—Filée 3 Avril 1857.

SCHEDULE No. 14.

PROVINCE OF CANADA, *District of Montreal.*

SUPERIOR COURT FOR LOWER CANADA.

PRESENT: The Hon. Mr. Justice

No. 2079

A. E. KIERZKOWSKI *Plaintiff*

vs.

THE GRAND TKUNK RAILWAY COMPANY *Defendant*

ON THIS Eighth day of April in the year of our Lord on thousand eight hundred and fifty-seven,

PERSONALLY CAME AND APPEARED

WILLIAM HENRY ALLEN DAVIES of the City of Montreal Chief Accountant To the Grand Trunk Rail Way Co.–aged Forty Four years, a witness produced on the part of the Plaintiff who being duly sworn deposeth and saith:—I am not related, allied or of kin to, the parties in this cause; I am not interested in the event of this suit I know the parties in this cause as described in the Plaintiffs Declaration I am in the employ of the Defendants in this cause as Chief Accountant.

QUESTION.—Do you know the Amount of the liabilities of the Saint Lawrence and Atlantic Rail Road Company at the time of the Amalgamation thereof which the Grand Trunk Rail Road Company, to Wit, on the Twelfth day of April One thousand Eight hundred and Fifty Three?

ANSWER.—The amalgamation took place took place on the Eleventh day of July One thousand Eight hundred and Fifty Three, On the Fifteenth day of July of the same Year, when the Books of the St. Lawrence and Atlantic Rail Road Company were handed over to the Grand Trunk Railway Company, the liabilities of the former Company were as follows To the Shareholders of that Company, Two Hundred and Thirty Five thousand One Hundred pounds Currency, for Shares taken by them in the Stock of of that Company paid up in full;--To the Corporation of the City of Montreal One Hundred

Twenty Five thousand pounds, for their Bonds advanced to the Company.--To the Gentlemen of the Seminary of Montreal, Twenty Five thousand pounds, being amount of Loan to the Company.—The British America Land Company Twenty Five Thousand pounds; being also a Loan to the Company.—To Messrs. Barnard Hoare & Company as Trustees for the Bond holders in England One Hundred and Nine Thousand, & Five Hundred pounds, being amount of Bonds issued by the Company for the Completion of the Island Pond Section of the road.—To the Provincial Government of Canada, Five Hundred & Sixty Eight thousand Seven Hundred & Ninety One pounds, Thirteen Shillings and four pence, being Amount of Bonds issued in favor of the St. Lawrence & Atlantic Rail road Company They also owe to the Grand Trunk Railway Company for money advanced to pay off their liabilities &c &c. Two Hundred and Fifty Nine thousand Nine hundred and Thirty Eight pounds Nineteen shillings & One penny—They also owed Sundry individuals in Bills payable, Thirty Eight thousand Seven Hundred and Ninety One pounds Thirteen shillings and Nine pence making altogether the sum of One Million Three Hundred and Eighty One thousand Two Hundred and Ninety Two pounds Fifteen Shillings and Five pence, for which the Company owned & possessed One Hundred and Forty Three Miles of Rail road; Costing One Million Two Hundred Thousand and Seventy Five pounds and four pence rolling Stock, consisting of locomotive Engines Cars &c.—Costing Ninety Two thousand One Hundred and Thirteen pounds Eight Shillings and Eight pence; Fuel on hand valued at Four Thousand Five Hundred and Thirty six pounds Seventeen Shillings & four pence.—Bonds of the Provincial Government of Canada on hand, not issued Eighty Two thousand One Hundred and Twenty Five pounds.--Bills receivable on hand, Two thousand Four Hundred and Forty Two pounds Nine Shillings and one penny.—

I have been the chief accountant of the Grand Trunk Railway Company ever since its amalgamation with the St. Lawrence and Atlantic Rail Road Company—The above information has been taken from the Books of the Grand Trunk Railway Company by me.—

CROSS EXAMINED.

I am not acquainted with the price at which lands were acquired by the Rail Road in passing through the Seigniory of the plaintiff in this cause, and further the Deponent saith not and having read this his Deposition he declares the same contains the truth persists therein & hath signed.

Sworn & acknowledged at the Enquête sittings the day month & year first before written. } W. H. A. DAVIES

MONK, COFFIN & PAPINEAU *P S C*

(*Endorsed*)

Deposition of William H. A. Davies Esq Filed 8th April 1857.

(*Paraphed*) M C & P

SCHEDULE No. 16.

STATEMENT showing the value of the Equipment of the St. Lawrence & Atlantic. RR. Company on the 15th. July 1853.

				LOCOMOTIVES.						
Cost of an American Engine				£2191 . 10 . 0						
Duty at 12½ %				273 . 18 . 9						
Freight & wharfage.				70 . 10 . 0						
				£2535 . 18 . 9						
12	Engines as above in working order, at 2535 . 18 . 9						3.0431	5	0	
1	Montreal Engine purchased of Kinmond						2400	0	0	
1	American do under repair						2783	0	0	
2	Engines almost complete advances to Kinmond Brothers full value.						4800	0	0	
	Cost of repairs to above Engines, Flange Tyres &c &c						5694	13	1	
2	Snow Ploughs						317	1	5	
										46.425 19 6
				PASSENGER. CARS						
7	1st. class. Passenger Carriages				£475 .		3325	0	0	
1	1st. & 2nd. do do				"350 .		350	0	0	
9	2nd. do do				"312 . 10s		2812	10	0	
3	Express Post Office Cars.				282 . 10s		847	10	0	
6	Baggage Cars.				282 . 10s		1695	0	0	
							9030	0	0	
				PAID FOR REPAIRS-			611	0	0	
										9641 0 0
	Advanced McLean & Wright on a/c of the following Cars.									
2	1st. Class passenger Cars (wheels furnished by the Coy				£427 .					
5	2nd. Class				"264 . 10s					
3	Express & Post Office Cars				"252 . 00					4105 0 0
5	Baggage Cars				"234 . 10s					
								£		13.746 0 0

				MERCHANDIZE CARS							
33	Freight	Car	serviceable	£157 . 10s.	....	....	5197 . 10s				
11	do	do	bad order		....	....	1732 . 10s	6930	0	0	
100	Platform	do	serviceable	£12 . 10s	....	....	12750 . 0 . 0				
23	do	do	bad order		....	....	2932 . 10 . 0	15682	10	0	
								22612	10	0	
				PAID FOR REPAIRS				1222	9	7	
											23.834 19 7
				Advanced McLean & Wright on a/c of the following Cars.							
10	Freight	Cars.	(Wheels	furnished by the Company			£109 . 10 . 0				
10	Platform	Cars	not mounted		....	....	79 . 10 . 0				
21	Freight	do		....	....	....	109 . 10 . 0				
60	Platform	do		....	....	....	79 . 10 . 0	8423	11	0	8423 11 0
										£	32.258 10 7
				ABSTRACT							
Locomotives	....	....	....	....	....	....				£	46.425 19 6
Passenger Cars.	....	....	....	....	....	....					13.746 0 0
Merchandize cars.	....	....	....	....	....	....					32.258 10 7
										£	92.430 10 1

Correct Copy of Inventory from the Books of the Grand Trunk Railway Company of Canada.

W H. A DAVIES
Chief Acct
G T R W C

(*Endorsed*)

No 2079. A. E. Kierskowski Pltff vs The Grand Trunk Railway Company of Canada, Defdts—Exhibit of the Defendants No 1. Fyled at Enquête, this 1st September 1857.

(*Paraphed*) M C & P

SCHEDULE No 17.

No. 8.

PARDEVANT LES NOTAIRES PUBLICS pour cette partie de la province du Canada qui constituait ci-devant la province du Bas-Canada, soussignés, résidants dans le district de Montréal :

SONT COMPARUS William Maginn Steers, Ecuier, résident en la Cité de Montréal, agissant en ces présentes pour et au nom de la Compagnie du chemin à lisses du St. Laurent et de l'Atlantique et duement autorisés à l'effet des présentes par procuration en date du trente et un de Mars Mil huit cent quarante huit, passé devant Mtre. William Crawford et son Confrère, Notaires à Montréal, d'une part ;

Et Alexandre Edouard Kierzkowski, agissant tant en son nom qu'au nom de Dame Louise Amelie Debartzch son Epouse, par lui autorisée a l'effet des présentes, résidens en la Paroisse de Saint Marc, susdit District d'autre part.

LESQUELS ont arrêté ce qui suit : après avoir été déclaré par le dit William Maginn Steers au nom qu'il agit, que la Compagnie du chemin à lisses du St. Laurent et de l'Atlantique a acquis depuis l'octroi de sa charte à ce jour, de diverses personnes soit à titre gratuit, soit à titre onéreux trente deux arpents et un quart, plus ou moins de terre en superficie, dans l'étendue de la censive des dits seigneurs pour la construction et l'usage du dit chemin, et suivant que la situation des terrains est indiquée au plan annexé aux présentes, et signé des parties.

Attendu que par le fait de ces acquisitions, dont un état a été exhibé aux dits seigneurs qui l'a accepté pour valoir comme suffisante exhibition des contrats d'acquisition, certains droits sont devenus dus envers et aux seigneurs comparants il a été arrêté et convenu entre les parties que la somme de Cent dix livres treize chelins cours actuel de la province, serait payée aux seigneurs pour lui tenir lieu de l'indemnité due pour " droits d'indemnité " et le dédommager des autres droits.

Laquelle somme a été payée à l'instant par le dit William Maginn Steers au dit sieur Alexandre Edouard Kierzkowski lequel en donne quittance et décharge à la dite compagnie, moyennant le paiement de la dite somme de cent dix livres treize chelins cours actuel, les dits seigneurs a déclaré les terrains actuellement possédés par la dite Compagnie, dans l'étendue de leur dite censive, quittes et déchargés à toujours envers eux leurs hoirs et ayants cause à l'avenir, de toute demande et réclamation pour " droits d'indemnité," de lods et ventes accrus à raison de l'acquisition des terrains en question, et s'en reconnait payé par la dite Compagnie, et les dits Seigneurs s'est sont obligés de demander et exiger le payement des cens et rentes et autres charges annuelles, dans leur totalité, à ceux des propriétaires des terres à travers lesquelles le dit chemin passe, qui par leurs contrats de vente ou donation à la dite Compagnie, ont entrepris de les payer en totalité.

Telles sont les conventions des parties, qui pour l'exécution d'icelles font élection de domicile, le dit William M. Steers dans le bureau de la dite Compagnie, à Montréal, et les dits Seigneurs en leurs domicile dans la dite Paroisse Saint Marc.

FAIT ET PASSÉ en la dite Paroisse Saint Marc en la demeure du dit Alexandre Edouard Kierzkowski l'an mil huit cent quarante neuf le dixième jour de Octobre après midi, sous le numéro Huit des minutes de Mtre. Louis Duchesnay l'un des notaires soussignés, et ont les parties signé avec nous notaires, après lecture faite.

(Signé) "A. KIERZKOWSKI"—"LOUISE KIERZKOWSKI"—W. M. STEERS Land Comr."

"S. A. DAVIGNON N. P."—"LS DUCHESNAY N. P."

Vraie copie de la minute demeurée en l'Etude du soussigné.

LS. DUCHESNAY.
N. P.

(*Endorsed*)

No. 7—Le 10. Octobre 1849.—Quittance par Alexandre E Kierzkowski Ecr *et uxor* à la Compagnie du Chemin à Lisses du St. Laurent et de l'Atlantique.

No. 2079.—A. E. Kierzkowski—Pltff vs The Grand Trunk Railway Company of Canada—Defdts—Exhibit of the Defendants No. 2. Fyled at Enquête this 1st September 1857.

(*Paraphed*) M C & P

SCHEDULE No. 18.

The St. Lawrence & At: R. R. Co. to the Seignior of St F Leneuf, (St Chs)

One fifth of the Sum of £: 388 8s 11d. being the amount of Commutation du for lands, passent en main-morte.....	£	77	13	9
On twelfth for Lods & Ventes on the same.....		32	7	5
	£	110	1	2

St. Marc July 12th. 1849. A K.

(*Endorsed*)

No. 2079. A. E. Kierskowski; Pltff.—vs The Grand Trunk Railway Company of Canada Defdts. Exhibit of the Defendants, No. 3, Fyled at Enquête on the 1st of September 1857.

(*Paraphed*) M C & P.

SCHEDULE No. 19.

Extract from the Minutes of proceedings of the Annual General Meeting of the stock holders of the St. Lawrence and Atlantic Railroad Company, held in their Office Montreal 16th January 1850.

"The Directors have given much of their attention to the subject of Interest payable to the Proprietors, and while they cannot recommend in the present circumstances of the Company, any attempt to pay such interest in money, they consider that pending the execution of the work, it will be only just that such interest should continue, and the mode of payment they would suggest is by obligation to be issued half yearly, and payable in four years from date of issue, by which time the Completion of the Railroad will, it is confidently expected, enable the Company to discharge them."

"True Extract" BENJN. HOLMES V Pres

(*Endorsed*)

No. 2079, A. E. Kierskowski—Pltff vs The Grand Trunk Railway Company of Canada exhibit of the Defendants, No 4.—Fyled at Enquête the 1st of September 1857.

(*Paraphed*) M C & P

SCHEDULE No. 20.

Extract from the Minutes of proceedings of the Directors of the St. Lawrence and Atlantic Railroad Company, at a Meeting held in their Office, at Montreal 17th August 1850, a quorum being present.

"The President submitted to the Board a form of Debenture for Interest on Shares, as follows; viz:

" Debenture for Interest

" Montreal 1st July 1850

" Four years after date, The St. Lawrence and Atlantic Railroad Company promise to pay " or order, value received: Interest on " paid up Shares up to this date as per Account folio,

Sec. & Tr: President.

which after examination was approved of and

On Motion of Mr. Stayner
Seconded by Mr. William Molson

It was resolved that

The Interest due on paid up Shares, calculated up to the 1st. July last, Should be paid to all Stockholders who have not already received the same, in Debentures of this form, pursuant to the

Resolution adopted at the Special General Meeting of the Proprietary held on the 15th January last."
"True Extract" BENJ. HOLMES, V Pres

(*Endorsed*)
No. 2079—A. E. Kierskowski—Pltff vs The Grand Trunk Railway Company of Canada—Defdts. Exhibit of the Defendants No 5. Fyled at Enquête the 1st September 1857.
(*Paraphed*) M C & P.

SCHEDULE No. 21.

PROVINCE OF CANADA, } *District of Montreal.* }

SUPERIOR COURT FOR LOWER CANADA.

PRESENT: the Hon. Mr. Justice, MONDELET—

No. 2079.

A. E. KIERSKOWSKI, *Plaintiff*

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA, *Defendants*

ON THIS first day of September in the year of our Lord one thousand eight hundred and fifty-seven

PERSONALLY CAME AND APPEARED,

WILLIAM HENRY ALLAN DAVIES, of the City and District of Montreal, Chief Accountant to the Grand Trunk Railway Company aged forty years, a witness produced on the part of the Defendants who being duly sworn, deposeth and saith:—I am not related, allied or of kin to, any of the parties in this cause; I am not interested in the event of this suit. I know the parties in this cause as described in the Plaintiff's Declaration; I am in the employ of the Defendants in this Cause as Chief Accountant.

There is actually due by the Grand Trunk Railway on account of the Union or Amalgamation with the late St. Lawrence & Atlantic Railroad Company the following sums of money: 1º to the Provincial Government of Canada, four hundred & eighty six thousand, six hundred & sixty six pounds, thirteen shillings & four pence.—2º. To the City of Montreal, one hundred & twenty five thousand pounds. 3º. To the Seminary of Montreal, twenty five thousand pounds & 4º. To the British American land Company twenty five thousand pounds, making an aggregate amount of six hundred & sixty one thousand, six hundred & sixty six pounds, thirteen shillings & four pence.

The value of locomotives was set in an Inventory then made at the sum of forty six thousand, one hundred & eight pounds, eighteen shillings & one penny moreover Two snow ploughs valued at three hundred & seventeen pounds one shilling & five pence, currency—The value of cars at forty six thousand & four pounds, ten shillings and seven pence, currency, & the value of fuel on hand four thousand five hundred & thirty six pounds, seventeen shillings & four pence; these four last mentioned sums forming an aggregate amount of ninety six thousand nine hundred & sixty seven pounds, seven shillings & five pence, said current money aforesaid. The value of the Rails & ties, to the best of my belief, at the time of the Amalgamation was as follows: On the section from Longueuil to the boundary line, one hundred & forty thousand four hundred & eleven pounds, four shillings, currency; on the section from the Boundary line to Island Pond, twenty thousand eight hundred & eighty nine pounds, twelve shillings, said current money aforesaid, forming, these two last mentioned sums an aggregate amount of one hundred & sixty one thousand, three hundred pounds & sixteen shillings, said current money aforesaid. The Rails rarely last more than ten years when they require to be taken up & re-rolled or otherwise repaired. The ties or sleepers do not last so long generally. The value of the works of embankment, drainage &c &c, at the time of the Amalgamation may be taken at six thousand four hundred & thirty six pounds per mile.

The value of the Stations at the time of the Amalgamation was forty four thousand, three hundred & fifty eight pounds, two shillings & two pence. The value of the bridges erected on the line of the road was seventy-seven thousand, seventy eight pounds, eleven shillings & four pence, currency, The above valuations are from Longueuil to the Boundary Line.

Exhibit No. 1, produced this day at Enquête is a copy of the Inventory of the Rolling Stock, locomotives & passenger's cars belonging to the late St. Lawrence & Atlantic Company, at the time of the said amalgamation. The Rails of a Railway and the Wheels of the Cars & locomotives must be made to suit each other. The ties are not fixed to the land; they are laid on the surface of the ground and are removeable without taking the rails up. The rails are kept in their place on the ties by means of chairs & spikes and they can be removed without disturbing the ties. The earthwork or embankments of a Railway cannot be said to improve the piece of ground upon which they are made; but they rather damage it for any other purpose. The earthworks including grading, drainage &c are generally very expensive. They constitute the chief expenditure of a Railway.

QUESTION.—Supposing that at the time of the Amalgamation of the Railway Companies mentioned in this cause, the Company Defendant had not become vested with the Corporate rights & privileges of the St. Lawrence & Atlantic Railroad Company, consisting amongst others in the right & privilege of conveying freight & passengers & of collecting tolls for such conveyance & also in the right of perpetual existence, of what value would have been for the Company Defendant the mere intrensic value of the real property belonging to the St. Lawrence & Atlantic Railroad Company?

ANSWER.—There is no doubt that if it had not been for the purpose of becoming vested with the corporate rights & privileges of the St. Lawrence & Atlantic Railroad Company, it would have been of no advantage for the Company Defendant to have entered into the amalgamation above referred to. The intrinsic value of the road, without the Corporate rights of the St. Lawrence & At-

lantic Railroad Company would have been of no value, beyond that of the rails as old Iron & the materials of which the stations were constructed & the value of the land upon which the road was constructed, which in most cases would have been valueless in consequence of embankments & others works constructed upon them.

In my opinion, the main & principal interest which the Grand Trunk Company had, in amalgamating with the St. Lawrence & Atlantic Rail-Road Company was for the purpose of becoming vested with the rights & privileges granted to the St. Lawrence & Atlantic Rail-Road Company by the Legislature, & without which corporate rights & privileges, the St. Lawrence & Atlantic Rail-road could not have been worked & would have been a source of expenditure & loss to the Company Defendant.

The location of the St. Lawrence & Atlantic Rail-road running as it does from opposite Montreal, a large & considerable commercial centre in communication by navigation with the Upper lakes, towards the Ocean at Portland in the State of Maine, by means of its connection with the Atlantic & St. Lawrence Rail-road, leased by the Company Defendant, as contemplated at the time of the amalgamation gave to the St. Lawrence & Atlantic Road a higher commercial value than it would otherwise have had. The position of the St. Lawrence & Atlantic Rail-road thus giving an outlet to the Ocean to the long line of road contemplated to be built westward from Montreal, by the Company Defendant, & with which it was intended to be put in immediate connection by means of the Victoria bridge must necessarily have been one of the chief reasons why the St. Lawrence & Atlantic Railroad was received into or amalgamated with the other Companies mentioned in this cause. The passage of the St. Lawrence & Atlantic Rail-road through the Seigniory of the Plaintiff must have added & did doubtless add value to the lands of the censitaires of the Plaintiff.

Being shown, Exhibit No. 2, fyled by the Defendant, at Enquête, I can say that the extent or piece of ground mentioned in the said Exhibit as occupied by the St. Lawrence & Atlantic Rail road, in the Seigniory of the Plaintiff is the same piece or extent of ground mentioned in the Plaintiff's Declaration as the one upon which the said Rail-road is said to traverse the Seigniory of the said Plaintiff.

At the time of the amalgamation, the land occupied by the St. Lawrence & Atlantic Rail-road in the Seigniory of the Plaintiff must have increased about twenty five per cent above the price originally paid for by the St. Lawrence & Atlantic Rail-road Company, The whole mortgage indebtedness of the Company Defendant towards the province amounts to three millions one hundred and eleven thousand, five hundred pounds, sterling money, which includes four hundred and sixty seven thousand five hundred pounds, sterling, advanced by the Provincial Government to the St. Lawrence and Atlantic Rail-Road Company for the building of their Road.

The price at which lands were acquired for the building of the St. Lawrence & Atlantic Railroad was from ten to fifteen dollars per arpent.

CROSS EXAMINED.

The Inventory mentioned in my examination in Chief was made on the fifteenth of July Eighteen hundred & fifty three when the Grand Trunk Company took possession of the St. Lawrence & Atlantic Rail-road and of the Rolling Stock and other goods & chattels belonging to the said company. No valuation was made at the same time of the road itself. It was carried into the Books of the Grand Trunk Company at the cost at which it appeared in the Book of the St. Lawrence & Atlantic Rail-road Company. The valuations of the different Stations & bridges of the line of the St. Lawrence & Atlantic Railroad are taken by me from the valuation handed to the Defendants by the St. Lawrence & Atlantic Company at the time of the transfer of the road—I have made no valuation myself—The sleepers are the cross beams lying on the ground upon which the rails are layed. The intervals between the sleepers are generally filled with gravel in order to make the road more stable and the sleepers become thereby embedded into this ground. The road could be run without that but it is universally done so in England & this road is likewise ballasted in that manner—When the sleepers are taken away that is done in this manner. The pins or spikes, fastening the rails to the ties are taken out & the sleepers are with drawn from under the rails & so the ties may be taken out successively. This is done for the purpose of repairing the road.

I have no special data from which I have been led to the conclusion that the land occupied by the St. Lawrence and Atlantic Rail-road at the time of the amalgamation was worth twenty five per cent more than when it was purchased; for the purpose of a railroad but, I estimate that to be the increase from the special fact that a railroad increases considerably the lands in the locality through which it passes.

And further deponent saith not. This his deposition having been read to him he declares it contains the truth, and persists therein & hath signed.

Sworn at Enquête sittings, the day, month & year first above written

W. H. A. DAVIES

MONK COFFIN & PAPINEAU

P S C

(*Endorsed*)

Deposition of William Henry Allan Davies on the part of Dfdts—Fyled 1st Sept. 1857.

L

SCHEDULE No. 22.

PROVINCE OF CANADA. } SUPERIOR COURT.
District of Montreal. }

A. E. KIERSKOWSKI,

Pltff

vs

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,

Defdts.

The parties in this cause admit:

1*stly*. That the printed document produced in this cause by the Plaintiff as his Exhibit No 1, contains a true copy of a certain deed bearing date the twelfth day of April one thousand eight hundred & fifty three, by which certain Rail-Road Companies were united under the name of the Grand Trunk Railway Company of Canada & also the resolutions passed by the Shareholders of the Companies therein named for the purpose of ratifying the said deed which is mentioned and referred to in the Act of the Legislature for the Province of Canada passed in the eighteenth year of the Reign of her present Majesty under the Chapter thirty third.

2*ndly*. That the Exhibit No. 3 produced at Enquête by the Defendants is in the hand-writing of the Plaintiff.

3*rdly*. That the contents of the Exhibit No 4 produced at Enquête certified to be a true Extract by Benjamin Holmes, Vice President of the Company Defendants is an Extract from the Minutes of proceedings of the Annual General Meeting of the Stockholders of the St. Lawrence & Atlantic Railroad Company, held in their Office Montreal sixteenth January eighteen hundred & fifty.

4*thly*. That the contents of the Exhibit No 5, produced at Enquête & certified to be a true Extract by Benjamin Holmes, Vice President of the Company Defendants is an Extract from the Minutes of proceedings of the Directors of the St. Lawrence & Atlantic Railroad Company at a Meeting held in their Office at Montreal on the seventeenth day of August one thousand eight hundred & fifty, a quorum being present.

Montreal 1st September 1857.

CHERRIER DORION & DORION
Att for Plf
CARTIER & BERTHELOT,
Attys for Defdts.

(*Endorsed*)
Admissions—Fyled 1st September 1857.

SCHEDULE No 23.

PROVINCE OF CANADA, } SUPERIOR COURT FOR LOWER CANADA.
District of Montreal. }

PRESENT: The Hon. Mr. Justice. MONDELET.

No. 2079.

A. E. KIERZKOWSKI,

Plaintiff

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA

Defendants

ON THIS second day of September in the year of our Lord one thousand eight hundred and fifty-seven,

PERSONALLY CAME AND APPEARED

WILLIAM MACBEAN of the City & District of Montreal, Share and Transfer clerk aged fifty years, a witness produced on the part of the Defendants who being duly sworn, deposeth and saith:— I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

I know the parties in this Cause as described in the plaintiffs Declaration, I am in the employ of the Defendants in this Cause as Share & Transfer Clerk & having charge also of the Land Deeds & Plans.

There is actually due by the Grand Trunk Railway on account of the Union or amalgamation with the late St. Lawrence & Atlantic Rail Road Company the following sums of Money; 1º To the Provincial Government of Canada four hundred & eighty six thousand, six hundred & sixty-six pounds thirteen shillings & four pence—2º To the City of Montreal, One hundred & twenty five thousand pounds. 3º To the Seminary of Montreal twenty five thousand pounds & 4º To the British American land Company, twenty five thousand pounds, making an aggregate amount of six hundred & ninety one thousand, six hundred & sixty six pounds thirteen shillings & four pence—

The value of locomotives was set in an Inventory then made at the sum of forty six thousand one hundred & eight pounds, Eighteen shillings & one penny, Snowploughs Three hundred & Seventeen pounds, one shilling and five pence The value of Cars at forty six thousand and four pounds, ten shillings & seven pence currency and the value of fuel on hand, about four thousand, five hundred & thirty-six pounds, seventeen shillings & four pence; these three last mentioned sums forming an aggregate amount of about ninety-six thousand, six hundred & fifty pounds & six shillings said current money aforesaid. The value of the Rails & ties, to the best of my belief, at the time of the Amalgamation was as follows: On the section from Longueuil to the boundary line One hundred and twenty six miles is about One hundred & forty thousand four hundred & Eleven pounds, four shillings,

Currency; on the section from the boundary line to Island Pond about seventeen miles, about twenty thousand, eight hundred & eighty-nine pounds, twelve shillings, said current money aforesaid, forming these two last mentioned sums an aggregate amount of about one hundred & sixty-one thousand, three hundred pounds & sixteen shillings said Current money aforesaid.

The Rails weigh over One hundred tons per mile and rarely last more than ten or twelve years when they require to be taken up & re-rolled, or otherwise repaired. The ties or sleepers do not last near so long generally—The value of the works of embankment, drainage & &, at the time of the Amalgamation may be taken at about six thousand four hundred & thirty-six pounds per mile—The value of the stations at the time of the amalgamation was about forty-four thousand three hundred & fifty Eight pounds, two shillings & two pence. The value of the bridges erected on the line of the road was about seventy-seven thousand, seventy-eight pounds, Eleven Shillings & four pence, Currency—

The above valuations are from Longueuil to the boundary line—Exhibit No 1 produced this day at Enquête is a copy of the Inventory of the Rolling stock, locomotives & passengers cars belonging to the late St. Lawrence & Atlantic company at the time of the said Amalgamation—

The Rails of a Rail way and the Wheels of the Cars & locomotives must be made to suit each other. The ties are not fixed to the land; they are laid on the surface of the ground and are removable without taking the rails up.

The Rails are kept in their place on the ties by means of Chairs & spikes, and they can be removed without disturbing the ties. The Earthwork or embankments of a Railway cannot be said to improve the piece of Ground upon which they are made; but they rather damage it for any other purpose—The earthworks, including grading, drainage & & are generally very expensive; they constitute the chief expenditure of a Railway—

Question—Supposing that at the time of the Amalgamation of the Railway Companies mentioned in this Cause, the Company Defendant had not become vested with the corporate rights & privileges of the St. Lawrence & Atlantic Rail-Road Company consisting, amongst others, in the right & privilege of Conveying freight & passengers and of collecting tolls for such conveyance, & also in the right of perpetual existence, of what value would have been for the Company the mere intrinsic value of the real property, belonging to the St. Lawrence & Atlantic Rail Road Company?

Answer—There is no doubt that if it had not been for the purpose of becoming vested with the corporate rights & privileges of the St. Lawrence & Atlantic Rail-Road Company, it would have been of no advantage for the Company Defendant to have entered into the Amalgamation above refered to. The intrinsic value of the road without the corporate rights of the St. Lawrence & Atlantic Rail Road Company would have been of no value, beyond that of the rails as old iron & the materials of which the stations were constructed & the value of the land upon which the road was constructed, which in most cases would have been valueless in consequence of its shape & of Embankments & other works constructed upon them—

In my opinion the main & principal interest which The Grand Trunk Company had, in amalgamating with the St. Lawrence & Atlantic Rail Road Company, was for the purpose of becoming vested with the rights & privileges granted to the St. Lawrence & Atlantic Rail Road Company by the legislature, & without which corporate rights & privileges, the St. Lawrence & Atlantic Rail Road could not have been worked & would have been a source of expenditure & loss to the Company Defendant.

The location of the St. Lawrence & Atlantic Rail Road running as it does from opposite Montreal, a large & considerable Commercial centre, in communication by navigation with the upper lakes, towards the Ocean at Portland in the state of Maine, by means of its connection with the Atlantic & St. Lawrence Rail Road, leased by the Company Defendant, as contemplated at the time of the Amalgamation, gave to the St. Lawrence & Atlantic road a higher Commercial value than it would otherwise have had—The position of the St. Lawrence & Atlantic Rail Road thus giving an outlet to the Ocean to the long line of road contemplated to be built westward from Montreal, by the Company Defendant & with which it was intended to be put in immediate connection by means of the Victoria bridge must necessarily had been one of the chief reasons why the St. Lawrence & Atlantic Rail Road was recieved into or amalgamated with the other Companies mentioned in this Cause—The passage of the St. Lawrence & Atlantic rail road through the Seigniory of the Plaintiff, must have added and did doubtless add value to the lands of the *Censitaires* of the Plaintiff—

Being shown Exhibit No 2 fyled by the Defendant at Enquête, I can say that the extent or piece of ground mentioned in the said Exhibit as occupied by the St. Lawrence & Atlantic Rail Road in the Seigniory of the plaintiff is the same piece or extent of ground mentioned in the Plaintiffs Declaration as the one upon which the said Rail Road is said to traverse the Seigniory of the said plaintiff—At the time of the Amalgamation, the land occupied by the St. Lawrence & Atlantic Rail-Road in the Seigniory of the Plaintiff must have increased about twenty-five per cent above the price originally paid for by the St. Lawrence & Atlantic Rail Road Company.

The whole Mortgage indebtedness of the Company Defendant towards the Province as per books of the Company amounts to three millions one hundred & Eleven thousand five hundred pounds, sterling Money, which includes four hundred & Sixty-seven thousand, five hundred pounds, sterling advanced by the Provincial Government to the St. Lawrence & Atlantic Rail Road Company for the building of their road

The price at which lands were acquired for the building of the St. Lawrence & Atlantic Rail-Road in the Seigniory of the Plaintiff was from ten to fifteen dollars per arpent when no damages were necessarily done to the property.

CROSS-EXAMINED.

I know nothing of the real value of the locomotives, cars & other chattel property belonging to

the St. Lawrence & Atlantic Company at the time of its amalgamation with the said Company Defendants except from the inspection of the Books of the latter Company & the Inventories entered therein. I know the value of the rails & ties from the price paid for them by the original St. Lawrence & Atlantic Rail-Road Company and the valuation I have made in my examination in Chief of those rails & ties was a conjectural value from having known their original cost. In the same way I came to value of the works of embankments, drainage at the time of the amalgamation by the entries of their cost in the books of the original Company. I am not a practical engineer, but ye t I have had considerable experience in rail-roads & I could come to an approximative value of those works.

I could not particularize any particular sale of property in the Seigniory of the Plaintiff since the Amalgamation. I have lived in the Seigniory & known that the value of the property is higher now than it was prior to the opening of the St. Lawrence & Atlantic rail-road. I do not beleive that the amalgamation of the different Companies to from the Grand Trunk Company had any effect on the value of property in the Plaintiff's Seigniory, but I beleive the opening of the St. Lawrence & Atlantic Company had, as I have already stated in my examination in Chief—

And deponent further saith not—This his deposition having been read to him, he declares it contains the truth persists therein & hath signed—

Sworn at Enquête sittings the day, month & year first above written.

WILLIAM MACBEAN

MONK COFFIN & PAPINEAU
P C S

(*Endorsed*)

Deposition of W. Macbean for Defendants—Fyled 2d September 1857.
(*Paraphed*) M C & P

SCHEDULE No 21.

PROVINCE OF CANADA, *District of Montreal.*

SUPERIOR COURT FOR LOWER CANADA.

PRESENT: The Hon. Mr. Justice MONDELET

No. 2079.

A. E. KIERSKOWSKI *Plaintiff*

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA *Defendants*

ON THIS Eighth day of September in the year of our Lord one thousand eight hundred and fifty-seven PERSONALLY CAME AND APPEARED

BENJAMIN HOLMES of the City and District of Montreal Esquire. Vice-President of the Company Defendants—aged years, a witness produced on the part of the Defendants who being duly sworn, deposeth and saith :—I am not related, allied or of kin to, any of the parties in this cause ; I know the parties in this Cause as described in the Plaintiffs Declaration, I am not related, allied to, or akin to any of the parties in this Cause, nor am I interested in the event of this Suit beyond being a holder of twenty five Shares of the Capital Stock of the Grand Trunk Railway Company of Canada. I am a Director and hold the appointment of Vice President of said Grand Trunk Railway Company.

There was actually owing by the Saint Lawrence & Atlantic Railroad Company prior to its amalgamation with The Grand Trunk Railway Company and assumed under that agreement by the latter Company the following amounts or sums of money viz.

First. To the Provincial Government of Canada four hundred and eighty Six thousand Six hundred and Sixty Six pounds, Thirteen Shillings and four pence Halifax currency—Second. To the City Corporation of Montreal One hundred and twenty five thousand Pounds Currency. Third. To the Seminary of Montreal Twenty five thousand pounds Currency Fourthly. To the British American Land Company twenty five thousand pounds currency, making an aggregate of Six hundred and Ninety one thousand Six hundred and Sixty Six pounds, twelve shillings and four pence Halifax currency. Schedules estimating the value of the Rolling Stock were prepared at the date of the amalgamation by which the value of Locomotives was fixed at the sum of Forty Six thousand One hundred and eight pounds, eighteen Shillings, and One penny. Snow ploughs, at Three hundred and Seventeen ponads One Shilling and five pence. The value of Cars amounted to Forty Six thousand and four pounds ten shillings and seven pence. The Value of Fuel on hand at Four thousand five hundred and thirty six pounds, seventeen shillings and four pence, these three last mentioned sums forming an aggregate of Ninety Six thousand Six hundred and fifty pounds, Six Shillings Current Money aforesaid.

From the information acquired by me at the time of the Amalgamation of the Companies I believe the value of the Rails and Ties forming the Line of Road to have been as follows viz. In the Section from Longueuil to the boundary line, a distance of about One hundred and twenty Six Miles One hundred and forty thousand four hundred and eleven pounds, four Shillings Currency ; and on the Section from the boundary Line to Island Pond, a distance of about Seventeen Miles, Twenty thousand, Eight hundred and eighty Nine pounds, twelve Shillings Current money aforesaid : these two last items forming an aggregate sum of One hundred and Sixty one thousand three hundred pounds Sixteen Shillings Current money.

About one hundred tons of Rails are required for each mile of Railway—these are expected to last from ten to twelve years according to quality of Iron and amount of work done upon them, after which they must be renewed or taken up and re-rolled or repaired. Ties or sleepers will not last over seven years. The estimated value of the works of embankment, Cutting drainage & at the date of amalgamation was estimated and taken to be about six thousand four hundred and thirty six pounds per mile—

The stations were valued at Forty four thousand three hundred and fifty eight pounds two shillings and two pence.

The valuation of the Bridges on the line of road Seventy seven thousand and seventy eight pounds eleven shillings and four pence Currency. The above valuations are for the line from Longueuil to the boundary line. I recognise the Exhibit No. 1, produced this day at *Enquete* as a copy of the Inventory of Rolling Stock held by the late St. Lawrence & Atlantic Company at the date of said amalgamation. Of course the wheels of the Locomotives and Cars must be made to accommodate themselves with the rails used: The ties are not fastened down but laid upon the ground prepared for them, and can be elevated without taking off the Rails which are kept in their places on the ties by means of Clasps called Chairs spiked down to the ties: The formation of embankments or cuttings must of course render the ground over which the line passes of little or no value for any other purpose: These works are expensive and constitute one of the chief expenditures of a Railway.

Question.—Supposing that at the time of the amalgamation of the Railway Companies mentioned in this cause the Company Defendant had not become vested with the corporate rights and privileges of the St. Lawrence & Atlantic Railroad Company consisting amongst others in the right and privilege of conveying freight and passengers and of Collecting tolls for such conveyance, and also in the right of perpetual existence, of what value would have been for the Company the mere intrinsic value of the real property belonging to the St. Lawrence & Atlantic Railroad Company.

Answer.—There can be no question but that the amalgamation was entered into and almost solely intended for the purpose of becoming vested with the corporate rights and privileges of the St. Lawrence & Atlantic Railway—and that to the Company Defendant little or no advantage would have accrued by the simple acquisition of the Land or property—the intrinsic value of which without the Corporate rights of The St. Lawrence & Atlantic Company would have been of little value beyond that of the Rails to be sold as old Iron and other material.—The Land on which the line was formed would in most case have been valueless from the very charges to which it had been subjected in the formation of the road.

The main and in my judgment the principal object the Grand Trunk Company had in view in amalgamating with the St. Lawrence & Atlantic Railroad Company was the becoming vested with the rights and privileges conferred upon that Company by the Legislature, without which of course it could not have been worked, and would have been a loss to the Company defendant.

The location of The St. Lawrence & Atlantic Railroad running as it does from opposite Montreal a large and considerable Commercial centre in communication by Navigation with the Sea, and the upper Lakes, and towards the Ocean at Portland in the state of Maine by means of its connection with the Atlantic and St. Lawrence Railroad leased by the Company defendant as contemplated at the time of the amalgamation gave to the St. Lawrence & Atlantic road a higher commercial value than it would otherwise have had.—The position of the St. Lawrence & Atlantic Railroad thus giving an outlet to the Ocean to the long line of road contemplated to be built westward from Montreal by the Company defendant and with which it was intended to be put in immediate connection by means of the Victoria Bridge must necessarily have been one of the chief reasons why the St. Lawrence & Atlantic Railroad was received into, or amalgamated with the other Companies mentioned in this cause. The passage of the St. Lawrence & Atlantic railroad through the Seigniory of the plaintiff must have added and did doubtless add value to the lands of the *Censitaires* of the Plaintiff.

Being shown exhibit No. 2. Fyled by the Defendant at *Enquete* I can say that the extent or piece of ground mentioned in the said Exhibit as occupied by the St. Lawrence & Atlantic railroad in the Seigniory of the Plaintiff is the same piece or extent of ground mentioned in the Plaintiff's declaration as the one upon which the said railroad is said to traverse the Seigniory of said Plaintiff—

At the time of the Amalgamation the land occupied by the St. Lawrence & Atlantic railroad in the Seigniory of the plaintiff must have increased from twenty to fifty per cent above the price originally paid for it by the St. Lawrence & Atlantic railroad Company.

The whole mortgage indebtedness of the Company defendant towards the Province as per the books of the Company amounts to three millions one hundred and eleven thousand five hundred pounds sterling money which includes four hundred and sixty seven thousand five hundred pounds Sterling advanced by the provincial Government to the St. Lawrence & Atlantic railroad Company for the building of their road.

The price at which lands were acquired for the building of the St. Lawrence & Atlantic railroad in the Seigniory of the Plaintiff was from ten to fifteen dollars per Arpent when no damage was necessarily done to the property.

CROSS-EXAMINED.

The valuation I have spoken of in my examination in Chief of the rails, ties & worth of embankment, drainage &c., was made as follows: the whole cost of the road was considered & the estimates referred to & a valuation as near as possible was fixed to each particular description of work.

Besides the sums mentioned in my examination in chief as due by the St. Lawrence & Atlantic Rail-Road Company, at the time of the amalgamation & which were assumed by the Grand Trunk Company there were sundry notes to the amount of about five & twenty thousand pounds, which had previously been issued in favour of the stock-holders of the St. Lawrence & Atlantic Railway

Company, for back interest. This liability was also assumed by the Grand Trunk Company. The sum of seventy five thousand pounds mentioned in the deed of amalgamation of the twelfth of April eighteen hundred & fifty three, was given to cover all interest recognized & unrecognized at the date of the amalgamation as due to the stock-holders. The back interest recognized was the amount of the notes above mentioned. The whole amount of the seventy five thousand pounds was paid over to the stock-holders of the St. Lawrence & Atlantic Road, in the shape of a dividend. The Company never entered into a minute calculation as to the amount due to the shareholders, but the seventy five thousand pounds, having been placed at the disposal of the St. Lawrence & Atlantic Rail-Road-Company by the Grand Trunk Company for the payment of said arrears, a dividend was made dividing the said sum in proportion to the amount of the stock which each shareholder held at the date of the amalgamation, irrespective of the amount of the notes above referred to. The notes previously given to the amount of the above sum of about twenty five thousand pounds for recognized interest were paid besides by the Grand Trunk Company as they fell due and as part of the liabilities assumed by the Grand Trunk Company. The notes given did not cover the whole of the arrears of interest due to the share-holders, at the time of the amalgamation, but assuming that they were entitled annually to interest, there were several years of interest due at the time of the amalgamation. These interests were due under a bye-law made by the Directors of the Company. I beleive that after a time, there was a resolution made suspending a further issue of notes for back interest, that is; after a certain period there was a resolution suspending the issue of notes for interest to accrue from the date therein mentioned.

QUESTION.—What was the amount of Stock upon which such interest was payable and paid to the Stock-holders?—

I could not precise the amount without referring to the books of the Company.—

I think the stock of the St. Lawrence & Atlantic Rail-Road Company gradually declined from the time of its original subscription & that it was never at par. I think the mere privilege of constructing the road irrespective of the works performed was considered very valuable. Only portions of the road had been in operation at the time of the amalgamation. It was I think opened from Montreal to the Province line in July eighteen hundred & fifty three. It was opened to Sherbrooke in October eighteen hundred & fifty two, the distance being about ninety six miles.—The Company had never declared a dividend on the earnings of the road. The increased value which I beleive the farms in Seigniory of the Plaintiff acquired was from the original construction of the St. Lawrence & Atlantic Rail-road, which would be augmented by the prolongation of the road.

The paid up capital Stock in Shares of the St. Lawrence and Atlantic RailRoad Company on the fifteenth day of July one thousand eight hundred and fifty three, being the date at which a Bonus of thirty seven pounds fourteen shillings and four pence Currency per Centum was paid to the Share-Holders, was two hundred and thirty five thousand one hundred pounds Currency, represented by nine thousand four hundred and four Shares of Stock of the Value of twenty five pounds Currency each, as is mentioned in the certified Extract of the books of the St. Lawrence and Atlantic Rail-Road Company, which I now produce marked. Z. This Bonus nearly absorbed the seventy five thousand pounds allowed for back interest in the Deed of Amalgamation, and was paid irrespective of the amount of Notes issued by the St. Lawrence and Atlantic RailRoad Company in favor of the Share Holders for back interest, which were subsequently paid by the Defendants in this cause.

Before and up to the date of the Amalgation of the St. Lawrence and Atlantic RailRoad Company with the Grand Trunk RailRoad Company, I was Vice President of the former Company that is the said St. Lawrence and Atlantic RailRoad Company.

And further this Deponent saith not this Deposition being read to him, he declares that it contains the truth, persists therein and hath signed.

Sworn and acknowledged at the Enquêtes Sittings on the day and year first above mentioned

BENJ. HOLMES.

MONK COFFIN & PAPINEAU
P C S

(Endorsed)
Deposition of Benjamin Holmes for the Defendants—Fyled 8th September 1857.

SCHEDULE No. 25.

The paid up Capital Stock in Shares of the Saint Lawrence & Atlantic Railroad Company on the fifteenth day of July One thousand eight hundred and fifty three, being the date at which a Bonus of thirty seven pounds fourteen shillings and four pence Currency per cent, was paid to the Shareholders, was Two hundred and thirty five thousand, One hundred pounds Currency represented by Nine thousand four hundred and four Shares of Stock of the value of twenty five pounds Currency each.

Certified a true Extract from the Books of the St. Law. & At. Ra. Coy.

BENJ. HOLMES.

DOCUMENT V

PROVINCE DU CANADA
District de Montréal

COUR DU BANC DE LA REINE
EN APPEL

A. E. KIERZKOWSKI,

Demandeur en Cour Inférieure

APPELANT.

LA COMPAGNIE DU CHEMIN DE FER DU GRAND TRONC DU CANADA

Défenderesse en Cour Inférieure.

INTIMÉE

L'Appelant se réservant le droit de se plaindre de l'insuffisance du rapport du writ d'appel en cette cause comme de toute diminution ou augmentation du dossier de la Cour Inférieure, dit pour Griefs à l'encontre du Jugement final rendu en cette cause, dont est appel, que le dit Jugement est irrégulier, erroné, illégal et injuste et doit être considéré comme tel par cette Honorable Cour pour entr'autres raisons les suivantes :—

1nt. Parce que le Demandeur a prouvé tous les allégués contenus en sa Declaration et que la Defenderesse n'a prouvé aucun des allégués contenus dans ses Exceptions Péremptoires.

2nt Parceque par l'acte du douze Avril mil huit cent cinquante trois, relaté en la déclaration de l'Appelant en Cour Inférieure Subsequemment ratifié par les parties au dit acte la Compagnie du chemin de fer du St. Laurent et de l'Atlantique a cédé à La Compagnie du Chemin de Fer Le Grand-Trone du Canada, Intimée en cette cause le Chemin de fer du St. Laurent et de l'Atlantique dont un mille et soixante et troisième de mille passant à travers la Seigneurie de St. François-le-Neuf dont l'Appelant était alors comme il a été depuis Seigneur en possession et que cette cession ayant eu lieu en faveur d'une main-morte, cette mutation a donné lieu en faveur de l'Appelant comme Seigneur et en possession de la dite Seigneurie de St. François-le-Neuf a un droit d'indemnité égal à un cinquième du prix de cette partie du dit Chemin du St. Laurent et de l'Atlantique qui passe dans la Seigneurie de l'Appelant.

3nt. Parceque la cession du douze Avril mil huit cent cinquante trois ayant été faite à titre onéreux à un prix excédant cinq mille livres courant par mille, l'Appelant comme Seigneur de la Seigneurie de St. François-le-Neuf avait droit aux lods & ventes sur le dit prix.

4nt. Parceque dans tous les cas l'Appelant avait droit à un Jugement en sa faveur ordonnant une ventilation pour déterminer la partie du prix payé par l'Intimée à La Compagnie du St. Laurent et de l'Atlantique qui représentait la partie du dit Chemin de fer du St. Laurent et de l'Atlantique qui passait dans sa Seigneurie afin de déterminer le montant de l'indemnité et des lods et ventes auxquels il avait droit.

5nt. Parceque le jugement de la Cour Inférieure aurait du être en faveur de l'Appelant tandis qu'il a été rendu en faveur de l'Intimée.

6nt. Parceque ce Jugement est irrégulier, illégal & injuste envers l'Appelant.

Pourquoi l'Appelant conclut a ce que cette Honorable Cour infirme le dit Jugement de la Cour Supérieure dont est appel, avec dépens et rende tel Jugement que par la dite Cour Supérieure aurait du être rendu et prononcé conformément à la loi et à la preuve faite en la dite cause et suivant les droits des parties.

Montréal 21 Mai 1858

CHERRIER DORION & DORION
Avts de l'Appelant

Reçu copie le 22 Mai 1858

CARTIER & BERTHELOT
Avts de la Defd

(*Endorsed*)
Griefs d'appels—filé 22 Mai 1858

(*Paraphed*) *J U B*

DOCUMENT VII

PROVINCE DU CANADA,
District de Montréal.

COUR DU BANC DE LA REINE EN APPEL

A. E KIERZKOWSKI

Demdr en Cour Inférieure

APPELANT

&

LA COMPAGNIE DU GRAND TRONC DE CHEMIN DE FER DU CANADA

Défdresse en Cour Inf.

INTIMÉE

L'Intimée se reservant le droit de se plaindre de l'insuffisance du rapport du writ d'appel en cette cause, comme de toute diminution ou augmentation du dossier de la Cour Inférieure, dit pour Réponse aux Griefs ou Raisons d'Appel du dit Appelant que le Jugement final rendu en cette cause dont est appel, est régulier, légal et Juste et doit être confirmé par Cette Cour pour entre autres raisons les suivantes :

1° Parceque le Demandeur n'a prouvé aucun des allégués contenus en sa Déclaration, et que la Défendeerse a au contraire prouvé tous les allégués des ses exceptions péremptoires:

2° Parceque l'acte du douze Avril mil huit cent cinquante trois, relaté en la Déclaration de l'Appelant, en Cour Inférieure, n'était en lui-même et ne contenait que des conventions préparatoires d'une union qui n'était ni une vente, ni acte équipollent à vente, ni translatif de propriété, et ne pouvait légalement établir et n'a pas lui-même établi comme Corporation la Compagnie qui en est résultée, et que cet acte n'a pas donné ouverture aux profits & droits Seigneuriaux et d'indemnité réclamés par le dit Demandeur:

3° Parceque l'acte d'accord du douze Avril mil huit cent cinquante-trois, n'était pas un acte onéreux donnant ouverture à des droits de lods et ventes, mais uniquement un acte de société entre les différentes Compagnies qui y sont nommées:

4° Parceque le Jugement dont est appel est Juste, légal et conforme à la loi.

C'est pourquoi la dite Intimée conclut à ce que le dit Jugement du Vingt-trois Novembre Mil huit cent cinquante-sept, soit confirmé avec dépens

Montréal 2 Juillet 1358

CARTIER & BERTHELOT
Ats. de l'Intimé

(Reçu Copie)

CHERRIER DORION & DORION
Ats. de l'Applt

(*Endorsed*)

Réponses aux Griefs d'appel.—Prod: 2 Juillet 1858

(*Paraphed*) *J U B*

DOCUMENT X

PROVINCE DU CANADA, *District de Montréal.* } COUR DU BANC DE LA REINE.

EN APPEL.

ALEXANDRE EDOUARD KIERZKOWSKI,

Demandeur en Cour Inférieure,

APPELANT.

ET

LA COMPAGNIE DU GRAND TRONC DE CHEMIN DE FER DU CANADA,

Défenderesse en Cour Inférieure,

INTIMÉE.

FACTUM DE L'APPELANT.

Par un acte fait à Londres, le 12 Avril 1853, entre les Représentants de différentes Compagnies de chemin de fer et auquel étaient représentées " La Compagnie du Grand Tronc de Chemin de Fer du Canada " et " La Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique," il fut convenu qu'à compter du 1er Juillet 1853, ces différentes Compagnies seraient réunies sous le nom de " *La Compagnie du Grand Tronc de Chemin de Fer du Canada ;*" que leurs différentes entreprises de chemins de fer seraient également réunies sous le nom du " Grand Tronc de Chemin de Fer du Canada ;" que la nouvelle Compagnie paierait les dettes des différentes Compagnies parties à l'acte ; que les actions des actionnaires dans " la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique " seraient converties en actions de même valeur, " dans la Compagnie du Grand Tronc de Chemin de Fer du Canada " et que de plus cette Compagnie paierait £75,000, c'est-à-dire, £75,000 sterling, somme à laquelle étaient estimés les intérêts dus aux actionnaires de " la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique."

Cet acte ayant été ratifié par les actionnaires des différentes Compagnies intéressées, le 1er Juillet 1853, " La Compagnie du Grand Tronc de Chemin de Fer du Canada " est entrée en possession du chemin de fer que " la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique " avait construit de Longueuil à Island Pond et de tout ce qui en dépendait, et ce aux conditions portées en l'acte du 12 Avril 1853.

L'Appelant, seigneur de la seigneurie de St. François-le-Neuf, que traversait ce chemin de fer, voyant dans l'acte du 12 Avril une mutation qui donnait ouverture à des droits seigneuriaux, a porté, devant la Cour Supérieure, sa demande en paiement de l'indemnité seigneuriale et des lods et ventes pour la partie du chemin (environ un mille et soixante et trois centièmes de mille) qui se trouvait dans sa censive.

A cette demande l'Intimée a répondu:

1o. Que l'union mentionnée dans l'acte du 12 Avril 1853 avait eu lieu dans un but d'intérêt public, et conformément à un Acte de la Législature qui l'avait rendue obligatoire.

2o. Que la Compagnie du Grand Tronc de Chemin de Fer du Canada n'est pas une main-morte et qu'elle ne doit pas d'indemnité.

3o. Que par l'acte du 12 Avril 1853, l'Intimée n'a pas fait l'acquisition du Chemin de Fer, des propriétés et des droits de la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique ; que cette dernière Compagnie n'a pas cessé d'exister, mais qu'elle n'a fait que prendre le nom de la Compagnie du Grand Tronc de Chemin de Fer du Canada.

4o. Que cet acte ne peut être considéré comme un acte de vente ou équipollent à vente.

5o. Que la construction du Chemin de Fer du St. Laurent et de l'Atlantique et l'union qui en a assuré le parachèvement ont augmenté la valeur de la propriété de l'Appelant, qui est en conséquence mal fondé à reclamer une indemnité.

6o. Que s'il y a eu mutation par l'acte du 12 Avril 1853, cette mutation a eu lieu d'une main-morte à une autre, et que l'Appelant ne pourrait sur une telle mutation reclamer ni indemnité, ni lods et ventes, attendu que par " l'Acte Seigneurial de 1854 " et les Actes qui l'amendent, tous fonds sur lesquels des droits d'indemnité ont déjà été payés ou sont devenus dûs, et qui n'ont pas été subséquemment vendus ou concédés à des personnes possédant autrement qu'en main-morte, sont déclarés avoir été, de la date de tel paiement ou de tout acte obligeant au paiement de tels droits, déchargés de toutes redevances et charges seigneuriales et tenus en *franc aleu roturier* ; et qu'ainsi la partie du Chemin de Fer qui passe à travers la seigneurie de l'Appelant a été déchargée de toutes redevances seigneuriales à compter du paiement que la Compagnie du St. Laurent et de l'Atlantique a fait ou pu faire des droits d'indemnité dûs sur les expropriations faites dans sa seigneurie ou du jour où tels droits sont devenus exigibles.

7o. Que la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique a depuis longtemps payé l'indemnité sur les acquisitions qu'elle a faites dans la seigneurie de l'Appelant.

8o. Qu'en supposant que l'Appelant aurait le droit de reclamer soit des lods, soit une indemnité, ce ne pourrait être que sur la valeur réelle et intrinsèque du terrain occupé par le Chemin de Fer, qui est au-dessous de £50, et qui ne pourrait donner lieu à des lods et à une indemnité dont le montant fût de la compétence de la Cour Supérieure.

9o. Que dans tous les cas, s'il y a eu acquisition par l'Intimée dans l'acte du 12 Avril 1853, il ne peut y avoir de lods et ventes sur le prix et valeur du mobilier, des rails, lisses en fer, bois, etc., ni sur la valeur des droits et priviléges de la Corporation, ni enfin sur la valeur commerciale de l'ensemble des travaux de la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique.

Sur cette contestation la Cour Inférieure a rendu le Jugement suivant, le 23 Novembre 1857 :

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 a sale or its equivalent in law, *acte équivalent 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 *lods et ventes* demanded in this action by the Plaintiff; considering that the Defendant is not in law *mort-main* or *gens de main-morte*, subject to the payment of Seignorial *indemnité* for acquisitions by the Defendant of Real Estate for the purpose of such Defendant and that the lands in the Plaintiff's declaration therein alledged to be held by the Defendant in *mort-main* were not by-law so held in *mort-main*; considering that the Defendant even if such *mort-mainer* and if such acquired of said realty and lands previous to the legal operation and effect of the Seignerial Tenures Act, was by the said last act declared to be relieved and freed from the payment of Seignorial *indemnité* for such acquisition made by the Defendant, directly from another *mortmainer*, 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 seignorial dues, accrued and due by the Defendant to the Plaintiff, previous to the legal operation, in that respect of the said Seignorial Tenure's 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 *lods et ventes* demanded by the Plaintiff in this action, doth maintain, the Peremptory Exception of the Defendant, and doth dismiss the Plaintiff's action with costs.

His Honour Mr. Justice Smith dissents from this Judgment.

Ainsi la Cour Inférieure par son Jugement décide que l'acte du 12 Avril 1853 n'est pas un acte de vente, ni équipollent à vente, qu'il n'est pas même un acte translatif de propriété.—Que les Compagnies de Chemins de Fer ne sont pas dans ce pays des main-mortes sujettes au paiement d'un droit d'indemnité sur les acquisitions qu'elles peuvent avoir faites dans les Seigneuries.—Qu'en supposant qu'elles soient des main-mortes, " l'Acte Seigneurial de 1854 " les a exonérées du paiement de toute indemnité sur les acquisitions qu'elles ont pu faire directement d'une autre main-morte, avant la passation de cet acte ; que l'acte du 12 Avril 1853 n'a pas eu d'effet avant l'Acte Seigneurial de 1854 ; et enfin que les Compagnies de Chemins de Fer ne doivent pas de lods et ventes sur les acquisitions qu'elles ont faites pour la construction de leurs chemins.

Pour que les considérations sur lesquelles la Cour a motivé son Jugement fussent fondées, il faudrait que non seulement les Compagnies de Chemins de Fer qui ont jusqu'à présent payé et des lods et ventes et des droits d'indemnité, mais encore que les Cours qui les y ont contraint et la Législature elle-même qui a reconnu aux Seigneurs le droit de les recouvrer, fussent tombées dans la plus singulière erreur. Mais il n'en est rien. L'Appelant croit pouvoir démontrer la fausseté de chacune des propositions légales énoncées dans le Jugement de la Cour Inférieure et faire voir que l'opinion de la minorité de la Cour, qui était favorable à ses prétentions, doit seule être suivie.

Par suite des conventions contenues dans l'acte du 12 Avril 1853, les propriétés de la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique sont passées à la Compagnie du Grand Tronc de Chemin de Fer du Canada, qui est maintenant seule propriétaire du Chemin de Fer du St. Laurent et de l'Atlantique. La quatrième clause de l'Acte 16 Vict., ch. 39, qui a autorisé cette réunion des différentes Compagnies, le déclare formellement. Il y a plus, c'est que ce changement de possession a eu lieu à la condition que la nouvelle Compagnie payerait les dettes de l'ancienne et moyennant la somme de £75,000 sterling, payée à la Compagnie du St. Laurent et de l'Atlantique et distribuée entre tous ses actionnaires en proportion du montant des actions de chacun d'eux. (*Déposition de Benjamin Holmes, pièce 24 de la procédure.*) Cet acte du 12 Avril 1853 n'a-t-il pas tous

les caractères qui distinguent un acte de vente et, quelque soit la désignation que les parties aient voulu lui donner, cela ne peut en altérer l'effet.

Il faut donc dire que par l'acte d. ` Avril 1853, il y a eu mutation dans la propriété du Chemin de Fer du St. Laurent et de l'Atlantique, et que cette mutation a eu lieu par acte de vente ou équipollent à vente.

Cette mutation a-t-elle eu lieu en faveur d'une main-morte?

Telle est la seconde question qu'il faut examiner.

" On appelle gens de main-morte tous les corps et communautés, tant ecclésiastiques que laïques qui sont perpétuels, et qui, par une subrogation de personnes étant censés être toujours les mêmes, ne produisent aucune mutation." (Guiyot, Rep. Vo. Gens de main-morte.)

Lefebvre de La Planche (Traité du Domaine, T. 1, p. 336) donne aussi, d'après Dumoulin, cette autre définition de la main-morte :

" Les main-mortes sont ainsi appelées parce que *idem semper corpus permanet, licet personæ mutentur et moriantur.*"

La définition que les auteurs Anglais et Américains donnent d'une corporation, correspondent avec celle que les auteurs Français donnent de la main-morte.

" A Corporation is a body created by law, composed of individuals united under a common name, the Members of which succeed each other so that the body corporate continues the same notwithstanding the change of the individuals who compose it, and is for certain purposes considered a natural person.

Angell & Ames, on Corporations p. 1, § 1.

" The ideal being, called a Corporation, we may thus define to be a continuous identity endowed at its creation with capacity for endless duration ;..... .....
....

" But continuous identity, a name, and a common seal seem indispensible requisites to the creation of a Corporation proper."

Grant, on Corporations, p. 4 & 5.

Toutes ces définitions font voir que le caractère distinctif de nos Corporations anciennes et modernes, c'est la succession perpétuelle.

C'est à tort que la Cour Inférieure a supposé qu'il y avait une différence entre les corporations de chemin de fer et les main-mortes en ce que les premières avaient le droit d'acquérir des immeubles et de les aliéner, et que les main-mortes ne peuvent faire ni l'un ni l'autre.

Il y a d'abord erreur dans l'assertion que les main-mortes en France ne pouvaient ni acquérir des immeubles, ni les aliéner. Ce n'est qu'à une époque encore assez récente que les gens de main-mortes ont été privés du droit d'acquérir et de posséder des immeubles sans la permission du Prince, et pour ce qui est du droit d'aliéner, ils n'en ont jamais été privés. Il n'y a que ceux qui ne possédaient que comme simples administrateurs des biens qui appartenaient au public, ou qui par destination étaient inaliénables, qui ne pouvaient aliéner ; mais jamais les corps de marchands, de gens de métiers et d'ouvriers, qui possédaient pour eux-mêmes, n'ont été privés du droit d'aliéner les immeubles qu'ils possédaient en commun, quoiqu'ils aient toujours été considérés comme gens de main-mortes et tenus au paiement de l'indemnité seigneuriale sur les acquisitions qu'ils faisaient comme corps.

D'ailleurs, l'indemnité n'est pas dûe parce que les main-mortes n'ont pas le droit d'aliéner, mais parce que de fait elles n'aliènent pas. (1)

" Mais l'impuissance d'aliéner ne suffit pas seule, dit Henrion de Pansey, (2) pour autoriser le seigneur à demander une indemnité. Cela se voit tous les jour, etc..... .....

" Ainsi pour l'indemnité il ne suffit pas que le propriétaire soit dans l'impossibilité d'aliéner. Le seigneur ne peut l'exiger que lorsque l'immeuble passe dans les mains d'un corps main-mortable."

Mais ce qui doit décider la question, c'est que plusieurs des Compagnies de Chemin de Fer dans le Bas-Canada ont été reconnues comme main mortes par la Législature elle-même ; que l'Acte d'incorporation de la Compagnie du St. Laurent et de l'Atlantique réserve aux seigneurs d'une manière spéciale leurs droits d'indemnité sur les acquisitions que cette Compagnie ferait dans leurs censives, et que les Tribunaux l'ont condamnée au paiement de cette indemnité. (3)

Une autre question qui ne souffre pas de difficulté c'est que lorsqu'une main-morte acquiert un héritage d'une autre main-morte, elle doit une indemnité, dans le cas même où il en aurait déjà été payé une (4).

" Le relief est, pour bien dire, le seul droit qui reste aux seigneurs sur les fiefs amortis, car rarement ils sont aliénés et les formalités de ces aliénations les raréfient excessivement : en ce cas d'aliénations les fiefs amortis retournent à leur premier état, parce que l'amortissement et l'indemnité n'emporte qu'une immunité personnelle à la main-morte qui les obtient et les paie ; et quand l'héritage passerait *d'une main morte à une autre*, il y aurait nouvel amortissement, nouvel e indemnité, quand bien même, ce serait un échange d'un héritage amorti contre un autre héritage amorti mouvant d'un même seigneur."

Guyot, des Fiefs, t. 2, p. 146.

D'après ce qui vient d'être dit, l'acte du 12 Avril 1853 a donné ouverture à un droit d'indemnité et à des lods et ventes en faveur de l'Appelant, et c'est en vain que, pour s'y soustraire, l'Intimée prétend que l'union effectuée entre les différentes Compagnies n'a pas été volontaire, mais qu'elle leur a été imposée par la Législature. Le fait que cette transaction ne pouvait avoir d'effet qu'après que les conditions en seraient ratifiées à une assemblée spéciale des actionnaires de chaque Compa-

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(1) Hervé, t. 6, p. 429.

(2) Dissertations féodales, Vo. Indemnité, § 50.

(3) 8 Vict. ch. 25, sect. 1. And it is hereby enacted that Peter McGill, &c..... shall for that purpose be a body politic and corporate by the name of *The St. Lawrence and Atlantic Railroad Company* and by that name shall have perpetual succession and shall have a common seal ; and by that name shall and may sue and be sued, and also shall and may have power and authority to purchase lands, tenements and hereditaments for them and their successors and assigns for the use of the said Rail Road without Her Majesty's *Lettres d'Amortissement* ; saving nevertheless to the seignior or seigniors within whose censive the lands, tenements and hereditaments so purchased may be situate, his and their several and respective *droits d'indemnité.*

No. 172—Jacobs vs La Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique. 16 *Déc.* 1850.

(4) Henrion de Pansey, Vo. Indemnité, § 24.—Bacquet, Vo. Droit d'Amortissement, c. 46, No. 24—Hervé, Matières féodales, t 6, p. 638—Prudhomme, des Biens en Roture, p. 216.

gale par au moins les trois quarts des Actionnaires présents et qu'en ce qui concerne la Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique, cette ratification a eu lieu à l'unanimité, met au néant la prétention de l'Intimée.

Mais est-il vrai, comme le prétend l'Intimée, que " l'Acte Seigneurial de 1854 " a un effet rétroactif de manière à l'exonérer du paiement de l'indemnité et des lods et ventes qui pouvaient être dûs sur l'acte du 12 Avril 1853, exécuté avant que cette loi ne fût sanctionnée.

La clause 34e est celle sur laquelle l'Intimée fonde cette étrange prétention. Voici cette clause :

" Tous les héritages, pour lesquels des droits d'indemnité auront été payés à un seigneur et qui n'auront pas été vendus ou concédés depuis tel paiement à d'autres qu'à des main-mortes, sont déclarés être et avoir été, depuis la date où ce paiement aura été fait ou depuis la date de l'acte en vertu duquel le *propriétaire* sera obligé de les payer, libres de tous droits et devoirs seigneuriaux et tenus en franc aleu roturier, mais sujet au paiement d'une rente constituée égale aux cens et rentes légalement dûs sur iceux."

La prétention de l'Intimée est que si un héritage est passé successivement entre les mains de plusieurs main-mortes, le seigneur n'a le droit de reclamer qu'une seule indemnité, parce qu'en vertu de cette clause tel héritage est déclaré libre de tous droits seigneuriaux et est devenu un franc aleu roturier à compter du jour que l'indemnité sur la première mutation a été payée ou qu'elle est devenue exigible.—Pour mieux faire comprendre cette prétention il faut donner un exemple.

A, propriétaire d'un héritage en censive, le vend à B qui est une main-morte, B le vend à C, autre main-morte. Il n'est pas douteux qu'avant " l'*Acte Seigneurial de* 1854 " il était dû un droit d'indemnité sur chacune de ces mutations. Mais l'Intimée prétend que depuis cet acte, C n'est plus tenu de payer d'indemnité pour l'acquisition qu'il a faite, parce que, dit-elle, la clause 34 déclare cet héritage affranchi de toute redevance seigneuriale à compter du jour que la première main-morte B en a fait l'acquisition.—Si l'Intimée veut être logique, il faut qu'elle dise que si C avait payé au seigneur avant 1854, l'indemnité qu'il lui devait sur son acquisition, et qui pouvait alors être recouvrée en justice, il pourrait la répéter du seigneur, parce que, par un acte subséquent de la Législature, son héritage a été affranchi de ce droit et qu'il est devenu un franc aleu roturier, à compter d'une date antérieure au paiement qu'il a fait. Il en serait de même s'il y avait eu plusieurs mutations successives, chaque main-morte pourrait reclamer l'indemnité qu'elle aurait payée, quelque cette indemnité fût dûe à l'époque du paiement. Il faudrait quelque chose de bien clair et de bien positif dans une loi pour lui faire produire un tel effet.

La clause dont il s'agit ne dit rien de semblable, et quoiqu'elle soit assez mal construite, il est facile cependant de comprendre qu'elle signifie que, lorsque des droits d'indemnité auront été payés à un seigneur et que l'héritage ne sera pas sorti de la main-morte qui les aura payé, il sera considéré comme *franc aleu roturier* à compter du jour où le *propriétaire* aura payé ou se sera obligé de payer telle indemnité. Il suffit de transposer le mot propriétaire qui, dans cette clause, ne peut signifier que le propriétaire actuel, c'est-à-dire celui qui était propriétaire lors de la passation de l'acte, pour la rendre claire et prévenir une interprétation qui ne serait rien moins qu'un contre-sens.

De plus, cette clause et la clause 33 qui la précède immédiatement, n'ont été introduites dans l'Acte Seigneurial que pour diriger les Commissaires dans la confection des cadastres et exempter les possesseurs de terres commuées et les main-mortes qui avaient déjà payé ou étaient tenus de payer, les uns le prix de la commutation et les autres une indemnité considérable, de contribuer au paiement de la somme nécessaire pour abolir la Tenure Seigneuriale. Il était de toute justice que cette somme fût répartie sur les héritages qui profitaient le plus directement du changement de tenure et que les terres commuées qui n'étaient plus soumises au régime seigneurial et celles possédées par des main-mortes qui ne pouvaient plus donner ouverture aux droits casuels, du moins tant qu'elles ne changeraient pas de mains, ne fussent pas chargées, comme les autres terres en roture, du paiement d'une indemnité pour abolir des droits qui ne les affectaient pas ou très peu.

La clause 34e n'a pour objet que cette distinction entre les terres qui, ayant été remises dans le commerce, devaient contribuer au rachat des droits seigneuriaux, et celles qui, possédées par les main-mortes, en seraient exemptes.

On ne pourrait lui donner un effet rétroactif et priver les seigneurs d'arrérages qui leur sont légitimement dûs qu'en donnant à cette clause une interprétation contraire au but que s'est proposé la Législature en passant l'Acte Seigneurial, celui d'abolir les droits seigneuriaux pour l'avenir seulement, tout en conservant les droits échus et acquis.

Il est expressément déclaré par la clause 36 de cet Acte, que " rien de ce qui est contenu dans cet Acte n'affectera le droit de recouvrer les arrérages de droits seigneuriaux échus avant la passation de l'Acte.....

.....

et que rien de ce qui est contenu ne sera interprété de manière à affaiblir ou à supporter aucune prétention d'un seigneur ou des co-intéressés devant la Cour Seigneuriale, mais que ces réclamations seraient jugées d'après les lois existantes lors de la passation de cet Acte."

Interprétées l'une par l'autre, les clauses 34 et 36 se concilient parfaitement, pourvû que l'on donne à la première sa vraie signification. Ainsi les Commissaires en vertu de la première clause, devront considérer les terres possédées par des main-mortes, comme libres de tous droits seigneuriaux, à l'exception des cens et rentes, et les seigneurs, en vertu de la seconde clause, conserveront leur recours pour tous droits échus lors de la passation de l'Acte. Si donc la Compagnie du Grand Tronc devait une indemnité et des lods et ventes sur l'acte du 12 Avril 1853, ces droits ont été par la clause 36 conservés aux seigneurs, auxquels ils étaient dûs.

La Clause 38 vient encore à l'appui de cette interprétation en déclarant que " le but de cet Acte est d'abolir aussitôt que possible tous droits et devoirs seigneuriaux et féodaux en leur substituant des rentes constituées—d'accorder au seigneur une indemnité raisonnable pour tous les droits lucratifs que la loi lui donne et qui seraient abolis par cet Acte—***de préserver les droits des tiers qui ne les auront pas perdus par leur propre négligence—et que toutes les dispositions de cet Acte devaient recevoir l'interprétation la plus libérale afin d'assurer l'accomplissement de l'intention de la Législature*** telle qu'exprimée dans cette clause."

L'objet de la loi et l'intention du Législateur sont clairement indiqués dans ces deux clauses 36 et 38, et par là même le sens que l'on doit donner à la 34me clause. Vouloir faire régler par cette dernière clause les rapports des seigneurs et de leurs censitaires quant à des droits acquis et échus avant la passation de l'Acte Seigneurial serait annuller d'un seul trait les clauses 36 et 38 qui n'auraient plus dans ce cas aucune signification.

Les droits d'indemnité qui pouvaient être dûs à l'Appelant sur l'acte du 12 Avril 1853, n'ont donc pas été abolis par " l'Acte Seigneurial de 1854."

Il ne reste plus qu'à examiner si les Chemins de Fer sont, comme le prétend l'Intimée, des travaux publics dont la vente ne donne pas lieu au droit de lods et ventes. Que les Chemins de Fer soient des ouvrages publics en ce sens qu'ils sont destinés à l'usage du public et qu'ils sont soumis à certains réglements faits dans l'intérêt public, c'est ce que nul ne peut contester, mais cela n'empêche pas qu'ils ne soient des entreprises commerciales appartenant aux Compagnies qui les ont construits et qui les exploitent. Ce sont ces Compagnies qui en perçoivent tous les profits, qui en exercent tous les droits utiles. Les taxes locales et contributions foncières sont à leur charge. Elles peuvent hypothéquer et quelques fois mêmes elles sont autorisées à vendre. L'Acte 16 Vict., ch. 39 fournit un exemple de cette autorisation.

Les acquisitions faites pour objets publics ne forment exception à la règle qui assujetit les acquéreurs au paiement des lods et ventes, que dans le cas d'une nécessité indispensable, comme lorsqu'il s'agit d'ériger des fortifications, et autres ouvrages semblables.

Les Chemins de Fer n'ont pas ce caractère d'utilité publique qui puisse dispenser, les Compagnies auxquelles ils appartiennent, du paiement des lods et ventes, pas plus que les Banques incorporées, les Compagnies d'Assurance, de Construction, de Prêt et autres semblables, auxquelles des chartes sont octroyées, fondées sur l'avantage que le public est censé retirer de ces Sociétés, ne sont exemptes de les payer sur les acquisitions qu'elles font. Les Compagnies de Chemin de Fer sont des Sociétés purement commerciales et économiques, et comme telles elles sont soumises au paiement des lods et ventes sur les acquisitions qu'elles font d'héritage en censive.

L'Appelant soumet donc que l'acte du 12 Avril 1853 est un acte translatif de propriété, par lequel l'Intimée a acquis la propriété du Chemin de Fer du St. Laurent et de l'Atlantique ; que l'Intimée est une main-morte, ce qui donne droit à l'Appelant de réclamer une indemnité sur cette acquisition pour la partie du chemin qui se trouve située dans sa mouvance ; que c'est par acte équipollent à vente que la mutation a eu lieu, ce qui donne ouverture aux lods et ventes ; qu'enfin ni " l'Acte Seigneurial de 1854," ni aucune autre loi ne soustrait l'Intimée à l'obligation de payer et l'indemnité et les lods et ventes sur la transaction du 12 Avril 1853.

L'Appelant attend donc avec confiance le Jugement de cette honorable Cour, persuadé qu'il est, qu'elle devra infirmer le Jugement de la Cour inférieure et condamner l'Intimée au paiement de l'indemnité et des lods et ventes qu'il a droit d'exiger, et qu'une ventilation sera ordonnée pour déterminer le montant de ses justes réclamations.

CHERRIER, DORION ET DORION,
Avocats de l'Appelant.

Montréal, 18 Novembre 1858.

APPENDICE.

DISTRICT OF MONTREAL. } IN THE SUPERIOR COURT.

A. E. KIERZKOWSKI,

PLAINTIFF,

vs.

THE GRAND TRUNK RAIL-WAY COMPANY OF CANADA,

DEFENDANTS.

Alexandre Edouard Kierzkowski, Esquire, seignior in possession as usufructuary of the seigniory of St. François-le-Neuf in the district of Montreal, residing in the parish of St. Charles, in the said district, Plaintiff, complains of the Grand Trunk Railway Company of Canada, Defendants.

For that whereas at all and every the time and times herein after mentioned, the said Plaintiff was and is still seignior in possession as usufructuary of the seigniory of St. François-le-Neuf, lying and being on the south side of river Richelieu, in the district of Montreal, bounded in front by the said river Richelieu, in rear by the seigniory of St Hyacinthe, on one side by the seigniory of St. Denis, and on the other side by the seigniory of St. Hilaire *de Rouville*, and the said Plaintiff, as such seignior in possession of the said seigniory, was entitled to claim all seigniorial rights accruing within the said seigniory, and more particularly the rights of indemnity, (*indemnité*) on alienations made of property within the seigniory in favor of mortmain or parties holding in mortmain and also of all lods et ventes.

That on the 12th day of April 1853, and for more than three years previous thereto, the St. Lawrence and Atlantic Rail-Road Company, a body politic and corporate, duly incorporated by an Act of the Provincial Parliament, was possessed as proprietor of a certain Rail-Road known as the St. Lawrence and Atlantic Rail-Road, running from the river St. Lawrence, opposite the City of Montreal, in the District of Montreal, and passing through several seigniories and townships to the Province line where it joined the Atlantic and St. Lawrence Rail-way, together with that portion of the said Atlantic and St. Lawrence Rail-way extending from the said Province line to a place called Island Pond

in the State of Maine, altogether a distance of one hundred and twenty six miles, more or less, which Rail-Road ran through the said seigniory of St. François-la-Neuf for a distance of one mile and sixty three hundredth of a mile in length, from the Eastern line of the seigniory of St. Hilaire to the Northern line of the seigniory of St. Hyacinthe.

That on the said twelfth day of the month of April 1853, by a certain deed made and executed at the City of London in Great Britain, between the Grand Trunk Rail-way Company of Canada of the first part; The Grand Junction Rail-Road Company, of the second part; The Grand Trunk Rail-way Company of Canada East, of the third part; The Quebec and Richmond Rail-way Company, of the fourth part; The St. Lawrence and Atlantic Rail-Road Company, of the fifth part; The Toronto and Guelph Rail-Road Company, of the sixth part; and the Atlantic and St. Lawrence Railway Compar , e the seventh part; and William Jackson, of Birkenhead, England, Esquire, and the Honorable John Ross, of Belleville, Canada, of the eighth part, the said parties after reciting in part the Acts of the Provincial Legislature of Canada incorporating several of the above mentioned Railway Companies, did refer to the several acts incorporating the St. Lawrence and Atlantic Rail-Road Company and declare as follows; " and whereas an act was passed in the eigth year of the Reign of Her present Majesty entituled " An act to incorporate the St. Lawrence and Atlantic Rail-Road Company" under which a Company was incorporated and empowered to construct a Rail-Road from the river St. Lawrence opposite the City of Montreal, in the general direction of St. Hyacinthe and Sherbrooke, to the boundary line between Canada and the United States, at such a point as would best connect with the Atlantic and St. Lawrence Rail-way and by such act the Company was empowered to raise a capital of six hundred thousand pounds currency with power to raise an additional sum of five hundred thousand pounds currency, and whereas an act passed in the tenth and eleventh year of the Reign of Her present Majesty intituled " An act to amend the act incorporating the St. Lawrence " and Atlantic Rail-Road Company and to extend the powers of the said Company," and three other acts have since been passed for the purpose of amending and enlarging the powers of the St. Lawrence and Atlantic Rail-way Company, under the last of which acts, and an agreement executed in pursuance thereof, the St. Lawrence and Atlantic Rail-way Company are now entitled to that portion of the Atlantic and St. Lawrence Rail-way which lies between Island Pond and the boundary line of the Province of Canada.

And whereas the said St. Lawrence and Atlantic Railway is nearly completed and the capital which they are autherised to raise is one million two hundred and twenty five thousand pounds currency, of which the sum of two hundred and forty six thousand one hundred pounds, or there abouts, has been raised by shares, and six hundred and thirty three thousand pounds sterling, or there abouts, by borrowing, and it is anticipated that the sum of three hundred thousand pounds will be required for the purpose of fully completing and equipping the said Railway. And whereas provincial debentures to the amount of sixty seven thousand eight hundred pounds have been issued to the said St. Lawrence and Atlantic Railway Company, and are now held by them. And whereas by an act of the Provincial Legislature of Canada passed in the fifteenth and sixteenth years of the Reign of Her present Majesty intituled; " An act to empower any Railway Company whose Railway forms part " of the Main Trunk line of Railway throughout the Province to unite with any other such Company " or to purchase the property and rights of any such Company and to repeal certain acts therein " mentioned incorporating Rail-way Companies," it is provided that it shall be lawful for any two or more Companies formed, or to be hereafter formed for the purpose of constructing any Railway which shall form part of the Main Trunk line of Rail-way contemplated by the Legislature in passing an act of the fourteenth and fifteenth years of Her present Majesty, intituled, " An act to make pro- " visions for the construction of a Main Trunk Line of Rail-way throughout the whole length of this " Province" to unite together as one Company or for any one of such Companies to purchase and acquire the property and rights of any one or more of such Companies. And it is thereby declared that the provisions of the now reciting act shall apply to and include the St. Lawrence and Atlantic Rail-way Company, and the whole of the Rail-way which that Company are empowered to construct and shall apply to and include any Company which may have been formed by the union of any two or more Companies under this act. And it is thereby also provided that it shall be lawful for the directors of any such Company as aforesaid, to agree with the Directors of any other such Company, or Companies, that the Companies they respectively represent shall be united as one Company and by such agreement to fix the terms upon which such union shall take place, the rights which the share holders of each Company shall possess after such union, the number of directors of the Company after such union, and who shall be such directors until the then next election, the period at which such next election shall be held, the number of votes which the shareholders of either Company shall respectively have thereat the corporate name of the Company after any such union, the time when the agreement shall take effect, the By-Laws which shall apply to the united Company and generally to make such conditions and stipulations touching the terms upon which such union shall take place as may be found necessary for the determining the rights of the said Companies respectively and of the shareholders thereof after any such union, and the mode in which the business of the Company shall be managed and conducted after any such union. And it is thereby also provided that whenever any such agreement shall have been made as aforesaid, the directors of each of the Companies which it is to effect, shall call a special general meeting of the shareholders of the Company they represent, in the manner provided by law for calling such general meetings, stating particularly, that such meeting is called for the purpose of considering the said agreement and of ratifying or disallowing the same, and if at such meeting of the shareholders of each of the Companies concerned, respectively, three fourth or more of the votes of the shareholders attending the same, either in person or by proxy, be given for ratifying said agreement, then the same shall have full effect accordingly as if all the terms and clauses thereof not inconsistent with the now reciting act were enacted in an act of the

Legislature of this Province; and if less than three fourths of the votes of the shareholders present at such meeting, in person or proxy, be given in favor of ratifying such agreement, then the same shall be void and of no effect, and no other meeting shall be called to consider any agreement for a like purpose within six months thereafter, provided always that the first meeting of the shareholders of any Company for considering any such agreement shall be held within three months of the time when the same shall be made by the Directors thereof, and not afterwards. And it is thereby further provided that from and after the time when any such ratified agreement for the union of two or more Companies shall take effect, the Companies intended to be united shall become one Company and one Corporation by the corporate name assigned to it in such agreement and shall be invested with and have all the rights and property and be responsible for all the liabilities of the respective Companies, parties to such agreement, and shall be held to be the same Corporation with each of them, so that any right or claim which would be enforced by or against either of them may after such union be enforced by or against the Company formed by their union, and any suit, action or proceeding pending at the time of such union by or against either of such Companies may be continued and completed by or against the Company formed by their union by the corporate name assigned to it by the agreement.

And it is thereby further provided that in the case of any such union as aforesaid, the capital of the Company formed thereby, shall be equal to the combined capitals of the Companies united and they may raise, by loan or otherwise, any sum not exceeding the total amount which such Company might raise. And it is thereby further provided that the Legislature of the Province will make any further Legislative Provision which may be required for the purpose of giving full effect to the now reciting act, and to any agreement made under it, and ratified as aforesaid, according to the true intent and purpose thereof. And whereas by an act of the Provincial Legislature of Canada passed in the sixteenth year of Her present Majesty intituled, "An act to extend the provisions of the Rail-"way Companies union act to Companies whose Railways intersect the Main Trunk Line or to places "which the said Line also touches," it is provided that the hereinbefore recited act intituled, "An "act to empower any Railway Company whose Railways form part of the Main Trunk Line of Rail-"way throughout this Province, to unite with any other such Company or to purchase the property "and rights of such Company and to repeal certain acts therein mentioned incorporating Railway "Companies," and all the enactments and provisions therein contained shall extent and apply to, and include any Railway Company whose Railways intersects the Main Trunk Line of Railway contemplated by the Legislature, in passing the act of the now last Session of the Provincial Parliament, intituled, "An act to make provisions for the construction of a Main Trunk Line of Railway through-"out the whole Province," or touches any city, town or place which the said contemplated Main Trunk Line of Railways also touches, subject always to the amendments, and provisions therein contained. And after reciting several other acts and agreements, each of the said, several Companies of the second, third, fourth, fifth and sixth parts, subject to the approval of the shareholders in accordance with the provisions of the thereinbefore recited act of parliament, did amongst other things covenant and declare, with and to the said Company parties thereto of the first part, who did thereby subject as aforesaid, covenant and declare with and to each of the said Companies parties thereto of the second, third, fourth, fifth and sixth parts as follows, that is to say: 1. From and after the first day of July one thousand eight hundred and fifty three, the Grand Trunk Railway Company of Canada East, the Quebec and Richmond Railway Company, the St. Lawrence and Atlantic Railway Company, the Grand Junction Railway Company and the Toronto and Guelph Railway Company shall be united with and incorporated into the Grand Trunk Railway Company and shall together form one Company to be called "*The Grand Trunk Railway Company of Canada*" and the undertaking of the said several Companies shall be united into one undertaking to be called "The Grand Trunk Railway of Canada" subject to the provisions of the hereinbefore recited acts of Parliament, and to the assent of the shareholders of the several Companies as required by the hereinbefore recited act to authorize the union of Companies on the Grand Trunk Line. In the united undertaking is also to be included the construction and maintenance of an Iron Tubular Bridge over the St. Lawrence, at Montreal, as projected by the Grand Trunk Railway Company under the provisions of the act and the contract hereinbefore recited.

2. The several clauses of the "Railway clauses consolidation act" with such modification however as regards "plans and surveys" and "general provisions" as are contained in the several special acts of the different Companies, and as refer to the directors and shareholders thereof as fully as if the same were herein repeated, except such of the clauses thereof as are inconsistant with the express provisions hereinafter contained.

3. The capital of the united Company will consist of the aggregate amount of the respective capitals, which the several Companies forming such union may have raised or have been entitled to raise under the authority of the several acts of Parliament, relating to such Companies respectively together with such increase of such aggregate capital as may, from time to time be made under the provisions of the "Railway clauses consolidation act."

4. The stock or shares of the Quebec and Richmond Railway Company shall become stock or shares of the same nominal amount in the capital of the united Company, and shall rank on the Register of the united Company, as stock or shares upon which so much is paid as shall at the time of the amalgamation have been actually paid thereon.

5. The stock or shares of the St. Lawrence and Atlantic Company shall (subject to such equalization as may be necessary for the conversion thereof form currency to sterling money) become stock or shares of the same nominal amount in the capital of the united Company and shall rank on the Register of the united Company, as stock or shares upon which so much is paid as shall at the time of the amalgamation have been actually paid thereon, and in addition, the united Company shall take

upon itself as part of the liabilities and obligations of the united Company, the sum of seventy five thousand pounds being the estimated amount of the arrears of interest due to the shareholders of the St. Lawrence and Atlantic Company and with which sum the arrears will be fully discharged.

That the said deed of the 12th day of April 1853 was afterwards duly ratified by the stockholders of the different Companies therein named at regular meetings of the said stockholders called for that purpose and that the stockholders of the said St. Lawrence and Atlantic Railroad Company, did duly ratify the same on or about the 30th day of May 1853.

That the Grand Trunk Railway Company of Canada have since the date of the said deed of the 12th day of April 1853, and since the date of the said ratification entered into possession of the said St. Lawrence and Atlantic Railroad, which has by virtue of the said deed become part and portion of the Grand Trunk Railway of Canada and have possessed ever since, and are now in possession of the same, including that portion thereof which passes through the seigniory of St. François-le-Neuf.

That the real estate situate in the seigniory of St. François-le-Neuf, aforesaid acquired by the said Defendants from the said St. Lawrence and Atlantic Rail-Road Company, by and in virtue of the said deed of covenant, consists of that portion of the late St. Lawrence and Atlantic Rail-Road now forming part of the Grand Trunk Railway of Canada which passed through the said seigniory of St. François-le-Neuf, and comprised a lot of land of ninety feet in width more or less, by one mile and sixty three hundredth of a mile in length, bounded on both sides by lands belonging to the censitaires of the said seigniory of St. François-le-Neuf, and at one end by the line separating the said seigniory of St. François-le-Neuf from the seigniory of St. Hilaire and at the other by the line between the said seigniory of St. François-le-Neuf and the seigniory of St. Hyacinthe.

That by virtue of the acquisition so made by the said Grand Trunk Railway Company of Canada from the said St. Lawrence and Atlantic Rail-Road Company, a mutation has take place in the proprietorship of the said St. Lawrence and Atlantic Road and more particularly of that portion thereof passing through the said seigniory of St. François-le-Neuf, and that the same has now become the absolute property of the Grand Trunk Railway Company of Canada, on which mutation, the Plaintiff is entitled to and has right to claim and demand a right of indemnity in consequence of the said property having by such mutation, passed from the St. Lawrence and Atlantic Rail-Road Company into the hands and possession of the Defendants who hold it in mort-main.

That the said deed of the 12th of April 1853, by which the said Defendants have acquired the said St. Lawrence and Atlantic Rail-Road is a deed *à titre onérenx* equal to a deed of sale of the said St Lawrence and Atlantic Rail-Road, and that *lods et ventes* have accrued on the said deed in favor of the Plaintiff for that portion of the said St. Lawrence and Atlantic Rail-Road which was lying in the said *Seigneurie* of St. François-le-Neuf.

That the consideration for the transfer by the St. Lawrence and Atlantic Rail-Road Company to the Defendants of the Said St. Lawrence and Atlantic Rail-Road and of that portion of the Atlantic and St. Lawrence Rail-Road which belonged to the said St. Lawrence and Atlantic Rail-Road Company, consisted—

1. Of the amount of the liabilities of the said St. Lawrence and Atlantic Rail-Road Company which said liabilities exceeded at the time of the passing of the said deed, the sum of eight hundred thousand pounds currency.

2. Of the sum of two hundred and forty six thousand and one hundred pounds currency of Stock and Shares held by the Share holders of the St. Lawrence and Atlantic Rail-way Company, which were converted in their favour into Shares in the Grand Trunk Rail-way Company for the same amount.

3. Of the sum of seventy five thousand pounds sterling paid to the said Shareholders of the said St. Lawrence and Atlantic Rail-way Company for arrears of interest due them.

That the said three different sums form together that of £1,116,100 currency, which the said Defendants have paid to acquire the said St. Lawrence and Atlantic Rail-Road and the said portion of the Atlantic and St. Lawrence Rail-Road Company.

That the proportion of the said last mentioned sum appartening to that portion of the St. Lawrence and Atlantic Rail-Road which was situated and lying in the said Seignior of St. François-le-Neuf, as the consideration or price thereof, calculated according the value which the said portion of the said Road bears to the whole of the said Road, would exceed the sum of £10,000 0s. 0d. currency, but that the said Plaintiff, in order to avoid contestations, is willing to consider the sum of £6,538 9s. 0d. currency as representing the price or consideration paid and given by the Defendants for the said portion of the St. Lawrence and Atlantic Rail-Road lying whithin the said Seigniory of St. François-le-Neuf, though the said sum is far below the real value of the said portion of Rail-Road lying within the said seigniory of St. François-le-Neuf.

That the right of indemnity (*droit d'indemnité*) due to the said Plaintiff by the Defendants on their said acquisition of the said portion of the St. Lawrence and Atlantic Rail-Road lying within the Seigniory of St. François-le-Neuf, consists of one fifth of the price or consideration paid for the same to wit: of one fifth of the said sum of £6,538 9s. 0d. currency equal to the sum of £1,307 5s. 9½d. currency.

That the *lods et ventes* due to the Plaintiff by the Defendants on their said acquisition of that portion of the said St. Lawrence and Atlantic Rail-Road lying within the said seigniory of St- François-le-Neuf amount to another sum of £544 17s. 5d. currency, which the said Plaintiff is entitled to claim from the said Defendants for the said *lods et ventes*.

And the said Plaintiff alleges that the Defendants though aften requested to pay and satisfy to the Plaintiff the above two sums of £1,307 5s. 9½d. and of £534 17s. 5d. currency amounting together to that of £1,852 3s. 2½d. currency have hitherto neglected and refused so to do.

Wherefore, the Plaintiff brings suit and prays that the said Defendants be condemned to pay and satisfy to the Plaintiff the said sum of £1,852 3s. 2½d. currency with interest and costs of suit.

Signed,

CHERRIER, DORION AND DORION,
Attornies for Plaintiff.

Montreal, 22nd November 1856.

Exceptions Péremptoires et Défense en Fait. (Already printed, See page 29.)

(*Endorsed*)

Factum de l'Appelant—Filé ce 22 Novembre 1856.

(Paraphed) J U B

PROVINCE DU CANADA,
District de Montréal.

BANC DE LA REINE.

EN APPEL.

A. E. KIERZKOWSKI,

APPELANT

vs.

LA COMPAGNIE DE CHEMIN DE FER DU CANADA,

INTIMÉE.

AUTORITES CITEES PAR L'APPELANT.

PROPOSITION.—1° Par l'acte du 12 Avril 1853, le Chemin de fer du St. Laurent et de l'Atlantique est passé à la Compagnie du Grand Trone, & il y a eu mutation.

Acte 16 Vict. c. 39, Sect. 4.

Le nom d'*Union* ou d'*Amalgame* que l'on donne à l'acte ne signifie rien. Il ne désigne pas une espèce particulière de contrat connu dans notre droit, mais il peut s'appliquer à toute espèce de contrat et surtout aux contrats mixtes, comme l'est celui du 12 Avril 1853.

HENRION DE PANSEY, Dissertations Féodales—Vo. Indemnité, § 23, p. 276.

" Cette maxime est incontestable de manière que si, après le paiement de l'indemnité, la main-" morte transporte l'immeuble à un autre corps main-mortable par vente, par donation et par échange, " cette *union* ouvre au profit du Seigneur une nouvelle action afin d'indemnité, &c....."

POCQUET DE LIVONIÈRE, p. 179 et 180.

En considérant l'acte sous le jour le plus favorable à l'Intimée, l'on ne pourrait tout au plus y voir un acte de Société par lequel l'une des Compagnies aurait apporté dans la Société un immeuble, dont partie lui aurait été payée par ses associés et l'autre partie aurait formé sa mise dans la Société. Or, il y aurait encore mutation dans une semblable transaction.

POTHIER, Contrat de Société, No. 3, 2 & 3 al.

" De la prescription, No. 79.

Le Contrat de Société est un contrat qui est de sa nature translatif de propriété, &c....."

PARDESSUS, Droit Commercial, T. 1, p. 16, No 975—p. 20, No. 976—p. 35 et 36, No. 984—p. 47, No. 989—p. 50, 1. al. p. 57—" mais de ce qu'une action dans une Société, etc"

CHAMPIONNIÈRE et RIGAUD, Droit d'Enrégistrement, T. 3, p. 750, No. 2750—" Toutes les fois done, etc ....."

Idem. p. 750, No. 2751—p. 751 No. 2753—2754, p. 763—No. 2780.

Idem. Dictionnaire de l'Enrégistrement, T. 5, Vo. Société, Nos. 38—39—40—41—42—62—63—64—65—66—et 68.

HENRION DE PANSEY, Vo. Indemnité, § 26, p. 278—279—281—282.

ANCIEN DENISART No. 3. Union de benefice est une aliénation.

BOSQUET. Dictionnaire des Domaines. Vo. Indemnité, T. 2, p. 533, arrêt du 7 Août 1744.—Contre le Sem de St. Louis de Rouen.

Proposition 2o. Cette mutation a eu lieu en faveur d'une main-morte & a donné lieu à l'indemnité Seigneuriale.

GUYOT, Répertoire, Vo. Gens de main-morte.

" On appelle ainsi tous les corps et communautés, tant ecclésiastiques que laïques, qui sont " *perpétuels*, et qui par une subrogation de personnes, étant censés être toujours les mêmes ne produi-" sent aucune mutation *par mort*."

ANCIEN DENISART, Vo. Gens de main-morte.

" On appelle gens de main-morte, les sociétés, monastères et communautés qui ne meurent ja-" mais, qui se renouvellent toujours."

LEFEBVRE DE LAPLANCHE, Traité du Domaine, T. 1, p. 336.

" Ces main-mortes sont ainsi appelées parce que *idem semper corpus permanet licet personæ mu-" tentur et moriantur*."

BOSQUET, Dictionnaire des Domaines, Vo. Amortissement, p. 147, donne la même définition que Guyot.

GRANT—On Corporations, p. 4, 5, 98, 102, 103.

" A question of more difficulty is as to the position of Corporations, who have taken and continue " to hold, lands beyond the annual value which their license to hold in *mort-main* authorizes."

Idem, p. 129, to 134, 136.

Kent's Com. T. 2, p. 267, p. 275.

Angell & Ames, on Corporations, p. 1, 2, 3, 35, 44, 83, 113, 114, 115.

Code Civil de la Louisiane, Art. 418, 419, 420, 421, 422 et 427.

Fessart, Dictionnaire de l'Enregistrement et des Domaines, Vo. main-morte. T, 3, 2. 307 No. 1, p. 308. No. 4.

" Aujourd'hui l'expression de main-morte n'est plus usitée que pour parler des biens dé. " tenus par les communautés religieuses, les hospices, les communes, les établissements publics et " généralement par les corps et *individus qui se perpétuent*."

Ce n'est pas parce que les corps ne peuvent aliéner leurs biens qu'ils sont appelés main-morte. L'impuissance d'aliéner n'est qu'un accident de la main-morte et non essentielle à son existence. Toutes les main-mortes pouvaient autrefois acquérir des immeubles et les aliéner, et si l'on a prohibé l'aliénation des biens des main-mortes, ou plutôt si l'on a exigé l'observation de certaines formalités pour leur aliénation, cela n'a été que pour la conservation des biens de l'Eglise et de ceux destinés à des objets publics et dont les corps ou communautés qui les possédaient n'avaient qu'un simple usufruit ou même qu'une simple possession sans aucun droit de propriété.

Nouv. Denisart. Vo. Aliénation des biens ecclésiastiques p. 420 No. 2—p. 421—552.

Cette prohibition du reste ne s'est jamais appliquée aux corps et communautés propriétaires de leurs biens, comme les corps de marchands, d'ouvriers et de gens de métiers, etc.

D'ailleurs, les main-mortes étaient obligées d'aliéner dans l'an, de leur acquisition, si elles n'obtenaient la permission de posséder au moyen de l'amortissement.

Nouv. Denisart. Vo. Aliénation p. 436, § XI, No. 2.

Ceci fait voir qu'il ne leur était pas défendu d'aliéner, mais seulement qu'il leur était défendu de posséder.

Bosquet. Dictionnaire du Domaine, Vo. Amortissement, p. 144.

" On voit une ombre d'amortissement dès le IVe siècle, sous les Empereurs Romains, qui, selon " le témoignage de St. Jérome, mirent des bornes aux acquisitions que faisaient les Eglises, lesquelles " recevant de toutes parts et ne *faisant que très rarement des aliénations*, se fussent trouvées à la fin " posséder tous les biens temporels ; ce fut par ce motif que les Rois, dans les XIIe et XIIIe siècles " pour remédier aux trop grandes acquisitions que la ferveur de la religion inspirait, déclarèrent les " main-mortes incapables de posséder."

Hervé, Matières Féodales, T. 6, p. 429.

" Ce n'est pas tout. Comme les autres corps qui sont perpétuels par leur institution et qui ont " des propriétés en tant que corps, *ne les aliènent pas plus que le Clergé n'aliéne les siennes* parce " qu'aucun membre du corps ne peut disposer de ce qui appartient à ce corps et de ce dont il n'a que " la jouissance ou l'administration, on a trouvé que le préjudice était le même pour le roi, quelque " fût le corps qui fit l'acquisition et on a étendu l'amortissement à tous les corps qui font acquisi- " tion."

Idem, p. 438—440.

" Idem, p. 441.....Dira-t-on aussi que les corps municipaux, que les corps de marchands " et d'ouvriers étaient frappés de la même incapacité que l'Eglise, et si on le dit, comment le prou- " vera-t-on."

"Idem, p. 480..... Il a été tout simple qu'ils exigeassent aussi un dédommagement pé- cuniaire des corps qui acquerraient *pour ne point aliéner*, puisque ces acquisitions altéraient leurs profits casuels."

Guyot, Traité des Fiefs, T. 2, p. 146.

" Le relief est, pour bien dire, le seul droit qui reste aux Seigneurs sur les fiefs amortis, car rarement *sont-ils aliénés*, et les formalités de ces *aliénations* les *raréfient excessivement*."

Arrêtés de Lamoignon, Tit. 18, Art. 16. " En cas *d'aliénation* faite par gens de main-morte, etc." Art. 17....." Encore que dans la suite les gens de main-morte mettent *l'héritage hors de leurs mains*."

Leverve de Laplanche, T. 1, p. 338.

" Comme il n'arrive jamais de changement dans la possession des main-mortes par succession, et *qu'il est très-rare que leurs héritages changent de main par la voie de la vente*, les seigneurs s'op- posaient aux acquisitions qu'ils voulaient faire, etc."

Ferrière, Dictionnaire de Droit. Vo. Indemnité.

" Le droit d'indemnité est dû, etc.....car quand des communautés ont acquis des immeubles et " les ont fait amortir, ces immeubles sont *pour ainsi dire hors du commerce*, attendu qu'elles *ne les* " *aliènent que très-rarement*."..... .....

Si après les lettres d'amortissement, avant l'action intentée par les Seigneurs, les gens de main- morte aliènent l'héritage ou le fief amorti ; le seigneur pourrait en ce cas exiger double droit, les uns pour l'acquisition de l'immeuble faite par les gens de main-morte et les autres pour la *vente* qu'ils en ont faite."

Fonmaure. Traité des Lods, No. 594-5-6.

Bourjon. T. 1, p. 302.

" Lorsqu'une main-morte *vend à une autre*, il est dû nouveau droit d'amortissement et nouveau ou second droit d'indemnité."

Traité des Droits d'Amortissement.

Bacquet. T. 2, p. 384 et 436.

Boutaric. Traité des Droits Seigneuriaux, p. 433.

PREUDHOMME. Traité des Biens en Roture, p. 212 et 213.

NOUVEAU DENISART. Vo. Aliénation des Biens des Communautés laïques, § 1, 2, 3, p. 416 et 417.—L'auteur fait la distinction entre les communautés qui sont propriétaires de leurs biens et celles qui ne le sont pas. Les unes peuvent aliéner, les autres ne le peuvent pas.

Idem p. 418.—" Qu'il est faux que les biens des communautés soient " puissent être dits" inaliénables proprement & rigoureusement dans le même sens qu'on le dit des biens des mineurs, &c.

Idem p. 427.—Aliénation faite sans les formalités requises déclarée valable.

P. 431 et suiv.—Opinion de l'Avocat-général Séguier, que les Ecclésiastiques ne sont que de simples usufruitiers, ce qui est la raison pour laquelle ils ne peuvent aliéner.

P. 432.—" M. l'Avocat-général appuya, etc....." " Il insista encore sur ce que la vente était antérieure à l'époque de 1749, temps où l'Eglise ayant la faculté d'acquérir, elle devait avoir plus de liberté pour *vendre*.

GUYOT, Répertoire. Vo. Aliénation, p. 311.

ANCIEN DENISART, Vo. Biens d'Eglise, No. 22.—" Dans le temps ou l'Eglise commença à posséder des fonds, les Evêques qui en avaient l'administration pouvaient les *aliéner*."

Idem Le même auteur Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37 et 38. donne des exemples d'aliénation faites sans aucune formalité qui ont été déclarées valables. Ce qui demontre que les formalités exigées pour l'aliénation des biens de l'Eglise n'étaient que pour la conservation de ces biens.

COCHIN, T. 1, p. 159.

" Enfin les formalités en matière d'aliénation des biens de l'Eglise n'ont été établis que pour éviter la lésion et pour justifier de l'avantage procuré à l'Eglise; mais quand, par d'autres voies, l'utilité évidente de l'Eglise est reconnue, ces formalités ne deviennent plus que des cérémonies inutiles et des dépenses perdues."

HENRION DE PANSEY, Vo. Indemnité, § 1, p. 238, § 3, 240.

" Mais l'impuissance d'aliéner, etc. "

Idem § 49, p. 338, § 50, p. 345.

Ord. de 1749, Art. 14 et 26.

D'HÉRICOURT, Lois Ecclésiastiques, part. 4, c. 3.

" L'amortissement est la permission que le Roi accorde aux gens de main-morte de posséder des immeubles, et la finance que les gens de main-morte sont obligés de payer aux Rois pour obtenir cette permission."

HERVÉ, T. 6, p. 458.—" Lettres d'amortissement contiennent ordinairement la clause *sine coactione vendendi vel extra manum suam ponendi*."

Le Roi en France accordait quelquefois des lettres Patentes qui dispensaient du droit d'amortissement,

D'autres fois il accordait un amortissement général pour tous les biens d'une église, d'une communauté ou d'une province.

HERVÉ. T. 6, p. 472 à 478.

La clause qui se trouve dans quelques Statuts Provinciaux, que les corporations pourront acquérir sans lettres d'amortissement, équivaut à ces amortissements généraux que faisaient les Rois de France et à la dispense du droit d'amortissement qu'ils accordaient.

Si les corporations peuvent dans ce pays acquérir et aliéner leurs immeubles, ce n'est que parce que leurs actes d'incorporation les y autorisent. Or, en France le Roi pouvait avant l'édit de 1749, par de simples lettres patentes, autoriser des main-mortes à acquérir et à posséder des immeubles sans droit d'amortissement, à plus forte raison il le pouvait par des Edits.

DENOST. Jurisprudence du Conseil p. 57.

Voir Déclaration de 1702 et l'art. 14, Ord. de 1738

12 Vict., ch. 10, s. 24.

HERVÉ, T. 6, 540.

BOSQUET. Dictionnaire des Domaines. Vo. Amortissement, p. 147.

" Tous les dites gens de main-morte sont sujets au droit d'amortissement, lorsqu'ils n'en ont pas " été dispensés nommément en considération de la faveur de leur établissement et de la destination " de leurs biens."

" En conséquence il a été jugé, toutes les fois que la question s'est présentée, que les commu- " nautés de marchands doivent le droit d'amortissement pour raison des acquisitions faites en " commun."

" Voyez la décision du Conseil du 24 Juillet 1722, contre les marchands drapiers, merciers de " Rouen."

" Celles du 8 Février 1728, contre les brasseurs de la même Ville."

" Arrêt du 8 Mai 1736 contre les huissiers de Rouen, pour l'acquisition d'une sergenterie " noble."

" Décisions du 7 Janvier 1742 et 25 Fév. 1742 contre les marchands merciers et bonnetiers de " Paris. Celle du 7 Mai 1745 contre les Fabriquants de la ville de Tours, pour l'acquisition d'une " maison destinée à l'établissement d'une Calandre. Celle du 29 Novembre 1747, contre les apothi- " caires de Caën, qui juge qu'ils doivent le droit d'amortissement du sol pour une acquisition desti- " née à un jardin botanique et à un laboratoire; autre du même jour qui juge même chose contre " les marchands drapiers et merciers de Falaise pour l'acquisition d'une maison destinée au contrôle " et à la visite des marchandises. La raison pour laquelle la superficie a été dispensée du droit " par ces deux décisions, c'est qu'elle est destinée à l'utilité publique sans rapporter, ni revenu ni " utilité particulière, aux dites communautés."

Cela était conforme à l'Ord. de 1738.

" Décision du Conseil Royal des Finances du 28 Sept. 1749, qui réforme une décision de Mr. " l'Intendant de Rouen et condamne la communauté des maîtres drapiers et sergiers d'Evreux, à " payer le droit d'amortisement d'un moulin à fouler acquis par bail à rente en 1731."

L'amortissement et l'indemnité sont soumis aux mêmes règles, l'un est payable au Seigneur et l'autre au Roi.

Bosquet, Loco citato, p. 170.

Dunost, Jusisprudence du Conseil, T. 1, p. 24-25.

" Décision du 29 Novembre 1747, qui condamne les maîtres-apothicaires de Caën, à payer le droit d'amortissement d'une maison par eux acquise pour servir de Jardin Botanique et de Laboratoire, quoiqu'ils eussent soutenu qu'on ne pouvait les regarder comme main-morte, *ayant la liberté de vendre et aliéner.*

Lorsque les auteurs parlent de l'inaliénabilité des biens des main-mortes, ils n'entendent parler que de l'impossibilité où sont les individus qui composent un corps main-mortable d'aliéner leurs parts dans les biens appartenant au corps et non de l'impossibilité du corps de les aliéner.

Dunost, Jurisprudence du Conseil, L. 1, p. 37.

" Sur ce, décision du 21 Février 1748, qui porte : *le droit n'est pas dû.*" p. 33.

" Le motif de cette décision est que l'adjudication a été faite au profit des Jurés-Auneurs de Toiles, pour eux leurs hoirs, successeurs et ayant cause. De ce terme d'hoirs, on a conclu que les Jurés-Auneurs n'avaient point acquis en communauté, en sorte que, chaque officier vendant sa charge, pouvait vendre la portion qui lui appartenait dans la maison, et que les héritiers de cet officier lui succédaient dans cette portion ; ce qui constitue au contraire la main-morte, *étant l'impossibilité que l'un du corps aliène sa part ou portion ou que ses héritiers lui succèdent.* On les a regardés comme des acquéreurs en société, qui étaient tous co-propriétaires pour un vingt-cinquième."

3o. Les Compagnies de Chemin de Fer et autres Corporations ont été reconnues comme main-mortes par un grand nombre d'actes de la Législature Provinciale.

41 Geo. 3 c. 10.—Montreal Water-Works 1801.

41 Geo. 3 c. 17.—Royal Institution 1801.

2 Guil. 4 c. 58.—Chemin de Fer du Champlain et du St. Laurent 1832.

4 Guil. 4 c. 35.—Collége Ste. Anne 1834.

4 Guil. 4 c. 36.—Collége St. Hyacinthe 1834.

5 Guil. 4 c. 18.—Compagnie du Gaz de Montréal.

6 Guil. 4 c. 51.—Collége Chambly.

2 Vict. c. 26.—Actes concernant les biens des différentes dénominations religieuses.

3 et 4 Vict. c. 30.—Ord. concernant le Séminaire de St. Sulpice.

Le Séminaire y est reconnu comme étant une Corporation Ecclésiastique, sans qu'il soit déclaré que ses biens seront tenus en main-morte.

7 Vict. c. 11.—Principaux Officiers de l'Ordonnance.

8 Vict. c. 25.—Compagnie du Chemin de Fer du St. Laurent et de l'Atlantique.

9 Vict. c. 82.—Compagnie du Chemin de Fer de Montréal et Lachine.

10 et 11 Vict. c. 119.—Chemin de Fer de Carillon et Grenville.

10 et 11 Vict. c. 120.—Chemin de Fer du Lac St. Louis et de la ligne Provinciale.

10 et 11 Vict. c. 121.—Chemin de Fer de Montréal et de la ligne Provinciale.

10 et 11 Vict. c. 122.—Chemin de Fer du Canada, Nouveau-Brunswick et de la Nouvelle-Ecosse.

12 Vict. c. 178.—Chemin de Fer de la Jonction de Montréal et Vermont.

12 Vict. c. 93.—Incorporant les Pères-Oblats.

12 Vict. c. 96.—L'Academie Industrielle de St. Laurent.

12 Vict. c. 180.—Compagnie du Canal du St. Laurent et du Lac Champlain.

Voir encore :—

L'Ord. 4 Vict. c. 31, s. 32 —Concernant la Cité de Québec.

" 4 Vict. c. 32. s. 35.— " " "

Toutes les corporations religieuses et civiles y sont reconnues comme étant des mains-mortes.

Jugements.—

No. 1772.—Jacobs vs. La Compagnie du St. Laurent et de l'Atlantique.—Jugt. 16 Déc. 1850.

No. 890.—Grant vs. Les Principaux Officiers de l'Ord.—28 Janvier 1848.

Ces deux Jugements ont été rendus à Montréal.

4o. Sous le droit nouveau en France l'on reconnait que tous les corps qui ont une existence perpétuelle sont des mains-mortes.

Fessart,—Dict. de l'Enregistrement et des Domaines, cité plus haut.

Dalloz,—Juris. du royaume, année 1849.—4e partie, p. 46.

Note 2.—Rapport de M. Grévy.

" Citoyens Représentants, les établissements de main-morte, dont l'existence se perpétue par une " subrogation successive de personnes, acquièrent souvent, *aliènent rarement et ne meurent jamais.* " Leurs biens dont la masse va sans cesse augmentant sont retirés du commerce, etc.".....

2 Col. " Les Sociétés anonymes n'*ayant qu'une durée limitée*, il s'est élevé des doutes sur la " justesse de leur assimilation aux établissements de main-morte."

.....

P. 47— " Toutefois il ne faut pas perdre de vue que, si les biens des mains-mortes ne peuvent " jamais éprouver de mutation pour cause de décès, ils peuvent être et sont quelquefois *l'objet de* " *transmissions entre vifs.*"

Dalloz,—Juris. du Royaume, année 1851, p. 49 et 50.—L'on y reconnait que les Chemins de Fer sont des biens tenus en main-mortes et s'ils ont été déchargés des droits établis par la loi de 1849 ce n'est que parceque les Compagnies qui les exploitent n'en sont pas propriétaires.

M. DeSerigny, Dans la Revue Critique de Jurisprudence, année 1851, p. 480,—Combat les

décisions qui ont exempté les Compagnies de Chemins de Fer des droits établis par la loi de 1849—et déclare formellement que ces Chemins de Fer sont tenus en main-morte.

5o L'acquisition faite d'une main-morte par une autre main-morte à quelque titre que ce soit donne lieu au droit d'indemnité.

Henri de Pansey, vo. L'Indemnité § 23 & 24, p. 276.

Bacquet,—Droits d'amortissement c. 46. No. 4. p. 411 à 415.

Hervé,—Matières féodales T. 6, p. 573, 574, 616, 617.

Ferriere,—G. C. sur la coutume de Paris T. 1, p. 1152, No. 8, 9 & 10.

Lefebvre De Laplanche.—Traité du domaine, T. p. 418.

Bacquet,—T. 2, p. 518,—Rapporte les lettres d'amortissement accordées à la Confrérie des Orfèvres.

Bosquet, Vo. L'Indemnité, T. 2, p. 534.

" Vo Union, T. 3, p. 482.

6o. La main-morte qui a payé l'indemnité doit en outre les lods et ventes si l'acte qui la rend propriétaire en est productif.

Pocquet de Livonière,Traité des Fiefs, p. 183 et 184.

Loisel Vo. Institutes Coutumières, (Ed. 1846, par Dupin et Laboulaie,) Liv. 1, S. 60, T. 1, p. 109.

Henrion de Pansey Vo Indemnité, § 30, p. 285.

Bosquet, Dictionnaire du Domaine, Vo. Indemnité due par le Roi.

Voir aussi les autorités citées à l'appui de la 1re proposition.

7o. Les acquisitions faites pour des travaux publics qui peuvent être d'intérêt général, mais qui sont faits par des individus ou des corporations dans un but de spéculation, ne sont pas exempts du paiement des lods et ventes.

Fonmaure, Traités des Lods, No. 238.

Pocquet de Livonière, Traité des Fiefs, p. 246.

Valin, Commentaire sur la coutume de Larochelle, T. 3, (addition au commentaire,) Edition de 1768, p. 744 et suiv.

8o. La clause 34e de l'acte Seigneurial de 1854, n'a pas d'effet rétroactif.

Voir le préambule et les clauses 5—6—14—32—33—34—36 et 33.

Hervé, T. 6, p. 575 et 576.

Il ne faut pas interpréter toutes les expressions dans leur sens littéral.

Toullier, T. 4, p. 444.

Merlin, Vo.Rép., Effet Rétroactif.

Mailler-de-Chassat,T. 1, p. 123--125—155.

Blackstone, T. p. 44—160.

Coke's Institute, p. 360.

Bacon's Abridgment, T. 6, p. 384.

Dwarris on Statutes, p. 680 et 681—658—659.

Smith's Commentary on Statutory and Constitutional Construction, p. 677, p. 678—679—533 § 532.

7, Johnson's Report, 477—Dash and Vunkleek.

Baron dit Lafrenière et Cuthbert,—Jugée en appel en Mars 1857.

Montréal, 20 Janvier 1359.

DOCUMENT XI

PROVINCE DU CANADA, *District de Montréal.* } **Cour du Banc de la Reine.**

JURISDICTION CIVILE.

ALEXANDRE A. KIERZKOWSKI,
Demandeur en Cour Inférieure,
APPELANT.

vs.

LA COMPAGNIE DU GRAND TRONC DE CHEMIN DE FER DU CANADA,
Défenderesse en Cour Inférieure,
INTIMEE.

FACTUM DE LA COMPAGNIE.

Au soutien du Jugement rendu par la Cour Superieure du District de Montréal, déboutant la demande de l'appelant, La Compagnie soumet ici le mémoire par elle fournie aux Juges qui l'ont rendu.

Plusieurs questions importantes surgissent du litige mu en cette instance. L'exposé de faits qui suit nous conduira naturellement à leur énoncé.

Fait.—Par l'acte Provincial 8 Vict. cap. 25 (1845), la Compagnie du Chemin à lisses du St. Laurent et de l'Atlantique fut incorporée avec les pouvoirs et sous les limitations ordinaires aux chartes de chemins de fer. Le parcours du chemin en contemplation devait s'étendre du fleuve St. Laurent, vis-à-vis Montréal, à la frontière américaine. Une disposition particulière de la loi

assujettissait la Compagnie au paiement de l'indemnité aux Seigneurs dont le chemin devait parcourir la censive. En conséquence, lors de l'expropriation des terrains nécessaires au chemin, cette indemnité fut payée, et, en particulier M. Kierzkowski, dont une partie de la Seigneurie est traversée par le chemin du St. Laurent et de l'Atlantique, reçut la sienne.

Par un autre acte, l'acte 14 et 15 Victoria : cap. 73, passé en 1851, il fut statué qu'une ligne de chemin de fer appelée : la ligne Principale du Grand Trone de chemin de fer (main Trunk line Railway) serait construite, traverserait la Province dans toute sa longueur et se continuerait de la frontière est à Halifax, en traversant le Nouveau Brunswick et la Nouvelle Ecosse ; le chemin canadien devant recevoir la garantie du gouvernement canadien. La Clause 13 comporte que ce chemin sera un *ouvrage provincial* à être construit sous la surintendance du bureau des travaux publics et demeurera sous le contrôle du Gouvernement.

Par un troisième acte de la Législature 16 Viet. cap. 37, passé en 1852. La Compagnie du Grand Trone de chemin de fer du Canada proprement dite, fut incorporée avec pouvoir de construire un chemin de fer, devant faire partie de la ligne du Grand Trone, de Kingston à Montréal. Certains pouvoirs accordés aux Compagnies de Chemin de fer en Général par l'acte 13 et 14 Viet. cap. 51, appelé " acte de consolidation des lois de chemins de fer," furent donnés à la Compagnie et entr'autres *celui d'acheter et vendre des biens mobiliers et immobiliers sans restriction quelconque*, dans les limites du montant qu'il était permis à la Compagnie de posséder.

Un quatrième acte provincial, passé dans la même année et la même session du parlement (16 V. C. 39) dont le préambule est " qu'il serait avantageux que le Grand Trone de chemin de fer " fut sous le contrôle d'une seule compagnie ou d'un aussi petit nombre de compagnies possible," décrète qu'il sera loisible à aucune compagnie créée ou à être créée à l'avenir, pour la construction d'aucun chemin qui doit faire partie du Grand Trone de chemin de fer au désir de l'acte 14 et 15 Viet. c. 73 ci-haut cité, de s'unir de façon à ne former qu'une seule compagnie. La clause première applique de plus les dispositions de cette acte à la Compagnie du St. Laurent et de l'Atlantique. La clause seconde comporte qu'il sera permis aux directeurs de telles compagnies de convenir avec les directeurs des autres compagnies, que les compagnies n'en formeront qu'une, et qu'une d'elles se chargera des obligations des autres, et de déterminer les conditions de cette union ; également les droits devant appartenir aux actionnaires de chaque compagnie après l'union ; et généralement de règler les conventions de telle union et le mode futur d'administration des affaires des compagnies ainsi unies. Le clause sixième couchée en forme de *proviso* statue : que chaque compagnie continuera à exister comme corporation aussi longtemps que nécessaire pour mettre à exécution les pouvoirs transférés à la compagnie formée de l'union des autres, appartenant à chaque telle compagnie par son acte d'incorporation. Les autres clauses du statut attribuent à la nouvelle compagnie les pouvoirs des autres compagnies qui doivent la composer, la chargeant de leurs obligations et élève son capital au montant collectif formé du capital de toutes ces compagnies.

Un autre acte de la même session (16 Viet. c. 76,) entr'autres dispositions, comporte que si la compagnie du Grand Trone de chemin de fer du Canada est une des compagnies comprises dans l'union, la compagnie ainsi formée de l'union des autres avec elle s'appellera ; " La Compagnie du Grand Trone de chemin de fer du Canada."

En vertu des Statuts Provinciaux ci-hauts cités, un acte appelé. " Amalgamation act" (acte d'union ou amalgame) fut fait à Londres, le 12 Avril 1853, entre la compagnie du Grand Trone de chemin de fer du Canada, la compagnie principale de jonction, la compagnie du Grand Trone de chemin de fer du Canada est, la compagnie du chemin de fer de Québec et Richmond, la compagnie du chemin de fer du St. Laurent et de l'Atlantique, la compagnie du chemin de fer de Toronto et Guelph, la compagnie du chemin de fer de l'Atlantique et du St. Laurent, et William Jackson de Birkenhead en Angleterre, et l'Honorable John Ross de Belleville, dans le Haut-Canada.

Cet acte, après avoir référé aux statuts provinciaux ci-haut cités donne, pour raisons du traité fait entre ces différentes compagnies, les suivantes, savoir : que par l'acte ci-dessus cité (8 Viet. cap. 25) incorporant la compagnie du St. Laurent et de l'Atlantique, cette compagnie avait le pouvoir de prélever un capital de £600,000, et de l'élever au chiffre de £1,000,000 ; que par un autre acte passé dans les 10e et 11e années du présent règne, en amendement de l'acte d'incorporation d'icelle compagnie et en extension de ses pouvoirs, et trois autres actes de même nature dont le dernier accordait à la compagnie la faculté d'acquérir le chemin qui s'étend de Portland, dans l'Etat du Maine à la frontière du Canada, le capital de la compagnie était élevé à £1,225,000 ; que le chemin du St. Laurent et de l'Atlantique était presque complété et que le capital que la compagnie avait le droit de prélever était de £1,225,000, sur laquelle somme £246,100, ou environ, avaient été réalisés par actions, et £633,000,sterling ou environ par emprunt, et que l'on prévoyait qu'une somme additionnelle de £300,000, serait nécessaire pour finir entièrement et équipper le dit chemin ; que des débentures provinciales s'élevaient à £67,800, avaient été émanées en faveur de la dite Compagnie du St. Laurent et de l'Atlantique et étaient sa propriété ; que par l'acte de la législature également ci-haut cité, passé dans les 15e et 16e années du présent règne intitulé " acte pour autoriser aucune Compagnie du chemin de fer faisant partie de la ligne du Grand Trone de chemin de fer en cette Province, à s'unir à aucune autre Compagnie semblable ou à acquérir la propriété ou les droits de telle Compagnie, il était dit qu'il serait loisible à deux Compagnies ou plus formées dans la vue de construire aucun chemin de fer, faisant partie de la ligne principale de Grand Trone, contemplée par la Législature, en passant l'acte 14 et 15 Viet. ch. 73, de s'unir comme une seule Compagnie ou à aucune ou plus de ces Compagnies d'acquérir la propriété ou les droits de l'une ou plus des autres Compagnies ; que les dispositions de ces différents actes s'appliquaient à la Compagnie du St. Laurent et de l'Atlantique et à la totalité du chemin que cette Compagnie pouvait construire ; qu'il était permis aux directeurs de chacune de ces compagnies de s'entendre pour s'unir de manière à ne former qu'une Compagnie aux termes et conditions convenues par le traité relativement aux droits que les actionnaires de chaque Compagnie devaient posséder après telle union, au nombre et au choix de tels directeurs jusqu'à la

prochaine élection, le terme de telle élection, le nombre de votes que les actionnaires devaient avoir, le nom d'incorporation de la Compagnie après telle union, le jour de la mise en force du traité, les règlements applicables à la Compagnie formée de l'union générale, et généralement de faire toutes conventions et stipulations touchant les conditions auxquelles telle union devait avoir lieu, qui seraient jugées nécessaires pour établir les droits respectifs des compagnies et ceux des actionnaires ainsi que le mode d'administration des affaires de la Compagnie après telle union ; que tel traité devait être ratifié par les trois quarts au moins des votes des actionnaires des diverses compagnies dûment assemblées par convocation des Directeurs ; que sur telle ratification de la convention arrêtée par l'union de deux ou de plus de deux compagnies, telles Compagnies n'en formeraient qu'une et seraient une seule corporation règie sous le nom d'incorporation choisi, et serait revêtue de tous les droits de propriétés et responsables de toutes les obligations des compagnies respectives devenues parties à la convention, de telle façon que tout droit ou obligation appartenant à chaque compagnie appartiendrait à la compagnie formée de l'Union des autres : que toute poursuite pendante pour ou contre chaque Compagnie serait continuée pour ou contre la compagnie sous son nom d'incorporation ; que le *capital* de la compagnie *unie* serait égal au *capital* combiné de *chacune des compagnies*, et que la nouvelle compagnie aurait le droit de le prélever par emprunt ou autrement.

Il fut ensuite stipulé par le dit acte d'union ou amalgame que les différentes compagnies ci-haut énumérées seraient unies de manière à n'en former qu'une depuis le premier juillet 1853, sous le nom de " La Compagnie du Grand Tronc de chemin de fer du Canada," et que les différentes entreprises de ces compagnies seraient unies en une seule sujette aux dispositions des actes ci-haut cités et à la ratification des actionnaires : et que dans l'entreprise collective seraient compris l'érection et l'entretien du Pont-Victoria. Il fut de plus convenu que l'acte de consolidation des actes des chemins de fer, entr'autres dispositions, celles relatives au pouvoir des compagnies de chemin de fer, c'est-à-dire l'acte 14 et 15 Vict. chap. 51 s'appliquerait à la compagnie unie, que le capital de la compagnie unie serait égal au capital formé des divers capitaux des compagnies composant l'association. Que les actions du chemin de fer de Québec et du Richmond deviendraient actions de la nouvelle compagnie et qu'il en serait ainsi de celles de la compagnie du St. Laurent et de l'Atlantique.

Il fut encore convenu que la compagnie unie payerait aux actionnaires de la compagnie du St. Laurent et de l'Atlantique £75,000, pour acquitter les arrérages d'intérêts dûs sur les actions et sur les autres dettes de la compagnie.

En vertu de cet acte d'union ratifié par les actionnaires du St. Laurent et de l'Atlantique, les diverses compagnies ci-haut énumérées furent confondues en une seule qui prit le nom de " Compa- " gnie du Grand Tronc de chemin de fer du Canada," et le chemin du St. Laurent et de l'Atlantique entr'autres chemins, fit partie de la compagnie unie. En d'autres mots, toutes les compagnies, et entr'autres celle du St. Laurent et de l'Atlantique, s'agglomérèrent avec le Grand Tronc et depuis l'époque de cet amalgame en ont fait partie.

Le chemin, comprenant les lisses, les dormants, les débarcadères, les gardes, les locomotives et tout le mobilier de la compagnie du St. Laurent et de l'Atlantique fut transféré à la compagnie unie et depuis ce temps a appartenu à cette compagnie connue sous le nom de " La Compagnie du Grand Tronc de chemin de fer du Canada."

DEMANDE.—Se prévalant de cet acte d'union dans laquelle est entrée la Compagnie du St. Laurent et de l'Atlantique et traitant cette union comme une mutation du chemin appartenant à cette compagnie, en faveur de la Compagnie du Grand Tronc, mutation qui, suivant lui aurait donné ouverture à une indemnité seigneuriale et au droit de lods et ventes, en sa faveur, pour la partie passant dans sa seigneurie, attendu que telle partie du chemin aurait été transférée en *main-morte*, M. Kierzkowski a, le 9 décembre 1856, intenté contre la Compagnie une action pour £1852 3s 2d, étant £1307 5s 9d, pour droits d'indemnité et £544 17s 5d pour lods et ventes.

Le libellé de sa demande considère l'acte d'union comme ayant produit une mutation équipollant à vente et comme telle donnant ouverture aux lods et ventes et à l'indemnité.

Il traite le montant des actions de la compagnie du St. Laurent et de l'Atlantique, qui, aux termes des Statuts et de l'Acte d'union doivent être changées en actions de la compagnie unie, le montant des dettes de cette compagnie et la somme de £75,000, que la compagnie a payée aux actionnaires du St. Laurent et de l'Atlantique pour arrérages d'intérêts comme composant le prix de tel mutation équippollant à vente. Ce montant est de £1,116,100 donnant une proportion de £10,000 pour le chemin qui passe dans la Seigneurie de St. François le neuf, sur laquelle il reclame un douzième pour lods et ventes et un cinquième pour indemnité, faisant £1852 3 2, pour laquelle somme il a intenté son action contre la compagnie du Grand Tronc.

DEFENSE.—Les Défenses de la Compagnie se réduisent à quatre propositions distinctes, qui peuvent s'énoncer comme suit.

1o. La Compagnie du Grand Tronc de chemin de fer du Canada n'est pas une *main-morte* ; et supposant que l'acte d'union ait formé une mutation en sa faveur, elle n'a pas donné ouverture au droit d'Indemnité.

2o. L'acte d'union n'a pas donné lieu à une mutation donnant ouverture au droit d'indemnité en faveur de M. Kierskowski.

3o. Supposant que la Compagnie du Grand Tronc de chemin de fer du Canada serait une *main-morte* et que l'acte d'union aurait donné lieu à une mutation emportant le droit d'indemnité, l'acte Seigneurial de 1854 a éteint ce droit d'indemnité et tout autre droit Seigneurial.

4o. Indépendamment des trois propositions ci haut exposées, le chemin de fer du Grand Tronc est un ouvrage construit pour l'utilité publique ; c'est un ouvrage Provincial dont la mutation ne donne pas ouverture au droit de lods et ventes.

Ce sont ces différentes propositions de la Défense qu'elle va soutenir des raisonnements et appuyer d'autorités.

PREMIERE PROPOSITION

ARGUMENT.—La Compagnie du Grand Tronc de chemin de Fer du Canada n'est pas une *main-morte.*

Cette question spéciale relativement à la Compagnie du Grand Tronc se rattache à une question générale qui s'applique à toutes les Compagnies de chemin de fer établies en ce pays. Ces compagnies qui ont par leur charte la libre faculté d'acquérir et d'aliéner, et qui ne sont frappées d'aucune restriction en ce sens, sont-elles *des mains-mortes* qui, sous l'ancien régime Seigneurial, étaient tenues de payer l'indemnité à chaque mutation faite en leur faveur?

Admettant par forme de raisonnement que cette question, d'un haut intérêt public et qui est bien importante dans l'espèce actuelle, dût être jugée par le Droit Français introduit ici près de deux siècles avant la découverte de la locomotion par la vapeur et auquel des compagnies industrielles de la nature des compagnies de chemin de fer étaient entièrement inconnues, supposant, disons-nous, que cette question doive trouver sa solution dans la Législation Française et les livres des Jurisconsultes, à l'exclusion de notre Législation Canadienne elle n'en doit pas moins être décidée dans la négative. C'était évidemment l'incapacité d'acquérir et d'aliéner, incapacité dont l'Eglise avait été frappée depuis les temps les plus reculés de la Monarchie Française, qui avait fait nommer les corps ecclésiastiques *gens de main-morte* et qui avait donné lieu aux lettres d'amortissement et à la finance, que, sous le nom d'amortissement ou d'indemnité, ils payaient au Seigneur suserain ou Seigneur censier, pour leurs acquisitions, suivant que le bien acquis était tenu en Fief ou en Rôture. Il est bien vrai que quelques auteurs enseignent que sous les Rois de la première race l'Eglise acquérait librement; mais tous s'accordent à dire que cette liberté était un abus qui fut bien vite proscrit et qui disparut pour toujours.

Les monumens de la seconde race fournissent des preuves abondantes de cette insertion qui est aujourd'hui un fait historique que personne ne saurait mettre en doute. Cette incapacité s'est incarnée dans les mœurs légales de la France; pendant plus de sept siècle elle a fait partie de la police du Royaume. Une raison d'Etat qui s'opposait à l'accaparement trop considérable de biens par des mains qui ne vendaient pas et exerçaient un monopole indû sur le reste des citoyens, joint à l'intérêt des Seigneurs dont les acquisitions par l'Eglise paralisaient la mouvance, explique facilement la restriction qui empêchait les mains mortes d'acquérir sans permission; permission qui n'était accordée que sur payement de finance et jamais sans de bonnes raisons. Par la suite, les mêmes motifs étendirent cette prohibition à tous les corps, tant ecclésinstiques que laïcs dont les membres ne possédaient pas pour eux mais pour le corps qu'ils représentaient; qui pas plus que l'Eglise n'aliénaient; qui ne mourraient pas plus qu'elle et comme elle se perpétuaient, non par une substitution d'individus possédant en nom propre, mais par une succession de proposés qui mouraient, mais dont le perpétuel remplacement perpétuait indéfiniment l'existence du corps. Ces corps distingués entre eux par différents noms furent donc connus sous la dénomination générale de "gens de main-morte," comme l'Eglise l'avait été auparavant, et leurs acquisitions furent soumises à toutes les restrictions de cette tenure.

A l'appui de ces divers avancés, l'on cite ici les autorités suivantes:

AUTORITÉS.

14 et 15 Victoria, ch. 73.—16 Victoria, chs. 37, 39 et 76.

Edit du mois de Décembre 1691, art. 8.—Ordonnance de Neyron, vol. 2, p. 236.

Bacquet.—Traité des droits de Franc-Fief, vol. 2, fol, 266.

Dumoulin.—Titre des fiefs, art. 51, glose, 2, p. 64, vol. 1.

Lemaître.—Traité des amortissements, ch. 7.

Despeisses.—Titre 3 des fiefs, art. 2, vol. 3, page 170.

Nouveau Denisart.—Gens de main-morte, vol. 9, p. 266.

Domat.—Lois civiles. Titre préliminaires des personnes, sec. 7, p. 15.

Répertoire de Guizot.—Gens de main morte, vol. 11.

Merlin Rep,—Main morte, vol. 7, p. 625.

Dictionnaire des Domaines Vol. 1: page 147.

Angel Ames.—Introduction page 6th on corporations.

Pour affaiblir le poids de ces autorités et en éluder l'application au litige mu entre les parties la Demande objecte: que ce n'était pas l'incapacité d'acquérir non plus que d'aliéner qui donnait lieu aux restrictions dont étaient frappés les gens de main-morte, mais la perpetuité de leur succession et la rareté de leurs aliénations.

Cette objection dont le plus grand tort n'est pas d'être en contravention avec les autorités ci-haut citées, pèche encore par son défaut d'application aux compagnies de chemin de fer. Il est bien vrai que par leurs actes d'incorporation, les compagnies de chemin de fer, reçoivent de la loi une existence morale qui peut être perpétuelle mais qui ne l'est pas essentiellement. Créatures de la loi elles sont sujettes à toutes les conditions auxquelles elle subordonne leur existence, par lesquelles elle limite leurs pouvoirs. L'inexécution des obligations que leur impose leur charte en produit la confiscation, l'abus de leurs prérogatives en opère le retranchement. La baisse de leurs actions peut paralyser leurs entreprises, l'insolvabilité peut fermer leurs comptoirs. Le consentement mutuel des associés peut les dissoudre. L'épuisement ou le défaut de renouvellement des actions peut les laisser s'éteindre d'inanition.

Voici comment s'exprime l'excellent ouvrage d'Angell et Ames sur les corporations:—Introduction, page 4.

"The *immortality* of a corporation means only its capacity to take in perpetual succession as long as the corporation exists; so far is it from being literally true that a corporation is immortal, many corporations are limited in their duration to a certain number of years. A corporation without limi-

tation may be dissolved and consequently cease to exist, for want of members, voluntary surrender of franchises, forfeiture by measurer &c., when it is said therefore that a corporation is immortal, we can understand nothing more than that it *may* exist for an indefinite duration, and the authorities, which have been cited to drove its immortality in any other sense, do not warrant the conclusion drawn from them."

En un mot, les corporations sont des aggrégations d'individus dont la loi réunit les pouvoirs collectifs sur la tête d'un être fictif auquel elle accorde certaines prérogatives, qu'elle appelle d'un certain nom sous lequel elle sanctionne son existence légale, et dont elle fait, dans les termes du droit une personne (*persona*)capable des droits et passible des obligations qui sont du domaine des individus. Cette personne peut toujours vivre par la substitution perpétuelle des associés les uns aux autres, mais, elle peut aussi mourir par défaut de succession. et avec elle s'éteint la charte qui lui a donné l'être.

Les compagnies à fonds commun (joint stock companies) érigées par la loi en corporations (et les compagnies de chemin de fer avec quelques légères modifications sont de ce nombre) ne sont que des sociétés commerciales industrielles ou financières composées d'un plus grand nombre d'associés que les sociétés ordinaires et dont la responsabilité est limitée au montant respectif de leurs actions. Comme le mode ordinaire d'administration des sociétés généralement formées par la réunion de deux ou trois intéressés au plus serait insuffisant et ces règles qui s'y rattachent trop restreintes pour des opérations de cette magnitude, la loi pourvoit à un mode spécial de gestion. Elle attribue à la compagnie les pouvoirs consolidés des associés, et la revêt de certaines prérogatives additionnelles. Le privilège le plus ample accordé aux compagnies de chemin de fer est le pouvoir d'expropriation pour cause d'utilité publique. Mais, quelques soient les modifications de la forme, le fonds est le même ; leurs pouvoirs, leurs droits et leurs obligations ne sont que les pouvoirs, les droits et les obligations individuelles des associés. A la différence des corps laïes ou ecclésiastiques en France, qui étaient des corps reconnus par la police du Royaume, occupant une place distincte dans l'état, y ayant des droits politiques revêtus de privilèges conquis ou octroyés comme les privilèges des communes par exemple, et qui, dans l'ordre public, peuvent être assimilés à nos conseils municipaux, les confreries d'artisans et marchands, les jurandes et maitrises y comprises. L'on touche donc du doigt la différence qui distingue un corps dont les membres ne possèdent rien pour eux, mais possèdent tout pour le corps auquel ils appartiennent, qui n'ont aucun intérêt individuel ou de lucre dans l'administration de la chose commune, d'une compagnie formée pour conduire à bonne fin des opérations commerciales ou industrielles dont les profits sont divisibles entre tous les associés et dans lesquelles chacun a un intérêt distinct appréciable en argent. Il y a la différence qui existe entre la possession *pour soi* et la possession *pour autrui*.

Ajoutons que de droit commun les corporations ont le pouvoir d'acquérir et vendre, à moins que ce droit ne soit limité par leur charte, à la différence des corps tenus en main-morte en France ; (Angell & Ames, p. 87, 88 et 89. Tout le cap. 5. Powers relating to property) et nous aurons esquissé les points de dissemblance qui séparent nos compagnies des main-mortes et qui repoussent toute idée de similarité.

Le raisonnement par lequel on veut assimiler les compagnies de chemin de fer aux corporations en main-morte en France et sujetes aux droits d'amortissement tombe donc au néant, par défaut d'analogie dans les caractères essentiels qui les constituent. Les compagnies ne sont point des mains-mortes parcequ'elles n'ont point de perpétuité de succession proprement dite et qu'elles sont délivrées des entraves qui liaient les *mains-mortes* : l'incapacité d'acquérir et aliéner et la possession précaire ou *pour autrui*.

Passons maintenant à la seconde proposition.

L'acte d'union ou amalgame n'est pas une mutation qui sous l'ancien régime seigneurial aurait donné ouverture au droit d'indemnité et de lods et ventes.

Ici, la défense admet de suite que, sous l'ancien régime féodal, en France, toute mutation donnait ouverture au droit d'amortissement et d'indemnité, à la différence des lods et ventes dont la mutation par vente ou acte équipollent à vente créait seule l'exigibilité. Tout acte transférant la propriété, fait entre vifs ou à cause de mort, donnait au seigneur ou au roi le droit de reclamer cet amortissement et cette indemnité, mais, toujours fallait-il que cet acte fut translatif de propriété. Or, dans l'espèce, la défense soutient que l'acte d'union ou amalgame des compagnies n'a pas eu cet effet. En d'autres mots, que, par cet acte La Compagnie du St. Laurent et de l'Atlantique ne s'est pas dénanti de ses droits de propriété dans le chemin qu'elle a joint aux chemins des diverses compagnies qui font aujourd'hui partie du Grand Tronc de chemin de fer. La demande soutient l'inverse de la proposition. Ce sont donc ces deux prétentions contraires qu'il s'agit d'examiner.

Si l'acte en question a transmis à la Compagnie du Grand Tronc la propriété du chemin du St. Laurent et de l'Atlantique, cette transmission a dû être opérée par un acte auquel la loi reconnait la puissance d'aliéner le domaine. Cet acte doit donc avoir un nom connu; il doit occuper une place distincte dans la nomenclature légale.

Désespérant de lui trouver une autre dénomination, la demande l'appelle un acte de vente ou acte équipollent à vente, acte par lequel la Compagnie du St. Laurent et de l'Atlantique a vendu à la Compagnie du Grand Tronc son chemin et ses droits d'incorporation.

Il s'agit donc d'examiner s'il a les caractères ou quelques uns des caractères qui sont de l'essence de la vente.

La vente est un acte par lequel le vendeur transfère à l'acheteur le domaine d'une chose déterminée, moyennant un prix. La première question qui se présente à l'esprit se rattache donc au caractère de la possession que la Compagnie du Grand Tronc a obtenue du St. Laurent et de l'Atlantique. La première compagnie a-t-elle acquis la propriété de ce chemin, et la dernière s'est-elle dénantie du droit de propriété qu'elle en avait ?

L'énoncé des diverses dispositions de l'acte d'union fournit une réponse distincte à cette question.

Les diverses compagnies s'unissent ensemble pour n'en former qu'une appelée du nom commun de " La Compagnie du Grand Tronc du chemin de fer du Canada." Le capital de la nouvelle compagnie est le capital collectif formé des divers capitaux de ces compagnies et leurs différents pouvoirs sont transférés à la Compagnie nouvelle qui, s'attribuant leurs droits épouse aussi leurs dettes. Les actionnaires du St. Laurent et de l'Atlantique, ainsi que ceux des autres compagnies demeurent actionnaires de la nouvelle, leurs actions deviennent des actions de la Compagnie du Grand Tronc, inscrites au cahier des actions au même rang et avec les privilèges respectifs qu'ils avaient entr'eux. Peut-on voir là une aliénation de leurs droits en faveur de la nouvelle compagnie? En faisant partie de la nouvelle compagnie, non seulement ils n'ont pas aliéné ces droits, mais, ils se les sont expressément réservés. Ils se sont rendus passibles envers la compagnie nouvelle des obligations qu'ils avaient contractées envers leur propre compagnie, et doivent retirer les dividendes que le fonds commun produira en proportion de la mise de chacun d'eux. Ils ont soumis ces dividendes aux chances de hausse et de baisse des actions de la nouvelle compagnie de la même manière que ces mêmes dividendes étaient sujets à la hausse et à la baisse de la compagnie ancienne. Leur propre titre est si peu éteint qu'il est formellement reconnu par la nouvelle compagnie.

Quand aux droits appartenant à la Compagnie du St. Laurent et de l'Atlantique en vertu de sa charte, en d'autres termes, son titre d'incorporation, il n'est pas non plus éteint, mais transporté à la compagnie nouvelle qui l'a uni au sien, sans que pour cela il ait jamais cessé d'appartenir à La Compagnie du St. Laurent et de l'Atlantique qui y a des droits indivis avec les autres compagnies qui lui ont en échange cédé une part indivise dans leur propre titre et leurs propres actions. Il y a fusion et jonction de titres, sans extinction d'aucuns d'eux. Plusieurs compagnies existaient avec des titres et des droits distincts, des obligations diverses, un mode de gestion particulier. En vertu d'une loi spéciale, elles s'unissent pour n'en former qu'une et confondent ces titres, ces droits et ces obligations convenant de les soumettre à un mode de régie uniforme.

L'association de ces compagnies n'a point produit d'autres résultats qu'une association d'individus. Primus, Secundus et Tertius sont propriétaires de chacun une usine qui se font mutuellement concurrence. Pour faire cesser cette compétition fâcheuse, ils conviennent de s'associer et de confondre en une seule opération leurs opérations rivales, qui sont continuées sous le nom de l'un d'eux. L'usine de chacun est cotée comme mise dans la société au prorata de sa valeur. Les profits et les pertes doivent être partagés d'après le chiffre respectif de cette mise. Peut-on voir là une vente ou un acte équipollant à vente de la part d'aucun des associés en faveur de ses co-associés ou de l'un d'eux ? Y a-t-il là le dénantissement requis par la loi pour constituer la vente? S'il y a dénantissement, qui s'est dénanti ? Est-ce Primus qui s'est dénanti en faveur de Secundus ou est-ce ce dernier en faveur de Tertius ? Si vente il y a eu, il n'y a pas eu une seule vente, mais trois, dont l'effet a été de créer entre les vendeurs et les acheteurs une indivision de droits dans la chose vendue. Si *donner* et *retenir* ne vaut, vendre et retenir vaut moins encore.

Or, ce qui serait vrai pour les individus dans l'espèce supposée, l'est également pour les compagnies dans l'espèce actuelle. Si la compagnie du St. Laurent et de l'Atlantique a vendu au Grand Tronc, elle au aussi vendu à la compagnie de Guelph et Toronto, et cette dernière compagnie et le Grand Tronc ont élegament vendu à la compagnie du St. Laurent et de l'Atlantique. Bref, toutes ces compagnies unies se sont fait des ventes réciproques, et il y a eu autant de ventes que de compagnies. L'acte d'union fait entre sept compagnies a donc constitué sept ventes distinctes, à la suite desquelles chaque compagnie a conservé dans leur intégrité ses droits tombés dans l'indivision, de distincts qu'ils étaient ; car c'est là le seul changement sensible apporté par l'acte d'union à la possession de ces droits.

Cette conséquence absurde, résultat rigoureux de la prétention de la demande, en démontre l'inadmissibilité.

Concluons donc sans plus long argument, que l'acte d'union n'a pas constitué une vente et que s'il faut en juger les effets par analogie avec un autre contrat, malgré que la spécialité de ses dispositions semble repousser toute assimilation, que le contrat qui lui ressemble d'avantage, est le contrat de société dans lequel toute l'ingéniosité imaginable ne saurait trouver le plus minime caractère de contrat de vente.

Forcé d'admettre la justesse de ce rapprochement, la demande a cru en affaiblir la portée, en l'éludant par un sophisme. Dans l'impossibilité où elle était de combattre la difficulté de front elle a tenté de la tourner. Elle a donc dit : " En France, le contrat de société donnait ouverture au droit de contrôle pour l'excédant de mise apportée par un des associés sur la mise des autres. Par l'acte d'union, les compagnies unies se sont engagées à payer les dettes du St. Laurent et de l'Atlantique, ont repris ses actions se montant à £1,541,100 et ont de plus payé £75,000, pour acquitter les arrérages d'intérêts dûs par La Compagnie du St. Laurent et de l'Atlantique à ses actionnaires, faisant en totalité une somme ronde de £1,116,100. Cette somme, qui a été un excédant de mise, apporté par la compagnie du Grand Tronc a formé un prix payé à celle du St. Laurent et de l'Atlantique." Si cette assertion, qui porte à sa face la preuve de sa propre fausseté pouvait prouver quelque chose, elle produirait une induction défavorable à la demande. En effet, cet excédant de mise aurait été versé par le Grand Tronc en faveur de la Compagnie du St. Laurent et de l'Atlantique, et ce serait cette dernière compagnie qui aurait à payer le droit d'indemnité. Mais, la proposition n'est pas en elle-même soutenable. Le contrat de société n'a aucun des caractères de l'acte de vente, en autant qu'il s'agit du droit d'indemnité, et il serait singulier que l'imposition d'un droit fiscal en changeait la nature. Considéré comme contrat de société, l'acte d'union n'a donc pas donné ouverture au droit d'indemnité.

Il est cependant une autre manière de l'envisager, plus favorable encore à la défense. En France l'union de deux bénéfices ou autres établissemens tenus en main-morte, ne produisait pas d'indemnité pour deux raisons données par les auteurs. La première est qu'en certains cas cette union se faisait par autorité souveraine, et la seconde qu'elle ne retirait aucuns biens du commerce.

AUTORITÉS.

L'acte d'amalgame.
Guyot, Rep. Vol. 9 p. 152.
Hervé, matières féodales. Tom. 6, pp. 429, 541, 617.
Dictionnaires des Domaines. Vo. Union.
Revue des Tribunaux, 3 vols. p. 76.
Le Séminaire de Québec vs la Bourse de Québec. Jugement du 21 février 1851.

Or, les caractères de l'union dont font mention les autorités ci-haut citées, ne se trouvent-ils retracés d'une manière frappante dans l'acte en question ?

Ayant ainsi rapidement exposé les moyens apportés pour la défense à l'appui de la seconde proposition, passons à la troisième.

Troisième proposition.

Supposant que les Compagnies soient des mains-mortes passibles du droit d'indemnité, et que l'acte d'union ait été un acte donnant ouverture à ce droit et au droit de lods et ventes, l'acte seigneurial de 1854 les a tous deux éteints,

La clause 31 de cet acte s'exprime ainsi : " Tous fonds sur lesquels des droits d'indemnité ont " été payés à un seigneur et qui n'ont pas été vendus ou concédés depuis tel paiement à des person- " nes possédant autrement qu'en main-morte, sont par le présent déclarés être et avoir été du jour de " la date de tel paiement ou de tout acte ou contrat par écrit obligeant tels propriétaires à payer tels " droits, déchargés de toutes redevances et charges seigneuriales et tenus en franc aleu roturier, mais " sujets à paiement d'une rente constituée égale aux cens et rentes légalement dûs sur iceux."

Le sens de cette disposition ne pourrait être plus clair. Ces mots : " Tous biens sur lesquels des " droits d'indemnité ont été payés et qui n'ont pas été vendus depuis à des personnes possédant " autrement qu'en main-morte sont déclarés être et avoir été déchargés de tous droits seigneuriaux," ne disent ils pas évidemment que quand la vente ou concession postérieure au paiement de l'indemnité ont eu lieu entre mains-mortes, il n'y a pas eu ouverture au droit d'indemnité ou de lods et ventes? Mise hors de conflit par les termes trop précis de cette clause, la demande cherche à la repousser par des hypothèses. Elle dit d'abord qu'en l'insérant dans l'acte seigneurial, le but du législateur n'a pas été de déclarer l'extinction des droits des seigneurs, mais, seulement de donner aux commissaires Seigneuriaux des instructions pour la confection des cadastres. Il aurait été injuste, dit-elle, que les propriétaires de fonds tenus en main-morte eussent été tenus seuls de la commutation du droit d'indemnité, et par cette clause la législature a voulu répartir ce droit sur tous les biens de la seigneurie. Et au soutien de cette interprétation qui repose en entier sur des conjectures, l'on argue de l'esprit général de l'acte Seigneurial qui n'est pas de règler les droits passés mais simplement la tenure féodale pour le futur. La demande invoque en particulier la clause 36 qui est couchée en ces termes à l'appui de cette supposition. " Rien de contenu dans ce présent acte n'affectera le " droit de recevoir ou recouvrer tous arrérages de droits seigneuriaux, échus avant la passation de " présent acte ou ne donnera à aucune personne quelconque, aucun droit d'action pour le recouvre- " ment de deniers ou autres valeurs payés par lui ou ses prédécesseurs sous forme de rentes ou " autres redevances seigneuriales ou pour le recouvrement de dommages qu'elle prétendrait reclamer " par suite de la privation d'aucun droit dont elle croirait avoir été illégalement privé par son seigneur, " à moins qu'elle n'eut le dit droit d'action, si le présent acte n'eut pas été passé ; et rien de contenu " dans le présent acte ne sera censé affaiblir ou maintenir aucune reclamation d'aucun seigneur ou " d'aucuns censitaires à aucun droit reclamé par ou pour eux respectivement, à l'audition des questions " et propositions qui en vertu du présent acte, devront être soumises à la décision des juges, mais " icelles seront décidées suivant la loi, telle qu'elle était immédiatement avant la passation du présent " acte." L'on dit : Cette clause nous donne la clef de l'interprétation de la clause 34, dont elle " modifie l'application." Mais l'on oublie que pour qu'il en fût ainsi, il serait nécessaire que la clause 36 référât à la clause 34, qu'elle la rappelât explicitement ou par implicité en établissant des dispositions contraires. Autrement chaque clause à son effet, si elles peuvent se concilier. Et ne le font-elles pas ? La clause 36 dit que rien de contenu dans le présent acte n'affectera le droit de recouvrer tous arrérages de droits seigneuriaux échus avant sa passation ; mais quels sont ces droits ? Ceux que la loi n'a pas spécialement rappelés ou auxquels elle n'a pas spécialement dénié l'existence. Or, la clause 34 venait de déclarer éteint le droit de double indemnité ; la clause 36 peut-elle l'avoir fait revivre ? Evidemment non. Le sens de cette clause 36 qui se concilie parfaitement avec la clause 34, est donc que le présent acte n'affectera pas le droit de recouvrer les arrérages des droits seigneuriaux, moins cependant le droit d'indemnité qui était éteint pour les acquisitions faites par des mains-mortes depuis le paiement de ce droit ; et ainsi du droit de lods et ventes.

Mais, l'on objecte encore : La clause 34, telle qu'énoncée par la défense aurait un effet rétroactif, et ne doit pas être ainsi appliquée par la cour qui doit l'interpréter dans un sens équitable, et ne pas supposer que le législateur a voulu commettre l'énorme injustice de dépouiller les seigneurs de leurs droits acquis. En matière d'interprétation des lois, la doctrine est aujourd'hui trop clairement établie pour admettre un conflit d'opinion. La Législature, le Parlement Impérial comme le Parlement Provincial, en matière qui sont de leur compétence respective est omnipotente, et les Cours n'ont aucun droit de paralyser l'action des lois qu'elle a faites, qu'elles doivent aveuglement appliquer, si le sens en est clair, quand même elles causeraient une injustice. La Législature peut donc faire une loi rétroactive et cette loi rétroactive, les Cours doivent lui donner effet si l'intention du législateur est clairement exprimée.

La Défense admet que si la loi offre un sens douteux, les juges doivent l'interpréter comme ne rétroagissant pas sur les droits acquis. Mais ce droit d'interprétation judiciaire n'existe que pour les cas douteux. Si donc la clause 34 offre un sens non équivoque, si la clarté de la disposition qu'elle consacre éloigne jusqu'à l'ombre d'un doute, la cour n'a qu'une voie ouverte à sa décision, elle doit

l'appliquer sans discussion. Or, il est impossible de trouver dans aucun statut une clause plus expresse et dont le sens peut moins être mis en doute. S'appesantir plus longtemps sur la signification d'une disposition aussi lucide serait totalement inutile; ce serait chercher des preuves à l'évidence.

D'ailleurs, indépendamment de ce raisonnement, qui est celui de la loi, est-il certain, ainsi que l'affirme la Demande, que cette clause consacre une si grande injustice et foule aux pieds des droits acquis?

En abolisant une tenure odieuse, en dégrêvant le sol du Bas-Canada des entraves de la féodalité, le législateur ne pouvait-il pas sans injustice retrancher un droit aussi injuste que celui de double, triple et quadruple indemnité. La question de son exigibilité était un point douteux que la loi a fixé par une clause déclaratoire. Ce ne fut donc pas sur des droits acquis, mais sur des droits litissieux, que la loi seigneuriale s'est prononcé. Il est d'ailleurs à remarquer qu'aucune question n'a été posée sur l'existence de ce droit d'indemnité à la Cour Seigneuriale, devant laquelle la clause 36 laissait intacte tous les droits, tant les droits des Seigneurs que ceux des Censitaires. L'on peut donc raisonnablement inférer du silence des Seigneurs sur ce point qu'ils considéraient la question comme définitivement réglée par la clause 36e.

Reste la quatrième et dernière question qui ne se rattache qu'à une partie de la Demande, la réclamation de M. Kierzkowski pour lods et ventes.

La Défense soutient que le chemin du Grand Trone étant un ouvrage provincial, ainsi qu'il est dit plus haut, doit être considéré comme un ouvrage entrepris pour cause d'utilité publique et qu'il ne doit pas de lods et ventes pour sa mutation.

La question a été solennellement jugée dans la cause de Grant contre les officiers de l'artillerie par jugement de cette cour, rendu le et confirmé par la Cour d'Appel, le

Décision des Tribunaux, vol. 7, p. 91.

La Défense ne croit pas devoir la discuter. Elle réfère à ce jugement se contentant de citer les autorités suivantes à leur appui:

Maynard.—Livre 4, ch. 43 et 50.

Larocheflavin.—Droits Seigneuriaux, ch. 36, art. 1, p. 726, of 4, to Edn of 1682, with notes of Graveral.

Laurens.—Bouchel, Bibliothèque du Droit Français; V. Lods et Ventes, p. 530 of vol. 2.

Frain.—Arrêts, avec addition, by Hevin, Arret 68, p. 254 et seq.

D'Olive.—Questions Notables; Liv. 2, ch. 16, ps. 332 et 338.

Despeisses.—Droits Seigneuriaux, Tit. 4, art. 3, sed. 5, Ft. 7, No. 3, p. 79 of vol. 3.

LaPeyrère.—V. Vente, No. 55, p. 886 of Ed. of 1808.

Pocquet.—Livre 3, ch. 6, S. 7, p. 240.

Brillon.—Dictionnaire des Arrêts; V. Lods, No. 75, p. 145 of vol. 4.

LaPlanche.—Traité du Domaine, Liv. 4, ch. 4 *in fini* p. 219 of vol. 1.

Lacombe.—Recueil, V. Lods et Ventes, p. 440, Ed. of 1769.

Sudre.—Additions to Boutarie, ch. 3, No. 6, p. 100.

Freminville.—Pratique universelle, vol. 5, p. 604, Ed. of 1776.

Guyot.—Traité des fiefs "Du Quint, et Lods et Ventes," ch. 13, p. 511 of vol. 13. "Du retrait Seigneurial," ch. 3, No. 16, p. 24 of vol. 4. Institutes Féodales, ch. 6, No. 19, p. 752 of vol. 6.

Roriot.—Notes on Perrier, Qu. 124, No. 24, p. 37 of vol. 1.

Pothier.—Coutume d'Orléans, Int. Sit. Fiefs, No. 164.

Traité des Fiefs, It. 1, ch. 5, S. F. 1, art. 4.

Bourjon.—Liv. 2, titre 4, ch. 4, sec. 2, No. 8, p. 272 of vol. 1.

Denisart (ancien).—V. Lods, ps. 183–4 of vol. 3.

Renaudon.—Dictonnaire des Fiefs; V. Lods, p. 66, of Vol. 2. No Cens, p. 139 of vol. 1.

Prud'homme.—Liv. 3, ch. 51, ps. 297—8.

Fosmour.—No. 235, ps. 214—5.

Herré.—Vol. 3, ps. 3, 4, 23 et 24.

Par ses Défenses le Grand Trone a aussi prétendu que s'il devait des lods et une indemnité, ce ne pouvait être que sur la nue valeur du fonds qui se trouve dans la censive de M. Kierzkowski traversée par le chemin de fer, abstraction faite, de la valeur des lisses, dormants et autres accessoires. La Demande soutient que ces lisses, dormants et accessoires sont incorporés au fond et en font partie. La discussion de cette question serait prématurée en autant que si l'action n'est pas rejetée en entiere il devra y avoir une expertise pour évaluer le montant sur lequel l'indemnité et les lods devront être payés, et que la question ne se présentera à juger que sur le mérite de cette expertise.

Pour résumer la Défense, en peu de mots, elle prétend:

1o. Qu'elle n'est pas une main-morte et qu'elle ne doit pas d'indemnité.

2o. Que l'acte d'union ne contient pas une mutation qui donnerait ouverture au droit d'indemnité et encore moins aux lods et ventes, quand même le Grand Trone serait une *main-morte*.

3o. Que quand même ces droits auraient existé, ils ont été éteints par l'Acte Seigneurial de 1854.

4o. Que le Grand Trone étant un ouvrage construit pour cause d'utilité publique, à tout évènement ne doit pas de lods et ventes.

Ces diverses propositions, la Défense s'attend à les voir maintenir, et partant, à voir rejeter la Demande.

C'est sur ce mémoire que le jugement dont est appel fut rendu déboutant l'action du Demandeur; duquel jugement l'Intimée demande la confirmation.

Montréal, Août 1858.

T. J. J. LORANGER,
Conseil de l'Intimée.

CARTIER & BERTHELOT
Avocats de l'Intimée.

(*Endorsed*)
Factum de la Compagnie—Filé 18 Novembre 1858.
(*Paraphed*) J U B

ALEXANDRE E. KIERZKOWSKI,
Appelant,
&
LA COMPAGNIE DU GRAND TRONC DU CHEMIN DE FER DU CANADA,
Intimée.

Autorités de la Compagnie pour prouver l'incapacité des mains-mortes en France de vendre leurs immeubles ; du moins sans autorisation et le caractère precaire de leur possession.

Dumoulin sur la Coutume. Traité des fiefs art. 51. In verbo Jouer de son fief glose 2 page 589, 2e colonne.

Et hic vulgari verbo utor, quo manum mortuam vocare solent ecclesiam sive civitatem, aut collegium vel aliud quodcumque corpus, sive seculare, sive ecclesiasticum bonorum capax, quod ideo manus mortua vulgo nuncupatur, quod sicut semel mortuus amplius non moritur, ita hujus modi corpus non moritur *nec mutatur*, et licet omnes personæ ex quibus consistit moriantur et mutentur, idem semper permanet.

Et plus bas :

Et idem dicendum est physicaliter sive naturaliter loquendo quod manente *formâ* manet *identitas rei ;* et *augmentum* vel *diminutiô non concernit* nisi *quantitatem* vel *qualitatem* unde non mutat essentiam vel substantiam.

La Rocheflavin—arrêts du Parlement de Toulouse Titre X livre 1 page 23. L'aliénation des biens d'église faite sans solemnité peut être annulée ores soit inféodation si ce n'est après cent ans.

Et à la note page 24 in fine :—

Cette jurisprudence n'a pourtant pas lieu, à l'égard des choses saintes ou sacrées, qui ne tombant pas dans le commerce, et ne pouvant pas être par conséquent aliénés ne sont pas sujettes à prescription, et dont l'aliénation n'est pas simplement nulle mais abusive

Le Maitre. Traité des amortissements chap. 1.

Gens de main morte comme sont Eglises, Colléges et Communautés sont dits et appelés *gens de main morte* parceque jamais ne meurent, et les héritages étant une fois à eux ne *changent jamais de main.*

Bacquet. Traité des Francs fiefs tome 2. page 366—8.

Gens de main morte sont appelés les gens d'église (ici suit la nomenclature de toutes les mains mortes tant ecclésiastiques que laiques) d'autant que jamais ne meurent, et que les successeurs représentent toujours les prédécesseurs ; *aussi que les héritages par eux possédés ne changent jamais de main.*

Le même—traité des nouveaux acquêts, 3e partie page 367, 4, première colonne.

Car n'étant permis aux gens de main morte *de vendre, échanger ni autrement aliéner les héritages à eux appartenant* et ne mourant point le Roi et les Seigneurs Haut Justiciers feodaux et censiers sont entièrement privés de leurs droits seigneuriaux et féodaux, et ne peuvent à l'avenir, prendre ni percevoir aucuns droits de deshérance, confiscation, de quints et requints, reliefs et rachapts, lods et ventes, saisines et amendes, comme ils feraient si les héritages étaient ès mains des particuliers francs et libres qui peuvent chacun jour vendre, échanger, donner ou autrement aliener les héritages qui leur appartiennent.

Idem page 372, 2e colonne.

D'autant que si les héritages possédés par gens de main morte sont tenus immédiatement du Roy en fief ou en censive, le dit seigneur perd tous ses droits de quint, requint, lods et ventes etc., qui lui pourraient advenir et être dûs si tels héritages étaient ès mains de particuliers, qui librement les puissent vendre, échanger, donner ou autrement librement aliéner. *Lesquelles aliénations sont prohibées aux gens de main morte.*

Page 376—2e colonne. Pour récompenser Sa Majesté de la perte et dommage qu'elle souffre quand aucuns héritages sont possédés par gens de main morte lesquels *ne vendent point* ne meurent point, et *n'aliénent aucunement leurs héritages.*

Idem page 383. 1re colonne.

Pour récompenser Sa Majesté de la perte et dommage qu'elle souffre lorsque les gens de main morte possèdent des héritages en commun ; car encore que tels héritages appartiennent à de simples particuliers, le Roy serait toujours payé des droits et redevances susdites ; et néanmoins en ce cas de vendition, d'échange ou donation faites par les particuliers propriétaires, le dit seigneur serait payé de ses droits féodaux ou censuels ; *lesquels il perd entièrement quand les héritages sont possédés par gens de main morte.*

Pour montrer le caractère précaire de la possession des mains mortes en France Idem page 397 1re colonne.

Combien que par les anciennes lois, ordonnances et statuts du Royaume, il soit prohibé aux personnes ecclésiastiques, communautés et autres gens de main morte de posséder héritages et droits immobiliers en France, et qu'ils pussent être contraints en vuider leurs mains dans l'an et jour, toutefois par succession de tems on a trouvé juste, équitable et raisonable, de tolérer et permettre aux gens d'église et de main morte avoir, tenir et posséder biens et héritages à eux appartenant, et ce pour quatre raisons particulières. La première à ce que par le moyen de tels biens et héritages, les ecclésiastiques pussent être substantés, nourris et alimentés, leurs Eglises, monastères et habitations entretenus. Et que les communautés des villes puissent subvenir à leurs affaires communes,

réparations et fortifications de leurs villes et bourgades; aussi que les pauvres des hôpitaux et maladreries puissent être nourris et alimentés etc.

Idem page 399, 2e colonne.

Lesquels gens de main morte jamais *meurent jamais n'aliénent, de leur part n'y a jamais mutation.*

Idem page 442, 1re colonne.

D'autant plus que les gens de main morte ne vendent point leurs héritages etc.

Domat.—Lois civiles des personnes, Titre 2. Sec 2. Note a de la section. 15e page 15.

Les corps ecclésiastiques et laiques étant établis pour un bien public et pour durer toujours, il leur est défendu *d'aliéner leurs biens sans juste cause* &c.

Bosquet, Dictionnaires des domaines, Vo. Amortissement, p. 147.

" Tous les dites gens de main-morte sont sujets au droit d'amortissement, lorsqu'ils n'en ont " pas été dispensés nommément en considération de la faveur de leur établissement et de la destina- " tion de leurs biens."

" En conséquence il a été jugé, toutes les fois que la question s'est présentée, que les commu- " nautés de marchands doivent le droit d'amortissement pour raison des acquisitions faites en " commun."

" Voyez la décision du conseil du 24 Juillet 1722, contre les marchands drapiers, merciers de " Rouen."

" Celles du 8 Février 1723, contre les brasseurs de la même ville."

" Arrêt du 8 Mai 1738 contre les huissiers de Rouen, pour l'acquisition d'une sergenterie noble."

" Décisions du 7 Janvier 1742 et 25 Février 1742 contre les marchands merciers et bonetiers " de Paris. Celle du 7 Mai 1745 contre les fabriquants de la ville de Tours, pour l'acquisition d'une " maison destinée à l'établissement d'une Calendre. Celle du 29 Novembre 1747 contre les apothi- " caires de Caen, qui juge qu'ils doivent le droit d'amortissement du sol pour une acquisition destinée " à un jardin botanique et à un laboratoire; autre du même jour qui juge même chose contre les " marchands drapiers et merciers de Falaise pour l'acquisition d'une maison destinée au contrôle et à " la visite des marchandises. La raison pour laquelle la superficie a été dispensée du droit par ces " deux décisions, c'est qu'elle est destinée à l'utilité sans rapporter ni revenu ni utilité particulière " aux dites communautés." (1)

" Décision du Conseil Royal des Finances du 23 Sept. 1749, qui réforme une décision de M. " l'Intendant de Rouen et condamne la communauté des maîtres drapiers et sergiers d'Evreux à " payer le droit d'amortissement d'un moulin à fouler acquis par bail à rente en 1731."

Guyot, Traité des Fiefs, L. 2, p. 146.

" Le relief est, pour bien dire, le seul droit qui reste aux seigneurs sur les fiefs amortis, car *rare-* " *ment sont-ils aliénés*, et les formalités de ces *aliénations* les *raréfient excessivement.*"

Hervé, Matières Féodales, L. 6, p. 429.

" Ce n'est pas tout. Comme les autres corps qui sont perpétuels par leur institution et qui ont " des propriétés en tant que corps, *ne les aliène pas plus que le Clergé n'aliènent les siennes* parce " qu'aucun membre du corps ne peut disposer de ce qui appartient à ce corps et de ce dont il n'a que " la jouissance ou l'administration, on a trouvé que le préjudice était le même pour le roi, quelque fût " le corps qui fit l'acquisition et on a étendu l'amortissement à tous les corps qui font acquisition."

" Idem, p. 480.....Il a été tout simple qu'ils exigeassent aussi un dédommagement " pécuniaire des corps qui acquerraient *pour ne point aliéner*, puisque ces acquisitions altéraient leurs " profits casuels."

Grant on Corporations, p. 38, observes, " But with respect to lands and tenements, the legislature " began early to impose restrictions upon the right of corporations aggregate to acquire and transmit " them in succession, by various statutes called Mortmain. These restraints were first considered " to be necessary in consequence of the extend to which landed property was accumulating in the " hands of the great religious or ecclesiastical corporations, and the earliest of them is found in " *Magna Charta.* Feudal subjects granted in donations to churches, monasteries and other religious " or charitable corporations, and thereby all *casualties* to the king and the mesne lords necessarily " became lost where the vassal is a corporation which never dies, or *because the property of those* " *subjects is mode over to a dead hand which cannot transfer it to another.* Hence the doctrine of taking " lands to religious persons by perpetual or rather continuous succession, preventing all chance of " escheat, was known as early as the early times above mentioned in England, and had even then " acquired the name of mortmain."

L'on sentit de bonne heure en France la nécessité de semblables restrictions.

Montesquieu dit : " *on a donné à plusieurs fois au clergé tous les biens du royaume.*"

Renauldon, *Traité des Droits Seigneuriaux*, p. 127, remarque " que St. Louis, fut effrayé de " voir que les biens des ecclésiastiques *devenant inaliénables entre leurs mains*, étaient hors de tout " commerce et que le clergé, par les priviléges accordés à cet état, étant exempt de tout service, et " de toutes impositions publiques, s'il continuait d'acquérir, laisserait enfin aux peuples épuisés et dé- " pouillés que le fardeau excessif des charges publiques.... Les plus anciennes de ces lois sont celles " qui défendent aux ecclésiastiques d'acquérir aucune espèce de biens dans le royaume, sans la per- " mission du Roi.... Depuis St. Louis jusqu'à Louis XV, par son Edit de 1749, ces défenses ont été " si souvent réitérées qu'on ne peut plus douter de la parfaite incapacité que les gens de main-morte " ont de pouvoir acquérir aucuns biens dans le royaume sans la permission du Roi. " Il est clair" dit Renauldon, *loco citato* " que le seigneur éteint à son égard les droits casuels qui pouvaient lui revenir " par de fréquentes mutations et autres accidents de fief; il a donc paru juste que le seigneur retirât

(1) Cela était conforme à l'Ordre de 1738.

" quelque chose qui pût à l'avenir lui tenir lieu de récompenses de toutes ces pertes, et c'est ce qu'on " appelle le droit d'indemnité."

L'Edit de 1749 porte : " les biens immeubles qui passent entre leurs mains cessent pour toujours " d'être dans le commerce, en sorte qu'une très grande partie des fonds de notre royaume se trouve " actuellement possédée par ceux, *dont les biens ne peuvent être diminués par les aliénations*, s'aug- " mentant au contraire continuellement par de nouvelles acquisitions."

La Déclaration de Louis XV notre ordonnance des mains-mortes porte " que la prohibition " d'acquérir s'appliquera à toutes *communautés et gens de main-morte, quelque faveur que puissent* " *mériter les établissements fondés sur des motifs de charité et de religion*, il est temps que nous prenions " des précautions efficaces pour empêcher etc., que ceux qui y sont autorisés *ne multiplient des acqui-* " *sitions, qui mettent hors du commerce une partie considérable des fonds et domaines* de nos colonies, " et ne pourront être regardées *que comme faites au bien commun de la société*."

Hervé dit : " On les appelle mains-mortes parce que leur propriété est dans une espèce d'état de " mort relativement au commerce, et qu'il ne leur est pas permis d'en disposer comme aux autres " citoyens."

Merlin Verbo, Gens de main-morte, dit : " Il est vrai qu'on appelle aussi gens de main-morte les " communautés, corps et établissements publics, dont l'existence se perpétue par la subrogation toujours " successive des personnes qui les composent et qui les administrent."

Grant remarque : " A corporation *quasi* corporation does possess a *quasi* immortal character, as " Coke expresses it, but it is in fact an institution *calculated for, and capable of indefinite duration;* " it is an ideal body, a continuous identity endowed in its creation with *capacity for endless* " *duration*."

Angell and Ames on Corporations : " These mortmain corporations are altogether different from " the civil corporations created in modern times for an infinite variety of temporal purposes. The most numerous, and in a secular and commercial point of view, the most important class of private " civil corporations, and which are commonly called companies, consist at the present day of banking, " insurance, manufacturing and extensive trading corporations, and likewise of turnpike, bridge, canal " and railroad companies, and others established for the promotion and engagement of individual " adventure. The convenience of union and the aggregation of capital for public advantage in the " extension of commercial pursuits necessarily require the great object of an incorporation, namely, " the bestowal of the character and properties of individuality on a collective and changing body of " men. By those means, perpetual succession of many persons are considered as the same, and may " act as an individual, thereby enabled to manage its own affairs, and to hold property *without the* " *perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of* " *transmitting it from hand to hand.* The charter or act of incorporation, a law peculiar to itself, not " only specifies the particular undertaking or business to which it is limited, but, to prevent monopo- " lies, and to confine the action of incorporated companies strictly within their proper sphere, the " acts incorporating them almost invariably limit, not only the amount of property they shall hold, or " their capital stock, but limit also their purchase of lands within a certain amount, and frequently " prescribe the purposes for which alone the land shall be purchased and liable, and the mode in " which it shall be applied to effect these purposes."

Denizart, Tom. IX, au Titre Gens de Main-Morte, page 266 dit :

On entend par gens de main-morte des corps ou des établissements civils ou ecclésiastiques, qui au temps ou on leur a donné ce nom, avaient beaucoup plus de liberté pour acquérir que pour vendre.

On a voulu exprimer par le terme *main-morte*, l'espèce d'état demort dans lequel demeurent les biens qui appartiennent aux corps et aux établissements dont il est question, relativement au commerce et aux droits domaniaux et féodaux auxquels ils pourraient donner lieu dans la main d'un propriétaire qui aurait la libre faculté d'aliéner. Plusieurs auteurs ont remarqué que cette expression *gens de main-morte*, convenait peu pour désigner des êtres moraux, qui ne meurent jamais. Mais l'usage en a fixé le sens de manière qu'on ne peut pas se méprendre sur l'application.

Le même auteur, dans le même titre, ajoute, page 273, Vol. IX :

Mais les gens de main-morte forment dans l'état, des familles qui ne peuvent s'accroître comme les familles particulières.

Il y a plus. Suivant leur institution, se sont des familles de mineurs qui ne peuvent aliéner que difficilement. De là, deux inconvénients : 1o. les gens de main-morte acquérant toujours sans jamais aliéner peuvent posséder des biens au-delà de ce qui est nécessaire pour le but de leur établissement, et devenir par succession de temps, propriétaires de tous les biens qui existent dans le royaume.

Walewski, Traité des Sociétés par actions, parlant de cette société dit :

" Dans laquelle toute individualité disparait pour faire place à une simple association de capi- " taux, les tiers trouvant leur garantie dans l'autorisation du gouvernement qui revise et approuve " les statuts de ce genre d'entreprises."

Le code de commerce contient une disposition expresse relative aux associations semblables à la présente.

" Elle est qualifiée par la désignation de l'objet de son entreprise, elle est administrée par des " administrateurs à temps révocables, les associés ne sont passibles que de la perte du montant de " leur intérêt dans la société, ils ne laissent que le capital pour répondre aux créanciers de l'associa- " tion. Le capital se divise en actions d'une valeur égale, représentant le droit qu'on a dans une " société anonyme, et la réunion de toutes les actions forme le capital de la société ; enfin elle ne " peut exister qu'avec l'autorisation du roi, et avec son approbation par l'acte qui la constitue, qui " doit être donné dans la forme prescrite par les règlements d'administration publique."

Troplong, Traité des Sociétés, dit :

" Les sociétés commerciales sont celles qui sont formées pour exercer un commerce, ou pour " faire des actes de commerce, c'est leur but qui leur imprime le caractère comme tel. Et, quant " aux sociétés anonymes, leur intention se jugera par leurs habitudes, et par les circonstances au " milieu desquelles elles se sont formées. Lorsque des entreprises de transport se lient à des entreprises " de construction, la société qui s'y livre est une société commerciale ; ainsi une société qui a cons- " truit un chemin de fer, et qui ensuite exploite le transport des voyageurs et marchandises par ses " wagons, est une société de commerce," et Bosquet, Dict. de Droit, dit : " l'exploitation d'un chemin " de fer par une compagnie constitue une entreprise de commerce, justiciable des tribunaux de com- merce."

Cette doctrine a été consacrée par le jugement rendu à Québec et rapporté au troisième volume des Rapports Judiciaires dans la cause du Séminaire de Québec contre la Bourse de Québec.

Voyez l'acte d'amalgame.

Guyot, Rep. Vol. 9, p. 152.

Hervé, matières féodales. Tom. 6, pp. 429, 541, 617.

Dictionnaire des Domaines. Vo. Union.

Maynard.—Livre 4, ch. 43 et 50.

Larocheflavin.—Droits Seigneuriaux, ch. 36, art. 1, p. 726, de 4, à l'Edition de 1682, avec les notes de Graveral.

Laurens.—Bouchel, Bibliothèque du Droit Français ; V. Lods et Ventes, p. 530 du vol. 2.

Frain.—Arrêts, avec addition, par Hevin, Arrêt 68, p. 254 et seq.

D'Olive.—Questions Notables ; Liv. 2, ch. 16, ps. 332 et 338.

Despeisses.—Droits Seigneuriaux, Tit. 4, art. 3, sec. 5, Ft. 7, No. 3, p. 79 du vol. 3.

La Peyrère.—V. Vente, No. 55, p. 886 de Ed. de 1808.

Pocquet.—Livre 3, ch. 6, S. 7, p. 240.

Brillon.—Dictionnaire des Arrêts ; V. Lods, No. 75, p. 145 du vol. 4.

La Planche.—Traité du Domaine, Liv. 4, ch. 4 *in fini* p. 249 du vol. 1.

Lacombe.—Recueil, V. Lods. et Ventes, p. 440, Ed. de 1769.

Sudre.—Additions à Boutarie, ch. 3, No. 6, p. 100.

Freminville.—Pratique Universelle, Vol. 5, p. 604, Ed. de 1776.

Guyot.—Traité des Fiefs " du Quint et Lods et Ventes," ch. 13, p. 511. du vol. 13. " Du Retrait Seigneurial," ch. 3, No. 16, p. 24 du vol. 4. Institutes Féodales, ch. 6, No. 19, p. 752 du vol. 6.

Raviot.—Notes sur Perrier, Qu. 124, No. 24, p. 37 du vol. 1.

Pothier.—Coutume d'Orléans, Int. Sit. Fiefs, No. 164.

Traité des Fiefs, It. 1, ch. 5, S. 1, art. 4.

Bourjon.—Liv. 2, titre 4, ch. 4, sec. 2, No. 8, p. 272 du vol. 1.

Denisart (ancien).—V. Lods, ps. 183—4 du vol. 3.

Renaudon.—Dictionnaire des Fiefs ; V. Lods, p. 66, du Vol. 2. *No Cens*, p. 139 du vol. 1.

Prud'homme.—Liv. 3, ch. 51, ps. 297–8.

Fosmour.—No. 235, ps. 214–5.

Hervé.—Vol. 3, ps. 3, 4, 23 et 24.

(*Endorsed*)

Mémoire des Autorités données par l'Intimée.—

DOCUMENT XVI

TRANSCRIPT

Of the proceedings had and entries made in the Register of the Court of Queen's Bench for Lower Canada, Appeal Side.

25th January 1858.

MM. Cherrier, Dorion & Dorion of Counsel for the said Alexandre Kierzkowski fyle a Præcipe for a Writ of Appeal, and Writ issued.

9th April 1858.

The Writ of Appeal is returned with Schedules annexed thereto.

22d May 1858.

MM. Cartier & Berthelot appear for the said Respondents.
Reasons of Appeal are fyled on behalf of the said Appellants.

2d July 1858.

Answers to Reasons of Appeal are fyled on behalf of the Respondents.

25e Octobre 1858.

Les Intimés produisent une requisition au Greffier des Appels de consigner au Registre de cette Cour le fait de l'incompétence de l'Honorable Mr le Juge Caron à siéger en cette cause.

Les Intimés produisent aussi une Requête aux Juges de cette Cour pour un ordre au Greffier d'intimer ce fait au Juge en Chef de la Cour Supérieure, et un ordre conforme, au bas de la dite Requête signé par l'Honorable Mr. le Juge Aylwin.

18th November 1858.

The Respondent fyle their printed case.

20*th November* 1858.

" Quebec 17 November 1858. J. U. Beaudry Esq. Clerk of Appeals." Sir—I have to acknowledge the receipt of your letter, dated the 25 October last notifying me that one of the Judges of the Superior Court for Lower Canada, is required to sit and act in the cause pending in the Court of Queen's Bench (Appeal Side) wherein Alexandre E. Kierzkowski is appellant and La Compagnie du Grand Trone de Chemin de Fer du Canada is respondent, in lieu and stead of the Honorable Judge Caron who is incompetent to sit in the said cause; and having communicated with the Judges of the said Superior Court, it has been arranged that the Honorable Judge Meredith will sit and act at the hearing of the cause above mentiond. I have the honor to be, &c, (Signed) EDWARD BOWEN, *Ch. Justice. S. C.*

30*th November* 1858.

The Appelaint fyles his printed case.

3*d December* 1858.

The Honorable Sir Louis Hypolite Lafontaine Bt. Chief Justice.
" Mr. Justice Aylwin.
" Mr. Justice Duval.
" Mr. Justice Meredith, *Adhoc.*

This cause being called from the Rôle for hearing on the merits, the argument is begun and continued to next day.

4*th December* 1858.

PRESENT:

The Honorable Sir Louis Hypolite Lafontaire, *Bt. Chief Justice.*
" Mr. Justice Aylwin.
" Mr. Justice Duval.
" Mr. Justice Meredith, *Adhoc.*

The argument on the merits of this cause is concluded, whereupon *Curia advisare Vult.*

27*e Avril* 1859.

PRESENTS:

L'Honorable Sir Louis Hypolite Lafontaine, Bt.
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith,

La Cour met cette cause hors du délibéré et Ordonne du consentement des parties qu'elle soit entendue de nouveau le premier juin prochain.

1*er Juin* 1859.

PRESENTS:

L'Honorable M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge C. Mondelet, *Assistant.*

Cette cause ayant été appelée pour audition sur le mérite est continuée généralement vû l'absence de l'Honorable Juge-en-Chef.

30*e Juin* 1859.

L'Honorable M. le Juge-Assistant Mondelet produit la Déclaration dont suit copie. " Je soussigné Juge-Assistant de cette Cour, déclare que je suis incompétent à siéger en cette cause, ayant participé au Jugement rendu par la Cour Supérieure.

(*Signé,*)

CHARLES MONDELET
J. A. B. R.

L'Intimé produit une Réquisition aux fins de constater au Registre l'incompétence de l'Honorable Juge Mondelet.

L'Intimé produit une Requête pour qu'il soit enjoint au Greffier de cette Cour d'informer le Juge-en-Chef de la Cour Supérieure qu'il est besoin d'un Juge de la dite Cour Supérieure pour remplacer le Juge Mondelet, au bas de laquelle Requête se trouve un ordre en Conformité signé par l'Honorable Juge Aylwin.

6*e Juillet* 1859.

Reçu ce jour de l'Honorable Juge-en-Chef de la Cour Supérieure la lettre dont suit copie " Quebec 2 July 1859. L. W. Marchand, Esqr. Depy Clerk of Appeals. Sir, I have to acknowledge the receipt of your letter, dated the 30 June last notifying me that one of the Judges of the Superior Court for Lower-Canada is required to sit and act in the cause pending in the Court of Queen's Bench (Appeal Side) wherein Alexandre Kierskowski et al are Appellants and the Grand Trunk Co. of Canada is Respondent, in lieu and stead of the Honorable Judge Charles Mondelet who is incompetent to sit in the said cause; and having communicated with the Judges of the said Superior Court,

it has been arranged that the Honorable Judge Lafontaine of Aylmer will sit and act at the hearing of the cause above mentioned.

I have the honor to be,
Sir, Your Obedient Servant,
(*Signed*) EDWD. BOWEN
Ch. Justice S. C.

1*er Septembre* 1859.

PRESENTS :
L'Honorable Sir Louis Hypolite LaFontaine, *Bt. Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge A. LaFontaine, *Juge Suppléant.*

Les parties ayant été appelées pour audition au mérite, l'Appelant est entendu par ses avocats et la cause est continuée au deux Septembre courant.

2e *Septembre* 1859.

PRESENTS :
L'Honorable Sir Louis H. LaFontaine *Bt Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge A. Lafontaine, *Juge-Suppléant.*

L'audition est continuée et les deux parties ayant été entendues par leurs Avocats, *Curia advisare Vult.*

2e *Décembre* 1859.

PRESENTS :
L'Honorable Sir Louis Hypolite Lafontaine, *Baronet, Juge en Chef*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge-*Suppléant* A. Lafontaine.

La Cour met cette cause hors du délibéré et ordonne une nouvelle audition au mérite de l'appel. La cause est en conséquence, remise sur le rôle des inscriptions et l'audition est fixée à demain, du consentement des parties.

3e *Décembre* 1859.

PRESENTS :
L'Honorable Sir Louis Hypolite LaFontaine, *Baronet, Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge-*Suppléant* A. Lafontaine.

Les parties n'étant pas prêtes, l'audition est remise à Lundi du consentement des parties.

5e *Décembre* 1859.

PRÉSENT :
L'Honorable Sir Louis Hypolite LaFontaine, *Baronet, Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge-*Suppléant*, A. Lafontaine.

Les parties ayant été entendues par leurs avocats sur le mérite : *Curia advisare Vult.*

9e *Decembre* 1859.

PRÉSENTS :
L'honorable Sir Louis Hypolite LaFontaine, *Bt. Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge Meredith.
" M. le Juge-*Suppléant*, A. Lafontaine.

The Court of Our Lady the Queen now here, having heard the Appellant and Respondents by their counsel respectively, examined as well the record and proceedings had in the Court below, as the Reasons of Appeal filed by the Appellant and the answers thereto, and mature deliberation on the whole being had :

Considering that in that part of the Judgment of the Court below which rejects the claim of the Appellant for the sum of One thousand three hundred and seven pounds, five shillings and nine pence two farthings currency, as the right of indemnity *droit d'indemnité*,—due to the Appellant as alleged, by the Respondent on their acquisition of that portion of the St. Lawrence and Atlantic Railway Company lying within the Seigniory of St. François-le-Neuf, there is no error, doth, in so far as regards the said part of the said judgment, rejecting the said claim for One thousand Three hundred

and Seven pounds, five shillings and nine pence, two farthings currency, Confirm the said Judgment, to wit, the Judgment of the Superior Court rendered at Montreal, in this cause, on the Twenty third day of November one thousand Eight hundred and Fifty Seven—The Chief Justice, Sir Louis Hypolite LaFontaine, Baronet, and Mr. Justice Meredith dissenting from the foregoing part of the present Judgment.

And considering that the deed of agreement, bearing date the Twelfth day of April, One thousand Eight hundred and Fifty Three in the plaintiff's declaration mentioned, is in effect a conveyance,—*Acte translatif de propriété*, and did cause an alienation, or change in the Ownership, of the said real estate, situated in the Seigniory of St. François-le-neuf, belonging to the Appellant, and mentioned in the declaration of the Appellant in this cause filed; in as much as before, and at the time of the making of the said agreement, the said real estate belonged exclusively to the St. Lawrence and Atlantic Railway Company, mentioned in the plaintiffs declaration; whereas after the making, and carrying into effect of the said agreement, and under and by virtue thereof, the said real estate became the property, of another and different corporation, namely, the Grand Trunk Railway Company of Canada the respondent in this cause. Considering also that the said agreement cannot be deemed equivalent to a sale—equipollent *à vente*—in so far as regards the shares in the said Grand Trunk Railway Company of Canada, to which the Shareholders in the St. Lawrence and Atlantic Railway Company became entitled under and by virtue of the said agreement, in as much as the said shares were received by the said Shareholders in exchange for their shares in the said St. Lawrence and Atlantic Railway Company.

Considering also, that the said agreement cannot be deemed a contract equivalent to a sale, in so far as regards the liabilities of the said St. Lawrence and Atlantic Railway Company assumed by the Grand Trunk Railway Company of Canada, as mentioned in the said agreement, in as much as the said liabilities are to be considered as so much that had to be deducted from the value of the assets transferred as Capital by the said St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of said Canada, and in as much as the assuming of the said liabilities by the said Grand Trunk Railway Company of Canada was, under the Fourth Section of the Statute, Sixteenth Victoria, Chapter the Thirty ninth, a necessary consequence of the union of the said two Companies, parties to the said agreement; and which said union of the said Companies is not considered as a sale in the said Statute.

Considering, however, that in so far as regards the sum of seventy five thousand pounds sterling, mentioned in the said agreement and in the Plaintiff's declaration, the said agreement is a contract equivalent to a sale—*acte équipollent à vente*—in as much as the parties to the said agreement, by agreeing that the said sum of Seventy five thousand pounds sterling should be paid for the exclusive benefit of the St. Lawrence and Atlantic Railway Company, in effect admitted that the property transferred by the said St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of Canada, exceeded in value, to that extent, the shares in the said Grand Trunk Railway Company of Canada, to which the Stockholders in the said St. Lawrence and Atlantic Railway Company became entitled under and by virtue of the said agreement.

Considering also that the said defendants are not exempted from the obligation to pay *lods et ventes* in relation to the said contract, in as much as the said Grand Trunk Railway Company of Canada is merely a private Corporation and is not a public body, acting for the state; and therefore is not entitled to the privileges incident to contracts entered into by the state for purposes of public utility.

Considering, therefore, that there is error in the Judgment of the Court below, in so far as it wholly rejects the claim of the said Appellant for *lods et ventes*, doth reverse the said Judgment of the Court below, in so far as it rejects the claim of the Appellant for *lods et ventes*, and proceeding to render such Judgment as the Court below ought to have rendered in the premises, doth order that two experts be named in the Court below in this cause by the parties, in due course of law and according to the course and practice of the Court, and in default of such Nomination by the parties, that the said experts be named by the Court, or by a Judge thereof in vacation, and that a third expert be named, by the said Court, or by a Judge thereof in Vacation, and that the said experts do, in due course of law, ascertain and report to the said Superior Court, at Montreal,

First.—What was, at the date of the said agreement, namely, the Twelfth April One thousand Eight hundred and Fifty three, the value of the whole of the property, moveable and immoveable, which, under and by virtue of the said agreement, was transferred by the St. Lawrence and Atlantic Railway Company to the said Grand Trunk Railway Company of Canada.

Secondly—What was, at the same date, the value of the moveable property transferred under and by virtue of the said agreement.

Thirdly.—What was, at the same date, the value of the immoveable property transferred under and by virtue of the said agreement.

And the said experts are hereby directed to include, in their estimate of the said immoveable property, the buildings, fences, rails and other improvements made thereon, or permanently attached thereto, at the date of the said agreement.—And in case the said Experts entertain any doubt as to whether any thing ought to be deemed moveable or immoveable, the said experts will make a special report to the Court, setting forth the value of the things in relation to which such doubts may be entertained by them.

Fourthly.—What part of the sum of money reported as the value of the whole of the property moveable and immoveable transferred by the said St. Lawrence and Atlantic Railway Company to the Grand Trunk Railway Company of Canada, ought to be considered as the value of the said real estate situate in the said Seigniory of St. François-le-Neuf mentioned in the declarations of the Appellant in this cause filed in which estimate of the said last mentioned real estate the said experts are hereby directed to include the value of the buildings, fences, rails and other improvements made thereon or permanently attached thereto with power to the said Experts, in addition to the evidence

already adduced in this cause, to receive such further evidence as the parties may legally place before them. The said Experts and any winesses examined before them, to be previously sworn in due course of law—the said experts to be also subject to any further orders or directions that may be given them by the Court below for the purpose of carrying into effect the present Judgment—in relation to which last mentioned orders & directions it shall be the duty of the said experts, to make a special *report* And the Court doth condemn the Respondent to pay to the Appellant his costs in this Court, the cost in the Court below to be adjudicated upon by the Court below, when rendering final Judgment in this cause. And the Court doth order the Record to be remitted to the Court below.

The Hon. Judges Aylwin and A. Lafontaine dissenting from the opinion of the majority as for as regard the awarding of *lods et ventes.*

The Appellant moves that an Appeal be allowed to Her Majesty in Her Privy Council from the Judgment rendered in this cause, unless cause to the contrary be shewn on the first day of next term.

It is ordered that a rule do issue accordingly.

L'Intimée fait motion qu'il lui soit permis d'appeler à Sa Majesté en son Conseil Privé du jugement rendu en cette cause, à moins que cause au contraire ne soit montrée le premier jour juridique du terme prochain.

Il est ordonné que cause soit montrée au contraire le premier jour juridique du Terme prochain.

1*er Mars* 1860.

PRÉSENTS :

L'Honorable Sir Louis Hypolite LaFontaine *Baronet Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.

L'Intimée rapporte la règle par elle obtenue le neuf Décembre dernier, et l'audition sur icelle est continuée, la Cour telle que composée étant incompétente.

1*er Juin* 1860.

PRÉSENTS :—

L'Honorable Sir Louis Hypolite Lafontaine, *Bt. Juge en Chef.*
" M. le Juge Aylwin.
" M. le Juge Duval.
" M. le Juge A. Lafontaine, *Suppléant.*

La cause étant appelée pour audition sur la motion de l'Appelant en date du neuf Décembre dernier, la Cour, du consentement de l'Intimée, accorde la dite motion et permet à l'Appelant d'interjetter appel du jugement rendu par cette Cour le neuf Décembre dernier, à Sa Majesté, en son Conseil Privé, en par le dit Appelant donnant dans un délai de six semaines, le cautionnement voulu par la loi.

La cause étant appelée pour audition sur la Règle obtenue par l'Intimée le neuf Décembre dernier, la Cour du consentement de l'Appelant, déclare la dite Règle absolue et permet à l'Intimée d'appeler du jugement rendu en cette cause, à Sa Majesté en son Conseil Privé, en par elle donnant le cautionnement voulu par la loi, sous un délai de six semaines.

12*e Juillet* 1860.

Pursuant to notice given, the said Alexandre Edouard Kierzkowski offers as security on the Appeal in this cause to Her Majesty in Her Privy Council, The Honorable Louis Antoine Dessaulles and Maurice Laframboise, Esquire, Advocate, both of the City of St. Hyacinthe, in the District of St. Hyacinthe, who not being required to justify as to their solvency do execute a Bail-Bond which is taken, acknowledged and fyled.

Pursuant to notice given, the said Grand Trunk Railway Company of Canada offer as security on the Appeal in this cause to Her Majesty in Her Privy Council Theod Doucet, Esquire, Notary and William McBean, Esquire, both of the City of Montreal, who not being required to justify as to their solvency, do execute a Bail-Bond which is taken, acknowledged and fyled.

BAIL-BOND.

PROVINCE OF CANADA, *Lower Canada to wit.*

IN THE COURT OF QUEEN'S BENCH.

(APPEAL SIDE.)

No. 30. In a cause between

ALEXANDRE EDOUARD KIERZKOWSKI, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François-le-Neuf in the District of Montreal, residing in the Parish of St. Charles in the said District,

(*Plaintiff in the Court below*)
APPELLANT

&

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,

(*Defendants in the Court below,*)
RESPONDENTS.

Be it remembered that on the Twelfth day of July in the year of Our Lord one thousand eight hundred and sixty at the city of Montreal in the district of Montreal Before Me. the Honorable Thomas Cushing

Aylwin, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared The Honorable Louis Antoine Dessaulles, one of the Members of the Legislative Council and Maurice Laframboise, Esquire, Advocate, both of the city of St. Hyacinthe in the district of St. Hyacinthe, who declare themselves jointly and severally bound and liable unto and in favor of the said The Grand Trunk Railway Company of Canada, their heirs, assigns and representatives in the sum of five hundred pounds current money of Canada to be made and levied of the several goods and chattels, lands and tenements of them the said the Honorable Louis Antoine Dessaulles and Maurice LaFramboise Esquire respectively, to the use of the said The Grand Trunk Railway Company of Canada, their heirs, assigns and representatives subject to the condition hereinafter mentioned to wit: whereas Judgment was rendered in the said cause in the said Court of Queen's Bench, on the Ninth day of December one thousand eight hundred and fifty nine, on the Appeal instituted in this cause, and the said Alexandre Edouard Kierzkowski has obtained leave to Appeal therefrom to Her Majesty in Her Privy Council: Now the condition of the present obligation is such that if the said Alexandre Edouard Kierzkowski do prosecute effectually the said Appeal to Her Majesty, shall answer the condemnation, and pay unto the said The Grand Trunk Railway Company of Canada such costs and damages as may be awarded unto them, then the present obligation shall be null and void, otherwise the same to be and remain in full force and value.

And the said Louis Antoine Dessaulles and Maurice LaFramboise have signed.

L. A. DESSAULLES.
M. LAFRAMBOISE.

Taken and acknowledged before Me at the City of Montreal the day and year first above written,

T. C. AYLWIN. J.

(*Endorsed*)

Bail-Bond—Filed 12th July 1860.

(*Paraphed*) *L W M*

PROVINCE OF CANADA, *Lower Canada to wit:* —

IN THE COURT OF QUEEN'S BENCH.

(APPEAL SIDE.)

No. 30. In a cause between

ALEXANDRE EDOUARD KIERZKOWSKI, Esquire, Seignior in possession as usufructuary of the Seigniory of St. François-le-Neuf, in the district of Montreal, residing in the parish of St. Charles in the said district,

(*Plaintiff in the Court below*)

APPELLANT

&

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

(*Defendants in the Court below*)

RESPONDENTS.

Be it remembered that on the twelfth day of July in the year of Our Lord one thousand eight hundred and sixty at the city of Montreal in the district of Montreal Before Me, the Honorable Thomas Cushing Aylwin, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared Théod Doucet, of the city of Montreal, Esquire, Notary, and William McBean, of the said city of Montreal, Esquire, who declare themselves jointly and severally bound and liable unto and in favor of the said Alexandre Edouard Kierzkowski, his heirs, assigns and representatives in the sum of seven hundred and fifty pounds current money of Canada to be made and levied of the several goods and chattels, lands and tenements of them the said Théod Doucet and William McBean respectively, to the use of the said Alexandre Edouard Kierzkowski, his heirs, assigns and representatives subject to the condition hereinafter mentioned to wit: whereas Judgment was rendered in the said cause in the said Court of Queen's Bench, on the Ninth day of December one thousand eight hundred and fifty-nine on the Appeal instituted in this cause, and the said The Grand Trunk Railway Company of Canada have obtained leave to appeal therefrom to Her Majesty in Her Privy Council; Now the condition of the present obligation is such that if the said The Grand Trunk Railway Company of Canada do prosecute effectually the said Appeal to Her Majesty, shall answer the condemnation, and pay unto the said Alexandre Edouard Kierzkowski such costs and damages as may be awarded unto them, then the present obligation shall be null and void, otherwise the same to be and remain in full force and value.

And the said Théod Doucet and William McBean have signed.

T. DOUCET.
WILL. MCBEAN.

Taken and acknowledged before Me at the city of Montreal the day and year first above written, the said parties having first duly justified as to their solvency.

T. C. AYLWIN. J.

(*Endorsed*)

Bail-Bond—filed 12th July 1860.

(*Paraphed*) *L. W. M*

PROVINCE OF CANADA, }
Lower Canada to wit. }

IN THE COURT OF QUEEN'S BENCH.

APPEAL SIDE.

I, Louis François Wilfrid Marchand, Deputy Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the sixty-nine foregoing and present pages, contain true and faithful copies, to wit; of all and every the original papers, documents and principal proceedings, and of the transcript of all the rules, orders, proceedings and Judgments of Her Majesty's Superior Court of Lower Canada, sitting at the City of Montreal, in the Province of Canada, transmitted into my office as the record of the said Superior Court, in a certain cause therein lately pending and determined, wherein Alexandre Edouard Kierzkowski, Plaintiff in the Superior Court was Appellant in the Court of Queen's Bench, (Appeal Side,) and The Grand Trunk Railway Company of Canada, Defendants in the Superior Court, were Respondents in the Court of Queen's Bench, (Appeal Side,) and also of all the principal proceedings and documents had and fyled in the said Court of Queen's Bench, (Appeal Side) and of all and every the entries in the register of the said Court of Queen's Bench, and of the Judgment therein given on the Appeal instituted before the said Court of Queen's Bench by the said Alexandre Edouard Kierzkowski.

In faith and testimony whereof, I have to these presents set and subscribed my signature and affixed the seal of the said Court of Queen's Bench, (Appeal Side).

Given at the City of Montreal, in that part of the Province of Canada called Lower Canada, the day of in the year of our Lord one thousand eight hundred and sixty.

Clerk's fees on transcript of record.

I, the undersigned, the Honorable Sir Louis Hypolite LaFontaine, Baronet, Chief Justice of the Court of Queen's Bench, for Lower Canada, in the Province of Canada, do hereby certify, that Louis François Wilfrid Marchand, Esquire, is the Deputy Clerk of the said Court, on the Appeal Side thereof, and that the signature "L. W. Marchand" subscribed at the foot of each of the foregoing printed pages and of the certificate above written, is his proper signature and hand writing.

I do further certify, that the said Louis François Wilfrid Marchand, as such Deputy Clerk, is the keeper of the records of the said Court, and the proper officer to certify the proceedings of the same on the Appeal Side, and that the seal above set is the seal of the said Court, in the Appeal Side, and was so affixed under the sanction of the said Court.

In testimony whereof, I have hereunto set my hand and seal, at the City of Montreal, in the said Province, this day of in the year of our Lord one thousand eight hundred and sixty, and of Her Majesty's Reign, the twenty-fourth.

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