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THE QUEBEC, MONTMORENCY AND CHARLEVOIX RAILWAY COMPANY (DEFENDANT) ..... APPELLANT;

AND

WILLIAM WARING PRIMROSE GIBSONE AND OTHERS (PLAINTIFFS PAR REPRISE D'INSTANCE)... RESPONDENTS.

WILLIAM WARING PRIMROSE GIBSONE AND OTHERS (PLAINTIFFS PAR REPRISE D'INSTANCE).... APPELLANTS;

AND

THE QUEBEC, MONTMORENCY AND CHARLEVOIX RAILWAY COMPANY (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA, APPEAL SIDE.

Railways—Expropriation of land—Title to land—Tenants in common—Propriétaires par indivis—Construction of agreement—Misdescription—Plans and books of reference—Satisfaction of condition as to indemnity—Registry laws—Estoppel—R. S. Q. arts. 5163, 5164—*Art.* 1590 *C. C.*

In matters of expropriation where the railway company has complied with the directions and conditions of articles 5163 and 5164, Revised Statutes of Quebec, as to deposit of plans and books of reference, notice and settlement of indemnity with the owners, or with at least one-third of the owners *par indivis*, of lands taken for railway purposes, the title to the lands passes forthwith to the company for the whole of the property by mere operation of the statute, even without the consent of the other owners *par indivis*, and without the necessity of formal conveyance by deed or compliance with the formalities prescribed by the Civil Code as to registration of real rights.

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*PRESENT:—Sir Henry Strong C J. and Taschereau, Sedgewick, King and Girouard JJ.

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The provisions of the Civil Code respecting the registration of real rights have no application to proceedings in matters of expropriation of lands for railway purposes under the provisions of the Revised Statutes of Quebec.

Pending expropriation proceedings begun against lands held in common, (*par indivis,*) for the purposes of appellant's railway, the following instrument was signed and delivered to the company by six, out of nine of the owners *par indivis*, viz.: "Be it known by these presents that we the legatees Patterson of the Parish of Beauport, County of Quebec, do promise and agree that as soon as the Quebec, Montmorency and Charlevoix Railway is located through our land in Parishes of Notre-Dame des Anges, Beauport and L'Ange-Gardien, and in consideration of its being so located, we will sell, bargain and transfer to the Quebec, Montmorency and Charlevoix Railway Company, for the sum of one dollar, such part of our said land as may be required for the construction and maintenance of the said railway, and exempt the said company from all damages to the rest of the said property, and that, pending the execution of the deeds we will permit the construction of said railway to be proceeded with over our said land, without hinderance of any kind, provided that the said railway is located to our satisfaction. As witness our hands at Quebec, this 11th day of June, in the year of Our Lord, one thousand eight hundred and eighty-six."

Afterwards, the line of the railway was altered and more than one year elapsed without the deposit of an amended plan and book of reference to show the deviation from the line as originally located. The company however took possession of the land and constructed the railway across it and, in August, 1889, the same persons who had signed the above instrument granted an absolute deed of the lands to the company for a consideration of five dollars, acknowledged to have been paid, reciting therein that the said lands had "been selected and set apart by the said railway company for the ends and purposes of its railway and being already in the possession of the said railway company since the eleventh day of June, one thousand eight hundred and eighty-six, in virtue of a certain promise of sale *sous seing privé* by the said vendors in favour of the said company." Neither of the instruments were registered. G. purchased the New Waterford Cove property in 1889 and, after registering his deed, executed by all the owners *par indivis*, brought a petitory action to recover that part of the property taken by the railway company, alleging that the instruments mentioned constituted a donation of the lands

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and did not come within the operation of articles 5163 and 5164 of the Revised Statutes of Quebec.

Held, that the terms of sub-section 10 of article 5164, R. S. Q. were sufficiently wide to include and apply to donations; that the instrument in question was not properly a donation, but a valid agreement or *accord* within the provisions of said tenth sub-section, under onerous conditions of indemnity which appeared to have been satisfied by the company; that, as the agreement stipulated no time within which the new plan should be filed and the location appeared to have been made to the satisfaction of the required proportion of the owners, it was sufficient for the company to file the amended plan and book of reference at any time thereafter and that, as the indemnity agreed upon by six out of nine of the owners *par indivis* had been satisfied by changing the location of the railway line as desired, the requirements of article 5164 R. S. Q., had been fully complied with and the plaintiff's action could not, under the circumstances, be maintained.

APPEAL and CROSS-APPEAL from a judgment of the Court of Queen's Bench for Lower Canada, appeal side, affirming the judgment of the Superior Court, District of Quebec, as to five-sevenths of the lands sought to be recovered by the petitory action herein and declaring the respondents to be the true and lawful owners thereof.

The facts are sufficiently stated in the head-note and also in the judgment of His Lordship, Mr. Justice Girouard.

Belleau Q.C. and *Bédard Q.C.* for the appellant. In cases of expropriation, the *acquéreur* cannot be ejected. The property passed to the company by mere operation of law. The consent of the owner is required only to fix the indemnity. C. C. 1590; Pothier, Vente, no. 513; 2 Aubry & Rau, n. 220. After the deposit of the plans, the expropriation can not be disturbed by any sale on the part of the proprietor. The land has become, for the purposes of the expropriation, *extra commercium*; and is replaced by the indemnity. R. S. Q. Art. 5164 s. 30. The transfer taking place by mere

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operation of law, no registration is required. R. S. Q. Art. 5164 s. 28; 23 Vict. ch. 61, s. 50; C. S. L. C. ch. 24, s. 50, s.s. 9; Mun. Code, Que., art. 903. Art. 5163, ss. 7, 11, R. S. Q. permits deviations within a mile of the original location, and in this case the alteration was made in satisfaction of the indemnity demanded by the requisite proportion of the owners *par indivis* as a benefit for themselves. The company was bound only to satisfy them and was not obliged to file amended plans within any fixed time as in cases of forced proceedings under the Act. The indemnity was settled under a valid agreement for valuable consideration, by the payment of some money and the performance of the onerous conditions imposed to the satisfaction of two-thirds of the owners *par indivis*.

In virtue of the *sous seing privé* of 11th of June, 1886, the appellant had a free right of way through the New Waterford Cove, to the satisfaction of the proprietors; it was confirmed by all the heirs by the reservation of the line in deed of January, 1889, when the old location had been abandoned and the new one adopted to their satisfaction, and also by the deed of August, 1889. Therefore, the contract having been fulfilled as a whole, the respondents are, as their *auteurs* were, estopped from repudiating part of it. When the plaintiff purchased he was aware that the legatees had sold the right of way through the New Waterford Cove and that at the date of the action the appellant had been for over a year the lawful proprietor in possession of the strip of land revendicated. Furthermore there was public notice of the expropriation on record by the deposit of the plans and books of reference in the registry office long prior to the purchase by plaintiff, and he was bound both by constructive and actual notice thereof.

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Fitzpatrick Q.C. (Solicitor General for Canada), and *Gibsone* for the respondents. There are no registered title deeds prior to Gibsone's. No proper expropriation was made. The requirements of the Quebec Railway Act, under which the company purported to act, are peremptory and a condition precedent to the valid appropriation of land. The requisite formalities were not fulfilled and only a plan was deposited. The respondents rely upon *Corporation of Parkdale* v. *West* (1), per Macnaghten L. J. at pp. 613-615, a case decided under the Consolidated Railway Act, the provisions of which are similar to those of Quebec Railway Act and *The North Shore Railway Co.* v. *Pion* (2), per Selborne L. J. at pp 624-5-6, 628, 629, decided under the Quebec Railway Act.

The memorandum in writing was never intended to have reference to the location now in question and the deed cannot be deemed a title under the Railway Act, nor at civil law, and in any case it was gratuitous and the description of the lands indefinite,—said to be in the parishes of Notre-Dame des Anges, Beauport and L'Ange Gardien, whilst New Waterford Cove is situate in the Parish of St. Roch North. The contention that there had been a seigniory of Notre-Dame des Anges in this locality, and that as the parish of St. Roch North is within the old limits of this seigniory the memorandum must have reference to St. Roch North, if admitted would apply to the half-dozen other parishes within the old seigniory, a construction which would be unreasonable. Further the seigniory was divided into parishes in 1835, and thereupon ceased to be a territorial division and such a description would be unreasonable in a contract which involved $50,000. Even if the memorandum could have referred to the New Waterford Cove, the only location

(1) 12 App. Cas. 602. (2) 14 App. Cas. 612.

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mentioned was the abandoned location, and to change this location the company must make a new contract with the owners of the land. The legatees have not approved the present location, in fact disapprobation was shown by the legatees Patterson refusing to convey it to the company.

The plan of the present location was deposited on the 7th of August, 1889, and two days later a deed was passed, transferring a road-bed across the Montmorency property. Reference to this deed will shew that it was signed by the Patterson legatees in July when they could have had no knowledge of the intended change of location. The deed of 21st January, 1889, is so obviously anterior to the change of location that comment would be superfluous. The memorandum appears to be a promise of sale made by four persons, three having an eventual interest and the fourth none whatever; it does not purport to transfer ownership, and cannot operate as a sale, whatever legal relations it might have created between the signers and the railway company. There having been no right of way granted, it follows that the reference in the deed of January, 1889, cannot estop the plaintiffs, at any rate so far as regards the present location.

The cross-appeal is on the ground that the court below should have held the railway company bound to register even its titles under the Railway Act, such as awards and contracts made under ss. 7 and 10, of R. S. Q. Art. 5164. Even if the plaintiff had known that the company had a title to the land which was unregistered, it would not have been any bar to his purchasing the land and registering the title. Art. 2085 C. C.; *Delesderniers* v. *Kingsley* (1); *Ross* v. *Daly* (2); *Thibeault* v. *Dupré* (3); *Farmer* v. *Devlin* (4). When

(1) 3 L. C. R. 84.
(2) 3 L. C. R. 136.
(3) 5 L. C. R. 393.
(4) 15 R. L. 621.

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plaintiff acquired this property he paid a fair price for it, and in purchasing, in considering the company a trespasser, and in taking the present suit, he acted in the fullest good faith. The judgment below gives effect against the cross-appellants, purchasers for value in good faith with registered titles, to an unregistered common law conveyance of a portion of the lands claimed. The amount also for which judgment was given is wrong. G. B. Hall and W. C. J. Hall could each give title to only one-ninth of the land, for the memorandum, and the clause in the deed of 21st of January, 1889, refer only to the extent of six-ninths, and G. B. Hall and W. C. J. Hall were only two of the six persons, who had one-ninth share each, concerned in the matter. The court below wrongly declared the respondent owner of two-sevenths interest in the land, and this court should reverse that part of the judgment complained of and restore the judgment of the Superior Court, and condemn the respondent to pay all costs in this appeal and the courts below.

THE CHIEF JUSTICE.—I agree with the majority of the court in the conclusion that this appeal must be allowed, but I am unable to concur in the reasons assigned for that judgment.

The learned Chief Justice of the Court of Queen's Bench, in whose judgment in this respect I concur, has, I think, satisfactorily demonstrated that the appellants acquired no title by expropriation under the provisions of the Railway Act. Further, it appears to me very clear that sec. 5164, subsec. 10 R. S. Q. does not apply in the appellants' favour. By that section it is enacted that:

> Whenever there is more than one person proprietor of any land as joint proprietor or proprietors in common, or *par indivis*, any contract or agreement made in good faith with any party or parties proprietor, or being together proprietors of one-third or more of such

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and as to the amount of compensation for the same or for any damages thereto shall be binding as between the remaining proprietor or proprietors as joint proprietor or proprietors in common and *par indivis.*

The appellants have not brought their case within this section.

I refer again to the Chief Justice's judgment as showing that this sec. 5164 has no application.

I am not able, however, to agree with the Court of Queen's Bench in rejecting the defence of the railway Company founded on Art. 1485 C. C. This Art. is as follows:

Judges, advocates, attorneys, clerks, sheriffs, bailiffs and other officers connected with courts of justice, cannot become buyers of litigious rights which fall under the jurisdiction of the court in which they exercise their functions.

The depositions in this record show that Mr. Gibsone was at the time he purchased the lands which he seeks to recover in this action, an advocate practising in the courts of the district of Quebec, within the jurisdiction of which these lands were situated. Further, at the time of the purchase the property was in the possession, of the railway company and in use by them as part of the line of their railway.

It is said that this defence fails for these reasons: First, it is said that the respondent had no notice of the litigious character of the property; that he did not buy or intend to buy litigious rights at all, but land which he purchased in good faith.

I should not be able to bring myself to the conclusion that these reasons were sufficient to show the purchase a permissible one, even if I found no authority in support of my views, for when a man buys immoveables knowing the fact to be, as Mr. Gibsone knew in the present case, that the land was in use as part of the line of a railway in actual operation, he must be taken to know that he could not make his

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purchase effectual without litigation, which he must therefore be supposed to contemplate.

Art. 1485 is in all material respects an exact reproduction of Art. 1597 of the French Code. It is laid down by writers of authority that it is not essential, to bring a sale within Art. 1485, that an action should be actually pending at the time of the sale. That the provision of the law refers to rights in immoveable property as well as to other litigious rights is also the interpretation universally put on the Art. 1485 The character of litigiosity is said to apply to an immoveable when a vendor, not having the actual detention of it at the time of sale, is unable to deliver the possession.

That the term "litigious rights" is inclusive of the case last referred to is very clearly put in *Aubry & Rau* (1), as follows:

> Elle parait même devoir s'appliquer à la vente d'un immeuble dont la propriété est litigieuse aussi bien qu'à la cession d'un droit de propriété litigieux, alors du moins que le vendeur, ne détenant point l'immeuble vendu, se trouve hors d'état d'en faire la delivrance.

The law is laid down in the same terms by other commentators (2). These authorities might be greatly added to as well by citations from authors as by reference to the jurisprudence which seems to be uniform the same way. The point is one of some public importance inasmuch as speculative traffic in the land actually occupied by railway companies for the purposes of their permanent way is certainly one which ought not to be encouraged.

(1) Tome 4, p. 455, ed. 4th.

(2) See Troplong, Vente, Tome 2, p. 1001. Duvergier, Tome 2, p. 379. Also see Laurent, Tome 24 no. 58 et seq. Huc. vol. 10, no. 54; Arntz vol. 3, no. 941.

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Taschereau J.

I am of opinion that the appeal should be allowed and the action dismissed.

TASCHEREAU J.—I agree with my brother Girouard that this appeal should be allowed, and respondent's action dismissed. The heirs, Hall and Patterson would not have a right to this action. They would be estopped by conduct and by deeds. And that being so, the respondents acquired no rights from them. The appeal is allowed with costs, and the action dismissed with costs in all the courts against respondents. Cross-appeal dismissed with costs.

SEDGEWICK J. concurred.

KING J.—I am of opinion that the appeal should be allowed and the action dismissed for the reasons contained in the judgment of His Lordship the Chief Justice.

GIROUARD J.—A railway company incorporated by the Legislature of Quebec, and proceeding to expropriate for the purpose of constructing its line of railway, must follow the directions indicated in sections 5163 and following of the Revised Statutes of Quebec. The proceedings commence by depositing in the Department of Public Works and in the Registry Office of the county, through which it is intended to build the railway, a plan and book of reference, showing its location, and more particularly the lots of land to be traversed and the names of their proprietors; and if it becomes necessary to deviate, an amended plan and book of reference must also be deposited. Art. 5163, pars. 1, 7, 8.

One month after the notice of the deposit of the plan and book of reference, the company may settle the indemnity to be paid amicably, if agreed to with

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the proprietors, or proceed to establish it by arbitration; and the statute declares that all contracts and arrangements made to that effect are to be valid and binding to all intents and purposes, and have the effect of vesting the property of said lands in the company, without any charge, restriction or limitation. Art. 5164, pars. 3, 5, 11. Even before the deposit of any plan and book of reference, an agreement, or *arrangement*, to use the French version of the statute, made with any proprietor, is binding and obligatory, if the location of the road be duly made during the year following; and in such a case paragraph 7 of the same section enacts that the company may, even against a third party who has since acquired in good faith, take possession of the land, according to the terms of the arrangement, to the same effect as if the price had been fixed by an award of the arbitrators. This law is so liberal that in order to facilitate the transfer of lands, special powers are granted to corporations, tutors, women, *grévés de substitution*, par. 3; and with regard to undivided property held in common by several persons, par. 10 provides that any contract or agreement or *accord*, made in good faith with the proprietors of one-third of the same, is binding upon all.

Upon tender or payment of the amount awarded or agreed to by the parties, the company is entitled to have immediate possession of the land, and upon payment or tender of the indemnity they may even forcibly procure the same through the ministry of the sheriff of the district. Par. 28.

Finally, if the amount awarded by the arbitrators be not paid by the company within two months, the proprietor may recover the property and possession of his land and also damages; par. 29. Admitting that this enactment applies likewise to the default of pay-

ment of the indemnity agreed to between the parties —a proposition which is perhaps open to some doubt —that is the only ground under the statute for which the company can be evicted, namely the non-payment of the indemnity. It is also the principle laid down in article 1590 of the Civil Code.

The respondent, by his petitory action, revendicates from the appellants some lots of land or their value, $6,500. These lots are in their possession for the purposes of their railway and are known as the New Waterford Cove, near the City of Quebec, on the eastern side of the River St. Charles, in the seigniory of Notre Dame des Anges, and being part of the cadastral numbers 560, 561, 562 and 570 of the cadastre of the parish of St. Roch North, in the County of Quebec.

This action was taken on the 13th day of November, 1892.

The appellants were incorporated in 1881, by an Act of the Province of Quebec, 44 & 45 Vict. ch. 44. They were empowered to build a railway from the City of Quebec to the Saguenay river. On the 9th March, 1883, they deposited the plan and book of reference for the first section of their line starting from the City of Quebec and going to the Montmorency River. But, for various reasons which it is not necessary to explain, the location of the track through the New Waterford Cove and through the extensive Montmorency lumber yards and mills was only roughly indicated in the plan and book of reference; it was made plain, however, that the line of railway was running through those lands, although the book of reference did not extend over the Montmorency property. The heirs Hall and Patterson, nine in number, were owners not only of the Montmorency mills and yards in Beauport and L'Ange Gardien, but also of the New Waterford Cove. Both estates, and espe-

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cially the Montmorency one, were to benefit largely by the construction of this railway. The cove was the property of the heirs Hall, and the Montmorency mills and yards that of the heirs or legatees, Patterson; but, as already observed, the heirs Hall and the heirs or legatees Patterson were the same persons; and so the title to both the Montmorency mills and the New Waterford Cove was vested in the same proprietors in common.

On the 11th day of June, 1886, while the company was slowly proceeding with its work, six out of the nine proprietors signed and delivered to the appellants the following document, *sous seing privé*:

> Be it known by these presents that we, the legatees Patterson, of the parish of Beauport, County of Quebec, do promise and agree that as soon as the Quebec, Montmorency and Charlevoix Railway is located through our land in parishes of Notre Dame des Anges, Beauport and L'Ange Gardien, and in consideration of its being so located, we will sell, bargain and transfer to the Quebec, Montmorency and Charlevoix Railway Company, for the sum of one dollar, such part of our said land as may be required for the construction and maintenance of the said railway; and exempt the said company from all damages to the rest of the said property, and that, pending the execution of the deeds, we will permit the construction of the said railway to be proceeded with over our said land, without hinderance of any kind, provided that the said railway is located to our satisfaction.

The difficulty between the parties arises only with regard to the New Waterford Cove property valued at the time at $6,000 or 7,000, and has no reference to the Montmorency property valued at about $250,000, all the heirs having formally declared that, with regard to the latter, they were satisfied with the proceedings of the railway company and especially the location of its line, by granting them an absolute deed of sale of the land by deed of the 9th day of August, 1889, without making any reservation whatever as to the New Waterford Cove property, and in which deed they declare:

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The above described parcels of land having been selected and set apart by the said railway company for the ends and purposes of its railway and being already in the possession of the said railway company since the eleventh day of June one thousand eight hundred and eighty-six, in virtue of a certain promise of sale *sous seing privé* by the said vendors in favour of the said company.

The railway was completed in September, 1888, from the Montmorency River to lot 562 of Saint Roch, North, through lot 570, which formed part of the cove.

On the 7th August, 1889, a deviation of the plan of 1883 was deposited showing the new location contemplated in the agreement of 1886, which showed a considerable change of the line through the New Waterford cove, and particularly lots 560, 561 and 562. The railway was built at once over the new location; the appellants were working at it in 1889, and the whole work was completed in the spring of 1890, and ever since the appellants have been in public possession of the lands for the purposes of their railway.

The first, and in fact the only, question to be decided is the validity of the agreement of 1886, and its effect. Was it an arrangement within the meaning of the Railway Act or simply a promise of sale? Was it binding upon all the proprietors? Was the approbation of the location a condition suspensive or precedent? Was it necessary to have a deed in the notarial form and registered like an ordinary deed of sale? Can the arrangement be enforced at the present time?

It seems clear to me that if the arrangement of 1886 is to have any validity, it must be under the provisions of the Quebec Railway Act. As I understand them, notarial deeds of transfer are not necessary, and in many cases not obtainable, for instance, when the proprietors are unknown or refuse to agree with the company and an arbitration becomes necessary. Registration of deeds of transfer in the usual form is not re-

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quired; it is intended to be replaced by the deposit and registration of the plans and books of reference and all interested parties are bound to take notice of the same, and this is also the opinion which the Court of Appeal expressed when rendering the judgment appealed from.

The agreement of 1886 had in contemplation a new and definite location of the railway to be made over the lands therein mentioned, and not one already made; this clearly results from the following words. The legatees Patterson promised to sell and transfer "as soon" as the railway "is located through our land." It also affords an explanation why they provided that the said location should be made to their satisfaction.

Was this a suspensive condition of the transfer? The stipulation was not that their approbation be first obtained, but "that the said railway be located to our satisfaction." If the location was not satisfactory to them they should have protested, but they did not do so; quite the reverse; in signing the deed of the 9th August, 1889, without any reservation, they have acquiesced in writing in the location, and moreover, they allowed the work to be proceeded with without raising the slightest objection, either by injunction or action, or in any manner or form whatever. In fact the evidence shows that all the heirs were satisfied with the location.

The respondent says that their refusal to sign a deed of sale of the New Waterford Cove property was a sufficient protest. But I do not consider that such a deed was necessary; no promise of sale, in fact no sale, is required from the proprietor under the Railway Act; the settlement of the indemnity alone is required and thereupon the land passes by mere operation of the Act.

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If the agreement of 1886 had any validity in 1889, when the said deed of sale was demanded, it was not as a promise of sale, but as an agreement or *accord* settling the indemnity; the parties intended evidently to have a deed of sale as an act of prudence, but in my opinion it was not necessary. The agreement and the deposit of the plan and book of reference as amended had the effect of transferring the lands in question by mere operation of law and the agreement was only necessary to ascertain the amount of the indemnity, in the absence of an award, and thus perfect the transfer.

But had the agreement of 1886 any force in 1889, as more than a year had elapsed from its date without the deposit of an amended plan and book of reference therein referred to, as required, it is contended, by paragraph 7, of article 5164 of the Revised Statutes? That seems to me to be the whole difficulty in the case.

In the first place, is the agreement to be governed by that enactment? Is it to be considered as an arrangement made before any plan and book of reference were deposited? Such a plan and book did exist, and were duly deposited; the New Waterford Cove property was indicated in it, roughly it is true as to the precise location of the railway, but with certainty as to the property to be traversed, a fact which the plan and the book of reference show beyond doubt; the case was therefore one of a plan and book of reference to be amended or completed to suit the proprietors. The agreement of 1886 was not one contemplated by article 5164, par. 7, that is before the proceedings in expropriation were commenced; it was an arrangement pending the expropriation and must be treated as such under paragraphs 7 and 8, of article 5163, and paragraphs 5 and 10, of article 5164. It had undoubtedly in view a location not yet determined, a new and

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amended plan; the location to the satisfaction of the proprietors was the consideration for it, but this could be done at any time under the clause which permits deviations from deposited plans, art. 5163, par. 7; the agreement stipulates no delay within which the new plan must be fyled, and in my humble opinion it was sufficient for the company to do so at any time thereafter, provided it was done to the satisfaction of the proprietors, which was undoubtedly the case here, as I have already observed. The question of the indemnity being thus settled by the granting of a suitable location, nothing more remained to be done to vest the lands in the company; this took place by mere operation of the law without any other formality, and more particularly without any deed of sale, under paragraphs 5 and 10, of article 5164. The action of the respondent should therefore be dismissed with costs, as his title is posterior to that of the appellants.

The clerical error in the description of the New Waterford Cove in the agreement of 1886, as being in the "parish" of Notre Dame des Anges, instead of the "seigniory" of Notre Dame des Anges, is covered and rectified in the deed of the 21st January, 1889, where it is properly described as lots Nos. 560, 561, 562 and 570 of the official cadastre of the Parish of Saint Roch North. I do not moreover look upon an erroneous description of this kind as fatal to the arrangement; article 5163, par. 5, 12; the latter is supposed to cover the immoveables mentioned in the plan and book of reference deposited, and there is no dispute as to their identity.

It is not disputed that, at the time the above deeds were granted to the appellants, the grantors were the true and lawful owners *par indivis* of the lands in question, having a right to make an arrangement with the railway company within the meaning of the Railway

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Act. True, the deeds of the appellants were never registered, but, as I have already observed, I have no hesitation in agreeing with the Court of Appeals that the registration regulations of the Civil Code do not apply to proceedings in expropriation under the Railway Act. The respondent, as subsequent purchaser, was bound to take notice of the registration of the plan and book of reference, and of their amendment made by the railway company, and if he did not do so it was at his risk and peril.

The respondent was fully aware of the arrangement; he had even signed the deeds of sale of the 21st of January, 1889, and 9th August, 1889, as attorney for two of the heirs, and if, under article 2085 of the Civil Code, bad faith is no answer to a plea of want of registration, that article must be limited to the case, therein mentioned, of a deed, document or right subject to the formality of registration, and not be applied to a case like the present one, where no registration is required and the transmission of real property or rights takes effect by mere operation of law.

It has been contended that the agreement of the 11th of June, 1886, if valid at all, was not an agreement or *accord* within the meaning of the Railway Act, and that more particularly paragraph 10 of art. 5164 contemplates agreements or contracts for money consideration and not mere donations or gifts which, it is alleged, could bind only the parties who consent. Paragraph 10 does not make any such distinction; its terms are wide enough to comprise all kinds and forms of contracts, even mere donations, the only restriction being good faith. It reads as follows:

Whenever there is more than one person proprietor of any land as joint proprietor, or proprietors in common or *par indivis*, any contract or agreement made in good faith with any party or parties, proprietor, or being together proprietors of one-third or more of such land as to the amount of compensation for the same or for any

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damages thereto, shall be binding as between the remaining proprietor or proprietors as joint proprietors or proprietors in common and *par indivis.*

Mere donations are sometimes highly beneficial to the donors, and frequently the construction of a line of railway will give value to estates which till then were almost valueless, and the New Waterford Cove proves to have been a property of that kind.

But it is not true to say that the agreement contained a mere donation. The stipulation that the line was to be located both at Montmorency and the Cove, to the satisfaction of the proprietors, was a very onerous charge and proved to be so, a fact which is fully established by the testimony of Mr. H. M. Price and of Mr. Wm. Russell; it was made in good faith, and in the interest of all concerned, and it is only fair and just that it should be binding upon all, especially as it was consented to by six out of nine proprietors, *par indivis.*

Finally, I look upon par. 29, of art. 5164 of the Railway Act as fatal to the action of the respondent. The indemnity agreed to between the appellants and six of the proprietors was undoubtedly paid; true it did not consist in the payment of money to the proprietors; but this is not required by the Act, as I understand it; parties may settle in any manner they please. Here it consisted in the location of the railway which would suit them; this was done and, as I read the above clause of the Railway Act, the company cannot be evicted and the proprietors cannot recover the property, nor the possession of their lands. The satisfaction of the indemnity is an absolute bar to the action.

Upon the whole, I am of opinion that the appellants are proprietors under the Railway Act of the New Waterford Cove, or part of lots 560, 561, 562 and 570 of Saint Roch North, in question in this cause, under

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the agreement of the 11th June, 1886; that the document in question required no registration and that being signed by the proprietors *par indivis* of more than one-third of the said lots it conveyed the whole property to the appellants, even in the absence of, or against the consent of, the other proprietors. The appeal of the railway company should be allowed and the cross-appeal of the respondent dismissed with costs, and his action also dismissed with costs, said costs to be taxed against the respondent *par reprise d'instance*.

Appeal allowed with costs and cross-appeal dismissed with costs.

Solicitors for the appellant: *Malouin, Bédard & Déchéne.*

Solicitor for the respondents: *F. G. Gibsone.*