

TORRANCE, J. As to the nullities alleged before the judgment of 20th October, I would say that the return of the bailiff shows sufficiently that the defendant had notice of the petition and of the time of presentation, and as to the division of the Court, it was for him to know the particular one with which he was concerned. The judgment itself shows that the defendant was duly called, and made default, and as to the continuance from the 17th to the 20th October, it was the act and order of the Court and not of the plaintiff, and no notice of the adjournment was necessary to the defendant. As to the omission to issue a rule against the defendant to show cause, if we look at the French version of the Code of Civil Procedure, 781, we see that the procedure of record has complied with its requirements. Moreover, how can I by this proceeding annul a solemn judgment of the Court? It can only be annulled by a higher court. As to the phraseology of the judgment, ordering that a writ issue condemning the defendant to be imprisoned, it is a little tautological, but the meaning is plain. The complaint that the defendant did not receive a copy of the procès-verbal of arrest is without foundation. Where does our Code require it? I have carefully examined the provisions of our Code, and it appears to me that they have been followed. The citations from the Code of France and its commentators are not our guide where our own Code is plain. Upon an examination of the record, my conclusion is that the petition should be dismissed.

*Roy & Boutillier*, for plaintiff.  
*Mathieu*, and *David*, for petitioner.

#### SUPERIOR COURT.

MONTREAL, June 12, 1880.

ROLLAND, insolvent, DUPUY, assignee, FRANEY, adjudicataire, DUPUY, petitioner for *folle enchère*, and FRANEY, contesting.

*Assignee's sale*—Description of immovable in minutes of seizure—Omission of name of street.

The question was as to the description of an immovable in the minutes of seizure, under C. C. P. 638, which reads as follows:

"The seizure of immovables is recorded by minutes, which must contain:

1. Mention of the title under which the seizure is made;
2. Mention of the defendant having been called upon, as required by the preceding article;
3. A description of the immovable seized, indicating the city, town, village, parish or township, as well as the street, range or concession on which they are situated, and the number of each immovable, if there exists an official plan of the locality; if not it must mention the contemrinous lands . . . ."

The assignee had described the immovable in his advertisements as follows:

"Un certain lot de terre ou emplacement sis et situé dans le quartier Sainte Anne, de la dite cité de Montréal, connu et designé aux plan et livre de renvoi officiels du dit quartier, comme étant le numéro douze cent cinquante-huit (No. 1258)—avec bâtitesses dessus érigées."

The name of the street on which the immovable was situated was not stated.

MACKAY, J., relying chiefly on the remarks of the Chief Justice of the Court of Queen's Bench in the case of *Fauteux and Montreal Loan & Mortgage Co.*, 22 L. C. J. 284, held the omission to be fatal, and the adjudication was declared void.

The judgment is as follows:—

"The Court, etc.,

"Doth dismiss said petition and doth maintain said contestation, principally because of the description of the land sold (referred to) being defective, by reason whereof if Franey had a deed a cloud would be on his title from this assignee Dupuy, he, said assignee, not having conformed to Art. 638 C. C. P. by his advertisement, and Franey is yet in time to urge the nullity, with costs against the said assignee distracts," &c.

*Pelletier & Jodoin* for the assignee, petitioner.

*A. Dalbec* for the adjudicataire contesting.

A DESIRABLE POSITION.—As an offset to the complaints of exorbitant charges noticed in this issue, we may quote the following advertisement which appears in a local paper in North Wales: "Important to Solicitors—Wanted for the Eglysbach Parish, a lawyer to undertake to attend all vestries, and give his opinion on all legal matters connected with the said parish. Salary £5 per annum." The Eglysbach functionaries are evidently determined that their treasury shall not be depleted by excessive counsel fees.