This appears to me to be not only the positive law of the question, but also the common sense way of looking at it. Why should a debtor who borrows money to pay his debt not to be allowed to come in at any time without fraud, and make a declaration to the effect that he borrowed money to pay his creditor, and that now he wishes his lender to be subrogated in the rights of his old creditors? He might do it by a new deed at any time, why should he not by a deed made later, the date of which is fixed, recognize the former obligation? Now, which of these formalities is wanting in this case? The act of loan and the *quittance* are notarial, the act of loan declares that the sum was borrowed by Hamilton, and the *quittance* declares he was paid with the money so borrowed, and the deed was enregistered into the bargain. I therefore think that for a double reason the judgment of the Court below should be confirmed; 1st, the appellants have not shown any legal interest to disturb the arrangement of these people; 2nd, the forms of law necessary to a valid subrogation have been observed.

I had almost forgotten to allude to the case of *Filmer & Bell* (2 L. C. R. p. 130) which has come under our notice. It certainly has some resemblance to this case, but I do not think it can guide us in coming to a conclusion. In the first place it is before the code, and it can hardly be very confidently affirmed that articles 1155 and 1156 C. C. accurately express the old law. In some particulars article 1156 does not pretend to express it. If the *arrêt* of 1690 expressed the law as it stood here before the Code, namely, that the payment and the subrogation should be of the same date to make the subrogation valid, then *Filmer & Bell* was correctly decided. But the authority of this case may perhaps be questioned. Mr. Justice Aylwin said that the arrêt of 1690 was a declaration of the common law. The annotator of the *arrêt* in the *Journal des Audiences* expressed an opinion somewhat different. After speaking of the difficulties to which subrogation had given rise, and the efforts to clear them away, he adds :—« Mais enfin le Parlement de Paris a mis la dernière main à cette matière de subrogations très-difficile d'elle-meme, car le 6 Juillet 1690, les Chambres étant assemblées, il a ordonné," &c., the *arrêt* in question. If, then, it was new law, it was not enregistered here, and it is not binding on us, even if it came from the Roman Law, which is not to be proved by simple assertion.

Monk, J., also concurred, and stated that he agreed entirely with the opinions which had been expressed by the majority of the Court.

Judgment of the Court of Review confirmed.

Bethune & Bethune for appellants.

Abbott, Tait, Wotherspoon & Abbott, for respondents.

Rolfe et al., Appellants, and Corporation of the Township of Stoke, Respondent.

Appeal to Queen's Bench in action to set aside a municipal roll.

The appeal was from the Circuit Conrt, District of St. Francis.

Ramsay, J. This is a motion on the part of the respondent to reject the appeal, the case not being appealable. It is argued on the part of the respondent, that by Art. 100 of the Municipal Code, the jurisdiction to set aside a municipal roll is given jointly to the District Magistrate's Court and to the Circuit Court, that the proceedings are all under Chap. 7 Municipal Code, and therefore are summary, that the evidence may be taken orally or in writing, and that there is no express appeal given to the Circuit Court, while it is expressly taken away from the Magistrates' Court. All this, it is contended, shows that the Legislature did not intend to give an appeal, or to make the general rule of Art. 1142, C. C. P. apply to the class of cases of which this is one. That on the contrary, by Art. 1033 C. C. P., the appeal to the Queen's Bench is limited in matters relating to municipal corporations and offices, and it is added that if 1142 C. C. P. is generally applicable, it does not touch this case, as it is for no sum of money, and binds no future right.

This point is not a novel one for this Court. In the case of *Cooey & The Corporation of the County of Brome*, which was as to the validity of a by-law, we distinctly held that there was jurisdiction in this Court to hear the appeal, and we reversed the judgment of the Court below. The case of the *Corporation of the County of Drummond & Corporation of the Parish of St. Guillaume* was cited to show that