writ could not be quashed on motion, that the only way to quash a writ was by *exception à la forme*. On the 19th of December the Defendant fyled an *exception à la forme*, based on the said informality, and the Plaintiff moved to dismiss the said exception, the four days allowed by Statue having expired.

Bethune & Dunkin, in support of the motion, contended that the four days allowed to fyle an *exception à la forme* by the 16 Vic., c. 19, s. 21, had expired before the fyling of the exception in question, that the wording of the section was express and could not be extended by the Court, that the Defendant had chosen his remedy, and that if the time for fyling his *exception à la forme* was prescribed, it was by his own fault.

E. D. David & Ramsay, opposing the motion, contended, that Defendant had not had four days in which he could fyle his *exception à la forme*, that the record had been taken *en délibéré* the day after the return of the writ, and that the exception had been fyled the day after the record had been sent down, that no paper could be fyled while the record was before their Honors; that the taking of the record *en délibéré* on Defendant's motion was the act of the Court and not of the Defendant, that it could not be supposed that the Legislature had a case like the present in view in framing the section invoked by the Plaintiff, that the time during which the record was *en délibéré* before their Honors could no more be counted to exclude the fyling of an *exception à la forme*, than could the time during which a case was in Appeal count, as part of the 6 months to exclude a party to apply afterwards for a writ of *Certiorari*.

Mondelet, (C.), J., dissenting from the majority of the Court said, that it is well established, that no record can be touched by either party while *en délibéré*. That he could not believe that it was the intention of the Legislature, that the delay should come against a party while the record was out of his reach, that no Judge being at liberty to persume such an intention in the Legislature, nothing short of a clear distinct, imperative declaration on the subject, could induce him to disregard a principle which, in his opinion, was correct, it being founded on reason and justice and in keeping with what he considered to be *bonne procédure*.

Day, J., I quite agree with my learned brother as to the record being out of the reach of the Defendant; but the terms of the 16 Vic., especially coming as they do to carry out the 12 Vic., are so express that we cannot chose but follow the strict rule there laid down. At one time in England the Courts of Justice interferred constantly with Statutes and great inconvenience having arisen from this practice, it is now no longer done.

Smith, J., The Defendant had not two remedies; he took a course to which he had no right, and by his own fault lost his opportunity of fyling an *exception à la forme*. The Court could not help taking the motion to quash *en délibéré*.

Motion maintained and exception à la forme rejected.

The Defendant gave notice of Appeal. This Appeal has been abandoned.