day, the Court was adjourned to the 13th. In the meantime the storm became so violent that it was impossible for Judge or jurors to attend Court on the 13th, and the trial was not resumed until the 14th, when it was continued without objection on the part of the prisoner, and resulted in his conviction. Subsequently his counsel moved in arrest of judgment, on the ground that there had been no legal Court of Sessions on the 14th of March. The General Term held on appeal that the Court of Sessions had lost jurisdiction by not sitting on the 13th. No case exactly in point could be found, but decisions were cited to the effect that the statutory directions must be followed or the court fails.

NEW PUBLICATION.

TRAITÉ DES SUBSTITUTIONS FIDÉI-COMMISSAIRES, contenant toutes les connaissances essentielles selon le Droit Romain et le Droit Français, avec des Notes sur l'Ordonnance de 1747: par Mr. Thévenot d'Essaule de Savigny.—Montreal: A. Periard, Publisher.

This is a Canadian edition, published by Mr. Periard, of the well-known treatise of Thevenot d'Essaule on Substitutions, which, as the author informs us in the preface, was undertaken shortly after the Ordinance of 1747, though not completed until some years later. The work also embraces notes by the Canadian editor, Mr. Justice Mathieu, giving the articles of our Civil Code on the subject treated, together with a summary of the decisions which have been rendered by our Courts on matters of substitution. The importance of the subject and the ability of the work which now appears in a modern dress, are too well-known to our readers to require further notice here. The edition is convenient in form, and well printed, and will doubtless supersede the older editions.

SUPERIOR COURT.

AYLMER, (dist. of Ottawa), Sept. 26, 1888.

Before WURTELE, J.

BLANCHETTE v. CORPORATION OF THE TOWNSHIP OF BOUCHETTE.

Summons—No return—Motion by defendant to be discharged from the suit—Art. 82 C.C.P.

HELD:—*That it is necessary to give notice of a motion for the discharge of the defendant from the suit, with costs, on the default of the plaintiff to return his writ.*

The writ was returnable on the 24th September, 1888, but was not returned; and the defendant filed a written appearance on the return day itself.

On the 26th, the defendant moved to be discharged from the suit, with costs, in consequence of the default of the plaintiff in not having returned his writ, and he produced at the same time the copies of the writ and declaration which had been served upon him.

The plaintiff's attorneys happened to be in Court, and pleaded;—1st, that the defendant was bound to pay the costs of the return before he could move to be discharged; and 2nd, that notice had not been given of the motion. The defendant's counsel contended that neither were necessary under Article 82 of the Code of Civil Procedure; and he quoted, as to notice being unnecessary, *Gagnon* v. *Sénécal, & Gouin*, 4 Rev. Leg. 537, and *Chalut* v. *Valade et al.*, 21 L. C. J. 218.

PER CURIAM.—The only condition precedent imposed by Article 82 of the Code of Civil Procedure upon the defendant to be allowed to move to be discharged from the suit, is the filing of the copy of the writ which was served upon him. Notwithstanding the ruling in *Coady* v. *Fraser*, 6 Q. L. R. 384, I am, therefore, of opinion that a defendant is not required to pay the fees on the return when he files his copy of the writ. Besides, by the tariff, the fee which it is pretended should have been paid, is payable on the return of the writ, and motions such as the one now under consideration can only be made when there is none; there being no return, the fee imposed on returns does not accrue, and surely cannot be exacted.

As to the other objection raised, I am with the plaintiff, notwithstanding the ruling in the two cases quoted by the defendant's counsel. The context of the Article does not, it is true, require or even mention the giving notice to the plaintiff of the motion asking to be discharged from the suit; but all proceed-