

the Superior Court, Montreal, Rainville, J., Jan. 15, 1881.

JOHNSON, J. We are asked by the plaintiff to review a judgment ordering the liberation of the defendant who was held under a *capias*. The insufficiency of the affidavit was made the subject of a petition, and what the defendant objected to was substantially that it did not allege the sequestration to have taken place since the indebtedness. It said that in February, 1879, there had been a conversation between the parties, and that since that time the defendant has sequestered. The debt was contracted some months after that. Therefore, it is not expressly said that there was a debt at the moment of sequestration. The affidavit is wanting in precision, and is therefore technically deficient. The judge who heard the case granted the petition, and subsequently suspended the discharge because this review was taken. The affidavit may, perhaps, be construed to mean all that the law requires; but we think where a party has been liberated, or at least the principle of his liberation has been already granted, we should not, as it were, send him back by resorting to construction; but rather take the strict view of the law, and maintain the judgment. We therefore order his discharge now.

Judgment confirmed.

Macmaster & Co. for plaintiff.

Davidson, Monk & Cross for defendant.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

TORRANCE, RAINVILLE, LAFRAMBOISE, JJ.

[From S. C., Montreal.

STAFFORD et al., insolvents, JOSEPH, claimant, and SMITH et al., contesting.

Insolvent estate—Landlord's claim for unexpired lease—Estimate of value where right to terminate lease was stipulated in favor of the lessee.

The judgment under Review was rendered by the Superior Court, Montreal, Mackay, J., July 7, 1880.

TORRANCE, J. This was an appeal from a judgment settling the amount of the claim of a landlord against the insolvent estate of his tenants. Two points were especially complained of by the landlord. 1. That the judgment only

allowed him \$800 damages for unexpired lease, in place of \$4,500 for six years claimed by him. The evidence shows that the lease gave the tenants the right to terminate the lease on the 1st day of May, 1880, by giving six months' previous notice. The insolvency took place in 1879, and the lease was terminated by the creditors on the 1st of May, 1879, from which time the landlord recovered possession, and the Court, considering the fact that the lease might have terminated on the 1st of May, 1880, has only allowed one year's damages, namely, \$800. We do not see error in this estimate of damages.

2. The other point to which attention has been called by the claimant is that the judgment orders the claimant to tender back to the assignee an iron staircase at such place in the city as the assignee might in eight days indicate. The reason of this order was that the claimant objected to the assignee removing the staircase in the previous year, on the ground that the tenant had the use of it and could not be disturbed. We see nothing unreasonable in this order, and on the whole we confirm the judgment. The apportionment of costs is also complained of, but we think as to costs that the discretion of the Court was reasonably exercised.

LAFRAMBOISE, J., differed from the majority.

Judgment confirmed.

C. S. Burroughs for claimant.

Davidson, Monk & Cross for contestants.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

SICOTTE, RAINVILLE, JETTÉ, JJ.

[From S. C., Montreal.

EVANS v. FRASER.

Libel in way of Profession—Damages.

The judgment under Review was rendered by the Superior Court, Montreal, Johnson, J., May 31, 1880, as follows:

When this case was submitted the other day there was a motion made to reopen the defendant's enquête with a view of establishing omissions in the accounts of the estate Fraser. There are affidavits on both sides; and I think the affidavit produced on the plaintiff's behalf is conclusive against granting the application. I need not indeed go so far as that; for it is no