maintenance of the suit in which he was engaged as lawyer. Such a bargain has never been maintained in England, and cannot be here. His Honor did not mean to imply that the appellant was guilty of fraud, but only that this contract, the consideration for which was maintenance, was against public policy, and incompatible with the existence of a respectable bar.

Judgment confirmed, MONK & TESSIER, JJ., dissenting.

W. Grenier, for appellant;

Barnard & Monk, counsel.

Archibald & McCormick, for respondent.

SUPERIOR COURT.

MONTREAL, May 14, 1879.

TORRANCE, J.

RHODES v. ROBINSON.

Capias—Form of Affidavit.

This case was before the Court on the merits of a petition to discharge the defendant, who was arrested last June for a debt due his landlady of $144. The affidavit on which the capias issued, alleged that the defendant was immediately about to depart from the Province with intent to defraud plaintiff, &c., having obtained a situation as surgeon on board a steamship bound for London, England. The last allegation of the affidavit was in these words: "that without the benefit of a Writ of Capias "ad Respondendum to seize and attach the "body of said defendant to abide the judgment "herein, the said plaintiff will be deprived of "her remedy," &c.

PER CURIAM. The counsel for the defendant has called the attention of the Court to the omission in the affidavit of the words, "and "that such departure will deprive the plaintiff "of his recourse against the defendant;" required by the C. C. P., 798. He also cites *Anderson* v. *Kirkby*, A. D. 1877, Montreal, in which case this objection was taken and the application was successful, and the judgment liberating the defendant was confirmed in Review, September, A. D., 1877. I have looked at the affidavit in that case and find in it another omission of a serious character, namely, in the reasons of belief that the defendant was immediately about to depart with intent to defraud. The reason was simply that deponent was informed by John Blakeney, that defendant, a resident of Montreal, is leaving this day for New York.

The affidavit in that case was in this respect different from the one now under consideration, and the reason there given for the belief was held insufficient to show intent to defraud. The reason for the belief in the present case, I hold to be sufficiently stated. There remains the question as to the omission of the words "that "such departure will deprive plaintiff of his "recourse, &c." Undoubtedly one of the motives of the judgment in the Kirkby case was that these words were omitted, but there was the additional motive that the intent to defraud by the departure was insufficiently shown, and I cannot say the two cases are therefore precisely parallel. But further, in the present case, though the affidavit does not follow the words of the article 798, it is a substantial compliance with form No. 42 in the appendix, to be used when a capias is asked for under C. C. P., 842, which authorizes a Commissioner of the Superior Court on such affidavit to grant a warrant of arrest. My attention has also been called to the case of *Dallimore* v. *Brooke*, reported in 6 Rev. Leg. 657, in which the Court of Appeals held that the affidavit for attachment was sufficient, as it followed the form No. 45, though it was not a strict compliance with the words of the Code. I think it therefore safer to hold that the affidavit being a substantial compliance with the form 42 attached to Articles 812 and 813, is a substantial compliance with the requirements of the law. At the same time I cannot help expressing my regret that the form given has not followed the words of the Code. It adds much to the uncertainty of the administration of Justice, as opinions will differ how far there has been a substantial compliance with the law.

Petition rejected.

M. Hutchinson, for defendant, petitioner.

F. O. Wood, for plaintiff contesting.
