was held sufficient evidence of the intent. In the last case, Caron, J., said: "It is discretionary with the judge to say whether the affidavit "contains sufficient evidence of a fraudulent intention. I am of opinion there is enough to "establish it. This is a commercial case, and "the discretionary power of the Court ought to "be exercised for the protection of trade." In the same case Chief Justice Duval said, although he also laid stress on the fact of the debtor being a stranger without property in the country, and who was going to leave without any certainty of his ever returning,—"In one word, either "the defendant has means of paying, or he has "not. In either case, he commits a fraud when "he refuses to pay. If he has the money, it is "a fraud to refuse payment; if not, he has got "goods under a promise to pay which he cannot "fulfil, and he is going to leave the Province "without giving security." I admit there is a sound distinction to be taken, as to the intent to defraud, between persons who have property in the country, and persons who have not. I don't mean to say that the law (as I once heard it put) makes an invidious distinction between rich and poor, but it certainly sees and applies a distinction of common sense between a man who has thousands of pounds worth of property in this country to pay all his debts ten times over, and one who has nothing—as regards their right to leave the jurisdiction, and whatever it may say in the case of the poor man, it reasonably concludes that mere absence can't defraud a man's creditors if he leaves behind him plenty of means to pay; but nothing of that sort applies in this case, or applied in the case of *Shaw* v. *McKenzie*. If a man leaving no property behind him to pay his debts, says to his creditor, I am going to leave the country, and I will pay you or not just as, and when, I choose, it has been said that it would not show an intent to defraud; certainly it is not an avowal of such intent in so many words. He does not say, I am going to defraud you; but it is an avowal that he intends to exercise the option of defrauding you or not at his pleasure, and if he can do that under the law, and escape arrest, the law would seem to require amendment. These are the principles which have always guided me in endeavoring to ascertain the intent to defraud, which must be alleged and reasonable grounds shown for it—before arresting a debtor who is leaving the country. But I should only be doing an injury to the defendant here if I acted on my individual views against the prevalent notions as expressed in the cases of *Hurtubise* v. *Bourret*, *Henderson* v. *Duggan*, and *Shaw* v. *McKenzie*. Therefore, I apply the law, as I find it in those decisions, to the present case; and upon the evidence I say it appears that the debtor, the present plaintiff, was arrested. The affidavit insufficiently alleged the intent to defraud; and he was discharged. The intent to defraud, if it exists, of course could be shown now under the defendant's plea, which says he had probable cause for issuing the capias—whether he sufficiently alleged it in his affidavit or not; but under the decisions I am bound by, the intent is not sufficiently shown. There is only the intent to leave, and to take upon himself the duty of saying whether he would ever come back, or ever pay his debts: and this, we have seen, is not sufficient under the recent cases. When it comes to damages, however, the Court has something to say. This man was arrested and went to jail, and was liberated on his petition; but he cannot put forward the length of his incarceration—which was of his own choosing—before he petitioned to get out, as an aggravation of damage. The conduct of this debtor towards his creditor was as dishonest as it well could be, (I say it of course subject to correction). I only mean to speak of what I consider honesty. He ought not to make money out of a creditor whom he cannot or will not pay; but there is the legal cause of action according to the decisions. There is the arrest, without the proof of intent to defraud—which proof the defendant took upon himself by his plea; and estimating the damages, as a jury would, I give $20 with costs of action as brought.

Judgment for plaintiff.

Augé & Lafortune, for the plaintiff.

Church, Chapleau, Hall & Atwater, for the defendants.

CIRCUIT COURT.

MONTREAL, November, 1883.

Before RAINVILLE, J.

THE VICTORIA MUTUAL FIRE INSURANCE COMPANY v. MULLIN.

Mutual Insurance Company—Insurance Act of 1877.

The action was brought to recover the amount of assessment due upon a premium note.