

gave an obligation and hypothec, dated 9th Feb, 1875, under misrepresentation as to the ownership or availability of said property as security, and representing that he urgently needed the money;

That Molson was at the time Vice-President and Managing Director of the Mechanics Bank, in which he had a large amount of stock nominally paid up, but on which only a small amount had really been paid;

That the Bank was not then in good credit, and it was afterwards discovered that a teller had largely misappropriated its funds;

That notwithstanding Molson's representation of his being in urgent need of said money, he deposited it at small interest in said Bank till 7th Sept., 1875;

That on the 5th Sept., 1875, the teller's defalcation was discovered, and Molson became aware that the Bank must fail, and he himself be involved in the disaster, whereupon he caused the title and heading of the deposit account in the books of the Bank to be altered, by adding the words, "mortgage in trust for Eliza A. Molson," meaning his wife, in whose name he afterwards drew out the \$30,000, with accrued interest, and secreted it; and on being called to account by one of the Directors for doing so while he was debtor to the Bank in a large sum, declared that he had taken the said money because he did not desire to be left in the street, and that he had got it and put it away;

That deponent had not become aware of these equivocal facts until within the next previous 30 days, save as to Molson's insolvency, which had come to his knowledge shortly after the failure of the Bank. Deponent had assisted in negotiating a settlement between Molson and the Bank, whereby the large amount of stock held by Molson was cancelled;

That Molson had informed deponent that he, Molson, was not paying, and could not pay, any one; that the \$30,000 had been expended in various ways. The deponent in the autumn of 1875 had exhibited to him by Mr. Barnard a statement of Molson's affairs, in which the \$30,000 was not inserted. Molson had frequently afterwards applied to deponent for further loans. Molson failed to pay the interest due 1st January, 1877, and told de-

ponent that the property mortgaged to Carter came from his father's estate, and belonged to his children, and he set about placing obstacles in the way of the property being available, by (in his capacity of legatee of his father) leasing it to one Freeman for five years on and from the 24th February, 1877, and afterwards conniving with his wife, caused an intervention to be put into the cause for his wife and children, to embarrass plaintiff's recourse;

That he had secreted said sum of \$30,000, which he had still in his possession, and had no other means for the payment of his debts.

Molson petitioned to quash the *capias*, alleging that he had not secreted the \$30,000, and never had done anything with a fraudulent intent; that he had borrowed the money to give the use of it to the Mechanics Bank, which he had done; that he had drawn the money to redeem securities which came back to his creditors; that the statement in 1875 contained \$9,000 Molson's Bank bills afterwards expended on debts; that a satisfactory settlement was made with the Bank 14th January, 1876, by deed;

That Mr. Abbott, as legal adviser of himself as well as Mr. Carter, approved of the security given by him, and had advised the transfer of the property from his father's estate and the manner of doing it. Only after the failure of the Bank had petitioner become aware that his own title was doubtful and his wife and children might have rights; that he, Molson, failed to arrange with his creditors from being overpressed by Carter's claim; the lease to Freeman was in good faith, and the rents are collected as *alimens* for his wife and children;

That the intervention was a perfectly justifiable proceeding on the part of his wife, who had rights under his father's will.

The parties went to proof, and on the 11th Nov., 1878, Mr. Justice Papineau rendered his judgment, dismissing Molson's petition on the ground that he had not sufficiently disproved the allegations of the affidavit, and laying particular stress on the alteration of the deposit account on the books of the Bank, which appears to have occurred.

It is to me rather a startling proposition to justify a *capias* issued in June, 1877, against a debtor for alleged falsity in a statement made in 1875.