

to them and to his advantage, is a valid payment under Art. 1144. I have no doubt either, that the Art. 807 of the *Code Municipal* does not support the plaintiff's pretension of an exclusive right of action in himself. As I read it, it gives the action to all those who have earned the money. The plea and tender of the defendants are maintained. The previous offer of the \$2 was proved, so the action must be dismissed with costs. If the plaintiff gets, as he does, all he is entitled to for himself, he cannot complain for others.

Geoffrion, Dorion, Lafleur & Rinfret for the plaintiff.

De Bellefeuille & Bonin for the defendant.

CIRCUIT COURT.

MONTREAL, NOV. 27, 1886.

Before JOHNSON, J.

MCCARTHY v. JACKSON, and WARD, Petitioner.

Contrainte par corps—Guardian—Commitment—Enumeration of effects—Petition under C. C. P. 792.

Held:—1. That C. C. P. 792 applies to all the cases in Section VII, C. C. P. 781-795.

2. In the commitment of a guardian for not producing effects placed under his guardianship, it is not essential that there should be an enumeration of the effects he has to deliver up in order to obtain his liberation.

For reports of previous proceedings in the present case, see 9 L. N. 211; 9 L. N. 298; and M. L. R., 2 Q. B. 405.

JOHNSON, J.:—The petitioner is the guardian *en justice* of the effects seized in this case, and is imprisoned for contempt in not representing them when required. He now petitions for his release on the ground of the illegality of his detention, which illegality he makes to rest upon the allegations: First, that the warrant or authority for his detention does not specify what are the effects he is to deliver up in order to get his liberation; and secondly, because it requires him to pay the costs of his arrest. It is stated that the petitioner has already applied to the Queen's Bench for his release under a *habeas corpus*, which was refused because the detention was under civil process, and the civil courts can

take care of their own processes. (*) What is sought now is action by the Circuit Court which issued the process, and it is invoked under the article 792. That article, and the preceding ones from 781—in section VII.—refer to the subject of coercive imprisonment, but it is contended by the plaintiff, who resists the application, that it applies merely to liberation for default to pay alimentary allowance when it has once been ordered. Art. 790 gives this right to alimentary allowance, and art. 791 relieves the creditor from continuing to pay it, if the debtor afterwards acquires property to the extent of \$50. Then 792 says: The debtor may, if he has grounds for so doing, seek redress against such imprisonment by petition or motion to the court or judge served upon the creditor.

Although, therefore, it is true that 792 immediately follows the articles referring to alimentary allowance, and to the consequences of not paying it, it is not a necessary consequence that it relates only to those articles, and gives no right to release for any other cause of illegal detention. Now, section VII. refers not only to imprisonment for debt, nor yet to cases merely in which an alimentary allowance may be granted; but it expressly refers also to other kinds of coercive imprisonment similar to the present, and in which it has been held that no alimentary allowance will be granted, and in fact it refers to all cases of *contrainte par corps* whatsoever. (See art. 782.)

The question then is whether 792 applies to the case of the prisoner here; and having looked at the law since the case was argued yesterday, I am of opinion that it does apply to all the cases in sec. vii. Art. 792 makes reference expressly to art. 795 C. P. C., which, of course, indicates the French Code of *Procédure Civile*, as our codifiers, at the time they gave that reference, had no code of procedure of our own, and could have none while they were still making it or until it was completed, and adopted by the Legislature. The French *Code de Procédure* is very different from ours in its provisions respecting alimentary allowance, and is much more elaborate and detailed; and art. 795 of that code provides that

* See *Ex parte Ward*. M. L. R., 2 Q. B. 405.