president to commit, on view, any one disturbing the peace, and to remand him for any time within 48 hours. But the interpretation of this disposition is of no importance in the present case, for the President did not act under sub-section 3. He did not commit on view, according to his own story. He convicted respondent without a hearing and committed him to prison for ten days as a punishment. There is no mystery about the conviction on view. All commitments are necessarily executed on view. But neither on view, nor otherwise, can there be a commitment as a punishment without a conviction.

Mr. Cloutier had, however, a power,—it was to award imprisonment for ten days against any such delinquent. There is nothing to say that he could do that without trial. It was a special punishment he could inflict, according to the ordinary course of the jurisdiction of a justice of the peace, for a certain offence. If there be no trial and no conviction, how is it known that the respondent was a delinquent? Appellant says, "that doesn't signify, for I could *commit* on view." This answer is absurd.

We are told that the President was in good faith. The whole nature of the proceedings shows the reverse. When the arrest was made, the temporary authority of the appellant was almost at an end, and the election was over. It was evidently a malicious act. Even the factum breathes personal ill-will. The respondent is the *"chef d'une bande de tapageurs."*

The Court is of opinion that the imprisonment was illegal, and the majority of the Court is of opinion that an imprisonment *in pœnam*, without lawful authority, and without even the semblance of a trial, establishes malice, and, therefore, that the judgment appealed from should be confirmed with costs.

Judgment confirmed with costs, the Chief Justice and Monk, J., dissenting.

Montambault, Langelier & Langelier, for appellant.

Larue, Angers & Casgrain, for respondent.

COURT OF QUEEN'S BENCH.

QUEBEC, October 7, 1886.

MONK, RAMSAY, TESSIER, CROSS, BABY, JJ.

DANJOU (deft. below), Appellant, and THEBERGE (plff. below), Respondent.

Procedure—Premature adjudication on the merits.

RAMSAY, J. The appellant was sued in an hypothecary action, and by plea, filed as a preliminary plea, he demanded security, that the property should be sold for a price sufficient to cover an hypothecary debt he had paid, and which was a prior hypothec to that of plaintiff. There was an inscription for hearing on the preliminary plea, and it was dismissed, and without further proceedings, the court gave judgment for the plaintiff. It is of this appellant complains. The respondent contends that the pretended preliminary plea is not a preliminary plea, but a plea to the merits. The court cannot adjudicate on the merits without regular proceedings on the merits, or the acquiescence of the parties in irregular proceedings.

The judgment should be reversed in so far as it decides the merits, and the case sent back to be proceeded on anew in the court below.

Judgment reversed.

COURT OF QUEEN'S BENCH.

QUEBEC, October 7, 1886.

DORION, CH. J., MONK, RAMSAY, TESSIER AND BABY, JJ.

THE MAGOG TEXTILE AND PRINT CO. (plff. below), Appellant, and DOBELL (deft. below), Respondent.

Company—Action for calls—Subscription for shares.

HELD:—*That a subscription for shares in a company to be formed, where the subscriber's name was omitted in the letters patent, and no shares were ever allotted to him, is not binding.*

The company appellant sued the respondent for $5,000, being the amount due on calls on the stock of the company, said to be subscribed for by respondent.