

3rd. Because the said allegation is "that the defendant has secreted and made away with his property and effects," and no mention is made of any date or time at which the defendant is charged with secreting and concealing his property, and because it does not even appear that the debt sued for existed at the time that the pretended secretion took place.

L. N. Champagne, for defendant:—The charge of secretion is quasi-criminal in its nature, and should be specified with sufficient clearness to give the defendant full opportunity to answer it. The affidavit does not even show at what time the alleged secretion took place. If the defendant had secreted his property some fifteen years ago, the Court would certainly not imprison him now on that account. Had the affidavit charged that the defendant had secreted and is now secreting his property it would then be sufficiently explicit, but there is nothing to show that the pretended secretion has any connection with the present time or that the debt existed when it is supposed to have taken place.

In support of the petition the following authorities were cited:

McAllen v. Ashby, 4 Leg. News, 50, S. C. M., 1881.

D'Anjou & Thibodeau, 11 R. L., 512, Q. B., 1882.

Weinrobe v. Solomon, 7 Leg. News, 109, S. C., 1884.

C. J. Brooke, for plaintiff:—The affidavit is exactly in accordance with the requirements of Art. 798, C. C. P. The time of the secretion is immaterial if the property is still secreted; and the obvious meaning of the words used, is that the secreted property is still existing and still secreted. Even had the goods been hidden before the debt was contracted, their subsequent concealment would still give rise to the *capias*. This explanation is confirmed by the allegation that the secretion has been made with intent to defraud the plaintiff, and is, if necessary, still more clearly shown by the further averment, that without the *capias* the plaintiff will be deprived of his recourse against the defendant; *i. e.*, that the plaintiff will be deprived of such recourse by reason of the se-

cretion charged. The defendant does not suffer by any vagueness in the affidavit, as he can commence his *enquête* by cross-examining the plaintiff on his reasons for making it.

Authorities cited:—

Trenholme v. Hart, 16 R. L., 318.

Montgomery v. Lester, 8 Q. L. R., 375.

The following are the *considérants* of the judgment:—

"Considérant, 1o. Que la loi n'exige pas que la où les qualités du défendeur soient mentionnées dans le bref ou dans la déposition; 2o. Que la loi n'exige pas non plus, que le déposant donne aucune raison, ou fasse mention d'aucun fait pour appuyer l'allégation de recel (art. 798, C. P. C.); 3o. Ni enfin que mention soit faite de la date de tel recel;

"Considérant que le demandeur, en alléguant dans la dite déposition que le défendeur a caché et soustrait ses biens, etc., avec l'intention de frauder ses créanciers en général et le demandeur en particulier, et que sans le bénéfice d'un bref de *capias ad respondendum*, etc., il sera privé de son recours et perdra sa créance, fait voir suffisamment que le recel en question a été fait par le défendeur avec l'intention de le frauder en lui faisant perdre sa créance, c'est-à-dire la créance qui fait la base de l'action en cette cause, et que c'est là tout ce que la loi requiert;

"Considérant enfin que cette partie de la dite requête, savoir: cette partie de la dite requête où il se plaint de l'insuffisance des allégations de la dite déposition est mal fondée, la rejette avec dépens, dont distraction, etc."

C. J. Brooke, attorney for plaintiff.

Rochon, Champagne & Wright, attorneys for defendant.

(C. J. B.)

COURT OF QUEEN'S BENCH—MONTREAL.*

Railway company—Bill of lading—Condition—Goods transferred to another company.

*Held:—*That it is competent for a railway company which undertakes to carry goods over their line destined for a point beyond their own line, and receives the freight for

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