

diction in a judge or the Court here; that the 31 Vic., cap. 76, did not apply to the Province of Manitoba, and cited in support of this pretention, 1st, 33 Vic., cap. 3, sec. 2; 2nd, 34 Vic., cap. 13, sec. 1; that these two acts relate to the entry of Manitoba into the Dominion. Section 1 of the last named act directing that the acts passed in the first, second and third sessions of the Parliament of Canada, will apply to the Province of Manitoba the same as to the other four provinces, with the exception of the special acts mentioned in a schedule at the end of said act, and that Manitoba is therefore in regard to said chapter 76 of 31 Vic., in the same position as the four provinces confederated by the B. N. A. act.

The plaintiffs contended that when 31 Vic., cap. 76, was passed, Manitoba was in effect a foreign country and was not affected by it, and that in any case by the Imperial Act hereinafter mentioned the Court here had full jurisdiction.

The judge (Jetté, J.) gave his decision on the 31st May, 1883, as follows:—

"La Cour, en vertu des pouvoirs qui lui sont conférés par le Statut Impérial, 22 Vict., chap. 20, après avoir entendu les parties sur la demande de révision de la décision du commissaire enquêteur, S. Cross, écuyer, rendue le 11 d'avril dernier, et enjoignant au témoin Maltby de répondre à la question à lui posée, et de produire les livres et documents demandés, sous réserve de la dite objection;

"Confirme, en tous points, la dite décision, dépens réservés."

Dunlop & Lyman for the plaintiffs.

Geoffrion & Co. for the defendants.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

April 18, 1883.

Present:—LORD BLACKBURN, SIR BARNES PEACOCK, SIR RICHARD COUCH, SIR ARTHUR HOUBOUSE.

CARTER V. MOLSON.

Capias—Failure to file statement.

The Code of Civil Procedure having failed to impose any penalty whatever for not filing the statement required by Art. 766, the penalty provided by C.C. 2274, and by C.S.L.C., Ch. 87, Sec. 12, s.s. 2, cannot now be enforced.

PER CURIAM. This is an appeal from a judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec; by which that Court, by a majority of three to two, reversed a judgment of the Superior Court of Lower Canada.

The judgment is in the following terms:

"6th March, 1882,

"Present: The Honourable Sir Antoine Aimé Dorion, Knight, Chief Justice; the Honourable Mr. Justice Monk, the Honourable Mr. Justice Ramsay, the Honourable Mr. Justice Tessier, the Honourable Mr. Justice Baby.

"The Court of our Lady the Queen, now here, having heard the Appellant and Respondent by their Counsel respectively, examined as well the record and proceedings had in the Court below, as the reasons of appeal filed by the Appellant, and the answers thereto, and mature deliberation on the whole being had;

"Considering that the Appellant, arrested on a *capias ad respondendum* at the suit of the Respondent, has been discharged, by giving security, under Article 825 of the Code of Civil Procedure, that he will surrender himself into the hands of the Sheriff, when required to do so by an order of the Court or Judge, within one month from the service of such order upon him or upon his sureties, and that in default such sureties will pay the amount of the judgment in principal, interest and costs. And considered that, by Article 766 and the following Articles of the Code of Civil Procedure, express provision has been made concerning the matters provided for by Chapter 87 of the Consolidated Statutes of Lower Canada and Article 2274 of Civil Code, as to the obligation of a debtor who, having been arrested on a *capias ad respondendum*, has been admitted to bail, to file a statement of all the property, real and personal, of which he is possessed, and that the provisions of Sections 12 and 18 of the said Chapter 87 of the Consolidated Statutes and Article 2274 of Civil Code have thereby been repealed under the provisions of Article 1360 of the Code of Civil Procedure.

"And considering that, although by the first paragraph of the above-mentioned Article 766 of the Code of Civil Procedure, a debtor who has been admitted to bail is bound to file the statement and declaration of all the property