Berlin, and have ice-houses on the bank of the Danube, near Vienna. The ice, after being cut, is elevated by crane and pulley to the store-house, and slides down inside. On the downward slide the ice moves by its own weight, and with increasing velocity, its course being directed by laborers stationed along the sides to keep the blocks on the track. Popp, the injured party, was one of those so engaged. But a large cake of over a hundred weight jumped the track, and though Popp sprang to one side, he was not quick enough, and was thrown down and his left leg broken. He claimed damages, but the sympathies of the company were apparently as cold as the article they deal in. Mr. Popp, however, gained the day—the Court holding that it was the duty of the company to provide railings or beams along the sides of the slide to keep the ice from falling off,—and after the company had dragged the plaintiff through three Courts, the judgment in his favor has been affirmed finally by the Imperial Supreme Court of Austria.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

[From S. C., Montreal.

OSBORNE et al. v. PAQUETTE.

Evidence—Certificate of Prothonotary not sufficient proof of execution of deed of composition between Insolvent and his creditors.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Jetté, J., May 31, 1880.

JOHNSON, J. On the 15th April, 1879, the defendant was arrested under a capias *ad respondendum* at the suit of the plaintiffs, and went to prison in default of bail. On the 23rd of June he gave bail under article 825 C. P., that he would surrender to the sheriff when required to do so by an order of the Court, within a month of the service of such order on him or on his sureties—in default, the sureties to be liable, &c. After giving this bond, he was liberated, and on the 17th of September judgment was given for the debt, interest and costs sued for, and also maintaining the capias. On the 13th of February the plaintiff moved that as the defendant had not made an abandonment of his property under Art. 766, he should be imprisoned, and also that the Court should give the order contemplated by the bail bond—to surrender within a month after it should be served on him.

The first part of the motion was unfounded, and seems to have been unnoticed. The second part asking for the order to surrender was answered, not by contesting the right that was claimed by the plaintiff to have this order, but by in effect alleging a reason why the right could not in this case be exercised as asked; that is to say, he advanced a fact or an allegation of facts; and he produced as his only proof of them a certificate of the Prothonotary. He said: "You cannot ask for this order, because when you get it, it will be of no use, inasmuch as I have a deed of composition with my creditors." Whether this would be a complete answer, and whether a composition not confirmed by the Court would discharge the debtor from liability to this order, we need not discuss. The only point now is whether the certificate of the Prothonotary is a complete proof of the execution of such a deed between these parties; and it seems clear that it cannot be so held, and still less is it a proof of the facts of the composition. We see, however, that this man may have a right; and yet we see also that the inscribing party here is entitled to succeed completely, because this right has not been established. We, therefore, render the judgment that might have been given below, and we order that the motion be answered in writing within eight days, and we discharge the inscription, and condemn the defendant to pay the costs of review.

Inscription discharged.

L. N. Benjamin for plaintiffs.
Doutre & Joseph for defendant.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

JOHNSON, TORRANCE, JETTÉ, JJ.

[From S. C., Montreal.

MCALLEN v. ASHBY, & ASHBY, Petr.

Capias — Affidavit — Existence of debt at time of alleged secretion.

The judgment under Review was rendered by