

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Carter v. Molson, from the Court of Queen's
Bench, Lower Canada, delivered 18th April
1883.*

Present :

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

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

The judgment is in the following terms :—

“ 6th March 1882,

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

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

“ Considering that the Appellant, arrested on a *capias ad respondendum* at the suit of the Respondent, has been discharged, by giving security, under Article 825 of the Code of Civil Procedure, that he will surrender himself into the hands of the Sheriff, when required to do so by an order of the Court or Judge, within one month from the service of such order upon him or upon his sureties, and that in default such sureties will pay the amount of the judgment in principal,

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interest, and costs. And considering that, by Article 766 and the following Articles of the Code of Civil Procedure, express provision has been made concerning the matters provided for by Chapter 87 of the Consolidated Statutes of Lower Canada and Article 2274 of Civil Code, as to the obligation of a debtor who, having been arrested on a *capias ad respondendum*, has been admitted to bail, to file a statement of all the property, real and personal, of which he is possessed, and that the provisions of Sections 12 and 18 of the said Chapter 87 of the Consolidated Statutes and Article 2274 of Civil Code have thereby been repealed under the provisions of Article 1360 of the Code of Civil Procedure.

“ And considering that, although by the first paragraph of the above-mentioned Article 766 of the Code of Civil Procedure, a debtor who has been admitted to bail is bound to file the statement and declaration of all the property of which he is possessed, according to Article 764 of the said Code, within thirty days from the judgment rendered in the suit in which he was arrested, it is not provided in the said Article, nor in any other Article of the said Code, nor in any provision of law now in force, that, in default of filing such statement and declaration, such debtor shall be imprisoned or be subject to any penalty whatsoever.

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

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

“ (The Honourable Justices Ramsay and Baby dissenting.)”

The question, which their Lordships have found to be one of considerable difficulty, depends on the true construction of the two codes of Lower Canada, the Civil Code, more particularly Art. 2274 and Arts. 2613 and 2614, and the Code of Civil Procedure, more particularly Art. 766 and those following it, and Art. 1360. There were careful and elaborate provisions for framing two codes in question; but notwith-

standing all the precautions taken, there may be, and in fact in the present case there are, doubts as to what is the meaning of the language employed. And the Civil Code of Lower Canada, Art. 12, is "that when a law is doubtful or ambiguous it is to be interpreted so as to fulfil the intention of the Legislature, and to attain the object for which it was passed."

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

First, by Statute 20 Vict., c. 43, which afterwards became the second chapter of the Consolidated Statutes of Lower Canada, Commissioners were appointed, who were directed (Secs. 4, 5, and 6) to reduce into one code, to be called the Civil Code of Lower Canada, those provisions of the laws of Lower Canada which relate to civil matters, and are of a general and permanent character, whether they relate to commercial cases or others, but excepting the laws relating to seignorial or feudal tenure, and to reduce into another code, to be called the Code of Civil Procedure of Lower Canada, those provisions which relate to procedure in civil matters and cases, and are of a general and permanent character. They were directed to embody therein such provisions only as they held to be then actually in force. They might suggest such amendments as they thought desirable, but were to state them separately. And they were directed to follow, as far as might be, the arrangement of the Code Civil of France. It was provided that, as the Commissioners proceeded with their work from time to time, there should be an opportunity given to the Judges to review their work, and make suggestions to the Commissioners, who were to consider, but were not bound to adopt, their suggestions. And by Sect. 13 the Commissioners were required

from time to time to incorporate with the proper portions of the said codes such amendments as the Governor in Council thinks it right to recommend for adoption by the Legislature after considering the reports of the Commissioners, and those of the Judges if any, but such amendments shall be carefully distinguished from the actual law. And then by Sect. 14, "When the said codes, or either of them, are completed, with such amendments as last mentioned, printed copies thereof, and of the reports of the Commissioners, and of the Judges if any, shall be laid before the Legislature, in order that such code or codes may be made law by enactment; and if it be found advisable that either of the said codes be completed and submitted to the Legislature before the other, the Civil Code of Lower Canada shall be the first so completed and submitted.

"2. Either House may propose any amendments to either code, but such amendments shall be proposed by resolutions, which may be passed by the one House and sent to the other for its concurrence, and shall be subject to amendment by the other, and be dealt with as a Bill might be until finally agreed to by both Houses, and shall then be communicated to the Commissioners, who shall with all possible despatch incorporate the substance of the amendments so agreed to with the proper code, which may then be passed as a Bill at the same or any other session."

The Civil Code was the first completed and submitted to the Legislature, and it was amended by resolutions agreed to by both Houses, but the Legislature did not quite pursue the course indicated by the latter part of Sect. 14, Sub-sect. 2. By 29 Vict., c. 41, sect. 2, the Commissioners were directed to incorporate the amendments with the Civil Code, adapting their form and language

(when necessary) to those of the said code, but without changing their effect, inserting them in their proper places, and striking out of the said code any part thereof inconsistent with the said amendments.

Power was also given to the Governor to select any Acts and parts of Acts passed during the last and present sessions, and cause them to be incorporated. And power was given to the Commissioners to make verbal and formal amendments, and so soon as the said work of incorporation was completed the amended code was to be submitted to the Governor, who may cause a correct printed copy thereof, attested by his signature and that of the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Council.

Then by Sect. 6, "The Governor in Council
 " may, after such deposit of the roll last men-
 " tioned, declare by proclamation the day on and
 " after which the said code, as contained in the
 " said roll, shall come into force and have effect
 " as law, by the designation of ' the Civil Code of
 " ' Lower Canada,' and upon, from, and after
 " such day the said code shall be in force ac-
 " cordingly." The Governor in Council, by
 proclamation, named the 1st August 1866 as
 that day.

A precisely similar course was taken as to the Code of Civil Procedure of Lower Canada, the Statute 29 & 30 Vict., c. 25, being in the same words as those of 29 Vict., c. 41, except that (Code of Civil Procedure of Lower Canada) is throughout substituted for (Civil Code of Lower Canada.) The day fixed by the proclamation for this code coming into force is the 28th day of June 1867.

So that there was a period of nearly ten months, during which the Civil Code was in force, before the Civil Code of Procedure came into force.

It seems implied in that part of the judgment which states "that there are express provisions" "in the Code of Procedure as to these matters," and that "the provisions of Sects. 12 and 18 of "the Consolidated Statutes and Art. 2274 of "the Civil Code have thereby been repealed under "Sect. 1360 of the Code of Civil Procedure," that the majority of the Court of Queen's Bench put the construction on Art. 1360 of the Code of Civil Procedure, that it repealed not only all laws in force before the passing of either code, but also all parts of the Civil Code which touched procedure.

The literal meaning of the words "laws in force" "at the time of the coming into force of this "code" includes, the Civil Code, for, as already pointed out, the Civil Code came into force some months before the Code of Civil Procedure did; but their Lordships are scarcely prepared to hold that the intention and object of the Legislature was that when a matter is included in the Civil Code which might without impropriety have been included in the Code of Procedure, and an express provision is made in the Code of Procedure upon that particular matter, the provisions of the Civil Code are abrogated as being laws concerning procedure in force at the time when the Code of Procedure came into force. The two subjects from their nature overlap, and in the Code Civil of France, as well as in the Canadian Codes, much which might well be put into the one code is placed in the other. There seems nothing to prevent laws in both codes relating to the same subject from standing together, unless they are from their nature so inconsistent that the later enactment must be taken to repeal the earlier.

The 20th title of the Canadian Civil Code, relating to imprisonment in civil cases, is one which might have been placed under the head

of procedure; and so might the 16th title of the French Code Civil, entitled, "De la Contrainte par Corps en Matière Civile," have been placed in the "Code de Procédure Civile." But in neither the Canadian codes nor in the French Code has this been done.

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

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

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

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

the great advantages which have resulted from codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the codification of the civil laws of Lower Canada."

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

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

This cannot be understood, without reading and construing the statute referred to in order to see what rules and what penalties of imprisonment were provided by that statute, and then determining which of them were kept alive by this Article ; for, though this Article does contain an express provision on at least part of Chap. 87, and so by Art 2613 and 2614 of the Civil Code does abrogate at least so much of Chap. 87, yet it seems impossible to deny that the Legislature did intend, at all events until the Code of Civil Procedure should come into force, to re-enact by reference to the abrogated statute some penalties, and apply them to the things specified in Art. 2274. And there is great difficulty in doing this. For though Chap. 87, s. 12 (1) does, in certain cases included in Art. 2274, but not

quite co-extensive with it, require a debtor against whom judgment for 80 dollars or upwards has been rendered to file a statement of his property and creditors, and a declaration of his willingness to abandon the property in his statement mentioned to his creditors, and by Sect. 12 (2) does impose penalties on a Defendant neglecting to file such statement, yet there are no penalties co-extensive with Art. 2274, and there certainly are many penalties which, by Chap. 87, s. 18, are imposed upon debtors who have not been arrested, against whom a judgment has gone in a commercial cause, which cannot on any construction be kept alive by Art. 2274. Those difficulties are all removed if Art. 2274 is read as meaning "according to the rules and subject to the penalty provided in certain cases in Chap. 87, *until the Code of Civil Procedure comes into force, and then in the manner and form specified in the Code of Civil Procedure.*"

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

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

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

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

The Appellant must pay the costs of this appeal.
