

opinion that the averments in the writ, although sufficient to sustain an indictment for nuisance at the instance of the Attorney-General, do not amount to a relevant allegation that the lane was closed by the company, in the exercise of any power, franchise, or privilege, within the meaning of Article 997.

Upon the next question, that which relates to the discontinuance of the action, their lordships entertain no doubt that the decision appealed from is right. The Attorney-General was the sole *dominus litis*, and had the same right to control the conduct and settlement of the suit as if there had been no relator.

Counsel for the appellant, although they referred to, did not very seriously press, two points which appear to have been relied on in the Courts below. One of these was that a new Attorney-General might so far disturb judicial arrangements made by his predecessor, as to retract a discontinuance by the latter; and the other that the Attorney-General for Lower Canada, as an officer of the Crown, stands in this exceptional position, that a mandamus will lie at the instance of his relator, to compel him to perform what the Court may conceive to be his official duty, in a prosecution under Article 997 of the Code. There is no authority for either of these propositions, which are so plainly erroneous, that it is unnecessary to take any further notice of them.

But it was strenuously urged, on behalf of the appellant, that in a prosecution under Article 997, the Attorney-General does not possess the usual powers of a plaintiff and *dominus litis*. In so far as concerns the right to discontinue, it was maintained by the Attorney-General, that he is the mere servant of the Court, and cannot refuse to insist until final judgment, unless he has leave from the Court. In support of that strange assertion, his counsel relied upon Article 998 of the Code, which enacts that, without the authorization of the Court or Judge, no writ of summons can issue under Article 997. Whatever may be its practical effect, that enactment is plainly intended to be for the protection of the persons or companies against whom the writ is directed. It enables the Court or Judge, in their discretion, to prohibit the issue of a writ; but it cannot imply any unusual right, on their part, to interfere with the discretion of the prosecutor to withdraw or insist, after their authority has been given to the institution of his action.

Their lordships can hardly conceive anything less calculated