

proper form of proceeding. I do not feel concerned much about that. I understand the plaintiff's argument perfectly as far as it goes, to the effect that the rent was not due ; but the *meditatio fugæ*, if it was believed in by the defendant, was sufficient to make him act as he did. There is high authority for saying that the question is not whether the defendant had probable cause of action in the particular form of action brought. (See Carr. & Payne, vol. 7,506 ; Whalley vs. Pepper.) If there is no proof of want of probable cause for proceeding in the form advised, the action must fail. That the defendant took steps that could not hold, and resulted in the plaintiff's discharge, is no ground of action, without want of probable cause and malice. He got his costs on that proceeding. He is not to get damages unless the defendant acted without good faith and fair appearance of right on his side at the time he took the steps complained of. The plaintiff has failed to establish the constituents of his action, which are want of probable cause and malice, and it must therefore be dismissed as regards costs. They ordinarily follow the event, but the court has a discretion to exercise in all such cases, and it is ordered that each party will pay his own costs.

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COUR DE CIRCUIT,—RICHELIEU.—Sorel, 14 Mars 1874.

*Coram* ROUTIER, J.

No. 1099.

CHARLES H. BEAULIEU vs. A. DEMERS ET AL.

JUGE :—Que l'endosseur d'un billet promissoire qui est poursuivi pour le paiement de ce billet, peut produire une exception dilatoire demandant à ce qu'il lui soit permis d'appeler en garantie l'endosseur de ce billet.

Le demandeur poursuivait les deux défendeurs A. Demers et M. Mathieu, comme endosseurs d'un billet promissoire