The Legal News.

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POWERS OF LOCAL LEGISLATURES.

A majority of the Court of Queen's Bench of Quebec, comprising one Judge *ad hoc*, in the case of *Dobie & Board for Management of Temporalities Fund*, generally known as the Presbyterian Church case, have decided adversely to the power of the Legislature of Quebec to change the constitution of a Board for the administration of a Fund belonging to a body incorporated by an Act of the Legislature of Canada prior to Confederation. As one of the three Judges, however, supported the judgment of the Court below on another ground, it was not disturbed. This decision was rendered on Saturday (June 19) in Montreal. On the following Monday several cases before the Supreme Court of Canada, which were referred to by Chief Justice Dorion, as involving a point very much like that raised in the *Dobie* case, were decided by the Supreme Court at Ottawa. We have not yet seen the reasons of the Judges, but according to the statement telegraphed, the majority of the Supreme Court have taken the same view that was expressed by two Judges—Sir A. A. Dorion and Judge Monk—in the *Dobie* case. The question raised in one of these cases, *Parsons* v. *The Citizens Insurance Co.*, was this: The Ontario Legislature has passed an Act prescribing a certain set of conditions for all policies, and unless Insurance Companies put other conditions upon their policies as variations, the only conditions applicable to the contract are those of the Statute. In this instance the Company simply issued the same policy that they would have issued had the Ontario Act never been passed. The Insurance Company was incorporated by an Act of the old Province of Canada, which gave them power to insure risks upon such terms as they agree upon with the parties insured, and they relied on this Act as authorizing them to issue policies with their own conditions as formerly. It was contended on the part of the Company that the B. N. A. Act never contemplated that Insurance Companies must in every respect conform to the will of the several local legislatures; that under sub-sec. 2 of sec. 91 of that Act, insurance companies are placed under the exclusive control and jurisdiction of the Dominion. The opposite side claimed that the Ontario Legislature had jurisdiction under sub-sec. 13 of sec. 92 of the B. N. A. Act, which gives control over property and civil rights to the Provincial legislatures. The question is evidently very much like the constitutional question discussed in the *Dobie* case, of which a note will appear in a future issue. In each case the unsuccessful party is endeavoring to obtain an appeal to the Privy Council in England.

BAIL.

In the case of *Ex parte Jones*, which will be found in this issue, the Court of Queen's Bench has given an intimation of some importance on the question of admitting to bail. It is remarked that the geographical situation of this country, and the absence of any system of passports, &c., renders it necessary to be extremely careful in admitting to bail strangers charged with robbery or theft. The facilities for evading pursuit are so convenient that the giving of bail may often, as one learned Judge observed, involve merely the loss to the accused of a portion of his plunder. Increased stringency in the matter of bail is undoubtedly in accordance with public sentiment.

CONSOLIDATION OF STATUTES.

A measure to be submitted to the Quebec legislature, for the consolidation of the general statutes of the Province of Quebec, contains the following provisions:

1. The lieutenant-governor in council may appoint a commission to consolidate the general statutes of this province, which shall be under the direct control of the law officers of the Crown, and which shall be composed of a commissioner and two secretaries, one speaking the French, and the other the English language.

2. Any judge of the Superior Court of this

province, with his own consent, may be added to such commission, in the capacity of advising commissioner.

3. The commission shall classify, revise and consolidate the statutes of a general and permanent character of the late province of Canada, affecting the province of Quebec, and within the jurisdiction of its legislature, as also those of this province since 1867.

4. In consolidating such statutes, the commission shall only incorporate therein the provisions which they shall then deem to be in force, and the authorities on which they base their judgment as to their so being in force shall be cited by them.

They may change the phraseology of such statutes, without, however, altering the sense; all unnecessary or improper expressions shall be struck out and each provision thereof shall, as far as possible, be rendered simple, clear and precise.

5. The said commission may suggest such amendments to the law as they deem advisable, by distinctly specifying them and accompanying them with the reasons by which they support them.

6. The commission shall publish in the manner most convenient for reference, together with the consolidated statutes, or in a separate volume, according as they may deem most advisable, the general statutes which affect this province, but are not within the purview of its legislature, including imperial statutes, and the statutes of the late province of Canada.

7. They shall also publish, together with the consolidated statutes, or with the general statutes mentioned in the preceding section, as they shall deem most convenient, all orders in council, proclamations, treaties or documents, which shall be prescribed them by the lieutenant-governor in council.

8. The said commission shall, from time to time, report their proceedings and the progress of the work entrusted to them, to the lieutenant-governor in council.

In matters with respect to which no provision is made in this act, the commission shall be guided by the instructions of the lieutenant-governor in council.

9. Whenever they shall deem any portion of the work sufficiently advanced to be printed, they shall cause the same to be printed, and transmit to the lieutenant-governor, together with their report, a sufficient number of copies.

10. When the work is completed, printed copies of the consolidated statutes, together with the reports of the commission, shall be submitted to the legislature.

NOTES OF CASES.

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COURT OF QUEEN'S BENCH.

MONTREAL, June 15, 1880.

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

DILLON et al. (defts. below), Appellants, and BORTHWICK (plff. below), Respondent.

Commission on sale of property—Revocation of mandate.

The appeal was from a judgment of the Superior Court, Montreal (TORRANCE, J.), May 31, 1878, maintaining the action of the respondent for a commission on the sale of certain property.

The action was brought on a written contract by which the appellants agreed to "give to the Rev. J. D. Borthwick and no one else, the whole and sole sale of as much of our farm situated at Longue Pointe, and known as the Dillon Farm, as will constitute and make one hundred lots of 10,000 square feet each, &c. The said property to be sold by him in lots for the sum $67,000, of which we will allow him the sum of $7,000 for costs of commission, all expenses, surveying lots and bringing the said property to sale, but the said sum of $7,000 in *pro rata* rate at $70 per lot, will be paid by the purchasers out of their first payment made on their respective lots," &c.

The respondent sold no lots, but on June 12, 1877, the appellants sold two lots to Mrs. Gonzalve Doutre, and the action was for $140, the stipulated commission on these lots.

The defence was that the sale was not effected through the respondent.

The Court below maintained the action: "considering that the plaintiff by an agreement

between him and the defendants of date 25th September, 1876, had the exclusive right and power to sell the lots in question for a commission of seventy dollars each lot; doth dismiss the *défense en droit* of defendants, and doth condemn the said defendants jointly and severally to pay and satisfy to plaintiff the sum of $140 currency, being the commission to which he is entitled on the two lots sold by defendants to Dame Laura Brunelle, wife of Gonzalve Doutre, under the deed of sale 12th June, 1877, passed before Mtre. L'Archevêque, notary public, with interest," &c.

RAMSAY, J. The appellants entered into an arrangement with respondent, by a written contract dated 25th September, 1875, by which the appellants gave to the respondent certain property to be sold by him in lots for the sum of $67,000, of which the appellants were to allow respondent the sum of $7,000 for costs of commission, all expenses surveying lots and bringing the said property to sale; but the said sum of $7,000, in *pro rata* rate at $70 per lot, to be paid by the purchasers out of their first payment. The respondent had a plan made of the property, divided into lots, and went to some trouble and expense, but up to the 12th June, 1877, he had sold no lots. On that day appellants sold two lots to Mrs. G. Doutre. Respondent then sued appellants, who both by demurrer and pleas to the merits contended that respondent was an agent, and that appellants could revoke their *mandat* at pleasure, and that their selling the lots themselves was lawful, and a revocation of the *mandat*. There can be no doubt that the mandator may at any time revoke his *mandat*, but Borthwick was something more than a *mandataire*. The act of agreement of the 25th September, 1875, gives Borthwick an interest in the sale on account of the outlay made by him, which was only to be returned by the commission on sales. The appellants should have offered at least to return Borthwick what he had paid for surveys, &c. Under the circumstances the judgment is confirmed.*

Doutre & Doutre for appellants.

Mousseau & Archambault for respondent.

* TESSIER, J., who was absent, concurred.

COURT OF QUEEN'S BENCH.

MONTREAL, June 15, 1880.

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

THOMSON (deft. below), appellant; and WATSON (plff. below), respondent.

Master and servant—Clerk's responsibility for money lost or stolen from his custody—Condonation of clerk's negligence by subsequent acts of employer.

The appeal was from the judgment of the Superior Court, Montreal, (Mackay, J.), Nov. 7, 1879, maintaining an action for wages by the present respondent against the appellant.

The remarks of the learned Judge who rendered the final judgment in the Court below will be found at length on p. 387 of Vol. 2, Legal News.

Sir A. A. DORION, C. J. The respondent Watson was a confidential clerk in the employ of Thomson, and on the 10th January, 1879, was discharged. He now sues for $245.53, balance of salary. The plea is that a sum of $510 belonging to appellant was stolen from the custody of respondent through his fault, and that the appellant has a right to set off this sum against the claim for wages. There is no proof that the money was stolen through the fault of Watson. The appellant did not discharge Watson, but kept him in his employ for eighteen months afterwards; and the Court below held that the master had thereby condoned the negligence of his employee, if there were any negligence, and that the appellant was not entitled to set off the sum lost against the claim for salary. This Court is of opinion that, under the evidence, the judgment was right in not holding the respondent liable for the loss of the money. It was too late, after the appellant had dismissed Watson from his service, to revive this old claim, and to set it off against the demand for wages accrued after that event.

RAMSAY, J., remarked that the case resembled that of *Gravel & Martin*, decided by this Court some years ago.* But there is an important distinction. Here the employer admitted that

* 22 L. C. Jurist, 272.

the money was stolen, and allowed the amount to be charged in his books to profit and loss. And now he merely takes the ground that the clerk is responsible for negligence, and tries to set off the loss against a claim for wages. In *Gravel & Martin* the clerk was unable to show that the money had been stolen from him, and the employer held him accountable immediately.

Judgment confirmed.*

F. W. Terrill for appellant.

M. Hutchinson for respondent.

CITY OF MONTREAL (deft. below), appellant; and DUGDALE (plff. below), respondent.

DUGDALE (plff. below), appellant; and CITY OF MONTREAL (deft. below), respondent.

Officer of Corporation performing additional duty—Claim to extra compensation—Dismissal of an employee—37 Vict. (Que.) cap. 64—Intellectual services—Tacite Reconduction.

These appeals arose from an action brought by Dr. Dugdale against the City of Montreal. This gentleman was employed as health officer, at a salary, and during his engagement a civic small-pox hospital was established, which Dr. Dugdale attended during fourteen months. It appeared that there was no agreement as to remuneration for this service, and Dr. Dugdale, having rejected an offer of $400, sued the city for $2,100, being at the rate of $150 per month, and got judgment. He also claimed $266.67 for four months' salary as health officer, at a salary of $800, on the ground that he had been illegally dismissed during the year. This portion of his demand was rejected, and the result was that each party appealed from the judgment.

The *considérants* of the judgment of the Superior Court (Montreal, June 14, 1878, Torrance, J.) were as follows:—

"Considering that plaintiff is entitled to recover from defendants the sum of $2,100, being the value of his services as physician of the civic small-pox hospital for the period beginning the 10th November, 1874, and ending the 10th January, 1876, estimated at said $2,100, namely, the first item of plaintiff's account, exhibit No. 1, doth condemn the said defendant to pay to said plaintiff the said sum of $2,100, with interest from the 7th of September, 1877, day of service of process, until paid, and costs of suit *distraits*, &c.

"And the Court doth dismiss plaintiff's action, *quant au surplus*, as not proved according to the allegations of the declaration."

RAMSAY, J. Dr. Dugdale sued the Corporation of the city of Montreal for professional services rendered by him as health officer, and as physician attending the small-pox hospital established by the city. In the year 1868 Dr. Dugdale and Dr. Larocque were appointed health officers for the city. The employment was gratuitous, but at the end of the year the Corporation voted these gentlemen each a small fee, and engaged them for the year 1870 at the rate of $500. This was continued yearly till 1873, when the salary was raised to $800. In March, 1877, the Corporation resolved to employ only one health officer, and Dr. Dugdale's services were dispensed with from and after 1st May, 1877.

In 1874 the Board of Health determined to establish a small-pox hospital, which went into operation in November, 1874. Dr. Dugdale and Dr. Larocque attended there together till the 1st January, 1876, when Dr. Dugdale resigned his functions there. He now claims a salary of $2,100 for his services there.

A third item is for visits at the small-pox hospital during January and February, 1876, $90.

The judgment of the Court below allowed him $2,100 for his services at the small-pox hospital from November, 1874, to 1st January, 1876, and dismissed his action for the balance of his year's salary as health officer in 1877; also for the fees for visits in 1876 to the small-pox hospital.

From this judgment the Corporation appealed, and so did Dr. Dugdale.

The general principle involved in a claim for extra remuneration seems to me to be very clear. If a person employed in a particular capacity by another is charged to perform some duty not theretofore performed by him, he may decline to do it, and then the question will arise nakedly whether the new employment is of a similar kind to that which he was employed to perform. If it is, he is bound to perform the

*TESSIER, J., who was not present at the delivery of the judgment, concurred.

duty to the best of his ability. But if the person employed performs the new duty without remonstrance, the presumption is that the new work falls within the general scope of that which he was employed to perform, and he has no legal claim to additional remuneration. This is evidently the rule of reason and of ordinary experience. In the case before us, however, the position of the parties is not so clearly defined, and it seems to me that the general rule is, therefore, not perfectly applicable. The plaintiff was appointed as a health officer, and he had medical duties to perform. During this time an epidemic broke out, which required the establishment of an extra hospital, entailing far more work than was at first contemplated. Dr. Dugdale did not refuse to do the work, neither did he continue to perform it in silence. He spoke to the members of the committee as to extra remuneration, and it seems that one of them informed these gentlemen that their claims would be considered. Under these circumstances I think the governing principle in such a case is this: the plaintiff agreed to trust to the generosity of his employer, and therefore he has no claim beyond that which the Corporation chose to allow, and he ought to have taken the $400 offered. I think the Corporation have admitted this was equitably his due, and it ought to have been offered by the action. I would, therefore, reverse the judgment of the Court below in so far as regards the allowance of $2,100, and give instead to Dr. Dugdale $400 with costs in favor of Dr. Dugdale in the Court below, and costs of appeal in favor of the Corporation.

As to the balance of his services for the year, I think Dr. Dugdale is entitled to that. This point was decided in the case of Mr. Devlin. The statute cited by the Corporation (37 Vic. cap. 64) does not authorize the Corporation to dismiss its servants unfairly, without notice and in violation of their contract. If they have such a privilege, they have what no other person, public or private, has. The Queen can only dismiss her servants without notice when it is expressed in the commission. Of course if the Queen dismissed a servant without notice in violation of a contract, there would be no action, but that is because no action lies against the Crown, and not because there was no right of action. I don't think Dr. Dugdale is entitled to any fees for his attendance at the hospital after 1st January, 1876. Mr. McCord distinctly tells us that he was to go to the hospital when required.

There appears to me to be another difficulty in Dr. Dugdale's way, even if a different view were taken of his position. It is as to the form of the evidence. He has brought medical men to establish that attending a small-pox hospital is worth $200 a month. It seems to me that they might as well have said $2,000. Unless they could give us some idea of what Dr. Dugdale was gaining elsewhere, which is not attempted, it is merely a fancy appreciation. This is a difficulty attending the proof of the value of intellectual services. I would, therefore, reverse the judgment as regards balance of salary, giving Dr. Dugdale what he asks on that point and costs of both courts.

With regard to Dr. Dugdale's claim to be paid for the whole term of one year, a question has been raised whether his re-employment by *tacite reconduction* gives him a right to salary for his services for the period of a year, the original engagement being for that period. I think the authority of Despeisses, quoted in support of the article of our Code, is satisfactory on this point, and it is in accordance with principle. If it be a *reconduction*, the parties must be put in the same position in which they were before; else the law would presume a different bargain. This would be an illogical operation. It will be observed that Pothier does not contradict the doctrine of Despeisses in the least; he seems to support the same general conclusion, mentioning the particular cases in which the question of the period of engagement could arise.

Sir A. A. Dorion, C. J., and Cross, J., expressed opinions in the same sense. The Chief Justice said his opinion was based on the principle that a public officer is not entitled to remuneration for services rendered unless there is an agreement for it. It is a matter of agreement solely. In the *Devlin* case, the majority of the Court went upon the ground that the Finance Committee had offered to pay for the extra services.

Monk, J., differed, and would confirm both judgments. Tessier, J., who was absent, concurred with Mr. Justice Monk.

Judgment reversed in each case. The appeal of Dr. Dugdale maintained for the $266.67,

salary as health officer; and on the appeal of the City, the judgment for $2,100 in favor of Dr. Dugdale reduced to $400.

R. Roy, Q.C., for the City of Montreal.

Trenholme & Maclaren for Dr. Dugdale.

MONTREAL, June 12, 1880.

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

Ex parte JONES, and others, petitioners for writ of habeas corpus.

Bail—Prisoners connected by evidence with the larceny of a large sum, and strangers in the country.

MONK, J., concurred in the judgment rejecting the petition on behalf of Jones, because there were circumstances which militated against him, and precluded the Court from admitting him to bail. But with regard to the other three prisoners the evidence appeared to him to be weak. It was true that the Crown might obtain additional evidence, and when the application was previously made before his Honour in chambers, he refused to admit the prisoners to bail on the ground that the term of Quarter Sessions was approaching and the trial ought to take place at once. Since that time, there had been a true bill found, and the case had been postponed to another term. He would be inclined to admit them to bail now. He did not desire, however, to enter a formal dissent, though he would have been better satisfied if the judgment had granted the application made by the other three prisoners.

Sir A. A. DORION, C. J. In the case of Jones, there was an application to be released absolutely, founded on the fact that last term he had undergone a trial, and the jury had been discharged. The Court had intimated in the course of the argument, that it could not decide here, on a writ of habeas corpus, whether the discharge of the jury by the Judge of Sessions was proper or improper, legal or illegal. The Court specially refrained from pronouncing any opinion on that point. It appeared that before the trial had been begun before the Court of General Sessions, Turner, the chief witness, had been called and had answered, and subsequently when the trial had commenced he was not forthcoming. It appeared that he had been tampered with in the interest of the prisoners, and that was an additional reason for not allowing these men to go out on bail. In the case of Jones the prima facie case was strong, and although the evidence as to the other three prisoners was not so strong, yet the Grand Jury found it sufficient to return a true bill against them, and the magistrate, who was acquainted with all the circumstances, considered it sufficient to justify him in refusing bail. Apart from this, these men were utter strangers, with return tickets in their possession by the railways between this and New York, and there was evidence that although they did not board all together, yet they were in constant communication with each other.

RAMSAY, J., concurred with the Chief Justice. It was the duty of the Court to see that the punishment of the bodies of offenders was not converted into a mere punishment of their pockets. Jones was caught with a great portion of the stolen money in his possession. When the trial came on, a most ingenious organization appeared to have been entered into to save him from being convicted. This Court had been invited to say that because the Judge of the Sessions might have made a mistake, and the prisoner could not now be effectively tried at all, he should be admitted to bail. This would be deciding a matter not within the jurisdiction of the Court, and which, moreover, might never have to be decided at all. The Court below might refuse to reserve a case, and the Attorney-General might refuse to give his fiat for a writ of error. As to the evidence, the Court of Sessions had refused bail, and the disappearance of Turner, being in the interest of the defence, was a reason why they should not be bailed. In conclusion, his Honor referred to the position of the country, by which we were exposed to the visits of people who were able to get out of the Province again in two or three hours. It was the duty of the Court to take the greatest possible precaution against the escape of criminals, and to bear in mind that the facilities for escape are much greater here than in England. No encouragement should be offered to a system by which thieves might buy bail with part of their plunder.

CROSS, J., concurred with the judgment to the fullest extent, but on one point was inclined to go somewhat further; he did not see why this Court should not be able to take notice of

the fact, where a gross irregularity had been committed in the Sessions Court. He concurred, however, in regarding the complicity which apparently existed between the witness Turner and the prisoners as a circumstance against them.

Petition rejected.

F. X. Archambault, } for the prisoners.
F. J. Keller, }
Mousseau, Q. C., for the Crown.

COURT OF REVIEW.

MONTREAL, May 31, 1880.

SICOTTE, J., TORRANCE, J., PAPINEAU, J.

BANNATYNE v. CANADA PAPER CO.

[From S. C., Montreal.

Capias without reasonable grounds—Damages for arrest.

SICOTTE, J. The plaintiff has been a resident of the State of New Jersey, U. S, since 1874. In May, 1878, he was arrested, on the affidavit of the company's manager, under a *capias*, while he was attending to the examination of a witness in a suit instituted by the defendants against him. The ground assigned in support of the charge of leaving with intent to defraud, is that the deponent had been informed that the plaintiff had stated "he had come to Montreal to attend the meeting of the Graphic Company, and that he was about to go to New York." The allegations of the affidavit were declared insufficient in law, and the *capias* was dismissed.

The plaintiff instituted an action against the defendants, complaining that there was no ground for the arrest, that it was done in malice and for wrong motives

Defendants, after stating the causes of contestation, as to the settlement of the affairs of a partnership which had existed between them and plaintiff, before 1873, pleaded that the *capias* was not issued maliciously; that it was issued after advice taken from their counsel, and that no damage was caused.

By the judgment under review, the defendants were condemned to pay $500 damages.

The facts of the case are not at all favorable to defendants. The plaintiff had refused to go into the new concern created on the limited liability principle, and to acknowledge a claim of $3,467 for losses said to have arisen out of the non-recovery of some debts due to the former partnership. A suit was going on between the parties. While Bannatyne was attending the enquête he was arrested on the grounds already stated. There was no cause for such an outrage on the person of the plaintiff. There was malice in the arrest so made. It was evidently an attempt to coerce by vexation and humiliation a settlement of a disputable and disputed claim. The advice of counsel cannot avail under such circumstances. It is not because a false accusation has not caused damage to a man known for his honorable character and for his integrity, that his traducers must escape penalty for their wrong doings. As Sourdat has it: "Quand un préjudice est causé en dehors de toute convention, le fait, dommageable en lui-même, est ordinairement entaché d'un caractère de perversité beaucoup plus grave que lorsqu'il s'agit d'une infraction aux contrats." This character of perversity is the criterion to determine the amount of the penalty. In appreciating the damages, the Judge acted as the jury. He assessed the damages at $500. We are of opinion that under the circumstances of the case, there is no reason to disturb the verdict.

Judgment confirmed.

Bethune & Bethune for plaintiff.
Ritchie & Ritchie for defendants.

SUPERIOR COURT.

MONTREAL, May 31, 1880.

DELISLE et al. v. LETOURNEUX.

Action against surety of official assignee—Liability for default of official assignee when acting under appointment of creditors.

JOHNSON, J. The action here is against one of the sureties of an official assignee who absconded with the plaintiff's money. One Laurent Pigeon was insolvent, and on the 27th of September, 1876, a writ of attachment had issued against him, addressed to Cleophas Beausoleil, official assignee. At a meeting of creditors, on the 25th October, Olivier Lecours, who also held the office of official assignee, was appointed assignee to this estate. The plaintiffs were collocated for the full amount of their mortgage claim, and the real estate being brought to sale, fetched enough to pay it; but the assignee made default to hand over, and a rule was taken against him without effect. His bondsmen to the Government were the defendant, and another who is not before the Court;

and the action of the plaintiffs now is to get from the bondsman who is sued the amount that came into Lecours' hands with interest, and the costs of the rule.

The defence denies that Lecours ever received the money, and contends that, even if he did, he was not acting as an official assignee, but as an assignee of the creditors; and that the bond, therefore, does not reach his case; and the plaintiffs have no right of action, there being no privity between them and the sureties. The terms of the bond are that "if the principal faithfully discharges the duties of the said office and duly accounts for all monies and property which may come into his custody by virtue of the said office, the obligation of the sureties is to be void; and also, that in case the principal as such assignee fails to pay over the monies received by him, or to account for the estate or any part thereof, the amount for which the principal as such assignee may be in default, may be recovered from the sureties by Her Majesty or by the creditors or subsequent assignee entitled to the same, by adopting in the said Province such proceedings as are required to recover from the sureties of a Sheriff or other public officer."

These are also the precise words of section 28 of the Insolvent Act of 1875. Therefore, not only by law, but by the express terms of the bond which the sureties themselves have given, there is a right of action vested in the creditors.

As to the receipt of the money by Lecours, and his default to pay it over, the evidence, in my opinion, sufficiently proves the facts.

The remaining point is whether Lecours not having been the official assignee to whom the writ was addressed, his acts are covered by the bond. This instrument on the face of it, is declared to have been executed "in pursuance of an Act further to amend an Act respecting the security to be given by officers of Canada;" and also to have been given in pursuance of the Insolvent Act of 1875. The first mentioned Act, which is chap. 19 of the 35th Vict., was referred to by the plaintiff. It certainly tells us what is the effect of such a condition as this in certain cases; but this is not one of them. That statute was passed to give effect to the ordinary condition found in the bonds of public officers, when there had been a legislative extension or change of the officer's duties. Here the point is whether the assignee was acting in virtue of his office, although appointed by the creditors. The Insolvent Act, sec. 28, says the security is to be given to Her Majesty, and for the benefit of the creditors of any estate "which may come into his possession under this act;" and whether it comes into his possession in one way or the other, either by having the writ addressed to him, or by his being subsequently appointed, would seem to make no difference.

There are two other provisions tacked to this section, marked *a* and *b*. The first gives power to the creditors to exact further security from the assignee; and upon this Mr. Clarke observes that the additional security which may be called for under (*a*) is for the benefit of the creditors of the estate. The second (*b*) says that the official assignee is an officer of the court, subject to its summary jurisdiction, and shall be accountable for the monies, property and estates coming into his possession as such assignee, in the same manner as sheriffs and other officers of the court are. Mr. Clarke on this observes: "It would seem that if the creditors' assignee is also an assignee appointed by the Governor-in-Council, and has already given security, under section 28, he is not bound to give fresh security under this section, though he may be called upon to increase it. But if he has not given security when chosen assignee by the creditors, this section compels him to do so to such amount as the creditors may then fix. It seems intended chiefly to meet the case of the creditors' assignee not being an official assignee, and not having already given security to the Crown."

I hold, therefore, that the bond here does cover the plaintiff's case; Lecours' security was not increased by the creditors, but it reaches to what he has done.

A manuscript report has been lent to me of a case tried last year by Chief Justice Hagarty, in Ontario, and in which that learned judge found for the defendant in a very similar case to this (*Miller*, assignee, v. *The Canada Guarantee Co.*) on the ground that the default was committed as creditors' assignee, which was not covered by the bond. His Lordship left the point, however, to the Court, and I am not aware for which party the verdict was finally entered. I must decide the present case by my own construction of the statute, and I think the plaintiff is entitled to judgment. Any other construction would necessitate in all cases where the creditors appoint an assignee, that new security should be given, which is not what the law has said. Judgment for plaintiff for amount demanded.

Barnard & Co. for plaintiff.
Lacoste & Co. for defendant.