

giving directions to a sheriff's officer as to the distribution of the proceeds of property sold under execution, in a case where the debtor had become a defendant and judgment had been rendered against him. Article 611 must be read *secundum subjectam materiam* with reference to the place in which it was found in the code, and it must not be assumed that in a code of civil procedure and in a matter relating to the execution of judgments the Legislature intended, by a side wind, to nullify and make nugatory the careful specific provisions contained in Article 1,994 of the Civil Code. But a question was raised by his opponents whether the Crown had not this right paramount, as he understood, to the code, should the code be against them. On this, his first contention was that this privilege of the Crown was determined by the law of France and not by the law of England. It was not one of those major prerogatives which the Crown had in all its dominions, but was one of those minor incident prerogatives of the Crown of which the existence must be determined by the law regulating the civil rights of Her Majesty's subjects in the particular part of her dominions in which it was sought to enforce it. Of course, in cases where there was no peculiar law in question, as in Australia, the rights of the Crown would be determined by the common law of England; but in Canada, where there was a pre-existing law, his submission was that the civil rights of the inhabitants of that country were to be regulated by the law in existence at the date of the passing of the Act of 14 George III.; and therefore it was material to enquire what were the rights of the French Crown, and what preference the French Crown had for debts due to it at the passing of that statute. Now, the difference between the parties, as to the scope of the rights enjoyed by the French Crown, turned principally on the meaning of the word "comptable." The decisions of the courts in France and Canada were all in favor of his view that "comptable" applied only to persons accountable for the revenues of the Crown as agents of the Crown, and were against the view that it included ordinary debtors of the Crown upon loan and simple contract.

Mr. Macmaster, Q.C., followed on the same side.

Sir Farrer Herschell, Q.C., on behalf of the Crown, said he should submit to the Court that, despite recent decisions in the Canadian courts, the Crown had the same prerogatives in Canada as in other parts of its dominions; that if the case was to be governed by the law of France, the rights of the French Crown were not limited in the manner suggested by his opponents, and that "comptables" bore a more extended meaning than that attributed to it by his friends, this bearing to some extent on Article 1,995; and lastly, he would come to Article 611. He thought it right to bring before the notice of the Court a consideration which had recently been raised in the case of the Oriental Bank. The claim here was a claim under a winding up in the insolvency in this bank, and therefore, no doubt, the winding up creditors generally were prevented, by reason of the winding up, from asserting their claims against the property of the bank. But the winding up acts did not mention the Crown, did not affect the Crown, and there was nothing to prevent the Crown from enforcing its full claim against the bank by execution, and that being so the proper course was to pay the claim of the Crown in full under the liquidation. He submitted also that where a portion of the dominions of the Crown had become such by cession after conquest, unless there was anything in the terms of the cession to limit or affect the rights which the Crown would otherwise possess, that possession, as soon as it became part of the dominions of the Crown, became subject to all the prerogatives of the Crown, and the distinction between major and minor prerogatives only existed where the cession had been conditional upon the continuation of certain existing laws which would be inconsistent with those minor prerogatives. With regard to the recital that, except as otherwise provided the civil rights of the inhabitants of Canada were to be governed by the law of France, he submitted that only rights of subjects *inter se* were meant, and that rights between the Crown and subjects were to be governed by the prerogatives of the British and not of the French Crown. His first proposition, there-