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*Oct. 4, 5.

*Dec. 13.

THE CORPORATION OF AUBERT-GALLION..... APPELLANT;

AND

DAVID ROY..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE.)

44 & 45 *Vic. ch.* 90 *(P.Q.)—Toll-bridge—Franchise of—Free bridge—Interference by—Injunction.*

By 44 & 45 Vic. (P.Q.) ch. 90 sec. 3, granting to respondent a statutory privilege to construct a toll-bridge across the Chaudière River in the parish of St. George, it is enacted that "so soon as the bridge shall be open to the use of the public as aforesaid during thirty years no person shall erect, or cause to be erected, any bridge or bridges or works, or use or cause to be used any means of passage for the conveyance of any persons, vehicles or cattle for lucre or gain, across the said river, within the distance of one league above and one league below the bridge, which shall be measured along the banks of the river and following its windings; and any person or persons who shall build or cause to be built a toll-bridge or toll-bridges or who shall use or cause to be used, for lucre or gain, any other means of passage across the said river for the conveyance of persons, vehicles or cattle, within such limits, shall pay to the said David Roy three times the amount of the tolls imposed by the present act, for the persons, cattle or vehicles which shall thus pass over such bridge or bridges; and if any person or persons shall, at any time, for lucre or gain, convey across the river any person or persons, cattle or vehicles within the above mentioned limits, such offender shall incur a penalty not exceeding ten dollars for each person, animal or vehicle which shall have thus passed the said river; provided always that nothing contained in the present act shall be of a nature to prevent any persons, cattle, vehicles or loads from crossing such river within the said limits by a ford or in a canoe or other vessel without charge."

After the bridge had been used for several years the appellant municipality passed a by-law to erect a free bridge across the

*PRESENT:—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

Chaudière River in close proximity to the toll-bridge in existence; the respondent thereupon by petition for injunction prayed that the appellant municipality be restrained from proceeding to the erection of a free bridge.

Held, affirming the judgment of the court below, that the erection of the free bridge would be an infringement of the respondent's franchise of a toll-bridge, and the injunction should be granted.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court.

The material facts are as follows: In 1881 the respondent, by a statute passed by the legislature of Quebec, 44 & 45 Vic. ch. 90, obtained the statutory privilege to erect a toll-bridge, on the Chaudière River, in the parish of St. George, in the district of Beauce. In addition to the clause of the statute given in the head note section one was also referred to.

By that section it is provided that "after the expiration of eight years from the passing of the act, it shall and may be lawful for the municipality of St. George to assume the possession of the said bridge and dependencies and to acquire the ownership thereof, upon paying to the said David Roy the value which the same shall, at the time of such assumption, bear and be worth, with an addition of twenty per centum, and after such assumption it shall become a free bridge and shall be maintained by the municipality as such free bridge."

The respondent maintained in good order his bridge collecting tolls thereon for ten years, it being the only one erected on the Chaudière River, within a distance of six miles. In 1891 the appellant municipality, in order to avail itself of a subsidy of $17,500, granted by the government of the province of Quebec to aid in the erection of an iron bridge on the river Chaudière, determined to erect within the limits of the municipality an iron bridge free and open to the public,

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and passed a by-law on the 19th June, 1891, authorizing the erection of a free iron bridge opposite the parish church of St. George, within a short distance of respondent's toll-bridge, without paying to him the indemnity mentioned in the first section of 44 & 45 Vic. ch. 90.

After the passing of this by-law, on the 14th July, 1891, the respondent applied for and obtained a writ of injunction calling upon the corporation, appellant, to suspend all action and operations under the by-law of the 19th June, and to stop all work of construction on the bridge, because, amongst other reasons, the by-law was illegal, null and void, and also because the act of the legislature, 44 & 45 Vic. ch. 90, had given him the exclusive and perpetual privilege of building and maintaining a toll bridge within the limits of three miles above and three miles below his own.

The superior court of the district of Beauce held that the by-law of the 19th June was valid, and that Roy did not have as against the municipality of Aubert-Gallion, the exclusive privilege to build and maintain an open bridge, and rejected the writ of injunction with costs.

The court of Queen's Bench also held the by-law of the 19th of June to be legal and *intra vires*, but held that the by-law could not be carried out so long as the statutory privileges in question remained in force, and maintained the injunction.

Linière Taschereau Q.C. and *Lemieux* for the appellant.

The statute 44 & 45 Vic. ch. 90 cannot be relied on as a prohibition to the municipality to erect a free bridge.

A municipal corporation has unrestricted and clearly defined rights to build free bridges on rivers, watercourses, etc.; and this power or right cannot be taken

away from it by a charter granted to an individual, unless it be by a formal enactment to that effect.

The act recited forbids only private persons, for the space of thirty years, from entering into competition with Roy by the erection and building of a toll-bridge for lucre or gain, within three miles on either side of this bridge but this prohibition does not extend to the corporation.

The act forbids the erection by individuals for lucre or gain, but does not apply to the bridge intended by the corporation of Aubert-Gallion which is to be for free and gratuitous use.

Roy answers this objection by a reason *ab inconveniente*: "A free bridge" he says "is even more ruinous to me than another bridge for lucre or gain." That may be; but Roy has placed himself in that position, for the act of the legislature, which forbids individuals to erect bridges for lucre or gain, was passed at his request, on his own petition, addressed to the legislature, and which should have contained the terms under which the statute was to be passed. He defined his own position, as appears by the preamble of the act, and he cannot to-day be allowed to improve it.

Moreover, is it to be believed that if Roy had asked of the legislature an enactment forbidding the building of a free bridge by the corporation, such a monopoly would have been granted him? No, for it would have been manifestly unjust to make the interest of the whole public subservient to that of a simple individual.

To grant such a monopoly legislative authorization was required in formal and express terms, and such was never given directly or indirectly to municipal corporations in the province of Quebec. See Harrison's Municipal Manual (1).

(1) Pp. 313, 517, 520.

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The authorities are unanimous in declaring that the terms of grants conferred on individuals must always be applied and interpreted strictly. See Endlich on the Interpretation of Statutes (1); Maxwell on Statutes (2); Sedgewick on the Interpretation of Statutory Law (3); and also arts. 520, 542, 485, 460, 84 M.C. (P.Q.)

Fitzpatrick Q.C. for the respondent:

The question which arises on this appeal is: Whether a corporation which, in the public interest, grants a perpetual and exclusive franchise to any one to build a bridge, a franchise which has been confirmed by the legislature with the condition that the said corporation may, after eight years, convert the same into a free bridge on indemnifying the proprietor, has a right to set at nought its promises and engagements, without any right, on the other hand, to those who are ruined by its conduct to complain of the same?

I contend that the statute 44 & 45 Vic. ch. 90, grants to the respondent a perpetual and exclusive privilege, and that the appellant cannot without breach of the most elementary good faith, violate a public contract, repudiate a solemn engagement, and not only ruin the respondent but tax him over the bargain, in order to aid in the construction of a free bridge alongside of his own.

The clause by which the appellant cannot convert this toll-bridge into a free bridge, without paying the value thereof, has not been written to protect the public, for, to the latter, a free bridge is worth a hundred-fold more than a toll-bridge. It was evidently framed in the interest of the respondent so that he might not be ruined at the caprice of four councillors.

(1) P. 494 sec. 354. (2) P. 264, 263.
(3) Pp. 291, 296.

The following cases and authorities were cited and relied on: *Galarneau* v. *Guilbault* (1); *Corriveau* v. *Corporation St. Valier* (2); *Charles River Bridge Co.* v. *Warren Bridge Co.* (3); and Kent's Commentaries (4).

The learned counsel also argued the question of the validity of the by-law, but the grounds relied on for and against the validity are sufficiently reviewed in the judgment of Mr. Justice Fournier.

STRONG J. concurred with TASCHEREAU J.

FOURNIER J.:—Par un règlement du conseil de la municipalité d'Aubert-Gallion, en date du deux novembre mil huit cent quatre-vingt, il fut ordonné et statué:

ART. 1er.—Que M. David Roy est par le présent règlement autorisé à construire un pont sur la rivière Chaudière, vis-à-vis l'église paroissiale de St. Georges.

ART 2.—Qu'après que le pont aura été ouvert au public, et tant qu'il restera en bon état, nulle personne et nulle compagnie ne construira ni ne fera construire aucun pont ou ponts, ou n'emploiera comme traversée aucun bateau ou vaisseau d'aucune espèce pour traverser aucune personne, bestiaux ou voitures quelconques, soit en louant ou autrement, les susdits bateaux ou vaisseaux sur la dite rivière Chaudière, à une distance de trois milles en haut et en bas du dit pont qui sera construit par le dit David Roy, et si aucune personne construit un pont ou des ponts d'aucune espèce ou établit une traverse d'aucune espèce ou fait traverser sur la dite rivière Chaudière dans les dites limites, elle paiera au dit David Roy pour chaque personne ou animal ou voiture qu'elle traversera pour lucre trois fois la valeur des taux imposés par le présent règlement pour toutes les personnes et animaux qui passeront sur tels ponts ou par telles traverses ainsi construits ou établis, en contravention des dispositions de ce règlement, et toute contravention à la prohibition de traverser pour rémunération d'un côté de la rivière à l'autre entraînera une amende n'excédant pas dix piastres. Cette amende recouvrable de la même manière que celle imposée par le code municipal de la province de Québec.

(1) 16 Can. S.C.R. 579.
(2) 15 Q. L. R. 87.
(3) 11 Peters 420.
(4) 13 Ed. 3 vol. par. 439a.

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Avec le privilège de construire un pont, l'intimé obtint aussi le droit de prélever des péages qui furent fixés par le règlement.

Après le règlement, et pendant qu'il était en force, la législature de la province de Québec, passa à la session de 1881, un statut qui fut sanctionné le 30 de juin, accordant au dit intimé le droit exclusif de construire à ses dépens, au même endroit, sur la rivière Chaudière, dans la paroisse de St-Georges, un pont de péage avec dépendances, réservant cependant à l'expiration de huit années après la passation du dit acte, à la dite municipalité, le droit de prendre possession du dit pont et de ses dépendances et d'en acquérir la propriété, en en payant la valeur au temps de la prise de possession et en payant 20 p.c. en outre de la valeur, lequel pont deviendrait alors un pont libre et serait maintenu par la municipalité.

Il est évident que par le règlement ci-haut cité, la municipalité appelante s'est interdit le droit de construire un pont libre, dans la limite indiquée, pendant toute la durée du privilège accordé à l'intimé. Ce privilège ayant été confirmé par l'acte 44-45 Vic. c. 90, il n'est plus loisible à la municipalité de rien entreprendre qui soit en contradiction avec son règlement ni avec le statut de la législature accordant à l'intimé les mêmes droits et privilèges, car tous deux sont de la nature d'un contrat entre la législature et la municipalité d'une part, et l'intimé, de l'autre, et sont également obligatoires pour les deux parties.

En vertu des pouvoirs qui lui étaient conférés par le règlement et le statut ci-haut cités, l'intimé a construit à l'endroit indiqué dans la dite municipalité, un pont offrant au public toutes les conditions de sûreté et de commodité voulues. Ce pont a existé depuis au delà de dix ans, et est encore en existence, et en état de servir avantageusement pour l'utilité du public.

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Cependant la dite municipalité, en violation du règlement et du statut ci-haut cités, a passé en date du 19 juin 1891, un règlement ordonnant la construction d'un pont en fer qui devait être un pont municipal.

Ce règlement contient entre autres les dispositions suivantes: 1° Que ce pont serait construit en fer sous la direction du gouvernement de Québec, conformément à l'art. 859*a* du Code Municipal; 2° Que le gouvernement se chargerait de tous les frais de la superstructure du dit pont, et la municipalité construirait les culées et les piliers en pierre suivant les plans et spécifications annexés au règlement.

3° Les clauses 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 et 15 fixent la date du commencement des ouvrages et de leur achèvement, le mode d'accorder le contrat, ainsi que le mode de paiement, les garanties d'exécution du contrat, les cotisations sur les contribuables pour frais de construction, en outre une déclaration limitant la responsabilité de la municipalité à $11,500, avec l'intérêt de trois ans, se montant en tout à $13,340, le nom du surintendant, le mode d'entretien et de réparation du dit pont et finalement que ce pont serait libre et gratuitement ouvert au public.

Après l'adoption de ce règlement, l'intimé a demandé à la cour Supérieure un bref d'injonction pour faire ordonner à l'appelante de suspendre tous procédés en vertu du règlement du 19 juin, et d'arrêter tous les ouvrages de la construction du dit pont, pour entre autres, les raisons suivantes: Que le dit règlement était nul, et que l'acte de la législature 44-45 Vic. c. 90, lui avait accordé un privilège exclusif de construire et entretenir un pont de péage dans les trois milles au-dessus et au-dessous du lieu indiqué.

Le jugement de la cour Supérieure, district de Beauce, a reconnu la validité du règlement du 19 juin, et a dénié à l'intimé son privilège exclusif de construire un pont

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à l'encontre de la municipalité. Ce jugement ayant été porté en appel à la cour du Banc de la Reine a été infirmé.

Dans leur constestation les parties ont soulevé un grand nombre de questions dont il est inutile de s'occuper pour la décision du litige en cette cause.

La question se réduit à savoir si, après le règlement adopté par la dite municipalité appelante, accordant à l'intimé le privilège exclusif de construire un pont, privilège reconnu plus tard, par l'acte de la législature 44-45 Vict. ch. 90, accordant de nouveau au dit intimé, le même privilège, la municipalité peut-elle maintenant entraver l'exercice du privilège de l'intimé, en construisant ou permettant de construire, au même endroit, dans la dite municipalité un pont libre qui aurait l'effet de détruire complètement la valeur du pont de péage de l'intimé? Ne s'est-elle pas au contraire, par son dit règlement interdit tout droit de construire un pont en opposition au privilège qu'elle a accordé?

La décision de cette question est réglée par les termes du règlement et par les sections 1 et 3 du statut 44-45 Vict. ch. 90.

En déclarant, par son règlement qu'après que le pont aura été ouvert au public, et tant qu'il restera en bon état, nulle personne et nulle compagnie ne construira ni ne fera construire aucun pont ou ponts, etc., l'appelante a fait une prohibition générale et absolue dans laquelle elle est nécessairement comprise elle-même, puisqu'elle est la partie contractante et l'autorité qui crée et accorde le privilège en question en faveur de l'intimé. Il n'y a aucune réserve quelconque en sa faveur, et cette déclaration doit être interprétée comme s'appliquant à elle-même.

La même prohibition est contenue dans l'acte 44-45 Vict. ch. 90 et doit avoir le même effet. Elle est même

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encore plus étendue, puisqu'elle ne fait qu'une exception en faveur de celui qui passerait à gué ou en canot et sans charge, cette restriction prouve bien que la prohibition est générale.

J'ai dit que le règlement doit être considéré comme ayant l'effet d'un contrat entre la municipalité d'une part et l'intimé Roy, de l'autre. Celui-ci, en construisant un pont a accepté le privilège qui lui avait été accordé à ce sujet. Le fait d'avoir demandé et obtenu de la législature la confirmation de ce privilège, ne peut pas être considéré comme une renonciation à ses droits. Tout au contraire, ce procédé ne peut être considéré que comme une mesure de prudence pour se mettre à l'abri des contestations trop fréquentes des règlements municipaux. Il sauvegardait ainsi ses droits en les mettant sous la protection d'un acte de la législature qui lui en assurait la jouissance. Ce privilège doit, d'après le statut, durer pendant trente ans, et d'après le règlement, tant que le pont restera en bon état.

Dans un de ses plaidoyers, l'appelante a prétendu que le pont en question était en ruine et dangereux pour le public. Ce motif n'a pas été invoqué comme raison d'ordonner la construction d'un nouveau pont, parce qu'il eût alors été facile à l'intimé de prouver que le pont existant était suffisant et en état de servir au public et que le public s'en servait alors. Ce fait a été établi par la preuve en cette cause, ainsi que le comporte le jugement de la cour du Banc de la Reine, déclarant qu'il n'appert pas que le dit pont n'est pas en bon état.

Dans la cause de *Galarneau* v. *Guilbault* (1), la cour a eu l'occasion d'examiner la question de l'étendue d'un semblable privilège accordé pour la construction d'un pont. Une des conditions du privilège était que

(1) 16 Can. S. C. R. 579.

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si le pont par accident ou autrement était détruit, ou devenait dangereux ou impassable, les demandeurs seraient tenus de le rebâtir dans les 15 mois, sous peine de forfaiture de tous les avantages accordés par le dit acte, et que pendant tout le temps que le dit pont serait dangereux ou impassable, les dits demandeurs seraient obligés de maintenir une traverse sur la dite rivière, pour laquelle ils pourraient percevoir des péages Ce pont ayant été entraîné par les glaces, les demandeurs se mirent en frais d'en construire un autre et entretinrent une traverse, les défendeurs prétendant que les prohibitions du statut n'avaient pas d'autre effet que de protéger le pont, pendant qu'il était en existence, et ne pouvaient nullement s'étendre à la protection de la traverse. La cour décida que le privilège exclusif accordé par le statut s'étendait à la traverse, et, tant qu'elle était maintenue par les demandeurs, les défendeurs n'avaient aucun droit de bâtir un pont temporaire, etc.

L'étendue de ce privilège a été portée encore plus loin dans la cause de *Girard* v. *Bélanger* (1), où il avait été décidé, en cour Supérieure, à St-Hyacinthe, le 2 décembre 1872, par Sicotte, J., que la construction d'un pont sur lequel on n'exigerait pas de péages n'était pas une atteinte aux privilèges des demandeurs.

Sur appel à la cour du Banc de la Reine, (2) ce jugement fut infirmé et il fut, au contraire, maintenu que c'était une atteinte aux privilèges des demandeurs, appelants, leur donnant le droit d'en demander la démolition pour faire respecter leur privilège. Ce dernier jugement fut rendu unanimement en 1874 par la cour du Banc de la Reine. On en trouve la substance dans l'ouvrage de feu l'honorable juge Ramsay, où l'on voit qu'il fut décidé que la construction d'un

(1) 17 L. C. Jur. 263.

(2) Ramsay's App. Cas. 712.

semblable pont n'était qu'un moyen d'éviter le privilège accordé au propriétaire du pont de péage.

Ce privilège a encore été maintenu dans une cause de *Globensky et ux.* v. *Lukin et al*, (1) dans laquelle il fut décidé :

Que le propriétaire d'un moulin qui a pratiqué ou fait pratiquer au moyen de bacs ou chalans des voies de passage et traverses dans les limites du privilège d'un pont de péage, pour y traverser les gens à son moulin gratuitement, mais dans la vue de se procurer des gains par la mouture de leurs grains, est passible de dommages et intérêts envers le propriétaire de ce pont à raison de la perte de ses profits, qui lui sont ainsi enlevés indirectement.

Par tous ces motifs, je suis d'avis que l'appel doit être renvoyé avec dépens,

TASCHEREAU J.—The respondent in this case attacks, by a petition for injunction, a by-law passed by the municipality, appellant, in June, 1891, for the erection of a free bridge across the Chaudière River, and prays that the appellant be restrained from proceeding with the said erection on the ground that it would be an unlawful interference of the privilege granted to him by the legislature in 1881, by the act 44 & 45 Vic. ch. 90, under which he was authorized to build and has built a toll-bridge across the said river, within the said municipality. Section 3 of the said act reads as follows (2).

The bridge projected by the municipality, appellant, would be within one league from the respondent's, but they contend that a free bridge would not be an unlawful interference with his franchise. The judgment of the Court of Queen's Bench, reversing the judgment of the Superior Court, was adverse to their contention and ordered them not to proceed with the erection of the said bridge. I am of opinion that this judgment was right though on grounds different from those upon

(1) 6 L. C. Jur. 149.

(2) See p. 456.

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which the said judgment of the Court of Queen's Bench was based.

The appellants would read section 3 above cited of the respondent's charter, as if it said: "during thirty years no person shall erect, or cause to be erected, any bridge or bridges or works, for lucre or gain, within the distance of one league from the said bridge" and hence argue that a bridge for lucre or gain only is prohibited by the statute, and not a free bridge. But the words "for lucre or gain" are not so to be found therein after the words "any bridge or bridges or works," but only after the words "or use or cause to be used any means of passage for the conveyance of any persons, vehicles or cattle." I do not see that these words "for lucre or gain" are at all connected with the words "bridge or bridges or works." I read the sentence as if the words "for lucre or gain" were inserted immediately after "or use or cause to be used." And I am fully justified in doing so, it seems to me, by the fact that it is after the same words, "use or cause to be used," that the words "lucre or gain" are to be found a few lines after, in the same clause, when decreeing the penalty for infringement of the charter. And that penalty is "on any person who shall build or cause to be built a toll-bridge or toll-bridges within the said limits," consisting in three times the amount of the tolls imposed by the act for the persons, cattle or vehicles, which shall thus pass over such bridge or bridges, whether such persons, cattle or vehicle have passed free or not, such a toll-bridge, it is clear, not being absolutely prohibited, *sed quœre?* as per Sir Montague Smith in *Jones* v. *Stanstead, Shefford & Chambly Ry. Co.* (1); *Leprohon* v. *Globensky* (2); *Globensky* v. *Lukin* (3),—with a penalty

(1) L. R. 4 P. C. 116. (2) 3 L. C. Jur. 310.
(3) 6 L. C. Jur. 145.

of ten dollars for each person, animal, or vehicle conveyed across the said river for lucre or gain, within the said limits, by any other means of passage—here again, using the words "for lucre or gain," only in connection with the means of passage other than by a bridge.

Then the words "bridge for lucre or gain" are not those generally used in statutes *in pari materiâ*, to mean a toll-bridge. Whenever a bridge for lucre or gain is meant, it is called a toll-bridge, not a bridge for lucre or gain, and this very statute, nay this very clause itself, when decreeing penalties, is an instance of it. And if the legislature had here intended to forbid only the erection of a toll-bridge or of toll-bridges it would have said, "no person shall erect or cause to be erected any toll-bridge or toll-bridges." But it did not say so. The prohibition extends to any bridge.

Neither can this section be read again as limiting the prohibition to a bridge for lucre or gain, as contended for by the appellants; "no person shall erect or cause to be erected any bridge or bridges, or works for the conveyance of any persons, vehicles or cattle for lucre or gain across the said river." A bridge is built for the passage but not for the conveyance of any one, and the words "for the conveyance of any persons, vehicles or cattle for lucre or gain" are clearly governed by and relate only to the preceding words "any means of passage." This section must be read, and, in fact, reads as follows, in the French as in the English version: "During thirty years, no person shall erect or cause to be erected any bridge or bridges or works across the said river within the distance of one league." * * * It thus expressly enacts that no bridge of any kind shall, within a league, be erected in opposition to the respondent's privilege, a prohibition which as against a free bridge was obviously, by the legis-

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lature itself, considered as absolute, and which accordingly was left to be enforced, when necessary, as has been done by the respondent here, and by the grantee of a similar franchise, in an analogous case, in Montreal, *Leprohon* v. *Globensky* (1), by a restraining order, the penalties imposed applying exclusively to the infringement of the franchise by a toll-bridge or by the other prohibited means of passage.

This is made still clearer by the proviso of the section which specially exempts a free passage by a ford, or in a canoe, or other vessel from the prohibition to cross the river within the said limits. Does not that infer that a free bridge is to be prohibited? If not, why a proviso to allow free passage by a ford or canoe or other vessel without mention of a free bridge? If the legislature had intended to permit a free bridge, it would not so have exclusively provided for a free passage by a ford or canoe or other vessel. *Inclusio unius est exclusio alterius.* Comp. Garnier, Reg. des Eaux (2).

The appellant would have us read this proviso as if it extended to a free bridge. But there is no rule or construction of statutes that I know of to authorize it. Quite the contrary, when the statute says that, notwithstanding the privilege granted, a free passage by a ford or in a canoe or other vessel, shall be permitted, it clearly, it seems to me, though impliedly only, decrees, or assumes rather, that a free bridge or a free passage by a bridge shall not be permitted. And is it not evident that if the legislature had, by the act, allowed the erection of a free bridge at any time, by this corporation or by any one else, in opposition to the respondent's privilege, the public would then have had no bridge at all?

(1) 3 L. C. Jur. 310.

(2) Vol. 1, no. 368.

Suppose (says Putnam J.) (1) for example, a free bridge should be placed by the side of the toll-bridge, it would seem a mere mockery to tell the proprietors of the toll-bridge that they might still have all the toll that they could collect over their bridge. This free bridge would as effectually destroy their franchise as if an armed force were stationed to prevent any one passing over it. Who does not see that their charter would be subverted by this construction?

Charters creating a monopoly or granting a franchise, it is true, are, as argued by the appellants, *strictissimi juris*. But they, like all other statutes, must receive, if possible, a construction which will promote the object of the law giver, not one which would defeat his intentions. And

in every case, (says Story J.) the rule is made to bend to the real justice and integrity of the case. No strained or extravagant construction is to be made in favour of the king. And, if the intention of the grant is obvious, a fair and liberal interpretation of its terms is enforced. Whenever the grant is upon valuable consideration this rule of construction ceases, and the rule is expounded, exactly as it would be in the case of a private grant, in favour of the grantee (2).

Such a grant is always made in the interest of the public, to ensure an easy access from one side of a river to the other which it has previously been impossible to get, and which without it, it must be assumed, cannot be obtained. And this very grant itself was, on its face and in express terms, so made to the respondent for the benefit of the public:

"Whereas (says its preamble) the construction of a toll-bridge over the river Chaudière, in the parish of St. George, in the county of Beauce, would greatly tend to promote the welfare and to facilitate the intercourse of the inhabitants of the said parish and of the neighbouring parishes, and whereas David Roy has, by petition, prayed to be authorized to construct such a toll-bridge."

(1) *Charles River Bridge* v. *Warren Bridge* 7 Pick. 493.

(2) *Charles River Bridge* v. *Warren Bridge* 11 Peters 589, 597.

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Could anything be clearer? Is it not solely upon these considerations of public utility, and in return for his assuming an enterprise needed by the public, that the legislature granted this franchise to the respondent?

These franchises (says Chancellor Kent) (1) are presumed to be founded on a valuable consideration and to involve public duties, and to be made for the public accommodation, and to be affected with a *jus publicum*, and they are necessarily exclusive in their nature.

See also *Perrine* v. *Chesapeake* (2).

The obligation between the Government and the grantee of such a franchise is mutual. He is obliged to provide and maintain facilities for accommodating the public, at all times, with an easy crossing. The law, on the other hand, in consideration of this duty, provides him a recompense by means of an inclusive toll, to be exacted from persons who use the bridge, and, of course, it will protect him against any new establishment calculated to draw away his custom to his prejudice.

Or, in the words of the same learned Chancellor:

The grant must be so construed as to give it due effect, by excluding all contiguous and injurious competition. *Ogden* v. *Gibbons* (3).

For it has been said long ago

where the use is granted, everything is granted by which the grantee may have and enjoy the use (4).

And if two constructions may be made, one to make the grant good, the other to make it void, then for the honour of the king and the benefit of the subject, such construction shall be made that the grant shall be good." Bacon's Abridg. Prerog, F. 2.

And, (says Mr. Justice Story) (5): Wherever a grant is made for a valuable consideration, which involves public duties and charges, the grant shall be so construed as to make the indemnity co-extensive with the burden.

McLean J., in the same case, said:

Much discussion has been had at the bar, as to the rule of construing a charter or grant. In ordinary cases, a grant is construed favour-

(1) 3 Comm., p. 458.
(2) 9 How. 180.
(3) 4 Johns. Ch. Rep. 160.
(4) 1 Saunders Rep. 321.
(5) *Charles River Bridge* v. *Warren Bridge* 11 Peters 630.

ably to the grantee, and against the grantor. But it is contended that in government grants nothing is taken by implication. The broad rule thus laid down cannot be supported by authority. Whatever is essential to the enjoyment of the thing granted must be taken by implication, and this rule holds good whether the grant emanates from the royal prerogative of the King in England, or under an act of legislature in this country. *Charles River Bridge* v. *Warren Bridge* (11 Peters 557.)

In *Newburg Turnpike Co.* v. *Miller* (1), it was held, in that sense, that where one has a franchise of a bridge with the exclusive right of taking toll, though no limit above or below are defined by the charter, the erection of a free bridge, by another person, so near as to create a competition injurious to such franchise, is an infringement of the grant and will be prohibited by injunction.

No rival road, bridge, ferry or other establishment of a similar kind (said the court), can be tolerated so near to the other as materially to affect or take away its custom. It operates as a fraud upon the grant and goes to defeat it. The consideration by which individuals are invited to expend money upon great, expensive, and hazardous public works, as roads and bridges, and to become bound to keep them in constant and good repair, is the grant of a right to an exclusive toll. This right, thus purchased for a valuable consideration, cannot be taken away by direct or indirect means.

I need not remark that the respondent's case here is still more favourable, as his charter clearly defines the limits of his privilege.

In *Reg.* v. *Cambrian Railway Co.* (2), Blackburn J. said :

The prosecutor's right is to a ferry, or franchise, by which he had the exclusive right of carrying passengers across the river. It is well established that if that right is interfered with, without the authority of an act of parliament, an action would lie for that disturbance.

That case was, it is true, overruled by *Hopkins* v. *The Great Northern* (3), but only on the ground that a railway bridge, authorized by act of parliament, is not

(1) 5 Johns. Ch. Rep. 100. (2) L.R. 6 Q.B. 422.
(3) 2 Q. B. D. 224.

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an infringement of the franchise of a ferry. A question of the same nature as to a toll-bridge arose in the province of Quebec in the case of *Jones* v. *Stanstead* (1), which was ultimately determined by the Privy Council (2), but upon grounds which have no application to the present case.

In the United States, it was also held in *Re Lake* v. *Virginia* (3), upon the principle that any ambiguity in the terms of the grant of a franchise must operate against the grantee and in favour of the public, that a railway bridge is not an infringement of a previous grant of the exclusive right of a toll-bridge. But neither does that case help the appellants here. It is in fact their construction of the respondent's charter which would, if adopted, then have clearly, in 1881, not been in favour of the public, since the public would not then have had the bridge which the act itself says was needed to promote the welfare of the inhabitants.

In the well known case of *Charles River Bridge Co.* v. *Warren Bridge Co.* (4) to which I have already referred, the grantees of the franchise of a toll-bridge were, it is true, defeated in their attempt to restrain the erection of another bridge near theirs; but they had no limits defined by their charter above and below their bridge for the exclusive exercise of their franchise, and moreover, the bridge of the defendants had been authorized by a special act of the legislature; and the great controversy before the courts was as to the power of the legislature to pass such an act, it being contended by the plaintiffs that the act was *ultra vires* under the constitution of the United States, as impairing the obligation of a contract. But the case is no authority in favour of the appellants here. On the contrary, it

(1) 17 L.C.R. 81.
(2) L.R. 4 P.C. 98.
(3) 7 Nev. 294.
(4) 11 Peters 420.

is evident by a reference to the opinion of Taney C.J., who gave the judgment of the court, that the plaintiffs would have been successful if their charter had defined certain limits for their privilege, and, I assume from the report, even without any such limits being defined in their charter, if the defendant's bridge had not been authorized by statute. See also *Tuckahoe Canal Co.* v. *Tuckahoe Railroad Co.* (1). Such, according to Garnier, Reg. des. Eaux (2), would be the decision, in France, under similar circumstances. See also Daniel, Cours d'Eaux (3).

And it cannot be doubted, in fact it must be assumed, that if the legislature, here, had been asked, or were asked at any time during the thirty years of the respondent's privilege, to grant a charter, or a permission for another bridge, whether a free bridge or a toll-bridge, within three miles from the respondent's, such a petition would not have been, or would not be granted, if the respondent performed all his obligations, or if granted at all, would have been so, or be so, only upon providing for due compensation to the respondent. It would have been an expropriation of the franchise. It cannot be presumed that the legislature would, by a clear abuse of power, have destroyed its own grant and committed a fraud on its grantee.

As said in Dalloz Répertoire (4).

Par le fait même de la concession, l'état contracte envers les adjudicataires de constructions de ponts l'obligation de les maintenir dans la jouissance du droit de péage, et de n'apporter dans la situation des choses aucun changement qui serait de nature à porter prejudice aux interêts des concessionnaires.

A case noted in Ramsay's Digest of *Girard* v. *Belanger* (5) decided by the Court of Appeal in Montreal, in 1874, is on all fours with the present one. There the

(1) 11 Leigh 42; 36 Am. Dec. 374.
(2) Vol. 1, no. 567.
(3) Vol. 1, no. 227.
(4) Vo. Voirie par Eau no. 635.
(5) P. 712.

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court, reversing the judgment reported at 17 L. C. Jur. 263, distinctly held that a free bridge was an infringement of a charter for a toll-bridge similar to the respondent's here, and, in one respect, not so favourable to the exclusiveness of the franchise. For there, the proviso exempted from the operation of the act the free crossing by a ford or in a canoe or otherwise (1) whilst here, these words "or otherwise" have been replaced by the words " or other vessel," removing one of the grounds that had given rise to the controversy in that case of *Girard* v. *Belanger*. And this decision of the highest court in the province which, as I have said, was rendered in 1874, furnishes an additional argument against the appellants' contention here, the respondent's charter having been granted in 1881, after that decision. For it is a well settled rule of construction (unaffected by legislation in the province of Quebec as it is for Dominion statutes, by 53 Vic. ch. 7 (D.) that, where a statute has received a judicial interpretation, and the legislature has afterwards re-enacted one *in pari materia*, it must be considered to have adopted the construction which the courts had given to it. See Per Strong J., *Nicholls* v. *Cumming* (2). See also cases cited in Endlich on Interpretation of Statutes (3). This rule, it seems to me, applies here with the more force, as by the replacing I have noticed above, of the words "or otherwise," by the words "any other vessel," the legislature must be assumed, in view of the anterior decision of the Court of Appeal, to have intended the decree more clearly, and so as to remove any room for doubt, that a free bridge would be an infringement of the grant to the respondent.

In the case of *Galarneau* v. *Guilbault* (4), in this court, Mr. Justice Fournier, delivering the judgment

(1) 26 Vic., ch. 32, sec. 10 (1863.)
(2) 1 Can. S.C.R. 425.
(3) P. 513.
(4) 16 Can. S.C.R. 579.

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of the court, was clearly of opinion that a free bridge, under similar circumstances, is an infringement of the franchise of a toll bridge. It was not necessary, however, for the determination of that case to decide the point.

A case of *Motz* v. *Rouleau*, noted in *Globensky* v. *Lukin, et al.* (1), decided in the Court of Appeal, Quebec, in 1848, is the other way. *On cite ces arrêts comme on signale des écueils*, says Boncenne. It was there held that a free bridge was not an infringement of a charter for a toll-bridge granted in 1818, by the 58 Geo. III. ch. 25, Lower Canada, to one Verrault, of Ste. Marie, Beauce. That decision, however, was overruled by the legislature itself in 1853, by a declaratory act, the 16th Vic. ch. 260, wherein it is declared to remove all doubt, that the intention of the legislature, in the aforesaid act of 1818, was to prohibit the building of any bridge or bridges whatsoever in opposition to Verrault's toll-bridge. To show how similar on this point the charter there in question was to the one now under consideration, I quote it at length.

Sec. 6. No person or persons shall erect or cause to be erected any bridge or bridges or works, or use any ferry for the carriage of any persons, cattle or carriages whatsoever, for hire (pour gages) across the said river Etchemins, within half a league * * * and if any person or persons shall erect a toll-bridge or toll-bridges over the said river Etchemins within the said limits, he or they shall pay to the said Verrault treble the tolls hereby imposed for the persons, cattle and carriages which shall pass over such bridge or bridges; and if any person or persons shall at any time, for hire or gain (pour gages ou gain) pass or convey any person or persons, cattle or carriages across the said river, within the said limits, such offender or offenders shall, for each person, animal or carriage so carried across, forfeit and pay a sum not exceeding forty shillings. Provided that nothing in this act contained shall be construed to prevent the public from passing any of the fords in the said river or in canoes without gain or hire (sans lucre ou gages).

(1) 6 L. C. Jur. 149.

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The court had construed that clause as the appellants here would construe section 3 of the respondent's charter, that is to say, as prohibiting only a toll-bridge within the grantee's limits and not a free bridge. That construction the legislature declared to have been erroneous, and contrary to its intentions. Could it not be argued here, if it was at all necessary for respondent's case, that, by this declaration of the legislature of what is the construction to be given to that section of Verrault's charter, the court must give a similar section re-enacted in a subsequent charter *in pari materia*, even to another party, that same construction that the legislature has declared must be the true construction of the previous one? In other words, what the legislature meant in 1881, by section 3 of the respondent's charter, must be what it meant by the same section enacted in 1818.

It is exactly, it seems to me, as if the legislature, in 1881, had contracted with the respondent that he would have, as to this bridge, the same rights that were conceded to Verrault, in 1818, as to his bridge.

An additional argument against the appellant's contention is derived from the very first section of the respondent's charter, whereby the legislature provided for the case, and the only case, where they might, after eight years, have a free bridge in this locality. It reads as follows:—

> After the expiration of eight years from the passing of the act, it shall and may be lawful for the municipality of St. George to assume the possession of the said bridge and dependencies and to acquire the ownership thereof, upon paying to the said David Roy the value which the same shall, at the time of such assumption, bear and be worth, with an addition of twenty per centum, and after such assumption, it shall become a free bridge and shall be maintained by the municipality as such free bridge.

The appellants would contend, for they are driven to go so far, (and the superior court had supported

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their contention) that they had the right to build a free bridge in the locality at any time immediately after the erection of the respondent's toll-bridge, or even simultaneously with it. That cannot be, in my opinion. Such a contention, if it were to prevail, I have already remarked, would clearly render vain and illusory, and nullify the grant made to the respondent. Comp. *Anderson* v. *Jellet* (1). And apart from the reasons I have hereinbefore attempted to explain, this first section further demonstrates, in my opinion, the unsoundness of the appellant's proposition. It is only after eight years from the passing of the act that this municipality can, there, have a free bridge, and then, not one in opposition or adverse to the respondent's grant, but only upon expropriating his bridge and paying him, not merely the actual value thereof, as in ordinary expropriations, but an addition of 20 per cent over and above such value, the legislature thereby clearly, it seems to me, showing that, in its intention, such an expropriation, at the end of eight years, would deprive the respondent of a privilege for the balance of the thirty years against any bridge whatever, the 20 per cent above the value being for that privilege and franchise. Such a clause would not be found in the statute if, as they contend, this municipality, appellant, had, and has had, the right, at any time, to erect a free bridge within one league from the respondent's toll-bridge. It would have been futile, and ironical almost, to grant to the municipality appellant the right of expropriating the respondent's bridge, without any privilege in their favour thereafter on their paying him 20 per cent more than its value, if they always had an independent right to build one themselves.

(1) 9 Can. S. C. R. 1.

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And, it must not be lost sight of, the erection of a free bridge by the appellants would not relieve the respondent from the duties and obligations cast upon him by the statute. He would be deprived of all the benefit of the franchise, whilst he continued liable during the unexpired term of thirty years to all the burdens imposed upon him. He would have to keep his bridge in repair under a penalty of ten dollars a day, and give to the public without distinction the right to pass over it. For though the bridge is his property, yet he could not in law, refuse to any one the right of passage over it, upon payment of the statutory tolls.

Upon the consideration of the right to an exclusive toll for 30 years, he disbursed a large amount to build it, and to repay to Cahill and Gilbert, as obliged to by his charter, their cost of a temporary bridge they had erected in this same locality. This consideration the appellants would take away from him and leave nothing but the charges and obligations. They have not the right to do so, in my opinion. The rights of a grantee are not to be extended by implication they say. Spoliation is not to be authorized by implication, I would say.

In France, as in England and the Unites States, as might well be expected, it is held that the right to a franchise of this nature called *droit de bac* and *de pontonage* must necessarily be exclusive and entitle the grantee *ex necessitate rei* to restrain all interference with his right. Daniel des Cours d'Eaux (1); Bacquet, des Droits de justice (2); Henrys, Ferrière dic. de Droit vo. Péage (3); Dupont, Actions possess (4); Dalloz, rép. vo. Voirie par Eau (5); Domat, Dr. publ. tit. (6); 3 Despeisses (7).

(1) Vol. 1, 234 à 238.
(2) Ch. 30 no. 19 & seq.
(3) Vol. 1 ch. 1 quest. 77 page 233, des péages.
(4) Nos. 461 à 469.
(5) Nos. 400, 584.
(6) 8 Sec. 1 par. 7.
(7) P. 233, du droit de péage; see also Merlin Rep. v. péage.

We see in Lebret's decisions (1) that the King Louis XIII. having run great danger in crossing the Seine at Neuilly in a scow decided that a bridge should there be built, and that this bridge be built by private parties, upon the king granting them an exclusive right to tolls during a certain time. By an arrêt of March 4th, 1705 (5 Journ. des audiences 507), it appears that the king himself, Louis XIV., successor to the grantor, paid an annual sum for the passage of the officers of his household.

And in Anc. Dénizart (2), the following case is reported:

The Seignior of Coulonge, owner of the franchise of a ferry across the River Saône, took proceedings against one Bourdance, to prohibit him and his servants from crossing the river in his own scow opposite his residence, twelve hundred feet from the ferry. In the Court of first instance, the Seignior obtained a judgment in his favour. This judgment, however, was reversed in appeal on the 9th January, 1758, but only upon a declaration by Bourdance that he admitted the plaintiff's right to the franchise, and upon his binding himself not to allow any one else but members of his family and his servant to cross at all in his scow. This is a clear case where, long ago, a free passage to the public was held to be an infringement of the franchise of a ferry.

In modern times, this doctrine, in a case under analogous circumstances, of *Turquand* v. *Goagon* (3), has received the sanction of the Court of Cassation.

In another case reported in Sirey (4), the grantee of a toll-bridge was held to be entitled to recover damages from the state for a breach of the state's contract, by having allowed the construction of a railway bridge

(1) *Liv.* 5, *décision* 12.
(2) Vo. *Bac.*
(3) S.V. 52, 1, 15.
(4) S. V. 54, 2, 158.

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within the limit of the toll-bridge privilege. See also Sirey 59, 2, 461.

In 1875 also, Sirey (1), *Re Société des Ponts de St. Michel*, the state was declared to be responsible in damages for the erection of a free way of crossing within 40 metres of a toll-bridge. A prior case in Sirey (2), and another one in Sirey (3), seem to have been determined in a contrary sense. However, they merely declare the right generally of the state to build a new bridge, without compensation, near a toll-bridge, and have no application here. They are, moreover, overruled by the more recent cases, and, at most, demonstrate, if demonstration was needed, that Sirey, like Dalloz, may well be termed:

Un arsenal du droit français où toutes les erreurs peuvent trouver des arrêts et tous les paradoxes des autorités (4).

A case of *Guerin* v. *l'Etat* (5), before the Conseil d'Etat in 1869, is absolutely in point. The plaintiff had obtained from the state, in 1851, the grant of the franchise of a toll-bridge of which he was in possession. The state subsequently built a free bridge on the same river, three thousand metres from the plaintiff's toll-bridge. Thereupon, an action of damages against the state was instituted. The action was dismissed, but only upon the ground that the distance between the new bridge and the toll-bridge was such that the plaintiff could not be admitted to contend that his privilege extended so far, and without questioning at all his right to an exclusive privilege, even against a free bridge, within a certain distance below and above his own bridge, though such was not expressly reserved to him in his charter.

Le requérant (said the Minister of the Interior for the state) se borne à soutenir que l'interdiction qui ne se trouve pas écrite dans son con-

(1) S.V. 77, 2, 30.
(2) S. V. 41, 2, 110.
(3) S. V. 46, 2, 350.
(4) Appleton, de la possession, no. 220.
(5) S.V. 70, 2, 135.

trat, y est sous entendue, c'est-à-dire qu'en lui concédant le droit de se rembourser au moyen d'un péage d'une partie du capital engagé pour la construction du pont de Magné, le gouvernement n'a pas pu se réserver la faculté de lui enlever les bénéfices qu'il croyait pouvoir retirer de ce péage. Cette observation est exacte, sans doute ; le concessionnaire d'un pont à péage doit avoir le monopole du passage dans une certaine étendue de la rivière ; mais évidemment aussi cette étendue a des limites. Le perimètre de protection reservé aux entrepreneurs ne peut pas être illimité.

And on this last ground alone, as I have said, the grantee's claim was dismissed.

GWYNNE J.—I cannot entertain a doubt that the true construction of the act which has conferred upon the plaintiff his franchise is that so long as the franchise continues in force it is not competent for the appellants to erect or maintain a free bridge within the limits over which the franchise operates without expropriation of the plaintiff's franchise rights by compensating him as the act provides after expiration of eight years. I entirely concur in the judgment of my brother Taschereau, and that the appeal be dismissed with costs.

PATTERSON J. concurred.

Appeal dismissed with costs.

Solicitors for appellants: *Taschereau & Pacaud.*

Solicitor for respondent: *F. X. Drouin.*