

know that he only had limited authority; for instance, he was bound to know that Paquet had no authority to buy lands for himself, personally, and to pay for them out of the bank's money and securities. It is, in my opinion, idle for the defendant to say that he was ignorant that Paquet was using funds other than his own to pay defendant. The Courts are asked to believe very improbable stories sometimes, and incredible sometimes. The \$10,000 cheque of 25th September, the four bank drafts (over \$22,000 in amount), and the \$4,800 *bordereau* of Oct. 21st, with what is proved about them, make appearances fatal to defendant's petition. Suppose Paquet not to support some of the affidavit's allegations, for instance, that Goldring knew *all* the payments made to him to have been made with money *détourné* from the Bank, we have yet proof to show a limited amount of money so *détourné* to have been had by Goldring, viz, the four drafts, the \$10,000 cheque and the \$4,800 *bordereau*, and he ought not to be allowed to retain them.

The case is a little embarrassed by the fact that Paquet has, since his arrest, given up to the Bank the very lands and mining rights acquired from Goldring; these cannot, fairly, be said to be of small value, but of what value are they? It is perfectly uncertain. Yet is the *capias* to be set aside? I can't see it. The land referred to, when it was given up, was really not Paquet's. He had used trust money to buy it, and the Bank might fairly claim to follow their money into the land as into stocks, had he bought stocks instead of land. Paquet was only doing common honesty in giving the Bank the land bought with the money stolen from it. (See 1 Hovenden on Frauds, c. 13).

The defendant may have rights, and has some, no doubt, derivable from the Bank's acquisition from Paquet of the lands alluded to, but what they are must be referred to another court. The Bank will probably hesitate to allow Goldring to take out of the lands to their prejudice, etc. He will pretend what he thinks best. I think, upon all that I have before me, that the *capias* was, and is, perfectly warranted. The petition is rejected with costs.

Upon the petition to reduce the bail, considering what is proved, and that the Bank ought not now fairly to have more bail than \$36,800, instead of that originally ordered, but without

finding, as prayed, that defendant owes the plaintiff nothing, or that the affidavit for *capias* is insufficient.

Petition is granted to this extent, and defendant shall be allowed freedom on first giving bail in the usual manner to extent of \$36,800.

In appeal,

Sir A. A. DORION, C. J. Art. 798 of the Code is in these words: "This writ (of *capias*) is obtained upon an affidavit of the plaintiff, his bookkeeper, clerk, or legal attorney, declaring that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding \$40, and that the deponent has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the Province of Canada, with intent to defraud his creditors in general, or the plaintiff in particular, and that such departure will deprive the plaintiff of his recourse against the defendant." Then, art. 801 adds this: "If the demand be founded upon a claim for unliquidated damages, the writ of *capias* cannot issue without a Judge's order, after examining into the sufficiency of the affidavit; and the affidavit in such case must state the nature and, moreover, amount of the damages sought, and the facts which gave rise to them, and the Judge may, in his discretion, either grant or refuse the *capias*, and may fix the amount of the bail, upon giving which the defendant may be released." So that to obtain a *capias* for damages it is necessary to allege, first, that there is an amount due; second, it is necessary to state the amount of damages sought, and the facts which gave rise to them; and, after that, it is necessary to state that the man is about to leave the Province with intent to defraud his creditors. In the present case, the Judge to whom the original application was made was satisfied that the party was entitled to a *capias*. The defendant complained of that order, and asked that the *capias* should be quashed on several grounds, amongst others, because it was not alleged in the affidavit that the defendant, Goldring, was indebted to the Hochelaga Bank; also, that it did not appear in what place the debt arose. The defendant went on to traverse the allegations, stating that he is really not indebted to the Hochelaga Bank as alleged; that he was not about to leave the Province of Canada with