

Quebec, Nov. 12, 1880, (See 3 Legal News, p. 369), affirming the judgment of the Superior Court, (See 2 Legal News, p. 5), 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 he (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. Art. 798 C.P.C. Judgment reversed; \$500 damages awarded.

Appeal allowed.

Maclaren, and Rose, for Appellant.

Doutre, Q.C., for Respondents.

ABRAHAMS, Appellant, v. THE QUEEN, Respondent.

Indictment—Delegation of authority by Attorney General—32 § 33 Vic. cap. 29, sec. 28.—Obtaining money by false pretences.

This was an appeal from a judgment of the Court of Queen's Bench, Montreal, (see 4 Legal News, p. 41; 24 L.C.J., p. 325).

The indictment contained four counts for obtaining money by false pretences.

On the indictment was endorsed: "I direct that this indictment be laid before the Grand Jury."

Montreal, 6th October, 1880.

L. O. LORANGER,

Atty. General.

"By J. A. Mousseau, Q. C.

"C. P. Davidson, Q. C."

Defendant moved to quash the indictment. The motion was supported by affidavit, and the learned Chief Justice rejected it, intimating at the time that as he had some doubts, he would reserve the case, should the defendant be convicted. The defendant was found guilty, and the following questions *inter alia* were submitted for the consideration of the Court of Queen's Bench:

1. Whether the Attorney General could delegate his authority, to direct that the indictment in this case be laid before the Grand Jury, and whether the direction as given on the indictment, was sufficient to authorise the Grand Jury to enquire into the charges and report a true Bill.

2. Whether if the indictment was improperly laid before the Grand Jury it should have been quashed on the motion made by the defendant?

It was admitted that the Attorney General gave no direction with reference to this indictment, and that the gentlemen who put the endorsement on the indictment, did so merely because they were representing the Crown at the current term of the Queen's Bench under a general authority to conduct the Crown business at such term, but without any special authority over, or any directions from the Attorney General in reference to this particular indictment.

Held, on appeal, that under 32 and 33 Vic., c. 29, sec. 28, the Attorney General has no authority to delegate to the judgment and discre-