

was untenable, and the practice of the Court in this respect, which has always been adopted, is in compliance with the directions of the Code. The other technical objections to the writ have no substantial foundation. Three of the Judges of the Court of Queen's Bench held that the writ was correct in point of form, although one of them, Mr. Justice Badgley, being of opinion that the writ asked for too much, held that a peremptory writ could not issue commanding the Defendants to do the one thing only, viz., to bury, which, according to his view, they were legally bound to do. The procedure therefore requiring a petition and plea to the petition, it appears to follow that the applicant for the writ is not so strictly bound by the prayer of his petition as he is in this country to the command contained in the first writ of mandamus, and that the Court may mould the order for the peremptory writ in the same manner as the Court here may mould the rule for a mandamus. There being no rule which requires a peremptory writ of mandamus to be granted in the precise terms of the first writ, it seems to follow that the general rule applicable to pleadings, either in equity or at common law, may be acted upon. According to them, a Plaintiff may generally obtain a decree for less than that for which he asks, and for relief in more distinct and specific form than that for which he has prayed, provided it is within the scope of the prayer.

In the present case the prayer of the petition was—that the Defendants might be commanded to bury or cause to be buried the body of the deceased Joseph Guibord, in the Roman Catholic Cemetery, conformably to usage and to law. That was, doubtless, as pointed out by the Court of Review, extremely vague.

The objection to issuing a peremptory writ in that form was clearly stated by Mr. Justice Mackay (Record, pp. 270, 271).

“Under such vague conclusion,” he observes, “the point really meant to be tried is hidden. That the Defendants are bound to bury Guibord in the Roman Catholic Cemetery, according to the usage and the law, is indisputable, and is not disputed. Peremptory mandamus to do this would nevertheless leave things just as