

COURT OF REVIEW.

MONTREAL, October 31, 1891.

Coram Sir F. G. JOHNSON, C.J., LORANGER and TELLIER, JJ.

PIKE RIVER MILLS Co. v. PRIEST.

Capias—Affidavit—Allegation of indebtedness.

- HELD:**—1. *That an affidavit for capias is not void for uncertainty because it sets out several causes of indebtedness for a like amount (as in a declaration with the common counts), so long as it is clear that the allegations all relate to one and the same sum of money.*
2. *The omission to annex an account referred to in the affidavit, is not material, the law requiring only the oath of the creditor or his agent.*

INSCRIPTION IN REVIEW of a judgment of the Superior Court, district of Bedford, LYNCH, J., June 9, 1891, which reads as follows:—

“Considering that the affidavit upon which the writ of *capias ad respondendum*, in this cause issued, is based, does not sufficiently set forth the cause or nature of the alleged indebtedness of defendant;

“Considering that several causes of action for a similar amount are set forth in said affidavit, rendering it uncertain what the real cause of action, relied on by plaintiff, is;

“Considering that there is no sufficiently specific allegation, in said affidavit, of the time of the alleged secretion clearly showing that it took place subsequent to defendant's indebtedness;

“Doth grant said petition, and doth quash, annul and set aside said writ of *capias ad respondendum*, and doth order the discharge and liberation of said petitioner thereunder, with costs.”

JOHNSON, Ch. J. (in Review):—

The defendant, arrested under a *capias ad respondendum*, petitioned for discharge, and alleged as grounds of his petition that the affidavit was defective. A *saisie-arrêt* also issued upon the same affidavit, and there was another petition as to that. The same grounds substantially were alleged in both petitions, and judgment was given quashing both writs. The plaintiff inscribes here, and we have to consider the grounds taken by the defendant with reference to the sufficiency of this affidavit in both cases.

The petition amplified the grounds for liberation, but the judgment noticed only two: First, as regards the *capias*, it was held