

At this meeting the creditors, and the defendant amongst them, were naturally not much pleased, and something harsh was said by the defendant at which the plaintiff took, or affected to take offence, and left. The whole of the creditors concurred in the step of issuing the *capias*. He had said he would come back to the meeting at four o'clock ; he never came, and the next time he met the plaintiff in the street he knocked him down, and went off to Chicago. He afterwards made an assignment of his estate to Mr. Lajoie, and is now uncertificated, with assets amounting to almost nothing compared to the amount of his debts. The defendant, besides the general issue, and an averment that he acted in good faith, with sufficient cause, and without malice, sets up a number of fraudulent acts of the plaintiff previous to his arrest, such as the secretion of his furniture and effects, and fraudulent and fictitious transfers to his father and cousin, and proof was heard of these transactions. I must say, however, that, looking at the plaintiff's case alone, and without considering what the defendant has proved, I have not the slightest hesitation in saying that the action ought to be dismissed. It rests, in principle, upon the want of probable cause and the malice of the defendant. The plaintiff is bound to prove these constituents of his case, from the circumstances, or from express evidence. He has proved nothing but an arrest, which so far from being without probable cause, was in my opinion entirely justified. The interlocutory upon the petition for discharge under the *capias*, neither settles the question of want of probable cause, nor of that of malice. It disposed only of the point whether there was actual and proved ground for the arrest made apparent under that preceeding. The plaintiff has no ground of action whatever. I see nothing on his part but conduct justly and naturally suggesting the step that was taken, followed by singular effrontery in bringing the present action, which is therefore dismissed with costs. The examination of the plaintiff before the Insolvent Court, as well as some other papers, some of them proved and some not, were produced at the enquête. A motion is made to reject them from the