of *Hurtubise & Bourret* and this case have no resemblance whatever. In the former the question was as to the sufficiency of an affidavit for a capias; and we held that it was not sufficient to swear to the fact of the intention to depart, and the grounds for believing this intention to exist, together with the fact of the overdue debt, but that the affidavit must set forth the reasons for believing the intent to defraud besides, or, as Chief Justice Meredith, in a more recent case, has precisely expressed it, the fact that the debt is overdue is not evidence that the departure from the jurisdiction is with intent to defraud. What we are invited to decide in the present case is, that because the affidavit on which defendants took out the capias against the plaintiff is insufficient, therefore, the defendants are liable in damages. I take it this is not the doctrine of the law. *Milot & Chagnon*, 3 R. L. 454. To give it a little substance we have an argument put forth, which, to say the least of it, is novel in form. It is contended that when a suspicious fact is established, the deponent must enquire as to whether the suspicion can be removed. Now, let us leave all subtleties and see what the law does require to protect the party suing out extraordinary process from an action of damages. It requires "probable cause" and absence of malice. If there be not want of probable cause and malice combined no action of damages for false imprisonment will lie. I use the words of the English law because they have been commonly used here; and I fancy they have gained currency because they express in a striking manner the elements of the doctrine of the civil law. The governing doctrine I take to be, that there is no action of damages when the arresting party is in good faith, understanding good faith to exclude *faute grossière*. At any rate the English formulary has been distinctly recognized by the Legislature, Art. 796, C.C.P., and by this Court as expressing correctly the law, in the case of *Brown* v. *Gugy*. The second jury trial was on issues formulated by the judgment of this Court ordering a new trial; they were as to the existence of probable cause, malice, and amount of damages. We held the same doctrine in the case of a magistrate who had signed a warrant of arrest in Quebec in 1875, *Marois* v. *Bolduc*, in the case of *Beauchemin* v. *Valois*, and in *Ryan* v. *Laviolette*. Malice may be presumed, it is true, from want of probable cause (*Dennis & Glass*, Q.B., 17 L.C.R., p. 473), but where there is cause, even express malice will not render the party liable. *David* v. *Thomas*, Q.B., 1 L.C.J., p. 69.

Under these principles let us examine the evidence. It is now totally unimportant whether Howard or Reid told McKenzie that Shaw was going to leave the country, for the fact is admitted to be true, however McKenzie knew it. The next fact is that there was an overdue liability. This is fully proved by Reid, the broker who negotiated the transaction. He swears that the debt was due on the 25th of June, nearly a month before the arrest. This is confirmed by Turner, who also proves that the debt was not paid. The answer to this is that the account was disputed, and that an action was pending at Toronto in which Shaw denied that the debt was due. It is the first time I ever heard that it was an evidence of integrity to dispute the payment of an account that was due. It is frequently done by people otherwise respectable, but it is a fraud, nevertheless. But the non-payment of a commercial debt 23 days after it was due, and after demand of payment, is no complete measure of Mr. Shaw's delinquency in this matter. Mr. Greening was especially charged to wait upon Mr. Shaw in Toronto in order to obtain a settlement. This was in March or April. Mr. Shaw's answer, if not a lie, was at all events a prevarication. To set Greening off the track, he told him that he had sent a settlement. The settlement he sent was the 4 months note mentioned by Turner, a departure from the contract proved. In *Mills and Meier et al.*, 5 Q.L.R., p. 274, prevarication and unsatisfactory excuses were held to be some ground for an attachment. We have therefore fully proved—shuffling and prevarication as to the settlement, a fraudulent defence to the action at Toronto and departure. And yet we are coolly told that there is absence of probable cause, for it would have been easy for Mr. Powis, who was in Toronto, to find out that these were merely the eccentricities of a great land owner, of an opulent merchant of first-class standing, who could buy on credit as easily as other people could with cash. It seems to have been quite possible to get witnesses to swear to all this;