

management of the affairs, moneys, property and effects of the said institute, the good government of the said institute, the performance of divine service therein, the studies, lectures and exercises of such institute, the qualification, appointment, residence and removal of the principal, teachers and officers and servants of the said institute and touching and concerning any and every other matter or thing which to the said corporation may seem good, fit, or useful for the said institute.

3. The real estate situate on the south-eastern slope of the mountain, fronting on the Côte des Neiges road, in the parish of Montreal, and known as the Trafalgar property, which was purchased and acquired from the said Donald Ross, of the parish of Montreal, esquire, by the said other persons mentioned in the first section of this act, by deed of sale executed on the thirtieth day of June, one thousand eight hundred and seventy-one, before William Ross, notary public, under the number thirteen thousand six hundred and nine, is hereby vested in the said corporation "The Trafalgar Institute."

4. The death of any of the persons mentioned in the first section of this act, or of any of their successors, or the failure of appointment of a successor to, or vacancy from time to time in any of the offices of principal, archdeacon, and minister enumerated in the said first section, or the failure of appointment of successors to the said Donald Ross, Alexander Mitchell, and Alexander Macpherson, or any of them, shall not dissolve, or otherwise impair or affect the said corporation, which shall continue to subsist, to all intents and purposes whatsoever, as fully and effectually as if no such death, failure of appointment of a successor or successors, or vacancy, had occurred.

#### C A P. X L I V .

An Act to amend Act 32 Victoria, chapter 72, concerning the enlargement of the Cemetery of Notre-Dame-des-Neiges, and also Act 33 Victoria, chapter 52, intituled: An Act to amend Act 32 Victoria, chapter 72, concerning the Cemetery of Notre-Dame-des-Neiges, and for other general purposes.

[Assented to 23rd December, 1871.]

WHEREAS by and under an act passed in the thirty-second year of Her Majesty's reign and designated

as being chapter seventy-two of the statutes of the Legislature of this Province, during the said year, certain powers have been granted to the *Fabrique* of the Roman Catholic parish of Notre-Dame de Montréal, for the enlargement or extension, by way of expropriation, of the Cemetery owned by the said *Fabrique*, and known under the name of "Cimetière de Notre-Dame-des-Neiges"; and whereas by and under another act passed in the thirty-third year of Her Majesty's reign, being chapter fifty-two of the statutes of the Legislature of this Province passed during the said year, certain provisions of the first act above mentioned have been amended; and whereas it is now expedient to further amend the provisions of the said two acts above mentioned with a view to make the said provisions more effective and the better to insure the due execution thereof; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Additional  
sections after  
sec. 7 of 32 V,  
c. 72.

After service  
of the petition  
and register-  
ing of a notice  
the owner shall  
not sell.

Proceedings in  
case of absence  
of owner.

1. The two following sections are introduced after section seven of the said act thirty-second Victoria, chapter seventy-two.

7a. From and after the service of the said petition either on the party or parties or in his, her or their absence, at the prothonotary's office as hereinafter provided, and the registering in the registry office of the Montreal division, of a notice embodying the substance of the allegations of the said petition and designating the piece of land to be expropriated, the proprietor, possessor, holder or party interested in the said piece of land shall cease to have the power to sell or alienate the same validly, and any sale or alienation agreed upon or consented by him shall be *de facto*, null and void so far as the said *Fabrique* is concerned, and the said *Fabrique* may go on with their proceedings in the same manner as if such sale or alienation had not taken place; provided that the proceedings of the said *Fabrique*, be afterwards begun within three months from the date of the said notice, and prosecuted thereafter with diligence.

7b. In case of absence from the province of the owner of the piece of land which the said *Fabrique* shall have resolved to acquire for the enlargement or extension of their said Cemetery of Notre-Dame-des-Neiges, such absence may be stated and recorded in a return made by a bailiff in the manner usually adopted for summonses; and upon the deposit at the office of the prothonotary of the superior court of the district of Montreal, of the petition of the said *Fabrique* together with the bailiff's return, such absentee shall be notified of all proceedings instituted or had against him, her or them by a short notice drawn up in the form usually

employed in summonses against absentees, in conformity with the provisions of the Code of Procedure, and at the expiration of two months from the last insertion or publication of such notice, if the said party or parties appear, the procedure shall take its regular course, in the same manner as if the service or signification of the said petitions had been made upon the said party or parties personally; but if the said party or parties fail to appear, they shall be held to have been regularly *mis en cause* to all purposes and intents of the present act, and the service or signification of all other documents, notices, or other papers, *pièces de procédure* whatsoever, which it may be necessary subsequently to serve on such party or parties, may be made by a simple service upon the prothonotary of the said court, and shall be held to all intents and purposes to be a personal service upon such party or parties.

2. The following words are added to the first section of the said thirty-third Victoria, chapter fifty-two : Sec. 1 of 33 V. c. 52 amended.

And in default of such designation by either of the said parties, or in the event of the absence of such party or parties, the judge or the court shall appoint *ex officio*.

3. The following words are added to section three of the said act thirty-third Victoria, chapter fifty-two : Sec. 3 of said act amended.

And in default of such appointment by either of the said parties within a delay of ten days, or in the event of absence as aforesaid, the judge or the court shall appoint *ex officio*.

4. Sections seventeen and eighteen of the said act thirty-second Victoria, chapter seventy-two, are by these presents repealed, and the following substituted : Secs. 17 and 18 of 32 V. c. 72 repealed and replaced.

17. Within fifteen days after the confirmation and homologation of the report of the commissioners, the said *Fabrique* shall deposit and pay into the office of the prothonotary of the superior court of the district of Montreal (of which such payment and deposit, the prothonotary of the said court is hereby ordered to deliver to the said *Fabrique* a written certificate or acknowledgment,) the price or compensation fixed upon and determined in the said report; and such certificate of payment and deposit shall constitute, in favor of the said *Fabrique*, a legal title to each of the pieces of land or immovables aforesaid, and thereupon the owners of the same and all other parties interested shall be expropriated, and the said *Fabrique* shall be the sole and only owner thereof, and may take immediate possession thereof without further formality, and use the same for the purposes authorized by this act. Deposit by fabrique of price fixed by report. Effect of such deposit.

18. The expropriation made under the authority of this act shall have the effect to remove, and expunge, any hypothec or mortgage or privilege with which the said pieces of land Claims against the land shall be removed and connected

into claims  
against the  
money.

or immovable may at the time be charged and encumbered; but the price or compensation deposited in the office of the prothonotary of the said court, as aforesaid, shall represent and take the place of the said pieces of land and of immovables or part or parcel of immovables, as regards the hypothecary or privileged creditors who shall retain their position and priority in the distribution to be subsequently made of the moneys deposited in conformity with this act.

Court to regulate the distribution of the money.

5. When the moneys shall have been tendered and deposited in the office of the prothonotary of the said court as hereinbefore provided, it shall be lawful for the said superior court to determine and decree the mode or manner of bringing before the said court the creditors of the person to be indemnified or his assigns, and all other parties interested, and to make and issue such orders as to the said court may appear equitable for the return or distribution of the said moneys or for any other matter relating to or concerning the claims or pretensions of the parties interested; provided always that when the price or compensation shall be paid in full or in part to the person to be indemnified (but this proviso shall not be deemed to apply to his creditor,) the amount of such price or compensation shall not be liable to the tax imposed under the authority of the act passed in the twelfth year of Her Majesty's reign, chapter one hundred and twelve, nor to the commission to which the prothonotary of the said superior court is entitled, nor to any tax, commission or rate whatsoever.

Proviso as to tax on commission upon the amount deposited.

12 V. c 112.

Sec. 4 of 33 V. c. 52 amended.

6. Section four of the said act thirty-third Victoria, chapter fifty-two, is hereby amended by substituting the word "six," for the word "three," in the third line of the said section.

How evidence shall be taken.

7. Notwithstanding any provisions to the contrary contained in the said acts thirty-second Victoria, chapter seventy-two, and thirty-third Victoria chapter fifty-two, the commissioners appointed for the purposes of the said acts and of this act, shall take or cause to be taken in writing, the depositions of the parties, witnesses and church wardens, in the manner and form usual in the superior court, and the said deponents shall be sworn and their depositions attested by one of the said commissioners or by all or the majority of them, and the said depositions shall be thereafter annexed to the report to form part thereof for the purposes hereinafter provided.

Filing of report and of separate report in case of disagreement.

8. On the day fixed for the production of the report the commissioners or the majority of them shall file the said report in the office of the superior court in Montreal, but if

one of the said commissioners does not agree with his colleagues, respecting the conclusions or grounds of the said report, it shall be lawful for him to produce a separate report.

9. At the expiration of the five days, which follow the deposit of the report of the said commissioners in the said office, any party interested may, by petition served upon the adverse party, pray the judge or court, as the case may be, to homologate the said report, and, in the fifteen days which follow such homologation, the said *Fabrique* shall deposit in the said office the amount of the indemnity fixed by the report of the said commissioners so homologated, and may thereupon take immediate possession of the land expropriated for all lawful purposes whatsoever as the absolute proprietors thereof.

10. In the fifteen days which follow the homologation of the said report, notwithstanding any provisions to the contrary contained in the said acts thirty-second Victoria, chapter seventy-two, and thirty-third Victoria, chapter fifty-two, it shall be lawful either for the said *Fabrique* or for any other party interested, and notwithstanding that the homologation of the report has been demanded by the said *Fabrique* or by the said party, to appeal from the judgment of homologation so rendered, by writ in the usual manner according to the provisions of the code of civil procedure, and after security for costs has been given, directly to the court of Queen's bench, sitting in appeal, to ask upon the evidence taken before and produced by the said commissioners, the augmentation or diminution, only, of the indemnity accorded to the expropriated proprietor; and no question of law, form or procedure, on any other point in the cause, shall be received on such appeal.

11. Notwithstanding the appeal, the sum deposited by the *Fabrique* may be forthwith distributed in conformity with the fifth section of this act, but in the case of an appeal by the *Fabrique*, by reason of the excessive indemnity allowed to the expropriated proprietor, the sum, which the said *Fabrique* contends to be so in excess of the reasonable compensation to which the said proprietor was entitled, shall remain deposited in the office of the prothonotary, and shall not be distributed until a final decision be had upon the said appeal, unless the expropriated proprietor offers good and sufficient hypothecary security for the reimbursement of the said sum in the event of the indemnity being reduced in appeal, in which case the whole sum deposited may be distributed or paid as aforesaid.

12. The expenses incurred in establishing the indemnity to be paid to the party expropriated, shall be borne by the

Homologation  
of report—pro-  
ceedings  
thereon.

Appeal from  
judgment of  
homologation.

Money to be  
distributed  
notwithstand-  
ing appeal, but  
if fabrique  
appeal the  
excess cannot  
be paid without  
security.

As to expenses  
of establishing

indemnity and costs of appeal. said *Fabrique* of Montreal, and such expenses shall be taxed by the court or judge, as the case may be, or by the said court of Queen's bench sitting in appeal, and the said superior court or judge and the said court of Queen's bench, in adjudicating upon the said appeal, shall have full power and authority, in the event of its appearing to them, that the proof produced by any party has been superfluous and useless, to reject the same, or to cause the expense of such superfluous and useless proof to fall upon the said party; the costs in appeal shall be borne by the party who shall fail before the said court.

And whereas in addition to the aforesaid provisions, it is expedient and advantageous as well for the *Fabrique* as for the parishioners of the said parish of Notre-Dame de Montréal, to provide a more expeditious and easy mode for the enregistering of sales, or exchanges and retrocessions of church pews, in the said parish, and of burying lots in the said cemetery, and also for a more summary proceeding for the disinterment of bodies, in the said cemetery, in certain cases, and to provide principally for the keeping of good order in the said cemetery, it is further enacted:

Church pews and burying lots may be disposed of by deed *sous seing privé*.

**13.** In case of any sale, exchange or retrocession of church pews or of burying lots, in the said cemetery, it shall not be necessary that the deeds of such sale, exchange or retrocession be executed before a notary, but they may be made or executed *sous seing privé* by the *curé*, the chief warden (*marguiller en charge*) and the secretary-treasurer, and before witnesses, if one of the parties cannot sign his name; and the said acts or deeds shall be deemed as authentic, as also any copy thereof that may hereafter be delivered under the signature of the *curé*; the said *Fabrique* shall keep and retain in their archives, the originals of the said acts or deeds, copies whereof shall be delivered when required.

Deeds and certain copies thereof to be authentic.

Mode of disinterment in certain cases.

**14.** When it shall be deemed necessary to disinter the body of any person interred in the said cemetery, with the sole view of repairing the vault or coffin in which such body is deposited, or to transport a body to any other part of the same cemetery, then, upon the written request of the parents or representatives of the person so interred, the body of such person may be disinterred by the said *Fabrique*, permission therefor having been previously asked and obtained from the *curé*, without the request and formalities prescribed by chapter twenty-one of the consolidated statutes for Lower Canada.

C. S. L. C. c. 21.

Constables for the maintenance of order in the cemetery.

**15.** Any justice of the peace, upon the request of the *curé* and chief warden, (*marguiller en charge*) may appoint and swear one or more constables, for the purpose of

enforcing, under their orders and directions, the keeping of good order in the said cemetery, and such constables are hereby, for that purpose, authorized and empowered to arrest any person contravening or offending against the following provisions.

**16.** If any person, in the said cemetery,

1. Creates any disturbance, or idles about without any apparent good motive or behaves in an indecent manner, or sells or offers for sale any liquor, fruit, cakes, candy, or any other article whatsoever, or forms part of a pleasure party or of any profane assemblage, or resists or refuses to withdraw from the premises when ordered to do so by any person in charge or the keeper of the said cemetery acting in the execution of his duties;

Persons who may be arrested on view.

2. Or wilfully or maliciously destroys, injures, mutilates, deforms or removes any tablet, grave-stone, monument or other erection within the said cemetery, or any fence, paling, railing or other erection for the protection of the said cemetery or of such monument, grave-stone, tablet or other erection aforesaid, or of any burying lot within the said cemetery, or wilfully or maliciously destroys, cuts, breaks or injures any tree, shrub, plant, flower within the limits of the said cemetery; or plays at any game, or discharges fire arms (excepting in cases of military funerals) or disturbs the persons assembled in the said cemetery for the burial of a body, or in fine commits any nuisance whatsoever within the said cemetery;

Other such persons.

Any such person so offending and contravening as aforesaid may be arrested by any person in charge or keeper as aforesaid, and taken before a justice of the peace or any other court having competent jurisdiction in the premises, and shall be liable, for each such offence, to a penalty not exceeding fifty dollars and of not less than five dollars, according to the nature of the offence; and in default of payment of such penalty, such person shall be liable to an imprisonment in the common jail of the district of Montreal, during a period of not less than five days and not exceeding one month.

Punishment of such persons.

**17.** And such person so offending and contravening shall be also liable to an action for trespass before any court of competent jurisdiction, and such action shall be instituted by the said *Fabrique* for the payment of all damages that may have been caused by such illegal acts; and the amount of the said penalty, if paid, and of such damages, shall be applied, under the direction of the said *Fabrique*, either to the keeping of or repairs to the said cemetery, or to the burial of the poor who are interred therein.

Their liability for damages.

Application of penalty and damages.