On June 16th, 1882, the Court (Papineau, J.) maintained the demurrer (*réponse en droit*), and rejected the plea.

On the 30th, the defendant, desiring to appeal from that judgment, caused a motion for leave to appeal, and notice of its presentation on the 15th September next, to be served upon the plaintiff, by leaving a copy of each with his attornies *ad litem*, and also upon the Prothonotary, who received copies, and filed the same in the office of the Clerk of Appeals.

On the 5th July *E. LeBlanc* asked the Prothonotary to issue execution against the defendant for costs on the judgment. The mode prescribed by art. 1124, C. C. P. to stay the execution of judgments appealed from, was the giving security. But in this case no security had been given, neither could any be received. Security could be tendered only after the issue of the writ of appeal, and as, in this case, the judgment was not final, but interlocutory, the motion for leave to appeal had to be granted before a writ could issue. Defendant might, perhaps, invoke art. 1120, which read, "The motion (for leave to appeal) must be served upon the opposite party, and, if required, is followed by a rule, calling upon such opposite party to give his reasons against the granting of the appeal; and the service of such rule upon him has the effect of suspending all proceedings before the court below. But it was clear that the service of the rule only, and not of the motion, had the effect mentioned.

W. A. Polette, e contrà.—Art. 1124 applied to final, and not to interlocutory judgments, at least not until the writ had issued. The enactment regulating the matter was art. 1120, and the objection derived from its wording was untenable in the present instance. A rule was not required. The object of a rule was to compel the opposite party to appear, and the notice of presentation possessed the same power, and stood in its place. The want of a rule gave the notice the same effect as a rule would have on the course of the procedure. The service of the notice operated like that of a rule. It might be answered that the Court alone could pronounce whether a rule was required or not. But the Code provided for a rule, to meet the case of a party who would be within the delay to move (art. 1119), but who could not for want of sufficient time (R. P. Q. B., 20°) give valid notice of presentation. That party could save his right by moving, but his motion had to be followed by a rule. Here, however, the delay of notice was far more than sufficient; and the question regarding the requirement of a rule evidently could not come up before the Court. Moreover, if it had to be adjudicated upon, that could not take place except in term, and the Court would not sit before the 15th of September next. The present impossibility for the defendant to secure an advantage which he could obtain, or at least attempt to obtain, if the Court was sitting, could not in justice operate to his prejudice. No other interpretation of art. 1120 could sustain its logical accord with art. 1124, which, in case the motion should be granted, would require appellant to give security for costs, in the Court below as well as in the Court above. If the law binds appellant over to give security, it manifestly holds that he is not obliged to pay until after judgment in appeal if it goes against him, and, necessarily, that execution cannot issue until then. To issue execution now, would be assuming the responsibility to bring about a state of things at variance with the provision contained in art. 1124. This was defendant's contention within the letter and the spirit of the Code of Civil Procedure.

On the 6th July,

The Prothonotary refused the Execution.

Execution refused.

LeBlanc & Boisvert, for plaintiff.

W. A. Polette, for defendant.

(W. A. P.)

RECENT QUEBEC DECISION.

Procedure—Guardian—Rule for contrainte.—Il n'est pas nécessaire de signifier la motion sur laquelle émane une règle pour contrainte par corps contre un défendeur ou un gardien: il suffit de leur signifier personnellement la règle elle-même. S'il émane contre le gardien à une saisie-revendication une règle pour contrainte par corps, faute par lui de représenter la chose confiée à sa garde, le demandeur n'est pas tenu de lui offrir par cette règle, l'alternative de remettre la chose ou d'en payer la valeur.—*Watzo* v. *Labelle, & Frappier*, 26 L.C.J. 121.