J. M. COTÉ *et al*.....APPELLANTS; 1881

*Feb'y.24,25.

AND *June 10.

JAMES MORGAN *et al*.....RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE.)

Writ of prohibition to municipal corporation—Assessment roll, amendment of—Arts. 716 *&* 746 *a, municipal code, P. Q.*

The municipal corporation of the county of *H.*, in the province of *Quebec*, made an assessment roll according to law in 1872. In 1875 a triennial assessment roll was made, and the property subject to assessment was assessed at $1,745,588.58. In 1876, without declaring that it was an amendment of the roll of 1875, the corporation made another assessment in which the property was assessed at $3,138,550. Among the properties that contributed towards this augmentation were those of appellants, who, by their petition, or *requête libellée*, addressed to the Superior Court, *P. Q.*, alleged that the Secretary-Treasurer of the county of *H.* was about selling their real estate for taxes under the provisions of the municipal code for the province of *Quebec*, 34 *Vic.*, c. 68, sec. 998 *et seq.*, and prayed to have the assessment roll of 1876, in virtue of which the officer of the municipality was proceeding to sell, declared invalid and null and void, and that a writ of prohibition should issue to prevent the respondents from proceeding to sell. The Superior Court directed the issue of the writ restraining the defendants as prayed, but upon the merits, held the roll of 1876 valid as an amendment of the roll of 1875. The Court of Queen's Bench reversed this judgment on the merits, and held the roll of 1876 to be substantially a new roll, and therefore null and void.

Held, per *Henry*, *Taschereau* and *Gwynne*, JJ., affirming the judgment of the Court of Queen's Bench, that the roll of 1876 not being a triennial assessment roll, or an amendment of such a roll, was illegal and null, and that respondents were entitled to

*PRESENT—Sir W. J. Ritchie, Kt., C.J., and Strong, Fournier, Henry, Taschereau and Gwynne, JJ.

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an order from the Superior Court as prayed for to restrain the municipal corporation from selling their property, and the writ which issued, whether correctly styled "writ of prohibition" or not, was properly issued, and should be maintained.

Per *Ritchie*, C.J., *Strong* and *Fournier*, JJ., that a writ of prohibition issued under art. 1031, as was the writ issued in this case, will only lie to an inferior tribunal, and not to a municipal officer.

[The court being equally divided, the judgment appealed from was confirmed, but without costs.]

APPEAL from a judgment of the Court of Queen's Bench for the Province of *Quebec* (appeal side), maintaining a writ of prohibition addressed to appellants forbidding them from proceeding to the sale of the lands of the respondents for taxes.

By the declaration or *requête libellée* of the respondents, they alleged that the appellant *Joseph Michael Côté*, as secretary-treasurer of the county of *Hochelaga*, was about selling their real estate by forced sale for taxes, under the provisions of the municipal code for the province of *Quebec*; that in the year 1876 the corporation of the village of *Hochelaga*, while there was a valid subsisting assessment roll for the municipality made in 1875, which by law was, and continued to be, in force for three years, and under the false pretence that there was no such roll, nor any made since 1873, proceeded to make a new assessment roll, which by law could only be made every three years; that the school commissioners of the school municipality of the village had taken for the base of their roll the said illegal assessment roll; that these taxes, which were claimed by the municipality of the village of *Hochelaga* and by the catholic school commissioners of the same municipality, were utterly illegal. In consequence, they prayed that a writ of prohibition should issue, that the two corporations who claimed the taxes, and the county of *Hochelaga* and their secretary treasurer, by whom the sale was to be made, should be enjoined

and forbidden from selling the real estate in question. And further, that a certain valuation roll for 1876 of the municipality of the village of *Hochelaga*, upon which the legality of the contested taxes turns, should be declared illegal, null and void.

This *requête libellée* was sworn to, and the following order was made by *Torrance*, J.S.C., "Let the writ issue as prayed for. 1st March, 1878."

(Signed) "F. W. *Torrance*, J."

On the same day, under 35 *Vic.* c. 6, sec. 21, *Quebec*, the appellants sued out of the Superior Court of the district of *Montreal*, an ordinary writ of summons, whereby the respondents were summoned to appear in the said court in the city of *Montreal* on the fourteenth day of March, to answer the demand which should be made against them for the causes mentioned in the *requête libellée* thereunto annexed.

This writ, to which was annexed the *requête libellée* or declaration, was served upon all the defendants. The defendants appeared and severed in their defence. They filed an exception to the form, and they also, by demurrer, objected that no writ of prohibition lies in such a cause; they pleaded also to the merits, denying the truth of the allegations in the declaration, thereby raising an issue as to the validity of the assessment roll. The learned judge of the superior court maintained the action to be well founded, and pronounced judgment for the plaintiffs on the demurrers, but in favor of the defendants upon the issue as to the validity of the roll, thereby holding the roll of 1876 to be valid as an amendment of the roll of 1875, which was admitted to have been duly made. From this judgment upon the merits the plaintiffs appealed to the Court of Queen's Bench (appeal side), the majority of which court reversed the judgment of the superior court, holding the assessment roll impugned not to be an amend-

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ment of the roll of 1875, but to be a wholly new roll and absolutely null and void. From this judgment the present appeal was taken.

Mr. *Archambault*, Q.C., for appellants:

The first ground we rely upon is that no writ of prohibition lies against an officer of a municipal corporation. Writs of prohibition can only issue here as in *England*, to prevent an inferior tribunal from exceeding its jurisdiction. Art. 1031 C. C. P. Writs of prohibition, mandamus, &c., are granted only in default of any other remedy.

Our municipal code articles 734, 735, 736, 737 and 738 provide the necessary means to have a roll reformed; it is a cheap and rapid remedy to which the respondents would not resort. Then, again, they had an appeal by art. 927, but respondents not only did not resort to these remedies, but in their petition, or *requête libellée*, they do not mention that they used those remedies, and they do not complain that the appellants prevented them, either by fraud or otherwise, from employing those remedies. They only said you had no right to make a new roll for 1876. We answer, the roll of 1876 was only an amendment for local and school purposes. All the formalities in making the amended roll of 1876, required by art. 746 *a*, arts. 736, 737 and 738 have been observed, and, after the homologation of the roll, the appellants, or a number of them, appealed to the county council, as they had a right to do, and as held by the Superior Court this roll is valid, regular and legal.

Mr. *Mousseau*, Q.C., followed on behalf of appellants:

The appellant (*Côté*) should not have been condemned to pay costs. He had nothing whatever to do with the confection of the roll. He had no discretional power, and he was bound to obey the law. Arts. 371, 373, 998,

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999 and 1,000 M. C., *P.Q.* Neither could the corporation of the county council of *Hochelaga* be made a party and made liable for costs, and although the court of first instance dismissed the exceptions to the form and the demurrers of the defendant, the appellants are entitled before this court, to urge in support of the final judgment of the superior court,all the grounds taken by them before the Superior Court.

Now, with reference to the writ of prohibition, as was contended by my learned colleague, I submit that no such writ lies in the present case under art. 1031 C. C. P. In my opponent's factum it is very ingeniously tried to confuse the writ of injunction with the writ of prohibition. This cannot avail the respondent's case, for 41 *Vic.*, c. 14, was passed after the issue of the writ in this case, and before then, no such writ as a writ of injunction was known in our procedure. The writ which was issued in this case could not be addressed to a municipal corporation (1).

There was nothing in the evidence to show that the roll of 1876 was a new roll. Art. 746*a*, under which this roll was made, virtually gives the power to the council to make a new roll every year. Here there was no injustice ; all respondents complain of is that, instead of making alterations on the roll itself, the secretary-treasurer recopied the whole roll ; and the reason was that, as at that period property increased very much in value every year, and there were so many changes, it was found better to copy the whole roll. Under such circumstances this court ought to uphold the judgment of the Superior Court, and declare the roll valid and regular. See *Cooley* on Taxation (2).

Mr. *Barnard*, Q.C., and Mr. *Creighton*, with him, for respondents:

(1) See High on Extraordinary Legal Remedies, s. 782.

(2) P. 536.

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Two questions arise on this appeal: 1st. Whether the taxes sought to be collected were or were not perfectly illegal, null and void? 2nd. Whether the petitioners had a remedy, and whether by a writ of prohibition. With regard to the first question the judge who rendered the judgment in the court of first instance, and all the judges in the Court of Queen's Bench, seem to have admitted that this roll of 1876, in so far as it was an original triennial roll, was an absolute nullity. The minority in appeal and the judge of the court of first instance however held that the council has, under article 746*a*, the power, every year, of revising, for local purposes, the triennial roll, and as the roll of 1876 has been revised by the council they consider it as if it were the revised edition of the roll of 1875. They think that it is practically the same thing whether the result arrived at finally by the council is reached by way of a revised roll or by way of a new roll.

Now, we submit there can be no doubt that this was not an amended roll of the original triennial roll of 1875.

Art. 746*a* says: The revision must be made in accordance with art. 736 among others. Now, under article 736 the council, before proceeding to the revision of the valuation roll of 1875, were bound to give notice of the day and hour when such revision should take place. The notice given in this case, so far from being a notice that the roll of 1875 would be revised, expressly refers to the revision of the new roll made by valuators for the year 1876.

In the second place, art. 737 says that the council, sitting as a revising board, must take into consideration the complaints made, and hear the interested parties in presence of the valuators. Surely the valuators referred to are the valuators who made the roll to be revised. In this case the roll of 1875 therefore could not be

revised, if the valuators present were those who made the roll of 1876.

The importance of article 738, which says that the amendments made must be entered on the amended roll, or on a document annexed thereto, lies in the fact that it practically recognizes that no revision can take place of a roll unless that roll is before the revising tribunal. The incongruity attaching to the appellants' pretention on this point is so manifest that it is deemed unnecessary to pursue the matter further. Here the council, sitting as a court, are called to revise the judgment of *A.* and the argument on the other side is that this is done if by some new law of equivalents the court revise the judgment of *B.*

It will possibly be argued that in *Lower Canada* the council, sitting as a revising board, has power to alter the roll *proprio motu* in the absence of any petition or complaint. No doubt such is the case under the article 734 when the council examines the triennial roll. It is an anomaly however which it is impossible to account for. But even supposing the council, in the case of a roll actually in force, to have the same right to make alterations of its own accord, the fact would still remain that the roll to be revised was that of 1875, and it could not be revised when it was not before the council at all.

As to the pretention of the school commissioners that they could render a roll valid which is an absolute nullity by simply adopting it as their own, it was entertained neither by the judge of the court of first instance nor by any one of the judges of the Court of Queen's Bench, and it seems to require no special notice, at least at present.

With regard to the second point, whether the remedy we employed was a proper remedy.

Although the writ in this case has been called a writ of prohibition, the prayer of the petition was that the

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defendants should be enjoined and forbidden from selling. There can be no doubt that in *Lower Canada* it is sufficient that the facts and conclusions be distinctly and fairly stated without any particular form being necessary, and if the respondents' proceeding was valid as an injunction, it was not invalid because called a prohibition. In fact, to speak of writs of prohibition is not correct, although the code uses the term, for the writ is an ordinary writ of summons as held by the judicial committee in the case of *Brown* v. *Curé &c. de Montreal* (1) and the real character of the remedy depends on the conclusions of the *requête libellée*, which is allowed by the preliminary order of the judge.

If, however, it were necessary to show that prohibition strictly so called did lie in this case, the respondents contend that the English precedents and authorities fairly applied to the altered circumstances existing in this country are conclusive in their favor, and such seem to have been hitherto the view not only of the majority of the Court of Queen's Bench for *Lower Canada*, but of the Chief Justice of that court also. See report of *Armstrong* and *Sorel* in *Taschereau's* Code of Procedure (2), and the report of the same case (3), and also *Bourgouin* and the *Montreal Northern Colonization Railway Company* (4); *Carter* v. *Breaky* (5); *McDougall* and *Corporation* of *St Ephrem Upton* (6). In all those cases, according to our own jurisprudence, the name is nothing.

The further objection, that the respondents had a remedy of another kind under the municipal law, will be found to be without any foundation. The respondents opposed the valuation roll of 1876 before the village council, but their opposition was not even taken

(1) L. R. 6 P. C. 193.
(2) Art. 1031.
(3) 20 L. C. Jur. 171.
(4) 19 L. C. Jur. 57.
(5) 2 Q. L. R. 232.
(6) 5 L. C. Jur. 229.

into consideration. They then had the choice of an appeal to the county council or to the circuit court. They chose the county council, who took the opinion of counsel, and were told that the valuation roll was a nullity. A decision of the county council in favor of the respondents, unfortunately, was prevented by the fact that the opinion of counsel came too late and the appeal stood dismissed by the mere lapse of time.

The last point we urge is, that this court cannot entertain the objection raised to the form of the writ. There is no cross appeal, and as the judgments of Mr. Justice *Torrance* and Mr. Justice *Rainville*, dismissing the appellant's preliminary pleas, have not been printed in the record, this court will hold that they have acquiesced in these judgments.

The learned counsel also referred to the following cases :

Kane v. *Montreal Tel. Co.* (1) ; *Guyot* Répertoire (2) ; *Guyot* Répertoire (3) ; *Bouteiller* Somme Rurale (4) ; *Savard* v. *Moisan* (5) ; *Mayor, etc., of Montreal* v. *Harrison Stephens* (6) ; *Molson* v. *City of Montreal* (7) ; *Mayor et al,* v. *Benny et al* (8) ; *Mayor of Iberville* v. *Jones* (9) ; *Atty. Gen.* v. *Litchfield* (10).

Mr. *Mousseau*, Q. C., in reply.

RITCHIE, C.J. :—

The question in this case arises under a decision of the Court of Appeal of the province of *Quebec*. Proceedings were initiated by petition—*requête libellée*—by which the parties sought to stop the sale of certain property which was about being sold under an assess-

(1) 20 L. C. Jur. 120.
(2) IV. Vo. Complainte, 206.
(3) I. Vo. Arrêt de Défense.
(4) Tit. 21 demande sur nouvelleté et trouble.
(5) 1 Rev. de Leg. 378.
(6) 3 App. Cases 605.
(7) 3 Legal News 382.
(8) 16 L. C. Jur. 1.
(9) 3 Legal News 277.
(10) 11 Beav. 120.

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ment which was made in the county of *Hochelaga*. There are a number of parties to the suit, but it is not necessary to refer to them. The Court of Queen's Bench held that the assessment was unjustifiable, and that the order prayed for, the prohibition, should issue to prevent them going on with the sale. The decision of the court was that the valuation roll was null and illegal, and that the sale ought to be stopped, and granted the prayer of the petition. The Honorable the Chief Justice and Mr. Justice *Tessier* dissented from this decision.

I think that the whole case turns, as far as my view of it goes, on the question, not whether the assessment was null and void or not, but whether, in the proceedings which were taken by the parties, they were entitled to a writ of prohibition, or to a writ in the nature of a writ of prohibition, under the circumstances which were proved in this case. The code, art. 1031, provides that in writs of prohibition which are to be addressed to courts of inferior jurisdiction wherever they exceed their jurisdiction, they are to be applied for and obtained in the same manner as writs of *mandamus*, with the same formalities. Now, it is obvious that this power of issuing writs of prohibition in the province of *Quebec*, under the code of civil procedure, art. 1031, is substantially the same as the power to issue writs of prohibition under the English jurisprudence, and these writs of prohibition can only go to the courts to prevent their acting without jurisdiction, or to prevent their exceeding their jurisdiction, and it is abundantly clear that the prerogative writ of prohibition under the English law does not go for the purpose of stopping or preventing the proceedings of commissioners under assessments, or of those persons who are to carry out the assessment laws, they not being judicial tribunals to which the prohibi-

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tion will go. It is true that in the *United States* there are to be found some cases, in some of the states where writs of prohibition, similar to the writ of prohibition under English jurisprudence, have been used for such a purpose, but it is to be remarked that in the majority of the states the writ of prohibition has not been used for any such purpose, and it is further to be remarked that in those states where the writ of prohibition has been so used, and in those courts out of which those writs have issued, the judges, I think, in all the cases that I have looked up, have stated that the writ of prohibition was justified by the practice of those courts, but could not be justified by English principles or by English practice, and that while used in the *United States* in these individual states, it was in opposition to the usage in *England*. Therefore, this writ of prohibition which is prayed for could not, if it was the prerogative writ in *England*, avail in this case, and the writ under article 1,031 of the civil code of procedure, if the writ is the same (as I think is very clear from the wording of the code) as the English prerogative writ of prohibition, would not be applicable to a case of this kind; and this seems to have been admitted by the learned judge who delivered the judgment of the majority of the court in this case, but he gets rid of the difficulty by saying that the jurisprudence of *Quebec* does not regard the name of the writ, but that by whatever name it may be called, the writ may issue in a case of this kind, and it is not a writ of prohibition as understood under the English law, or as under article 1031 of the code, but that it may be treated in the nature of an injunction. Now, it is well known that the writ of injunction under the English law and the writ of prohibition are writs of an entirely separate and distinct character. *High*, on

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Extraordinary Legal Remedies (1), points out that while some points of similarity may be noticed between the extraordinary remedial process of prohibition and the extraordinary remedy of courts of equity by injunction against proceedings at law, says :

> There is this vital difference to be observed between them, that an injunction against proceedings at law is directed only to the parties litigant, without in any manner interfering with the courts, while a prohibition is directed to the court itself, commanding it to cease from the exercise of a jurisdiction to which it has no legal claim, and injunction usually recognizes the jurisdiction of the court in which the proceedings are pending and proceeds on the ground of equities affecting only the parties litigant, while the prohibition strikes at once at the very jurisdiction of the court. The former remedy affects only the parties, the latter is directed against the forum itself.

The difficulty that strikes my mind (and I put it forward with a great deal of hesitancy, still, it is the best judgment at which I have been able to arrive in this matter) is this: that the conclusion at which the minority of the Court of Queen's Bench arrived was the correct decision, if I may be permitted to say so. I think that when Mr. Justice *Ramsay* pointed out that according to the jurisprudence of *Quebec* it mattered not by what name you called the writ, if the party was entitled to the remedy, he overlooked the fact that when the parties in this case were seeking to restrain municipal officers they were doing it by a proceeding which, according to what I understand of the practice in the province of *Quebec*, was applicable to the writ of prohibition, and was not open to the parties as it would be if they had taken proceedings to set aside this assessment and to get the remedy which they were entitled to, if the assessment was null and void, by a regular proceeding. In fact, that they did not adopt that course, but that they adopted this summary proceeding which would be open to them if they

(1) P. 550.

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were merely seeking to get a writ of prohibition under this act, and, therefore, in my opinion, the remedy as sought for in this case was misconceived, and therefore they ought not to be allowed to use the writ of prohibition to give them that relief which, under the procedure in the province of *Quebec*, could only be obtained by a regular suit in which the proceedings are of an entirely different character.

I must confess myself much impressed with the reasoning of the learned Chief Justice *Meredith* and the very exhaustive judgment he has given in the case of *Carter* v. *Breaky* (1), in which he has put forward, with much force, that there was no writ of injuction applicable under the system of procedure then in force in the province of *Quebec*. He points out that the want of a writ of injunction was considered by the courts, by judges and by counsel, as a *casus omissus* in the law of *Quebec*, and he expresses his regret and the regret of others that it was not provided for by the code, and we find that the legislature very lately has given, by statutory enactment, the writ of injunction.

Reference is made to that in Chief Justice *Dorion's* judgment, in which he points out that by the Act 41 *Vic.*, ch. 14, security is necessary to be given in such proceedings, and says to allow a writ of prohibition to issue in a case where a writ of injunction is the proper remedy, would deprive a defendant of the substantial right of obtaining security; but, I think that is answered by this fact: that at the time these proceedings were taken that statute had not come in force; and therefore, if the writ of injunction did not exist, I am very much inclined to think in accordance with the view of Chief Justice *Meredith*, in *Quebec*, no matter what proceedings they had taken, they could not have got a writ of injunction, as we term it in the English

(1) 3 Q. L. R. 315.

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law. But, however that may be, hereafter no questions will arise as to whether the writ of injunction can be issued in the province of *Quebec* or not, because the legislature has made provision for it, but of course the provisions which have been made for the issuing of it by the legislature must be acted on. As Chief Justice *Meredith* pointed out in the case to which I have referred, that authority must be found for the proceedings and we must know under what law the power is derived to do what has been done, so just in the present case, we must know what authority the court had; and I must confess that for the issuing of this prohibition, injunction or restraining writ, by whatsoever name it may be called, I have sought in vain to find in the jurisprudence of *Quebec* any authority for issuing such an order, if order it is, or such a writ, if writ it is, in the proceeding which has been taken in this case, and, altogether, I think that the judgment cannot be sustained, but that the appeal in this case should be allowed with costs.

STRONG, J.:—

Art. 1031 of the Code of Procedure of the province of *Quebec*, is as follows:—"Writs of prohibition are addressed to courts of inferior jurisdiction." Without entering upon any discussion as to the analogy or distinction between writs of prohibition as known to the common law of *England* and those authorized by this article of the *Quebec* code, it is manifest that such a writ as that defined by the article quoted, is a remedy entirely inapplicable and inappropriate in the present case. The defendants, who were proceeding to execute a ministerial office, did not constitute a court of inferior jurisdiction, nor were they threatening any excess of jurisdiction in assuming to exercise any judicial authority whatever. The proceeding appealed against cannot therefore be sustained as a writ of prohibition.

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It has, however, been suggested that the writ may be considered as a writ of injunction, and the judgment of the Court of Queen's Bench supported on that ground. The plain and conclusive answer to this, however, is that the writ of injunction was unknown to the procedure of the courts of the Province of *Quebec*, until the stat. of *Quebec* 41 *Vic.*, cap. 14 made provision for such writs, and the proceedings in the present case were taken before that act came into operation.

Then it has been contended that although a technical writ of injunction could not have been obtained before the statute, it was still the right of the plaintiff, if the assessement was null, to have it so pronounced judicially, and the defendants prohibited from enforcing payment of the illegal tax, on an ordinary action at common law. Granting that this was so, the respondents are met by the objection that they have not made use of the procedure prescribed by the code for an ordinary action, but have instead adopted the special and exceptional mode of proceeding prescribed for writs of prohibition, which differs essentially from those which the law authorizes in common actions, the delays being different, and the proceeding being originated by petition (*requête libellée*) instead of by service of a writ of summons and a declaration. It has been urged, it is true, that these proceedings are notwithstanding the same, and for that reason we should ignore formal distinctions, but to this argument I cannot accede. The law has directed a different mode of proceeding in each case, and I do not think we are at liberty to disregard the plain distinctions of the code and to recognise one form of action as an equivalent for another; were we to do so we should be virtually subverting and repealing the code of procedure.

I am, therefore, obliged to come to the conclusion that the appellants are entitled to prevail. I have come to this

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determination reluctantly, I admit, for I am of opinion that the assessment was illegal, and the merits altogether with the respondents, but the technical difficulties I have mentioned appear to me to be insurmountable.

My conclusion is, therefore, that the appeal should be allowed, the judgment of the Court of Queen's Bench reversed, and the action dismissed, with costs to the appellants in this court and both the courts below.

FOURNIER, J. :

La requête libellée des Intimés demandant un bref de prohibition avait pour objet d'empêcher la vente de leurs propriétés, situées dans le village d'*Hochelaga*, annoncées en vente par le secrétaire-trésorier du comté d'*Hochelaga*, pour arrérages de taxes.

Le principal moyen invoqué au soutien de cette requête est la nullité du rôle d'évaluation de 1876 d'après lequel s'est faite la répartition des taxes demandées. Cette nullité, résultant de ce que, d'après la loi, un rôle d'évaluation ne pouvant être fait que tous les trois ans, celui fait en 1875 était encore en force et qu'une révision seulement de ce dernier rôle pouvait avoir lieu en 1876, en observant toutefois les formalités voulues à cet effet.

La requête ne contient pas d'allégation de fraude, ni d'évaluation injuste ou excessive. Il n'y a pas d'offre de payer les taxes dues suivant le rôle de 1875. C'est la forme seulement des procédés suivis dans la confection du rôle que les Intimés ont attaquée par leur requête.

Quoique les Appelants aient séparé leurs défenses, pour invoquer des moyens particuliers à chacun d'eux, tous ont cependant plaidé par exception à la forme, et par défense au fonds en droit, les moyens suivants : que les Appelants ayant des intérêts différents ne pouvaient

s'unir dans la même procédure pour obtenir une conclusion uniforme; que le bref est irrégulier et nul ne contenant aucun ordre, si ce n'est le commandement de comparaître; que les Appelants n'étant pas juges d'un tribunal inférieur, un bref de prohibition ne pouvait pas leur être adressé.

Quant aux autres plaidoyers, réponses spéciales, etc., je crois devoir me dispenser d'en donner ici une analyse, car, au point de vue que j'ai adopté, leur considération n'est pas nécessaire pour la décision de cette cause.

Cet appel soulève deux questions : la première est de savoir si un bref de prohibition peut être adressé à une corporation municipale ou scolaire et à leurs officiers pour les empêcher de faire la collection des taxes qu'elles ont imposées; la deuxième : si le rôle attaqué est nul parce que les changements ou amendements faits l'ont été de la même manière que s'il s'était agi d'un nouveau rôle au lieu d'un amendement.

Sur la première question de savoir si le bref de prohibition est admis dans le système judiciaire de la province de *Québec* pour empêcher la collection d'une taxe illégale, la Cour du Banc de la Reine a été divisée d'opinions, mais la majorité de la cour a soutenu l'affirmative. On voit, par une note de sir *A. A. Dorion*, que le même jour cette cour a rendu un jugement semblable dans la cause de *Jones* contre le maire d'*Hébertville*. C'est la première fois que ce principe a reçu la sanction de la Cour d'Appel. A venir jusqu'à ces deux décisions le contraire avait été maintenu, conformément à l'art. 1031 C.P.C. qui déclare que les brefs de prohibition sont adressés aux tribunaux de juridiction inférieure lorsqu'ils excèdent leur juridiction. En cela le code est conforme à la loi anglaise.

Dans la cause de *Blain vs. La corporation de Granby*, la Cour Supérieure, siégeant en révision pour le district de *Montréal* avait décidé qu'un bref de prohibition ne

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pouvait être adressé qu'à une cour et non pas à une corporation municipale. Le même principe a été énoncé dans la cause de *Beaudry vs. The Recorder of the City of Montreal* (1). Dans la cause du *Maire de Sorel vs. Armstrong* (2), la Cour de Révision a infirmé la décision de la Cour Inférieure ordonnant l'émission d'un bref de prohibition, et déclaré qu'il n'y a pas lieu à l'émission de ce bref. La même cour a décidé le 20 septembre 1876 qu'il n'y avait pas lieu au bref de prohibition pour empêcher une corporation de faire d'une partie de son territoire une municipalité séparée.

On voit par ces citations que les décisions de la Cour du Banc de la Reine ont d'abord refusé d'admettre qu'il y avait lieu au bref de prohibition en matières municipales. Ces décisions étaient plus conformes au Code de procédure et aux autorités anglaises que les deux derniers jugements qui ont décidé le contraire et dont l'un, celui rendu en cette cause, forme le sujet du présent appel.

High, on Extraordinary legal Remedies, § 782 states from American and English Authorities the rule on this subject as follows :

> The legitimate scope and purpose of the remedy being, as we have already seen, to keep inferior Courts within the limits of their own jurisdiction and to prevent them from encroaching upon other tribunals, it cannot properly be extended to officers or tribunals whose functions are not strictly judicial. And while there are cases where the writ has been granted against ministerial officers intrusted with the collection of taxes, yet the better doctrine, both upon principle and authority, undoubtedly is, that it will not lie as against municipal officers, such as collectors of taxes, or as against municipal boards of quasi judicial functions, entrusted with taxing powers, to restrain them from levying or collecting taxes.

En effet l'article 1031 du Code de procédure déclare que les brefs de prohibition sont adressés aux tribunaux de juridiction inférieure lorsqu'ils excèdent leur juri-

(1) 5 Rév. Leg. 223. (2) 20 L. C. Jur. 171.

diction. Ce texte précis devrait dispenser de citer aucune autre autorité. Il doit régler la question.

L'article 1031, comme on le voit par l'autorité citée par les codificateurs indiquant son origine, nous vient du droit anglais. Le code n'a sous ce rapport aucunement modifié la loi anglaise au sujet du bref de prohibition, il n'a fait qu'en régler la procédure; mais il n'a pas admis le recours à ce bref en d'autres cas que dans ceux où il était admis dans le droit anglais. Rien n'est plus certain que ce bref, d'après le droit anglais, ne peut être employé contre les corporations municipales J'ai en vain cherché dans les auteurs anglais des traces de son application dans ces matières; je puis dire avec assurance qu'on n'en trouve aucune. L'assertion de *High* à ce sujet est certainement exacte: "The exercise of the jurisdiction for this purpose (in municipal matters) is conceded to be without the sanction of English precedent."

Pour ces raisons je suis d'avis qu'il n'y avait pas lieu à l'émission d'un bref de prohibition et que les Appelants doivent avoir le bénéfice de l'objection qu'ils ont prise à ce sujet. Mais le jugement de la majorité de la cour procède moins sur l'existence du bref de prohibition en pareil cas, que sur le fait que, dans la présente cause, les conclusions prises dans la demande de ce bref ne sont pas différentes de celles que les Intimés auraient pu prendre par un bref d'injonction. Il est vrai que d'après le Code de procédure, les actions et autres procédés judiciaires n'ont pas besoin d'être désignés par un nom particulier, et qu'une erreur à ce sujet n'emporterait aucune conséquence. Il aurait été parfaitement correct de dire, que le bref en question quoique appelé "prohibition" devrait être considéré comme un bref d'injonction, si à l'époque où il a été émis le bref d'injonction eût été admis dans notre système de procédure, mais il ne l'était pas encore. Le bref dont il

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s'agit est daté du 1er mars 1878, et la loi introduisant le bref d'injonction dans le Code de procédure de P. de Q. n'a été sanctionnné que le 9 mars, quelques jours après. Ainsi la procédure des Intimés doit être réglée par la loi en force le 1er mars 1878. Si le bref d'injonction avait été en existence le 1er mars, je n'hésiterais nullement à me joindre à l'opinion que le bref de prohibition en cette cause doit être pris comme l'équivalent d'un bref d'injonction ; mais avant d'en arriver là il faudrait démontrer l'existence de ce dernier bref à cette époque. Le bref de prohibition existait pour les fins de l'art. 1031, comme bref de prérogative introduit avant le code comme faisant partie du droit public anglais. Mais il n'en était pas de même du bref d'injonction qui, comme appartenant au droit civil anglais, n'a jamais fait partie du droit de la province de *Québec*. Cette importante question a été traitée d'une manière si complète et si savante par l'honorable juge-en-chef *Meredith*, qu'après avoir lu et étudié son admirable jugement sur cette question dans la cause de *Carter vs. Breaky* (1), je n'ai pu faire autrement que d'en venir comme lui à la conclusion qu'avant la 41ème *Vict.*, ch. 14, le bref d'injonction n'existait pas dans la loi de la province de *Québec*.

Il est vrai que la dernière clause de cet acte, en exceptant de son effet les causes pendantes, laissa la question ouverte ; mais dans mon humble opinion elle ne peut recevoir une autre solution que celle donnée par l'honorable juge en chef. Dans le cas actuel on ne pouvait donc employer ni l'un ni l'autre de ces deux brefs,—le bref de prohibition ne pouvant l'être pour contrôler les corps municipaux, et le bref d'injonction n'existant pas encore.

Faudrait-il conclure de là que la loi de la province de *Québec* n'offrait aucun remède aux Intimés pour se protéger contre l'imposition d'une taxe illégale et qu'il

(1) Q. L. R. 113.

devenait en conséquence nécessaire d'étendre l'application du bref de prohibition ? Ce serait une grande erreur que de croire à une telle lacune dans notre droit. Non-seulement le code municipal mais le droit commun offrait aussi aux Intimés des moyens suffisants de protection. Ils avaient d'abord contre la décision du conseil local, l'appel au conseil de comté, droit qu'ils ont exercé. Ils avaient aussi l'appel à la Cour de Circuit, puis, d'après le droit commun, le recours à l'action négatoire pour empêcher la vente de leur propriété (1),—il était aussi facile d'adopter le mode de l'action négatoire reconnu par les lois de la province de *Québec* que de recourir au bref de prohibition ;—et enfin l'action en dommages après la vente pour la faire annuler. Ce n'est certainement pas une raison de nécessité qui devait faire admettre, outre tous ces différents recours, celui du bref de prohibition que la loi n'a pas accordé en pareil cas. Les moyens d'obtenir justice étaient assez nombreux sans cela. Pour ces raisons je suis d'avis qu'il n'y avait pas lieu au bref de prohibition.

Adoptant cette manière de voir sur la première question, il devient inutile que je me prononce sur la seconde, car je considère qu'elle n'est pas devant la Cour.

HENRY, J. :—

After a good deal of consideration, in fact all I have been able to give to this subject, I have arrived at the conclusion that I should sustain the finding of the court below in reference to the question of the power of a judge of the Superior Court to issue such an order. On looking at the jurisprudence in *France* I find that there the courts are authorized to issue an *ordre provisionel*—a provisional order—and it is necessary to the proper

(1) *McDougall vs. Corporation of the parish of St. Ephrem d'Upton*, 35 L. C. Jur. 229.

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administration of justice, not only in *Quebec*, but in every part of the world, that a superior court of a country should exercise a summary jurisdiction to prevent immense wrong and injury being done by one party to another. If there were not such an inherent power in the court, or if the legislature did not think it necessary to enact it, one party might seize upon a valuable gold mine or other valuable property of another, and before the right and title to it could be tested the party would be left without any redress whatever except by an action to recover damages, and that, possibly, from a party who is not worth the cost of the suit. I take it, then, that *Quebec* always had in its jurisprudence the power, through one of its judges, of issuing some kind of process in the shape of an order to restrain the party from doing an irreparable injury to his neighbor's property. I have ascertained that such a recourse always existed in *France*, and that being the case I am free to say that the practice and the law applicable to such cases in *France* would be sufficient, I think, to give to the Superior Court of *Quebec* the right to issue a provisional order. We are told, however, that an action could be brought—I believe it is called an *action negatoire*—but, as I understand it, that would be no stay of proceedings. It would not stop the party so going on with a trespass that might be disastrous in its consequences, and he might ruin a large amount of the property of his neighbor. As I have said, before a decision could be had the property would be gone and no redress would be left. I think, under the circumstances, therefore, such a power was inherent in the court, independent of the legislature.

I am free to say that I agree with my brother judges who expressed the opinion that the process in regard to what is called specially a writ of prohibition, does not apply to this case. At the time this process was commenced,

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there was no judicial action about to be taken, and therefore there is nothing to which the writ could apply. I need not consider whether the case was one in which a remedy could be given by a writ such as is issued in *England*. I do not think that the parties there could adopt the English practice in regard to the matter of injunction, but it is no matter. I agree to that extent with Judge *Ramsay* when saying that it is no matter, if the court had the power to restrain a party it makes very little difference what you call it—provided it is sufficient to enable the other party to obtain redress in the case, so far as protecting property until the question as to the right to it is determined. Chief Justice *Meredith*, in his judgment in the case referred to, says this is a case that has been often mooted, and the want of such a power has been often felt. If I am right in the conclusion at which I have arrived, the judges were wrong in not putting it in force years and years before. I consider the jurisprudence of the country was defective without it, but I find in a number of cases such a proceeding has been had. I find that on this point there is a difference of opinion among the judges of the province of *Quebec*.

Looking at the whole case, then, I am inclined to sustain the judgment of the court below, and I am the more inclined to do it because I am of the opinion that the assessment is altogether wrong. The law authorized the parties to amend the assessment roll, but not to make a new roll two years in succession. Having, then, not amended the roll, but having taken the proceedings that were adopted of providing a new assessment roll altogether, they have clearly shown they did not amend the roll, but made a new roll, which they were not justified in doing. I am, therefore, of opinion that the judgment of the court below should be confirmed.

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TASCHEREAU, J. :—

I am of opinion to dismiss this appeal. On the merits of the case, that is to say, on the point submitted, whether the valuation roll in question was legally made or not, I really see nothing but a question of fact. On the question of law connected therewith at the argument, whether a new valuation roll could be made in 1876, there cannot be two opinions. The council in 1876 could amend the existing roll, but clearly could not then make a new roll. Now, as a matter of fact, what did they do? It is sufficient to take their own notice as publicly given of the deposit of their proceedings, in accordance with the municipal code, to see that they did unmistakably make a new roll in 1876. This roll is therefore a complete nullity.

On the question of the legality of the proceedings taken in this case to contest this valuation roll, I am also of opinion with the court appealed from, that whatever name should be given or ought to have been given to these proceedings cannot affect the redress the plaintiffs have clearly established themselves to be entitled to in this case. In *France*, in matters requiring urgency, the judge could always grant *un ordre provisoire* (1).

Chief Justice *Meredith's* judgment, in *Carter* v. *Breakey* (2), relied upon before us by the appellants, has so little to do with the present case that it was not even noticed in the *Montreal* Court of Appeal. Judge *Meredith* held in that case, that the writ of injunction as known in *England* is not known in *Lower Canada*. This we have nothing to do with here. Judge *Ramsay*, speaking in the court appealed from, for the majority of the court, said that the name given to the writ is of no importance, and that it does not signify whether it be called a prohibition or an injunction. I add, call it an *ordonnance provisoire*, or a *mandamus*, or a mandatory

(1) Pigeau Liv. 2, part I. tit. 2, ch. 3. (2) 3 Q. L. R. 113.

injunction, if preferred, and the result is the same. Then, against Chief Justice *Meredith's* judgment in *Carter* v. *Breakey*, stands the late Judge *Dorion's* judgment in the very same case. The Chief Justice, it is true, says that *Stuart* and *Casault*, JJ., whom he had consulted, are of his opinion. But what shows conclusively that *Stuart* and *Casault*, JJ.'s, views cannot be invoked in this case by the appellants in support of their contention, is that these two judges, in *Pentland* v. *La Corporation d'Hibertville*, held distinctly that a municipal corporation can be stopped from selling lands for taxes by the very same process taken by the respondents here.

Then *Bourgouin* v. *Montreal Northern Railway* (1) is the judgment, and the unanimous judgment, of the Court of Appeal. And this fact must not be lost sight of when investigating what is the jurisprudence of *Lower Canada* on the point. At page 66 of the report of the case it will be seen, by the very words of the judgment itself, that the Court of Appeal maintained distinctly a writ of injunction. In the notes of the judges they seem to maintain it rather as a writ of *mandamus*. There the writ, as here, was to prevent the execution of an unlawful act. Call it *mandamus* here, if appellant prefers it, or a mandatory injunction. A writ of prohibition would prohibit from selling lands in question—a writ of injunction would enjoin not to sell such lands—a writ of *mandamus* would order to cease the proceedings on and for the sale of these lands. Is the result not the same in the three cases? By an oversight, Chief Justice *Dorion*, who dissented from the majority of the *Montreal* Court of Appeal in this present case, said:

> A writ of injunction, on the contrary, is not a prerogative writ, and is issued under the provisions of the *Quebec* Act, 41 *Vic.* ch. 14.

(1) 19 L. C. Jur. 56.

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And, by section 4 of that Act, it is provided "that no writ of injunction shall issue unless the person applying therefor first give good and sufficient security in the manner prescribed by and to the satisfaction of the court or a judge thereof, in the sum of six hundred dollars or any higher sum fixed by the said court or judge, for the costs and damages which the defendant or the person against whom the writ of injunction is directed may suffer by reason of the issue thereof"

No security whatsoever is required for the writ of *mandamus*, and none has been given in the present case To allow a writ of prohibition to issue in a case where a writ of injunction is the proper remedy, would be to deprive a defendant from the substantial right of obtaining security, not only for his costs, but also for all damages he might suffer from the proceedings adopted against him. This alone would be a sufficient ground of objection to prevent one writ from being used for another.

Now, this was correct at the time when it was said, but cannot be applied to this case, as the proceedings therein were instituted eight days, or thereabouts, before the said *Quebec* Act 41 *Vic.* ch. 14 came into force. Consequently the respondents in this case did not deprive the appellants of the right of obtaining security for costs and damages.

It has been said that in *Bourgouin's* case, an *action négatoire* had been first taken. That is so, but what is the difference? Where is there in the code anything authorizing such a writ during an action more than before such action? It seems to me, that if a party can take an action to-day and apply for such an order to-morrow, he can take his action and obtain the order at the same time. Indeed, it is obvious that if this could not be done, the remedy would often be nugatory and fruitless.

Then, here, there could be no *action négatoire*. What is an *action négatoire*? It is, says *Guyot* (1):

Une action par lequelle nous dénions droit de servitude à celui qui le prétend sur notre héritage.

"An *action négatoire* is an action by which we deny a

(1) Rep. v. *Action*.

right of servitude that our adversary claims to have over our land." Now, there is nothing of the kind here. *Morgan et al* do not deny that their property is subject to the taxes regularly imposed by the municipal authority ; and, then, this could hardly be called a servitude.

Then, in *Carter* v. *Breakey* it will be seen that Chief Justice *Meredith* saw a difference between it and *Bourgouin's* case, as in the first one, the contestation was purely and entirely between private individuals and on private matters, whilst in the last one, the corporation complained of by *Bourgouin* was a public corporation, and was sued as such. There also the parties complained of are public corporations, and their officers in the discharge of their public duties.

I have mentioned *Casault* and *Stuart*, JJ., in *Pentland* v. *Corporation d'Hébertville*. Then add *Torrance*, J., who granted the order in this case. *Rainville*, J., who dismissed *Coté et al's*, demurrers, and three judges in appeal, *Ramsay*, *Cross* and *Monk*, JJ. Here are seven judges distinctly holding the proceedings as taken here to be legal and valid. *Sanborn*, J. (1), in *Corporation of Sorel* v. *Armstrong*, expressed himself in such a way that he may fairly be taken as having been of opinion that sales for taxes could be stopped as they have been here. Then *Loranger*, J., in the same case, had maintained the proceedings in the court of first instance. To these must be added the late Judge *W. Dorion's* judgment in *Carter* v. *Breakey*, late Chief Justice *Bowen* in *Usborne's* case, and late Judge *Gauthier* in *ex parte Paton*, cited in *Carter* v. *Breakey*, who all three were of opinion that injunction, or an order equivalent to it, could be granted.

This makes twelve judges of the province of *Quebec*, who, either distinctly held that proceedings as taken here by respondents are legal and valid, or that an in-

(1) 20 L. C. Jur. 174.

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junction, not the writ, perhaps, known under that name in *England*, but an *ordre provisiore* to the same effect, did lie in the said province before the 41st *Vic.* Now, on this last point, must be added the four judges of the Court of Appeal in the *Bourgouin* case. I must say that the appellants have failed to make the clear, unmistakable, inevitable case, which, for my part, I would require to see before coming to the conclusion of revising the views and holdings of such an array of *Lower Canada* judges, more especially upon what, after all, is nothing but a question of practice, with which, as held in many instances by the privy council, and more particularly in *Marchioness of Bute* v. *Mason* (1) and *Board of Orphans* v. *Kraeglins* (2), a Court of Appeal ought not, as a general rule, to interfere.

It was argued that there was no summons in this case. But surely the writ as issued contained a summons. In fact, it is nothing else, on its very face, but a writ of summons, and it is upon such summons that the appellants appeared and pleaded, having been served with it, not within the short delays authorized on prerogative writs, but within the delays required in ordinary actions. It was said that there is no declaration. But what is the *requête libellée*, if not a declaration, or rather, what is a declaration if not a *requête libellée ?* I take the first case I find on my table, *Chevallier* v. *Cuvillier*, and if reference is made to the declaration there, it will be seen that it is nothing else than a petition addressed to the superior court, alleging certain facts, and praying the court, petitioning the court, upon the proof of such facts, to grant the petitioner certain conclusions.

Morgan, et al. the respondents, were perfectly justified in complaining of the most arbitrary and vexatious proceedings of the municipal authorities in the matter.

(1) 7 Moo. P. C. C. 1. (2) 9 Moo. P. C. C. 447.

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When they instituted their proceedings in this case, no other remedy was available to them They were not obliged to appeal or act in any way when this valuation roll was made, or when these taxes were imposed. They could treat the whole thing as an absolute nullity, as they should have done, and wait till an attempt should be made to levy this unwarrantable taxation before acting.

Even a judgment of a court of justice, if rendered without jurisdiction, can be so treated as a perfect nullity, as per *Attorney General* v. *Lord Hotham* (1), where it was held that " Where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing, and does not create any necessity for an appeal." If such is the case for the judgments of the courts of justice, surely, and *â fortori*, it is so for the proceedings of these municipal corporations. The respondents had, in my opinion, a perfect right to treat the valuation roll in question as a complete nullity.

I am of opinion to dismiss the appeal with costs.

GWYNNE, J.:—

On the first of March, 1878, the plaintiffs sued out of the superior court of the district of *Montreal* what, by reference to the original document itself transmitted to this court, appears to have been an ordinary writ (of summons), addressed "*à aucun des hussiers de la dite cour*," whereby they were ordered to summon the defendants that they should appear in the said court in the city of *Montreal* on the fourteenth day of March then current to answer the demand which should be made against them, for the causes mentioned in the *requête libellée* thereunto annexed. This writ (of summons), together with the *requête libellée* or

(1) 3 Turn. & Russ. 219.

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declaration of the plaintiffs, stating their cause of action or matter of complaint, was served upon all the defendants named in the writ of summons upon the same first of March.

The plaintiffs in the declaration or *requete libellée* so served stated the matter of their complaint to be, in short substance, as follows:—that they are proprietors of real property in the village of *Hochelaga*, and assessed and taxed as such; that in the year 1876 the corporation of that village, while there was a valid subsisting assessment roll for the municipality made in 1875, which by law was, and continued to be, in force for three years, and under the false pretence that there was no such roll, nor any made since 1873, proceeded to make a new assessment roll, which by law could only be made every three years, for which, and other reasons stated in the declaration, it was contended that the assessment roll so made in 1876 was wholly null and void as beyond the jurisdiction of the corporation to make. The declaration also alleged, that the school commissioners of the school municipality of the village had taken for the base of their roll the said illegal assessment roll, and that the corporation of the village and the commissioners of schools for the school municipality of the village had, illegally and with the object of troubling the plaintiffs in the peaceable possession of their property, seized the real property of the plaintiffs, and had, through the secretary-treasurer of the municipality, the defendant *Coté*, caused the same to be advertised for sale, to realize thereby rates calculated upon the said illegal assessment roll, and the plaintiff therefore prayed that "*un bref de prohibition*" should issue out of the said court addressed to the defendants, enjoining them from selling and forbidding them to sell the real property of the plaintiffs so seized, or to proceed in any manner upon the said assessment

roll of 1876, or to collect any taxes in virtue of that roll, and that the proceedings taken against the plaintiff's property might be declared to be illegal, void and of no effect, unless cause to the contrary should be shown by the defendants.

The defendants appeared to the writ of summons and filed an exception to the form, and they also by demurrer objected that no writ of prohibition lies in such a case; they pleaded also to the merits, denying the the truth of the allegations in the declaration, thereby raising an issue as to the validity of the assessment roll. The learned judge of the superior court maintained the action to be well founded, and pronounced judgment for the plaintiffs on the demurrers, but in favor of the defendants upon the issue as to the validity of the rolls, thereby holding the roll of 1876 to be valid as an amendment of the roll of 1875, which was admitted to have been duly made. From this judgment upon the merits the plaintiff appealed to the Court of Queen's Bench, appeal side, the majority of which court reversed the judgment of the superior court, holding the assessment roll impugned not to be an amendment of the roll of 1875, but to be a wholly new roll and absolutely null and void. Two of the learned judges of the Court of Appeal however, of whom the learned Chief Justice was one, were of opinion that the plaintiff's action should be dismissed, upon the ground that in their judgment a writ of prohibition did not lie in such a case. From this judgment the defendants have taken this appeal.

Now, why the above writ of summons should be called a writ of prohibition, or anything else than an ordinary writ of summons I am unable to see. True it is, that on the *requête libellée* there is endorsed a fiat signed by a judge, "Let the writ issue," but the writ which did issue in fact was a writ of summons in the

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ordinary form, and which, both in its form and in the time given therein for appearing and answering the cause of action stated in the declaration served with the summons, conformed to the ordinary writ of summons. It is only in the prayer or conclusions of the *requête libellée* or declaration that the term "writ of prohibition" is used. In this term so used there is no magic—the prayer or conclusions would be just the same in substance if instead of the words "writ of prohibition" had been used the word "*ordre*," and as if the conclusion had been "that the defendants be enjoined by the order and decree of this honorable court from selling, and be forbidden to sell, &c., &c., or to proceed in any manner upon the said assessment roll of 1876; and that the proceedings taken against plaintiff's property be declared illegal and void."

It is admitted, that if an *action négatoire* be brought the court has jurisdiction to restrain a defendant from disposing of or interfering with the property in respect of which the action is brought pending the litigation. If that can be done in such an action as an auxiliary remedy, the right arises not by reason of any article in the code to that effect, it must exist as a right incident to the court as a court of original civil jurisdiction, which the superior court is, and if such right exists as an essentially necessary instrument in administering justice as auxilliary to an action, upon what principle can it be denied to exist as a substantive remedy, and as the only one which, when, after hearing of the case upon the merits, the court comes to give judgment, would be effectual? It is the privilege and the duty of every Court of original civil jurisdiction to provide a remedy suitable to the redress of every wrong. Judge *Rainville* in *Bourgouin* v. *Malhiot* (1), recognizing this principle, says:

(1) 8 Rev. Leg. 396.

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Under the ancient French law there was no wrong without a remedy, and certainly under the ancient law of *France*, if any one was about to commit an illegal act against a third person, such third person always had a remedy.

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This principle pervades everysystem of jurisprudence. Now in the case before us there appears no defect in the institution of the suit. The defendants were served with a writ of summons in the ordinary form, and were thereby given fourteen days to appear and answer the complaint served with the summons in that complaint; the plaintiffs alleged a trouble *de droit*, for which they asked a suitable remedy, and the only one which in the circumstances would be effective, namely, that the defendants should be restrained from selling the plaintiffs' land for the purpose of realizing a sum of money as taxes rated, not upon the assessment contained in the only legal assessment roll affecting the lands, but upon an amount stated in an assessment roll which is wholly illegal and void, and made by the defendant municipality contrary to law, and, in fact, without any jurisdiction under the circumstances to make it. Under these circumstances, there is nothing in the objection, as it appears to me, unless it be carried to the extent of insisting that, even though in an action properly instituted by writ of summons, with the ordinary delays for appearing, &c., the plaintiffs should establish, upon an *exception peremptoire* being pleaded, raising an issue upon the validity of the assessment roll, that it was absolutely illegal and void, the court is powerless to give by final judgment or decree at the hearing any redress; and that a superior court of original jurisdiction is so powerless I cannot admit.

In the *Mayor of Sorel* v. *Armstrong* (1), the proceeding by writ of prohibition was disallowed upon the ground that the plaintiff alleged no want of jurisdic-

(1) 20 L. C. Jur. 171.

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tion in the municipality to make the assessment upon the land there assessed, and the claim for relief which the plaintiff relied upon was in the nature of a complaint for a wrong which he alleged was done him in his property being seized to pay a rate assessed upon land which did not belong to him. That case can be of no authority in a case like the present, unless it be to establish the applicability of the writ of prohibition to a case like the present—a position which I understand to have been asserted from time to time by no less than eleven judges of the province of *Quebec*.

Sanborn, J, in giving judgment against the maintenance of the writ of prohibition in that case, expresses his opinion to be that where municipal councils exercise jurisdiction which is in its nature judicial, and usurp power not given by law, a writ of prohibition may issue to restrain them from proceeding with such usurpation. Now, this is the very thing charged here, namely, that while an assessment roll, which was valid and binding for three years from 1875, was in existence, the municipality in 1876, instead of revising that assessment roll and making alterations therein, as they might by law have done, made a wholly new assessment roll, superseding the legally existing one, which they had no jurisdiction or authority by law to make. The whole question in the case is: Was the roll which was made in 1876, a revision or amendment of the roll of 1875? or was it a wholly new and independent roll? If the former it was legal, and the plaintiffs have no cause of action or *locus standi in curiâ*; if the latter, it was wholly illegal and beyond the jurisdiction of the municipality to make, and if beyond their jurisdiction, then, upon the principle enunciated by *Sanborn*, J., in the *Mayor of Sorel* v. *Armstrong*, the writ of prohibition lies; so that, according to that principle, the question of the validity of the assessment

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the judgment of the Court of Queens Bench in appeal declares.

Appeal allowed with costs.

Attorneys for appellants: *Mousseau & Archambault.*

Attorneys for respondents: *Barnard, Monk & Beauchamp.*