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 \*Feb. 13, 14.  
 \*April 22.

THE CITY OF MONTREAL.....APPELLANT;  
 AND  
 J. E. DUPRE .....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
 PROVINCE OF QUEBEC

*Municipal corporation—Exemption of taxes—Resolution of council—By-law—Approval of electors—Existing industry—(Q.) 34 Vict., c. 18—(Q.) 34 Vict., c. 68, s. 943—(Q.) 40 Vict., c. 29, ss. 229, 231, 366—(Q.) 44-45 Vict., c. 20, (Q.) 62 Vict., c. 39, s. 1—R.S.Q. (1888) ss. 4004, 4005, 4006, 4559, 4642, 4643—R.S.Q. (1909) s. 5775—Charter of Maison-neuve, 61 Vict., c. 57, s. 65; 63 Vict., c. 53, s. 19.*

A town corporation governed by the provisions of the "Cities and Towns Act" (R.S.Q. (1888) Title XI) cannot by a mere resolution of its council exempt from the payment of municipal taxes a party not actually carrying on an industry within its limits; but such exemption must be granted by a by-law brought before the council at two different meetings. Duff and Maclean JJ. *contra*. *Corporation of Chambly v. Lamoureux* (19 Rev. Leg. 312) discussed.

*Per* Idington and Mignault JJ.—Such a by-law does not require the approval of the municipal electors who are proprietors. Malouin J. *contra*.

Judgment of the Court of King's Bench (Q.R. 35 K.B. 43) reversed, Duff and Maclean JJ. dissenting.

\*PRESENT:—Idington, Duff, Mignault and Malouin JJ. and Maclean J. *ad hoc*.

APPEAL from the decision of the Court of King's Bench, Appeal Side, province of Quebec (1) reversing the judgment of the Superior Court (1) and maintaining the respondent's opposition to a seizure of immovables made by the appellant.

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The respondent, in 1911, obtained from the town of Maisonneuve, then a suburb of Montreal and now a part of the city, a ten years' exemption from taxation for a manufactory which he proposed to establish therein. After being granted this exemption, he fulfilled all its conditions, and as between the town of Maisonneuve and himself the alleged contract was faithfully observed. But the city of Montreal, having in 1918 annexed the town of Maisonneuve, disputed the legality of this exemption, which, at the time the proceedings were initiated, had almost run out. There were, however, some years of taxation unpaid since the date of the annexation, and it is as to this liability that the contest arose. The trial judge decided the case in favour of the city, but his judgment was reversed by the Court of King's Bench, Mr. Justice Rivard dissenting. The city now appeals.

The exemption was granted in April, 1911, by a mere resolution adopted by the town council. It is urged that a by-law was necessary and further that such a by-law required the approval of the municipal electors who were proprietors.

*Laurendeau K.C. and Parent* for the appellant.

*Geoffrion K.C. and Jalbert K.C.* for the respondent.

IDINGTON J.—Having, after I had perused and considered the several judgments of the respective judges in the courts below, availed myself of the opportunity of perusing the judgment of my brother Mignault, I have come to the conclusion that the reasoning adopted by him is correct and, agreeing therewith, I think this appeal should be allowed with costs herein and in the court appealed from, and the formal judgment of the Superior Court be restored.

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DUFF J. (dissenting).—This is an appeal from a judgment of the Court of King's Bench reversing a judgment of Mr. Justice Mercier. The point in controversy concerns the validity of a resolution of the town of Maisonneuve of the 19th April, 1911, purporting to exempt from taxes for ten years the property of the Dominion Die Company on certain specified conditions. "The Dominion Die Company" was a trade name under which the respondent carried on business, in which he alone was interested. At the time of the passing of the resolution the respondent was not carrying on any business in Maisonneuve. The sole question for consideration on the appeal is the validity of the resolution mentioned.

Maisonneuve, by 8 Geo. V, c. 84, was annexed to Montreal, but by paragraph (b) of section 1 of that statute it was provided that the resolutions of the annexed municipality should remain in force, notwithstanding the annexation. It is admitted that the resolution in dispute was, down to the time of the annexation, recognized as valid by Maisonneuve. The charter of the town was consolidated in 1898, previous to the granting of the exemption, by 61 Vict., c. 57, and subject to special provisions of the charter the municipality came under the operation of the "Cities and Towns Act."

The respondent invokes in support of the resolution sections 4559, 4642 and 4643, R.S.Q., 1888. On behalf of the appellant municipality it is contended that the first mentioned section authorizes exemptions only in favour of persons who at the time of the passing of the resolution are carrying on the industry, trade or enterprise in respect of which the exemption or commutation authorized by the section is granted; and as regards the two last mentioned of these sections, it is said that by force of other enactments of the Revised Statutes, and especially of sections 4404 and 4406, the exemption thereby authorized can only be effectively granted after the submission to the rate-payers of a by-law creating such exemption; and subsidiarily, that by the express terms of sections 4642 and 4643, the exemption must be embodied in a by-law which before the passing of it has been twice considered at separate meetings of the council. The attempt, it is therefore

argued, to execute the power given by these two sections by a simple resolution was merely inoperative.

The language of section 4559, read without reference to other provisions of the Revised Statutes, seems to be sufficiently clear; the relevant paragraph is in these words:

4559. The council may, by a resolution exempt from the payment of municipal taxes, for a period not exceeding twenty years, any person who carries on any industry, trade or enterprise whatsoever, as well as the land used for such industry, trade or enterprise.

The adjectival clauses,

who carries on any industry, trade or enterprise whatsoever  
and

used for such industry, trade or enterprise,

contemplate the state of affairs to exist during the currency of the exemption granted, and import the conditions upon which the grantee is to be relieved from taxation, which relief is to be operative, obviously, only while the conditions are fulfilled.

That is the natural reading of the language, which is not ambiguous, and the authority conferred seems to be exerciseable in favour of persons who are about to establish a business or industry, as well as in favour of those who are carrying on an established one. The distinction now made between established industries and industries to be established is not to be found in the language which the legislature has employed in this section to express its meaning.

The appellant municipality advances the view that notwithstanding the language of section 4559, an inference is to be drawn from sections 4404 and 4642 making this construction of section 4559 inadmissible. When these sections are read together, the legislative policy said to be revealed is that two separate and mutually exclusive systems of relief from taxation are to be in operation side by side, the one system being operative for the benefit of newly established industries, and the other for the benefit of existing industries alone.

For the purpose of examining this argument it is more convenient, I think, to deal with these sections historically; and it is well to observe at the outset that it is of cardinal importance to notice that the statute bringing in force the Revised Statutes of 1888 contains this clause (50 Vict., c. 5):

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8. The said Revised Statutes shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said acts and parts of acts so repealed, and for which the said Revised Statutes are substituted.

Sections 4559 and 4642 were both originally enacted in the year 1870: they are found in separate statutes. Section 4559 reproduces in slightly modified form (and with an extension of the period of exemption from five to twenty years) section 943 of c. 68 of the statutes of that year, which brought into force for the first time the Municipal Code of the province. Section 943 applies to local municipalities, and local municipalities include parishes, villages, and towns to which the Municipal Code applies; that is to say, towns not incorporated by special charter. Towns so incorporated, and all cities, are excluded from the ambit of the code. The code is what its name imports a code of the laws governing the municipalities, as municipalities, to which the enactment applies. Effect must therefore be given to the enactments of section 943 according to their terms, in the absence of any qualifying context in the provisions of the code itself and of any clearly expressed overriding enactment to be found elsewhere. Section 943, in so far as material, is in these words:

943. The council of every local municipality may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding five years, any person who carries on any business, trade or mining or manufacturing enterprise whatsoever, as well as the land used for such enterprise \* \* \*.

There is nothing in the code itself which is referred to as a qualifying context, and there can, I think, be little room for controversy that this provision, considered in itself, was sufficient to authorize (for the period of five years) such an exemption as was granted to the respondent by the town of Maisonneuve.

In the same year the statute was passed which appears later as sections 4642 and 4643 R.S.Q., 1888. That enactment was entitled, "An Act to encourage the introduction and establishment of new manufactories in the province." It was stated in the recitals that the introduction and establishment of such manufactories would tend to develop the productive resources of the province and increase its prosperity; and the enactment proceeded to authorize

municipal corporations, including cities, towns and villages, to grant exemptions for ten years from taxation. The contention advanced on behalf of the appellant is that the enactment of this legislation involved by necessary implication a qualification of the language of section 943 of the Municipal Code enacted in the same year, by which section 943 was restricted in its scope to businesses, trades and enterprises already existing at the time of the passing of the resolution.

Section 943 and chapter 18 are, it is said, complementary enactments; the one providing for the exemption of industries to be established, and the other for the exemption of something already established.

This argument fails when the two enactments, in point of scope and practical effect, are considered and compared. The Municipal Code applies to townships, villages and towns not incorporated by special charter; while chapter 18 applies to all cities and all towns, as well as to villages. The Municipal Code authorizes exemptions for five years; chapter 18 authorizes exemptions for ten years. Chapter 18, moreover, by section 3, makes special provision for granting exemptions to established industries, indicating, and this was probably the fact, that the municipalities which were considered most likely to avail themselves of its provisions were municipalities of a class to which the Municipal Code did not apply; that is to say, cities and towns incorporated by special Act. To all this may be added a distinction of great significance, which seems to have been overlooked in the argument on behalf of the appellant, that chapter 18 authorizes the exemption of manufactories only, while under the provisions of the Municipal Code the exemptions granted may affect any business, trade or mining or manufacturing enterprise.

It is indeed difficult to perceive any good reason for ascribing to the legislature by a non-natural reading of the words of section 943 the intention to limit the operation of that section to businesses and enterprises already established and to exclude from its ambit those to be established in the future. As already observed, chapter 18 authorizes the exemption of manufactories only, and on the construction contended for, no business, trade or enter-

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prise not a manufactory could be exempted by any municipality, unless it was already established at the time of the passing of the resolution creating the exemption. If exemption of such establishments was to be permitted, it seems singular, to say the least, that a municipality should be disabled from creating an exemption for the purpose of encouraging new trades and industries as well as assisting those already in operation; and I can think of no justification for departing from the normal reading of section 943 for the purpose of giving it such effect.

It is difficult to think of any definite policy in relation to manufactories which could be supposed to have inspired the enactments of c. 18 as well as that of section 943 of the Municipal Code; in truth we seem to have here two independent chapters of legislation which accidentally overlap, an occurrence neither startling nor uncommon.

The next stage in the history of the legislation is the enactment in 1876 of the "Town Corporations General Clauses Act," which was chapter 29 of the statutes of that year, 40 Vict. By sections 1 and 2, the provisions of that Act were made applicable to every town corporation or municipality to be thereafter established by the legislature of the province; and it was declared that they should constitute part of the special Act unless expressly excluded by the terms of that Act. By section 366 of the Act of 1876 the provision of section 943, slightly changed (but *ipsissimis verbis* in so far as pertinent to the questions in controversy on this appeal), was re-enacted, the changes being that for "business, trade, mining or manufacturing enterprise," were substituted "industry, trade or enterprise," and the period of five years was replaced by twenty years. Here, again, it is to be observed that this statute of 1876 is in form and effect a municipal code for the municipalities governed by it; and *prima facie* its provisions are to take effect according to the proper construction of the words in which they are expressed, read in light of other parts of the code and without regard to the provisions of other statutes. This statute contains nothing which qualifies the language of section 366.

The next stage in the progress of the law is marked by the enactment of the Revised Statutes of Quebec of 1888,

in which the provisions under discussion are, as already mentioned, reproduced, section 366 of the Act of 1876 appearing as section 4559 and c. 18 of 1870 as sections 4642 and 4643; and in construing them they are, by the express direction quoted above, to be read precisely as they should have been read before they were brought into the revision.

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The next step, and it is one of very considerable importance, is a decision of the Court of Queen's Bench affirming the decision of the Circuit Court in 1890, in *Chambly v. Lamoureux* (1). The controversy arose in respect of a resolution passed by the council of the appellant municipality on the 3rd January, 1881. The resolution is expressed to be in conformity with section 943 of the Municipal Code, and it provides that one Samuel T. Willett should be exempt for a period of twenty years on his new factory and outbuildings, and then proceeded to grant a general exemption, not only to Willett and his legal representatives, but to others, on "all buildings to be erected" within the limits of the municipality, for the purpose of industry or trade, and for the land used for such purposes; the exemption to be granted from the date the factory and outbuildings should be put into operation. The defendants, who were sued for taxes, had after the passing of the resolution established and put into operation a brewery, and in respect of this brewery they claimed exemption under the terms of the resolution. Taschereau J., in the Circuit Court, held that the exemption was not *ultra vires*. The municipality appealed to the Court of Queen's Bench, and the argument as reported is in substance the same as the argument addressed to us on this appeal, with the additional contention that the resolution, in so far as it purported to grant a general exemption to persons establishing industries after the passing of the resolution, was beyond the intendment of section 943, which had contemplated not a general regulation on the subject, but resolutions dealing with particular cases. This argument was rejected and the judgment of the Circuit Court was unanimously confirmed by the Court of Queen's Bench. The decision of the Court of Queen's Bench is necessarily a decision on the points raised on behalf of the appellant

(1) 19 R.L. 312.



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municipality which, as I have already said, were in substance points now urged in criticism of the judgment appealed from. There can be no doubt that the Court of Queen's Bench (Dorion C.J., Tessier, Cross, Bossé, Doherty JJ.) dealt with the merits of the question of the validity of the resolution, although according to the report an argument seems to have been advanced on behalf of the respondent touching the competency of the appeal. This is made quite plain by the formal judgment, a certified copy of which has been furnished us.

By the judgment of the Circuit Court it was, as I have mentioned, formally declared that

le dit règlement n'est pas *ultra vires*;

and the judgment of the Court of Queen's Bench is in these words:

La cour, après avoir entendu les parties, par leurs avocats, sur le mérite, examiné le dossier de la procédure en cour de première instance, la requête d'appel et sur le tout mûrement délibéré: Considérant qu'il n'y a pas mal jugé dans le jugement rendu par la Cour de Circuit pour le Bas Canada, siégeant à Montréal, le dix-huitième jour de février mil huit cent quatre-vingt-neuf et dont est appel, confirme le dit jugement avec dépens contre l'appelante en faveur des dits intimés.

The series of reports in which this case is reported was edited by Mr. Justice Mathieu of the Superior Court, and the case itself is cited in that learned judge's edition of the Municipal Code published in 1894, in these terms:

Une corporation municipale peut, sous les dispositions de cet article, exempter des taxes municipales, non seulement les manufactures spécialement mentionnées dans une résolution passée à cet effet, mais encore toutes les industries nouvelles, qui s'établiront à l'avenir dans les limites de la municipalité, et cette exemption comprend les taxes spéciales imposées pour aider à la construction d'un chemin de fer. (*La corporation de village du canton de Chambly et Lamoureux et al*, C.B.R., Montréal, 23 mai 1890, Dorion J. en C. Tessier J., Cross J., Bossé J., et Doherty J., confirmant le jugement de C.S., Montréal, 18 février, 1889, Taschereau J., 19 R.L., p. 312.)

In 1898 the decision is cited by Mr. Bédard K.C., in the first edition of his book on the Municipal Code published in that year, and again in the second edition, published in 1905, as authority for the same proposition. The Municipal Code continued unamended in this respect down to 1916, when it was re-enacted in amended form, and the authority to grant exemptions of every description was abrogated.

The next step to be noticed is the re-enactment of the "Towns Corporations Act," in 1909. Section 4559 of the revision of 1888 is reproduced as section 5775, which is in form identical with the earlier section except in this, that it is expressed to be subject to sections 5929 and following. Now it is important to observe that section 5929 deals with bonuses to manufactories to be established, as distinguished from manufactories already established. As the distinction seems to be clearly drawn throughout these statutes between exemption from taxation and bonuses, although in effect exemption from taxation is necessarily a subsidy, it is difficult to say what application these sections can have to the subject dealt with by section 5775. The reference to section 5929, however, which deals only with industries to be established, certainly gives no countenance to the construction contended for on behalf of the appellant municipality. Subject to that, the legislation is re-enacted in the form in which it appeared in the "Towns Corporations Act" of 1876, and in substance in the same words as those which were the subject of the judgment of the Court of Queen's Bench in *Chambly v. Lamoureux* (1).

The authority of decided cases, it is needless to say, in the province of Quebec stands upon a footing which is not the same as that upon which it is based in the law of England. Nevertheless, the central idea of *stare decisis* has not often been better expressed than in the sentence of Paul: *Minime sunt mutanda ea quae interpretationem certam semper habuerunt.* D. 1.3.23;

and the importance of adhering to an interpretation of a statute given in an authoritative decision which has been accepted for many years without challenge is recognized by writers on the French law; for example, 1 B.L., section 261. It is impossible to suppose that the legal advisers of municipalities governed by the "Towns Act" and of municipalities governed by the Municipal Code have not been familiar, since the appearance of the report, with the decision in *Chambly v. Lamoureux* (1), or that they have failed to treat it as an authoritative exposition of section 943 in the sense ascribed to the decision by Mr. Justice Mathieu in the note quoted above; I cannot doubt that it must have

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been acted upon in this sense. Certainly the municipality of Maisonneuve assumed, in passing the resolution now in dispute, the existence of the authority under section 4559 which municipalities were held by the Court of Queen's Bench to possess under section 943 of the Municipal Code; and I cannot suppose that this was an isolated case. This, taken together with the circumstance that in 1909 section 4559 was re-enacted without material alteration in the Revised Statutes of that year, convinces me that the decision in 1890 is a decision which ought not now to be departed from, even if there were better reasons than have been adduced on this appeal for disagreeing with the decision in so far as it is relevant here.

As to section 4404, that section in the main is a reproduction of section 229 of the "Towns Corporation General Clauses Act," 40 Vict., c. 29, which provided for aiding in certain ways, not including exemption from taxation, the construction of public works by incorporated companies and by the provincial government. Later this was amended by adding industrial undertakings to the enterprises to which aid might be granted under that section, but still authority was withheld to give aid in the form of exemption from taxation. It was not until the revision of 1888 that a sub-paragraph was added—sub-paragraph (4)—which authorizes aid,

by exemption from the payment of municipal taxes, assessments and dues, certain industrial establishments, according to the provisions of

section 4642 of the Revised Statutes and following. This reference, which was introduced into section 4404 by the revisers to the provisions of sections 4642 and following cannot legitimately be regarded as affecting the construction of section 4559 when the provision of the statute under which the revision took place is kept in view, which has already been referred to, that the Revised Statutes

shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law

in the statutes for which the Revised Statutes are substituted.

Counsel for the respondent also supports the resolution under the authority of section 4642. Two answers to this contention are put forward: First, it is said that by force of section 4643 an exemption under section 4642 can only

take effect when embodied in a by-law passed after consideration at two meetings of the council; and second, it is said that by force of section 4406 the by-law is inoperative unless sanctioned by the approval of a vote of ratepayers. The first of these answers is met by the respondent with a reference to section 65 of the Charter of Maisonneuve, 61 Vict., c. 57, which provides that except as regards by-laws other than those which must be submitted for the approval of the electors, the town council may exercise its powers by by-law or resolution. It is answered that this is a general provision, which can have no application to special powers given by special enactment, which in explicit terms require that they shall be exercised by by-law. Now it is to be noted that this provision does except the particular case of by-laws which must be submitted for the approval of the electors, an exception which, apart from special mention, would naturally be implied if any exception was to be implied; and I find it a little difficult, in face of this explicit exception, to imply an exception merely because it is required that a given power shall be exercised by a by-law passed after it has been considered at two separate meetings of the council. On the whole I think this objection fails.

As to the second objection, I am inclined to think it may fairly be affirmed that a by-law passed under the authority given by section 4642 is not a by-law passed in virtue of section 4404, and therefore that section 4406 does not apply to it.

The appeal should be dismissed with costs.

MIGNAULT J.—Were it not for the rather unskillful draftsmanship of the Quebec Revised Statutes of 1888, this case would give rise to but little difficulty. But the compilers of the revision introduced therein overlapping and what at first sight might appear irreconcilable provisions, and the dispute between the parties is as to which set of enactments should be applied. In my consideration of this question, I have not been a little aided by the memorandum of statutes filed by the parties at our request.

The respondent, in 1911, obtained from the town of Maisonneuve, then a suburb of Montreal and now a part of the city, a ten years exemption from taxation for a manu-

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factory which he proposed to establish therein, employing sixty or seventy hands. After being granted this exemption, he fulfilled all its conditions, and as between the town and himself the alleged contract was faithfully observed. But the city of Montreal having, in 1918, annexed the town of Maisonneuve, and with it its many liabilities, disputes the legality of this exemption, which, at the time the proceedings were initiated, had almost run out. There were, however, some years of taxation unpaid since the date of the annexation, and it is as to this liability that the contest arose. The trial judge decided the case in favour of the city, but his judgment was reversed by the Court of King's Bench, Mr. Justice Rivard dissenting. The city now appeals.

The exemption was granted in April, 1911, by a mere resolution adopted by the town council. It is urged that a by-law was necessary and further that such a by-law required the approval of the municipal electors who were proprietors.

We have been referred to no less than three sets of enactments as to exemption from municipal taxation in the Revised Statutes of 1888 by which this case is governed.

First there is article 4559, the first paragraph of which reads as follows:

The council may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding twenty years, any person who carries on any industry, trade or enterprise whatsoever, as well as the land used for such industry, trade or enterprise, or agree with such person for a fixed sum of money payable annually for any period not exceeding twenty years, in commutation of all municipal taxes.

This article allows the granting of the exemption by a resolution of the municipal council. It is, however, argued that it applies only to an existing industry, not to one to be established, and this is said to result from the words "who carries on any industry," etc., in the French version "qui exerce une industrie." As to new manufactories, it is contended, resort must be had to other provisions. This brings us to the second and third sets of enactments which must be considered together.

Taking them in their order, I will first give the text of articles 4404, 4405 and 4406 of the same Revised Statutes.

These sections are among those which deal with the powers of the town council exerciseable by by-law.

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4404. To aid in the construction of any bridge, causeway, pier, wharf, slide, macadamized or paved road, railroad, or other public works, or any manufacturing establishments situated in whole or in part within the municipality or in its vicinity, undertaken and built by any incorporated company, or by the Provincial Government:

1. By taking and subscribing for shares in any company formed for such purpose;
2. By giving or lending money to such company or to the Provincial Government;
3. By guaranteeing by endorsement or otherwise any sum of money borrowed by such company;
4. By exempting from the payment of municipal taxes, assessments and dues certain industrial establishments according to the provisions of section sixth of chapter second of this title.

4405. To subscribe for or hold stock in any company formed for the purpose of constructing electric telegraph lines.

4406. Every by-law, passed in virtue of the two preceding articles, before coming into force and effect, shall be approved by the electors of the municipality who are proprietors, in the manner prescribed in articles 4531 and following to article 4535 inclusively.

The reference in the last paragraph of article 4404 to "section sixth of chapter second of this title" brings us to the third set of enactments which we find in articles 4642 and 4643.

These latter articles, preceded by the title "Exemption of new manufactories from municipal taxes," are as follows:—

4642. For the purpose of encouraging the introduction and establishment of new manufactories within their limits, it is lawful for any city, town, or village municipality to exempt from all taxes, assessments and municipal imposts whatsoever, for a space of time not exceeding ten years, any manufactory, not being a flour-mill, gas-works, or distillery, which any individual, commercial firm, or corporation may have undertaken, or may undertake to establish.

2. Such exemption shall extend, not only to the buildings and grounds used by such manufactory, but also to all the moveables and machines employed in such manufactory, as well as to all articles manufactured therein.

3. In any case in which the exemption from taxes as hereinabove mentioned, in favour of a new manufactory, would prejudice the interests of any manufactory already established, or would create an undue privilege against the latter, it shall be lawful for the municipal authorities to grant the same, or a proportionate exemption to every such pre-existing manufactory.

4643. Any person, desiring to establish a manufactory as aforesaid, is obliged to ask the permission of the municipal council and state the nature of the manufacture, its locality, the extent of the intended site, and whether he intends to use steam power.

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Such permission shall not be given unless previous notice be given by the person applying therefor to the council, and the council may make a by-law for the purpose, which by-law must be brought before the council at two different meetings thereof, and when the by-law is agreed to, it shall be equivalent to a contract in favor of the proprietors of the manufactory therein mentioned, their heirs and assigns, for all the time specified in such resolution.

The first point to be considered in connection with all these enactments is the distinction between *existing* and *new* manufactories. It is argued that the language of article 4559 is wide enough to comprise both, but the special provisions of the second and third sets of enactments cannot be ignored, and both refer to industries to be established or new industries.

To test whether the distinction is a real one, it will be useful to consider the history of this legislation, and for this purpose the memorandum of statutes to which I have referred is most helpful.

Going back to the consolidated statutes of Lower Canada of 1860, chapter 24, section 57, we see that it was provided that the municipal council might by agreement with any person carrying on, or proposing to undertake any mining or manufacturing business, wholly exempt any such business from assessment during a period of not more than five years.

The distinction between an existing and a proposed business is expressed here, but the same rule is applied to each. We will find however that, while maintaining this distinction, each class was afterwards differently dealt with. This brings us to the legislation adopted in 1870.

In that year, the legislature adopted, by chapter 68 of 34 Victoria, the municipal code of the province of Quebec which came into force by proclamation on the 2nd of November 1871. On the day it was sanctioned, 24th of December, 1870, Royal assent was given to the statute, 34 Victoria, chapter 18, intituled "An Act to encourage the introduction and establishment of new manufactories in this province," and which in substance was to the same effect as articles 4642 and 4643 above quoted, the exemption period being also ten years.

And article 943 of the municipal code adopted at the same session allowed the exemption from municipal taxes

for a period not exceeding five years (subsequently extended to twenty years) of any person

who carries on any business, trade, or manufacturing enterprise whatsoever, etc.

The municipal code applied to all the territory of the province, excepting cities and towns incorporated by special statutes, and 34 Victoria, chapter 18, was made applicable to any incorporated city, town or village. It would, therefore, seem that at least as to the latter—and it is not necessary to consider any other municipalities—and as to the scope of article 943 of the municipal code, the distinction between existing and new enterprises was preserved, the exemption period however not being the same in both cases.

We now come to the enactment, in 1876, by 40 Victoria, c. 29, of the Town Corporations General Clauses Act.

In section 366 of this statute we find a provision to the same effect as article 943 of the municipal code, as amended. The exemption period is twenty years, the mode of granting it is by a resolution and the exemption can be made in favour of

any person who carries on any industry, trade, or enterprise whatsoever. This section was included in the revision of 1888 as article 4559 above quoted.

Section 229 of the same statute empowered the town corporation

to aid in the construction of any bridge, causeway, pier, wharf, slide, macadamized or paved road, railroad or other public work situated in whole or in part within the municipality or in its vicinity, undertaken and built by any incorporated company, or by the provincial government:—

1. By taking and subscribing for shares in any company formed for such purpose;
2. By giving or lending money to such company or to the provincial government;
3. By guaranteeing by endorsation or otherwise any sum of money borrowed by such company.

By section 230 the council was authorized to subscribe for or hold stock in any company formed for the purpose of constructing electric telegraph lines.

Finally section 231 provided that every by-law passed in virtue of the two preceding sections, before coming into force and effect, should be approved by the electors of the municipality who are proprietors in the manner prescribed

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in sections 356 and the following to section 360 inclusive.

In 1881, by 44-45 Victoria, chapter 20, section 229 was amended by adding after the words "public work" in the first paragraph the words "or any manufacturing establishment."

With this amendment, the council could by by-law—for section 229 was among the sections describing the powers of the council exerciseable by by-law (section 223)—aid in the construction of any manufacturing establishment by the means enumerated in subparagraphs 1, 2 and 3 above mentioned.

It seems clear that to aid in the construction of any manufacturing establishment means to aid a new or not yet established industry, so that we find here the same distinction between existing and new establishments which is further emphasized by article 4642 cited above.

When the revision of 1888 was effected, a new and fourth paragraph was added to section 229 which became article 4404 of the Revised Statutes. There was no warrant for this addition in previous legislation, and it is difficult to say why the Commissioners who prepared the revision inserted it here, for they had provided for the exemption from taxation in article 4559 and articles 4642 and 4643 of the revision, to the latter of which indeed they refer. This fourth paragraph, the principal cause of the controversy which has arisen in this case, reads as follows:—

4. By exempting from the payment of municipal taxes, assessments and dues certain industrial establishments, *according to the provisions of section sixth of chapter second of this title.*

The words I have italicized refer to articles 4642 and 4643, the text of which I have given above. It is to be remarked that under articles 4642 and 4643 a by-law is sufficient, provided it be brought before the council at two different meetings, to form a contract in favour of the proprietor of the manufactory therein mentioned, his heirs and assigns, for all the time specified in such by-law. The addition of paragraph 4 to article 4404, the appellant argues, shews that not only must the exemption by-law be thus brought before the council at two different meetings, but that it must also, before coming into force and effect, be approved by the electors of the municipality who are proprietors. I will examine this contention in a moment.

To complete the review of the pertinent enactments, I may say that, in 1899, by 62 Victoria, chapter 39, section 1, the first paragraph of article 4404 was amended so as to permit the council to grant the contemplated aid to a person as well as to a company or to the provincial government.

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Before attempting to place a construction on these articles, reference must be made to some provisions of the charter of the town of Maisonneuve, 61 Victoria, chapter 57, passed in 1898.

Section 60 states that notwithstanding article 4404 of the Revised Statutes and in the spirit of that article, permission is granted to the town to grant aid to any railway, manufactory, brewery, distillery, or other industrial or commercial establishment now established or which may wish to establish themselves within the limits of the town by giving or undertaking to give them land for their buildings and operations. And some bonuses and privileges already granted are confirmed.

By section 65 of the same statute it is stated that with the exception of the by-laws which must be submitted to the approval of the proprietors who are municipal electors, the town council may exercise its powers by by-law or resolution.

Finally in 1900 the charter of Maisonneuve was further amended by 63 Victoria, chapter 53, section 19, by adding thereto section 60a which declares that the town may exercise all the powers contained in articles 4402, 4403, 4404 and 4405 as well as in article 60 of 61 Victoria, chapter 57, in favour of any person, partnership, corporation or public body, and that it may exercise such powers in the form of a sale, loan, donation, exchange, lease, subscription \* \* \* exemption from taxation, or in any other way it may deem expedient.

In his factum the respondent calls attention to section 26 of the same statute which states that, among others, articles 4531, 4532 and 4533 shall not apply to the town of Maisonneuve, these articles being precisely among those referred to by article 4406 as prescribing the mode whereby the approval of the municipal electors may be obtained. This enactment would possibly complicate the situation were

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it not that the same section 26 declares that all the provisions of the municipal code that are not inconsistent with the Act or with the town corporations general clauses shall apply thereto and form part thereof, so far as the same is possible, *mutatis mutandis*. At that time, the municipal code fully provided for the mode of submitting by-laws for the approval of the municipal electors (article 671 *et seq.*).

Having now cited all the pertinent statutory enactments, my opinion is first that the distinction between existing and new industries, in so far as the exemption from municipal taxes is concerned, has been maintained throughout, and that consequently article 4559 of the Revised Statutes of 1888 and article 943 of the municipal code do not apply to the case of the respondent.

We are thus restricted to what I have called the second and third sets of enactments, that is to say to articles 4404 to 4406 and articles 4642 and 4643 of the Revised Statutes.

Paragraph 4 of article 4404 in connection with article 4406 furnishes the whole difficulty of construction. After serious reflection, I have come to the conclusion that paragraph 4 is less an enabling provision than a mere reference to the really enabling provisions of section 6 of chapter 2 of this title, that is to say a reference to articles 4642 and 4643. Such references (*dispositions de renvoi*) are not unfamiliar in statutory enactments and the Quebec Civil Code contains a number of them. If this construction be adopted it will be possible to harmonize articles 4404 to 4406 with articles 4642 and 4643, and the rule governing exemptions as to new industries will be found in the latter articles. It follows that the approval of the municipal electors who are proprietors is not necessary for the exemption is not granted in virtue of article 4404 but of articles 4642 and 4643.

This construction being adopted, it remains to be seen whether the respondent's exemption was legally granted. There was no by-law brought before the council at two different meetings, but merely a resolution submitted and voted upon at one meeting. Consequently the conditions of articles 4642 and 4643 were not satisfied. The respondent however relies on section 65 of the Maisonneuve charter the substance of which I have given above. But assuming that a mere resolution was sufficient, it should have been

considered at two meetings of the council, for this is not an idle formality but one destined to ensure due deliberation. And in my opinion there must be strict compliance with all the conditions laid down for the granting of an exemption from taxation so that, even giving full effect to section 65, these conditions were not fulfilled. I do not think that the saving provision of article 4186 of the Revised Statutes can avail the respondent, for these requirements are not mere formalities but are conditions going to the jurisdiction of the town council to grant an exemption from municipal taxation. I cannot therefore think that this exemption was validly granted to the respondent.

The respondent relies on the decision of the Court of King's Bench in *Corporation du Village de Chambly v. Lamoureux* (1).

The report of this case is most unsatisfactory. No reasons for the judgment of the Court of King's Bench are given; it is merely stated that the judgment of the first court was unanimously confirmed, and all we find in the report is a statement of the arguments of the parties. The judgment of the first court is extremely short and it refers to a by-law granting the respondent the exemption he invoked. The head-note speaks of a resolution, not a by-law, and in a foot-note a resolution is cited granting an exemption from taxation to Samuel T. Willett and to anybody else who would erect buildings for manufacturing purposes. It would not seem possible to contend that under the statute 34 Victoria, chapter 18, or articles 4642 and 4643 R.S.Q., 1888, a mere resolution could grant an exemption from taxation to any unnamed person who might in the future erect a building in the municipality for manufacturing purposes. Such an exemption would be void under this statute and these articles, and yet the head-note asserts that the council could grant it by a resolution passed under article 943 of the municipal code. That the Court of Queen's Bench did so decide seems very questionable, for the judgment of the first court, which was confirmed, speaks of

le règlement invoqué par les défendeurs \* \* \* les exemptant de payer toutes les taxes qui leur sont réclamées par cette action.

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If it had been shewn that this decision, as reported, had been followed in spite of its obvious error, I would hesitate to disturb a jurisprudence founded on it, but no such jurisprudence is shewn to exist. I, therefore, feel that I cannot accept this decision as an authority against the enactments I have mentioned.

I regret to have to come to a decision adverse to the respondent who observed in good faith the conditions of an exemption which was respected by the town of Maisonneuve until it became a part of the city of Montreal. But I must hold that the respondent has not shewn that the exemption from taxation was validly granted to him by the resolution which he invokes.

Since writing the above opinion I have had the advantage of reading and fully considering the reasons for judgment of my brother Duff. Perhaps I may be permitted to say that the fact that my learned brother has arrived at a different conclusion after an able and exhaustive study, in its different stages of development, of all this legislation, shews the difficulty of the problem which we have to solve. And while I have been unable to place, on article 4559 of the revision of 1888, a wide construction which would comprise even the manufactories mentioned in articles 4642 and 4643 of the same revision, with the result that an exemption from municipal taxation of a new manufactory could be supported under article 4559, although not granted in the manner specified by articles 4642 and 4643, I think, if I may say so with great respect, that the legislature of the province of Quebec would be well advised should it place the matter beyond any possible controversy by re-drafting all these provisions which appear in a scarcely modified form, in so far as tax exemptions are concerned, in the revision of 1909 (articles 5685, 5686, 5687, 5775, 5922 and 5923). There is moreover no conceivable reason why the exemption period should not be the same in all cases.

I would therefore allow the appeal with costs here and in the Court of King's Bench and restore the judgment of the learned trial judge.

MALOUIN J.—L'intimé a obtenu du conseil municipal de Maisonneuve en 1911 une exemption de taxes pour dix ans sur une manufacture qu'il se proposait d'établir dans les limites de cette municipalité. Cette exemption de taxes lui a été accordée par une simple résolution du conseil. L'intimé a établi sa manufacture dans les limites de la municipalité en conformité de la résolution.

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En 1918, la ville de Maisonneuve a été annexée à la cité de Montréal. Jusqu'à l'annexion, l'intimé n'a pas payé de taxes; mais après l'annexion l'appelante, prétendant que l'exemption de taxes accordée à l'intimé était illégale, en a exigé le paiement. Sur son refus de payer, elle a fait saisir les biens de l'intimé pour la somme de \$2,197.19, montant de taxes que ce dernier est censé devoir pour l'année 1918-19.

L'intimé a fait une opposition aux fins d'annuler à cette saisie, invoquant l'exemption de taxes que la ville de Maisonneuve lui a accordée.

L'appelante prétend que cette exemption de taxes est nulle parce qu'elle a été accordée par simple résolution, tandis que le conseil municipal aurait dû procéder par règlement à être soumis à l'approbation des électeurs propriétaires de la municipalité.

La cour supérieure a donné gain de cause à l'appelante; mais ce jugement a été infirmé par la cour d'appel, le juge Rivard étant dissident.

La seule question que nous avons à décider en est une d'interprétation de statuts. Il s'agit de savoir quel est l'article de la loi en vertu duquel le conseil municipal de Maisonneuve devait procéder pour accorder à l'intimé l'exemption de taxes sollicitée. Les parties ont admis que les statuts refondus de la province de Québec de 1888 s'appliquent à l'espèce.

Le conseil municipal paraît avoir procédé en vertu de l'article 4559 des statuts refondus de Québec de 1888. Je le reproduis en partie:

Le conseil peut par une résolution exempter des taxes municipales pour une période de vingt ans au plus toute personne qui exerce une industrie, un métier, ou se livre à une exploitation quelconque, ainsi que le terrain occupé par cette industrie, ce métier, cette exploitation, etc.

L'appelante prétend que cet article du statut ne s'applique qu'aux personnes exerçant une industrie dans les

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limites de la municipalité au moment où l'exemption est accordée et non aux personnes exerçant leur industrie en dehors de la municipalité. C'est, je crois, l'interprétation juridique et littérale du texte même. L'exemption de taxes est de droit strict, et l'interprète ne peut l'étendre au delà du cadre fixé par ce texte.

L'intimé a beaucoup insisté sur un précédent (1) où la cour d'appel paraît avoir décidé le contraire. Cette décision n'est pas motivée et ne peut nous aider dans la solution du présent litige.

La majorité des juges de la cour d'appel paraît s'être basée sur les articles 4642 et 4643 des statuts refondus de Québec de 1888 pour donner gain de cause à l'intimé. Je cite l'article 4642 en partie et l'article 4643 en entier :

4642. Dans le but d'encourager l'introduction et l'établissement de nouvelles manufactures dans leurs limites, il est loisible aux municipalités de cité, de ville et de village, d'exempter des taxes, cotisations et impôts, pour un temps n'excédant pas dix années, les manufactures autres que les moulins à farine, usines à gaz et distilleries, que des individus, des sociétés commerciales ou corps politiques et corporations ont entrepris et entreprennent d'y établir.

4643. Quiconque désire établir une manufacture, comme ci-dessus, est tenu de demander au conseil municipal le privilège de l'établir, de spécifier le genre de manufacture le lieu, l'étendue du terrain requis, et s'il entend se servir d'engins à vapeur.

Ce privilège ne peut être accordé sans avis préalable adressé et donné au conseil; sur ce, le conseil peut passer à cet effet un règlement qui doit être soumis à sa délibération à deux assemblées différentes; une fois adopté, le règlement a force de contrat en faveur des propriétaires de la manufacture y mentionnée, leurs hoirs et ayants cause, pour tout le temps spécifié dans ce règlement.

Je reproduis aussi au long les articles 4404 et 4406 de la loi des cités et villes qui s'appliquaient à la ville de Maisonneuve, car le texte de ces articles est essentiel à la décision du présent litige. Ils se lisent comme suit :

4404. Aider à l'établissement de ponts, chaussées, jetées, quais, glissoires, chemins macadamisés ou pavés, chemins de fer ou autres ouvrages publics ou tout établissement industriel situés en tout ou en partie dans la municipalité ou dans les environs, entrepris et construits par des compagnies constituées en corporation, ou par le gouvernement provincial :

1. En prenant et souscrivant des actions d'une compagnie formée ces objets;
2. En donnant ou en prêtant de l'argent à telle compagnie ou au gouvernement provincial;
3. En garantissant par endossement ou autrement, toute somme d'argent empruntée par telle compagnie;

(1) 19 R.L. 312.

4. En exemptant du paiement de taxes, cotisations et impôts municipaux, certains établissements industriels, conformément aux dispositions de la section sixième, du chapitre deuxième du présent titre.

4406. Tout règlement passé en vertu des deux articles précédents, doit, avant d'avoir vigueur et effet, avoir été approuvé par les électeurs municipaux propriétaires, en la manière prescrite aux articles 4531 et suivants jusqu'à l'article 4535 inclusivement.

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Dans mon opinion, l'article 4404-4 et l'article 4406 exigent que le règlement passé en vertu des articles 4642 et 4643 soit approuvé par les électeurs propriétaires de la municipalité avant d'entrer en vigueur. Ces deux derniers articles sont ceux qui se trouvent dans "la section sixième du chapitre deuxième du présent titre" et auxquels réfère le numéro 4 de l'article 4404.

La résolution exemptant l'intimé du paiement des taxes municipales n'a pas été soumise à l'approbation des électeurs.

De plus, le deuxième paragraphe de l'article 4643 exige qu'un règlement passé en vertu de l'article 4642 soit soumis aux délibérations du conseil à deux assemblées différentes, ce qui n'a pas été fait. Le conseil a procédé par résolution qui n'a été soumise qu'à une seule assemblée du conseil. Cette condition ne peut être considérée comme une simple formalité sans importance. C'est, dans mon opinion, une condition impérative et essentielle à la validité du règlement, qui n'entre en vigueur que lorsqu'il a été soumis une deuxième fois aux délibérations du conseil municipal.

Pour ces raisons, je suis d'avis que la résolution exemptant de taxes l'intimé est illégale. J'infirm后会 le jugement dont est appel et je renverrais l'opposition de l'intimé avec dépens dans toutes les cours.

MACLEAN J. (dissenting).—The question involved in this appeal is the validity of a resolution of the council of the town of Maisonneuve, passed on April 11, 1911, exempting from taxation for the period of ten years the business of the respondent, carried on in that municipality under the name of The Dominion Die Company. Since the passage of this resolution the town of Maisonneuve has become a part of the city of Montreal, but that fact in no respect affects the issue. During the period which the corporation of Maisonneuve maintained its separate existence the tax exemption granted by the resolution was observed, but the



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city of Montreal, after its absorption of Maisonneuve, in 1918, questioned the validity of the exemption granted by the resolution, and by steps which need not be mentioned, the issue reached the courts, and is now before this court on appeal, from the judgment of the Court of King's Bench, which appellate court reversed the trial judge, who found the resolution in question invalid.

Any difficulty in resolving the issue is due chiefly to the existence of three separate groups of articles to be found in the statutes of Quebec, 1888, all of which it is admitted were applicable to the corporation of Maisonneuve at the time the exemption was granted, and each of which enabled the corporation in certain events to grant exemptions from taxation.

The charter of the town of Maisonneuve, c. 57 Q.S. 1898, provides that the council of the town shall have all the powers, rights and privileges granted by the Revised Statutes of Quebec, 1888, and by the Municipal Code to municipal councils. The provisions of the Revised Statutes referred to are the articles referable to town corporations, title XI, chapter first. The first clause enacts that every provision of that chapter applies to every town and corporation established by the legislature of Quebec unless expressly modified or amended, and becomes part of its charter. The next clause enacts that in order to exclude any of the provisions of this chapter from the charter of the town, they must be expressly excluded; and the excluded provisions must be specified by their numbers. The charter of the town of Maisonneuve, expressly and by numbers, declared certain of such provisions as not being applicable to that town; but in the enumerated articles are not to be found the important ones hereinafter mentioned. The charter also provides that the provisions of the Municipal Code shall apply to the town, except such provisions as are inconsistent with the charter itself, or the Town Corporation General Clauses Act.

It is agreed that articles 4404, 4405, 4406, 4559, 4642 and 4643 as they read in the Revised Statutes of Quebec, 1888, applied to the town of Maisonneuve at the time the exemption in question was granted, the two last mentioned articles being part of chapter two of the Town Corporation

General Clauses Act, the remainder being part of chapter one. At the time of the granting of the tax exemption now in question, there was not, I think, any provision in the Municipal Code applicable to Maisonneuve upon the subject of tax exemption.

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It would perhaps be convenient to here set forth the important parts of such articles, upon which this case turns:

#### CHAPTER FIRST

1. Article 4559.—The council may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding twenty years, any person who carries on any industry, trade or enterprise whatsoever, as well as the land used for such industry, trade or enterprise, etc.

#### CHAPTER SECOND

2. Article 4642.—For the purpose of encouraging the introduction and establishment of new manufactories within their limits, it is lawful for any city, town, or village municipality to exempt from all taxes, assessments and municipal imposts whatsoever, for a space of time not exceeding ten years, any manufactory, not being a flour-mill, gas-works or distillery, which any individual, commercial firm or corporation may have undertaken or may undertake to establish.

Article 4643.—Any person, desiring to establish a manufactory as aforesaid, is obliged to ask the permission of the municipal council and state the nature of the manufacture, its locality, the extent of the intended site, and whether he intends to use steam power. Such permission shall not be given unless previous notice be given by the person applying therefor to the council, and the council may make a by-law for the purpose, which by-law must be brought before the council at two different meetings thereof, and when the by-law is agreed to, etc.

#### CHAPTER FIRST

3. Article 4404.—To aid in the construction of any bridge, causeway, pier, wharf, slide, macadamized or paved road, railroad, or other public works, or any manufacturing establishment situated in whole or in part within the municipality or in its vicinity, undertaken and built by any incorporated company, or by the Provincial Government:

1. By taking and subscribing for shares in any company formed for such purpose;

2. By giving or lending money to such company or to the Provincial Government;

3. By guaranteeing by endorsation or otherwise any sum of money borrowed by such company;

4. By exempting from the payment of municipal taxes, assessments and dues certain industrial establishments according to the provisions of section sixth of chapter second of this title;

Article 4406.—Every by-law, passed by virtue of the two preceding articles, before coming into force and effect shall be approved by the electors of the municipality who are proprietors, in the manner prescribed in articles 4531 and following to article 4535 inclusively.

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The respondent claims that the resolution granting his exemption was authorized by article 4559, while the appellant contends that the power granted to town councils under this article only extended to persons "carrying on any industry, trade or enterprise" prior to, or at the time of, the passage of the resolution. This article is very general indeed, and were it not for articles 4642 and 4643, one should find little difficulty in adopting the respondent's view.

Chapter second, within which are to be found articles 4642 and 4643 is entitled "Special provisions applicable to cities, towns and other corporations," while the heading of the articles themselves is "Exemption of new manufactories from municipal taxes." I therefore think that these articles are in the nature of special legislation, and I find it impossible to resist the conclusion that they supersede or qualify the general enactment contained in article 4559. These articles employ language that is quite clear, and the object of the legislation, namely, the encouragement of the establishment of new manufactories, is quite obvious. Where a general intention is expressed and also a particular intention which is incompatible with the general one, the particular intention should, I think, be considered an exception to the general one. Alternatively, the respondent relies upon these articles. Subject to a later consideration of the validity of the exemption as to the form and procedure adopted in its enactment, which also is contested, I am of the opinion that it was within the power of the municipality of Maisonneuve to grant the exemption which it did in this instance, under these articles.

The appellant urges that the exempting resolution is invalid under the articles I have above just referred to, and that articles 4404 to 4406 supply the test which the exemption must undergo before its validity is established. Upon their face these articles appear to be partially in conflict with articles 4642 and 4643 and attempt in some degree to invade the same area of legislation. It is particularly to be observed that article 4406 introduces the reference of a tax exempting by-law to the electors for approval, before becoming effective. It might later on be helpful to now point out that as originally enacted in 1876, article 4404 con-

tained no reference to "any manufacturing establishments," and these words were added by amendment in 1881. In 1899 also were added to the end of the first part of article 4404 the words "or by any person whatsoever," which words do not appear in article 4404, as appearing in the Revised Statutes. It should also be stated that subsection 4 of article 4404 was first enacted in 1881.

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Before attempting to construe the effect of the last mentioned group of articles, it might be well now to revert to the second group of enactments, articles 4642 and 4643, to inquire if, standing by themselves, anything further was required to be done by the Town Council to make the resolution and the exemption effective as against the corporation and in favour of the respondent.

Article 4642 clearly gives the corporation the power to exempt from taxation some one intending to start a new manufactory. Article 4643 requires that any person desiring to establish a manufactory shall ask permission to do so and shall state the nature of the manufactory, etc. The reason for such requirements are obvious. While the municipality at this period in its history was evidently very solicitous about the establishment of new industries within its bounds, still other considerations prompted reservations and restrictions. For instance, flour-mills, gas-works, and distilleries were disqualified from tax exemption. Again, it was desirable to learn if any proposed manufactory seeking tax exemption was to engage in the same line of industry as a pre-existing one, when the latter might become entitled to similar treatment. Further, some proposed manufactory might be desirable in one location but objectionable in another, or conceivably, altogether objectionable in its character and objects. For these, and possibly other reasons, permission of the council was first required before establishing any new manufactory. More importance seems to be attached to securing this "permission" than to the formal declaration of tax exemption by the council. However the respondent made application for permission to establish a new manufactory at a specific location, which was granted along with tax exemption. The second part of 4643 requires that such permission must be expressed in the form of a by-law. Nothing

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is expressly said about the passage of a by-law with respect to tax exemption and much is to be said in support of the view of Mr. Justice Greenshields of the appellate court below in this respect. However, a resolution of council was passed in terms exempting the respondents' proposed manufactory, to be located on specified lots of lands, from taxation for the period of ten years. Is the passage of a resolution a compliance with this empowering statute? The article requires that the by-law must be considered by the council at two separate meetings before adoption. Section 65 of the charter of the town of Maisonneuve provides that with the exception of the by-laws which must be submitted to the approval of the proprietors who are municipal electors, the town council may exercise its power by by-law or resolution.

This statutory enactment (1898) qualifies the article under consideration, and I am of the opinion that a resolution is, so far as this case is concerned, the equivalent of a by-law.

Is the resolution incomplete by reason of the fact that it was once only considered by the council? I think this question must be answered in the negative. It seems to me quite clear that section 65 of the charter was intended to so amend or qualify article 4398 of the Town Corporation Clauses that the town of Maisonneuve could legislate within its powers by by-law or by resolution, except in the case of by-laws that required the approval of the ratepayers. Under article 4643, a proposed by-law was not an effective by-law unless considered twice by the council, but a resolution when passed by the council of Maisonneuve was effective when passed. In this group of articles there is nothing to suggest that the tax exemption required the approval of the ratepayers. Maisonneuve, it will be found on reference to its charter, was continually cutting down by enactments of the legislature the Town Corporation Clauses and extending its own exclusive powers, and the power acquired enabling it to legislate by resolution, instead of by-law, was not at all unusual.

It is urged by the appellant, that article 4404 is the only legislation under which the tax exemption might have been granted and that in order to make the same effective and valid it should receive the approval of the municipal electors as prescribed by 4406. It is contended that these articles are in direct conflict with and control the second group of

articles, 4642, etc., as to the procedure making effective any resolution or by-law, and of course this requires consideration. As originally enacted in 1876, article 4404 was intended merely to authorize the municipality to grant unusual aids to undertakings in the nature of public works, by way of loans, guarantees and even by becoming a shareholder, and no mention was made of tax exemption whatever. As these suggested subventions involved direct money payments from the municipal treasury, or the assumption of liabilities by way of guarantee, it was sound policy to require ratification of the same by the electors before any by-law authorizing the same became effective. The wisdom of a different procedure in such cases as compared with exemption from taxation only, is obvious. Later, the added and unusual power to aid in the construction of "manufacturing establishments" by purchase of shares, loans or guarantees, was granted to municipalities. In 1888 the commissioners appointed to revise and consolidate the public statutes (Revised Statutes of Quebec, 1888), inserted what is now paragraph 4 of article 4404. That is, they added the power to grant exemption from taxation to the other three enumerated methods by which the municipality might "aid in the construction of bridges, etc., and any manufacturing establishments" and which required reference to the electors. Subsection four says the exemption from taxation may be granted

according to the provisions of section sixth of chapter second of this title,

being articles 4642 and 4643. Altogether the legislation enabled municipalities to commit themselves to extensive and unusual subventions, and it is fairly to be presumed that it was intended they should apply to unusual undertakings, requiring for special reasons assistance beyond the one of simple exemption from taxation. A careful reading of article 4404 clearly reveals this. For instance, under this article, assistance might be given to manufacturing establishments partly without the municipality, or in its vicinity, while under article 4642 the manufactory was to be within the limits of the municipality.

To construe paragraph four of article 4404 in the manner urged by the appellant, as a modification of articles 4642 and 4643, is to suggest that the legislature intended

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to amend article 4643 by requiring a reference to the electors instead of merely passing a by-law or resolution. I do not think it was intended to amend articles 4642 and 4643 at all, which was in the nature of special legislation. Any intention to so amend was so simple of accomplishment that one must conclude something else was intended. Article 4404, before paragraph four was added, did not deal with tax exemptions, but was legislation upon an entirely different subject. However, as the article now stands with this paragraph added, I construe it to mean that a municipal council might

aid in the construction of any manufacturing establishment, by (a) subscribing for shares; (b) a loan of money; (c) a guarantee; (d) exemption from taxation. The council might grant aid by employing any one or more, or even all of the four methods. If any persons intending to construct a manufacturing establishment required aid by way of a loan, or guarantee, or purchase of shares, it may safely be presumed that the same persons in their financial infirmities would seek tax exemption as well. In that event legislation already existed (article 4642) empowering the latter to be given and prescribing the procedure (article 4643), and accordingly the scope of the powers for granting tax exemption, and the procedure to accomplish that end, already existing, they were here incorporated by way of reference. I construe articles 4404 and 4406 to mean that if any manufacturing establishment was to be aided under any one or all of the methods prescribed by subsections 1, 2 or 3, the approval of the electors was required, but if in addition it was to have exemption from taxation, that portion of the by-law need not be submitted to the electors, but was to be enacted according to the provisions of article 4643.

If the true construction of articles 4404 to 4406 upon this point is in doubt, or my construction of them untenable in respect of the tax exemption clause, I am still of the opinion that the tax exemption in question is valid under articles 4642 and 4643. If the legislature expresses its mind clearly in one place, it ought to be presumed that it is of the same mind still, unless it clearly appears that it has changed it. It did very clearly express itself in articles

4642 and 4643, and the statute seems to say what the legislature meant, and neither directly or by implication does the legislature appear to have intended any modification whatever. Before the express words of a statute can be changed so as to have a different meaning that alteration ought to be clearly expressed. Articles 4404 and 4406 hardly suggest such an inconsistency with 4642 and 4643 as to indicate modification by implication. It is also a reasonable presumption that the legislature did not intend to keep contradictory enactments on the statute book, or to amend a statute without saying so, and such an interpretation is not to be adopted unless it is inevitable. The language of each should be restricted to its own object or subject, and a reading of each indicates they were intended for different purposes. Articles 4404 to 4406 empower municipal councils to grant unusual aids to certain undertakings which involved payments from its revenues, as in the cases of loans, and subscription of and payment for shares, and the assumption of liabilities as in the case of guarantees. Basically, that is the policy of the legislation. The policy of the legislation involved in articles 4642 and 4643 is clearly another thing. I do not think that a by-law or resolution passed in virtue of article 4642 is a bylaw passed under the authority of article 4404 and that article 4406 does not apply to it. I am of the opinion that the tax exemption in question is valid under articles 4642 and 4643, and I would dismiss the appeal with costs.

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*Appeal allowed with costs.*

Solicitors for the appellant: *Jarry, Damphousse, Butler & St. Pierre.*

Solicitor for the respondent: *J. W. Jalbert.*