The Legal News.

Vol. III. AUGUST 7, 1880. No. 32.

LAW COSTS IN ENGLAND.

The subject of costs is one which periodically comes up for discussion in England, but although the procedure in the Courts has been considerably simplified, the part of the community that is engaged in litigation still groans under the enormous expenses which are involved in a resort to a legal tribunal. Recently, attention has been again attracted to the subject, by some proceedings connected with an estate in bankruptcy. Two trustees were appointed to an estate, the assets of which realized about £2000. The committee of inspection voted £586 for the remuneration of the trustees, who actually received £388; and the solicitor's costs amounted to about £600. Lord Justice James thought it monstrous that nearly £1200 should be charged for realizing a petty business, and characterized it as "plunder of the estate." Professional journals in England favor the view that charges might be greatly cut down. The *Law Times* asserts that the abuses of the bankruptcy system are equalled by those attending the administration of insolvent companies. Liquidators and trustees incur enormous expenses in carrying on litigation for the supposed benefit of the estates under their charge. These expenses run up "with a rapidity which is simply amazing. Ultimately the expenditure is brought home to the creditors, and they become impressed with the conviction that law is a terrible and a costly thing." The *Law Times* is probably right in supposing that this condition of things is not for the good of the profession, for there can be no doubt that the ruinous cost of litigation checks and stifles a vast number of well founded suits which would otherwise be instituted. Referring to a report of the Manchester Chamber of Commerce, favoring the organization of a court of private arbitration, our English contemporary says:—"We do not think the particular prospect a good one. We do think that the prospect of arbitration is one which will more and more commend itself to the public mind, unless something is done to reduce the cost and delay of litigation in the courts of law. Lawyers, we believe, are beginning to recognize the fact that litigation is declining. They are slowly realizing the fact that commercial causes are the exception rather than the rule, even in the city of London. Our courts are mainly exercised with proceedings for libel, civil and criminal. Let lawyers look to it before it is too late. There are those who think an extension of county court jurisdiction would solve the problem and provide cheap, expeditious and righteous decisions. We are not of those. It is by the improvement of proceedings in the high court, by the control by the courts of irresponsible litigants, by the abolition of intermediate courts, by the limitation of interlocutory proceedings and appeals, and by the restriction of the number of lawyers, and a more sensible and rational system of remuneration for their services, and, lastly, by the discouragement by solicitors of preposterous payments to counsel, that confidence can be given to the public, and ruin no longer be considered synonymous with an action at law."

AUTHORITY OF PREVIOUS DECISIONS.

The Master of the Rolls, in a recent case of *Osborne* v. *Rowlett*, L. R. 13 Ch. D. 785, made some observations with reference to the authority to be allowed to previous decisions of Courts of co-ordinate jurisdiction. These remarks seem to make the task of overruling precedents dangerously easy. "I have often said, and I repeat it," said his Honour, "that the only thing in a judge's decision binding upon a subsequent judge is the principle upon which the case was decided; but it is not sufficient that the case should have been decided upon a principle, if that principle is not itself a right principle, or one not applicable to the case, and it is for a subsequent judge to say whether or not it is a right principle; and, if not, he may himself lay down the true principle. In that case the previous decision ceases to be a binding authority." This seems to be saying almost in so many words that the opinion of the subsequent judge is to prevail over that of the judge who decided the previous case—a rule which judges commonly follow more or less openly, and it is per haps as well to do so as to get over the previous decisions by some of the expedients that are

occasionally resorted to. On this subject the *Solicitors' Journal* says: "The ways in which judges in the interests of the law sometimes wriggle out of previous decisions are marvellous and manifold. Sometimes they say that the principle was wrong, and that the facts being different in some particular (albeit immaterial to the principle), they will not follow the case. They will only treat it as binding with regard to the very same facts." This suggests the old story of the judge who being hard pressed by a citation of *Jones* v. *Smith*, said he should not feel himself bound by that case unless a suit were before him in which the facts were precisely similar; indeed, unless the plaintiff's name were Jones, and the defendant's Smith!

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., McCORD, J., *ad hoc*.

DOBIE, (petitioner below), Appellant, and BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND, et al. (respdts. below), Respondents.

The Presbyterian Church Union—Constitutionality of Act (Quebec) 38 Vic. cap. 64.—Power of the Church Synod to admit new members into the body of the Church.

[Continued from p. 248.]

On the other hand, we have a decision of Vice-Chancellor Blake, in the case of *Cowan & Wright*, 23 Grant, Ch. Rep., p. 616, upholding the constitutionality of the Ontario Act (38 Vic. cap. 75) except in so far as it attempted to deal with property in the Province of Quebec. This is, of course, a decision of the precise point before us, and therefore it becomes important to examine the grounds upon which it was rendered. It appears to me that it is undeniable that the local Legislature, acting within the scope of its powers, has a right to legislate as absolute as the Dominion Parliament legislating within the scope of its powers. Indeed, this doctrine as to the respective powers of the Dominion and local Legislatures seems to me to be almost the only one on which there has been entire unanimity of opinion. But when from this it is sought to glide to the conclusion that the words of section 92 are alone to be considered as defining the exclusive rights of the local Legislatures, I think we arrive at a doctrine opposed to positive law, and to the authority not only of the Courts, but to the authority of practice.

There is a sort of floating notion that by the conjoint action of different Legislatures, the incapacity of a local Legislature to pass an Act may be in some sort extended. Section 15 of the 38 Vic., cap. 62 (Quebec), seems to have been added under the influence of such an idea. By it the Dominion and local Legislatures are permitted to recognize and approve. I cannot understand anything more clear than this, that the local Legislatures, by corresponding legislation cannot in any degree enlarge the scope of their powers. When the question is between the authority of Parliament and that of a local Legislature, the forbearing to legislate in a particular direction by Parliament may leave the field of local legislation more unlimited. This is the only bearing I can conceive the case of the *Union St. Jacques & Belisle** can have on this case. What the Privy Council held in that case was that a special Act for the relief of a corporate body did not fall within the meaning of "Bankruptcy and Insolvency" (B. N. A. Act, sect. 91, s. s. 21) and this more particularly as there was no Dominion Act with which it interfered. It is, therefore, dead against the pretension of respondents in this case, for the legislation objected to upsets a Dominion Act, that is to say, if corporations which have not alone provincial objects (provincial according to the meaning of the B. N. A. Act, *i. e.*, relating to one Province under the Act) created before Confederation, are under Dominion Laws. On this point there has never been a doubt. For instance, the Acts of incorporation of the G. T. Railway, an old Province of Canada incorporation, have been amended by Dominion Acts, never by local ones.

Another authority in support of the constitutionality of the Ontario Act has been mentioned by Mr. Todd in his very valuable volume on "Parliamentary Government in the British Colonies,"

* 20 L. C. J. 29; 6 P. C. 31.

(p. 355). This is, of course, an authority not to be despised, and if it had been given free from all bias by political considerations I should have considered it a very valuable opinion. But, without meaning to imply any sort of criticism as to the exercise of the discretion of the Federal Government in the disallowance of bills, I may say that we all know that the Federal Government is most unwilling to interfere in a too trenchant manner with local legislation, and where there is room for doubt as to the limits of the powers exercised, and where great popular interests are involved, they readily leave the question to the decision of the Courts. The report referred to by Mr. Todd, therefore, amounts to little more than this, that where part of an Act is evidently *ultra vires* and the rest not evidently so, the Federal Government will not interfere and disallow the bill. I have already said that the terms of section 92 of the B. N. A. Act do not alone decide as to the limit of the local legislative power. Those who drew the B. N. A. Act saw that, in spite of all precautions, it would be impossible so to define the exclusive powers as to avoid clashing. It was therefore enacted at the end of section 91, as a rule of interpretation, that "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 legislatures of the Provinces." This appears to me to be decisive in the present case, and I feel myself compelled to come to the conclusion that an Act which disposes of the property of a corporation created by a federal law is unconstitutional.

There is another way of considering the matter, which appears to me to bring forward this view still more clearly. If the Presbyterian body all over Canada wanted an Act of incorporation to enable them to manage their property, no local legislation would suffice. This brings me to still another consideration. The Ontario Act and the 62 cap. 38 Vic. (Quebec) are Acts of incorporation to all intents and purposes. It is true they do not, in so many words, declare certain persons to be a body corporate, but each gives to a certain organization corporate powers; each creates a fictitious person able to receive and hold by gift and devise. It will scarcely be pretended that these two Acts have created but one body corporate. They have evidently created two corporations, each of which deals with Presbyterians all over Canada. Now, let us apply the rule of *ultra vires* laid down in the minute of Council mentioned by Mr. Todd. It was there said the Act of Ontario was *ultra vires* in so far as it dealt with property in the Province of Quebec. Is it not by parity of reasoning also *ultra vires* in so far as it deals with civil rights outside the Province? If so, then cap. 62 is equally void so far. And what is the result? The Ontario Act not having been disallowed, exists so far as it can be applied within the local jurisdiction—that is, it has incorporated the Presbyterians in Ontario, under the name of "The Presbyterian Church in Canada." The Quebec statute has incorporated the Presbyterians of Quebec under the name of "The Presbyterian Church in Canada," "or any other name the said church may adopt," and it is in favour of this unnamed Corporation, and not in favour of the Ontario body, it has confiscated the property of "The Presbyterian Church of Canada in connection with the Church of Scotland." This mode of executive morselling would have the effect of producing a result which no Legislature contemplated. If a donor directs that £5 apiece be given to ten persons, it may logically be assumed that to give £1 apiece to each is partly to fulfil his directions; but to give the whole fifty pounds to one of the ten persons, is to contravene his directions. Therefore, to let a law stand, which is partly *ultra vires* and partly constitutional, may be the most perfect mode of defeating the legislative will. I therefore say that a law which is *ultra vires* in part may thereby be *ultra vires* in whole, and so it should be construed, at all events when it appears that the object of the Act is not attained by a partial execution. Take for instance an act of incorporation of a railway company from Quebec to Toronto. Could that be interpreted as an act of incorporation from Quebec to the Province Line? Unquestionably it could not be. But I shall be told "there is a special exception for that" (sect. 92, s. s. 10, *a*). The exception is not, however, more formal than the exception from incorporation by local Act of companies having other than provincial

objects. I therefore think that the Act purporting to create the body to be benefited by the transfer of the temporalities fund is *ultra vires* in whole.

There is another view of this case which depends on considerations entirely different from those which have influenced my opinion in one sense, or that of two of my colleagues in another sense. As that opinion has the effect of turning the scales, so far as this Court goes, in favour of respondents, it may not be out of place to notice it. One of the learned Judges thinks, I understand, that these Acts are *ultra vires*, and particularly the Act affecting the incorporation of the Temporalities Board; but that these Presbyterian bodies being voluntary associations they had a right, without any legislation, to form themselves into one body, that by the appellant's refusal to join the new body, he voluntarily excluded himself from the old, and that he has therefore no interest in the temporalities fund, and consequently no interest to question the illegal character of the Board. I confess to have experienced some slight feeling of consternation on first hearing this mode of dealing with the case relied on. For an instant I wondered if all my previous examination of the case had been misdirected. A little reflection will, however, I think, dispose of this opinion. The pertinacious use of the words "voluntary association" in this case, and in the case of *Johnston & The St. Andrews Church*,* induces me to think that some inexplicable meaning is commonly attached to the expression. If it be supposed that a Presbyterian Church is more of a voluntary association than an Episcopalian one, I am at a loss to understand the distinction. It seems to me to be a particularly unfortunate expression for a church association, for if there be any association, a man is not compelled by law to enter, which is more involuntary than another, it is the association with those of the same religious belief. But I must take it that the expression "voluntary association" means an unincorporated company, and taking it as such I shall deal with the argument. I admit there is no need of legislation to enable any number of persons to associate themselves together for religious or other purposes, and even to adopt a name as a designation. So the four Presbyterian churches or any of their number, whether a majority or a minority, had a perfect right to form an association and call themselves "The Presbyterian Church in Canada," without the intervention or permission of any Legislature; but such members had no right to take the trust funds, and make them over to another body; nor could their adherence to a new body annihilate the old one, and so deprive its remaining members of their interest in such funds. It is evident from the ruling in Bourgoin's case, already cited, that incorporated companies could not do so, and I fancy unincorporated associations would not have greater powers. But if there be any distinction there, then the temporalities is held under the authority of an Act of the Legislature, which by the reasoning under consideration cannot be touched by local legislation. If such a pretension as that I now combat were tenable, then a majority of the members of the Presbyterian Church of Canada in connection with the Church of Scotland could have voted a distribution of the funds amongst themselves, and in this way have defeated the whole objects of the donors.

There is an argument which I have omitted to mention, probably because the answer readily suggests itself. It is said that the Legislature of Quebec had, previous to the Act in question, dealt with the temporalities fund, and that the appellant had acquiesced in the action of the Legislature. I do not think that one unconstitutional Act can justify its repetition, or that the acquiescence of the Rev. Mr. Dobie can appreciably extend the provisions of an Act of the Imperial Parliament. In a case of *Vautrin & Niagara Mutual Insurance Co.*, the question was raised as to whether an Act of Ontario could set aside an old Province of Canada Act affecting both Upper and Lower Canada. We decided the case on another question altogether, and so no decision was given on the point. I may, however, say that I don't think the question raised in the present suit was really involved in that case. The object of the original incorporation was purely local and always remained so. Nor am I prepared to admit the doctrine that doubt gives rise to a presumption in favour of the action of the Legislature, which has been advanced by the learned Judge in the

* 1 Supreme Ct. Rep. 235; 1 Legal News, 13.

Court below. It seems to me that such a doctrine is not founded on any logical basis, and that its adoption would give rise to great confusion. In law there is doubt of the fact, and a variety of rules intimate how in such a case the Judge should decide; but when the Judge comes to give his decision in matter of law his doubts are at an end, however great may have been his intellectual difficulty in arriving at a conclusion. I can easily understand that a consistent and uniform interpretation of the Confederation Act in one sense as to the distribution of legislative power, may come to form a potent judicial reason for interpreting the Act in that sense; but to say on each occasion that the authority of the Legislature is impugned, that "it is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt," appears to me to be slightly declamatory. If we allowed ourselves to be guided by such considerations, we should be abdicating our judicial functions in a manner that would indicate respect for the integrity of the Legislature, rather than for our own body. But to characterize the question before us, as one even of very serious difficulty, seems to me to be going a very long way. I would therefore reverse, and Mr. Justice Tessier, I understand, concurs in the conclusion at which I have arrived.

McCord, J. It is unnecessary for me to state the facts of this case; they are fully set forth in the printed remarks of the learned Judge who rendered the judgment appealed from. As to the law of the case, resulting from those facts, I am of opinion that the Quebec Act, 38 Vic., chap. 64, in so far as it alters the constitution, composition and succession of the Board for the management of the Temporalities fund, is *ultra vires*.

The Board in question is a corporation created by the statute of the late province of Canada (now the provinces of Quebec and Ontario), 22 Vic., chap. 66. It was created for the management of a fund derived from, and existing in, both Ontario and Quebec, and belonging to a Church the territorial limits of which embraced both provinces, and the government or synodical management of which was not carried on in one province only but in both. This corporation was not created for a "provincial (Quebec or Ontario) object," nor has it a provincial character. On the contrary, it was created in the interest and for the advantage of both provinces. Being created for two provinces and applicable to them both, it can only be altered by a parliament having power to legislate for these two provinces. The character or scope of this corporation could not cease or change by reason of the fund happening at any time to be invested wholly in one of the provinces, and of the place of business of the corporation being at that time within that province. The Board could at any time remove its investments and its place of business to the other province, and its powers of management were in no wise confined to either province. The corporation is not a mere accessory of the property which it has to administer, and though the Provincial Legislature may control the "property" within its limits, and even the "rights" of the corporation in connection with that property, yet it cannot alter the corporation itself. If the legislative control of the property carried with it the power to alter the corporation, the consequence would be that if, as may be the case at any future time, one portion of the fund was invested in Ontario and the other in Quebec, one provincial legislature could enact that the corporation should be composed of one set of persons and the other legislature could ordain that it should consist of another set of members, and the absurd conclusion would be that there could be two boards of management. It seems to me, therefore, that the provisions of the act 22 Vic., chap. 66, respecting the composition and formation of the Board, have not been set aside by the Quebec Act, 38 Vic., chap. 64, and are still in force, for it is evident that they could not be set aside by the mere action of the Synod.

It is true, as the respondents say in their factum, that it was the Synod who *devised* the mode of election and got the act of incorporation, but it required a competent legislature to *create* the corporation and to establish the mode of election of its members, and the Synod could no more change the corporation by altering that mode than it could in the first instance create the corporation. Consequently, the present Board, which it is admitted is not composed of the persons or in the manner prescribed by the act 22 Vic., chap. 66, is illegally constituted.

The power of the Synod to alter the composition of a corporation created by statute is one thing, however, and its power to alter the composition of the unincorporated body or church which it represented and governed is another thing. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland had, to my mind, undoubtedly the power to admit new members into the body of the Church, and consequently to give them a share in its rights, privileges and property; the other Churches had the same power as regards themselves respectively; and the union of these four Churches was nothing more than the exercise of that power. By admitting new members into its body none of the Churches ceased to exist—it only became more numerous. The mere change in the name is nothing. The Church had originally named itself, and it could name itself again. As the Presbyterian Church of Canada in connection with the Church of Scotland did not change or cease by admitting new members,—that is, by the Union—and the evidence, in my opinion, does not show that it changed by any departure from its creed or doctrine, or in any other way, it follows that the appellant, who refused to accede to union, and who claimed and still claims to belong to a separate body, is no longer a member of that Church; and as that Church is the Church to which the Temporalities fund belongs, and on behalf and for the benefit of which it is to be held and managed by the Board, the appellant has no right, privilege or franchise in connection with the management of the fund in question, and consequently no interest or right to complain of the composition of the Board, or to obtain an injunction to restrain all its acts and powers. He may or he may not have a right to be paid certain moneys out of the fund, but, admitting that he has, his claim is merely that of a creditor, and his only right is to demand and obtain payment. He does not ask this, nor does he say it is refused him. I need only say in conclusion that my opinion reduces itself to this, that although the Board is not at present legally constituted, the appellant has no interest or right to obtain the injunction he asks for.

Sir A. A. Dorion, C.J., remarked that the question was of the greatest importance and of very considerable difficulty. It was not surprising that difficulties of this kind were recurring very frequently under our constitutional Act. He considered, however, that the Act was as clear as it could be made, to embrace so many questions in a small compass. For his part he could not understand the cry against the Supreme Court, in view of the necessity of having a tribunal competent to settle once for all questions of this kind, and even if its functions went no further, the utility of such a Court would be sufficiently apparent. The principal question presented in this case resolved itself into this. A certain society was incorporated under an Act of the old united Province of Canada, 22 Vict., cap. 66, and this society merged itself into a body embracing several churches of like doctrine. The important inquiry was whether it was the Legislature of the Dominion or of Quebec that had authority to legislate on this question. The society was incorporated by an Act of the united Legislature of Upper and Lower Canada. Now, it was contended that the Legislature of Quebec could not touch an Act of the old Legislature affecting both provinces, that is to say, that any Act not provincial in its object, passed before Confederation, cannot be touched except by an Act of the Dominion Parliament. But was it not the fact that every day the local Legislature was repealing whole bodies of laws affecting both provinces, which had been passed before the division of the old Province into Quebec and Ontario? To go no further than a case in this Court in February last, *McClanaghan & The St. Ann's Mutual Building Society**, it was clearly intimated that the Dominion Legislature had no right to legislate for the winding up of a building society incorporated by an Act of the Parliament of Canada, this being a matter affecting property in Lower Canada, and that it must be done by an Act of the local Legislature. His Honor considered it preferable that legislation in such cases should be entrusted to the provinces. The case of a railway between the two provinces had been referred to. What would prevent a railway company desiring to build a line from Montreal to Toronto, from coming to our local Legislature for power to go to the line, and then getting similar power from the Ontario Legislature for the part within that Province?

* 3 Legal News, 61.

However, in such a case, it is found more convenient to go to the Dominion Legislature, in order that the whole may be regulated by the same law. In the present case, a majority of twenty to one resolved it would be beneficial to them to join with three other bodies whose differences are more in name than in substance. This body happened to have funds, the object of which was to pay ministers. They had funds in Lower Canada and they wanted authority to manage that fund, so as not to be interfered with by any member of the corporation. The local Legislature says, we incorporate you, and we give you the right to manage your property in this Province. But it was said, that is spoliation. That question was decided by the Privy Council in the case of *Union St. Jacques & Belisle*. The Union was unable to pay the annuities to members, and it got authority from the local Legislature to commute the payments for a fixed sum. The question was raised whether the Province of Quebec could interfere with vested rights, and the Privy Council maintained the validity of the local act. Here the Legislature merely said to Mr. Dobie, if you don't wish to do as the others have done, your rights shall not be interfered with. If you don't join us, you shall not be deprived of any right. The Legislature of Quebec did not touch any rights which Mr. Dobie might have in the Province of Ontario; if they had done so it would be a dead letter. But they expressly limited themselves to the property within this Province. In the opinion of his Honor, this was within their functions, and the contrary view would be most distasteful. It was not the intention of the B. N. A. Act to allow the Dominion Legislature to force legislation upon the Provinces affecting property within the Province. The intention was to leave the local Legislatures free as regards the objects with which they have to deal.

MONK, J., concurred with the Chief Justice. His Honor adverted to the high standing and position of the united bodies, and to the fact that no injustice had been done to individuals. He was inclined to believe that the act was constitutional, and, upon the whole case, had no hesitation in concurring in the judgment of the Court below.

Judgment confirmed, Ramsay and Tessier, JJ., dissenting.

Macmaster, Hall & Greenshields, for Appellant.
M. M. Tait, Counsel.
J. L. Morris, for Respondents.
S. Bethune, Q.C., and *C. P. Davidson*, Counsel.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, July 30, 1880.

LOZEAU v. CHARBONNEAU.

Coercive imprisonment—Notice to the party—Form of Judgment.

The defendant was condemned to pay the plaintiff a sum of money by judgment of date 31st of March, 1879, and by judgment of date 20th of October, 1879, his coercive imprisonment was ordered for the payment of the debt and costs, and he was accordingly arrested on the 14th of July, 1880. He now presented a petition for liberation, on the ground of nullities in the judgment and of informalities in the arrest. C. C. P. 792. The alleged nullities were:—1st. That the petition praying for his imprisonment did not show by a return of service that he had notice of the time of presentation. 2nd. That the notice given did not specify in what division of the Superior Court the petition was to be presented. 3rd. That on the 17th October, when the petition was presented, the plaintiff, in place of having defendant called, had the cause continued until the 20th without reason. 4th. That no notice of this continuance was given to the defendant. 5th. That the order of 20th October, instead of ordering the imprisonment of the defendant *instanter*, should have summoned him to appear and show cause why he should not be imprisoned. 6th. That the judgment itself did not order the imprisonment, but that a writ should issue condemniug the defendant to be imprisoned. 7th. That the procès-verbal of arrest by the Sheriff did not show that a copy of the procès-verbal had been served upon the defendant.

David, for petitioner, cited C. C. P. 792. *Higgins* v. *Bell*, 17 L. C. Jur. 274. Sirey on French code, C. C. P. 694—2 Bioche, C. C. P. 380 et seq. p. 617-629, n. 382—Pothier par Bugnet, Tom. 10, p. 328, n. 699.

Roy, for plaintiff, cited C. C. 2272. Ordonnance 1667; Pothier, Pro. Civ. Contrainte, C. S. L. Can., Cap. 83, S. 140. C. C. P. 506; 1 Pigeau, 832, 3, 4. Contrainte.

TORRANCE, J. As to the nullities alleged before the judgment of 20th October, I would say that the return of the bailiff shows sufficiently that the defendant had notice of the petition and of the time of presentation, and as to the division of the Court, it was for him to know the particular one with which he was concerned. The judgment itself shows that the defendant was duly called, and made default, and as to the continuance from the 17th to the 20th October, it was the act and order of the Court and not of the plaintiff, and no notice of the adjournment was necessary to the defendant. As to the omission to issue a rule against the defendant to show cause, if we look at the French version of the Code of Civil Procedure, 781, we see that the procedure of record has complied with its requirements. Moreover, how can I by this proceeding annul a solemn judgment of the Court? It can only be annulled by a higher court. As to the phraseology of the judgment, ordering that a writ issue condemning the defendant to be imprisoned, it is a little tautological, but the meaning is plain. The complaint that the defendant did not receive a copy of the procès-verbal of arrest is without foundation. Where does our Code require it? I have carefully examined the provisions of our Code, and it appears to me that they have been followed. The citations from the Code of France and its commentators are not our guide where our own Code is plain. Upon an examination of the record, my conclusion is that the petition should be dismissed.

Roy & Boutillier, for plaintiff.

Mathieu, and *David*, for petitioner.

SUPERIOR COURT.

MONTREAL, June 12, 1880.

ROLLAND, insolvent, DUPUY, assignee, FRANEY, adjudicataire, DUPUY, petitioner for *folle enchere*, and FRANEY, contesting.

Assignee's sale — Description of immoveable in minutes of seizure—Omission of name of street.

The question was as to the description of an immoveable in the minutes of seizure, under C. C. P. 638, which reads as follows:

"The seizure of immoveables is recorded by minutes, which must contain:

1. Mention of the title under which the seizure is made;

2. Mention of the defendant having been called upon, as required by the preceding article;

3. A description of the immoveable seized, indicating the city, town, village, parish or township, as well as the street, range or concession on which they are situated, and the number of each immoveable, if there exists an official plan of the locality; if not it must mention the conterminous lands . . . "

The assignee had described the immoveable in his advertisements as follows:

"Un certain lot de terre ou emplacement sis et situé dans le quartier Sainte Anne, de la dite cité de Montréal, connu et designé aux plan et livre de renvoi officiels du dit quartier, comme étant le numéro douze cent cinquante-huit (No. 1258)—avec bâtisses dessus érigées."

The name of the street on which the immoveable was situated was not stated.

MACKAY, J., relying chiefly on the remarks of the Chief Justice of the Court of Queen's Bench in the case of *Fauteux* and *Montreal Loan & Mortgage Co.*, 22 L. C. J. 284, held the omission to be fatal, and the adjudication was declared void.

The judgment is as follows:—

"The Court, etc.,

"Doth dismiss said petition and doth maintain said contestation, principally because of the description of the land sold (referred to) being defective, by reason whereof if Franey had a deed a cloud would be on his title from this assignee Dupuy, he, said assignee, not having conformed to Art. 638 C. C. P. by his advertisement, and Franey is yet in time to urge the nullity, with costs against the said assignee distraits," &c.

Pelletier & Jodoin for the assignee, petitioner.

A. Dalbec for the *adjudicataire* contesting.

A DESIRABLE POSITION.—As an offset to the complaints of exorbitant charges noticed in this issue, we may quote the following advertisement which appears in a local paper in North Wales: "Important to Solicitors—Wanted for the Eglysbach Parish, a lawyer to undertake to attend all vestries, and give his opinion on all legal matters connected with the said parish. Salary £5 per annum." The Eglysbach functionaries are evidently determined that their treasury shall not be depleted by excessive counsel fees.