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DAMAGES AGAINST CORPORATIONS.

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

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 21, 1880.

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

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

Damages—Municipal Corporation—Alteration of Street Level.

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

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

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

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

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

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

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

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

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

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

any compensation for the altering of the level of the street, "it had to be sought by other process than this action, to wit, by resort to the tribunal provided by the 27 & 28 Vict., chap. 60."

If this reason be founded, it is needless to carry our investigation further, for we have no authority to decide the issues. It is well, however, to bear in mind that what respondent has to establish is an absolute absence of jurisdiction over the matter. Nothing less will do, because the defendant did not decline the jurisdiction by preliminary plea—*exception déclinatoire*—within four days from the return of the writ, as required by law. (Arts. 107 and 114, C. C. P.) "Le déclinatoire *ratione personae* ne peut être, pour la première fois, proposé en cause d'appel." Carré, 11, 142, note; 143, note 1st. "Le déclinatoire *ratione materiae* peut être proposé en tout état de cause, même en appel." 11, 147, art. 170, note 3rd, and No. 128. See also *Gray & Dubuc*, 2 L. R., Q., p. 234. The omission to raise the question of jurisdiction by the usual exception was probably due to the fact that it was not generally considered, at the time this action was begun, that a suit for damages, such as this is, fell within the provisions of the 27 & 28 Vic., chap. 60. But in May, 1876, the Judicial Committee held, in the case of Drummond & The Mayor, &c., of Montreal, that a claim for damages for closing a street so as specially to injure the plaintiff's property, could only be urged before Commissioners appointed under the provisions of the 27 & 28 Vic. The opinion of the Judicial Committee is thus expressed:—"It seems to them (their Lordships) that if he (respondent) has any claim, it is one to be prosecuted under the provisions of the Act relating to expropriations by this Corporation (27 & 28 Vic., c. 60), which will be hereafter considered." And further on they say:—"Their Lordships, however, do not think it necessary to decide in this appeal the question thus raised (question of right of indemnity), since in whatever manner it may be determined, and whatever may have been the case before the 18th section of the 27 & 28 Vic., c. 60, was passed, they think that this enactment, by requiring that the compensation payable to any party, 'by reason of any act of the Council for which they are bound to make compensation,' shall be ascertained in the manner prescribed by the Statute, excludes by necessary implication actions of indemnity for damage in respect of such acts. It is enough, therefore, to say that, in their view, the Corporation, having acted within their powers, the plaintiff's claim (if sustainable at all) is of a kind which would fall to be determined by the Commissioners under the special Act." (22 L.C.J. p. 9.)

Formal as this opinion appears to be, appellants contend that it cannot be considered conclusive authority, because it is contrary to the jurisprudence of our Courts, and because the point was never urged before the Courts here or before the Committee.

It may perhaps be said there was no jurisprudence on the point because it never was raised, so far as I know. But there have been many actions such as this, and common acceptation is perhaps as conclusive in a matter of this kind as if it had been formally decided.

Be this as it may, it is very certain that what has never been contradictorily argued cannot be considered definitively settled. I am, therefore, of opinion that we are not precluded from deciding differently from that judgment, and that it is our duty now to examine the question, and to express our opinion upon it. The enquiry seems to me to divide itself into two questions:—

1st. To what cases does the 27 & 28 Vic. apply?

2nd. Does the Act create a tribunal or only a *mode de procédure?*

With regard to the first question, the portion of the Act 27 & 28 Vic., chap. 60, which refers to the special "tribunal," is under the rubric "Expropriation and special assessment." After repealing the former legislation, so far as inconsistent with this Act (sec. 10), the Statute goes on to enact that "the Council of the said city of Montreal shall have power to order, by resolution, the opening or widening of streets, public highways, places or squares, or the construction of public buildings, and to order at the same time that such improvement shall be made out of the city's funds, or that the cost thereof shall be assessed," &c., (sec. 11.) Then if the Council of the said city determines, by resolution, to undertake or carry out "any of the *said* works," and if the person who is seized or possessed as proprietor of any lot of ground

or real property necessary to be acquired for the purpose of such work will not come to an amicable settlement, the "price or compensation shall be fixed and determined in the following manner," (sec. 13), that is to say, Commissioners shall be appointed by the Superior Court. The Statute then goes on to enact (sec. 18) as follows:—"All the provisions contained in the thirteenth section of the present Act, with regard to the appointment of Commissioners and the mode of ascertaining the value of the pieces or parcels of land or real estate taken by the Corporation of the said city, shall be and are hereby extended to all cases in which it shall become necessary to ascertain the amount of compensation to be paid by the said Corporation to any proprietor of real estate, or his representatives, for any damage he or they may have sustained by reason of any alteration, made by order of the said Council, in the level of any footpath or sidewalk, or by reason of the removal of any establishment subject to be removed by reason of any other act of the said Council for which they are bound to make compensation, and with regard to the amount of compensation for which damage the party sustaining the same and the said corporation shall not agree; and the amount of such compensation shall be paid at once by the said Corporation to the party having a right to the same, without further formality." Now, it is contended by the Corporation that by this section compensation for damages done and not acknowledged are placed on precisely the same footing as compensation for lands to be expropriated. I think this is a misinterpretation of the section, for it would follow that no action of damage would lie against the Corporation for any act attributable to the Council;—the words are: "or to any party by reason of *any other act* of the said Council *for which they are bound to make compensation.*" Not only there would be no direct action, but there would be no mode by which the party aggrieved could set the law in motion. It is the Council and its officers that give the notices, and move the Court or Judge for the order. If they don't acknowledge that there is any ground of indebtedness, of course they don't move. I think, therefore, that where the Corporation does not take any action, the common law remedy remains to the party aggrieved. Further to illustrate my meaning, let me suggest another case, which does not entirely turn upon Article 18. Suppose the Council of the city resolved to expropriate from lands for the purpose of widening a street, without any amicable settlement, and without any nomination of Commissioners, will it be seriously contended that the party expropriated would not have a common law action, as well for the loss of his land, if he be content not to revendicate it, as for the damage specially arising from the dispossession without due notice? I have heard no attempt to answer this but by saying the party aggrieved could proceed by *mandamus*. Now, let us examine the depth of this suggestion.

I do not propose to enter minutely into a consideration of the limits of the jurisdiction of the writ of *mandamus*, about which there has often been some difficulty in England, a difficulty perhaps complicated in a self-governing possession of the Crown by the question of the effect of recent legislation. Suffice it to say, that it appears very questionable indeed whether the writ would lie to compel the Corporation of Montreal to affect to come to the conclusion that they "are bound to make compensation," in order to give the party complaining an opportunity of testing his case. The words of the Statute only oblige the Corporation to proceed in this way where they "are bound to make compensation, and with regard to the *amount* of compensation for which damage the party sustaining the loss and the said Corporation cannot agree." The first step, then, the Court, on application for *mandamus*, would have to perform would be to determine that at all events there was a *prima facie* case of damages made out. That is to decide an important part of the issue. If the Court can determine this, owing to the reticence of the Corporation, why should it not decide the whole? Again, what would be the object of the *mandamus?* It would be to get an order from the Superior Court to compel the Corporation to make an application to the Superior Court, after a useless notice to the public. No case of a *mandamus* being granted under such circumstances has been brought under our notice. Generally the writ will not be granted to compel the exercise of a discretionary power; nevertheless, even where a power is discretionary, if it be used with manifest injustice, the Court will grant

the writ to prevent a failure of justice. It is, therefore, argued by the respondents that as the appellant has, in an extreme case, the right to a *mandamus*, therefore she is not deprived of all remedy by interpreting the Statute so as to exclude the operation of the common law. I think this is an inversion of the ordinary argument. We argue that the *mandamus* should be granted, because there is no other convenient remedy; but it does not seem to be deducible from this that there is no ordinary remedy, because, where there is none, there is the remedy by *mandamus*. I, therefore, think that the sections referred to in the 27 & 28 Vict. contain a direction to the Corporation to proceed in a particular way, in certain cases. I do not think the Corporation can be compelled so to proceed where the question is simply as to compensation for damages which they do not admit to be due.

But let us take for granted that this conclusion is wrong, and that there is a mode open to appellant to set the law in motion to enable her thereby to recover compensation unjustly denied, it does not appear to me, as the record before us stands, that we should be justified in dismissing the action for want of jurisdiction. Respondent contends that the 27 & 28 Vict. has established a tribunal for cases like this, and that, having done so, there is no remedy at common law. It is also the contention of the Judicial Committee. In the case of Drummond & The Corporation, they say "it establishes a tribunal consisting of Commissioners for determining the value of property expropriated, and a system of procedure for such cases." To be perfectly correct, their Lordships should have said "*to be* expropriated" (a correction of some importance, for it avoids the necessity of a tedious digression.) Now, I question much whether the proposition is precisely correct, either in English law or by the law of France. In Mr. Dillon's work on "Municipal Corporations," Vol. II., p. 902, he says: "If, in such cases, *the Statute provides a specific remedy*, or a remedy other than an ordinary civil action, that remedy alone can be pursued." And in a note to the second edition we find: "This remedy (one by a recent Statute) excludes a civil action for all damages *necessarily* occasioned." Without having the letter of the law before one, it is not easy to say absolutely that the cases cited have no bearing on the proposition of the author; but, so far as I can see, only one requires any mention. In *Flagg & The City of Worcester*, Merrick, J., after saying that there was no common law remedy, *i. e.*, action or right of action, for damages suffered in *repairing* highways, under the common law obligation to repair, said the party suffering could only proceed according to a special remedy allowed by law, and this remedy was complete in itself. "But under this restriction no damage can be done. To avail themselves of the remedy provided by the Statute, ample opportunity is afforded to parties deeming themselves to be aggrieved. Their damages are, *in the first instance*, to be determined *upon their own application* to the Selectmen of the town or Mayor and Aldermen of the city," &c. Elsewhere the judge says: "If their adjudication upon the question is not satisfactory, upon proper proceedings being had, they may be ascertained by a jury, as in the case of taking lands upon the location of highways." From the statement of the law by Merrick, J., Mr. Dillon was not justified in stating his proposition in the unqualified manner he has done. The general principle seems to be that "an existing jurisdiction cannot be taken away except by precise and distinct words. *Galsworth* v. *Durant*, 8 W. R. 594—R. Fisher's Dig. 5077. And the concurrent jurisdiction of courts of equity is not excluded by the adoption of equitable principles by courts of law. *Hawkshaw* v. *Perkins*, 2 Swans. 546. It has been the tendency of our jurisprudence here to treat remedies as cumulative where the new enactment is not unequivocal, particularly where the common law remedy is to be set aside. As an instance of this, I may mention that we have invariably held that the special remedy, by information of the Attorney-General, had in no way destroyed the old common law action. *In re The Adventurer*, decided by Judge Black, in the Vice-Admiralty Court at Quebec, he held that although the Legislature had vested in the Trinity Board the right of fixing the remuneration of pilots for extra services, still this did not take away from the Vice-Admiralty Court its jurisdiction over the matter, and the promoter was awarded extra allowance. 1 S. V. A. C. p. 105. Our legislation, too, indicates the same thing. In defining the jurisdiction of the

Superior and Circuit Courts, express words are used to limit the jurisdiction of each Court. Arts. 1053 and 1054 C. C. P. And by Art. 28 C. C. P. the exclusive jurisdiction of the Circuit Court and of the Admiralty are expressly preserved.

It would not be difficult to find numerous other illustrations to establish the principle relied on. Thus, for instance, by Sec. 125 of the Insolvent Act of 1875 (38 Vic., c. 16):—"All remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec, lien or right of property upon, in or to any effects or property in the hands, possession or custody of an assignee, may be obtained by summary order," and then the Statute adds the words, taking away the jurisdiction of the Courts, "and not by any suit or other proceeding of any kind whatever." Under this section, since this case was argued, we reversed a judgment maintaining a *saisie gagerie* in the hands of the assignee.

In France it seems always to have been held that the civil court could take cognizance of commercial cases raised before it voluntarily, although there was a *tribunal de commerce* established in the town. 2 Carré, p. 148. But the tribunal of commerce could not take cognizance of the civil matter by any consent. *Ib.* For instance, le Code de Commerce Français, Art. 51, is in these words:—"Toute contestation entre associés, et pour raison de la société, *sera jugée* par des arbitres." Notwithstanding the precision of these words it has been decided that: "L'incompétence des tribunaux de commerce pour connaître des contestations entre associés, doit être proposée *in limine litis*, avant toute défense au fond. Les juges ne sont pas tenus de renvoyer d'office devant des arbitres, si les parties ne le demandent pas." Sirey, Codes annotés. The reason of this doctrine is succinctly explained by Henryon de Pausey in his treatise "*de l'autorité judiciaire*", ch. 33. After showing the fundamental distinction between *incompétence*, *l'abus du pouvoir*, et *l'excès du pouvoir*, he goes on to say: "*Nous voyons cependant que de bons esprits ont pensé que l'on devait distinguer les tribunaux ordinaires des tribunaux extraordinaires;* que *les premiers*, investis de la plénitude de l'autorité judiciaire, pouvaient, *sans excès de pouvoir, connaître de toutes les affaires portées devant eux, quelque fut le domicile des parties et la nature de l'objet contentieux; mais qu'il n'était pas de même des tribunaux extraordinaires, par exemple, que si un tribunal de commerce statuait sur une affaire civile, son jugement pouvait être attaqué non-seulement comme incompétent, mais comme renfermant un excès de pouvoir.*"

There is yet another reason why the judgment in the case of *Drummond & The Mayor* should not be followed. The Statute 27 & 28 Vic. does not organize a new tribunal; it merely directs a new form of procedure to avoid inconvenience. The jurisdiction is still left to the Superior Court. The Court or Judge, on application and after notice, appoints the Commissioners, who are nothing more than *experts* carrying on their proceedings under the authority of the Court on an order the terms of which are fixed by Statute. Sec. 13, S. S. 5. It is to the Court the Commissioners report, and by the Court the judgment is rendered, for it is always the judicial decree that binds, however it may be described. Sec. 13, S. S. 12. If, then, it is only a *mode of procedure*, surely it can be waived by the consent or acquiescence of both parties. Dig. L. XVII., 2, 156, § 4. Where it is only a question of damages, there is no assessment to be determined, and therefore there is no possible public interest, as the Corporation and the party complaining can fix the compensation privately, and it is evident they can become bound by the judicial decree without the interference of any other party. Only one word more to close this point. The Corporation and the party had the right to agree to a compensation, could they not have fixed the compensation by reference to arbitration; if so, on what principle can it be said they may not refer it to the arbitrament of the Court.

A case of *Blais & Rochelle* (13 L. C. J. 277) has been mentioned, I can hardly say insisted upon. What was, in effect, decided there was that, under the particular statute referred to, (C. S. L. C., cap. 51) a survey was a condition precedent to all further proceedings. The action was brought without that formality, there was no acquiescence, and the action was dismissed. But I understand it has been decided since that time on the same statute that where the party would not make the survey, the direct action lay. I am therefore of opinion that under a fair interpretation of Sect. 18, 27 & 28

Vic., cap. 60, a party claiming damages from the Corporation for any act of the Council, has a right to proceed by action, that if the Corporation desires to have the compensation estimated by commissioners, it must move the Court to appoint them, and that if it fails to do so, it acquiesces in the ordinary procedure and is foreclosed from complaining later.

The learned counsel for the Respondent has again put forward an argument similar to that advanced by the Corporation in the cases of *Drummond* and of *Grenier*. It does not appear to me to be necessary to reiterate the opinion of the Court on the point raised in these cases. I adhere to the doctrine laid down by the Court in the former case, which, so far as I know, has not been over-ruled, and to the opinion I then expressed. I also concur in the opinion expressed by Mr. Justice Taschereau. It is therefore only necessary for me to say in general terms, that it is fully admitted now that the question must be decided by the ancient law of France; consequently, under no circumstances, should I feel it incumbent on me to enter into a lengthy dissertation to show that the English cases do not really maintain Lord Kenyon's *dictum* in Gov. of *Cast Plate Co. & Meredith*, that the *dictum* itself was *obiter* and supported by a manifestly untenable argument, that Buller, J., made a distinction between the civil law and the common law, and that the decision of Grove, J., was governed by "the clause in the Act which empowers commissioners to award satisfaction," which was "decisive against this action." To which, I may add, it is also decisive against its being any authority on the abstract question. The holdings in *Beckett* v. *Midland Ry. Co.*, in *Metropolitan Board of Works* v. *McCarthy*, and in *Lyon* v. *Fishmongers Co.* do not appear to me to be fairly susceptible of the species of minimisation they have been subjected to in *Bell* v. *The Corporation of Quebec*, and taking them in connection with Lord St. Leonard's decision in Ogilvy's case, I am led to entertain the hope that the common law of England does not refuse an action, because doing so would give rise to an infinity of actions. As I read the law of England by the cases cited, I am led to the conclusion that the general principle is the same as that of our law, and that the damage must be direct, or, as one of the judges said, it must affect the *corpus* of the property. There may be a difference between the two systems of law as to what constitutes a damage to the *corpus*, if that is to be the formulary used. Most of the authorities cited by the Corporation take ground which harmonizes perfectly with that taken by this Court in *Drummond's* case. For instance, Dufour admits that indemnity is due by l'Administration if they "*exercent une action directe sur la chose d'autrui,*" and that l'Etat is not liable for the "*dommage indirectement causé.*" These citations are both submitted by the Respondent. To them I may add the following words from the same author in the same No.: "*Il n'y a, en ce sens, de réparation due que là où il y a eu un acte préjudiciable et injuste.*" As instances of these cases, we have been referred to Steffani's case, which seems, so far as I understand it, to be a violation of the principles just laid down by Dufour, and he notes it as being a very extreme case. To the quotation of Larombière by Respondent, I might suggest the addition of the following Number, No. 11, in order to get the full meaning of the author, which does not appear to differ from the view of this Court. But the author who has really treated the question most fully is Demolombe, whose authority has been marvellously misunderstood. Instead of reading No. 699 of that author in connection with 699 A and 699 B, the corporation, following the Privy Council, seeks to make out an authority from the example contained in 699 B, separating it from the rule it is placed to elucidate. This is not a fair way of dealing with the author's opinion. Shortly stated, Demolombe's theory is this: that by the opening of streets the neighboring proprietors acquire rights of property which cannot be interfered with without indemnity, which is implied in every act regulating the public right. He says it is the doctrine of the Roman Law, of the old French Law, (still in force here) and that it is based on public faith and equity, and therefore it is the law of France now. Hence, if you affect the approaches to his house permanently, or the flow of water from his roof, or his lights, then there is a claim for indemnity. I fancy other examples might be suggested, as for instance his drainage into a public sewer. To quote Demolombe, in support of the pretentions of the Corporation, is a wonderful effort.

He is as energetic and eloquent an adversary of the half-hearted doctrine of the "respectfuls" of the *Conseil d'état* as one can desire to meet with.

In the case of *Drummond*, I drew attention to the fact that the idea of indemnity on both sides runs through the whole of the Corporation Acts, and that particularly with regard to streets the proprietor might be actually made to pay, for the convenience or advantage accruing to his property by opening a street. The supposition that he might be obliged to pay for the opening to-day and be deprived of it to-morrow, without indemnity, is too monstrous to require comment.

To these remarks I have only to add that I think the Corporation has the power by the statute to alter the level of the street. I also think the Corporation had the right to do so without the special authority of the act. From the moment it was vested with the charge of the streets, it inherited the privileges as well as the liability of the State with regard to them. But neither the State nor the Corporation has a right so to alter them as to make the foot-path inaccessible from the road. Such an alteration is *faute* to all intents and purposes, and if it gives rise to special damage to anyone, that damage gives right of action. For all practical purposes, it may be laid down as the rule of our law that where there is special damage to the property of an individual, there is either *faute* or interference with a right of property, consequently there is right to indemnity. So that whether the question be envisaged from the side of fault or from that of interference with a material right of property, the result is the same, and the plain equity of the law triumphs.

This was fully admitted by the Corporation in this very case, and they paid certain damages to the proprietors near the place of this alteration, and bought off their demand in demolition by undertaking to make the foot-path a suitable height above the roadway.

The only question, then, that remains is whether Lady Lafontaine has suffered from loss of rent alone. If we turn to the facts, the right of action seems undeniable. Prior to 1868 it was thought desirable to convert Little St. James street from a narrow into a wide street. For this purpose Commissioners were appointed, and proceeded to value the losses of those expropriated, and to assess those who were supposed to profit by the alteration. There was no indemnity to appellant, for the enlargement of the street took place on the north side, while her property was situated on the south side; but her two houses were assessed, one to an amount of $774, and the other to the amount of $981, equal to $1,755, or more than the rental for a year and a half of the whole property. It then became apparent that by widening the north side of the street the approach by St. Lambert's Hill was rendered more abrupt, and a by-law was passed to lower the level of the roadway of St. James street. Appellant's counsel say that this was so done in order to avoid the law, which specially reserves indemnity for lowering a footpath. Be this as it may, the lowering the level of the roadway had the effect of leaving the footpath on the south side from 2 feet 6 inches to 4 feet above the level of the road. It was evidently impossible to leave a precipice of this kind, and the Corporation engineers devised the brilliant scheme of making a slope stretching three feet into the street, and diminishing by so much the breadth of the roadway for which appellant had just been mulcted in the whole of her revenues for over a year and a half. The street was thus cut down, the new part between the 7th August and the 9th October, 1868, and the old portion was cut down between the 17th June and the 12th July, 1869. In June, 1871, the action was brought. On the 5th November, 1873, the Corporation came in and agreed to pay the appellant $2,728.41 damages to her property, save and except any damages she might have incurred for loss of rent, which last the Corporation refused to acknowledge. The effect of this transaction was to give appellant an indemnity of $973.47 over and above all she had to pay for widening the street. Thus reduced, Lady Lafontaine's action appears to me to be a very narrow one, requiring very special proof, and that I find totally wanting. We have, it is true, evidence that the property is diminished in value from 25 to 30 per cent. by reason of this state of the footpath, but it seems to me that this is covered by the general indemnity. She has not shown that one tenant left her houses on that account, or that she lost any rent on that account. One witness, who

described himself as an hotel-keeper, leased two rooms of one of the houses for a restaurant, at the rate of $400 a year. The premises were totally unfit for the object for which he took them; they were in "very poor condition." He undertook to make all the repairs. He conducted his restaurant on temperance principles. His capital was $50, and perhaps $100 of furniture. After a year's occupancy, he collapsed, and could only pay $250. He says it was all owing to the pavement. Perhaps it would not be difficult to suggest other reasons for Mr. Jordan's failure.

Mr. Larocque says he knows the appellant leased her property lower since the widening of the street than before. This is not conclusive, as an old rule teaches.

Mr. Lamothe tells us of the leases he passed in 1870 and 1871, but he says nothing for the time before that, and no other witness has told us any more about it. All we know is derived from the appellant's own statements in answers to interrogatories, and that is not evidence for her. It is, therefore, hardly necessary to examine it; but it may be said that even if it were evidence, it would not make out her case. It comes to this, that up to 1870, that is till after the change referred to, she had had the "best class of tenants," the Grand Trunk Railway Company and the Government, and that from them she had received higher rents than she received after they gave up the premises, leaving them in very bad condition, as Mr. Jordan tells us. But between May, 1870, and the relaying of the pavement the rent of the property evidently increased, for in 1872 the large house was leased at $500 a year till May, 1873, and $600 for the following year.

I therefore think the appellant has failed to make out any damage from loss of rent owing to the change of level of the footpath, and that her action was properly dismissed, and I would dismiss this appeal with costs. The judgment will be based on motives different from those given in the judgment appealed from. The appeal No. 58 must be dismissed for a similar reason, but we do not decide that Lady Lafontaine's action was barred by the arrangement with the Corporation, if her right had existed in fact.

JETTÉ, J., concurred in the judgment, but was of opinion, on the question of damages, that there was evidence which might have justified the Court in allowing some damages. However, he did not think it expedient to enter a dissent on this point.

BABY, J., agreed with the opinion expressed by Mr. Justice Jetté as to the proof of damages. On the question of law he concurred in the opinion of Mr. Justice Ramsay.

DOHERTY, J., made some observations upon the question of damages. There was no legal proof of damages under the head of loss of rent, and that was the only thing to which the appellant had reserved her right.

MONK, J., also concurred in the judgment, and in Mr. Justice Ramsay's appreciation of the law.

Judgment confirmed in both cases.

Barnard & Monk, for Appellant.

R. Roy, Q. C., for Respondents.

GENERAL NOTES.

A young lawyer of more extensive legal information than Biblical lore, was engaged in the prosecution of a criminal case. The prisoner proved a good character previous to the commission of the offence. The zealous advocate sought to break the force of this proof. He asked an older member of the bar to give him some anecdote which would forcibly illustrate the idea, that although a party might enjoy a good character, he might, at the same time, be a great villain. The old lawyer, knowing his young legal friend's ignorance of scriptural incidents, told him of Judas Iscariot, who, whilst he enjoyed the confidence of his companions, basely betrayed for a small sum of silver the most confiding and affectionate of friends. The young attorney enthusiastically remarked: "By Jove! that's good, and fits my case; where did you get it?"

The following is an extract from a lecture by Chief Justice Horton, of Kansas: "An Ohio judge was a fatalist, and used to determine perplexing cases by chance. An Indiana judge once had a number of cases to pass upon, and he gave decision turn about for plaintiff and defendant, declaring afterward that they were the best decisions he ever made, as every one of them was sustained by the Supreme Court. General Bela M. Hughes told an anecdote of David R. Atchison, who was a Senator from Missouri and Vice-President of the United States. He was a district judge in Missouri before he was a Senator, and was holding a term of Court in a frontier county. The lawyer for the plaintiff quoted Blackstone. The opposing counsel, in reply, said that he was astonished that his learned brother should quote from an English law-book, written by an Englishnobleman, in an American court of justice—a book written by a man who had kissed the bloody hand of George III. At the close of his speech, Judge Atchison declared that he was surprised at such a proceeding in his court. He gave judgment for the defendant, and declared that if the attorney for the plaintiff ever again read in his hearing a book written by a red-coated Tory he would fine him for contempt."