electing a mayor. The meeting was held on the 18th January, 1886, and all the members were present.

A resolution was proposed that inasmuch as one of the councillors, James T. Pattison, was notoriously disqualified, his seat should be declared vacant. No amendment was made thereto, but one of the councillors asked the head of the council whether the matter could be considered at a special meeting called for another purpose. The members present, with the exception of Pattison, voted on the resolution, which was carried upon a division. Pattison was debarred by art. 135, M.C. Pattison applied to have the resolution annulled under the provisions of art. 100 of the Municipal Code.

Foran, for the respondent, cited *Paris* v. *Couture*, 10 Q. L. R. 1, and *Loiseau* v. *Lacaille*, 2 Rev. Crit. 236, in support of his pretension that all the members being present the proceedings were regular.

McDougall, for the petitioner, referred to the first paragraph of art. 127.

PER CURIAM. Notwithstanding the great respect I entertain for the opinions of Chief Justice Meredith and Justices Caron and Casault, I cannot agree with their decision in the case of *Paris* v. *Couture*. The first paragraph of art. 127 says the subjects mentioned in the notice calling the special meeting can alone be taken into consideration, and I do not see that this enactment is qualified by the remainder of the article. Article 14 of the Civil Code enacts that a prohibitive provision entails nullity, although such nullity be not specially expressed. Art. 16 of the Municipal Code does not apply, inasmuch as an injustice was committed to the prejudice of the petitioner.

Petition maintained with costs.

CIRCUIT COURT.

BEDFORD, May 12, 1886.

Before BUCHANAN, J.

HOGLE v. RACINE.

Costs—Distinct portion of demand unfounded—Difference of Costs.

Held, that where a distinct portion of the demand is wholly unfounded, the plaintiff in such case should be condemned to payment of the difference of costs.

This was an hypothecary action for the recovery of the amount, $133.00, capital of a constituted rent, and for the arrears of such rent.

The defendant pleaded non-exigibility of the capital, and payment of the arrears.

Nothing was alleged in the declaration, nor shown, to entitle the plaintiff to the capital sum. The articles 390, 1789 and 1790, C. C., govern these matters, and no case being presented here as coming within the purview of art. 1790, the plaintiff had clearly no right of action as regards that specific portion of his demand embracing the capital sum. As to the arrears of rent the case was different. The plaintiff had a right of action under that head, and has established it to the amount of $11.92, for which amount judgment went in his favour, with costs as in an action of that class, and condemning him (plaintiff) to pay defendant the difference of costs as between the amount ($160) for which action was brought and the amount recovered.

The Court observed on this point:—As this action should never have been brought for the capital sum, I shall adopt a rule, as to costs, sometimes followed by other judges, and condemn the plaintiff to pay to the defendant the difference of costs, between the action as brought and the amount for which judgment is rendered. I do not adopt this rule (which indiscriminately applied *may* punish the victorious suitor, and contradict the principle laid down in art. 478, C. C. P.) in cases where the plaintiff cannot with some exactitude foresee the amount for which he can obtain judgment, as in actions of damages, and cases of a like nature; but in one like the present, where it was absolutely certain no judgment could be obtained for the capital, it looks like oppression to compel a defendant to go to the expense of defending himself in an action of the class as brought. The only suit open to the plaintiff was that as regards the arrears, and as to that he gets his costs, as to the other head of the demand he will pay the defendant the difference of costs.

SUPREME COURT OF CANADA.

LORD *v.* DAVISON.

Charty party—Deficient cargo—Dead freight—Demurrage.

By charter party the appellants agreed to load the respondent's ship at Montreal with