

"2. Either House may propose any amendments to either code, but such amendments shall be proposed by resolutions, which may be passed by the one House and sent to the other for its concurrence, and shall be subject to amendment by the other, and be dealt with as a Bill might be until finally agreed to by both Houses, and shall then be communicated to the Commissioners, who shall with all possible despatch incorporate the substance of the amendments so agreed to with the proper code, which may then be passed as a Bill at the same or any other session."

The Civil Code was the first completed and submitted to the Legislature, and it was amended by resolutions agreed to by both Houses, but the Legislature did not quite pursue the course indicated by the latter part of Sect. 14, Subsect. 2. By 29 Vict., c. 41, sect. 2, the Commissioners were directed to incorporate the amendments with the Civil Code, adapting their form and language (when necessary) to those of the said code, but without changing their effect, inserting them in their proper places, and striking out of the said code any part thereof inconsistent with the said amendments.

Power was also given to the Governor to select any Acts and parts of Acts passed during the last and present sessions, and cause them to be incorporated. And power was given to the Commissioners to make verbal and formal amendments, and so soon as the said work of incorporation was completed the amended code was to be submitted to the Governor, who may cause a correct printed copy thereof, attested by his signature and that of the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Council.

Then by Sect. 6, "The Governor in Council may, after such deposit of the roll last mentioned, declare by proclamation the day on and after which the said code, as contained in the said roll, shall come into force and have effect as law, by the designation of 'the Civil Code of Lower Canada,' and upon, from, and after such day the said code shall be in force accordingly." The Governor in Council, by proclamation, named the 1st August 1866 as that day.

A precisely similar course was taken as to the Code of Civil Procedure of Lower Canada,

the Statute 29 & 30 Vict., c. 25, being in the same words as those of 29 Vict., c. 41, except that (Code of Civil Procedure of Lower Canada) is throughout substituted for (Civil Code of Lower Canada). The day fixed by the proclamation for this code coming into force is the 28th day of June, 1867.

So that there was a period of nearly ten months, during which the Civil Code was in force, before the Civil Code of Procedure came into force.

It seems implied in that part of the judgment which states "that there are express provisions in the Code of Procedure as to these matters," and that "the provisions of Sects. 12 and 18 of the Consolidated Statutes and Art. 2274 of the Civil Code have thereby been repealed under Sect. 1360 of the Code of Civil Procedure," that the majority of the Court of Queen's Bench put the construction on Art. 1360 of the Code of Civil Procedure, that it repealed not only all laws in force before the passing of either code, but also all parts of the Civil Code which touched procedure.

The literal meaning of the words "laws in force at the time of the coming into force of this code" includes the Civil Code, for, as already pointed out, the Civil Code came into force some months before the Code of Civil Procedure did; but their Lordships are scarcely prepared to hold that the intention and object of the Legislature was that when a matter is included in the Civil Code which might without impropriety have been included in the Code of Procedure, and an express provision is made in the Code of Procedure upon that particular matter, the provisions of the Civil Code are abrogated as being laws concerning procedure in force at the time when the Code of Procedure came into force. The two subjects from their nature overlap, and in the Code Civil of France, as well as in the Canadian Codes, much which might well be put into the one code is placed in the other. There seems nothing to prevent laws in both codes relating to the same subject from standing together, unless they are from their nature so inconsistent that the later enactment must be taken to repeal the earlier.

The 20th title of the Canadian Civil Code, relating to imprisonment in civil cases, is one which might have been placed under the head of procedure; and so might the 16th title of the French Code Civil, entitled, "De la Contrainte par Corps en Matière Civile," have been