ence to the 29th February, in leap-year, "*Et computitur dies ille, et dies proxime precedens, pro unico die*"—that day and the next preceding shall be counted as one day. This rule has been repeatedly laid down in the Courts of Indiana, and the Supreme Court, adhering to the previous decisions, declared the service insufficient.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, Sept. 12, 1878.

Present:—DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

McKINNON, appellant, and THOMPSON, respondent.

Insolvency—Appeal—Security for Costs—Assignee.

The appellant, defendant in the court below, appealing from a judgment against him, in favor of the respondent, who had become insolvent, moved that all proceedings on the part of respondent be suspended until he should have given security for costs, or until his assignee should have taken up the *instance*; and in default of this, that he (appellant) be permitted to proceed *ex parte*. *Held*, that the appellant was not entitled, under sec. 39 of the Insolvent Act of 1875, to demand security from an insolvent respondent, or to call upon the assignee to take up the *instance*, and in any case such motion could not be entertained without notice thereof to the assignee.

McKinnon, the appellant, who had been condemned in the court below to pay the respondent the sum of $400, appealed from the judgment. The plaintiff had become insolvent, and the appellant moved in the first place, that, inasmuch as the respondent was insolvent and an assignee had been appointed to his estate, the respondent be declared incapable of proceeding, and that, he, appellant, be permitted to proceed *ex parte*. This motion was rejected. He now moved that all proceedings on the part of respondent be suspended until he should have given security for costs, or until the assignee should have taken up the *instance*, and that in the event of security not being given, or the *instance* not being taken up, he be permitted to proceed *ex parte*.

The appellant relied on sec. 39 of the Insolvent Act of 1875.

DORION, C. J., said the section referred to enacted that an insolvent should not be allowed to sue out a writ, or commence or continue any proceeding, until he had given security. This was to prevent an insolvent from occasioning the other side useless costs. But the law nowhere said that if the opposite party is proceeding, he can call upon the insolvent to give security or the assignee to take up the *instance*. An assignee was not bound to take up the *instance* unless he considered it in the interest of the estate that he should do so. There was another fatal objection to the motion: the assignee had not received notice, and without notice he certainly could not be deprived of his right to intervene.

Motion rejected.

Wotherspoon, for appellant.

Butler, for respondent.

MONTREAL, Sept. 18, 1878.

RASCONY, (defendant in the court below) appellant; and THE UNION NAVIGATION COMPANY, (plaintiffs below) respondents.

Company, Subscription of Shares before formation of

A subscription of shares in a company to be formed is not binding.

The company sued the defendant, Rascony, for $500, calls due on stock subscribed by him. Rascony pleaded that he never subscribed for stock in the present company, but in an antecedent one which was being organized. The court below sustained the action.

TESSIER, J., said the question was whether the defendant was really a shareholder. In the case of the same company and Macdougall, Macdougall bought shares on which there were calls paid, and after the letters patent had been obtained. But in the case of Couillard, 21 L.C.J. p. 71, the court exonerated Couillard because he had in no way bound himself after the company was incorporated. He merely subscribed to a company to be formed. The court would follow the same principle as that laid down in Couillard's case, and under this Rascony must be exempted from liability. Consequently the judgment of the court below must be reversed and the action dismissed with costs.

Doutre, Doutre, Robidoux, Hutchinson & Walker, for appellant.

Jetté, Beique & Choquet, for respondent.