not having fulfilled the conditions required to obtain the loan before the proceedings in liquidation were begun, he is not entitled to do so now.

The demand for an injunction was as it were subsidiary to the appellant's claim that he was entitled to the $2,000. After their proceedings had been ratified by the Quebec Legislature, the appellant did not restrict his demand to the costs he had incurred, but pressed his other claims, on which he failed.

The Society proceeded in good faith to wind up its affairs under the Dominion Act. The appellant must have known that legislation was going on in Quebec to supplement the Dominion legislation, and we do not think that this is such a favorable case, that we ought to mulct the respondents in the heavy costs incurred in both courts, when the appellant while insisting upon his extreme demand is declared unfounded in the most important portion of it.

The judgment is confirmed with costs against the appellant.

RAMSAY, J., concurred in the judgment, especially in so far as it reversed the decision of the Court below as to the constitutionality of the Dominion Act. This act did not pretend to be in any way connected with insolvency, and was clearly *ultra vires*. But his Honor differed on the question of costs; the appellant came here with the law in his favor, and he could not, therefore, concur in the part of the judgment which condemned him to pay the costs of the appeal.

Lacoste & Globensky for Appellant.
D. R. McCord for Respondents.

COURT OF REVIEW.

MONTREAL, January 31, 1880.

JOHNSON, RAINVILLE, JETTÉ, JJ.

KELLY v. THE HOCHELAGA MUTUAL FIRE INSURANCE CO.

[From S. C., Montreal.

Fire Insurance—Preliminary proof—Waiver—Material Fact—A threat, made four months before the insurance was effected, that certain persons would burn the store of insured in a certain contingency which never occurred, (which threat, moreover, was not shown to have had any connection whatever with the fire) held, not a circumstance material to be made known to the insurer.

This case came up in Review of a judgment of the Superior Court, Montreal, Torrance, J., noted at 2 Legal News, p. 347, maintaining the plaintiff's action.

JOHNSON, J. In this case the action was brought to recover $2,000 for a loss by fire under an interim agreement to insure the stock in trade of the plaintiff, and the defendants pleaded, admitting the contract, but alleging it to have been made subject to the conditions of the Company's policies, one of which was that there was to be no recourse if there was any misrepresentation, or omission to communicate any circumstance material to be made known to the insurer; and that, previous to the contract, the plaintiff had been warned that the store was to be set on fire by an enemy, and that the fire was, in fact, the result of this threat or warning; and the plaintiff concealed the fact from the Company, which, if it had been known to them, would have prevented them from insuring. There was a second plea under which the Company contended that the plaintiff had failed to furnish proof of his loss to the satisfaction of the Company on the printed forms in use, and in conformity with another condition of the policy, within 30 days from the occurrence of the fire. The plaintiff made special answers to both of these pleas. To the first he said that during the excitement of a municipal election, at which he was a candidate, he had been informed that somebody had threatened to burn his store, but no names were mentioned, and he thought the threat was of such a character that he paid no attention to it at the time, and only remembered it after the fire, when the suspicion he had that the thing had really been the act of an incendiary, made him recall it. To the second plea of the defendants—as to the notice of loss—the plaintiff replied that he was wholly ignorant of the stipulation as to the notice being required to be given on the printed forms of the Company; that he gave such proofs as the nature of the case admitted of, the fire having occurred at New Carlisle, and all his books and papers having been destroyed; that the Company received all the information he had to give without raising any objection on that score; and in fact the notice and claim were made afterwards (on the 24th August) on a printed form furnished by the Company, and which he