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*Nov. 3, 6.
*Dec. 30.

THE HONOURABLE JOSEPH-CAMILLE POULIOT (PLAINTIFF) .. } APPELLANT;

AND

THE TOWN OF FRASERVILLE (DEFENDANT) ..... } RESPONDENT.

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

*Expropriation—Municipal corporation—Statutory powers—Lands outside municipality—Appointment of arbitrators—Procedure—Award —"Towns Corporations Act," R.S.Q., 1888, arts. 4561-4569—Charter of Town of Fraserville, 3 Edw. VII., c. 69; 6 Edw. VII., c. 50—Quebec "Expropriation Act," 54 Vict. c. 38—Words and phrases—"Avoisinant"—"Adjoining."*

The statutes incorporating the Town of Fraserville, (3 Edw. VII., ch. 69' 6 Edw. VII., ch. 50 (Que.)), by section 183 gave power to expropriate lands both within and outside the limits of the municipality and section 193 substituted a new section to replace article 4561 of the Revised Statutes of Quebec, 1888, in regard to expropriations. In expropriating lands outside its limits for an electric lighting system the town proceeded under articles 4562 to 4569 of the "Towns Corporations Act," R.S.Q., 1888, incorporated as part of the charter by force of article 4178, R.S.Q., 1888, and obtained an order appointing an arbitrator on behalf of the owner from a judge of the Superior Court. Notwithstanding objection by the owner, an award was made and he brought action to set it aside on the ground that, by section 193, the application of articles 4562 to 4569 was confined, in the case of the Town of Fraserville, to expropriations within its limits and, as to expropriations beyond that area, nominations of arbitrators could be made only by the Attorney-General as provided by the "Expropriation Act," 54 Vict. ch. 38.

*Held,* Anglin J. dissenting.—That the sixth section of the Act, 6 Edw. VII., ch 50, by specifically authorizing the municipality to expropriate lands outside its limits enacted provisions incompatible with those of article 4561, R.S.Q., 1888, as so replaced by section 193, and it was, therefore, repealed as the repugnant provisions of the later statute prevailed. *The King* v. *The Justices of Middlesex* (2 B. & Ad. 818), and *In re Cannings and County Council of Middlesex*

*PRESENT:—Davies, Idington, Duff, Anglin and Brodeur JJ.

([1907], 1 K.B. 51), followed. Consequently, the procedure adopted for the appointment of arbitrators was proper and the award was valid.

The statute, 6 Edw. VII., ch. 50, by section 6, authorizing expropriations outside the town, in the French version made use of the phrase "dans ou en dehors de la ville et les municipalités avoisanantes," while the English version used the term "adjoining municipalities." The 297th section of the charter provided that in the event of discrepancy preference should be given to the French version.

*Held*, that the statute should be interpreted according to the meaning of the broader term "avoisinantes," used in the French version and, consequently, in exercising such powers of expropriation, the municipality was not limited to taking lands in contiguous municipalities.

*Per* Anglin J.—By section 193 of the charter the application of the provisions of the "Towns Corporations Act," arts. 4165 *et seq.* R.S.Q., 1888, is expressly confined to expropriations within the town; section 193 was not excluded from the charter nor impliedly repealed by the amendment of 1906 to section 183, and the appointment of arbitrators by the judge was an usurpation of the jurisdiction conferred by articles 5754*d* and 5754*e*, R.S.Q., 1888 (54 Vict. ch. 38, sec. 1), upon the Attorney-General of the province.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of Letellier J., in the Superior Court for the District of Kamouraska, which dismissed the plaintiff's action with costs.

The circumstances of the case are stated in the judgments now reported.

*St. Germain K.C.* and *St. Laurent K.C.* for the appellant.

*Stein K.C.* for the respondent.

DAVIES J.—The single question upon which I have entertained any doubt in this case is whether the appointment of arbitrators to determine the damages to which the appellant was entitled for or by reason of the expropriation by the respondent of certain lands of his outside of the Town of Fraser-

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ville should have been made by the Attorney-General under the provisions of the general "Expropriation Act" or by a judge of the Superior Court under the articles of the "Towns Corporations Act"—4561 to 4569—and the subdivision sec. 11 "Expropriation for Municipal Purposes."

The argument for the appellant is that section 4561 of these general expropriation sections was "replaced for the Town" of Fraserville by article 193 of ch. 69, 3 Edw. VII., (1903), amending the charter of Fraserville, that by this amendment the town's power of expropriation was limited to lands, buildings and structures "in the town" and that, therefore, the general provisions of the "Towns Act" relating to the manner of expropriation did not apply to these lands which were outside of the town's jurisdiction and powers.

The respondent, on the other hand, contends that so far as the construction of its electric light works was concerned this limitation on the town's power of expropriation "to lands, buildings and structures within the town" was removed by article 6 of the amendment to its charter in 1906, and that the methods by which this power of expropriation so extended should be exercised are to be found in the articles 4561 to 4569 of the "Towns Corporations Act" under the general heading of "Expropriation for Municipal Purposes."

The respondent invokes in support of its argument articles 4178 and 4179 of the "Towns Corporations Act" the first of which declares generally that the provisions of this chapter apply to every town etc. and

unless expressly modified or excepted they constitute part of its charter,

and the latter of which enacts

for any of the provisions of this chapter not to be incorporated in the charter it must be expressly declared that such provisions specifying them by their numbers shall not form part thereof.

Article 4561 of the "Towns Corporations Act," R.S.Q., 1888, title XI., conferring *power* of expropriation upon towns within the scope of the town's jurisdiction was amended, in 1903, by article 193 of ch. 69, 3 Edw. VII., limiting that power to land etc. "in the *town*" but this limitation, so far as the construction and maintenance of the electric works of the town were concerned, was done away with by the amendment of 1906 before referred to, and the land of the appellant, outside of the town, was under that amending power legally expropriated for the electric purposes of the town.

This extension of the limitation put upon the town's powers of expropriation then, it is said, necessarily left the provisions of the "Towns Corporations Act" as to the *method of procedure* applicable and so do not admit of the application of the general "Expropriation Act." I admit the difficulties in reaching a conclusion and have given the point much consideration. After reading the carefully prepared opinion of Mr. Justice Brodeur, I have concluded that his construction of the different statutes is right, that the proceedings taken to appoint the arbitrators under the "Towns Corporations Act" were correct and that the appeal should be dismissed with costs.

IDINGTON J.—I agree in the main herein with the reasons assigned by the courts below. But I have had some difficulty in trying to reconcile the enactment of section 193 of 3 Edw. VII., ch. 69, of Quebec, with the provisions necessary to be observed in the case of expropriation outside the town.

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It is quite clear the peculiar wording of that section never was necessary, for the scope of the jurisdiction of the town, as it stood in the section thus supplanted, covered and was limited to that needed.

I think the section 6 of 6 Edw. VII., ch. 50, three years later, amending section 193 of the first mentioned Act may be taken as an implied repeal of the limitation implied in the word "town" in said section 193, so much in evidence in the argument.

I conclude the two cannot stand together and the later one should prevail. Then the general provisions of the "Municipal Act" relative to town corporations does the rest.

I do not overlook the alternative properly and forcibly presented by Mr. St. Germain. His proposition relative to the general enactment providing for the Attorney-General naming the umpire or a sole arbitrator in case of disagreement, does not cover the whole ground involved in the questions raised herein. I need not elaborate.

In short the legislation has to be given some sort of sensible meaning.

At this stage it should not be expected of us to reverse the finding as to amount (especially when two of the board were selected by a judge) of the award of arbitrators acting within their powers when unanimously maintained by the courts below.

I admit the appellant has presented some plausible and, possibly, cogent reasons for his contention. But I fail to see anything more therein than what in the last analysis is matter of opinion of what the market value is of that taken.

Special advantages have been and must be tested by their value; not by what the owner may imagine and try to dictate as a price.

There does not seem any good reason to believe all these things were ignored by the majority of the arbitrators.

The only other matter of legal principle involved in the appellant's allegations, upon which we could properly act, is that relative to the expropriation being in part founded upon a resolution instead of by-law.

He has not so much to complain of in that regard as either plaintiff had in the cases of *Larin* v. *Lapointe* (1), reversed in the Privy Council under the name of *Lapointe* v. *Larin*(2), and *Robertson* v. *City of Montreal* (3). In the former the non-observance of forms of procedure as prescribed by statute did not seem of importance in the court above when the unanimous council in fact had directed something to be done without pursuing the method laid down in the statute; and in the latter case the majority of this court held a similar departure from the prescribed path by way of a by-law when substituted by using a resolution was not *ultra vires* or at least so far so that a ratepayer or contracting party could complain.

I think the appeal should be dismissed with costs.

DUFF J.—There is only one point requiring discussion. It arises in this way. The legislative charter of the Town of Fraserville, which is contained in an Act of the Legislature passed in the year 1903, was amended in 1906 in such a way as to provide that, for the purposes of establishing and maintaining a system of electric lighting, the municipality should have compulsory powers of expropriation as regards immovables both within and without the town. (Sec. 183, ch. 69, 3 Edw. VII., as amended by 6 Edw. VII., ch. 50,

(1) 42 Can. S.C.R. 521. (2) (1911), A.C. 520.
(3) 52 Can. S.C.R. 30.

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sec. 6.) The municipality in acquiring for these purposes property outside its territorial limits has proceeded on the assumption that the machinery for expropriating land outside as well as that inside the town is the machinery provided by articles 4562 to 4569 of the "Towns Corporations Act," R.S.Q., 1888, which with certain immaterial modifications became incorporated in the charter of 1903 by force of article 4178, R.S.Q., 1888. The appellant denies that these provisions of the "Towns Corporations Act," although incorporated in the charter and applicable to expropriations within the town, have any operation when an expropriation of property beyond the limits of the town is in question. Admittedly if the appellant is right in this contention the proceedings now impeached before us are invalid because if these enactments of the "Towns Corporations Act" are not the enactments by which such proceedings are governed then the method of procedure which it was the duty of the municipality to follow in such expropriations was that prescribed by the "Expropriation Act" and admittedly the procedure so prescribed was departed from in essential respects.

The question for determination is: Was the municipality, in expropriations of property outside the town, entitled to avail itself of the provisions of the "Towns Corporations Act" above referred to?

The point of the difficulty can, I think, be most clearly put by first explaining the contention of the appellant. The articles 4562 to 4569 of the "Towns Corporations Act" relating to expropriation which the municipality says are applicable and the appellant denies to be applicable to such expropriations are preceded by article 4561 which is the first section in a fasciculus under the sub-title "Expropriation for Municipal Purposes." This article is in the following words:—

The council may, by complying with the provisions following, appropriate any land required for the execution of works ordered by it within the scope of its jurisdiction: 40 Vict. ch. 29, sec. 386.

The charter of 1903 did not adopt article 4561 as it stands. The first section of a group of sections of the charter bearing the sub-title "Expropriations" is section 193 which deals with that article as follows:—

L'article 4561 des Statuts Refondus est remplacé, pour la ville, par le suivant:

Le conseil pourra s'approprier, dans la ville, le terrain et les batiments ou constructions necéssaires à l'exécution des travaux ordonnés par lui, dans les limites de ses attributions, en se conformant aux dispositions suivantes;

and it will be observed that the article which by this enactment is, as regards the Town of Fraserville, substituted for article 4561 expressly confines the powers thereby given to cases of expropriation *within the town.*

Now the appellant argues that the effect of this substituted article and especially of the words

le conseil pourra s'approprier dans la ville * * * en se conformant aux dispositions suivantes

is to limit the application of the "*dispositions suivantes,*" that is to say, of articles 4562 to 4569 of the "Towns Corporations Act" to such expropriations. The appellant assuming that point to be safely reached, has, of course, no difficulty in establishing the conclusion which indeed necessarily follows that the charter itself neither explicitly nor by reference to the "Towns Corporations Act" provides any machinery for the expropriation of the property outside the town and consequently that for such purposes the municipality must resort to the "Expropriation Act."

Not only is this argument a plausible one but it must, I think, be conceded that the view advanced by the appellant of the construction and effect of section 193 of the charter of 1903 is an admissible construction;

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indeed, at the conclusion of the argument I was strongly inclined to think that it was the right construction and that effect ought to be given to it.

There is, of course, some degree of *a priori* probability against the inference that the legislature intended to prescribe in respect of compulsory powers exercisable for the same object and by the same municipality one machinery where the property to be taken is within the municipality and a different machinery where the property to be taken is outside the municipality; where it is admitted that one set of machinery is not better adapted than the other set to either class of expropriation—as is the case here.

I feel at liberty to adopt the respondent's construction if it appear from the point of view of verbal interpretation to be a reasonably admissible one, even though from that standpoint alone the appellant's construction should be in some degree the preferable.

I find no difficulty in holding that the respondent's construction is a reasonably admissible construction. I have already pointed out that section 183, which confers compulsory powers simply, neither in the charter of 1903 nor in the amendment of 1906 has anything to say on the subject of machinery. So it must be observed when the article is narrowly examined, that article 4561 of the "Towns Corporations Act" is primarily concerned not with machinery but with the conferring of substantive powers. It is a comprehensive provision which declares that when the municipality orders works that it has jurisdiction to order the municipality shall have authority to take the necessary land. It is quite true that the article adds that this may be done by complying with the subsequent provisions, but this phrase adds nothing to the construction which would have been put upon the

article and the subsequent provisions if it had been absent and it certainly is not necessary to read it as restricting the scope of the succeeding articles by limiting their application to cases of expropriation by the municipality under the *general* powers conferred by the article 4561 itself. What effect then is to be attributed to section 193 which declares that article 4561 is replaced by an article in which the *general* powers of expropriation thereby conferred are limited in their application to those cases in which the property required is situated within the town. The answer to this question is dictated by the fact that the substituted article, like article 4561 itself, is primarily a provision dealing with substantive powers of expropriation, a comprehensive provision applying to all cases not specifically provided for in which it is necessary to take land for municipal purposes within the town. The charter contains a number of sections conferring such powers for specific purposes. Must we conclude that the machinery provided by the succeeding articles is available only in cases of expropriation under the residuary powers thus conferred? I repeat, such is not the necessary result of the limiting words. There is nothing in the language of the substituted article and nothing in that of articles 4562 to 4569 which are part of the charter requiring us to hold that the machinery provided by these articles is not available for proceedings in exercise of powers given for specific purposes under other provisions of the charter such as that found in section 183.

These in outline are the reasons (they are, I think, in accordance with those of my brother Brodeur) from which I have concluded that we are entitled to hold that the judgment of the court below was not erroneous.

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ANGLIN J. (dissenting).—In my opinion the appellant is entitled to succeed on the ground that the application of the expropriation provisions of the "Towns Act" (R.S.Q., 1888, arts. 4561 *et seq.*) is by section 193 of the charter of the Town of Fraserville, enacted in 1903, expressly confined to expropriations within the town. The French version of section 193 puts this restriction beyond any possibility of doubt.* The method to be pursued in the case of expropriations outside the limits of the town, which have, since 1903, been authorized by section 182 of the charter for waterworks purposes, and are now by an amendment to section 183, passed in 1906, also authorized for the purposes of the town electric lighting system, is not expressly provided for in the charter. If, notwithstanding the fact that article 4561 of the Revised Statutes of Quebec, 1888, has been "replaced *for the town*" by a section which restricts the application of the method of expropriation provided by the succeeding group of articles in the Revised Statutes to expropriations within the town, that group of articles applies also to expropriations outside the town, the restriction

*R.S.Q., 1888, (French version.) Art. 4561.—Le conseil pourra s'approprier le terrain nécessaire à l'exécution des travaux ordonnés par lui dans les limites de ses attributions, en se conformant aux dispositions suivantes.— (English version.) Art. 4561.—The council may, by complying with the provisions following, appropriate any land required for the execution of works ordered by it within the scope of its jurisdiction.

Charter of Fraserville, (1903,) 3 Edw. VII., ch. 69. (French version.) Sec. 193.—L'article 4561 des Statuts Refondus est remplacé, pour la ville, par le suivant:—Le conseil pourra s'approprier, dans la ville, le terrain et les bâtiments ou constructions nécessaires à l'exécution des travaux ordonnés par lui, dans les limites de ses attributions, en se conformant aux dispositions suivantes.— (English version.) Sec. 193.—Article 4561 of the Revised Statutes is replaced, for the town, by the following:—The council may, by complying with the following provisions, appropriate any land, buildings and structures in the town, required for the execution of works ordered by it, within the scope of its jurisdiction.

thus imposed would be meaningless and ineffectual—a result so abhorrent to sound construction that it can be accepted only if inevitable. Articles 4562 *et seq.* of the Revised Statutes of Quebec, 1888, were not excluded from the town charter: they necessarily had their place in it subject to the "express modification" made by section 193 of the town charter of 1903. Articles 4178 and 4179 of the Revised Statutes of Quebec, 1888, therefore, do not conflict with the view I take of the effect of section 193 of the charter, which is that, for the Town of Fraserville, articles 4562 *et seq.* of the "Towns Act" (arts. 4178 *et seq.*, R.S.Q., 1888), must be read as if article 4561 had been originally enacted in the terms of section 193 of the town charter. So reading them, it would, I think, be clearly impossible to hold articles 4562 *et seq.* applicable to outside expropriations under section 182 of the charter, enacted concurrently with section 193, and there is no reason for outside expropriations authorized by the amendment of 1906 being in a different plight so long as section 193 of the charter was left unaltered. The corporation in making these outside expropriations, whether under section 182 or under the amendment to section 183, was thus driven to resort to the provisions of the general expropriation law contained in articles 5754 (*a*) *et seq.* of the Revised Statutes of 1888 (54 Vict. ch. 38, sec. 1), which are expressly made applicable in all cases where powers of expropriation are conferred by a statute that does not determine the mode in which they are to be exercised. Counsel for the respondent contended that inasmuch as the power to expropriate outside the limits of the town for the purposes of its electric lighting system was not given by the town charter as consolidated in 1903, but was conferred only by an amendment of 1906,

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upon the adoption of that amendment the restriction effected by the words "in the town" in section 193 of the charter of 1903 should be deemed repealed by implication. I cannot agree with that contention. There is no repugnancy or inconsistency such as it requires as a foundation. It takes no account of the existence in the charter of 1903 of the provision made by section 182 for outside expropriations. Such an implied repeal as is contended for might possibly follow if the statutes did not contain the general provision above referred to for cases in which the mode of expropriation is not defined by the law conferring the right. But with that provision available necessity for extending the scope of section 193 does not arise, and short of absolute necessity there is no sufficient ground for an implication of repeal of the limitative words which it contains.

The ground of appeal, which should thus, in my opinion, prevail, is, no doubt, technical and, in view of the concluding sentence of article 5566 of the Revised Statutes of Quebec, 1909, as amended by 1 Geo. V., ch. 56, sec. 19, is of no importance except in the present case. Yet it may not be rejected on that account since it involves the jurisdiction of the arbitrators.

If the provisions of articles 4562 *et seq.* of the Revised Statutes of Quebec, 1888, did not apply, the judge of the Superior Court usurped the jurisdiction conferred by articles 5754*d* and 5754*e* (54 Vict. ch. 38, sec. 1) on the Attorney-General of the province. The appellant has never acquiesced in the appointments made by the Hon. Mr. Justice Cimon, who purported to act as *persona designata*. *Canadian Northern Ontario Ry. Co.* v. *Smith*(1). His order was

(1) 50 Can. S.C.R. 476.

not appealable. The respondent's plea of *res adjudicata* is, in my opinion, not well founded.

I think I should add that upon the other grounds taken the appeal, in my opinion, fails for the reasons stated by the learned Chief Justice of the court of appeal.

BRODEUR J.—Il s'agit d'un appel de la décision de la Cour du Banc du Roi, qui a confirmé unanimement un jugement de la Cour Supérieure dans une action en nullité de sentence arbitrale.

La Ville de Fraserville, l'intimée, désirant exproprier certains terrains appartenant à l'appelant et dont elle avait besoin pour son système d'éclairage, a donné avis d'expropriation sous les dispositions de l'acte des corporations de ville de 1888; et, comme l'appelant refusait de nommer son propre arbitre et le tiers arbitre, la corporation intimée s'est adressée à un juge de la Cour Supérieure pour faire la nomination (arts. 4565-4569*a* S.R.Q., 1888).

L'appelant a comparu devant le juge et a prétendu que la corporation n'avait pas le droit de s'approprier les terrains en question parce qu'ils étaient en dehors du territoire dans lequel elle pouvait exercer son droit d'expropriation.

Le juge, ayant débouté l'appelant de ses prétentions et ayant donné acte à ce dernier de ses objections, a nommé comme l'arbitre de l'appelant celui qu'il lui avait désigné et il a également nommé le tiers arbitre.

L'arbitre de l'appelant et le tiers arbitre ont rendu une sentence arbitrale par laquelle on lui accordait une somme de près de $5,000.

L'arbitre de la corporation était d'opinion qu'une somme moindre devait être payée. La decision de la majorité des arbitres fut acceptée par la corporation et le montant fut dûment offert.

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Il ne peut donc y avoir de contestation sérieuse quant au montant de l'indemnité.

L'appelant prétend cependant avoir droit à une plus forte somme. Mais comme les trois arbitres sont d'opinion que le montant offert l'indemnise suffisamment et comme ils ont procédé d'une manière juste, légale et équitable, la sentence arbitrale de la majorité dévrait être maintenue.

L'appelant demande en outre que la sentence soit mise de côté sur le principe (1) que la nomination de son arbitre et du tiers arbitre aurait due être faite non pas sous les dispositions de l'acte des corporations de ville (art. 4565 et 4569*a*) mais sous les dispositions de l'acte général des expropriations de 1890 (54 Vict. ch. 38), (2) que la corporation n'avait pas les pouvoirs statutaires requis pour exproprier ses terrains.

1.—NOMINATION DES ARBITRES.

La ville de Fraserville était régie lors de l'expropriation en question, en 1908, par un acte spécial de 1903 (3 Edw. VII. ch. 69) et par l'acte général des corporations de ville (arts. 4178 et suivantes des Statuts Refondus de 1888).

L'acte général des expropriations de 1890 (54 Vict. ch. 38) déclarait que ses dispositions s'appliquaient aux cas où la législature n'avait pas autrement pourvu au mode d'expropriation.

Il y était déclaré que si une partie refusait de nommer son arbitre alors l'autre partie pouvait demander au Procureur-Général de la province de faire la nomination d'un seul arbitre. Et si chaque partie avait choisi son arbitre alors le tiers arbitre était nommé par le Procureur-Général.

Dans l'acte des corporations de ville le pouvoir d'expropriation pour une ville était d'abord décrété par l'article 4561 S.R.Q. (1888) et les articles suivants

(4562 à 4570) déterminent la procédure à suivre dans les expropriations.

Dans les articles 4565 et 4569*a* il y est déclaré que si une des parties refuse de nommer son arbitre ou le tiers arbitre, alors un juge de la Cour Supérieure aura jurisdiction pour faire cette nomination.

Alors la différence entre l'acte général des expropriations et l'acte des villes c'est que dans le premier cas le Procureur-Général fait les nominations d'arbitres et que dans le cas des expropriations par des villes elles sont faites par le juge de la Cour Supérieure.

L'appelant prétend que "l'acte Général des Expropriations" s'applique au cas actuel parce que les terrains sont en dehors de Fraserville vu que la législature, dans le cas de Fraserville, aurait déclaré que le mode d'expropriation des corporations de ville ne s'appliquerait que dans le cas où les expropriations auraient lieu dans les limites de la ville.

Il se base sur la section 193 de l'acte spécial de 1903 qui a rappelé l'article 4561 des corporations de ville et l'a remplacé par un nouveau.

L'article 4561, tel que nous le trouvons dans les Statuts Refondus de 1888, se lisait comme suit:—

Le conseil peut s'approprier le terrain nécessaire à l'exécution des travaux ordonnés par lui dans les limites de ses attributions en se conformant aux dispositions suivantes.

L'amendement fait par la section 193 de la charte de Fraserville est comme suit:—

193. L'article 4561 des Statuts Refondus est remplacé pour la ville par le suivant:

Le conseil pourra s'approprier, *dans la ville, le terrain et les bâtiments ou constructions* nécessaires à l'exécution des travaux ordonnés par lui dans les limites de ses attributions, en se conformant aux dispositions suivantes.

Cet article 4561 des Statuts Revisés de 1888 avait pour but, comme on le voit, de donner aux villes le droit d'expropriation.

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Comme il ne référait pas aux bâtisses, il fut décidé dans le cas de Fraserville d'ajouter ces mots "et les bâtiments ou constructions" au mot *terrain* afin de rendre bien clair le droit de la ville de Fraserville d'exproprier non-seulement les terrains mais les bâtisses qu'on y aurait érigées. Et il était décrété aussi en même temps que ces expropriations ne pouvaient se faire que dans la ville. C'était en 1903 que l'article 4561 fut ainsi amendé. Mais en 1906 de nouveaux pouvoirs d'expropriation furent accordés à la ville pour son système d'éclairage et cette fois la ville ne fut pas restreinte à son propre territoire mais on lui a donné le pouvoir d'aller en dehors dans les municipalités avoisinantes.

La législature, cependant, lui a donné ce pouvoir additionnel non pas en retranchant les mots "dans la ville" de l'article 4561 tel qu'amendé en 1903 mais en faisant une nouvelle section. Cette nouvelle section est claire et non ambigue et personne ne prétendra qu'elle ne met pas à néant les restrictions imposées par l'article 4561 tel qu'amendé.

Si par la loi de 1903 la ville de Fraserville ne pouvait exproprier que dans les limites de son territoire pour son système d'éclairage, l'amendement de 1906 lui donne clairement le droit d'aller au dehors de son territoire pour perfectionner son système d'éclairage.

Ces deux dispositions sont donc contradictoires et quoique l'article 4561, tel qu'adopté en 1903, n'ait pas été formellement rappelé en 1906 il devient incompatible avec la loi de 1906 et alors la dernière doit prévaloir, vu qu'elle contient la volonté du législateur telle qu'exprimée en dernier lieu.

Lord Tenterden disait dans la cause de *The King* v. *The Justices of Middlesex*(1):—

(1) 2 B. & Ad. 818, at p. 821.

Where the proviso of an Act of Parliament is directly repugnant to the purview of it, the proviso shall stand and be held a repeal of the purview, as it speaks the last intention of the makers.

"The usual rule as stated" par sa seigneurie le juge Farwell dans la cause de *In re Cannings and County Council of Middlesex*(1):—

is that where there are two public general Acts with inconsistent provisions the later Act prevails.

La procédure en expropriation qui doit être suivie pour les terrains situés en dehors du territoire d'une ville est celle indiquée par les articles 4562 et suivants S.R.Q.

En vertu de l'article 4178, qui est le premier article de l'acte des corporations de ville, il est déclaré que:

*les dispositions du present chapitre* s'appliquent à toute municipalité ou corporation de ville établie par la législature de cette province, et à *moins de modification ou d'exception expresse font partie de la charte.*

L'article 4179 est encore plus explicite et dit:—

Pour empecher l'incorporation de quelques articles du présent chapitre dans la charte, elle doit *les en exclure expressément en les désignant par leurs* numéros d'ordre.

Où se trouve la disposition de la charte de Fraserville qui déclare expressément en les désignant par leurs numéros d'ordre que les articles 4562 et suivants ne font pas partie de sa charte?

Y a-t-il dans la charte de Fraserville une seule disposition qui déclare expressément que les articles 4565 et 4569*a* qui pourvoient à donner au juge juridiction pour la nomination des arbitres ne font pas partie de sa charte? Il n'y en a aucune.

L'article 4561 invoqué par l'appelant ne s'occupe pas particulièrement de la procédure à suivre dans les expropriations mais détermine le droit lui-même d'expropriation.

(1) [1907] 1 K.B. 58.

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Et quant à la procédure à suivre, les dispositions des articles 4562 et suivants s'appliquent et il serait illégal d'avoir recours à la loi générale d'expropriation qui ne s'applique pas aux corporations de ville.

La nomination des arbitres a été dûment et légalement faite par le juge de la Cour Supérieure.

L'appelant d'ailleurs ne souffre aucune injustice puisque la corporation consent à lui payer le montant que son propre arbitre a décidé de lui donner.

2.—POUVOIR D'EXPROPRIATION.

Un autre point qui a été également soulevé par l'appelant est que la ville de Fraserville ne pouvait pas exproprier son terrain parce qu'il ne se trouvait pas dans une municipalité avoisinante.

La rivière et le lac en question sont situés à environ une quinzaine de milles de Fraserville. La ville, pour maintenir son système d'éclairage, était évidemment obligée d'aller en dehors pour alimenter son pouvoir d'eau. A certaines saisons de l'année la rivière où elle prenait son pouvoir s'asséchait et ne pouvait fabriquer la lumière nécessaire.

Il paraitrait que le lac et le cours d'eau possédés par l'appelant était les seules propriétés propices qui existaient dans les environs. Il s'agaissait de faire avec ces lacs et ces cours d'eau des réservoirs qui conserveraient l'eau que l'on distribuerait ensuite dans le cours de l'été, lorsque le cours d'eau où la ville prenait son pouvoir s'assècherait. Elle a alors obtenue, en 1906, le droit d'exproprier des propriétés en dehors de son territoire par le statut (6 Edw. VII., ch. 50, sec. 6) qui déclare qu'elle pourra:—

Obliger les propriétaires ou occupants de tous terrains ou propriétés dans *ou en dehors de la* ville *et les municipalités avoisinantes*, à laisser

faire sur leurs propriétés tous les travaux nécessaires à la construction, au maintien et à la réparation du systeme d'éclairage électrique, et le conseil pourra exproprier tout terrain nécessaire à cette fin, sauf indemnité pour les dommages réels causés à tels terrains ou propriétés.

On se sert de l'expression *municipalités avoisinantes* dans la version française, des mots "adjoining municipalities" dans la version anglaise.

Le mot "adjoining" me paraît un peu plus restreint que celui "d'avoisinant"; et comme en vertu de la charte de Fraserville, sec. 297, il est déclaré que dans le cas de divergences entre la version française et la version anglaise la version française sera adoptée de préférence, je dis que nous devons alors considérer tout particulièrement le mot "avoisinant."

Le mot "avoisinant" veut dire *être* à *proximité d'un lieu,* ne veut pas nécessairement dire immédiatement voisin.

D'ailleurs le législateur avait tellement peu en vue les municipalités attenantes à la ville qu'il n'y en a qu'une seule, savoir la paroisse de la Rivière du Loup qui entoure Fraserville. Quand il a autorisé, par conséquent, la ville de Fraserville à exproprier dans les municipalités avoisinantes, il voulait évidemment parler des municipalités qui se trouvent être à une certaine proximité, mais qui ne sont pas nécessairement attenantes à la ville.

Les terrains en question sont à une quinzaine de milles de la ville. Ce sont les seuls que la ville pouvait exproprier pour son système d'éclairage. C'était certainement ceux qu'elle avait en vue quand elle s'est fait autoriser par la législature. Alors il ne peut pas y avoir de doute, suivant moi, que la corporation avait le droit d'exproprier les terrains de l'appelant.

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Pour toutes ces raisons, je considère que le jugement qui a renvoyé l'action du demandeur est bien fondée et doit être confirmé avec dépens.

*Appeal dismissed with costs.*

Solicitors for the appellant: *St. Germain, Guérin & Raymond.*

Solicitors for the respondent: *Lapointe, Stein & Levèsque.*