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