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CONTEMPT OF UCORT.

The London *Law Times* refers to a case of *Smith* v. *Bennett*, which came before Kay, J., on the 24th June, as showing the strictness of the Court in dealing with applications to commit persons to prison for contempt in disobeying the orders of the court. The plaintiff and defendant were co-owners of a public-house, and the defendant had worked coals under the house in breach of the rights of the plaintiff. The plaintiff brought his action for an injunction, and on the 4th May last, Hall, V. C., granted an injunction to restrain the defendant from "working" the mines. The plaintiff alleged that the defendant was nevertheless continuing to work the mines, and on the 15th of June last moved before Kay, J., to commit him for contempt accordingly. On that occasion the evidence appeared to his lordship to be unsatisfactory, and he directed that the parties should attend before him to be examined orally. This was now done, and, as the result of the evidence, and in particular that of the defendant, it appeared that the same number of men were kept at work in the pit as before the injunction, and that a man at the top of the pit was employed as theretofore in sharpening the tools of the men below, and in winding up the coal, so that to all outward appearance matters were going on as before. It was sworn, however, that the coal so being raised was coal lying in the pit which had been severed and gotten previously to the injunction. Kay, J., in giving judgment, said that no doubt the case was one which justified a strong suspicion that the defendant was acting in breach of the injunction. But the evidence now before him did not show that there had, in fact, been an actual breach, as the "winding" of the coal was not "working" it within the meaning of the injunction. Anybody who sought to put a man in prison on the ground of disobedience to an order of the court, must prove his case in the strictest way. This had not been done, and he, therefore, should refuse the motion with costs.

SERJT. BALLANTINE'S EXPERIENCES.

Serjeant Ballantine who, we suppose, may be correctly described as a popular lawyer, has made a very popular book, and the author is rewarded by seeing the third edition of his literary venture exhausted, while the public, like Oliver Twist, is asking for more. Whatever the learned serjeant's actual experiences of life may have been, he has been careful in this book to hold up the bright and pleasant side to the public eye, and no client or rival has reason to tremble, for the "Reminiscences" contain no betrayal of professional confidence or professional secrets. The veteran author was not particularly fortunate in his school experiences:—

"Marched two and two to the parish church clad in our best clothes, and encased in a sort of moral strait waistcoat, cramped up in a narrow pew, prayer-book in hand, listening to what we could not understand, we strove, often ineffectually, to keep awake, knowing that if we yielded to drowsiness we forfeited our share of the pudding—sole pleasure of the day."

The sergeant has a good deal to say about actors and actresses, but we pass on to one or two of the professional experiences. In 1856 the trial of William Palmer took place at the Central Criminal Court, for the murder of John P. Cook. Lord Campbell presided, and, says Serjeant Ballantine, "the reputation of his lordship for politeness was amusingly illustrated by a remark made by the crier of the court. His lordship had said, with great suavity of manner, 'Let the prisoner be accommodated with a chair.' 'He means to hang him,' said the crier." Sir Alexander Cockburn conducted the prosecution. There was considerable doubt as to the poison employed, for none was found in the body of the victim. But, writes the serjeant, "the strong good sense of Lord Campbell brushed away the merely scientific question; showed that it was not material to discover by what poison the deed was effected; dwelt with overwhelming force upon the facts, to which, as he explained, the medical evidence was merely subsidiary, and only used for the purpose of demonstrating that the appearances presented were consistent with the means suggested." Palmer was convicted, and justly.

Of Lord Chelmsford at the bar Mr. Ballantine says: "He was very painstaking and industri-

ous. His appearance was greatly in his favor; his manner was slightly artificial, and his jokes, of which he was fond, were somewhat labored." One of his puns will bear repetition. At a dinner party, reference was made to the Bishop of Durham's conduct in giving a valuable preferment to his son-in-law, Mr. Cheese, instead of to the curate, whose long services in the parish had entitled him to the promotion. Lord Chelmsford espoused the cause of the bishop, observing that nothing was more natural than that Cheese should come before dessert.

Some of the anecdotes of Sir Richard Bethell, afterwards Lord Westbury, indicate that this eminent lawyer was not always as candid in his statements to the bench as English barristers are supposed to be. "Once in a case before Sir Lancelot Shadwell, Mr. Wakefield demanded that judgment should be given in his favor, because Sir Lancelot had already given his decision in the similar case of *Jones* v. *Webb*. The vice-chancellor had no recollection on the point. Mr. Bethell, on the other side, was equal to the occasion. He got up and said, 'I perfectly recollect the case of *Jones* v. *Webb* mentioned by my learned friend, but my learned friend, of course accidentally, omitted to mention that your Honor's judgment was finally reversed on appeal in the House of Lords.' This was too much for the ingenious Mr. Wakefield, who, in his despair, was heard to mutter, 'what a d—— lie, there never was such a case at all!'"

Serjeant Ballantine is not without sentiment in his composition. Listen to his description of an evening on the Rhine:—"It was an autumn evening, and a moon nearly at its full was silvering the waters as they careered along, whilst small lights began to show themselves from the gabled buildings on the opposite side, and when I cast my eyes up the stream, the hills, but dimly seen, furnished the imagination with a glorious promise of beauty and grandeur. I descend into the well known *salon*. The *table d'hôte* is over, and the tables are laid out for tea; everything looks fresh. Honey, the prominent feature of the tea-table, tempts to a beverage of which the innocence is in keeping with the purity of the scene. * * * The warm soft feeling of an early autumn evening, the moon upon the waters, the music of the stream—all these perchance, as new sensations as the words of a first love whispered in their presence." As we part company with the lively serjeant, we venture to hope that our readers may be enjoying similar pleasurable sensations at this season of the year.

NOTES OF CASES.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

June 23, 1882.

Before SIR BARNES PEACOCK, SIR MONTAGUE E. SMITH, SIR ROBERT P. COLLIER, SIR JAMES HANNEN, SIR RICHARD COUCH.

CHARLES RUSSELL v. THE QUEEN.

Canada Temperance Act, 1878—*Powers of the Dominion Parliament.*

The Act 41 *Vic.* (*Can.*) *c.* 16, *respecting the traffic in intoxicating liquors, known as "The Canada Temperance Act*, 1878", *is within the powers entrusted to the Parliament of Canada.*

PER CURIAM. This is an appeal from an order of the Supreme Court of the Province of New Brunswick, discharging a rule Nisi which had been granted on the application of the appellant for a certiorari to remove a conviction made by the Police Magistrate of the city of Fredericton against him, for unlawfully selling intoxicating liquors, contrary to the provisions of "the Canada Temperance Act, 1878."

No question has been raised as to the sufficiency of the conviction, supposing the above-mentioned statute is a valid legislative Act of the Parliament of Canada. The only objection made to the conviction in the Supreme Court of New Brunswick, and in the appeal to Her Majesty in Council, is that, having regard to the provisions of "the British North America Act, 1867," relating to the distribution of legislative powers, it was not competent for the Parliament of Canada to pass the Act in question.

The Supreme Court of New Brunswick made the order now appealed from in deference to a judgment of the Supreme Court of Canada in the case of *The City of Fredericton* v. *The Queen*. In that case the question of the validity of "the Canada Temperance Act, 1878," though in another shape, directly arose, and the Supreme Court of New Brunswick, consisting of six judges, then decided, Mr. Justice Palmer dissenting, that the Act was beyond the compet-

ency of the Dominion Parliament. On the appeal of the City of Fredericton, this judgment was reversed by the Supreme Court of Canada, which held, Mr. Justice Henry dissenting, that the Act was valid. (The case is reported in 3rd Supreme Court of Canada Reports, p. 505.) The present appeal to Her Majesty is brought, in effect, to review the last mentioned decision.

The preamble of the Act in question states that "it is very desirable to promote temperance in the Dominion, and that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors." The Act is divided into three parts. The first relates to "proceedings for bringing the second part of this Act into force;" the second to "prohibition of traffic in intoxicating liquors;" and the third to "penalties and prosecutions for offences against the second part."

The mode of bringing the second part of the Act into force, stating it succinctly, is as follows:—On a petition to the Governor in Council, signed by not less than one-fourth in number of the electors of any county or city in the Dominion, qualified to vote at the election of a member of the House of Commons, praying that the second part of the Act should be in force and take effect in such county or city, and that the votes of all the electors be taken for or against the adoption of the petition, the Governor General, after certain prescribed notices and evidence, may issue a proclamation, embodying such petition, with a view to a poll of the electors being taken for or against its adoption. When any petition has been adopted by the electors of the county or city named in it, the Governor-General-in-Council may, after the expiration of 60 days from the day on which the petition was adopted, by Order-in-Council published in the *Gazette*, declare that the second part of the Act shall be in force and take effect in such county or city, and the same is then to become of force and take effect accordingly. Such Order-in-Council is not to be revoked for three years, and only on like petition and procedure.

The most important of the prohibitory enactments contained in the second part of the Act is section 99, which enacts that "from the day on which this part of this Act comes into force and takes effect in any county or city, and for so long thereafter as the same continues in force therein, no person, unless it be for exclusively sacramental or medicinal purposes, or for *bona fide* use in some art, trade, or manufacture, under the regulation contained in the fourth sub-section of this section, or as hereinafter authorized by one of the four next sub-sections of this section, shall, within such county or city, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly, on any pretence or upon any device, sell or barter, or in consideration of the purchase of any other property give, to any other person, any spirituous or other intoxicating liquor, or any mixed liquor, capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating."

Sub-section 2 provides that "neither any license issued to any distiller or brewer" (and after enumerating other licenses), "nor yet any other description of license whatever, shall in any wise avail to render legal any act done in violation of this section."

Sub-section 3 provides for the sale of wine for sacramental purposes, and sub-section 4 for the sale of intoxicating liquors for medicinal and manufacturing purposes, these sales being made subject to prescribed conditions.

Other sub-sections provide that producers of cider, and distillers and brewers, may sell liquors of their own manufacture in certain quantities, which may be termed wholesale quantities, or for export, subject to prescribed conditions, and there are provisions of a like nature with respect to vine-growing companies and manufacturers of native wines.

The third part of the Act enacts (section 100) that whoever exposes for sale or sells intoxicating liquors in violation of the second part of the Act should be liable, on summary conviction, to a penalty of not less than fifty dollars for the first offence, and not less than one hundred dollars for the second offence, and to be imprisoned for a term not exceeding two months for the third and every subsequent offence; all intoxicating liquors in respect to which any such offence has been committed, to be forfeited.

The effect of the Act when brought into force in any county or town within the Dominion is, describing it generally, to prohibit the sale of intoxicating liquors, except in wholesale quantities, or for certain specified purposes, to regulate the traffic in the excepted

cases, and to make sales of liquors in violation of the prohibition and regulations contained in the Act criminal offences, punishable by fine, and for the third or subsequent offence by imprisonment.

It was in the first place contended, though not very strongly relied on, by the appellant's counsel, that assuming the Parliament of Canada had authority to pass a law for prohibiting and regulating the sale of intoxicating liquors, it could not delegate its powers, and that it had done so by delegating the power to bring into force the prohibitory and penal provisions of the Act to a majority of the electors of counties and cities. The short answer to this objection is that the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petition of a majority of electors does not confer on these persons power to legislate. Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient, and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency. Their Lordships entirely agree with the opinion of Chief Justice Ritchie on this objection. If authority on the point were necessary, it will be found in the case of the *Queen* v. *Burah*, lately before this Board (L. R. 3 Appeal Cases, 889).

The general question of the competency of the Dominion Parliament to pass the Act depends on the construction of the 91st and 92nd sections of the British North America Act, 1867, which are found in part VI. of the statute under the heading "Distribution of Legislative Powers."

The 91st section enacts, "It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated;" then after the enumeration of 29 classes of subjects, the section contains the following words:—"And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislature of the Province."

The general scheme of the British North America Act with regard to the distribution of legislative powers, and the general scope and effect of Sections 91 and 92, and their relation to each other, were fully considered and commented on by this Board in the case of the *Citizens' Insurance Co.* v. *Parsons* (7 L. R. Appeal Cases, 96; 5 L. N. 25.) According to the principle of construction there pointed out, the first question to be determined is, whether the Act now in question falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the Legislatures of the Provinces. If it does, then the further question would arise, viz., whether the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, and so does not still belong to the Dominion Parliament. But if the Act does not fall within any of the classes of subjects in section 92, no further question will remain, for it cannot be contended, and indeed was not contended at their Lordships' bar, that, if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not, by its general power "to make laws for the peace, order, and good government of Canada," full legislative authority to pass it.

Three classes of subjects enumerated in section 92 were referred to, under each of which, it was contended by the appellant's counsel, the present legislation fell. These were:—

9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local, or municipal purposes.

13. Property and civil rights in the province.

16. Generally all matters of a merely local or private nature in the province.

With regard to the first of these classes, No. 9, it is to be observed that the power of granting licenses is not assigned to the Provincial Legislatures for the purpose of regulating trade, but "in order to the raising of a revenue for provincial, local, or municipal purposes."

The Act in question is not a fiscal law; it is not a law for raising revenue; on the contrary, the effect of it may be to destroy or diminish revenue; indeed it was a main objection to the Act that in the city of Fredericton it did in point of fact diminish the sources of municipal revenue. It is evident, therefore, that the matter of the Act is not within the class of subject No. 9, and consequently that it could not have been passed by the Provincial Legislature by virtue of any authority conferred upon it by that sub-section.

It appears that by statutes of the Province of New Brunswick, authority has been conferred upon the municipality of Fredericton to raise money for municipal purposes by granting licenses of the nature of those described in No. 9 of Section 92, and that licenses granted to taverns for the sale of intoxicating liquors were a profitable source of revenue to the municipality. It was contended by the Appellant's counsel, and it was their main argument on this part of the case, that the Temperance Act interfered prejudicially with the traffic from which this revenue was derived, and thus invaded a subject assigned exclusively to the Provincial Legislature. But, supposing the effect of the Act to be prejudicial to the revenue derived by the municipality from licenses, it does not follow that the Dominion Parliament might not pass it by virtue of its general authority to make laws for the peace, order, and good government of Canada. Assuming that the matter of the Act does not fall within the class of subject described in No. 9, that sub-section can in no way interfere with the general authority of the Parliament to deal with that matter. If the argument of the appellant that the power given to the Provincial Legislatures to raise a revenue by licenses prevents the Dominion Parliament from legislating with regard to any article or commodity which was or might be covered by such licenses were to prevail, the consequence would be that laws which might be necessary for the public good or the public safety could not be enacted at all. Suppose it were deemed to be necessary or expedient for the national safety, or for political reasons, to prohibit the sale of arms, or the carrying of arms, it could not be contended that a Provincial Legislature would have authority, by virtue of Sub-section 9 (which alone is now under discussion), to pass any such law, nor, if the Appellant's argument were to prevail, would the Dominion Parliament be competent to pass it, since such a law would interfere prejudicially with the revenue derived from licenses granted under the authority of the Provincial Legislature for the sale or the carrying of arms. Their Lordships think that the right construction of the enactments does not lead to any such inconvenient consequence. It appears to them that legislation of the kind referred to, though it might interfere with the sale or use of an article included in a license granted under Sub-section 9, is not in itself legislation upon or within the subject of that sub-section, and consequently is not by reason of it taken out of the general power of the Parliament of the Dominion. It is to be observed that the express provision of the Act in question that no licenses shall avail to render legal any act done in violation of it, is only the expression, inserted probably from abundant caution, of what would be necessarily implied from the legislation itself, assuming it to be valid.

Next, their Lordships cannot think that the Temperance Act in question properly belongs to the class of subjects "Property and Civil Rights." It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law placing restrictions on their sale, custody, or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have

property is interfered with, that incidental interference does not alter the character of the law. Upon the same considerations, the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used, it could not have been intended to prevent the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property, to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to property or to civil rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contagious disease be so regarded. Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada. It was said in the course of the judgment of this Board in the case of the *Citizens' Insurance Company of Canada* v. *Parsons*, that the two sections (91 and 92) must be read together, and the language of one interpreted, and, where necessary, modified by that of the other. Few, if any, laws could be made by Parliament for the peace, order, and good government of Canada which did not in some incidental way affect property and civil rights; and it could not have been intended, when assuring to the provinces exclusive legislative authority on the subjects of property and civil rights, to exclude the Parliament from the exercise of this general power whenever any such incidental interference would result from it. The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs. In the present case it appears to their Lordships, for the reasons already given, that the matter of the Act in question does not properly belong to the class of subjects "Property and Civil Rights" within the meaning of sub-section 13.

It was argued by Mr. Benjamin that if the Act related to criminal law, it was Provincial criminal law, and he referred to sub-section 15 of section 92, viz., "The imposition of any punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section." No doubt this argument would be well founded if the principal matter of the Act could be brought within any of these classes of subjects; but as far as they have yet gone, their Lordships fail to see that this has been done.

It was lastly contended that the Act fell within Sub-section 16 of Section 92,—"Generally all matters of a merely local or personal nature in the Province."

It was not, of course, contended for the Appellant that the Legislature of New Brunswick could have passed the Act in question, which embraces in its enactments all the Provinces; nor was it denied, with respect to this last contention, that the Parliament of Canada might have passed an Act of the nature of that under discussion to take effect at the same time throughout the whole Dominion. Their Lordships understand the contention to be that, at least in the absence of a general law of the Parliament of Canada, the Provinces might have passed a local law of a like kind, each for its own province, and that, as the prohibitory and penal parts of the Act in question were to come into force in those counties and cities only in which it was adopted in the manner prescribed, or, as it was said, "by local option," the legislation was in effect, and on its face, upon a matter of a merely local nature. The judgment of Allen, C.J., delivered in the Supreme Court of the Province of New Brunswick in the case of *Barker* v. *The City of Fredericton*, which was adverse to the validity of the Act in question, appears to have been founded upon this view of its enactments. The learned Chief Justice says:—"Had this Act prohibited the sale of liquor, instead of merely restricting and regulating it, I should have had no doubt about the power of the Parliament to pass such an Act; but I think an Act, which in effect authorizes

the inhabitants of each town or parish to regulate the sale of liquor, and to direct for whom, for what purposes, and under what conditions spirituous liquors may be sold therein, deals with matters of a merely local nature, which, by the terms of the 16th sub-section of section 92 of the British North America Act, are within the exclusive control of the local Legislature."

Their Lordships cannot concur in this view. The declared object of Parliament in passing the Act is that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors, with a view to promote temperance in the Dominion. Parliament does not treat the promotion of temperance as desirable in one Province more than in another, but as desirable everywhere throughout the Dominion. The Act as soon as it was passed became a law for the whole Dominion, and the enactments of the first part, relating to the machinery for bringing the second part into force, took effect and might be put in motion at once and everywhere within it. It is true that the prohibitory and penal parts of the Act are only to come into force in any county or city upon the adoption of a petition to that effect by a majority of electors, but this conditional application of these parts of the Act does not convert the Act itself into legislation in relation to a merely local matter. The objects and scope of the legislation are still general, viz., to promote temperance by means of a uniform law throughout the Dominion.

The manner of bringing the prohibitions and penalties of the Act into force, which Parliament has thought fit to adopt, does not alter its general and uniform character. Parliament deals with the subject as one of general concern to the Dominion, upon which uniformity of legislation is desirable, and the Parliament alone can so deal with it. There is no ground or pretence for saying that the evil or vice struck at by the Act in question is local or exists only in one province, and that Parliament, under color of general legislation, is dealing with a provincial matter only. It is therefore unnecessary to discuss the considerations which a state of circumstances of this kind might present. The present legislation is clearly meant to apply a remedy to an evil which is assumed to exist throughout the Dominion, and the local option, as it is called, no more localises the subject and scope of the Act than a provision in an Act for the prevention of contagious diseases in cattle that a public officer should proclaim in what districts it should come into effect, would make the statute itself a mere local law for each of these districts. In statutes of this kind the legislation is general and the provision for the special application of it to particular places does not alter its character.

Their Lordships having come to the conclusion that the Act in question does not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures, it becomes unnecessary to discuss the further question whether its provisions also fall within any of the classes of subjects enumerated in section 91. In abstaining from this discussion, they must not be understood as intimating any dissent from the opinion of the Chief Justice of the Supreme Court of Canada and the other Judges, who held that the Act, as a general regulation of the traffic in intoxicating liquors throughout the Dominion, fell within the class of subject, "the regulation of trade and commerce," enumerated in that section, and was, on that ground, a valid exercise of the legislative power of the Parliament of Canada.

In the result, their Lordships will humbly recommend Her Majesty to affirm the judgment of the Supreme Court of Canada, and with costs.

Judgment affirmed.

J. P. Benjamin, Q. C., and *Brown*, counsel for Appellant.

J. J. Maclaren, and *Fullarton*, counsel for Respondent.

SUPERIOR COURT.

MONTREAL, July 6, 1882.

Before HUBERT, HONEY, and GENDRON, Prothonotary.

PAYETTE v. HATTON.

Appeal—Interlocutory Judgment—Stay of execution for costs.

This was an action for slander, claiming $500 damages. Defendant pleaded thereto, amongst other matters, as a justification, truth of the fact charged by the words imputed. Plaintiff demurred to that plea.

On June 16th, 1882, the Court (Papineau, J.) maintained the demurrer (*réponse en droit*), and rejected the plea.

On the 30th, the defendant, desiring to appeal from that judgment, caused a motion for leave to appeal, and notice of its presentation on the 15th September next, to be served upon the plaintiff, by leaving a copy of each with his attornies *ad litem*, and also upon the Prothonotary, who received copies, and filed the same in the office of the Clerk of Appeals.

On the 5th July *E. LeBlanc* asked the Prothonotary to issue execution against the defendant for costs on the judgment. The mode prescribed by art. 1124, C. C. P. to stay the execution of judgments appealed from, was the giving security. But in this case no security had been given, neither could any be received. Security could be tendered only after the issue of the writ of appeal, and as, in this case, the judgment was not final, but interlocutory, the motion for leave to appeal had to be granted before a writ could issue. Defendant might, perhaps, invoke art. 1120, which read, "The motion (for leave to appeal) must be served upon the opposite party, and, if required, is followed by a rule, calling upon such opposite party to give his reasons against the granting of the appeal; and the service of such rule upon him has the effect of suspending all proceedings before the court below. But it was clear that the service of the rule only, and not of the motion, had the effect mentioned.

W. A. Polette, e contrà.—Art. 1124 applied to final, and not to interlocutory judgments, at least not until the writ had issued. The enactment regulating the matter was art. 1120, and the objection derived from its wording was untenable in the present instance. A rule was not required. The object of a rule was to compel the opposite party to appear, and the notice of presentation possessed the same power, and stood in its place. The want of a rule gave the notice the same effect as a rule would have on the course of the procedure. The service of the notice operated like that of a rule. It might be answered that the Court alone could pronounce whether a rule was required or not. But the Code provided for a rule, to meet the case of a party who would be within the delay to move (art. 1119), but who could not for want of sufficient time (R. P. Q. B., 20°) give valid notice of presentation. That party could save his right by moving, but his motion had to be followed by a rule. Here, however, the delay of notice was far more than sufficient; and the question regarding the requirement of a rule evidently could not come up before the Court. Moreover, if it had to be adjudicated upon, that could not take place except in term, and the Court would not sit before the 15th of September next. The present impossibility for the defendant to secure an advantage which he could obtain, or at least attempt to obtain, if the Court was sitting, could not in justice operate to his prejudice. No other interpretation of art. 1120 could sustain its logical accord with art. 1124, which, in case the motion should be granted, would require appellant to give security for costs, in the Court below as well as in the Court above. If the law binds appellant over to give security, it manifestly holds that he is not obliged to pay until after judgment in appeal if it goes against him, and, necessarily, that execution cannot issue until then. To issue execution now, would be assuming the responsibility to bring about a state of things at variance with the provision contained in art. 1124. This was defendant's contention within the letter and the spirit of the Code of Civil Procedure.

On the 6th July,

The Prothonotary refused the Execution.

Execution refused.

LeBlanc & Boisvert, for plaintiff.

W. A. Polette, for defendant.

(W. A. P.)

RECENT QUEBEC DECISION.

Procedure—Guardian—Rule for contrainte.—Il n'est pas nécessaire de signifier la motion sur laquelle émane une règle pour contrainte par corps contre un défendeur ou un gardien: il suffit de leur signifier personnellement la règle elle-même. S'il émane contre le gardien à une saisie-revendication une règle pour contrainte par corps, faute par lui de représenter la chose confiée à sa garde, le demandeur n'est pas tenu de lui offrir par cette règle, l'alternative de remettre la chose ou d'en payer la valeur.—*Watzo* v. *Labelle, & Frappier*, 26 L.C.J. 121.