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WRIT OF PROHIBITION.

There were two decisions by the Court of Appeal during the June term, which seem to extend somewhat the scope of the writ of prohibition. In *Morgan & Coté*, the writ issued to a municipal corporation and its secretary-treasurer, to prohibit the levying of rates imposed by an illegal assessment roll. *Town of Iberville & Jones* was another case in which a writ of prohibition was obtained to prohibit a municipal corporation from proceeding with an expropriation. Sir A. A. Dorion dissented as to the propriety of the writ issuing in such cases, and we understand that Judge Tessier who was not present at the delivery of judgment concurred with the Chief Justice. But the majority of the Court in each case sustained the writ, holding that the name does not greatly signify, so long as the conclusions ask for the proper legal remedy.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., CROSS, J., TESSIER, J.

DUHAIME (plff. below), Appellant; & AYOTTE (deft. below), Respondent.

Réglement de Compte.

The action was brought on an account for $392.15. The defendant tendered $60, and this tender was maintained by the judgment of the Superior Court, Montreal (Johnson, J.)

The plaintiff (appellant) complained that the defendant had been allowed to go back upon a *réglement* in writing, of 29th July, 1878, by which certain articles were settled for at prices stated. He contended that the respondent "ne peut être admis à revenir sur ce marché bien et dûment conclu. Ce réglement a un caractère définitif bien prononcé." The suit of the appellant was for the price of articles not included in the previous account, which had been settled, and in which the defendant now alleged that there were overcharges.

The COURT held that the settlement could not be set aside on the evidence adduced, and the judgment was reversed.

Judgment:—

"Considérant qu'il est prouvé que le 29 Juillet, 1878, l'intimé a réglé avec l'appelant pour tous les items mentionnés dans le compte A produit en cette cause, et lui a donné un bon ou billet pour la somme de $50, balance du dit compte;

"Et considérant que l'appelant réclame par cette action le montant de ce bon ou billet, et de plus le prix de certains articles non compris dans le dit compte A, ainsi qu'une somme de $80 pour déboursés, voyages, démarches pour gérer la manufacture de l'intimé, le tout formant la somme de $392.15;

"Et considérant que l'intimé n'a pas fait une preuve suffisante pour justifier la cour de mettre de coté le réglement de compte du 29 Juillet, 1878, et que l'appelant a établi tant par les admissions de l'intimé que par la preuve que l'intimé lui doit les sommes suivantes pour items non compris dans le compte A, savoir, cinq pièces de coton $16.90; dix sept canistres à $4.50 chaque, $76.50; un grand canistre de vingt gallons, $5; une presse et moules valant $60, au lieu de $140 qui est réclamé; un billet ou bon $50; formant en tout la somme de $208.40;

"Et considérant que l'appelant n'a pas droit à la somme de $80 qu'il réclame pour déboursés, voyages, et démarches pour gérer la manufacture de l'intimé, les parties ayant déjà réglé quant à cette réclamation qui est comprise dans l'item 11 du compte A;

"Et considérant que l'intimé n'a offert qu'une somme de $60, et que ses offres sont insuffisantes;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure siégeant à Montréal le 20me jour de mars, 1879;

"Cette cour casse et annule le dit jugement du 20 mars 1879, et procédant à rendre le jugement qu'aurait dû rendre la dite Cour Supérieure, déclare les offres faites par l'intimé insuffisantes, et le condamne à payer à l'ap-

pelant la somme de $208.40, avec intérêt sur cette somme à compter du jour de l'assignation, et condamne en outre l'intimé à payer à l'appelant les frais encourus tant en cour inférieure que sur le présent appel."

Lareau & Lebeuf for Appellant.

Loranger, Loranger, Pelletier & Beaudin for Respondent.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

MORGAN et al. (petrs. below), Appellants, & COTÉ et al. (defts. below), Respondents.

Writ of Prohibition to Municipal Corporation—Triennial Assessment Roll—Amendment of roll.

The appeal was from a judgment of the Superior Court, Montreal (Rainville, J.), July 9, 1879, quashing a writ of prohibition which had been issued at the instance of the appellants, to prohibit the respondents, the Secy.-Treasurer of the County of Hochelaga, the Corporation of the Village of Hochelaga, the County Corporation and the Catholic School Commissioners from proceeding to sell the property of appellants for taxes under a certain assessment roll of 1876.

The petitioners for writ of prohibition alleged that in July 1876, the Corporation of the village of Hochelaga appointed valuators to make a general assessment roll, pretending that the only roll then existing was that made in 1872 and 1873; that at this time there was in existence a roll made in June and July 1875; and that the roll subsequently made, in which the valuation of property was greatly increased, was a nullity.

The judgment of the Court below was as follows:—

"La cour, etc.,

"Déboute la défense en droit plaidée par chacun des dits défendeurs, et

"Considérant que les requérants n'ont pas prouvé les allégations de leur requête;"

"Considérant que le Rôle d'Évaluation dont on demande la nullité est légal et a été fait suivant les dispositions de l'article 746 du Code Municipal;"

"Casse le bref de prohibition émané en cette cause, et déboute les demandeurs requérants de leur demande avec dépens distraits, etc."

Sir A. A. DORION, C.J., (*diss.*) The object of the writ of prohibition is to have a certain assessment roll made by the Corporation of the village of Hochelaga declared invalid, and to prohibit the Corporation of the village of Hochelaga, the Corporation of the County of Hochelaga, the Catholic school Commissioners of the village of Hochelaga, and the Secretary-Treasurer from levying the assessment thereunder on the property of the petitioners. The difficulty lies in this: The Municipal Code says that corporations are obliged to make a new assessment roll every three years, but they may amend the existing assessment roll every year, In this case, the Corporation of the village of Hochelaga had a triennial assessment roll made in 1875. In 1876 it made another assessment roll, without declaring that it was an amendment of the roll of 1875. The petitioners complained and were heard: they appealed to the county council, and there the assessment roll was ratified by the delay being allowed to elapse. The case is certainly not free from difficulty. On oppositions by other parties, Mr. Justice Johnson declared the assessment roll bad; Mr. Justice (W.) Dorion held that it was good; Judge Caron also thought it was good, and Judge Rainville gave a similar judgment in this case. The majority here are going to declare the roll invalid and to reverse the judgment of the Court below. I cannot concur, in the first place because the writ of prohibition can only be addressed to an inferior tribunal, and cannot issue to a municipal corporation. *Blain* v. *Corp. of Granby; Beaudry & Recorder's Court; Drummond* v. *Comte* et al. There is however a case of *Mayor & Benny*, in which a writ of prohibition was granted to commissioners in expropriation. (His Honor cited also High's extraordinary legal remedies.) Holding, then, that the writ of prohibition will only lie to an inferior tribunal, and not to a municipal officer, I ask whether Coté, who merely received instructions from the school Commissioners to levy this tax, is a municipal officer or a Court. If he is not a Court, the writ could not issue against him. On the merits, I think the requirements of the Code were sufficiently complied with.

TESSIER, J., also dissented.

RAMSAY, J. This case began by a writ of prohibition, addressed to the School Commissioners of the Municipality of the village of Hochelaga, to the said Municipality of the village of Hochelaga, to the Corporation of the Council of Hochelaga, and to the Secretary-Treasurer of the county, Joseph Michel Coté, forbidding these parties from proceeding to the sale of the lands of the petitioners for school taxes pretended to be due to the said School Commissioners.

The first question that is raised is whether a prohibition will lie in the case of an illegal exaction of taxes, the pretended illegality consisting in the irregularity or even the illegality of the evaluation roll.

I think the preliminary question sought to be raised does not come up in this case. The appellants do not seek to set aside a roll; they pretend that the sum for which it is sought to hold them liable is not supported by the roll, the only roll in vigour. Surely that is a question parties wrongfully assessed must have a right to bring up at any time. If they have not, the law offers them no protection against any demand. Again, it is said that this illegality cannot be enquired of by prohibition. We have frequently said that the name given the writ was of no importance, and that if it asked for the proper legal remedy it does not signify whether it be called a prohibition or an injunction. The prayer of the petition is to forbid the parties defendants to carry on their proceedings to tax and collect certain taxes from the petitioners. When it is considered that the collection of these taxes is carried out by a species of judgment and execution, I think it can hardly be said that the writ is improperly styled a prohibition. Again, it is contended on the part of Coté that he cannot be prohibited because he is not a Court. What has been already said as to the name of the writ might be a sufficient answer; and to this I may add that when a Court is prohibited the parties who may be called upon to carry out the judgment are also prohibited. The only question, then, is of costs. This is a matter about which the respondents have shown no timidity. All the parties prohibited have appeared separately, and they have pleaded separately; first, by *exception à la forme;* again, by demurrer and special plea. It is impossible not to see that they were desirous of making costs, and they must therefore take the consequences. The majority of the Court is of opinion that the judgments dismissing the *exceptions à la forme* with costs were correct.

The real merits of the case may be resumed in a very few words. The law prescribes that in the months of June and July next after the coming into force of the municipal code, "and thereafter triennially in the same months, the valuators of every local municipality must draw up, either by themselves, or by any other person employed by them, a valuation roll in which are set forth with care and exactitude all the particulars required by this title." (716 M. C. as amended by 36 Vic., cap. 21, s. 19.) Where there is no valuation roll or where the valuation roll has been annulled, the valuators are bound to make one, upon an order of the Council, within the delay determined by the latter, even if it should not be the year during which valuation rolls are made in virtue of article 716. The valuation so made remains in force until the month of July of the year in which valuation rolls are made in virtue of article 716. These are the dispositions of article 717. A time is fixed for making the valuation roll, either by the law or in the exceptional cases mentioned, and it is specially provided that "such deposit cannot be made after the prescribed delay has expired." (726) It seems then that the law specially requires, with certain specified exceptions, which do not interfere with this case, that there shall be a roll every three years, and that it shall be filed before the end of July and not later. It is also prescribed when they shall be sent to the County Council.

It seems that in accordance with the law, a roll was made in 1872, estimating the value of the property subject to assessment at $429,160. In 1875 another roll was made and the property was assessed at $1,745,588.58. In 1876 another was made, and the Secretary Treasurer, Mr. Coté, tells us that "*le role en tous points a été fait comme si c'eut été un role triennial.* By this last roll the property was assessed at $3,138,550, more than six times the value of 1872. Among the properties which contributed towards this augmentation were those of appellants. I mention these details to show the interest of appellants, and not because they otherwise affect the case.

Respondents contend that this roll of 1876 was legally binding. The argument was this: the Council has a right to amend the original roll on their motion, and without any complaint. This power to amend is unlimited. Again, the local council has the power, for local purposes only, to revise and amend the roll each year, but the one in which a new roll is not made. There is no limit to the extent of this power to amend and revise. Hence the Council says, having the unlimited power to amend and revise, we have the power to amend the whole roll in every particular, and so as to make it an entirely new one. If this proposition be true, then all the articles which define the time of making the triennial roll, and forbidding its being made later, are of no avail. By confirming this judgment we should in effect say that what the law has declared shall not be done may be done, and this in the interests of a fraud, for there is no concealing the fact that the object of the Council was to charge the small number of large proprietors with the burthen of taxes they were unwilling to lay on the mass of the ratepayers. If, as I have already said, the Council has acted within its powers, the appellants may be without redress; but is it so? To amend is not to make anew, and the forms to be followed in the one case are different from those followed in the other. They are designedly different, and for the obvious reason that the intermediate amendment is made for local purposes only. Therefore it is that in amending in this way the Council must act, not by valuators, but under the sanction of their own authority, to change the general amount, not unevenly, but equally over all the property liable to assessment. If this be the object of the law, then making the amendment in the margin is not a useless form. But even if it were a form, apparently useless, the doctrine of the law is clear, that where a special power of this kind is given by a statute it must be followed to the letter. Without such compliance the power does not exist; and it has been even said, and I think with perfect reason, that where the law has attached a condition to its exercise, the object of which is not discernible, it must be followed all the more rigorously, because it is impossible in such case to say when an equivalent has been supplied. If it be said that this is very technical English law, I answer that it is to the law of England we must look for a guide in these matters. Our municipal system is English and not French, and in following the English system of granting extensive powers to corporations, frequently not managed by persons having a very clear idea of the importance of their duties and the responsibility attaching to the exercise of them, the strict rules by which they are watched and controlled must also be followed.

CROSS, J., as to the writ, said that so long as the conclusions are applicable he did not think it made much difference what the writ was called. On the merits it appeared to him a clear case, the law having declared that a triennial roll shall be prepared, and having prescribed the mode in which the amendments are to be made.

The judgment is as follows:—

" Considérant qu'il a été fait un rôle d'évaluation en 1872 pour la municipalité du village d'Hochelaga, et qu'il en a été fait un autre en juillet 1875, conformément aux dispositions de l'art. 716 du Code municipal, et que ni en vertu du dit article ni en vertu de l'art. 746*a* du dit Code, il ne pouvait être fait un autre rôle d'évaluation qu'en juin ou juillet 1878, excepté dans le cas prévu par l'art. 717 du dit Code;

" Considérant néanmoins que la dite municipalité du village d'Hochelaga, au lieu de réviser et d'amender le rôle d'évaluation en force (celui de 1875) suivant les dispositions du dit art. 746*a* du Code municipal, a procédé en juillet 1876, contrairement aux dispositions du dit article, à la confection d'un nouveau rôle d'évaluation;

" Considérant que le dit rôle d'évaluation de juillet 1876 est nul et illégal, et que les procédés pris par les intimés pour prélever les taxes imposées en vertu d'icelui, par la vente à l'enchère publique des terrains des appelants à défaut du paiement des dites taxes, sont nuls et illégaux;

" Considérant que dans le jugement dont est appel, savoir le jugement rendu par la Cour Supérieure à Montréal le 9me jour de juillet 1879, qui a cassé le bref de prohibition émané en cette cause, il y a erreur, renverse, annule et met de côté le dit jugement, et procédant à rendre le jugement que la dite cour de première instance aurait dû rendre;

" Maintient le dit bref de prohibition adressé à Joseph Michel Côté, Secrétaire-Trésorier du

Conseil du Comté d'Hochelaga, à la corporation du Comté d'Hochelaga, et aux Commissaires d'écoles Catholiques pour la municipalité du village d'Hochelaga, et défend au dit Joseph M. Côté es qualité, à la corporation du Comté d'Hochelaga, à la dite corporation du village d'Hochelaga, et aux Commissaires d'écoles catholiques pour la municipalité du village d'Hochelaga, de procéder en aucune manière sur le dit rôle général d'évaluation de 1876 pour la dite municipalité du village d'Hochelaga, et de prélever aucune taxe en vertu du dit rôle d'évaluation, et de vendre à l'enchère publique les terrains des appelants suivant l'avis public donné par le dit Secrétaire-Trésorier du Conseil de Comté à défaut du paiement des dites taxes imposées illégalement. (Dissentientibus l'Hon. Sir A. A. Dorion, J. C. et M. le Juge Tessier.)"

Barnard, Monk & Beauchamp, for Appellants.
Mousseau & Archambault, for Respondents.

*** A similar judgment was rendered in the case of Lussier, App. & Corporation of Village of Hochelaga, Respt., and in the case of Valois, App. & Commissaires d'Ecoles pour la Municipalité d'Hochelaga, Respts. In these two cases the Appellants had paid the rates imposed by the assessment roll of 1876 under protest, and had then sued to have the roll declared null and to recover the amount paid. The actions were dismissed in the court below. In appeal, the judgment in each case was reversed and the action maintained; Dorion, C. J., and Tessier, J., dissenting. The question as to the writ of prohibition did not arise in these cases.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

THE MAYOR & THE CITY COUNCIL OF THE TOWN OF IBERVILLE (respdts. below), Appellants; & JONES et al. (petrs. below), Respondents.

Writ of Prohibition to Municipal Corporation—Effect of general words in an Act, giving powers which conflict with special privilege under prior enactment.

The appeal was from a judgment of the Superior Court, in Chambers, District of Iberville, Chagnon, J., maintaining in part a writ of prohibition issued at the instance of the heirs of the Hon. R. Jones. The object of the writ was to prohibit the Corporation of the Town of Iberville from expropriating certain portions of a lot which the heirs Jones claimed as part of the property pertaining to their bridge over the Richelieu river, connecting the towns of St. Johns and Iberville. It appears that in the year 1826, the late Hon. R. Jones, (now represented by the respondents) obtained from the Government of Canada a charter authorizing him to build a toll bridge over the Richelieu at St. Johns, and by the second clause of the charter it was enacted, "that for the purposes of erecting, building, maintaining and supporting the said bridge, the said Robert Jones, his heirs, executors, curators and assigns, shall from time to time have full power and authority to take and use the land on either side of the river, and there to work or cause to be worked the materials and other things necessary for erecting, constructing, or repairing the said bridge accordingly."

By the third clause or provision of said charter it was further enacted, "that the said bridge, toll house, turnpike and dependencies to be erected thereon or near thereto, and also the ascents or approaches to the said bridge, and all the materials which shall be from time to time found and provided for erecting, building, or maintaining and repairing the same, shall be vested in the said Robert Jones, his heirs and assigns forever."

Shortly after obtaining this charter, and with the view of carrying out its provisions, Mr. Jones acquired from the Seignior of the Seigniory de Bleury a deed of concession of a lot of land adjoining the Richelieu river at Iberville, and immediately took possession of it for the sole purpose of using it as an approach to the bridge then about to be erected, and as an open air work shop in which to prepare the materials for the construction of the bridge and its maintenance in proper repair.

The Town of Iberville, which was incorporated by 22 Vict. c. 64, has the right, under its charter, to acquire all such real property within the Town as may be deemed necessary for the opening or enlargement of any street, public square, or market place, or generally for any object of public utility of a municipal nature. The portions of the lot sought to be expropriated were required to connect two exist-

ing streets, Edmond Street and St. Henri Street, with the River Richelieu. The Court below allowed the writ of prohibition with regard to the proposed continuation of St. Henri Street, and rejected it as to the ground required to prolong Edmond Street to the river.

The judgment below was as follows :—

" Considérant d'abord quant à la réponse en droit plaidée par les demandeurs à l'encontre de partie d'une des défenses des défendeurs, que la dite réponse est mal fondée, la renvoie sans frais ;

" Considérant, quant au mérite, que la concession faite par acte de la législature à l'Honorable Robert Jones, du privilége et franchise de bâtir un pont public et dépendances, sur la rivière Richelieu, a été ainsi faite au dit Honorable Robert Jones dans un but d'utilité publique ;

" Considérant que cette charte n'a pas été modifiée ni altérée par aucune législation spéciale subséquente ;

" Considérant que les clauses générales de l'acte d'incorporation de la ville d'Iberville, relatives au pouvoir donné à la corporation de cette ville, de tracer des rues à travers les terrains des particuliers pour des fins d'utilité publique, n'ont pu conférer un droit à la dite corporation d'empiéter sur les droits déjà conférés par une législation spéciale à l'Honorable Robert Jones pour des fins de même nature ;

" Considérant que la corporation de la ville d'Iberville, en traçant une rue dans la partie du terrain du dit Honorable Robert Jones et représentants joignant immédiatement le dit pont, enfreindrait les droits garantis à ce dernier par la dite charte, changerait et altérerait les abords du dit pont, enlèverait au dit Honorable Jones et représentants le droit de circuler librement à l'entour des abouts du dit pont, et d'y placer et faire travailler les matériaux nécessaires pour le maintien et l'entretien du dit pont ;

" Considérant que le fait que depuis la construction du dit pont, le dit Honorable Robert Jones et ses héritiers auraient laissé le public se servir de la partie du dit terrain joignant immédiatement le dit pont pour communiquer à la rivière, ne peut être une raison pour détruire la franchise concédée au dit Honorable Robert Jones sur cette partie du dit terrain et pour forcer le transfert de la dite partie du dit terrain à la municipalité, en en faisant une rue qui deviendrait dès lors sujette à toutes les résolutions et réglements du conseil, relativement au maintien des rues, et aux obstructions qui peuvent y être placées :

" Considérant que la partie de terrain joignant immédiatement le dit pont au sud d'icelui, doit participer et participe de par la volonté du législateur exprimée dans l'acte de la législature conférant la franchise ci-dessus, à la dite franchise elle-même ; et telle franchise ayant pour cause l'utilité publique, la dite partie de terrain ne peut être enlevée au dit Honorable Jones et ses représentants par le moyen d'aucune expropriation ou prise de possession de la part des autorités municipales ; et considérant qu'ainsi les requérants sont bien fondés à demander qu'il soit enjoint aux défendeurs de ne pas continuer leurs procédés d'expropriation sur cette partie du dit terrain, joignant immédiatement le pont Jones, au sud d'icelui ;

" Considérant d'un autre côté, que la partie du dit terrain du dit Honorable Robert Jones et ses représentants, que la corporation défenderesse, se propose d'exproprier pour en faire le tracé d'une rue en continuation de la rue Edmond, vers le milieu de ce que les requérants appellent leur *cour-à-bois*, ne peut être déclarée jouir du privilége et franchise accordée au dit Honorable Jones par l'acte de la législature susmentionné ;

" Considérant que par cet acte de la législature aucune partie du dit terrain n'est déterminément indiquée comme sujet ou faisant partie de telle franchise, mais qu'il n'est donné par cet acte qu'un pouvoir général d'exproprier pour les fins de l'érection du pont et du travail des matériaux nécessaires pour la construction du pont et la réparation d'icelui ;

" Considérant qu'aucune partie du dit terrain à travers lequel la corporation de la ville d'Iberville veut tracer la rue en question n'a été acquise par le dit Honorable Robert Jones à la suite d'expropriation faite sous l'opération du dit acte de la législature ; et considérant qu'au contraire il est constaté que le dit Honorable Jones a eu par titre de concession privé du seigneur le terrain en question ;

" Considérant qu'il importe de reconnaître comme participant à telle franchise toute partie du dit terrain nécessaire pour y travailler et faire travailler les matériaux devant servir à la réparation du pont, mais considérant qu'aller

au-delà d'une telle interprétation serait enlever aux autorités municipales des droits dont la base repose sur l'intérêt public ;

" Considérant qu'il est constaté par la preuve que pour tous besoins de réparation du dit pont les requérants ont une étendue suffisante de terrain depuis le pont lui-même jusqu'à la ligne Nord de la rue projetée ;

" Considérant qu'il est constaté par la preuve que les requérants peuvent pour les besoins de réparation de leur pont, utiliser en reculant ce qu'ils appellent la maison du charpentier jusqu'au point où se trouve ce qu'ils appellent l'office et même sans reculer cette construction, en se servant de la partie du terrain se trouvant en front de la dite maison du charpentier, une étendue de terrain à partir du pont à venir à la ligne du Nord de la rue projetée, dépassant de beaucoup la longueur de toutes pièces de bois nécessaires pour les dites réparations ;

" Considérant qu'il importe que la franchise des requérants soit circonscrite dans les limites précises qui lui sont données par la charte du dit Honorable Robert Jones, la ville d'Iberville ayant droit de faire valoir son importance présente ou future aussi bien que son site sur les bords d'une rivière navigable, et ayant droit de se plaindre de tous obstacles qu'on chercherait à apporter à l'exercice de ses droits qui dans la présente espèce ne paraissent pas avoir d'autre cause que l'intérêt public ;

" Considérant qu'en conséquence si l'action des autorités municipales a été *ultra vires* quant à l'expropriation projetée de la partie du terrain joignant immédiatement le dit pont, elle ne l'est pas quant à l'expropriation projetée du terrain jugé nécessaire pour la rue à être tracée en continuation de la rue Edmond ;

" Considérant que la corporation d'Iberville avait parfaitement le droit et le pouvoir de refuser l'offre faite par les requérants de permettre le tracé d'une rue au bout sud du dit terrain, du moment que la dite corporation, envisageant la franchise des requérants comme elle devait l'être, jugeait dans l'intérêt de la ville, qu'il valait mieux que la rue Edmond fut tracée en droite ligne jusqu'à la rivière ;

" Considérant de plus que les procédés par lesquels la nomination d'un arbitre de la part de la cour, a été provoquée par les défendeurs, n'ont pas été irréguliers et ont été adoptés conformément à et en vertu de l'acte d'incorporation de la ville d'Ibervilte, les requérants étant lors de la dite demande, tel que l'affidavit du nommé Lanier le démontrait alors, et tel que la preuve faite sur la présente requête le démontre aussi, absents dans le sens qui doit être attaché à ce mot par l'acte d'Incorporation de la ville ;

" Déclare les procédés des défendeurs tendant à l'expropriation de la partie du terrain des requérants joignant immédiatement le dit pont Jones au sud d'icelui comme ayant été faits et adoptés par les défendeurs *ultra vires*, et en conséquence maintient le bref de prohibition émané en cette instance n'étant autre dans sa nature qu'un bref d'injonction, quant à la dite partie du dit terrain que les défendeurs se proposent d'exproprier comme susdit, et défend en conséquence péremptoirement aux dits défendeurs sous les pénalités de droit, de continuer leurs procédés en expropriation sur telle partie de terrain, et leur enjoint péremptoirement de ne pas continuer tels et tous autres procédés ayant en vue l'expropriation de la dite partie de terrain ; tout ordre nécessaire pour la mise à exécution du présent jugement devant émaner en conséquence s'il y a lieu.

" Et je casse, annule et déboute la présente requête et bref de prohibition quant au surplus, le tout avec dépens contre les défendeurs."

In appealing from this judgment the appellants relied on three propositions:—

1st. That even supposing the property in question (that for the continuation of St. Henri street,) to be included absolutely in the franchise of the heirs Jones, in connection with the bridge, such property was still within the jurisdiction of the Town of Iberville for purposes of expropriation.

2nd. That under the terms of the Charter granted to the Honorable Mr. Jones, the ascents and approaches to the bridge are not vested in the proprietor of the bridge in such manner as to withdraw such ascents and approaches from the jurisdiction of the municipal authorities, and that beyond such ascents and approaches no property whatever is vested in Mr. Jones by the Charter except of course the ground upon which the bridge itself rests.

3rd. That the writ of prohibition is illegal in this case, because the Town Council of Iber-

ville was proceeding under the authority of the same Superior Court which has granted the writ.

Sir A. A. DORION, C.J. The Council of Iberville resolved to open two streets to the river. These two streets would run across a property belonging to the heirs Jones. After proceedings in expropriation were adopted the heirs Jones came in and obtained a writ of prohibition, to restrain the Corporation from proceeding with the expropriation. The petitioners said: we have a privilege for our toll bridge. The bridge abuts on the lot of land in question, and the streets you wish to open pass over property absolutely necessary for the management of our bridge. The Court below held that one of the proposed streets, passing quite close to the bridge, interfered with property necessary for the repairing of the bridge, and that the other street did not affect the respondents' rights, and the writ of prohibition was maintained as to the former and rejected as to the latter property. The question has been expressly raised by the Corporation that no writ of prohibition existed in such a case; that they were not a Court of justice, and were not amenable to prohibition. Secondly, it was contended that the Corporation are authorized by law to take property wherever it is required for the purpose of opening streets, and that they are not bound to respect the right of Jones. I think it is a principle that general words in a subsequent law do not repeal a special provision in a prior law; if a privilege has been given by law, that privilege can only be taken away by express words. Jones having got the right to construct a bridge, and to use the land necessary for its repair and management, that right cannot be taken away by any general words in a subsequent Act. It has been so held in several cases in England, and it is in accordance with reason. Therefore we say that the Corporation had no right to open a street which interfered with the respondents' bridge. The Court below held that one of the proposed extensions interfered with the bridge property, and the prohibition was maintained as to that. I am inclined to think that neither property is absolutely necessary, though it is a convenience. However, we shall not disturb the judgment as to this. As to the writ of prohibition, I think, as I have said in a previous case to day, * that the writ of prohibition does not lie to prevent a corporation from opening a street, or from receiving a tax; but I shall not enter a dissent in this case. The judgment is, therefore, confirmed.

RAMSAY, J. It is said in this case that prohibition won't lie because the appellants were acting under the authority of the Superior Court. This ground is untenable, the appellants are not acting under the authority of the Superior Court in the exercise of their rights. The order of the Superior Court applies solely to the appointment of an arbitrator. The proceeding is really more in the nature of an injunction, but with us the name is of no importance.

The other questions are whether the ground sought to be expropriated is covered by the charter, and whether the statute overrides the charter. The second clause of the charter is not drawn with precision. It reads as though to the right to take land on both sides of the river for the purposes of the bridge were joined the right to prepare the materials for making and repairing the bridge on the land so taken. Of course this cannot be the meaning, and in fact the owners of the bridge at once obtained the land from which it is sought to expropriate them, and they have ever since kept it for the purposes of the bridge. Under these circumstances, I think, the charter to respondents ought to be interpreted so as to cover the land in question. If so read the only question that remains is whether the charter of the municipal corporation over-rides that of the respondents. The municipality has a general power to take lands for roads, but this does not oust respondents of their special franchise which has an object exactly similar to that of the municipal corporation. It is not then to be presumed that the legislature intended to destroy or render precarious the earlier corporation by the creation of the second.

I would therefore confirm.

Judgment confirmed.

Charland & Paradis,
Barnard, Monk & Beauchamp, } for appellants.

J. G. Macdonald,
Davidson, Monk & Cross, } for respondents.

* See preceding case.