but, apart from the antecedent improbability of the story, it happens all to be contradicted. Mr. Reid, one of appellant's own witnesses, proves that Mr. Shaw was so "troublesome about giving settlements according to contract, altering the contract some way or other," that MM. Damase Masson & Co. would not deal with him. From the mouths of defendant's witnesses we have the thing more explicitly. Mr. Osborne tells us that all plaintiff's transactions with him were unsatisfactory. Previous to the 19th July, 1878, Osborne would not have trusted him. In Osborne's absence he did get credit, and paid by note, which was protested. Osborne sent Fulton to get a settlement of the note in Toronto. Fulton saw Shaw, "who received him very cavalierly." This must have been about the 18th, for Fulton could not again see Shaw, who had started for England. Fulton did not get paid till the 20th or 21st. Now how did he stand at New York? Mr. McGregor tells us his credit was not good, that he was supposed to be involved "very heavily" in tea transactions that would entail an "enormous loss," he could not readily buy on credit, and some of his paper was overdue. In Boston, we might also infer that his business standing was pretty much as McGregor has described it was in New York; but the words are open to another interpretation, and therefore they should be passed over. In Montreal, Mr. Lightbound declined to give him either a good or bad character, but said that with him his credit was as good afterwards as before the issue of the writ. Mr. Thompson, of Montreal, had two transactions with Shaw, one of which was unsatisfactory. Not only there is no contradiction to this testimony, but Shaw scarcely ventures to cross-examine those who complain of his dealings with them. If the unsatisfactory nature of the transactions with Osborne and Thompson was due to them and not to him, he might have extracted from them something to show that the dispute differed in kind from that raised by the plea in the Toronto action brought by defendants. The audacity of Mr. Shaw in suing the creditors he had thus wronged by keeping them out of their money or what they could have used as money for nearly five months, for $50,000 damages is confirmatory of the testimony of those who have spoken as to his claims to high standing. I have only to add that we agree with the Court below in distinguishing this case from that of *Lapierre & Gagnon*. In that case the settlement of the debt implied a waiver of any claim for damages. No such waiver can be inferred from a payment made in order to allow the party to go at large.

The appeal is dismissed with costs.

Judgment confirmed, Dorion, C.J., and Cross, J., dissenting.

Trenholme, Maclaren & Taylor, for appellant.

Doutre, Branchaud & McCord, for respondents.

COURT OF REVIEW.

MONTREAL, NOV. 13, 1880.

SICOTTE, TORRANCE, JETTÉ, JJ.

MCNAMEE et al. v. JONES et al.

[From S. C., Montreal.

Capias — Petition to be discharged—Failure of defendant to explain suspicious circumstances.

On a petition for discharge from custody under C.C.P. 819, *if the defendant fails to explain circumstances which induce a strong suspicion of guilt, and which he might easily explain, if innocent, his omission furnishes a forcible inference against him.*

The judgment under Review was rendered by the Superior Court, Montreal, Papineau, J., granting defendant's petition to be liberated from capias.

The capias issued upon the affidavit of W. G. Turner, book-keeper of the plaintiffs, who alleged that the defendants were indebted to plaintiffs in a sum of $14,564, money feloniously stolen by defendants, James Jones and James Trainor, and others, from the plaintiffs,—that defendants had, shortly after the larceny, been arrested for the crime and committed for trial; that they had presented an application for habeas corpus, which was dismissed by the Court of Queen's Bench,—that subsequently the Crown had given a consent for the admission of the defendants to bail, and an order was being prepared for their liberation, &c.

PAPINEAU, J., granted the defendants' petition, "Attendu que les demandeurs n'ont pas de créance personnelle contre les défendeurs, requérants."

SICOTTE, J., differed from the judgment of the majority of the Court of Review on the following grounds:—

1o Le déposant Turner ne connait rien per-