this, and got it in 1879. If Dr. Thayer did not mean secretly to appropriate this he would have carried it into the account next following that of December. The plaintiffs' Exhibit 4 is that account rendered in February, 1880, but it mentions nothing of it. Murray also proves this $300 bonus received by Dr. Thayer. Here I would remark that though it is proved that Kerby might have been, or was, willing to grant or lease without any bonus, and for no larger nominal rental than was stated, Thayer is not the less seen in a fraud. As to Starnes, it is said against him that he has been security or a bondsman for Kerby, when Kerby was capiassed once, but I see no reason to disbelieve anything that Starnes has said. The witness Tuckwell swears to another bonus had by Dr. Thayer on granting Hart & Tuckwell a lease in May, 1879. Dr. Thayer first asked $1,000, and finally agreed to one of $500. It was paid on the 10th of May, and should have appeared in the next account rendered by Dr. Thayer, unless he was meaning to suppress it, to the wrong of the plaintiffs. That next account was the one rendered in August, plaintiffs' exhibit A 7, but in it there is no mention of the $500. Never was there credit for any of those $500 to the plaintiffs. Certainly standing as at 1st of August, 1879, this bonus act of Dr. Thayer's does not look like honest administration. The defendant herself says that she is not a business woman, and shows that she has handed over her office to her husband virtually. On page 20 of her deposition she admits, after much shirking, a bonus of a diamond ring had by her from one Decker for a lease, and I would refer to p. 23 of her deposition as to her manner of answering about the Hart & Tuckwell bonus of $500.

I have come to the conclusion that the case for the plaintiff is very strong; the defence fails, for it has weak points, which I have alluded to sufficiently, and is not stronger than its weak side. Never mind if some fair administration appears to have been; there has been so much unfair that the Court sees the *mandataire* here, the female defendant, so much in fault that she must be removed from the executorship, and judgment goes so, and for an account.

*Kerr, Carter & McGibbon* for plaintiffs.

*Ritchie & Ritchie* for defendants.

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## COURT OF REVIEW.

MONTREAL, April 29, 1882.

MACKAY, PAPINEAU, BUCHANAN, JJ.

[From S.C., Montreal.

CHAPMAN v. BENALLACK.

*Instigating seizure of moveable effects—Damages.*

The plaintiff inscribed upon a judgment of the Superior Court, Montreal, Torrance, J., Dec. 30, 1881;—See 5 Legal News, p. 109, for judgment of the Court below.

MACKAY, J. The plaintiff sued for $1,200 damages, for defendant having instigated one Bolduc to take out two *saisies arrêts* before judgment against plaintiff's goods and chattels for plaintiff's fraudulent secreting of property and meditation of flight. The plea is: "Honest belief by defendant;" justification and reasonable and probable cause for making any statements he may have made to Bolduc, or others, creditors of plaintiff. The action has been dismissed because of plaintiff's conduct being suspicious. The judgment finds that Chapman and Benallack had been partners; that their partnership property had been sold by auction and $900 of the partnership money was taken by Chapman, who went to the States. The judgment finds that plaintiff has not proved want of probable cause for the two seizures, and that the allegations material of the declaration are not proved.

The finding by the judgment of want of probable cause is said to be made where it is not appropriate, as the defendant is not charged as for malicious prosecutions or attachments. That may be. It is also said that the judgment reposes on some illegal testimony going to prove plaintiff's wife's statements about things touching which she is under disability to testify. This may be, yet does not appear clearly. All that is proved is that the wife at her house said to persons calling that her husband was gone. But the judgment does not repose, and need not, upon what the wife said; and though want of probable cause for the seizures needed not be proved by plaintiff, the defendant, if proving probable cause for speaking as he did to Bolduc, leading him to make the seizures, may be held entitled to protection, and to be freed from plaintiff's demand for damages. The plaintiff's going away to the United States with all the money, without paying debts and with-