an amendment made by which those privileges were increased, it was to be considered altogether as the charter of the company, and by a reference to the word "charter" the whole charter of the company was to be considered together, whereby the amendment became an integral part of the original charter, so that by reference to the charter in that way the subsequent law incorporated the amendment as well as the original act. Suppose, however, the language of the law in that case had been to confer all the rights and privileges of a charter referred to by the date as part of the description: then it might be said it was somewhat similar to the case now before the court; but such was not the language there. If, for instance, this law incorporating the town of Tamaroa had declared that it was to have all the privileges and rights which the town of Havana had, without referring to a particular act, then it might be presumed that it referred to existing laws in force at the time that the corporate power was thus given to the town of Tamaroa. But, inasmuch as the act of incorporation in this case refers to a particular statute, we think it is scarcely inferable that it was in the mind of the legislature to give to the town of Tamaroa the right to subscribe to the capital stock of a railroad, and thereby impose additional burdens on the inhabitants of the town, especially when the very language of the act of 1859 limits the power of the town authorities to tax property within the town to not more than one-half of 1 per cent. Can it be fairly inferred, with such a limit upon the authority of the trustees, that the legislature intended to say that the town of Tamaroa should have the power to subscribe to the stock of a railroad, and thereby impose a tax on the people of the town, in the face of the express proviso to the act of 1859 defining the powers of the corporation? We think not. Therefore, if it were true that by a strained inference there was such an intention shown in the body of the act, still, there being a proviso of a limit upon the authorities of the town, which limit would be entirely inconsistent with a power previously given, the limit would control; the proviso would operate upon all previous language in the act. And so, without going further into this question, we hold that the plaintiff cannot recover.

NORTON and others *v.* CITY OF DOVER.

(*Circuit Court, D. New Hampshire.* October 31, 1882.)

PRACTICE—AMENDMENT OF WRITS—TERMS.

While the practice in the state courts may enlarge the power of amendment in the federal courts, it cannot diminish such powers as are conferred by acts of congress.

Caverly, Kevil & Wooleigh and *Mr. Fish,* for plaintiffs.

Mr. Mugridge, G. L. Roberts & Brother, and *Mr. McLane,* (specially,) for defendant.

LOWELL, C. J. The writs in this and several other cases were made returnable on the eighth of October, 1882, which was Sunday, and by Rev. St. § 658, the term of the court began on Monday, the 9th. There can be no doubt that the writs were voidable and might be quashed on motion. Three unreported cases in this court, decided in 1876, are cited which establish that point. I am informed that in none of these cases the question argued here, whether such process can be amended, was passed upon by the court. In these cases the printed briefs contain a petition for leave to amend, as well as an argument upon the subject. Such a writ was held to be void and not amendable in *Wood* v. *Hill,* 5 N. H. 229, which was followed; *Bell* v. *Austin,* 13 Pick. 90; and that in *Brainard* v. *Mitchell,* 5 R. I. 111. The first of these decisions was explained in *Kelly* v. *Gilman,* 29 N. H. 385, as belonging to an exceptional class of cases in which the process was by assent of the person, and the general rule was said to be that a mistake in the return-day may be amended. In cases cited from Massachusetts and Rhode Island the defendants did not appear. If he does appear, though only to move to quash, the law of Massachusetts now is that the writ may be amended. *Hamilton* v. *Ingraham,* 121 Mass. 562; *McIniffe* v. *Wheelock,* 1 Gray, 600; *Fay* v. *Hayden,* 7 Gray, 41. I have found no law in New Hampshire precisely like this, but in my opinion the defect is amendable by the law of this state. See Gen. Laws 1878, *c.* 226, §§ 8, 9; *Kelly* v. *Gilman,* 29 N. H. 384; *Tandy* v. *Rowell,* 54 N. H. 384. If the defendant had not appeared justice would require that notice should be served on him. With such service, I have but little doubt of the power of a court of New Hampshire to permit an amendment. But, however this may be, the practice in New Hampshire, while it might enlarge our powers of amendment, cannot diminish those which are conferred upon us by the acts of congress. By Rev. St.