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THE STAMP QUESTION.

The *Canadian Law Times*, referring to *Dickison* v. *Normandeau* (6 L. N. 136), says that the decision in *Bradley* v. *Bradley* (5 L. N. 425) is not to be taken as an index of either judicial or professional opinion in Ontario upon the subject matter of the case, and it adds: "We believe the point came expressly before the learned Chief Justice of the Common Pleas at *nisi prius* not many months ago, and was decided by him without any hesitation, according to the only enlightened view that could be taken of it," (*i.e.*, allowing the note to be double-stamped.) It appears, therefore, that the decisions of the Ontario Courts are nearly unanimous upon the question, the opinions of County Court Judges, though often very respectable in point of ability, not ranking high as precedents. We have thought it well to refer to the point once more, as we printed in a recent issue the decision of a Superior Court Judge in a contrary sense.

PRIVATE BILLS.

The last issue of the *Canada Gazette* contains the following announcement with reference to applications for private bills :—

"And further, with respect to the House of Commons, it is ordered under Resolution of 20th April, 1883, that—

"All Private Bills for Acts of Incorporation shall be so framed as to incorporate by reference the clauses of the General Acts relating to the details to be provided for by such Bills;—special grounds shall be established for any proposed departure from this principle, or for the introduction of other provisions as to such details, and a note shall be appended to the Bill indicating the provisions thereof, in which the General Act is proposed to be departed from;—Bills which are not framed in accordance with this Rule, shall be re cast by the promoters, and reprinted at their expense, before any Committee passes upon the Clauses."

CARTER v. MOLSON.

We print in this issue the judgment of the Privy Council in *Carter v. Molson.* Their lordships say: "It may well be doubted whether "the majority of the Queen's Bench have not "given too much effect to the accident that the "Codes did not come into force on the same "day;" and they are disposed to say that the Codes should stand together and be construed together; but they do not find any way of escape from the difficulty occasioned by the omission of the Code of Procedure to enact the penalty of imprisonment on the person refusing to perform the duty which Art. 766 of the Code of Procedure expressly requires him to perform. The case must, therefore, be added to the category of omissions which a too hasty codification has created.

CONSOLIDATION OF STATUTES.

Our readers are aware that a Commissioner (Hon. J. Cockburn) has been engaged in the work of classifying the statute law of the Dominion of Canada. A report has just been issued, from which we glean some details respecting the progress of the work.

The Commission recites in substance "that whereas it has become necessary to revise and consolidate the Statutes of Canada, and whereas each of the Provinces of Canada before Confederation possessed Legislative authority over and passed laws in respect to matters now within the exclusive legislative control of the Parliament of Canada;

"And whereas the British North America Act continued these laws in force until repealed or altered by the Parliament of Canada, some of which have been so repealed or altered, some remain still laws of the Province in which they were enacted, some are local in their nature, not capable of being extended to the whole of the Dominion of Canada, while others might properly be extended to the whole, or other parts of Canada, and it is probable that some of them should be entirely repealed;

"And whereas certain schedules of Acts requiring examination have already been prepared, and whereas for the proper revision and consolidation of the Laws of the Dominion of Canada, it is necessary that further examination, collection and classification of the several Statutes of Canada should be made."

The Commission then proceeds to define substantially in the language following, what is required to be done by the Commissioner, that is to say :—

1. "He is to complete the Schedules already prepared as above mentioned.

2. "To examine the Statutes passed by the Parliament of Canada since the 1st of July, 1867.

3. "To collect therefrom all those enactments which are still in force.

4. To note the enactments of the old Provincial Statutes which have been repealed or altered.

5. "To classify all unrepealed enactments according to subjects, care being taken to distinguish those applying to the whole Dominion from those applying to one or more of the Provinces only.

6. "And generally to make such examinations, classifications and collections of the said Statutes as may be necessary and preliminary to the proper revision and consolidation thereof, and in accordance with such instructions as may be given from time to time in that behalf by the Honorable the Minister of Justice of Canada."

The schedules referred to as having been prepared before the issue of the Commission were nine in number, eight of them containing lists of the Public General Statutes of each of the Provinces passed before the dates of their respectively entering Confederation, except as regards the Provinces where consolidation of the Provincial Statutes had taken place, in which cases the consolidated enactments and the Statutes passed subsequent to such consolidation only are set forth in the schedules, and the ninth schedule containing a list of all the Public General Statutes of the Dominion of Canada, from the 1st of July, 1867, down to and inclusive of the Parliamentary Session of 1877.

The lists of the Statutes of the several Provinces are contained in the first eight schedules as follows :—

1. The Consolidated Statutes of Canada.

2. The Consolidated Statutes of Upper Canada.

3. The Consolidated Statutes of Lower Canada.

4. The Statutes of the Province of Canada.

5. The Revised Statutes of Nova Scotia (3rd edition), and subsequent Statutes of that Province down to the 1st July, 1867.

6. The Revised Statutes of New Brunswick, of the year 1854, and subsequent Statutes of that Province down to the 1st of July, 1867.

7. The Revised Statutes of British Columbia of 1871, when that Province entered Confederation.

8. The Statutes of the Province of Prince Edward Island, down to the year 1873, when that Province entered Confederation.

The report proceeds to state :

"In each Province of the Dominion except one, there had been at least one general consolidation of the Provincial Statutes prior to such Province becoming a portion of the Dominion, but in the Province of Prince Edward Island there never appears to have been any such consolidation, although the Statutes of that Province have at different times prior to the entry thereof into Confederation, been revised, collected, classified and reprinted.

"The first eight schedules already mentioned, in addition to containing lists of the consolidated and subsequent Provincial Statutes passed prior to the confederation of the Provinces, respectively, purported to show which of these Statutes were of a purely Provincial character, and which of them related wholly or partially to subjects now within the jurisdiction of the Parliament of Canada, and also which of them had been repealed, superseded or amended either by subsequent enactments of the same Provinces passed prior to Confederation or by Legislation of the Parliament of Canada in any Session thereof between the 1st of July, 1867, and the 1st of July, 1877.

"In order to carry out the requirements of the Commission the first work devolving upon the Commissioner was the completion of the schedule already mentioned as the ninth, containing a list of all the Public General Statutes of Canada down to and inclusive of the last Session of Parliament, which he accordingly completed.

"The Commissioner, as the second branch of the work required under said Commission to be done, then examined the Statutes set forth in the last-mentioned schedule so completed and prepared as the result of such examination, a new schedule indicating in the proper columns thereof (in addition to its being a list of all the Statutes passed in each year between 1867 and 1882 inclusive,)

1. Those which were of a public general character.

"2. Those which had been repealed and the Statutes by which they had been repealed.

"3. Those which had become effete.

"4. Those which had been passed for only a temporary purpose.

"5. Those which had been amended and by what Statutes the amendments were made.

"6. And lastly, the Provinces of the Dominion to which the said Statutes were respectively applicable.

"The third requirement of the Commission was complied with as incidental to the preparation of the schedule last mentioned, indicating as it does which of the Statutes so examined remain in force.

"The schedule last-mentioned containing what has just been described, and complying with the second and third requirements of the Commission, involved necessarily the examination of over seven hundred Acts, or, in other words, of all the legislation of a public general character passed by the several Parliaments of the Dominion of Canada which have existed at any time between the 1st of July, 1867, and the dissolution of the last Parliament.

"The fourth branch of the work to be done under the Commission was carried out by the Commissioner concurrently with the examination of Dominion Statutes directed to be made as the second requirement, consisting as said fourth branch did of annotations made in the proper columns of each of the eight schedules first mentioned, indicating which (if any) of said Provincial Statutes therein-mentioned had been repealed, superseded or amended by Dominion legislation, and by which of such Statutes they were so repealed, superseded or amended.

"The first, second and fourth branches of the work having been so dealt with they formed the basis or material for 'the collection and classification of all unrepealed enactments' required as the third and fifth branches of the Commissioner's work, and these latter requirements, as well as the one last mentioned in the Commission, were partially complied with by the Commissioner in the following manner:—

"1. By the preparation of an analytical digest or 'classification of all unrepealed Acts of a public general character, passed by the Parliament of Canada, and of Acts of the Provinces of Canada, Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, passed by the Legislatures of these Provinces prior to their respectively joining the Confederation, and relating to matters subject under the British North America Act to the Legislative authority of the Dominion of Canada,' arranged so far as the order of subjects therein is concerned as nearly as practicable in accordance with the plan of arrangement or classification adopted in the Consolidated Statutes of Canada.

"This collection, classification or digest contains eleven chief titles and two hundred and fifty-seven subjects or titles of chapters, indicating all the subjects of legislation which, in the Commissioner's opinion, should be consolidated in order to form the Consolidated Statutes of the Dominion of Canada, and each and every Statute or portion of a Statute affecting these subjects necessary to be considered and taken into account in carrying out the said Consolidation.

"In respect of some subjects of Dominion legislation, the Provincial Statutes passed before Confederation have not been repealed, no laws having been passed by the Parliament of Canada in respect of such subjects, and as a result according to the British North America Act of 1867 the Provincial laws remain in force.

"In respect of other subjects, although Acts have been passed by the Parliament of Canada, the old Provincial laws have not been expressly repealed, the enactments either superseding in effect the Provincial laws, or enacting that said Provincial laws are thereby repealed only so far as is inconsistent with the new enactments.

"In some of the Provincial Statutes passed before Confederation, the main subjects of which are still within Provincial legislative jurisdiction, clauses were enacted constituting felonies or misdemeanors, or otherwise affecting the criminal law, or affecting some other subject, which is now exclusively one of Dominion legislation, and although the Statutes themselves may have since Confederation been repealed by other Provincial enactments, as in some cases is the fact, so far as could thereby be done, these particular sections or clauses still remain law in these Provinces, and should be dealt with in carrying out the general consolidation.

"In preparing, therefore, the said classification or digest, and in order to call attention to all the enactments required to be considered in carrying out the consolidation, the plan adopted by the Commissioner was to indicate in the digest opposite to each subject therein and on the same page thereof,—

"First, in black ink, all the Statutes or portions thereof which clearly had to be consolidated under that particular subject, and when they applied to only one or more Provinces that also was indicated in the same coloured ink.

"Second, in red ink, all those statutes or portions of statutes relating to the same subject, but as to which it was uncertain whether they had been impliedly repealed or superseded, and which the Commissioner considered should be carefully examined in the course of the actual consolidation, mentioning also the Provinces to which the same were applicable.

"Second, after making the collection and classification in the form of an analytical digest of the unrepealed Statutes of the Dominion of Canada and the Provinces before their respectively entering Confederation, on subjects now under the legislative control of the Parliament of Canada, under their respective subjects, as already at length described, the Commissioner having been provided by your Department with the requisite number of the printed volumes of the Statutes, and also with suitable blank

books for that purpose, took from the printed volumes all the Statutes and portions of Statutes in each particular subject, and indicated opposite to each subject in the said classification or digest, and placed them in the blank books, so as to exhibit in these books not only the subjects of legislation to be consolidated and the chronological order and description of the Statutes relating thereto, but also the actual Statutes as amended from time to time, omitting, where any repeal had taken place, any clauses so repealed, and inserting the new clauses substituted therefor, or when the original clauses were amended only by subsequent legislation, then leaving the original clauses in the body of the Statute so transferred to the blank book, and placing on the opposite or subsequent pages thereof the amending clauses or enactments, with a reference in the margin of each page of the book, identifying the amendments with the original Act, in the margin; also, of the page at the beginning of each Statute so embodied in said books, the names of the Provinces to which these Statutes apply are annotated, as well as the amendments thereto, and the extension thereof, by any Statute to other Provinces.

"The Statutes, or portions of Statutes, indicated in red ink, in the classification or digest which require to be considered in the course of the consolidation, are also either taken bodily from the printed volumes containing the same and placed on the pages of these blank books opposite to those pages showing the Statutes to be consolidated, or else only the caption, chronological description and Province to which these Statutes, requiring to be investigated relate, are so placed on the opposite pages already described, when as was the case in respect to some of the Provincial Statutes it was impossible to procure any copies of the said printed volumes.

"The books just described are thirteen in number, of about three hundred and fifty pages each, containing "in extenso" as already set forth, all the legislative enactments indicated in the digest or classification on the subjects mentioned therein which constitute the matter for consolidation and consideration in the course of such consolidation.

"Each of said books is properly indexed by subjects and pages, so as to afford a ready means of reference to the Statutes relating to each subject contained in the said books respectively.

"The British North America Act of 1867, and the amendments thereto, are placed on the first pages of the first of said books, as these Acts will doubtless be frequently referred to in the course of the consolidation, and will, no doubt, be published in the opening portion of the first volume of the Consolidated Statutes of the Dominion.

"In consequence of the impossibility already referred to of procuring any copies of the printed volumes containing some of the Provincial Statutes requiring to be referred to, with the exception of the volumes in the Parliamentary Library, the Commissioner, in accordance with authority received from your Department, procured written copies to be made of some of said Provincial Statutes, which are required for reference or otherwise in the course of said consolidation.

"The Commissioner has the honor, therefore, to submit the above as the result of his labors up to this date under the Commission, to him directed, as before mentioned, that is to say:—

"1. The nine schedules completed as directed by the Commission.

"2. The new schedule already described of the Statutes of the Dominion of Canada.

"3. The classification or analytical Digest also fully described.

"4. And lastly, the thirteen books containing the material to be consolidated as the Statutes of the Dominion of Canada, or which requires to be referred to in the course of such consolidation.

"There remains still to be performed a very important portion of the work directed to be done under the Commission before the contemplated revision and consolidation take place, that is to say, the preparation and arrangement of the actual Statute law so collected and placed in the said books into the form of new chapters, as nearly as possible, as the same will appear in the completed volumes of the proposed Consolidated Statutes.

"This last branch of the work, which will require great care and consideration, is just being entered upon, but when it is completed, the actual revision and consolidation can then proceed without delay and with all the material therefor in a complete state of preparation."

SUPERIOR COURT.

[In Chambers.]

MONTREAL, May 31, 1883.

Before JETTÉ, J.

CRAWFORD et al. v. THE MORTON DAIRY FARMING & COLONIZATION CO. OF MANITOBA, (Limited.)

Commission Rogatoire—Suit pending in Manitoba.

This was an action instituted in the Court of Queen's Bench, Manitoba, from which a commission issued to take evidence at Montreal.

In the course of the *enquête*, objection being taken by defendants to the production of certain books called for by plaintiffs, and the commissioner having decided in favor of their production, his ruling was submitted for revision to a judge of the Superior Court.

The defendants urged that there was no juris-

diction in a judge or the Court here; that the 31 Vic., cap. 76, did not apply to the Province of Manitoba, and cited in support of this pretention, 1st, 33 Vic., cap. 3, sec. 2; 2nd, 34 Vic., cap. 13, sec. 1; that these two acts relate to the entry of Manitoba into the Dominion. Section 1 of the last named act directing that the acts passed in the first, second and third sessions of the Parliament of Canada, will apply to the Province of Manitoba the same as to the other four provinces, with the exception of the special acts mentioned in a schedule at the end of said act, and that Manitoba is therefore in regard to said chapter 76 of 31 Vic., in the same position as the four provinces confederated by the B. N. A. act.

The plaintiffs contended that when 31 Vic., cap. 76, was passed, Manitoba was in effect a foreign country and was not affected by it, and that in any case by the Imperial Act hereinafter mentioned the Court here had full jurisdiction.

The judge (Jetté, J.) gave his decision on the 31st May, 1883, as follows:—

"La Cour, en vertu des pouvoirs qui lui sont conférés par le Statut Impérial, 22 Vict., chap. 20, après avoir entendu les parties sur la demande de révision de la décision du commissaire enquêteur, S. Cross, écuier, rendue le 11 d'avril dernier, et enjoignant au témoin Maltby de répondre à la question à lui posée, et de produire les livres et documents demandés, sous réserve de la dite objection;

"Confirme, en tous points, la dite décision, dépens réservés."

Dunlop & Lyman for the plaintiffs.

Geoffrion & Co. for the defendants.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

April 18, 1883.

Present:—Lord Blackburn, Sir Barnes Peacock, Sir Richard Couch, Sir Arthur Hobhouse.

Carter v. Molson.

Capias—Failure to file statement.

The Code of Civil Procedure having failed to impose any penalty whatever for not filing the statement required by Art. 766, the penalty provided by C.C. 2274, and by C.S.L.C., Ch. 87, Sec. 12, s.s. 2, cannot now be enforced.

Per Curiam. This is an appeal from a judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec; by which that Court, by a majority of three to two, reversed a judgment of the Superior Court of Lower Canada.

The judgment is in the following terms:

"6th March, 1882,

"Present: The Honourable Sir Antoine Aimé Dorion, Knight, Chief Justice; the Honourable Mr. Justice Monk, the Honourable Mr. Justice Ramsay, the Honourable Mr. Justice Tessier, the Honourable Mr. Justice Baby.

"The Court of our Lady the Queen, now here, having heard the Appellant and Respondent by their Counsel respectively, examined as as well the record and proceedings had in the Court below, as the reasons of appeal filed by the Appellant, and the answers thereto, and mature deliberation on the whole being had;

"Considering that the Appellant, arrested on a *capias ad respondendum* at the suit of the Respondent, has been discharged, by giving security, under Article 825 of the Code of Civil Procedure, that he will surrender himself into the hands of the Sheriff, when required to do so by an order of the Court or Judge, within one month from the service of such order upon him or upon his sureties, and that in default such sureties will pay the amount of the judgment in principal, interest and costs. And considered that, by Article 766 and the following Articles of the Code of Civil Procedure, express provision has been made concerning the matters provided for by Chapter 87 of the Consolidated Statutes of Lower Canada and Article 2274 of Civil Code, as to the obligation of a debtor who, having been arrested on a *capias ad respondendum*, has been admitted to bail, to file a statement of all the property, real and personal, of which he is possessed, and that the provisions of Sections 12 and 18 of the said Chapter 87 of the Consolidated Statutes and Article 2274 of Civil Code have thereby been repealed under the provisions of Article 1360 of the Code of Civil Procedure.

"And considering that, although by the first paragraph of the above-mentioned Article 766 of the Code of Civil Procedure, a debtor who has been admitted to bail is bound to file the statement and declaration of all the property

of which he is possessed, according to Article 764 of the said Code, within thirty days from the judgment rendered in the suit in which he was arrested, it is not provided in the said Article, nor in any other article of the said Code, nor in any provision of law now in force, that in default of filing such statement and declaration, such debtor shall be imprisoned or be subject to any penalty whatsoever.

"And considering that the judgment of the Superior Court sitting at Montreal on the seventeenth day of September, one thousand eight hundred and eighty, by which it was ordered that the said Appellant should be imprisoned in the common gaol of this district for one year, is not, under the allegations of the petition on which said order was made, justified by law, and that there is error in the said judgment.

"This Court doth reverse the said judgment of the seventeenth day of September, one thousand eight hundred and eighty, and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the petition of the said Respondent presented to the said Superior Court on the third day of September, one thousand eight hundred and eighty. And doth condemn the said Respondent to pay to the Appellant the costs incurred in the said Superior Court on the said petition, as well as those incurred on the present appeal.

"(The Honourable Justices Ramsay and Baby dissenting.)"

The question, which their Lordships have found to be one of considerable difficulty, depends on the true construction of the two codes of Lower Canada, the Civil Code, more particularly Art. 2274 and Arts. 2613 and 2614, and the Code of Civil Procedure, more particularly Art. 766 and those following it, and Art. 1360. There were careful and elaborate provisions for framing two codes in question; but notwithstanding all the precautions taken, there may be, and in fact in the present case there are, doubts as to what is the meaning of the language employed. And the Civil Code of Lower Canada, Art. 12, is "that when a law is doubtful or ambiguous it is to be interpreted so as "to fulfil the intention of the Legislature, and "to attain the object for which it was passed."

It is therefore material to inquire how and why the two codes were enacted, so as to ascertain what was the intention of the Legislature, and what the object for which they were enacted.

First, by Statute 20 Vic., c. 43, which afterwards became the second chapter of the Consolidated Statutes of Lower Canada, Commissioners were appointed, who were directed (Secs. 4, 5, and 6) to reduce into one code, to be called the Civil Code of Lower Canada, those provisions of the laws of Lower Canada which relate to civil matters, and are of a general and permanent character, whether they relate to commercial cases or others, but excepting the laws relating to seignorial or feudal tenure, and to reduce into another code, to be called the Code of Civil Procedure of Lower Canada, those provisions which relate to procedure in civil matters and cases, and are of a general and permanent character. They were directed to embody therein such provisions only as they held to be then actually in force. They might suggest such amendments as they thought desirable, but were to state them separately. And they were directed to follow, as far as might be, the arrangement of the Code Civil of France. It was provided that, as the Commissioners proceeded with their work from time to time, there should be an opportunity given to the Judges to review their work, and make suggestions to the Commissioners, who were to consider, but were not bound to adopt, their suggestions. And by Sect. 13 the Commissioners were required from time to time to incorporate with the proper portions of the said codes such amendments as the Governor in Council thinks it right to recommend for adoption by the Legislature after considering the reports of the Commissioners, and those of the Judges if any, but such amendments shall be carefully distinguished from the actual law. And then by Sect. 14, "When the said codes, or either of "them, are completed, with such amendments "as last mentioned, printed copies thereof, "and of the reports of the Commissioners, and "of the Judges if any, shall be laid before the "Legislature, in order that such code or codes "may be made law by enactment; and if it be "found advisable that either of the said codes "be completed and submitted to the Legislature before the other, the Civil Code of "Lower Canada shall be the first so completed "and submitted.

"2. Either House may propose any amend-
"ments 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 sub-
"ject 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 com-
"municated to the Commissioners, who shall
"with all possible despatch incorporate the
"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 men-
"tioned, 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 Proced-
"ure," 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

placed in the "Code de Procédure Civile." But in neither the Canadian codes nor in the French Code has this been done.

The general intention and object of the Legislature seems to have been that the two codes should stand together, and be construed together, and it may well be doubted whether the majority of the Queen's Bench have not given too much effect to the accident that the codes did not come into force on the same day.

It is not, however, necessary to decide this, as, by a different chain of reasoning, the same result may be come to.

The preamble to the Statute 20 Vict., c. 43, which afterwards became the consolidated Statutes, Chap. 2, is this:—

"Whereas the laws of Lower Canada in civil matters are mainly those which at the time of the cession of the country to the British Crown were in force in that part of France then governed by the custom of Paris, modified by provincial statutes, or by the introduction of portions of the law of England in peculiar cases; and it therefore happens that the great body of the laws in that division of the province exist only in a language which is not the mother tongue of the inhabitants thereof, of British origin, while other portions are not to be found in the mother tongue of those of French origin. And whereas the laws and customs in force in France at the period above mentioned have there been altered and reduced to one general code, so that the old laws still in force in Lower Canada are no longer reprinted or commented on in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them. And whereas the reasons aforesaid and the great advantages which have resulted from codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the codification of the civil laws of Lower Canada."

From the preamble and the whole scheme of the legislation, their lordships think that it was one main object of the Legislature to make the codes as one may say self-contained. This object, however, has been apparently lost sight of in several places, and, amongst others, in the Art. 2274 of the Civil Code, which is in the following words:—

"Any debtor imprisoned or held to bail in a cause wherein judgment for a sum of 80 dollars or upwards is rendered, is obliged to make a statement under oath, and a declaration of abandonment of all his property for the benefit of his creditors, according to the rules and subject to the penalty of imprisonment in certain cases provided in Chap. 87 of the Consolidated Statutes for Lower Canada, and in the manner and form specified in the Code of Civil Procedure."

This cannot be understood, without reading and construing the statute referred to in order to see what rules and what penalties of imprisonment were provided by that statute, and then determining which of them were kept alive by this Article; for, though this Article does contain an express provision on at least part of Chap. 87, and so by Art. 2613 and 2614 of the Civil Code does abrogate at least so much of Chap. 87, yet it seems impossible to deny that the Legislature did intend, at all events until the Code of Civil Procedure should come into force, to re-enact by reference to the abrogated statute some penalties, and apply them to the things specified in Art. 2274. And there is great difficulty in doing this. For though Chap. 87, s. 12 (l) does, in certain cases included in Art. 2274, but not quite co-extensive with it, require a debtor against whom judgment for 80 dollars or upwards has been rendered to file a statement of his property and creditors, and a declaration of his willingness to abandon the property in his statement mentioned to his creditors, and by Sect. 12 (2) does impose penalties on a defendant neglecting to file such statement, yet there are no penalties co-extensive with Art. 2274, and there certainly are many penalties which, by Chap. 87, s. 18, are imposed upon debtors who have not been arrested, against whom a judgment has gone in a commercial cause, which cannot on any construction be kept alive by Art. 2274. Those difficulties are all removed if Art. 2274 is read as meaning "according to "the rules and subject to the penalty provided "in certain cases in Chap. 87, *until the Code of "Civil Procedure comes into force, and then* in the "manner and form specified in the Code of "Civil Procedure."

It is not to be denied that this is introducing words not to be found in the enactment, and so far is objectionable. But their Lordships think that Art. 2274 of the Civil Code shews an intention on its face to hand over the whole of its subject matter to be dealt with by the provisions of the Civil Code of Procedure, or if that intention cannot be found on its face, then that the law contained in that enactment is "doubtful and ambiguous," and though not without some doubt and difficulty, they think that the object and intention of the Legislature is such as to justify this construction.

If it is adopted, all difficulty vanishes. The articles of the Code of Civil Procedure do impose many penalties, but they do not impose the penalty of imprisonment for a year on the person refusing to perform that duty which he is by the express terms of Art. 766 bound to perform.

The question how he is to be compelled to do so does not arise on this appeal. It is enough to say that he is not liable to imprisonment for a year.

Their Lordships think that the appeal must be dismissed. They will so humbly advise Her Majesty.

The Appellant must pay the costs of this appeal.