Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Henri T. Déchène v. *The City of Montreal, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 28th July* 1894.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
LORD SHAND.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Respondent Corporation are authorised by Section 101 of 37 Vict. (Quebec) cap. 51, to make an annual appropriation for the amounts necessary to meet the expenses of municipal administration during the current year. By the same clause, it is enacted that, "such appro- " priation shall never exceed the amount of the " receipts from the preceding year, added to the " balance of the said receipts which have not " been expended."

Section 12 of the Quebec Statute 42 & 43 Vict. cap. 53 provides that "Any municipal " elector, in his own name, may, by a petition " presented to the Superior Court sitting in the " district of Montreal, demand and obtain on " the ground of illegality, the annulment of any " by-law, resolution, assessment roll or appor- " tionment, with costs against the corporation;

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" but the right of demanding such annulment " is prescribed by three months from the date " of the coming into force of such by-law, " resolution, assessment roll or apportionment, " and after that delay every such by-law, " resolution, assessment roll or apportionment " shall be considered valid and binding for " all legal purposes whatsoever, provided that " it be within the competence of the said cor- " poration."

The effect of these provisions, taken by themselves, appears to their Lordships to be plain, and free from ambiguity. They confer upon each and every municipal elector the right, which he had not at common law, to challenge, on the score of illegality, any corporate appropriation of money to meet the expenses of the current year, subject to the condition that the right shall prescribe, if not exercised within three months from the time when the appropriation comes into force. They also confer upon the Corporation an absolute immunity from liability to have the legality of the appropriation questioned, at the instance of any person whatsoever, after the lapse of these three months. But they do not interfere with any right existing by law to impeach the appropriation, after the expiry of the three months, upon the ground that it was beyond the competence of the corporation.

On the 29th March 1886, the Respondents passed a byelaw or resolution, which became immediately operative, appropriating the sum of $1,922,173 to the expenses of the current year. Upon the 30th June 1886, the day after the period of three months expired, the Appellant, who is a municipal elector of the City of Montreal, presented a petition to the Court, praying for annulment of the appropriation to to the extent of $136,000. 36 cents, which sum

was alleged to be in excess of the limit prescribed by the Act 37 Vict. cap. 51. The last day of the three months was the feast of St. Peter and St. Paul, which, by Section 2 of the Civil Procedure Code is declared to be non-juridical. In defence, the Respondents, whilst disputing the allegations upon which the petition was founded, pleaded that it was out of time.

The parties arranged that, before entering into the merits of the case, the judgment of the Court should be taken upon that plea; and that, for the purpose of raising the plea, it should be assumed that in making the appropriation, the Corporation had exceeded the limit of their statutory power, by the sum of $136,000. 36 cents. His Honour Judge De Lorimier, in the Court of First Instance, sustained the plea, and dismissed the petition. On appeal, his decision was unanimously affirmed by five learned Judges of the Court of Queen's Bench.

The arguments submitted by the Appellant to the Court of Queen's Bench are summarized in the Case which he has laid before this Board, to which it may be convenient to refer. As therein stated, he pleaded :—" (1) That the reso-" lution complained of was not within the " competence of the Municipal Council. (2) " That the question of the delay within which " the petition could be presented was one of " civil procedure. (3) That the law making " valid an act done on the next judicial day, " where the last day on which it could be other-" wise done was a holiday, applied in all cases, " and not only in matters of civil procedure. " (4) That the Act extending the time for pre-" senting a petition to six months applied to " the present case." These pleas cover the whole points which were discussed in the lengthened argument addressed to their Lordships, in support of this appeal. The second and third of them

are the only pleas which can be regarded as having any substance, or any relevancy to the preliminary question of title, which the parties agreed to try, before the facts were investigated.

To begin with the first of these pleas, it is true that an incompetent resolution must be illegal; but it does not follow that an illegal resolution must be beyond the competence of the Council. In this case, the resolution sought to be impeached was plainly within their competence, seeing that it exclusively relates to matters committed to the Council by statute. Even if it had been incompetent, that circumstance could not enable the Appellant to bring a petition for its annulment after the expiry of the three months. After the lapse of that period, the right conferred upon a municipal elector by 42 & 43 Vict. cap. 53 sec. 12, is at an end; though the incompetent resolution remains open to challenge, at the instance of persons who have a proper title.

The fourth plea is to the effect that the time allowed to the Appellant, for bringing this suit, by 42 & 43 Vict. cap. 53, was enlarged to six months by the Quebec Act 52 Vict. cap. 79 sec. 144. The plea is sufficiently refuted by stating these two facts. The three months allowed to the Appellant ran out, according to his own contention, upon the 30th June 1886. The Act upon which the plea is founded was passed about two years after that date.

The second and third pleas may be treated as one. They are meant to express the proposition that, by the law of the province of Quebec, the 29th June 1886 being a non-juridical day, the three months period was extended to the next day, which was juridical. The Appellant maintains that the right given to him by the 12th section of 42 & 43 Vict. cap. 53 is substantially a matter of procedure; and, in the event of its

being held otherwise, that the same rule which obtains in matters of procedure has been extended by statute to the time limited for the prescription of any right of action.

The Respondents do not dispute that, when an action is depending, the rule upon which the Appellant relies is applicable to proceedings in the litigation. But they maintain that the statutory title of the Appellant to petition the Court, and their own statutory immunity, which arises immediately upon the cesser of his title are matters of right and not of procedure; and that the prescription, by which his title is cut off and their immunity established, is regulated by the provisions of the Civil Code.

The rule for which the Appellant contends is to be found in Section 3 of the Code of Civil Procedure, which enacts, as follows,—"If the day on "which any thing ought to be done in pursuance "of the law is a non-juridical day, such thing "may be done with like effect on the next "following juridical day." In the opinion of their Lordships, that enactment refers exclusively to things which the law has directed to be done, either by the Plaintiff or the Defendant, in the course of a suit, and has no reference to the title or want of title in the Plaintiff to institute and maintain it.

The enactment upon which the Appellant chiefly relied is Section 20 of the Quebec Statute 49 & 50 Vict., cap. 95. The statute did not become law until the 25th August 1886, nearly two months after the present petition was brought, but is said to be declaratory. Section 20, is in these terms,—"If the delay fixed for any "proceeding or for the doing of any thing expires "on a non-juridical day, such delay is prolonged "until the next following juridical day." The Section appears to their Lordships to be essentially a procedure clause, and to be, in substance, a re-

enactment of Section 3 of the Code of Civil Procedure. Its language is not calculated to suggest that a claimant may bring an action for recovery of land, after the period of limitation has run, if he can shew that the last day or days of that period were non-juridical, and that his claim is preferred upon the first juridical day after its expiry. Yet that would be the logical result of giving effect to the argument of the Appellant.

Their Lordships are satisfied that no question of procedure is raised by the circumstances of the present case; and they are also of opinion that Section 12 of 42 & 43 Vict., cap. 53, is not controlled either by the Code of Civil Procedure or by Section 20 of the Act 49 & 50 Vict. cap. 95. The latter clause is qualified by Section 1 of the same Act, which provides that the enactments which it contains, including Section 20, though otherwise applicable, shall have no effect against any other Statute, in so far as they may be inconsistent with the object, the context, or any of the provisions of such Statute. Even if Section 20 were *primâ facie* applicable to the present case, their Lordships venture to doubt, whether, having regard to that reservation, it could be permitted to control the plain intendment of the Legislature as expressed in the clause which gives a right of challenge to the Appellant; but in the view which they take it is unnecessary to decide that question.

Their Lordships have to express their concurrence in the reasons rendered by the learned Judges in both Courts below. They will humbly advise Her Majesty to affirm the judgments appealed from, and to dismiss the appeal, the costs of which must be paid by the Appellant.