

regularity could not be thus contested; the only remedy was the petition under the Act, within the five days from the insolvency, to set aside the proceedings.

PAPINEAU, J., rejected the demurrer, holding that a creditor was entitled to contest the regularity of the proceedings, on the application for discharge, and if a party had never been a trader or entitled to the benefit of the Act, the Court would not grant him his discharge.

Demurrer dismissed.

Mercier, Beausoleil & Martineau, for the petitioner.

Church, Chapleau, Hall & Atwater, for creditor contesting.

SUPERIOR COURT.

MONTREAL, March 29, 1884.

Before TORRANCE, J.

PROSSER et vir v. CREIGHTON.

Action for malicious prosecution — Essential averments.

1. *It is not necessary, in an action for malicious criminal prosecution, to allege that the justices before whom the plaintiff was brought had jurisdiction.*
2. *It is, however, essential to aver that the prosecution complained of has been terminated.*
3. *Where the plaintiff in such case is a woman separated as to property, it is essential to state in what way she is separated, whether judicially or by ante-nuptial contract.*

This was an action of damages by a married woman separated as to property from, and authorized by her husband, John Napier Fulton, for malicious criminal prosecution. The defendant filed an exception *à la forme*, 1, because no intelligible cause of action was set forth in the declaration; 2, because it does not appear in the declaration how the female plaintiff is separated as to property, whether judicially or by ante-nuptial contract.

PER CURIAM. One of the objections of the defendant appears to be that no jurisdiction is shown by the declaration in the Court or justices before whom the charge was made. This is not material as it has been settled that an action may be supported for a mali-

cious prosecution of a defective indictment and case may be supported for a malicious arrest in a court having no jurisdiction, and therefore it seems not material to allege or show that the justices, &c., had competent authority. 2 Chitty, Pleading, p. 412, note (y), London, 1836.

But there is another objection to the declaration, which is fatal. It does not appear that the prosecution complained of has been terminated. 2 Chitty, p. 411. Also, *Baslé v. Matthews and wife*, 2 Common Pleas, 684, A.D. 1867. *Vide* authorities: Fisher's Digest vo. Malicious arrest, 5623-5; Termination of prosecution.

It is also a fatal objection that the separation as to property of the female plaintiff is not set forth with sufficient particularity. Defendant is entitled to know precisely with whom he is dealing, in order to know what his recourse in the future may be. 1 Pigeau, 64 of edition of 1787, says: "On ajoute à l'égard des femmes mariées une troisième chose, qui est que la loi ou leur contrat de mariage leur ait réservé valablement cet exercice, ou que la justice le leur ait rendu; autrement elles ne peuvent le diriger."

Exception maintained.

R. D. McGibbon, for plaintiffs.

Maclaren, for defendant.

GENERAL NOTES.

The new Speaker, says the *St. James' Gazette*, is 54 years of age. Sir Henry Brand, it may be observed, was 57 at the date of his elevation to the chair; so was Mr. Evelyn Denison. The veteran Lord Eversley, who last Friday completed his nineteenth year, had lived but 45 when the Commons of Her Majesty's first parliament chose him to preside over their debates. His immediate predecessor, Mr. Abercromby, had entered on his sixtieth year at the time of his election, being thus considerably older than the gentleman whom he virtually if not theoretically displaced. Sir Charles Manners Sutton had been called to the chair at the age of 37, and retired into private life at the age of 55. Mr. Speaker Abbott was 44 when he entered on his high functions; Sir John Mitford, 52; Addington, 32. The case of Addington is worth noting, for, though an incompetent minister, he was allowed by his opponents to have proved an excellent Speaker. Macaulay thought that if Addington had remained in the chair long enough he would have left a reputation equal to that of Onslow himself. Grenville, on whose resignation Addington was elected, was but 29 when he quitted the chair. The premier whose cabinet he entered was just 30; one of his colleagues, the First Lord of Admiralty, not 33. Arthur Onslow had the Speakership from his thirty-eighth to his seventy-first year. An octogenarian Speaker it would probably be impossible to find in the whole list.