allegations, says that the road was kept in as good a state as possible, that the overseer had shovelled there that day, and that the plaintiff was drunk. The evidence established that plaintiff was addicted to drink, and was drunk at the time of the accident. Had he been sober the accident would not have occurred. The plaintiff in his factum does not grapple with the defendants' plea of contributory negligence. The judgment complained of is reversed, and the action dismissed.

Judgment reversed.

Ives & Brown, for plaintiff.
Brooks & Co., for defendants.

MACKAY, DUNKIN, RAINVILLE, JJ.

MONGEAU et vir v. LAROCQUE, and GIGAULT, Petitioner.

[From S. C. St. Hyacinthe.

Insolvent Act—Assignment by Non Trader—Assignee's claim to monies rejected.

MACKAY, J. On the 11th Feb., 1875, defendant Larocque made a cession under the Insolvent Act to Gigault. At the first meeting of creditors called nobody appeared, so Gigault became assignee. It is not surprising that no creditors appeared, for Larocque was not a trader and the assignment was undoubtedly a fraud. Larocque before that had been condemned in a suit by plaintiff against him and his lands were under seizure by the Sheriff. The Sheriff's sale took place in June, 1875, and on the 28th August the Sheriff returned the writ and reported the sale. In September, 1875, several oppositions *à fin de conserver* were filed. Only on the 9th November did Gigault petition the Superior Court at St. Hyacinthe, asking for the money levied, that he as assignee might distribute it. On the 1st Feb., 1876, plaintiff presented a counter petition, alleging that Larocque never was a trader, and that the proceedings in insolvency were a fraud. Gigault answered by a general denial and insisting that the sheriff should pay him over the money. Judgment has gone against Gigault, and with reason we think. Nobody is hurt by it. Larocque is insolvent, and all he had is before the Court, and creditors more than enough to consume it all. Gigault, who might have moved in July, August, September or October, kept inactive and did nothing, and allowed things to take their present shape, and for this reason, in addition to others, we hold that the judgment complained of ought to be confirmed. Gigault's claim is unreasonable. He seems to represent nobody but Larocque, and all Gigault's creditors are content. Upon a mere technicality Gigault would have all the proceedings going on before the Superior Court transferred to his office, and would draw all the parties now before the Superior Court before him, delaying affairs, and all to the end that he might pocket a small amount of commission.

Judgment confirmed.

Bourgeois & Co., for plaintiffs.
Sicotte & Co., for petitioner.

MACKAY, DUNKIN, RAINVILLE, JJ.

ALCOCK v. HOWIE.

[From C. C. Iberville.

Suit upon Ontario Judgment where service was personal.

MACKAY, J. The action was brought on a judgment in Ontario. Plea, that the judgment is a nullity; because the defendant never was summoned in Ontario. But what of that, seeing C. S. L. C. cap. 90, sec. 2? The defendant was personally served in his domicile, and ought to have contested as he pleased in Ontario. The judgment dismissing the action ought to be reversed. As to place of contract, or place at which debt was contracted, there is not certainty; the exemplification does not state places as well as it might have done. But under sec. 2, ch. 90, C. S. L. C., the defendant ought to have pleaded preliminarily, or as he pleased, in Ontario.

Judgment reversed.

J. J. McLaren for plaintiff.
Chartrand & Paradis and *Lacoste & Co.* for defendant.

Note.—In *Baylis* v. *City of Montreal* (*ante* p. 62), the grounds assigned in the judgment for the dismissal of the action are as follows:—"Considering that to recover the money he seeks by his declaration, plaintiff had burden to prove that it never was due by him, and to do this had to prove that the roll called 'a pretended assessment roll, distributing, &c.,' was irregular, illegal, or null and void; that the