

CÔUR SUPÉRIEURE—Montréal, 31 Mars 1874.

Coram JOHNSON, J.

PIERRE POULIN vs. DAVID ANSELL.

Un failli qui n'a pas obtenu sa décharge a-t-il le droit d'intenter une action en dommages en son nom seul? Cause Probable :—Capias :—Dommages—Intérêts.

I have had some difficulty in persuading myself that the plaintiff, who is an uncertificated bankrupt, has any right of action in his own name under the circumstances of this case. I am aware that in some cases of personal wrong, the right of action has in England been held to vest in the insolvent and not in his assignee but I have yet to be convinced that either reason or authority can take away from the creditors of a bankrupt ten thousand dollars due to him either as debt or damages under our law. Be this as it may, neither party has raised the question in this case, and it has to be considered by the Court upon the issue that was presented. The defendant caused a *capias ad respondendum* to issue against the plaintiff. He had a claim against him of about \$1,200, and another creditor concurred with him by assigning his debt, so that the whole amount for which the writ issued was \$3,000. The defendant, before the arrest of the plaintiff, held his overdue note for \$1,200 for sugar sold to him, and thought it was a cash article, the note went to protest, and the plaintiff being asked to pay it, put off his creditor till to morrow, when he again did the same thing; and so matters went on for a fortnight. The defendant then told him, he ought to be treated as an insolvent, at which the defendant was indignant, and said his brother should pay him the next day. The next day the plaintiff was gone, and nothing of any account worth considering was left in his place of business. In a few days he returned, and made more promises: but none of them were kept. He came to a meeting of his creditors; but had nothing to show. His furniture had been sold before he left Montreal.