Sur objection à la légalité de cette preuve, le demandeur fit du défendeur son témoin ; mais ce dernier nia positivement la dette et l'existence même des services.

PER CURIAM. Je ne crois pas le médecin privilégié jusqu'au point de prouver par son propre témoignage, la réquisition et l'existence de ses services, lorsque ceux-ci sont niés, même sous serment, comme dans le cas actuel. Au contraire, il doit prouver sa demande d'après les règles ordinaires, après quoi seulement il est cru à son serment quant à la nature et à la durée de ses services. S'il en était autrement, le public serait à la merci des médecins qui n'auraient qu'à réclamer pour obtenir. Je ne pense pas qu'il soit plus permis au médecin de prouver par son propre témoignage la réquisition de ses services qu'il n'est permis au marchand de prouver lui-même la vente et livraison de ses marchandises. Je n'hésite donc pas à dire que le demandeur n'a pas prouvé sa demande et que son action doit être renvoyée.

Action renvoyée.

Préfontaine & Major, procureurs du demandeur.

J. G. D'Amour, procureur du défendeur.

COURT OF QUEEN'S BENCH.

MONTREAL, January 24, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.

SAUVÉ, Appellant, and BOILEAU, Respondent.

School Commissioner—Municipal Office.

Motion to reject appeal, the case not being appealable under art. 1033 C.C.P. The action was as to the election of a School Commissioner; it was contended he was a municipal officer.

The COURT held that a School Commissionership was not a municipal office within the meaning of Art. 1033.

Motion rejected.

COURT OF QUEEN'S BENCH.

MONTREAL, January 26, 1882.

MONK, RAMSAY, TESSIER, CROSS and BABY, J J.

EVANS, Appellant, and LARAMÉE et al., Respondents.

Appeal—Interlocutory Judgment.

In this case an application was made for leave to appeal from an interlocutory judgment of 24th December last, referring the present cause and the parties to the Roman Catholic Bishop of Montreal, in order that he may decide whether the marriage tie between appellant and her husband should be broken, and also from a previous judgment of 31st March, 1880, dismissing her demurrer and that part of the conclusions which prayed that the present cause should be so sent to the Bishop for adjudication. [5 Legal News, p. 51.]

J. J. Maclaren and *Doutre, Q. C.*, appeared in support of the application for leave to appeal, and *Bonin* to oppose the application.

The facts were that an action had been brought on behalf of Laramée, who is an interdict, by the father and curator to annul his marriage with Evans, on the ground that the parties had been married by a Protestant clergyman, and that such marriage was invalid as both man and woman were Roman Catholics. The Court below held that it had been proved that both parties were Roman Catholics, and ordered that the cause be sent before the Roman Catholic Bishop as being the proper authority to pronounce as to the nullity of the marriage tie under such circumstances. It was from this judgment that the woman asked leave to appeal. The grounds assigned in support of the application were, first, because the judgment in part decided the issues between the parties. Second, because the Court had no authority to send the appellant for trial to another so-called tribunal which has and can have no jurisdiction over the appellant. Lastly, because the husband of the appellant is an interdict. It was contended that the right of appeal was clear, that the material question in the case had been decided, and that the Court below had virtually refused to pass judgment.

Leave to appeal was granted.

McLaren & Leet for appellant.

Doutre, Q. C., counsel.

DeBellefeuille & Bonin for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 24, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS and BABY, J J.

Ross et vir, Appellants, and Ross et vir, Respondents.

Sequestrator to estate after judgment removing executor.

Alice L. Ross, (Mrs. Thayer) co-heir with