The Legal News.

Vol. III. MARCH 20, 1880. No. 12.

INSCRIPTIONS.

The case of *Montreal & Ottawa Forwarding Co.* v. *Dickson*, 3 Legal News, p. 70, has attracted considerable attention from the bar, and it is important that there should be no misunderstanding with reference to the precise point decided. The defendant, it will be remembered, had pleaded an exception *à la forme*, and this was dismissed. The case was afterwards inscribed generally on the merits, and by the final judgment the action was dismissed, but without costs. The defendant wished to go to Review, both upon the final judgment and upon the interlocutory judgment rejecting the exception *à la forme*. His inscription in Review, like the inscription in the court below, was general. In a previous editorial reference to this case, it was assumed that the Court of Review had refused to take notice of the interlocutory judgment on the ground that the inscription *in review* was general. We were led to suppose this, because, although reference was made by the court to the fact that the inscription in the court below was also general, we did not see how an interlocutory judgment rejecting an exception *à la forme* could be made the subject of an inscription in, or be revised by, the court of first instance by the final judgment. We have authority, however, to state that what the Court of Review held, was not that a general inscription in review did not include all that the judgment below included; but that the exception *à la forme* had never been brought before the court below at the hearing on the merits; and that where neither the inscription nor the judgment there showed that it had been brought before the court below, the Court of Review would not presume it had been so.

The importance of the decision is not lessened by the additional explanation afforded. It may be remarked that the inscription in the court below was made by the plaintiffs. As they had already succeeded in getting the exception *à la forme* dismissed, they had no interest to include the interlocutory judgment in their inscription. But if the inscription had been made by the defendant, and he had included the interlocutory judgment in it, would the court below have permitted the exception to the form to be re-argued? And if it had done so, would it have had jurisdiction to revise, by the final judgment, a judgment rendered by the same Court? This is a question which is discussed by Mr. Justice Bélanger in a recent decision of *Casey* v. *Shaw*, noted in the present issue. His Honor remarks that there are certain cases in which the court, in deciding the merits, is not bound by an interlocutory judgment, *e.g.*, where a demurrer has been dismissed, and the same question is afterwards raised by a plea to the merits; but even in such cases, according to Mr. Justice Bélanger, the court does not attempt to revise the interlocutory judgment, but simply disposes of the issue before it. His Honor seems, therefore, to consider that the Court of first instance, at the final haering of the cause, will not hear any argument upon an interlocutory judgment, unless the same matter be involved in the main issue. The judgment of the Court of Review in *Ottawa & Montreal Forwarding Co. & Dickson*, apparently, does not agree entirely with the view of Mr. Justice Bélanger, for the Court remarks:—"We see the inscription on the merits (in the Court below) limited to that, and *not including the exception*," &c (see p. 71). However, we have called attention to the case again chiefly in order to correct our reference, at p. 65, to the judgment of the Court of Review.

THE INSOLVENT ACT.

The bill for the repeal of the Insolvent Act has passed both Houses, but, at the time we write, has not received the assent of the Crown. This step will probably not long be postponed; indeed, several of the opponents of the bill, including the late Mr. Holton, urged strongly that if the Act were to be abolished, the abolition should take effect at once, and thus prevent the rush into bankruptcy which might occur, if an interval of grace were accorded.

In the end, the opposition to the bill for expunging the Insolvent Act from the Statute book almost entirely collapsed, all sides seeming to regard the abolition as a foregone conclusion. No doubt, many of those by whose voice the thing was carried, like some of those