conditions of the so-called lease,—properly the faculty to use the said pew?

It seems to me clear beyond the possibility of dispute, that the condition the Fabrique and the respondent established, somewhat a strange one I admit, *"que la dite œuvre et fabrique fut obligée de poursuivre en justice pour en être payée,"* was neither violated in its letter nor in its spirit.

The so-called friendly remonstrance with the respondent, on which some stress is laid, does not affect the plea that this man's pew was sold over his head, when he was in no way open to the accusation of having broken his bargain. This was the view of both courts. The court of first instance thought respondent had acquiesced. It does not appear how he signified this acquiescence. It certainly was not when he persisted in sitting in the pew. Nor when he declined to be talked over by the *curé*. He did the best he could. Staying away from church is not a remedy open to all persons.

Judgment confirmed. Baby, J., *diss.*

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COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 7, 1886.

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

CLOUTIER (defendant below), Appellant, and TREPANNIER (plaintiff below), Respondent.

Illegal and wrongful imprisonment—Malice— M. C., 300, 301.

HELD :—*Where a Mayor, while presiding at an election of Municipal Councillors, committed a person to prison, for ten days, without a hearing, that, under the circumstances of the case, there was malice and the defendant was liable in damages.*

The judgment of the Court below (S. C. Quebec, Stuart, C. J.,) is reported in 11 Q. L. R. 321.

RAMSAY, J. This is an action of damages for the illegal and wrongful imprisonment of respondent. In 1885, appellant was Mayor of the parish of Chateau Richer. An election of Municipal Councillors was to take place, and the Mayor was called upon to preside. The Mayor opened his proceedings with a display of force and menaces of his intention to act with severity if there was any disturbance. This, it seems, produced the effect, it is alleged, it was the intention of the Mayor to prevent, and some agitation ensued. The Mayor was menaced, and he immediately directed, secretly, the secretary to prepare warrants directed against the respondent and five others. These so-called warrants were not executed till the morning after the election, and they turn out to be, not warrants of arrest, but commitments, on conviction, for ten days to the common jail. The respondent was thereupon committed, in execution, and he was only released on *habeas corpus.* Appellant pleaded to this action, that he was justified by the articles of the Municipal Code; that if he was not justified by the law he was in good faith, and that acting in a public capacity he was not to be punished for an error of judgment. And he urges, as a third reason for reversing the judgment of the Court below, that the damages were excessive.

The articles of the Municipal Code relied upon are Arts. 300 and 301. These articles are a fair specimen of our legislative attempts to make things clear. The natural method is to make up one's mind what it is desirable to enact, and then endeavor to express it. The method in vogue is, obscurely to conceive and redundantly to express something which, from its vagueness, may perhaps be tortured into an excuse for whatever turns up. Open as these articles are to criticism, it seems to me that it requires some force of imagination to believe that they justify appellant's proceedings, or to credit his appeal on the ground of good faith.

Article 300 merely gives the powers of a Justice of the Peace, temporarily, to the president, within the limits of the municipality. Had the law stopped there, its application would have given rise to no unprecedented difficulty. But article 301 goes on, *en outre,* to give him other powers, *à l'effet de maintenir la paix et le bon ordre.* Here the confusion begins. He may commit on view *"à la garde d'un constable ou de toute autre personne durant quarante-huit heures au plus, quiconque enfreint la paix ou trouble le bon ordre."*

There may be, perhaps, some difficulty in understanding this article. It seems to me, however, that it is meant to authorize the