making away with his property with the intention of realizing the same for leaving Upper Canada.

Bullock v *Jenkins*, 1 L. M & P 645, is an authority that on an application to reverse the judge's order for holding the defendant to bail no other affidavits can, in general, be used than such as were before the judge when he made the order; but on an application to discharge the defendant from custody fresh affidavits may be used.

Graham et al v. *Sandrinelli*, and *Talbot* v. *Bulkeley*, 16 M. & W. 191 and 194, are authorities to shew that where a deponent states only that he has been informed and believes that the defendant is about to leave England, without stating from whom the deponent obtained the information, is not sufficient ground for an order for the defendant's arrest.

Pegler et al. v. *Huslop*, 1 Ex. 437, decides that it is allowable when the defendant appeals to the court against an order to hold to bail, to use affidavits in denial of the plaintiff's cause of action. But the court will not interfere unless it plainly appears that the plaintiff has no cause of action against the defendant.

The affidavits used by the plaintiff do not bring the case quite within the principle on which the cases referred to in 16 M. & W. were decided. The plaintiff does not merely state that he is informed and believes that the defendant is about to leave the province, but that from information he had received from various sources, and from his own personal knowledge, he had good reason to believe that the defendant was *furtively* making away with his property with the intention of realizing the same and leaving the country. Two other persons at the same time, and before the same commissioner, make similar affidavits. If the deponents in those affidavits had informed him of the facts there stated, and plaintiff had stated that he had got such information from them the persons from whom he got the information being mentioned, the evil referred to in the cases quoted would not exist. The judge had the affidavit of these two persons with that of the plaintiff, and it seems to me was justified in giving as much force to them as if the plaintiff had stated that he had been informed by those deponents of the same circumstances that they mention in their affidavits. If the plaintiff's affidavit had been framed in that way, I have met with no decided case that declares the order made on such an affidavit would be wrong. Though not wishing this decision to be referred to as justifying parties in making such affidavits as those now under discussion when they wish to obtain a judge's order to hold a defendant to bail, I am not prepared to say that the plaintiff did not shew to the judge such facts and circumstances as satisfied him there was reasonable and probable cause for believing that the defendant was about to leave the province. I cannot therefore set aside the judge's order and the proceedings under it.

But the next question is, as to discharging the defendant out of custody, on the ground that he did not intend to abscond His own affidavit shews that he did contemplate selling his farm in consequence of the proceedings threatened against him; and it seems to me to that extent plaintiff was justified in making the affidavit of his intending to dispose of his property to leave the country. But he denies in the strongest language the charge brought against him, and endeavours to show by confirmatory facts and circumstances that he is not guilty of the seduction of the plaintiff's daughter, and says that he has determined, after consultation with his friends, to defend the suit, and abide its results That his occupation and pursuits, and the preparations he had made for completing his house and making improvements on his farm, all shew that he had no intention of leaving the country. Many of the circumstances to which he refers as to his position, property, and contemplated improvements, are confirmed by two other affidavits which he files.

No attempt is made to answer these affidavits, or to contradict the facts stated in them.

The defendants' affidavit denying the charge of seduction would not be sufficient to authorise his discharge, but it is permissable to take that into consideration in judging of the probabilities of his being about to leave the country. He states also that plaintiff wished him to marry his daughter, and offered him £100 through a friend to do so, and threatened him with a prosecution if he refused. If he had intended to leave the country, it is not probable that after that kind of notice and threat he would have continued his plans for the improvement of his place and have remained to be arrested.

On the whole, I think the defendant, as he has entered an appearance in the suit of the plaintiff against him, may properly be discharged from custody, and the costs of this application to be costs in the cause.

Per cur.—Judgment accordingly.

Cross v. Richardson.

Libel—Newspaper—Evidence.

In an action of libel for publication in a newspaper, the plaintiff's counsel proved the paper containing the publication, but did not file it, or read the article containing the alleged libel: the defendant's counsel opened his case, but declined calling any witnesses. The plaintiff's counsel then moved to have the paper read and filed, which the learned judge allowed, reserving leave to the defendant to move to enter a nonsuit, if the court were of opinion he was not entitled to do so Upon motion to enter a nonsuit, *held*, that the evidence offered was not admissable, except in the discretion of the judge trying the cause A nonsuit was therefore ordered. [C P., T. T., 1 Geo.]

This was an action for libel published in a newspaper.

The different papers were proved by the plaintiff at the trial, but they were not put in by him and filed or read when he closed his case.

The defendant's counsel commenced his case and said he would not call witnesses.

The plaintiff then desired to have the papers read.

The defendant's counsel objected to this as they had not been put in and read at the proper time.

The Chief Justice of this court was of opinion the plaintiff could not at that stage of the proceedings as of right put in and read the papers, but permitted him to do so, reserving leave to the defendant to move to enter a nonsuit, if according to the strict practice the plaintiff had not pursued the proper course The case then proceeded and a verdict was found for the plaintiff for $1 damages.

In Easter Term last *Eccles, Q. C.*, obtained a rule calling on the plaintiff to shew cause why the nonsuit should not be entered pursuant to the leave reserved.

In Trinity Term *Prince* shewed cause. *Eccles, Q. C.*, contra.

Adam Wilson, J.—Some of the following cases bear on the point:—*Giles* v. *Powell*, 2 C. & P. 259. After the plaintiff had closed his case his counsel desired to call a witness to prove that the bills had been dishonoured, and that due notice of dishonour had been given. This was opposed by the defendant's counsel because it was to give fresh evidence after the plaintiff had closed his case.

Best, C. J., said, "I shall always allow a party to adduce fresh evidence on points of this kind. I had a conversation with my Lord Chief Justice Abbott on the subject, and his lordship stated that he would never allow a witness to be called back to get rid of any difficulty on the merits, or on any thing which went to the justice of the case, but that he always allowed it to be done to get rid of objections which were beside the justice of the case and little more than matter of form. I shall therefore allow the witness to be examined."

Walls v. *Atcheson*, 2 C. & P. 268.—The plaintiff closed his case. The defendant contended he had no right to recover. An argument took place upon the case as it then stood. The plaintiff's counsel then proposed to read a notice which he had intended to have given in evidence, but which from some circumstance or another had been overlooked. The defendant's counsel objected to the plaintiff's mending his case after an argument.

Best, C. J.—"I would not allow the addition of any parol evidence by a witness. I have communicated with the Chief Justice of the King's Bench upon this subject, and we have agreed that it is better not to lay down any particular rule, but to leave it to the discretion of the judge who tries a cause, under the particular circumstances to admit or not admit what may be material. In this case I think I ought to admit this paper, because it cannot have been got up and manufactured for the purposes of the cause, since the commencement of the trial." The notice was then read.

George v. *Radford*, 3 C. & P. 464.—In an action for malicious arrest after the plaintiff had closed his case and the defendant's counsel had commenced to address the jury the Chief Justice said