

have only the three clauses of Article 1022 to guide us, I say that the judge in that case has no guide. He becomes as free as air. If he is of an arbitrary disposition, he is at liberty to indulge it to any extent to the detriment of the subject. I repeat, then, that we have no right to dispense with the law. It would be a most arbitrary proceeding. I do not think the Court has any such power. I say, if the law is bad and defective, let it be reformed.

I should certainly have wished all remarks on this case to stop at this point. Mr. Justice Monk, however, not objecting to the writ, entered upon the merits of the case. For my part, I am very desirous to stop here, simply saying that this writ is bad, that this person is not *rectus in curia*, and therefore the writ is quashed. It is desirable, certainly, that a question of this kind should be disposed of on the merits. Here again we find a difficulty. If we are to refer to the laws of England, the writ is not good.

The first question is, to whom has the writ been directed? I say it was directed merely to the Fabrique, *un corps laïque*. There used in former years to be much discussion as to the name to be given to these Fabriques. The writ is addressed in this case to the Curé and Marguilliers, not to the Curé personally. If you order a man to do a thing—either a Curé, or anyone else,—and tell him you intend to send him to jail if he does not do it, when you came to send him to jail, you certainly would not tell the Sheriff to put in jail the Curé et Marguilliers. It might be a different person who was *curé* when you went to execute the judgment, and how could you, with a judgment against the *curé* sue out a writ against another individual? The writ is therefore not properly directed. It is addressed merely to the Fabrique, a corporation *laïque*. What has the Fabrique to do with the keeping of the registers of burials? The duty of making entries of marriages and interments is not imposed on the churchwardens. The Fabrique may, therefore, say: We cannot comply with your request; we have no power to make an entry in the register.

With respect to the burial itself, here again I must say I could have wished that this question had not been touched, for it may be said, we are not meeting the merits of the

case. What has taken place, however? What was asked of the Fabrique? The widow deputed a person to call on the *curé*. He stated that Madame Guilbord would be satisfied with a civil burial. The *curé* answered that he was willing to give a civil burial. Here came the difficulty. The *curé* said: I will bury the body in consecrated ground. There is a division in the cemetery. The two portions are distinct, the one being allotted for persons dying without baptism, and unknown individuals. In France, the power of the Fabrique extended over cemeteries. As a matter of right, the churchwardens were authorized to direct where the graves were to be dug. There could be no doubt of this in France; and according to the authorities which had been cited, the same rules had been laid down in England. If there is a little difference in the powers held, the result is the same.

As I have said already, I am desirous of not going beyond the question before us. I therefore confine myself to the remarks I have now made. The writ has in my opinion contrary to the law, and therefore must be quashed.

Mr. DouRE inquired whether the majority of the Court quashed the writ because the form was defective. Three of the judges appeared to hold that the form was correct,

DuVAL, C. J.—We quash the writ for the reasons we have given. Mr. Justice Badgley, though of opinion that the writ issued legally, held that it improperly joined two conclusions which were incompatible, and could not be obeyed by the persons to whom it was addressed.

DRUMMOND, J.—It is one thing whether the form of the writ is in accordance with the requirements of the Code, and another thing whether it makes the proper demand in this particular case. I say the form of the writ is correct.

DuVAL, C. J.—I say that the form of the writ is wrong; and, moreover, that it is wrongly addressed. We all agree in quashing the writ.

Mr. DouRE said he was aware of that. He merely put the question that the Bar might be satisfied as to the point of procedure.

Mr. DouRE then moved for leave to appeal to the Privy Council. Leave was granted.