

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 Sourdats 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;