

3. Where there is absolute proof of injuries resulting from a chemical explosion upon defendant's premises, and the only witness is dead, the supplementary oath may properly be administered to the plaintiff. *Lyons & Laskey, Tessier, Cross, Church, Bossé and Doherty, J.J., Feb. 26, 1889.*

Exemption from taxes—Church—Special Assessment—38 Vict. (Q.) ch. 73, s. 3.

Held:—(Confirming the judgment of TEL-LIER, J., M.L.R. 4 S.C. 13.) That the Statute 38 Vict. (Q.) c. 73, s. 3, exempting churches, parsonages and bishops' palaces from "all taxes," includes exemption from special assessments for local improvements. City of Montreal & Rector and Churchwardens of Christ Church Cathedral, Dorion, C.J., Tessier, Church, Bossé and Doherty, J.J., March 26, 1889.

CIRCUIT COURT.

HUNTINGDON, Sept. 3, 1889.

Before BELANGER, J.

BLACKFORD v. DAME JESSIE MCBAIN *et vir.*

Procedure—Summons—Description of plaintiff—C. C. P. 49, 51, 1065.

HELD:—That the failure to state in a writ of summons the occupation or quality of the plaintiff, is a cause of nullity which necessarily involves the dismissal of the action.

The present action was taken in ejectment against the female defendant and her husband, to compel them to quit the premises of plaintiff, which they were continuing to occupy more than three days after the expiration of the lease. The defendants filed separate appearances, being represented, however, by the same attorney. They then joined in an exception to the form on the grounds that the writ did not state the quality or occupation of the plaintiff, and that it was addressed to the defendants, alleging that it ought to have been addressed to a bailiff; the whole in contravention of Arts. 48, 49 and 1065 C. C. P.

The plaintiff, by one demand, addressed to both defendants, required a plea to the merits, and having obtained foreclosure, inscribed the case for hearing on the exception to the form and upon the merits *ex parte*, whereupon

the defendants each moved to have the demand of plea, foreclosure and inscription on the merits set aside, complaining that the demand of plea had not been made upon the defendants separately. The fiat contained the quality of the plaintiff, and it was not contended that any other person of the same name resided in the place, of which he was described as a resident.

The following was the judgment of the Court:—

"The Court having heard the parties by their respective counsel upon the exception *à la forme* in this cause filed by the defendants jointly to the action in said cause, and upon the two motions filed by said defendants respectively and separately, by which said motions the defendants ask the rejection of the demand of plea to the merits, the foreclosure and certificate of foreclosure, and that part of the inscription inscribing the said cause on the merits *ex parte*, examined the proceedings in this cause, and more particularly the writ and declaration, said exception *à la forme* and said motions, and duly deliberated;

"Considering that the defendants are well founded in their said exception *à la forme*, inasmuch as the said writ and declaration do not disclose or state the quality or occupation of the plaintiff, as required on pain of nullity by Arts. 49, 51 and 1065 C. C. P.;

"Maintains the said exception *à la forme*, with costs, for the above reasons, and rejects the said plaintiff's action with costs, etc., reserving to said plaintiff his rights to bring another action for the same causes. And the Court rejects said two motions, without costs."

McCormick, Duclos & Murchison, for plaintiff.

J. K. Elliot, Q. C., for defendants.

(C. J. B.)

TENNESSEE SUPREME COURT.

MAY 7, 1889.

PEPPER v. WESTERN UNION TELEGRAPH CO.

Telegraph Co.—Not Agent of Sender.

The sender of a telegram does not constitute the company his agent, and is not bound to