I am of the opinion that so far as petitioner is concerned, it not being established that he retained anything fraudulently at the time of his assignment, the plaintiff cannot arrest him for refusing to make an abandonment, or as in 799 C. C. P., an assignment, of what he had already assigned.

If plaintiff had proved a fraudulent detention or secretion it would have been dedifferent, consequently on the first ground he was not entitled to arrest the defendant. As to the other ground, he says, you are in partnership—you must assign your interest in this partnership. The petitioner notified the plaintiff before the capias, "I have no interest therein—I have lived out of it, being entitled to six hundred dollars, and there are no profits." Is that true? Strange to say I find a statement produced by Mr. Chamberlain, one of the partners in the firm of W. W. Beckett & Co., showing the condition of the company (Petitioner's Exhibit "Z"), apparently showing a loss and gain of $1246.33, but on examining it I find that it is entirely misleading, that, in this apparent surplus is included $1145.91, drawn by petitioner, being an excess of $145.91 over what he was entitled to draw for twenty months, and $500.97 drawn by Chamberlain, as assets. Deduct this and the firm could not, on the 1st of May, 1887, pay its obligations by about $500. How, if petitioner had no interest, could he assign it, irrespective of the question as to whether he could be called upon to assign his share in a partnership? He told plaintiff this, still, plaintiff, alleging that he had an interest, contested his petition.

Is our law such that without fraud, without property, a person is bound to make a judicial abandonment, of what? not of what he has, but of what he has not?

Plaintiff has chosen to go into this issue. He says defendant should have abandoned, and then I might have contested his statement. He has contested here, and it is shown that there was nothing to abandon. There is no suggestion of any bad faith. Plaintiff had nothing to gain, defendant had nothing to assign, acquired since his former assignment, which I hold released him from the obligation to re-assign, and which obligation could only be created, since, by his having continued in trade and refusing to assign. He went into business with nothing and has acquired nothing since, and I do not think he was liable to arrest.

Consolidated Statutes of Lower Canada, Cap. 82, Sec. 47, says, "when a party has refused to make a *cession de biens* to his creditors or for their benefit." Chap. 87, sec. 9, says the same thing. The object of the law is to prevent fraud, but no fraud is shown here, and debtors must not be persecuted.

Petition granted.

Camirand, Hurd & Fraser, Attys. for petitioner.

Ives, Brown & French, Attys. for plaintiff.

SUPERIOR COURT.

MONTREAL, Jan. 24, 1888.

Coram LORANGER, J.

RIELLE v. DECARY.

Action for Libel—Delay for Pleading.

The plaintiff sued for damages on account of libellous allegations contained in a plea filed by the present defendant, in a case in which the Grand Trunk Railway Company was plaintiff.

The latter action was taken by the G. T. Railway Company to compel the present defendant to carry out a promise of sale of certain property required by the Company for their line. The defendant, in his plea to this action, alleged that he had been induced to sign this promise of sale by fraudulent representations on the part of the present plaintiff. The plaintiff sued for damages on account of these allegations.

After the return of the action, the defendant moved that the delay for pleading be extended till three days after the final judgment in the case of the *G. T. Ry. Co.* v. *Décary*.

The grounds alleged in support of the motion were that the final judgment in question would, in some degree, decide the fate of the present case; that the *enquête* in the two cases was identical; that it was useless to incur the expense of a second *enquête* on the same facts; and that it would be to the