plaintiff's affidavit.) Then there is a plea that defendants had really no intention to transgress the law, and that they had registered their partnership, but by ignorance one of the registrations called for was at a wrong registry office: that they corrected this as soon as possible and have now perfectly registered, and there is a plea of general issue.

Before these pleas were filed, the plaintiff had filed a *désistement* as against one of the defendants, saving his demand as regards the other. Yet afterwards, on 5th March, he joined issue with both defendants, and the case is now submitted after *enquête*. I am of opinion that the defendants are right in their proposition that such an action as this, for a single $200 penalty against two wrong-doers, each of whom has to answer only for himself, and each of whom has incurred a penalty of $200, is bad. See Espinasse (Penal actions). Action dismissed.

Painchaud, for plaintiff.

St. Pierre & Scallon, for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 26, 1881.

Before MACKAY, J.

HENRY D. J. LANE v. TAYLOR *et al.*

Will—Legacy—Error in name of legatee.

An error in the name of the legatee does not annul the disposition of the will by which the legacy is bequeathed, when the person intended to be benefited is indicated beyond reasonable doubt.

PER CURIAM. The defendants are sued as executors and trustees under the will of the late Miss Lane for £250 currency. The declaration sets forth a clause of her will by which she gave and bequeathed unto her cousin, George Henry Lane, of Ottawa, £250 currency, and states that this meant himself, the plaintiff; for testatrix knew well that George Henry had died several years before the date of the will, and is in fact described as dead in a later part of the will gratifying his daughters; the plaintiff was the only male cousin at Ottawa that the testatrix had, she knew him to be Henry, and must have assumed him to bear his father's name, George Henry.

The plea is that no legacy has been made to the plaintiff, that he is not the person designated, and that Miss Lane had frequently said that she would leave plaintiff nothing.

The testatrix's will is of 19th June, 1878, it is full of noble charities, and names as universal residuary legatee, Catherine Ann Tubby, who is otherwise a legatee. The will shows perfect intelligence. The testatrix names a living cousin, George Henry Lane, of Ottawa, and twice names a dead George Henry Lane, of Ottawa, when referring to his daughters as her cousins. This George Henry was plaintiff's father. Some time before her death the testatrix entrusted Miss Tubby to give the plaintiff the family portrait of the testatrix's grandfather. Miss Tubby does not seek to favor the plaintiff, yet, asked the question: "If plaintiff's father was not meant, can you suggest any one that could have been meant if the plaintiff was not?" answers: "I cannot."

Considering all that is proved, I find that Miss Lane fell into an error in designating the plaintiff to have £250. She misnamed him. He was and is Henry, and his father was before him. The testatrix knew both by that name. No other male Lane, cousin of testatrix, was in Ottawa at the date of the will. Here is our law on misnomers in wills:—"Si l'erreur ne tombe que sur le nom ou sur le surnom du légataire, la disposition n'est pas annulée, pourvu qu'il conste de la personne, par quelque démonstration qui le fasse connaitre sans équivoque." Furgole, vol. 1, Testamens, p. 235. Pothier: Dons. Test. is to the same effect. So I pronounce judgment for the plaintiff.

Barnard, Beauchamp & Creighton, for plaintiff.

Ritchie & Ritchie, for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 26, 1881.

Before MACKAY, J.

THE CITY OF MONTREAL, petitioning for the sale of a land for arrears of assessments, and LOIGNON, claimant, petitioner.

Petition under the C. C. P. 900—Diligence required to ascertain owner.

A petition under Art. 900 C. C. P. cannot be presented to a judge in chambers.

The creditor's hypothecary recourse under the above article can only be exercised where the proprietorship remains uncertain after due diligence has been used to ascertain the owner.

PER CURIAM. Article 900 of the Code of Pro-