NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, April 30, 1880.

SICOTTE, JOHNSON, RAINVILLE, JJ.

PAULET v. ANTAYA.

[From S. C., Richelieu.

Capias—Departure for a foreign country—Intent to defraud—A debtor is not liable to be arrested on capias for intended departure to a foreign country without paying his debt, unless the circumstances be such as to make him chargeable with intent to defraud.

JOHNSON, J. In this case the judgment of Mr. Justice Gill quashed a *capias*, and the plaintiff inscribes it for review. We are unanimously for confirming it. The judgment proceeded both on the insufficiency and on the untruth of the affidavit. As to the first ground, we say nothing about it, because the parties did not say anything about it; but as to the second ground, the untruth of the fact alleged in the affidavit, as far as concerns the intent to defraud, we entertain no doubt whatever that there was no such intent, and we hold that such intent is a prerequisite to the writ. I called the attention of the counsel at the argument to the case of *Henderson* v. *Duggan*, 5 Quebec Law Rep., p. 364, in which the history of the question and the difference between the old law of the 25 Geo. III, and the new law 12 Vict., c. 41, are clearly stated by Chief Justice Meredith. The old law kept the debtor in the jurisdiction, even where there was no intent to defraud: the new law, *for the first time*, made it necessary that there should be such an intent. Therefore, applying that rule, which is so well elucidated by the learned Chief Justice in the case of *Henderson* v. *Duggan*, we can have no hesitation about the fact itself; for if ever there was a case of abject poverty and misfortune, coupled with every effort honestly to pay, it is the present case. We say there was no intent to defraud, and we confirm the judgment with costs.

D. Z. Gauthier for plaintiff.

G. I. Barthe and *Longpré & Co.* for defendant.

JOHNSON, JETTÉ, LAFRAMBOISE, JJ.

CALLAGHAN v. VINCENT.

[From S. C., Montreal.

Assault—Conviction a bar to any other proceedings.

*A conviction for assault may be pleaded in bar to any other proceedings, civil or criminal, for the same cause.**

JOHNSON, J. The action was for damages for an assault. The defendant pleaded that he had been greatly provoked by the plaintiff's son, and that they, between them, had committed the first assault on him, and had had him arrested and taken before the Recorder, where he pleaded guilty of simple assault, and expressed his regret, and was fined $2.50 and costs; after which he had his turn and proceeded against the plaintiff and his son at Special Sessions, and for the first assault they had made upon him, he got them fined $15. Then the plaintiff, having had to pay $15 for his share of this row, and having got his nose broken, comes into the Court below and asks for damages—and he got there $15 damages. The defendant now brings the case here; and we must say that if we look at the merits, we do not think the judgment below is wrong. It is evident that the principle upon which the Court proceeded was the same as that adopted by the Recorder and the Magistrate, viz., that the first assault, though committed by the plaintiffs, being over, and a thing of the past, the defendant, after full time for reflection, came back and struck the plaintiff deliberately, an offence not affected, in a legal point of view, by the fact that the plaintiff had some time before that chucked bits of wood at the defendant, one of which had struck him.

We find ourselves compelled, however, to take a different view of the position of the parties, and upon a different ground. The conviction before the Recorder was for assault. There is no doubt this is a bar to a civil action, but the defendant's plea is confused; it recites what took place, however, and the submission and payment of the fine are proved, so that in law the plaintiff has no action. The Court below may easily have overlooked this, for the plea sets up what would appear more like a reconciliation than a plea in bar. Still, the facts are there sufficiently to show that the action does not exist. There is a case in point: *Marchessault* v. *Grégoire* (before Johnson, Torrance and Beaudry, JJ., 31st May, 1873, 4 R. L. 541).

* See 32-33 Vic. c. 20, s. 45; *Simard* v. *Marsan*, 2 L. N. 333.