

A partner, leaving the business of the firm unsettled, departed to the United States, taking with him several hundred dollars belonging to the partnership. Held, that there was probable cause for an attachment, at the instance of the remaining partner, of the partnership effects, and an action of damages for such seizure should not be maintained.

This was an action of damages charging that defendant had maliciously and without just cause, instigated two suits and seizures by one Louis Bolduc, against him, plaintiff, one in the Circuit Court and the other in the Superior Court.

Benallack pleaded that Bolduc had been induced to take these proceedings in consequence of the representations of plaintiff's wife on one occasion in presence of defendant, and on the other in presence of one Louis Demers; that plaintiff had gone to the United States, and was not likely to return, and that he had left nothing to pay his debts; that plaintiff, on the 15th February, had caused the effects of the partnership between plaintiff and defendant to be sold by public auction, and the sale realized, with other moneys collected by plaintiff belonging to the partnership, the sum of \$1,000; that said sale was made with the view of paying off the debts of said partnership; that the day after the sale, plaintiff went away to Chicago without informing defendant, and carried away with him all the money received by him excepting a small sum of money which he left with his wife; that these facts fully justified defendant in believing that plaintiff had left the country with an intent to defraud his creditors.

PER CURIAM. The parties here had been partners in the business of livery-stable keepers, and it terminated by agreement in February last, when Chapman, in whose name the business was carried on, had an auction sale of their effects. Bolduc was a creditor for \$150, secured by a note indorsed by Benallack, but it was not due for two months. He also had a claim for \$38.50 for work done as carriage-maker. He says that he was promised payment out of the proceeds of the sale. There was enough realized out of the sale and collection of debts to put into Chapman's pocket \$750 to \$900. He immediately went off to Chicago and Minneapolis with the money, but left \$150 with his wife for household expenses. Both

Benallack and Bolduc were angry, and Bolduc made two visits to Mrs. Chapman, one with Benallack and the second time with one Demers. Demers says that Mrs. Chapman told them in answer to inquiries made by them, that she did not know where he was, if he remembered rightly. Demers went with Bolduc as interpreter, and after the interview advised Bolduc to take a seizure against Chapman. The admissions and statements of Mrs. Chapman have been objected to as illegal, but the court has no difficulty in saying that here the wife was agent of her husband and representing him, in such a simple matter as his whereabouts;—Taylor; Ev. p. 676; see also Stephens' Digest of Evidence, Art. 17, note (b). Michael Lavery, another witness, says that Chapman met him in March, and told him that he went away to get out of Benallack's way, as he did not want to give him any money just then. Bolduc says the reason why he took the seizure against Chapman was not because of what Benallack told him, but he did so acting on his own judgment and knowledge of the facts. He said "when a man promises to pay his debts after a sale and sells his goods, and runs away, we take precautions, with such a man, without delay." It is not surprising that Bolduc and Benallack should have been incensed. Men generally are when they have recourse to coercive measures against their debtors, such as attachments founded upon affidavit.

Now, the question here is as to the probable cause for the representations of Benallack and the action of Bolduc. C. C. P. 796 says: That the provisional proceedings, like those under consideration, are "subject to a right of action by the latter (the debtor) to recover damages, upon establishing by proof against the creditor a want of probable cause." Here Benallack was debtor of Bolduc as well as Chapman, and the business had not been profitable. It was not wise—on the contrary, it was imprudent in Chapman, to leave for a foreign country, leaving the business unsettled, and carrying away several hundred dollars of the partnership money. These facts do not prove want of probable cause on the part of the creditor or partner. On the facts proved, therefore, the Court does not give damages, but holds the second plea of probable cause to have been proved, and the action is dismissed.