

important. The plaintiff in his motion asked for an order of surrender, and the Court granted it; and though both of them misstated the effect of the bond of the 16th of May, the bond itself is here to speak for itself, and it is under the bond of that date that the order was asked and got. The terms of art. 828 under which provisional bail was given to the Sheriff are as follows: "A defendant arrested upon a *capias* may obtain his provisional discharge by giving good and sufficient sureties to the Sheriff to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, if he fails to give bail pursuant to article 824, or to article 825." Under this bond to the Sheriff, therefore, the defendant's obligation was to do either the one or the other of two things, either of which the law allowed him to do, at his own option; that is to say, he might have given bail within eight days after the return of the writ (or afterwards, with the leave of the Court), in conformity with article 824, which would have been bail equivalent to the old special bail, under the law as it stood before the passing of 12 Vic. c. 42, the condition of which would have been that if he left the Province without paying debt, interest and costs, his sureties should become liable; or, in the second case, he had the right to give bail under art. 825, which is the new bail to the action originally provided, in somewhat different terms, and with a further condition by section 3 of the 12 Vic., c. 42. This last bond (under art. 825), was the one he gave; and if there has been any difficulty in dealing with the point now before us, it is because the Statute which is reproduced in cap. 87 of C. S. L. C. is not completely or exactly rendered by the article 825 of the Code of Procedure. The language of the 3rd section of the 12 Vic., c. 42, and the language of the 10th section of cap. 87 of the Consolidated Statutes, are identical. They both of them contemplate a surrender to be made in either of two cases: either a surrender with reference to the provisions of the law respecting the *cessio bonorum*, or a surrender within one month after the service of an order upon the debtor, or upon his sureties. The article of the Code (825), on the other hand, merely makes the condition of the bond that the debtor will surrender when

required, by an order of the Judge, within one month after service of such order upon him or upon his sureties. Therefore, there is this difference between the Statutes and the Code in this particular, viz., that the former provide for the surrender in both cases, that is, the surrender required in the proceedings upon a *cessio bonorum*, and the surrender required to fix the bail; and the article 825 only provides for the surrender required in order to fix the bail. The Statute of the 12th Vic. was a Statute which, as many members of the profession can still remember, entirely altered the old procedure under the *capias*. It was drawn by the late Chief Justice, then Mr. Lafontaine. It was entitled an Act to abolish imprisonment for debt; and, in substance, it did away with the *capias ad satisfaciendum*, and substituted an obligation on the part of the defendant to make a statement and abandonment of his property for the benefit of his creditors; and it gave the right to the plaintiff to proceed against his debtor, and to punish him if he failed to make this abandonment, or if he made it fraudulently. The statutes did not say that the defendant might give bail, as the article 825 says he may give bail. The statutes said he might give bail to "surrender himself into the custody of the sheriff whenever required so to do by an order of such Court, or of any Judge thereof, *made as hereinafter is provided*, or within one month after the service of such order on him or on his sureties." The article 825 says nothing of the surrender with reference to the *cessio bonorum*. It only provides for the surrender within one month after service of an order on a debtor, or on his sureties. The *cessio bonorum* is only compulsory in a case above \$80 (which the present case is not). There is provision for the making of it in any case, if the defendant so chooses; but in cases under \$80 it is granted as a privilege, and not imposed as a duty. Therefore it appears to me there would be no way of reaching the sureties unless the order granted in this case were held to be a legal order. It was said that the object of the law would be frustrated, and imprisonment for debt restored, if this order were upheld. That is not at all the case. The defendant can surrender, and can then liberate himself by making his *bilan*; but unless he does so, it appears to me quite clear that the sureties will be effectually reach-