

SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

MARCHAND V. SNOWDON et al.

Capias—Probable cause.

The plaintiff was arrested on a capias, on the ground that he had refused to make any settlement of his debt; that he was about to sell his estate and to leave the country. It appeared that the plaintiff had called a meeting of his creditors and informed them of the proposed sale, to which the majority of those present agreed. Held, that there was not probable cause.

This was an action of damages for maliciously causing the arrest of plaintiff for a debt due by him of \$200. The capias issued on the 11th November, 1881, on the affidavit of one Cleghorn, the book-keeper of defendants. He deposed that he had reason to believe and did believe that plaintiff was immediately about to leave the late Province of Canada, with intent to defraud his creditors, and his reasons for the belief were that plaintiff had informed him that he was about to sell his estate and effects and to take up his abode in Montana, in the United States. The plaintiff was arrested on the 11th November, 1881, contested the capias, and it was quashed on the 8th February, 1882.

PER CURIAM. The evidence shows that plaintiff being in a strait, notified his creditors, and met them on the morning of the 11th November, and after explaining matters to the creditors, proposed selling his stock to one Desjardins. This was agreed to by those present. One Poitras attended the meeting for defendants, though he did not express any opinion, and says in his deposition that his principals, the defendants, expressly forbade his consenting to anything for them. Plaintiff gave his creditors to understand that he would go to the States in January. It appears that Poitras reported the meeting to the defendants and plaintiff's intention to leave in January. Defendants immediately directed their book-keeper Cleghorn to have the plaintiff arrested as a debtor on the eve of absconding. Cleghorn, examined as a witness in the capias suit, says,

from plaintiff never having stated that he would settle his account, and never having made any set time at which he was to settle, and from his conversation to the effect that he was going to leave the country, and from information that Cleghorn had, his assets would not cover his liabilities. These were the reasons for making the affidavit. Q. Are you quite sure that the petitioner (plaintiff) did not state the time at which he intended leaving this country to go to Montana? A. I know he did not state it to me. Q. Nor did he state it to any other of your informants to your knowledge? A. That I cannot state. Q. Well, they did not state to you that he had stated to them the time at which he was leaving? A. No. They did not state anything of the kind to me.

The conclusion of the Court is that the affidavit was made without probable cause for the arrest, and defendants, therefore, are liable in damages. These are assessed at the sum of \$200.

T. & C. C. Delorimier, for plaintiff.

H. L. Snowdon for defendants.

J. L. Morris, Counsel.

SUPERIOR COURT.

MONTREAL, January 31, 1884.

Before JETTE, J.

GAUTHIER V. ST. PIERRE.

Professional Privilege—Words spoken by counsel during trial.

No action lies against an advocate for words spoken by him in the discharge of his professional duty before the Court, unless the words complained of are foreign to the case in which he is at the time engaged.

On the 6th October, 1882, the defendant Mr. St. Pierre, a member of the Montreal Bar, was engaged before the Recorder in the defence of a woman charged with keeping a house of ill-fame. Gauthier, the plaintiff, was the principal witness for the prosecution. Before the trial came on Mr. St. Pierre was informed that Gauthier was circulating a statement to the effect that the accused had admitted her guilt to him. Entertaining some doubt as to the correctness of this state-