of on the building. The party could not suffer by the error of the agent. The judgment would therefore stand, except as to the modification of amount.

Lunn & Davidson for appellant.

Judah, Wurtele & Branchaud for respondent.

MONTREAL, June 24, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY and CROSS, JJ.

GOLDRING (deft. below), appellant; and THE HOCHELAGA BANK (plffs. below), respondents.

Capias—Affidavit—Personal knowledge.

The appeal was from a judgment of the Superior Court, MACKAY, J., April 5, 1879, rejecting the appellant's application to quash the *capias*. In giving judgment the learned Judge assigned the following reasons:

There are two petitions. First, to have the affidavit for *capias* declared insufficient, and the order of the Judge allowing the writ declared to have been improvidently issued; that the defendant's arrest be declared illegal; that he be freed, &c. By the second petition the defendant complains of the amount of bail ordered, and asks that it be reduced to $5,000.

The first petition is in two parts—the one of law, the second mixed of law and fact. The first part claims that the affidavit does not show legal or lawful cause of action, nor a debt personally due by defendant to plaintiffs; that it does not appear by the affidavit in what place, or in what manner, the pretended indebtedness of defendant was contracted; that the information alleged in the affidavit to have been received from J. S. Paquet was and is insufficient to justify the making of the affidavit; that no demand of payment was ever made upon defendant in respect of the pretended debt set forth in the affidavit, &c. The second part of the petition repeats all that, and denies the truth of the affidavit's allegations, denies indebtedness of the defendant to the Bank, denies that the defendant ever intended to leave Canada with any intent to defraud; alleges that the defendant's transactions with J. S. Paquet were in the ordinary course of business; that the only monies received from Paquet were $5,625 under the first sale to him by defendant, and $12,500 under the second sale, and not $12,500 under the first sale and $65,000 under the second, as in the affidavit falsely alleged; that it is false that petitioner ever knew that Paquet was using any funds other than his own; that the Bank has obtained possession of all the property acquired by Paquet from defendant, and is now enjoying it; that the Bank has never asked payment from defendant in respect to any of the pretended matters and things referred to in the affidavit; that defendant was arrested before by the Bank for the same causes, but they discontinued that arrest and defendant was ordered to be released from it, but the plaintiffs, without any new grounds of action, have again arrested the defendant, in fact before defendant had been perfectly freed from the first one discontinued. The affidavit in question is not one of the most ordinary description, and the facts of the case, as we see at the end of it, are far from ordinary. It is fitting, therefore, to state the substance of the affidavit. [This is quoted, in part, below.]

Does St. Charles' (Director of the Hochelaga Bank) affidavit show a legal cause of action against defendant? I can't hold the contrary; though now, after a long *enquête* in the case, we see that St. Charles might have sworn more largely against both Paquet and defendant. The affidavit commences with charge of personal indebtedness by defendant, and ends with charge against him of having damaged plaintiffs beyond $77,000. I think it shows a debt personally due by defendant; it states place well enough (Montreal). That a demand of payment on defendant was not made before his arrest, ought not to hurt; certainly in a case like this, ought not; nor ought the affidavit to be held bad merely because of its reposing in part upon information from Paquet, the alleged confederate of defendant. Now passing to the second part, or the merits, of defendant's petition to annul the arrest, can the petition be allowed, seeing the proofs made? Certainly not; serious proofs are made against defendant. I do not want to hurt him needlessly, by a pronunciation at this stage of the case, upon his own petition, more strongly than requisite, but cannot allow him to succeed upon his petition, considering his acts and deeds, and Paquet's, in combination with him, so disastrous to plaintiff's Bank. Paquet was known to be the plaintiff's cashier, the defendant was bound to