

force there regulating the proceedings in actions, and not by summary process by motions for the old prerogative writ of *mandamus*, which the writ of *mandamus* obtainable upon motion without action, still is.

Appeal dismissed with costs.

C. Robinson, Q.C., and H. Cameron, Q.C., for the appellants.

Bethune, Q.C., and Edwards, for the respondents.

FRECHETTE V. GOULET.

(Megantic Election.)

Preliminary objections—Onus probandi.

In this case a petition was presented by the respondents complaining of an undue election and return for the County of Megantic at the last election for the House of Commons. The petition was met by preliminary objections, in which the sitting member alleged, *inter alia*, that the petitioners were not electors, nor qualified to vote at the election in question, etc. A day was fixed for the hearing of the preliminary objections at Arthabaska, when Mr. Justice Plamondon held that the *onus probandi* was on the defendant (present appellant), to support his preliminary objections, and no evidence being offered by either party, dismissed them with costs.

On appeal to the Supreme Court of Canada, *Held*, (per FOURNIER, HENRY, and GWYNNE, JJ.) following the practice adopted by the Superior Court of Quebec, sitting as an Election Court in the case of *Duval v. Casgrain*, that the *onus probandi* was on the party alleging preliminary objections.

Contra, RITCHIE, C.J., and STRONG and TASCHEREAU, JJ.

The Court being equally divided the appeal was dismissed without costs.

Crepeau and Gormully, for appellant.

Irvine, Q.C., for respondent.

GRANT V. BEAUDRY.

Action for false arrest against magistrate—

Notice—C. S. L. C. ch. 101, sect. 1.

David Grant, who was the plaintiff in the first instance, was Grand Master of the Orange Order in Montreal during the troubles of 1877-78. As such he was arrested for disturbing the peace, and brought an action against Mayor Beaudry for false arrest.

The notice given by appellant's attorney to the respondent was as follows:—

To the Hon. J. L. Beaudry, Mayor of Montreal,
SIR,—We give you notice that David Grant of the City of Montreal, salesman and trader, will claim from you personally the sum of ten thousand dollars damages, by him suffered from the abuse made of your authority in causing his arrest illegally and for no cause on the twelfth day of July last (1878), and that unless you make proper amend and reparation of such damages within a month, judicial proceedings will be adopted against you. Yours, etc.,

(Signed) Doutre, Branchaud & McCord,
Advocates for Plaintiff

Montreal, 19th October, 1878.

The Superior Court dismissed the action for want of proper notice. This judgment was confirmed on appeal to the Court of Queen's Bench, (P.Q.) but the Court went further, and stated that Grant was properly arrested, being a member of an illegal association.

On appeal to the Supreme Court of Canada,

Held, that the notice was insufficient, and that an expression of opinion as to the legality or illegality of the Orange association would be extra judicial and unwarranted.

Appeal dismissed with costs.

Doutre, Q.C., for appellant.

R. Roy, Q.C., for respondent.

CALDWELL ET UX. V. THE STADACONA FIRE INSURANCE CO.

Policy—Proofs of loss—Waiver—Estoppel—Insurable interest—Surrender.

This was an action upon a fire policy by appellant against respondent company. The policy was under seal, and purported to be effected in favour of the appellant Samuel Caldwell. It contained, however, a provision in the following words:—"Loss, if any, payable to George R. Anderson, Esq." One of the conditions provided that the company might require the policy "to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a ratable proportion for the unexpired term thereof of the premium received for the insurance." Another condition required particulars and proofs of loss within five days after such loss or damage has occurred. And another condition is in these words:—"None of the foregoing conditions or