

mistakeably wrong, in short that its error is as clear as that two and two make four and that two sides of a triangle are together greater than the third side. This is said advisedly, and with an entire remembrance that it is the Supreme Court of Canada which has rendered the judgment so characterized. And I support what I say by the following reasons:

(1). The action once begun, the defendants could only stop it by putting the plaintiff in as good a position as if he hadn't sued at all. Otherwise a defendant could always tender the debt without costs; or a plaintiff in like manner at any time discontinue his action.

(2). The repeal of the by-law could have no effect, unless the defendant was right on the merits. For if the plaintiff were right on the merits the by-law was null and void *ab initio*.

(3). At any rate, if the judgment of the Circuit Court were right, the "by-law....so annulled ceased to be in force from the date of the judgment," 704, M. C.; and consequently when the council assumed to repeal the by-law there was nothing to repeal. And if the judgment of the Circuit Court were wrong, the appellant would lose any way. But the goodness or badness of the Circuit Court judgment, could only be decided by hearing the case on the merits. Then why not go into the merits?

(4). The appellant having got a favourable judgment from the Circuit Court, is entitled to the benefit of it, unless "in the said judgment of the Circuit Court there was error." But the Supreme Court refused to consider that question.

(5). The judgment of the Court of Queen's Bench, was clearly not a final judgment. That being so, it is manifest that the other party couldn't take from the appellant a right of appeal which the law gave him. In other words, it is not for the party, hitherto successful but foreseeing possible defeat in the end, to say whether or not the law shall take its course.

(6). The judgment is not only vicious in principle, but altogether opposed to precedent. The learned judges, in fact, are condemned out of their own mouths.

In the case of *O'Sullivan v. Harty*, (11 Can.

S. C. R. 322), an appeal was heard on a question of costs, and on nothing else. The appeal was dismissed, but on the ground that the courts below had rightly put the costs on the appellant.

And in the case of *Exchange Bank v. Gilman*, (17 Can. S. C. R. 108), the law was thus admirably laid down by Mr. Justice Taschereau on pages 116-117 of the report:

"The judgment of the Court of Appeals alludes to the fact that the judgment on the first action has been set aside on a *requête civile* for want of stamps on the promissory note for which the plaintiff had recovered. I think this fact was erroneously taken into consideration. There is no issue of that kind on the record, and the copy of the judgment as setting aside the first judgment, was irregularly introduced into the record in the Court of Appeal. It could not have been invoked in the Superior Court, for the good reason that it was rendered on the 22nd of December, 1887, more than a year after the judgment of the said Superior Court. And the Court of Appeals could not give a judgment which the Superior Court could not have given, or take into consideration as a ground of their judgment, a fact which did not exist when the Superior Court pronounced its judgment."

The Privy Council have repeatedly heard appeals on questions of costs, and granted costs which had been refused by the courts below. *Yeo v. Latour*, 8 Moore, N. S. 74; *Armstrong v. Huddleston*, 1 Moore 478; *Princep v. Dyce Sombre*, 10 Moore 232; *Baboo v. Berry*, 2 Knapp 265.

Your very truly,

D. C. ROBERTSON.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Nov. 21.

Judicial Abandonnements.

- Léon E. Anctil, Coaticook, Nov. 14.
 Louis Boivin & Cie., grocer, Village Richelieu, Nov. 13.
 Antoine Silvani Daoust, grocer, Montreal, Nov. 13.
 George Daveluy, insurance broker, Montreal, May 21.
 Eusèbe Doiron, trader, Metapedia, district of Gaspé, Nov. 13.
 Hansen & Schwartz, ship-brokers and agents, Quebec, Nov. 13.
 Narcisse Edouard Morissette, trader, Three Rivers, Nov. 13.
 Harris Minkowskie, trader, Montreal, Nov. 10.
 Portugais & Lemay, cabinet makers, Quebec, Nov. 18.