of the previous offer, for the plea contains no such condition at all; and if it had, the plaintiff could not have got the order for the money, which was made on the express ground that there was no condition—the only ground, indeed, on which the law would allow the plaintiff to take it. Judgment for plaintiff for costs only.

Bethune & Bethune for plaintiff.

Barnard & Monk for defendants.

SUPERIOR COURT.

MONTREAL, Dec. 15, 1880.

JOHNSON, J.

BEAUDRY v. BROWN et vir, and BOWIE, guardian, *mis en cause.*

Guardian—Discharge by lapse of time.

A defendant who becomes voluntary guardian of effects seized under a writ of execution is liable as such to contrainte par corps.

A guardian is discharged by the lapse of a year after his appointment without proceedings.

The plaintiff moved for a rule *nisi* against J. G. Bowie, the guardian named to effects seized under writ of *saisie-gagerie.*

The *mis en cause* answered, 1. That as husband of the defendant he could not be guardian. 2. That more than a year had elapsed since his nomination without any proceedings by the plaintiff on the demand *en saisie-gagerie*, though default had been entered against the defendant.

JOHNSON, J. Two points have been raised:—1st. That the defendant cannot be guardian. The reported decisions are against that pretension, and it is therefore overruled. See *Munn* v. *Halferty*, 1 L. C. R., p. 170; *Brooks* v. *Whitney*, 4 L. C. J., p. 279; *Carley* v. *Hatton*, 15 L. C. J., p. 140.

The second point raised is that more than a year has elapsed since the seizure. I do not know of any case in which this point has come up,—I mean, any reported case. There was a case in Beauharnois, I have heard, of *Baker* v. *McDonald*, in which Judge Belanger held that the guardian was not discharged by the lapse of the year. Doutre, vol. 2, Art. 842, says our Code has not repealed the 20th article of the 19th title of the Ordinance of 1667, which in case of opposition liberated guardians after two months upon a regular demand made for that object; and by Art. 22 of the same ordinance the guardian is discharged one year after his appointment, and *pleno jure*. Rule discharged, but without costs.

A. Dalbec for plaintiff.

Archambault & David for *mis en cause.*

MONTREAL, December 15, 1880.

JOHNSON, J.

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING v. SIMPSON.

Insolvent—Liability for debt not inventoried.

JOHNSON, J. There is no question about the debt here, which is due under a deed of obligation; but the defendant pleads that he is not liable for costs because since he signed the deed he has become insolvent, and is still an undischarged bankrupt, his assignee having distributed his estate. The plaintiff answers that this is untrue; and that even if it were true, the defendant never disclosed the present claim, and therefore cannot get rid of the costs by operation of the insolvent law which, as far as the plaintiff is concerned, has not been complied with.

There is no proof of record of a due compliance with the act, nor of notice of any sort. The fact of insolvency is proved by the defendant, but that is all. Sec. 90 of the law says, "no costs incurred in suits against the insolvent after due notice has been given according to the provisions of this Act shall rank upon the estate;" etc. That may be the case; and indeed from the evidence of the assignee, there would appear to be no estate to rank upon; but that would not prevent a personal condemnation for the costs. Judgment for debt, interest and costs. The proof that should have been made was that under the 11th section, which we have nothing about.

Trenholme & Taylor for plaintiff.

T. & C. C. de Lorimier, and *Abbott & Co.* for defendant.