

S. C.]

NOTES OF CASES.

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authorized him personally to exercise; that no power of substitution had been conferred, and therefore the indictment was improperly laid before the Grand Jury.

Appeal allowed.

J. Doutré, Q. C., for appellant.

C. P. Davidson, Q. C., for respondent.

SHAW V. MACKENZIE ET AL.

Capias—Damages—Want of probable and reasonable cause.

This was an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, affirming the judgment of the Superior Court by which the plaintiff's action was dismissed.

The plaintiff (present appellant) claimed damages from the respondent for the malicious issue and execution of a *capias* against him, the plaintiff, at Montreal, in July, 1878.

The defendants, on appeal, relied on a plea of justification, alleging that when they arrested the appellant, they acted with reasonable and probable cause. In his affidavit, the reasons given by the deponent Kenneth Mackenzie, one of the defendants, for his belief that the appellant was about to leave the Province of Canada were as follows:—"That Mr. Powis, the deponent's partner, was informed last night in Toronto by one Howard, a broker, that the said W. J. Shaw was leaving immediately the Dominion of Canada, to cross over the sea for Europe or parts unknown, and deponent was himself informed, this day, by James Reid, broker, of the said W. J. Shaw's departure for Europe and other places." The appellant Shaw was carrying on business as wholesale grocer at Toronto, and was leaving with his son for the Paris Exhibition, and there was evidence that he was in the habit of crossing almost every year, and that his banker and all his business friends knew he was only leaving for a trip; and there was no evidence that the deponent had been informed that appellant was leaving with *intent to defraud*. There was also evidence given by Mackenzie, that after the issue of the *capias*, but before its execution, the deponent asked plaintiff for the payment of what was due to him, and that plaintiff answered

him "that (Shaw) would not pay him, that he might get his money the best way he could."

Held, on appeal, that the affidavit was defective; the fact of a debtor, about to depart for England, refusing to make a settlement of an overdue debt, is not sufficient reasonable and probable cause for believing that the debtor is leaving with *intent to defraud his creditors*. Judgment reversed; \$500 damages awarded.

Maclaren, and Rose, for appellant.

Doutré, Q. C., for respondents.

Appeal allowed.

NEW BRUNSWICK CASES.

SNOWBALL V. STEWART.

Evidence—Misdirection.

This was an action brought by Mr. Stewart against Mr. Snowball, to recover a quantity of logs alleged to have been cut by parties named Sutherland and Kirwan, on lands held by plaintiff under license from the Government. On the trial, the admissions of these parties were admitted on the plaintiff's counsel undertaking to connect the defendant with these parties. This he failed to do, but called an agent of the plaintiff, to depose as to certain statements of Mr. Snowball. The Chief Justice withdrew the evidence of these admissions from the jury, and directed them that if they thought Snowball admitted he had the logs, the plaintiff was entitled to a verdict. The jury found a verdict for the plaintiff. A new trial was moved for on the grounds: 1. That the Chief Justice had no right to withdraw the objectionable evidence admitted by him from the jury. 2. That outside of these statements there was no evidence, and the learned Judge misdirected the jury on that point.

The Supreme Court of New Brunswick discharged the rule.

Held on appeal, that there was no evidence that the logs sought to be recovered had been cut on plaintiff's premises, and that while the Chief Justice had the right to withdraw the objectionable evidence from the jury, he had misdirected the jury as to the effect of the statements made by Snowball to plaintiff's agent.

Weldon, Q. C., for appellant.

Wetmore, Q. C., for respondent.

Appeal allowed.