

posed of before the graver questions which arise out of the third plea are considered.

And first, is the mandamus bad upon the ground of uncertainty, or upon any other ground?

Their Lordships are of opinion that the writ was in proper form according to the Code of Procedure for Lower Canada; the procedure therein pointed out, though called a mandamus, was not a writ of mandamus in the first instance, but, in effect, a summons to answer a petition praying for an order upon the Defendants to do certain specified acts. The first thing to be done by the Defendants was not, as in the case of a writ of mandamus in England, to make a return to the writ, but to appear to the summons, and plead to the petition. The sections of the Code of Procedure bearing upon this point are 1023, 1024 and 1025. Article 1023 evidently contemplates a writ of summons. It says the application is made by petition, supported by affidavits setting forth the facts of the case presented to the Court or a Judge, who may thereupon order the writ to issue, clearly meaning a writ of summons, for it goes on, "and such writ is served in the same manner as any other writ of summons." This is rendered more clear by Article 1024, which directs the subsequent proceedings to be had in accordance with the provisions of the first chapter of that section. That refers to Articles from 997 to 1002, both inclusive; which, in cases similar to our *quo warranto*, require an information to be presented to the Court or a Judge, supported by affidavits, upon which the issue of a writ of summons may be ordered. The writ of summons commands appearance upon a day fixed, and is to be served in the manner pointed out. The Defendants are to appear on the day fixed (Article 1011), and to plead specially to the information (Article 1012.) In the case of mandamus under the Code, therefore, the parties are not to make a return to the summons; the pleadings are to commence with a plea to the petition, and not a plea to the return to the writ. In our opinion, therefore, the objection to the writ, so far as it related to its being a mere writ of summons, and not a writ of mandamus,