

of which he is possessed, according to Article 764 of the said Code, within thirty days from the judgment rendered in the suit in which he was arrested, it is not provided in the said Article, nor in any other article of the said Code, nor in any provision of law now in force, that in default of filing such statement and declaration, such debtor shall be imprisoned or be subject to any penalty whatsoever.

"And considering that the judgment of the Superior Court sitting at Montreal on the seventeenth day of September, one thousand eight hundred and eighty, by which it was ordered that the said Appellant should be imprisoned in the common gaol of this district for one year, is not, under the allegations of the petition on which said order was made, justified by law, and that there is error in the said judgment.

"This Court doth reverse the said judgment of the seventeenth day of September, one thousand eight hundred and eighty, and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the petition of the said Respondent presented to the said Superior Court on the third day of September, one thousand eight hundred and eighty. And doth condemn the said Respondent to pay to the Appellant the costs incurred in the said Superior Court on the said petition, as well as those incurred on the present appeal.

"(The Honourable Justices Ramsay and Baby dissenting.)"

The question, which their Lordships have found to be one of considerable difficulty, depends on the true construction of the two codes of Lower Canada, the Civil Code, more particularly Art. 2274 and Arts. 2613 and 2614, and the Code of Civil Procedure, more particularly Art. 766 and those following it, and Art. 1360. There were careful and elaborate provisions for framing two codes in question; but notwithstanding all the precautions taken, there may be, and in fact in the present case there are, doubts as to what is the meaning of the language employed. And the Civil Code of Lower Canada, Art. 12, is "that when a law is doubtful or ambiguous it is to be interpreted so as to fulfil the intention of the Legislature, and to attain the object for which it was passed."

It is therefore material to inquire how and

why the two codes were enacted, so as to ascertain what was the intention of the Legislature, and what the object for which they were enacted.

First, by Statute 20 Vic., c. 43, which afterwards became the second chapter of the Consolidated Statutes of Lower Canada, Commissioners were appointed, who were directed (Secs. 4, 5, and 6) to reduce into one code, to be called the Civil Code of Lower Canada, those provisions of the laws of Lower Canada which relate to civil matters, and are of a general and permanent character, whether they relate to commercial cases or others, but excepting the laws relating to seigniorial or feudal tenure, and to reduce into another code, to be called the Code of Civil Procedure of Lower Canada, those provisions which relate to procedure in civil matters and cases, and are of a general and permanent character. They were directed to embody therein such provisions only as they held to be then actually in force. They might suggest such amendments as they thought desirable, but were to state them separately. And they were directed to follow, as far as might be, the arrangement of the Code Civil of France. It was provided that, as the Commissioners proceeded with their work from time to time, there should be an opportunity given to the Judges to review their work, and make suggestions to the Commissioners, who were to consider, but were not bound to adopt, their suggestions. And by Sect. 13 the Commissioners were required from time to time to incorporate with the proper portions of the said codes such amendments as the Governor in Council thinks it right to recommend for adoption by the Legislature after considering the reports of the Commissioners, and those of the Judges if any, but such amendments shall be carefully distinguished from the actual law. And then by Sect. 14, "When the said codes, or either of them, are completed, with such amendments as last mentioned, printed copies thereof, and of the reports of the Commissioners, and of the Judges if any, shall be laid before the Legislature, in order that such code or codes may be made law by enactment; and if it be found advisable that either of the said codes be completed and submitted to the Legislature before the other, the Civil Code of Lower Canada shall be the first so completed and submitted.