

There is much in the affidavit wholly outside the issue. The circumstances under which the loan was granted are alien to the question, save that they show that security was at the time given which was satisfactory to the creditor, and throw upon him the onus of showing that it is bad: otherwise he would have no right to *capias* for an amply secured debt. This he does not pretend to do. It seems to me, besides, that Molson has reasonably accounted for the assets he is shown to have been possessed of. I think he would have rendered himself liable to the imputation of fraud by the alteration of the account in the Mechanics Bank if the alteration had been made before the insolvency, but it had been done months before; and by having securities indicated as being held by him in trust for his wife; and had the *capias* issued on his drawing out the \$30,000 in the name of his wife, I think it ought to have been maintained. But these securities, forming part of those he had previously pledged, and which were redeemed out of the \$30,000, went with Mr. Abbott's assistance to settle his liability to the Molsons Bank. It is true that there was one amount of 160 shares said to have been put back to the substitution in his father's will, having originally come from that source. Although this might be against creditors have been held a fraudulent preference, it could not in my opinion be a good ground for *capias*. Indeed, it seems to me that the proper remedy in this case would have been an attachment in insolvency, when all suggested frauds could have been enquired into. If the \$30,000 was improperly borrowed, perhaps Molson ought to have been prosecuted as a cheat; but no question was made of this until long after the money was received.

A *capias* is now taken, in effect requiring a debtor to account for the transactions of two years of his life, and if anything is left unexplained it is assumed he is to be liable to this rigorous remedy. I cannot concur in this view, and I, therefore, dissent from the judgment about to be pronounced.

MONK, J., also dissented. After recapitulating the history of the mortgage and the withdrawal of the money, his Honor said that Molson did not, in his view of the case, exhibit any intention to deceive or defraud his creditors or

Carter. Molson might have had doubts whether he was entitled to borrow on the property in question, and he might have tried afterwards to make reparation to his family. It was quite natural, when Mr. Brydges spoke to him about the withdrawal of the money from the Mechanics Bank, for Molson (who was then largely indebted to the Bank) to say: "I don't wish my family to be put on the street." Further, this \$30,000 had been accounted for: it had gone to pay creditors of Molson.

SIR A. A. DORION, C.J., for the majority of the Court, held that the judgment was correct, and must be confirmed. The *capias* was issued on the allegation that appellant was secreting his estate with intent to defraud. Therefore, to maintain the *capias*, proof must be made of this statement. The intent could only be judged by external acts, and the rule which would serve to judge of acts in one case must apply to all. His Honor did not attach much importance to the mode in which the loan was made. The fact was that appellant borrowed the money and deposited it in the Mechanics Bank, and kept it there for some time. About the 17th of June, 1875, a change was made by which the \$30,000 was transferred from the name Alexander Molson to the account of a mortgage in trust for Eliza A. Molson, his wife. In the month of July or August following it was discovered that an officer of the Bank was a defaulter to a large amount—about \$100,000—and as the whole capital was only \$300,000, the business of the Bank could not go on, and the Directors were obliged to close the doors. An attempt was made first to amalgamate with the Molsons Bank, but it was unsuccessful. At this time the assets of the Mechanics Bank were totally insufficient to meet its liabilities, and it finally closed its doors. About the 5th of September the whole amount of \$30,000 was withdrawn from the Bank by Alexander Molson as trustee for his wife. It was shown that a great portion of the amount went to pay Alexander Molson's debts; but it was also shown that it went to pay debts for which collaterals had been given. Out of the \$30,000 it was pretty clear that Molson had not accounted for \$6,000. The rest of the money went to pay creditors who held security, which he transferred to his wife and children.