The Legal News.

Vol. III. FEBRUARY 14, 1880. No. 7.

ERRORS OF LEGISLATION.

The judgment in the case of *Ex parte Archambault*, in the present issue, has furnished another instance of an awkward class of errors or oversights of legislation which are not so rare as they should be. It is not very creditable to the administration of justice in the Province that an obstruction of this sort should be encountered, and that a numerous body of offenders should go free because a door has been carelessly left open to facilitate their escape. The incident suggests rather forcibly the necessity of additional precautions against statutory blunders.

THE GOLDRING CASE.

The appeal to the Privy Council in the case of *Goldring & Bank of Hochelaga* (2 Legal News, p. 232) has been dismissed in England, on the preliminary point raised before their lordships, that the judgment dismissing the motion to quash the capias was not appealable. It may be remarked that the Court of Queen's Bench expressed doubts whether an appeal lay, but seeing that the party asking for the appeal was in jail, permission was granted, subject to objection before the Judicial Committee. Goldring was afterwards liberated on bail, and, therefore, the reason which chiefly influenced the Court of Appeal here no longer existed.

THE LATE MR. B. DEVLIN.

Since our last number appeared, the death has occurred of one who has occupied a very prominent place at the bar of the Province of Quebec during the past 30 years. Mr. Bernard Devlin, who died in Colorado a few days ago, was born 15th December, 1824, in Ireland. He came to Canada, while still young, with his father, and after a short connection with the press, studied law in the office of Mr. Edward Carter, Q.C., and was admitted to practice in 1847. He very early won success in the Criminal Courts, and continued to practice chiefly on that side of the bar. He was eminently persevering and energetic in the defence of his clients, and although his addresses to juries were not marked by the highest order of eloquence, they were effective and successful, and the young advocate rapidly acquired a wide reputation as a good winner of verdicts in rather desperate cases. The result was that he was engaged in almost every important trial where there was an English-speaking jury. He was not so successful in civil practice,—perhaps because his engagements before the criminal courts monopolized too much of his time and attention. In later years, Mr. Devlin sought to enter Parliament, and as he desired to represent the leading constituency in which his countrymen muster a controlling vote, he was induced to contest the old division of Montreal West with the late Mr. Thomas D'Arcy McGee. The *début* was not a fortunate one for Mr. Devlin. It would be out of place here to notice at any length the acrimonious struggle which ensued, and in which Mr. McGee triumphed over his opponent. Some years after the melancholy death of Mr. McGee by the hand of a midnight assassin, Mr. Devlin again entered the lists with Mr. M. P. Ryan. He was defeated, but Mr. Ryan being unseated, Mr. Devlin, in the new election, gained the victory. He, in turn, was unseated, but was again returned. After sitting in Parliament for two or three sessions, he was finally defeated by Mr. Ryan in the general elections of 1878. At this time he was suffering seriously from pulmonary disease, which continued to gain ground, notwithstanding an apparently vigorous constitution. His death took place in Colorado, whither he had gone to seek some alleviation of his malady.

Although Mr. Devlin has been surpassed in ability by several of the distinguished men who have figured at the bar of Quebec, there has probably been no one whose name and person were so familiar to the masses of the population. His style of oratory, as we have already said, was most effective before juries, his practice in that respect no doubt having done much to form it. But in maturer years he displayed considerable power in addresses to assemblies of a more general character, and where he had a point to make, he exhibited much skill in using it to the best advantage. While the animosities kindled by his early political battles were bitter and lasting, he nevertheless lived on the most friendly terms with large numbers of his opponents, and in his last years consistently and strenuously deprecated the introduction of per-

sonalities in public contests. The intelligence of his death, though not unexpected, has caused much sorrow among his professional brethren, and the community generally have exhibited a desire to honor his memory.

PUBLICATIONS.

THE AMERICAN LAW REVIEW. Little, Brown & Co., Boston.

The *Law Review*, which, during the thirteen years of its existence as a quarterly, won the very highest reputation for accurate work and general excellence, has, with the opening of the year, assumed the form of a Monthly Review. The old Quarterly would have been sadly missed by the profession, if the enterprising publishers had not, by trebling the number of issues, established fresh claims to gratitude. The contents of the January and February numbers are varied and interesting. Each issue comprises nearly one hundred pages, and no increase is made in the rate of subscription. The *Law Review* is entitled to liberal support, and we hope it will have a large circulation in Canada.

THE ALBANY LAW JOURNAL, Albany.—We have received a copy of the memorial number, in which the learning and ability of the founder, the late Mr. Isaac G. Thompson, are commemorated. The tribute which has been paid to the memory of this gentleman by all classes of the profession, from the Chief Justice of the Supreme Court down, is a most remarkable one, and shows that the legal world, though not demonstrative, is far from unappreciative. Mr. Thompson himself was one of the most unassuming of men, and would have shrunk from the honors which have been paid, unsolicited, to his memory as a faithful worker and good citizen.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, Feb. 9, 1880.

RAMSAY, J.

Ex parte JOSEPH ARCHAMBAULT, Petitioner for *habeas corpus*.

Selling liquor without license—Proof of municipal organization—Error in Statute, 42 & 43 Vic., cap. 3, s. 30.

RAMSAY, J. The petitioner was convicted for that he "at the village of St. Jean Baptiste, in the first division, within the district aforesaid," sold intoxicating liquors, and he was sentenced to pay a fine of $75, and the further sum of $8.70 for his costs. There was the usual addition for arrest, commitment and conveying to gaol, if the fine was not paid. The fine not being paid, the Judge of Sessions issued his *mittimus*, under which he was sent to gaol for three months, unless these several sums were paid, "and all costs of the arrest, commitment and conveying him to gaol," amounting to the further sum of $2.70, be sooner paid, &c.

It is now contended that the Judge of Sessions has exceeded his jurisdiction, firstly, it not appearing that the village of St. Jean Baptiste is a place "municipally organized"; and, secondly, that the costs of arrest and commitment, and conveying to gaol, could not possibly exceed $2.

Originally the village of St. Jean Baptiste was only incorporated by proclamation under the general Act for the incorporation of towns and villages; but that incorporation has been recognized by statute, as also the proclamation describing the territory so incorporated. We have, therefore, to look at the proclamation as part of the Act of incorporation, and there we find the village of St. Jean Baptiste described, and a name given to it as a corporation. We cannot, therefore, entertain the objection that the offence was not committed within territory "municipally organized," which is the term of the Act of 1878 (section 71). The authorities referred to on the part of the petitioner do not apply, because it is evidently not necessary to set up the corporate name of the territory, but only to establish that the territory by whatever name designated was municipally organized.

The second point necessitates a reference to several statutes. In the first place by the Summary Convictions Act (32 & 33 Vic., cap. 31, sec. 53,) it is provided that justices may in their discretion award costs, "not inconsistent with the fees established by law," &c. By cap. 93 C. S. L. C. (sections 18 & 19), the Governor-in-Council was empowered to make a tariff of fees for....."the Clerks of the Crown and of the Peace, criers, assistant criers and tipstaffs, and all other officers of justice, whose fees are to form part of the officers of justice fee funds, established under this Act," *i.e.*, 20 Vic., cap. 44.

In accordance with the terms of this Act, a tariff was issued on the 29th January, 1864. This tariff, of course, does not affect the services of bailiffs, and left their remuneration to be otherwise provided for, as for instance to be fixed in the discretion of the justices in each case. In 1870 a statute was passed (33 Vic., cap. 15, Q.) empowering the Lieutenant-Governor-in-Council to make, modify, &c., any tariff of fees payable to high constables, bailiffs, or constables, for their services in the execution of any order of justices of the peace, &c. Under this authority a tariff was passed on the 26th December, 1870. This tariff then still further limited the discretion of the justices. If the costs were calculated under these tariffs they are certainly not overcharged; in fact, it appears by the statement handed in by the High Constable, he might have charged under these tariffs $3.65. But in 1878 an Act was passed to amend and consolidate "the Quebec License Act and its amendments" (41 Vic., cap. 3). By section 225 of this Act, it is provided that "in all prosecutions or actions instituted under any of the articles of this law, before all courts except the Superior Court and the Circuit Court in appealable cases, where the usual tariff of fees prevails, no other costs or fees, excepting those mentioned in the schedule H, shall be claimed or taken by any attorney, clerk, bailiff or constable, or any officer of justice." On referring to schedule H, we find that "the fees to be taken by the clerks of the justices of the peace, recorder, judge of sessions, police magistrate and district magistrate are the same as those contained in chapter 100 of the Consolidated Statutes for Lower Canada." This reference to chapter 100 Consolidated Statutes for Lower Canada is, to say the least, very odd, for it contains no provision for bailiffs and constables at all. But this is of small importance now, for we have section 225 replaced in 1879 by an amending Act, 42 & 43 Vic., cap. 3, sec. 30. This amendment is more perplexing than section 225. It is said no other costs than those mentioned in schedule 4 shall be claimed by any attorney, officer, constable or any other officer of justice," and there is no schedule 4 either in the Act of 1878 or 1879.

There is, therefore, no authority for any charge for the arrest, commitment and conveying the prisoner to gaol. The commitment is, therefore, for an unauthorized sum, and the prisoner must be discharged.*

Keller for petitioner.

F. X. Archambault for the Crown.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 3, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY and CROSS, JJ.

GRENIER et al. (plffs. below), Appellants, and THE CITY OF MONTREAL (dfts. below), Respondents.

Alteration of level of street—Prescription of actions of damages resulting from offences or quasi offences, C. C. 2261, 2267—Cases of Drummond & Corporation of Montreal, and Bell & Corporation of Quebec, commented on—Damages inflicted in doing an act authorized by a statute.

The appeal was from a judgment of the Superior Court, Montreal, (Johnson, J.,) dismissing an action of damages brought by the appellants against the city, on the ground that the action was extinguished by the prescription of two years (21 L. C. J., p. 215).

RAMSAY, J. This is an action of damages for injury to appellant's property by reason of the alteration in the level of the neighbouring street. The action was dismissed on the ground of prescription of two years, which was not pleaded. Is the action for damages subject to such a prescription, and if so, can it be supplied by the judge? The difficulty arises entirely from the wording of the Code. Under the old law it is evident that no such prescription would apply. But it is argued that "actions" "for damages resulting from offences or quasi-offences, whenever other provisions do not apply," "are prescribed by two years," (2261-2); and that no such action "can be maintained after the delay for prescription has expired," (2267); that no one can be liable for damages except by his fault, and that consequently the right of action for damages must necessarily arise out of a *délit* or *quasi-délit*, which include "positive act, imprudence, neglect, or want of skill," (1053). These words of the Code are very precise, and if we are to give full effect to them, we should, perhaps, have to declare that even the action of damages for a breach of contract was

*This judgment was concurred in by Sir A. A. Dorion, C.J., and Monk, J., and the same decision was rendered in numerous other cases.

liable to the prescription of two years. But we do not think it necessary to decide the point in the present case ; at the same time we do not wish it to be supposed that we shall feel bound by the decision of the Superior Court, should a case arise presenting the question of prescription in another form. We think that the case before us presents a question of continuous damage, and in the absence of a special plea it is impossible to determine when the damage arose so as to be within the rule of prescription of two years. For instance, in the present case the earth to raise the level of the street was deposited more than two years before the institution of the action. but it does not follow that any actual damage arose then. It may have been months and weeks before the full effect of the alteration was manifest, and it is not sufficient to say that there was a protest two years and six months before, for such a protest may be for impending damage, to prevent any presumption of acquiescence.

On the part of the City no evidence has been produced. On the part of the appellants it is established beyond doubt that the roadway has been raised considerably above its level at the time the houses in question were built. It is not, however, proved that the appellants specially procured any level from the officers of the corporation before building ; but this is of no consequence, as it is in evidence that these houses were built after Dubord street was opened and used as a public thoroughfare. I think it is also established that the appellants have suffered damage, if not of very great amount, of a very appreciable kind, by the elevation of the level of the street, at least as regards one of the houses. The respondents' pretension is that however great the damage may be, and however directly it may result from their act, such act was legal, and that under the statutes concerning the Corporation of Montreal, the general clauses granting powers to do certain things, or rather certain classes of things, are to be construed as being rights accorded to the corporation to do these things, even to the positive injury of individuals, without indemnity, when such indemnity is not specially reserved by the statute. In support of this proposition the case of *Corporation of Montreal & Drummond** has been quoted. It would not be difficult, I think, to distinguish this case from the one referred to, and to show that the element of negligence is really the one now to be considered, and takes the case entirely out of the category in which the respondents desire to place it. The right to raise the level of a street does not seem to imply the right to inundate the neighbouring property. Making a street is a well-defined operation. In its ordinary acceptation it implies drainage and water courses, and some sort of adaptability to the contiguous properties, and I cannot conceive that the corporation by upsetting a quantity of earth into a street, by which a hollow is converted into an embankment, can escape from the liability of their act, on the pretext that they were raising the level of a street.

But apart from this distinction, and were it conceded that this case presented a question identical with that of *Drummond & The Corporation of Montreal*, I do not think we would be absolutely bound by a single decision in that sense. There is doubtless some inconvenience in inferior courts refusing to accept as conclusive in all other analogous cases, the decision of a higher tribunal. At the same time I am inclined to believe that the authority of precedent has never been considered as in itself perfectly conclusive, and the mass of overruled cases supports this view. The occasion which seems to justify over-ruling is when the precedent is plainly *contra rationem juris*. Now, with all due deference for the opinion of the Judicial Committee, I am bound to say that the decision in the case of *Drummond & The Corporation of Montreal* appears to me to be open to this objection. I cannot believe that their Lordships have perfectly seized the reasons of our judgment,—probably from the imperfect manner in which they were presented,—nor do I think they have thoroughly appreciated the doctrine expressed by the French writers. I am the more strongly induced to arrive at this conclusion from the reference made by their Lordships to the case of *Drummond & The Corporation of Montreal* in a case recently before them of *Bell & The Corporation of Quebec*.* In the latter case they admit in an unqualified manner that such cases must be decided by the French and not by the English law; and the counsel for the appellant are reminded that

* 22 L.C.J., p. 1.

* 3 Legal News, p. 33.

English and American decisions "cannot be treated as governing authorities." This is an important step gained towards settling the jurisprudence on the point before us. It dispenses us from the necessity of examining the cases of the English law, and endeavouring to evolve from them a general principle—a work which appears to be more arduous than to reconcile the two paragraphs of Dalloz which have given their Lordships some embarrassment.

Before proceeding to examine the rule laid down by the Judicial Committee as a principle of French law, it may be well to call to mind what was the pretention urged by the learned counsel for the Corporation at our bar. I quote from his *factum*, page 3 :—

"Les appelants soumettent que comme corporation municipale, la législature leur a délégué une partie de sa souveraineté, et leur a donné certains pouvoirs législatifs qu'ils peuvent exercer à leur discrétion dans l'intérêt du public, et sans encourir aucune responsabilité envers les individus ; que tant qu'ils ne touchent à la propriété même des citoyens, c'est-à-dire, tant qu'il n'y a point *expropriation* totale ou partielle, ils ne sont, à l'exception des éventualités prévues par la charte, tenus à aucune indemnité envers eux, pour dommages ou inconvénients qui peuvent résulter de travaux faits dans les rues, pourvu toutefois que ces travaux se fassent avec une diligence ordinaire, et que tels inconvénients ne soient pas le résultat de leur négligence ; la charte définit et précise les cas où le corps municipal sera responsable en indemnité envers les citoyens, et hors ces cas, nous répétons qu'il ne l'est pas, quand il opère dans les limites de ses attributions." I quote the passage at length so that there may be no doubt as to what are the City's pretensions in this class of cases, and I do this the more readily because I think the point is placed before us with great clearness. I shall next proceed to quote what the Privy Council in Drummond's case declared to be the law of England. They said: "Upon the English legislation on these subjects, it is clearly established that a statute which authorizes works makes their execution lawful, and takes away the rights of action which would have arisen if they had been executed without this authority." (Jud. Op., pp. 11 and 12). Their Lordships did not, however, go so far as to say that this was French law. They make a distinction. They said that if the works affected any of the natural servitudes of the property, in such case, the owner would be entitled to indemnity in some form or other, even when not reserved by the statute authorizing the works. That there may be again no misunderstanding, I quote the words of their Lordships' opinion, p. 7 : "It cannot be denied that the law of France allows to the owners of houses adjoining streets rights over them, which, if not servitudes, are in the nature of servitudes. Demolombe enumerates as undoubted the rights '*d'accès ou de sortie, des vues, et d'égouts*' (vol. 12, sec. 699), and the same rights are spoken of by Proudhon (vol. 1, art. 369). The right of access to a house is of course essential to its enjoyment, and if by reason of alterations in the street the owner cannot get into or out of it, or is obstructed in so doing, there seems to be no doubt that by the law of France he is entitled to recover, in some form, indemnity for the damage he sustains. But the stopping of a street at one of its ends does not produce these consequences." Recurring to the dictum in the Drummond case, in the case of Bell their Lordships (who all sat in the Drummond case) said: "There appears to be a clear distinction in the French law between rights of immediate access from a man's property to a highway, *and the power to complain of a mere obstruction on it.*" It may here be remarked that in the former case "obstruction to access" was put on the same footing as absolute impossibility of ingress and egress, while in the latter case they are contrasted. This is perhaps a very slight discrepancy, hardly affecting the question in the way I look at it, but which may have some significance as showing that the result of the rule laid down was not perfectly clear to the writer at the moment he wrote.

We have, therefore, an entire abandonment of the doctrine that the damage which is done under a statute is *damnum absque injuria*, and in its place we have a distinction between one sort of damage and another,—one for which indemnity is due, although not reserved by the statute, while for the other no right of indemnity exists. Now I state without the least hesitation that this pretention is a novelty. It is almost impossible to conceive that if there

was a "*droit d'accès et de sortie*," such as their Lordships seem to suppose there is, a *droit* which exceptionally controls the reading of a statute, we should not have some treatise *ex professo* on the subject. I am not aware of the existence of any such work, or indeed of any legal authority who treats of such a right. The pretention has never been urged at our bar, and without affecting to possess the gift of prophecy, I venture to say it never will be. The quotation from Demolombe, which appears to have induced their Lordships to arrive at the conclusion that there existed a special "*droit d'accès et de sortie*," differing in character from all other forms of direct damage, is solely an illustration of what might be no damage, and nothing more. But if the blockade was so near as to darken one's windows, or if the narrowing of the street was so great an alteration as to convert a carriage way into a lane where a wheelbarrow could not pass, neither Demolombe nor any writer on French law has ever pretended that damages would not be due. A glance at the quotation from Dalloz, on p. 9 of their Lordships' opinion, shows that this is the true interpretation. It is the equivalent of the old English distinction between remote and proximate damages to which Dalloz refers.

There is another point raised by their Lordships in the Drummond case which may have some bearing on this case. They say that the indemnity should have been sought before the special tribunal of Commissioners, and not before the ordinary Courts. This, again, is a *dictum* which, first suggested in the case of *Jones & Stanstead Railway Co.*, has, like a delicate exotic, failed to take root in our uncongenial soil. No one has made it the subject of a declinatory plea, or suggested that we had not jurisdiction. The truth is that the discussion in France which has attracted their Lordships' attention, as to whether the claim is properly for damages or for the price of an expropriation, is purely theoretical, so far as our forms of procedure are concerned. In practice we ask for damages for any sort of expropriation or quasi-expropriation or injury of the kind in question, just as we ask for land damages from a railway company.

In dealing with this question I have referred to the two cases of Drummond and of Bell, because by them this new doctrine is sought to be engrafted on our law as a settled jurisprudence. In the case of Drummond in reality a much simpler question arose. The plaintiff there was absolutely deprived of the enjoyment of a thing for which he had specially paid. The Corporation compelled Drummond to pay one day for the opening of a street, which another day they closed, and kept his money. There is nothing indefinite about the character of that particular transaction. It gave rise to no question of servitude *quasi* or real; the direct nature of the damages cannot be questioned; and if Article 407 of our Civil Code does "undoubtedly embody a fundamental principle of the old French law," as their Lordships say it does (it appears to me to embody a fundamental principle of justice), it is difficult to conceive why it was not applied in that case.

The doctrine, then, of our law seems to be unquestionable. With the doctrine of the English law on the point, we have nothing to do. It does not apply, and therefore we are not presumed to know anything about it; still we may be permitted to say, as a matter of general jurisprudence, that the English law and the French law start from the same well-known principle "*nemo damnum fecit, nisi qui id fecit, quod facere jus non habet*," (de Reg. Jur. L. 151.) Any difference there may be in giving effect to the principle must be due to some rule of detail as to the interpretation of the legislative act. Here we consider that powers to do certain works do not absolve the party empowered from the common law obligations which previously existed between the party empowered and his neighbour. This presumption applies with still greater force when the power granted is not to do a specific thing, but forms part of the general attributes of a corporation. It is the mere statutory specification of the powers accorded to this fictitious person, analogous to those belonging to a real person, and which, it might be supposed, except for such specification, it did not possess. To conclude that because this power is given without any expression of reserve, it is not given subject to the common law is a doctrine very difficult for us to realize. The rule as to the interpretation of contracts, which, in so far, is identical with the interpretation of statutes, is: "The customary clauses must be supplied in

contracts, although they be not expressed." Art. 1017, C. C.

The rule, therefore, of our law being clear, it only remains for us to enquire what is the amount of damages to be awarded. We cannot adopt the estimation of appellant's witnesses. It is evidently not a damage of an irreparable kind, and it can hardly be said to affect in any great measure anything but the lot next Dubord street. Damages $200.

Sir A. A. Dorion, C. J., said the circumstances of this case differed so materially from the *Bell and Drummond* cases, that he was inclined to think the Privy Council would hardly hesitate in this case to come to the same conclusion as had been arrived at by this court. It was sufficient to show that there was no difficulty in the case according to the principles of French law, which were admitted in the case of Bell to be those which should govern. A corporation cannot be prevented from doing works which they are by law authorized to do for the general benefit; but if in doing these works they inflict damage, they are bound to indemnify the person injured. There was no doubt that the appellant had a wall six feet high to his property on the street. The Corporation raised the street three feet, so that the appellant's wall was then only three feet high, and he had to raise it. He had a gate cut in two by the raising of the street, and he suffered some other small damages. There was a difficulty in getting at the exact amount, but the Court allowed him the moderate sum of $200. The question of prescription had been raised. In short prescriptions, the Code says the debt is extinguished, and no action can be maintained after the time has elapsed. The Court had to give some interpretation to that. But whatever opinion the Court might have on this point, it did not come up here, because the question of prescription did not arise. The damages complained of were not damages that could be seen the very day the work was done. The wall inclined over gradually until it had to be propped up. If the appellant had brought his action at once, he might not have been able to prove damages. The Court was of opinion that the damages being *continuous*, the two years prescription did not apply. The Court, therefore, had not to express any opinion at the present time on the rule as it had been expressed in the Code, and which his honor appeared to think, did not adequately embody the idea of Mr. Justice Day, as suggested by his report. The Court expressed no opinion however, on this point, as it did not arise here, this Court having already held that the two years prescription does not apply to cases of continuing damage.

Cross, J., remarked that in his view the present judgment in no way conflicted with the decisions of the Privy Council which had been referred to. As to the question of prescription, it was very embarrassing, and when fairly presented would have to be met.

The judgment is as follows:—

"Considérant que les appelants ont prouvé les principaux allégués de leur déclaration, et notamment que l'intimé a, dans le cours de l'Eté 1871, fait élever ou permis que l'on élevait le niveau de la rue Dubord, qui longe le côté nord ouest de la propriété des appelants, entre deux et trois pieds de hauteur;

"Et considérant que cette élévation du niveau de la rue aurait fait refluer les eaux de la rue sur la propriété des appelants, et aurait fait pencher le mur de cloture de la propriété des appelants, et détérioré la porte de cour que les appelants avaient dans le dit mur de cloture, et causé d'autres dommages à leur propriété, à un montant d'au moins $200;

"Et considérant que la prescription de deux ans ne s'applique pas à ces dommages qui sont continus, et qu'il y a erreur dans le jugement rendu par la cour supérieure siégeant à Montréal le 31me jour d'Octobre 1876;

"Cette cour casse et annule le dit jugement du 31 Oct. 1876, et procédant à rendre le jugement qu'aurait du rendre la dite cour supérieure, condamne l'intimé à payer aux appelants la somme de $200 de dommages avec intérêt à compter de ce jour, et les dépens," etc.

A. W. Grenier, for Appellants.

R. Roy, Q. C., for Respondents.

COURT OF REVIEW.

MONTREAL, January 31, 1880.

TORRANCE, RAINVILLE, PAPINEAU, J J.

In re DAVIDSON et al., insolvents, RIDDELL, Assignee, and STANLEY, claimant.

[From S. C. Montreal.

Insolvency—Proof of claim.

The judgment brought up for Review was

rendered by the Superior Court, in insolvency, Jetté, J., dismissing petition of Stanley, claimant ; see 2 Legal News, p. 348.

TORRANCE, J. The sole question is whether the claimant has proved his status as creditor. The Insolvent Act, Sec. 2, Sub. Sec. 4 and Sec. 104, provides that the proof is to be made in the usual way. The claimant bases his claim upon an account produced by him, showing a debtor and creditor side, and an alleged balance in his favour. I need not here say how that balance should be proved in an ordinary suit. The claimant says that his status has been recognized. I see no such proof. The Court below so held, and we find no error. Judgment confirmed.

Davidson & Cushing for claimant.
John L. Morris for assignee, contesting.

SUPERIOR COURT.

MONTREAL, January 31, 1880.

TRUTEAU v. THE CITY OF MONTREAL.

Action—Interest of plaintiff contingent on future action of legislature.

JOHNSON, J. The object of the present action is to set aside a resolution of the City Council, passed on the 21st February, 1879, and adopting a report of a special committee on railways. The grounds on which this is asked I will not now enter upon at length ; but will only say generally that the *raison d'être* of the plaintiff's action is alleged to be that the resolution now complained of virtually abrogated what is known as the million by-law, with all the benefits incident to it, which of right are said to have been vested in the people of this city.

The report of the committee is dated the 7th February of the same year ; and it dealt with the difficulties that had intervened since the legislative sanction of the terms of the million by-law, and the modifications rendered necessary of the conditions originally stipulated, and especially with the one relating to the point of junction of the Ottawa and the Quebec lines ; and they made certain recommendations as to new terms that in their judgment should be made with the Government. But assuming for a moment that the plaintiffs correctly represent the effect of this report and of its adoption to have been what they say it was—a thing which, I think, can by no means be assumed, except for the purpose of seeing the answer that the defendants make to it, (because it is certainly not clear that the Council in adopting this report adopted anything but an opinion that negotiations with the Government were to be entered upon)—but, I say, assuming the plaintiffs are right as to the effect of all this, the defendants answer at once by a peremptory exception, that before the present action was brought, viz., on the 2nd June, 1879, the Council passed another resolution to the effect that whatever objection there might be to the report or to its adoption, they would apply to the Provincial Parliament to confirm their proceedings. This last resolution evidently means that the whole thing is to be ratified by the Legislature, and practically suspends the operation of the report, and makes it a thing that can never have any effect until the law says it may—a purely eventual fact that may or may not happen : so that the proceedings of the committee and of the Council are not now executory, or to be set aside as if any present interest existed for resisting them.

As to the second plea of the defendants, I do not enter upon it. It seems to me to deal with important facts of which I have no information in the record. There is no evidence or enquête that I can see, and I know nothing about the matters alleged beyond common report. The action is dismissed on the first plea.

Trudel & Co., for plaintiff.
R. Roy, Q. C., for defendants.

OBITUARY.—Within a brief space several officials connected with the Courts of Quebec have died. Mr. Holt, a member of the Quebec bar, who occupied for a short time the position of Judge of Sessions of Quebec, died about two months ago, and his place has been filled by Mr. Chauveau, who was formerly Solicitor-General in the Joly administration. Mr. Brehaut, for many years Police Magistrate at Montreal, and afterwards Clerk of the Crown, died suddenly about three weeks ago. This week the list is increased by the death of Mr. A. M. Delisle, a retired official, for many years Clerk of the Crown at Montreal, and afterwards Sheriff.