

hold of the Defendants—their rock and fortress of defence. We shall not, however, leave them to repose there in fancied security, because we have another individual to introduce to you, Mr. Teulon, who was also a creditor of Blanchard, and with whom Mr. Smith had an interview shortly after,—please to remark and remember, gentlemen, *after* his conversation with Mr. Vaughan. In answer to the eager enquiries of Smith whether Blanchard was not about to leave the Province, Mr. Teulon, who, he it remembered, gentlemen, was a creditor, who, having his suspicions excited, had seen Blanchard himself, had examined into his affairs, and made himself acquainted with his circumstances, his conduct and his designs—this very Mr. Teulon stated to Mr. Smith, that there was no reason to believe that Blanchard was about to leave the Province, but that the grounds and reasons were strong to the contrary opinion, and that if the Defendants would arrest him, they would expose themselves to an action of damages! This is not the opinion of an indifferent individual—it is that of a person looking out sharply for his own interests—it is an opinion from the mouth of a creditor, who will declare to you, that though his debts had been for some time due, he would not have considered himself justified in arresting the Plaintiff, because no grounds existed for such a step. An opinion thus expressed by such a person in such a relation towards the Plaintiff, ought most certainly to have been sufficient to have removed from Mr. Smith's mind the impressions he pretended to have received from Vaughan's communication. Upon any man not pre-determined to act as the Defendants in this cause have done, rashly and unjustifiably, the conversation with Teulon would have satisfactorily and conclusively wiped away the unwarrantable suspicions they entertained relative to the conduct of the Plaintiff.

There is another and a very strong view of the present case, to which I would most respectfully call the attention both of the Court and Jury,—and I would more particularly invite your attention to it, as it appears to me to have been too much overlooked during the whole progress of the present litigation. I have hitherto treated the claim of the Defendants against the Plaintiff as if it had been one of an ordinary nature and in the common course—as if it was a debt actually due. This, however, gentlemen, as you are aware, was not the case. The proceedings adopted by them were for the premature recovery of a debt, for which they had themselves granted a term of payment, of which term two and four months still remained unexpired. The general principle which governs the relations between creditor and debtor is, that no debtor can be called upon for the payment of a debt until the expiration of the term stipulated for the payment of that debt. The term granted is a part of the contract in favour of the debtor, which the creditor cannot be allowed to violate at will. The law has, however, made two exceptions in favour of the creditor—the one, in cases of mortgage upon lands; the other, in cases of the insolvency of the debtor. Within this latter exception it was necessary for the Defendants to bring Blanchard, in order to justify their proceedings against him; and not by detailing suspicions, opinions, and information, but by proving the substantial fact of *insolvency*. For the *proof* of this fact of insolvency, the mere information given by a third person, or by fifty persons, of an intention on the debtor's part to leave the Province, however positive in its nature, or credible in its character, is totally insufficient. The justification ceases to depend upon the information given, but must rest upon *proof of the fact*, springing from and communicated by, that information.

The Plaintiff then, gentlemen, sounds his present claim upon two distinct grounds, the former of which is, his arrest by the extraordinary process of *captias*, without information to justify the proceeding—and the latter ground is, the institution of an action against him for the recovery of a debt not then due. It must be apparent to you that should the Defendants even succeed in justifying themselves upon the first—should they fully prove that they did receive credible information to the effect alleged, such proof can in no degree affect this claim of the Plaintiff upon the second ground, namely, the institution of legal proceedings for the recovery of a debt not yet due. Of justification for their conduct in this respect the Defendants stand before you utterly destitute. With-