

demand is for about 76 days from 11 Oct., 1879, to the date of the institution of the action. The Court assesses these damages at \$250, for which judgment goes against the City and *en garantie* against Latour & Co.

*Lacoste, Globensky & Bisailon*, for the plaintiff.

*R. Roy, Q.C.*, for the city.

*Champagne & Nantel*, for the defendants *en garantie*.

#### SUPERIOR COURT.

MONTREAL, June 28, 1881.

*Before* TORRANCE, J.

FULLER v. FARQUHAR et al., and STEWART, JR.,  
*mis en cause.*

*Insolvent surety—Supplementary list of creditors.*

PER CURIAM. This was a rule against Robert Stewart, Jr., for coercive imprisonment. He had been condemned to pay Fuller the sum of \$434.94, with interest and costs, as security for one Henry Parker, under a bond in appeal. Stewart answered the rule by pleading that on the 6th July, 1877, he had been put into insolvency under the Insolvent Act of 1875, and had included the claim of Parker among his liabilities under a supplementary statement of date 17th April, 1879. Stewart cited s. 61 of the Insolvent Act, but it does not cover his case. In the first place, he has had no confirmation of discharge from debts; and secondly, the supplementary list of creditors was not furnished in time to allow of his creditor obtaining the same dividend as other creditors. Other matters of form were urged against the imprisonment by Stewart, but it is unnecessary to refer to them. Stewart remains liable to imprisonment as a judicial surety, and the rule should be declared absolute.

*Maclaren & Leet*, for plaintiff.

*R. A. Ramsay*, for Stewart.

#### SUPERIOR COURT.

MONTREAL, June 28, 1881.

*Before* TORRANCE, J.

GADBOIS v. LAFORCE et al.

*Malicious Prosecution—Compensation of damages.*

This was an action of damages by which plaintiff seeks compensation for the loss of a valuable horse, and for an alleged malicious criminal prosecution. The defendants had a

judgment against Gadbois for \$71, and took in execution the horse in question, and subsequently abandoned the execution and lodged a seizure in the hands of the guardian, and under this seizure the horse was sold for the sum of \$87. Gadbois alleged that the horse was worth \$300 to \$400, and that defendants had agreed with him to buy the horse for \$150 cash, and to discharge the judgment; that they had broken this agreement, and wrongfully deprived him of the horse by deceit and treachery and abuse of the process of the court. As to the criminal prosecution, it arose out of the charge of conspiracy made by defendants, that Gadbois had by an opposition obstructed their proceedings. The defendants answered the charge as to the sale of the horse, that they had only used the ordinary process of the court, in order to obtain payment of the judgment, and they denied the alleged agreement to purchase the horse on the terms stated by plaintiff. As to the criminal prosecution there was, they said, reasonable and probable cause for it, and at any rate Gadbois in June, 1876, had instigated a criminal prosecution against them, and they had thereby suffered damages more than compensating any damages which Gadbois could pretend to claim from them.

PER CURIAM. The record is a bulky one, the action having begun in March, 1877, and 37 witnesses have been examined, during a period extending over near four years. I would say here what I have said before, that it is to be regretted that the enquéte should have occupied so long a time as nearly four years. Coming to the facts, I see no legal proof of the agreement to discharge the judgment by private sale of the horse. The matter involved more than \$50 and could not be proved by verbal testimony. At any rate, the evidence is quite contradictory, for the evidence for the defence is directly opposed to that for the demand. Then, as to the accusation that the defendants abused the process of the Court, it is not proved. They used the remedies provided by law, and Gadbois could have avoided their operation by simply paying the debt. As to the malicious criminal prosecution charged against the defendants, the evidence on this head is quite unsatisfactory, as there is no documentary evidence of the prosecution. There is not produced any copy of the complaint and warrant