plained of affected the future rights of the parties, for if it were not reversed, it would have the effect of authorizing the respondent to collect taxes of the nature claimed, from the appellant yearly.

Roy, Q.C., opposed the application, on the ground that the amount of the action and judgment was under $2,000, and that the case did not involve future rights, as the assessment was made yearly, and might be discontinued or not imposed hereafter. Cited *Lussier & Corporation of Hochelaga*, 3 L.N. 309.

CROSS, J., held, referring to *Les Soeurs de l'Asile de la Providence de Montréal & Le Maire et les Conseillers de la Ville de Terrebonne*, in which leave to appeal was granted by Mr. Justice Monk on 9th April last, that the case was one which was comprehended under the term "Future Rights," that it was dangerous to refuse to allow leave to appeal, and that where there was any difficulty leave would be given, as the respondent would always have his recourse before the Supreme Court to have the appeal rejected summarily.

Kerr, Carter & Goldstein, for Appellant.
Rouer Roy, Q.C., for Respondent.

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 8, 1884.

Before MONK, RAMSAY, TESSIER, CROSS, and BABY, JJ.

LA CORPORATION DU COMTÉ DE DORCHESTER (deft. below), Appellant, and COLLET (plff. below), Respondent.

Municipal Corporation—Road—Expropriation.

Held, That the Corporation, appellant, had no power to take any of the respondent's land for a road, without fulfilling the formalities prescribed by law for the expropriation of the land required for such road. The general reserve in the letters patent from the Crown is made in favour of the Crown only, and does not pass to the municipal authority.

For remarks of Justices Tessier and Baby see 10 Q.L.R. 63.

RAMSAY, J. (concurring in the judgment): This action is possessory by respondent, for taking possession of land for a road without proceeding to expropriate.

The naked question as to the right to this action when the municipality has not adopted the proper preliminary steps to expropriate the owner, has been so frequently decided by all the Courts of this Province that it will readily be supposed it was not the object of the appellant to test it again. But the pretention of the appellant is that by the original grant of the land from the Crown there was a reservation of the right to make as many roads as the Crown might require on the land in question, that this right passed to the municipalities, and is recognised by the Art. 906 M.C.

The words of the grant on which appellant relies are as follows:—

"And we do hereby expressly reserve to "us, our heirs and successors, a right of "making any number of *public roads* or *high-* "*ways*, of a width not exceeding one hundred "feet, through any part of the said land and "premises hereby granted, except such part "whereon any dwelling-houses or other "houses or dwellings shall be erected."

This reserve is evidently personal to the Crown, and would not necessarily pass to the municipality; but it is said that as no indemnity is to be granted, or as the English version elegantly and correctly has it "must "be granted," for the "land reserved for a "public road in the grant or concession of a "lot," therefore the municipality can avail itself of the reserve to the Crown. I cannot adopt this view. The code evidently refers to a specific reserve of so much land for road purposes, not to a general reserve of this kind. But, in addition to this, I don't think the Crown could take the land without indemnity under a general clause of this sort. It never has been suggested, so far as I know, that a general reserve of this kind was not subject to indemnity for damage. As an illustration, in the case of the *Duke of Buccleugh* v. *Wakefield*, L.R. 4 H. L. 377, where there was a contest as to whether the appellant had a right to destroy the whole surface under a general reservation of mines, the obligation to indemnify was taken as a matter of course. There was, therefore, an indemnity to be established.

I am to confirm.

Judgment confirmed, Baby, J., dissenting.
Belleau, Stafford & Belleau for appellant.
L. Taschereau for respondent.