

*An Act of the Local Legislature authorizing the Lieutenant-Governor to forfeit the right of exacting tolls on a toll bridge, (for default to make repairs), and to transfer the property to others, is not ultra vires.*

The action was brought in the Court below by the appellants, three corporations, viz., the municipality of the township of Cleveland, the municipality of the village of Richmond, and the municipality of the village of Melbourne, against one Holmes, their tenant, and his sureties, for \$144.16, being one month's rent of the tolls and toll house of the toll bridge across the St. Francis River, between the villages of Richmond and Melbourne.

The respondents, the Township of Melbourne and Brompton Gore, intervened, claiming to be owners of one undivided half interest in the bridge, and they put in issue the appellants' title and possession of the bridge in question. The bridge had been granted to the municipalities of Melbourne and Cleveland, but subsequently requiring repairs, the grant was revoked by the provincial executive, and a grant made to the appellants, who undertook to make the necessary repairs. The Court below, (Circuit Court, St. Francis, Doherty, J.) maintained the intervention, on the ground that the order in Council was *ultra vires*.

**RAMSAY, J.** The first question that is raised on this appeal, is as to the nature of the title conveyed by the order in Council, of the 21st November, 1857, to the then municipal Councils of the townships of Cleveland and Melbourne, as then constituted, *auteurs* of the parties now appellants and respondents.

On reference to the sections of the statute, under the authority of which this order in Council was passed, (12 Vic., cap. 5, sects. 12 and 13), it appears evident that the government of the then Province of Canada had full power to alienate completely, and without any restriction whatever, in favour of any district or municipal Council, or other local authority or company, any public roads, harbors, bridges or public buildings. The words of the statute are "to grant (and by so granting to transfer and convey)." The crown could of course limit the estate so conveyed, but whatever right was so conveyed became the property of the grantee, and this grant could not be revoked without the consent of the grantee "attested by

signature or seal, or both, as would be sufficient to make any deed or agreement, the deed or agreement of such grantee." (Sec. 13.)

In the order of Council, granting this bridge to the councils of the townships of Cleveland and Melbourne, it does not appear that there was any right reserved by the Provincial government to revoke this particular grant, and indeed no such pretension is put forth. It was, however, contended at the argument that the crown had a right to take any property for public uses; that it had, therefore, the right to resume the possession of this bridge without process of law, and that the local government, inheriting this right, might enter upon any property and take possession of it, of its own authority. The Court disposed of this proposition at the argument, and it is unnecessary to refer to it again.

The question in dispute between the parties really turns on the action of the local government of Quebec, under the terms of the 32 Vic., c. 15, Sec. 190.

By that act it is provided that the commissioner of public works, may make or cause to be made a report of the state of any toll bridge, and he may on any such report, order the bridge to be repaired within a certain time, and if it be not so repaired, then the proprietor of the bridge shall forfeit the right of exacting tolls, for passage on the bridge and all other privileges conferred upon him by the act respecting such bridge. Then sub-section 5 continues that "from the day of the publication of such proclamation, the bridge mentioned therein shall become the property of the Province, and the Lieutenant-Governor in Council may transfer the property therein and the control thereof, either to the municipality in which the same is situate, or to any other neighboring municipality, together with all the rights and privileges which the former proprietor thereof enjoyed, and upon such transferee becoming bound to perform upon such bridge the work ordered by the commissioner, and to keep the same for the future in good repair."

It is contended by respondents that this Act only applies to toll-bridges forming part of the public works of the Province, that a local Act cannot deprive a person of his property without process of law, and that this Act cannot affect the bridge in question, as it falls under the control of the Dominion Parliament. The legisla-