of the special clause having been struck out, the Court could not grant the application.—Objection maintained.

DRUMMOND *v.* COMTE *et al.*—(In Chambers.)

HELD—*That a writ of prohibition cannot issue to commissioners appointed by the Corporation for the expropriation of property, at least before their report has come before the Court for adjudication thereon.*

On the 19th of January an application was made to a Judge in Chambers for a writ of prohibition addressed to Mr. B. Comte and other commissioners appointed for the expropriation of property by the Corporation. The writ was allowed to issue, and the case now came up on a demurrer, on the ground that a writ of prohibition could not issue at all to these commissioners who were only *experts*. In England, the writ of prohibition was of a peculiar nature. It was a writ issued out of the Superior Court to inferior Courts, and to them only. It issued out of the Queen's Bench to the Ecclesiastical Courts and other inferior Courts. It was a writ prohibiting these Courts from proceeding. (Bacon's Abridgment, word Prohibition.) The Act 16th and 17th Victoria was passed in England for the purpose of reforming the practice in cases of prohibition, and the necessity of coupling the Crown with these writs was done away with. Bacon laid down that no man was entitled to a writ of prohibition unless he was in danger under some suit pending. Now there was no suit here, but for the purpose of ascertaining the value of property the Corporation were obliged to go before a judge of the court and have commissioners appointed. When the report of the commissioners came before the judge, and he was compelled by law to adjudge upon that report, then would be the proper time to use the writ of prohibition. Looking at the case in this way, the Court was of opinion at the present stage of the proceedings that the demurrer must be maintained and the writ quashed. The same judgment applied to two other cases.

COURT OF REVIEW—JUDGMENTS.

24th November, 1865.

PRESENT: Badgley, J. Berthelot, J., and Monk J.

CORPORATION OF MONTREAL, *v.* RANSON.

HELD—*That a defendant who has been regularly foreclosed will not be allowed to come in and plead, when the plea offered is not considered good.*

BADGLEY, J.—In this case, argued yesterday, we think the parties should have a judgment without delay. The defendant has asked for the revision of an interlocutory judgment by Mr. Justice Monk, rejecting his motion that default be taken off and that he be allowed to plead. The action was brought for the sum of $500 on a lease. The defendant having left his domicile and the province, the usual advertisement was published during two months. Then the defendant appeared by counsel. The vacation of July and August followed. In September the defendant was notified to plead, and was foreclosed in the regular manner. Altogether a delay of six months has elapsed since the return of the action. The defendant, after default had been entered, applied to the Court for permission to plead. The plea offered is to the effect that the Corporation have obtained possession of certain notes in favor of defendant to the amount of $1300, and that they have collected the amount of these notes. I think this is a good plea of compensation to the action, being for monies alleged to have been actually received upon promissory notes his property; surely it is clear enough, and I think, therefore, that the defendant should have an opportunity of going to proof. The application of the defendant is supported by an affidavit of his counsel that it was through the negligence of the latter that defendant was foreclosed. But it is evident there was no surprise in this case. The notices were made in regular form. Under these circumstances the negligence almost amounts to a fault. But I have always been reluctant to allow a party to be injured through the negligence of his attorney, and, therefore, I am of opinion that defendant should be allowed to plead, but only on payment of full costs. It is a question of costs. Otherwise he would be obliged to bring a direct action against the Corporation for the amount of cash received on the notes. My colleagues, however, differ from me, and the judgment will, therefore, be confirmed.

BERTHELOT, J.—I concur with the President of the Court in thinking that a party should not be exposed to injury through the neglect of his counsel. But the plea offered in this case is not, in my opinion, a good plea of compensation. The action is for rent, and I do not think that the allegations of the defendant's plea show the existence of a debt *claire et liquide*, which can be offered in compensation. The defendant's proper course would rather seem to be to bring an action *en revendication* of the notes, or an action *en reddition de compte*.

MONK, J.—If the defendant's plea had seemed to me a good one, I would have been disposed to afford him the relief prayed for. But on looking into it, I was of opinion that it was not one that could be maintained. The motion was therefore rejected by me in the Court below.

Judgment confirmed.

Nov. 30, 1865.

ROWAND *v.* HOPKINS, *ès qualité*.

Judgment ordering an account to be rendered, confirmed.

BADGLEY, J.—This was an action brought against the executor of the estate of Mr. Rowand, deceased, who was a factor of the Hudson Bay Co. There was a question as to whether the plaintiff was entitled to one-third or to one-sixth of the estates claimed, but the judgment of the Superior Court simply ordered the defendant to render an account, because the plaintiff was entitled to an account whether his share was one-sixth or one-third. Now, there was an application for revision. But there was nothing to review in this judgment, and it must be confirmed.