for the damage to the vessel, which would be assessed at $120, with costs of the action brought.

Dorion & Dorion, for the Plaintiff.

Cartier, Pominville & Bétournay, for the Defendant.

SUPERIOR COURT—March 30.

STEVENSON *et al. v.* McOWAN.

Right of Capias concurrently with an assignment.

MONK, J. This was an application on the part of the defendant to be discharged from imprisonment under a *capias*. He was arrested on the 25th October last. He had been carrying on business in partnership with one Drummond, as shoe merchants. They took stock in April, 1866, by which it appeared that they had a large surplus over all their liabilities. They took stock again on the 9th September; made large purchases in October, and on the 25th of that month, after a desperate struggle, they found it necessary to suspend. They called a meeting of their creditors on the 25th. Drummond appeared at the meeting. It turned out that their liabilities had been gradually increasing, although there was no evidence of extraordinary losses. On 25th October, their liabilities amounted to $25,170, and their stock to about $10,000. At the meeting of the creditors Drummond could not give any satisfactory account of their affairs, and he declined to make an assignment till he had conferred with his partner, McOwan, who was his cousin, and appeared to have been most active in the management of the business. They did not seem to have had much money on beginning business. Drummond put in $2000, and McOwan $1000, which Drummond said he never saw anything of. After the meeting the plaintiffs thought it prudent to have McOwan arrested. The arrest was apparently made almost simultaneously with the deed of assignment which bore date the 25th October. The *capias* was was based on affidavit, and a motion was made before Mr. Justice Berthelot to quash the *capias* on the ground that the affidavit

was insufficient. The Judge was of opinion that the affidavit was fully sufficient in law; and although the allegations respecting the defendant's secretion of his property were chiefly matter of inference, yet upon the whole, the facts stated in the affidavit were of such a character, that no judge could quash the *capias* on the ground of insufficiency of allegation in the affidavit. The reasons assigned in the affidavit were mainly as follows: That McOwan had previously secreted his estate, debts and effects; that although a number of his creditors attended the meeting, yet McOwan had failed to attend, and kept out of the way. His partner, Mr. Drummond, attended, and failed to give any statements, that he represented the assets of their firm to be only $10,000, and their liabilities at over $27,000, although in the month of April preceding, the firm of John McOwan & Co., represented themselves to be worth over $14,000 of a surplus. That neither of the partners had shown what had become of their assets, although thereto requested, and they had refused to make any assignment for the benefit of their creditors. The affidavit was probably made before the assignment was completed. These allegations were substantially sustained and proved by the evidence. Upon this state of affairs, two questions arose: 1st. After a man has made an assignment of his estate, or simultaneously with the making of an assignment, can he be arrested for secreting his property previous to that time? It was argued for the defendant that the Insolvent Act of 1864 did away with the *capias* when once an assignment had been made. On the other side it was contended that there was no enactment expressly doing away with the remedy by *capias*, and in the absence of an express enactment, it still existed. It was stated that Mr. Justice Berthelot had decided that when once an assignment has been made, there is no right to *capias*. His Honour had consulted with his colleague and found that what he said was, that he did not see much use in the *capias* after the debtor had made an assignment, but he went no further than that. He (Mr. Justice Monk) thought the *capias* had not been done away with, more especially in a case like the present where