

placed in the "Code de Procédure Civile." But in neither the Canadian codes nor in the French Code has this been done.

The general intention and object of the Legislature seems to have been that the two codes should stand together, and be construed together, and it may well be doubted whether the majority of the Queen's Bench have not given too much effect to the accident that the codes did not come into force on the same day.

It is not, however, necessary to decide this, as, by a different chain of reasoning, the same result may be come to.

The preamble to the Statute 20 Vict., c. 43, which afterwards became the consolidated Statutes, Chap. 2, is this:—

"Whereas the laws of Lower Canada in civil matters are mainly those which at the time of the cession of the country to the British Crown were in force in that part of France then governed by the custom of Paris, modified by provincial statutes, or by the introduction of portions of the law of England in peculiar cases; and it therefore happens that the great body of the laws in that division of the province exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin. And whereas the laws and customs in force in France at the period above mentioned have there been altered and reduced to one general code, so that the old laws still in force in Lower Canada are no longer reprinted or commented on in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them. And whereas the reasons aforesaid and the great advantages which have resulted from codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the codification of the civil laws of Lower Canada."

From the preamble and the whole scheme of the legislation, their lordships think that it was one main object of the Legislature to make the codes as one may say self-contained. This object, however, has been apparently lost sight of in several places, and, amongst others, in the Art. 2274 of the Civil Code, which is in the following words:—

"Any debtor imprisoned or held to bail in a cause wherein judgment for a sum of 80 dollars or upwards is rendered, is obliged to make a statement under oath, and a declaration of abandonment of all his property for the benefit of his creditors, according to the rules and subject to the penalty of imprisonment in certain cases provided in Chap. 87 of the Consolidated Statutes for Lower Canada, and in the manner and form specified in the Code of Civil Procedure."

This cannot be understood, without reading and construing the statute referred to in order to see what rules and what penalties of impris-

onment were provided by that statute, and then determining which of them were kept alive by this Article; for, though this Article does contain an express provision on at least part of Chap. 87, and so by Art. 2613 and 2614 of the Civil Code does abrogate at least so much of Chap. 87, yet it seems impossible to deny that the Legislature did intend, at all events until the Code of Civil Procedure should come into force, to re-enact by reference to the abrogated statute some penalties, and apply them to the things specified in Art. 2274. And there is great difficulty in doing this. For though Chap. 87, s. 12 (1) does, in certain cases included in Art. 2274, but not quite co-extensive with it, require a debtor against whom judgment for 80 dollars or upwards has been rendered to file a statement of his property and creditors, and a declaration of his willingness to abandon the property in his statement mentioned to his creditors, and by Sect. 12 (2) does impose penalties on a defendant neglecting to file such statement, yet there are no penalties co-extensive with Art. 2274, and there certainly are many penalties which, by Chap. 87, s. 13, are imposed upon debtors who have not been arrested, against whom a judgment has gone in a commercial cause, which cannot on any construction be kept alive by Art. 2274. Those difficulties are all removed if Art. 2274 is read as meaning "according to the rules and subject to the penalty provided in certain cases in Chap. 87, until the Code of Civil Procedure comes into force, and then in the manner and form specified in the Code of Civil Procedure."

It is not to be denied that this is introducing words not to be found in the enactment, and so far is objectionable. But their Lordships think that Art. 2274 of the Civil Code shews an intention on its face to hand over the whole of its subject matter to be dealt with by the provisions of the Civil Code of Procedure, or if that intention cannot be found on its face, then that the law contained in that enactment is "doubtful and ambiguous," and though not without some doubt and difficulty, they think that the object and intention of the Legislature is such as to justify this construction.

If it is adopted, all difficulty vanishes. The articles of the Code of Civil Procedure do impose many penalties, but they do not impose the penalty of imprisonment for a year on the person refusing to perform that duty which he is by the express terms of Art. 766 bound to perform.

The question how he is to be compelled to do so does not arise on this appeal. It is enough to say that he is not liable to imprisonment for a year.

Their Lordships think that the appeal must be dismissed. They will so humbly advise Her Majesty.

The Appellant must pay the costs of this appeal.