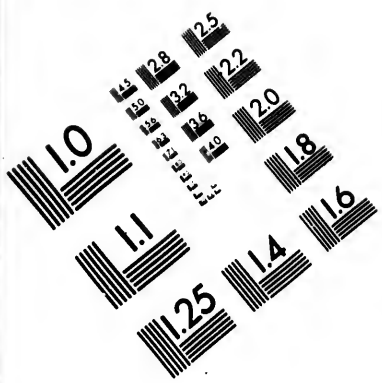

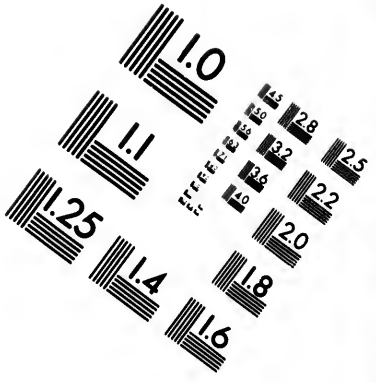

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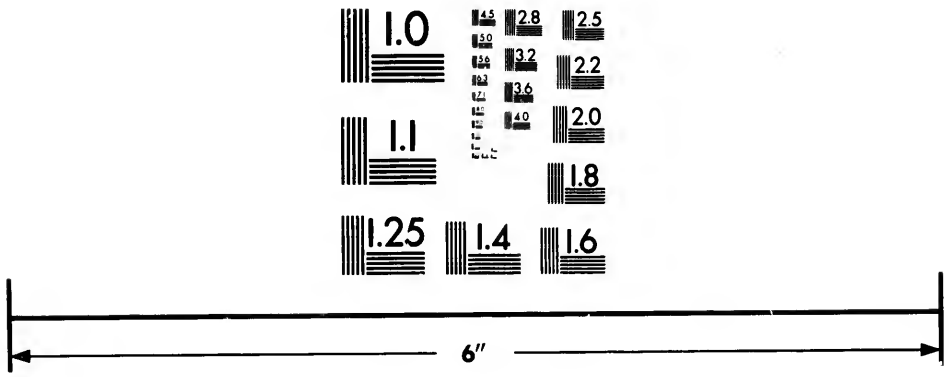

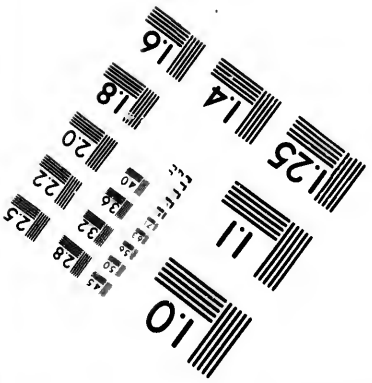

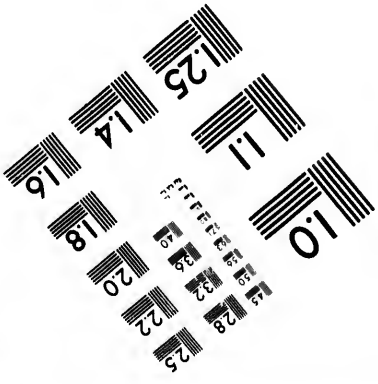

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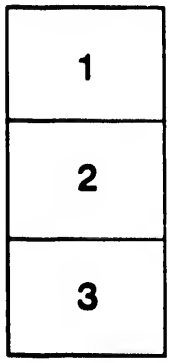

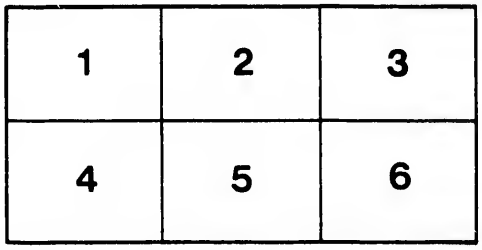

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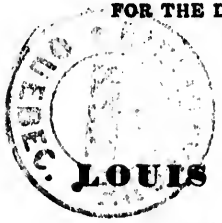
REPORT

OF A

CASE TRIED IN THE COURT OF KING'S BENCH,

FOR THE DISTRICT OF MONTREAL;



WHEREIN

LOUIS BLANCHARD

WAS THE PLAINTIFF

AND

THOMAS M. SMITH AND ANOTHER,

WERE DEFENDANTS,

ON THURSDAY, OCTOBER 3, 1833,

AND TWO FOLLOWING DAYS.

MONTREAL:
PRINTED AND PUBLISHED BY ANDREW H. ARMOUR & CO.
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1833.

REPORT.

DISTRICT OF MONTREAL, PROVINCE OF LOWER CANADA. } IN THE KING'S BENCH,

Thursday, October 8, 1833.

Present.—His Honor the CHIEF JUSTICE,
Mr. Justice ROLLAND.

THE case of "LOUIS BLANCHARD against THOMAS MITCHELL SMITH and CHARLES LINDSAY," having been called, Mr. DAY and Messrs. CHERRIER & LABERGE, appeared as Counsel for the Plaintiff; and Mr. WALKER and Mr. LAFONTAINE for the Defendants. Messrs. JONES and SEXTON were the Defendant's Attornies.

The following persons were called as Jurors:—

Louis Duchantal,	Henry Dow,
Robert Wilson,	François Derome,
Charles M'Donald,	George Harrison,
Louis St. Denis,	Isaac Johnson,
André St. Denis,	John Wells,
Henry Stem,	Augustin Perrault.

The Jury having been sworn—

Mr. DAY addressed the Court and Jury, for the Plaintiff, as follows:—

May it please the Court,
Gentlemen of the Jury,

For the third time, gentlemen, and to a third Jury, it has become my duty to urge the pretensions of the Plaintiff in this cause, and to expose the grounds upon which these pretensions rest. If in the performance of this duty, the circumstances, upon which the Plaintiff chiefly relies for success, shall not appear to you to be characterized by that strength and conclusiveness which, upon the two former trials, they have been declared to possess, you will considerately bear in mind, that a tale oft repeated must necessarily lose its interest in the mind of the narrator, and that to me the subject of the present litigation has been deprived of the greatest of its charms, the charm of novelty; and you will not suffer the wrongs of the Plaintiff to call in vain at your hands for redress, from any want of energy in me, or from my incompetency in pressing them upon your notice.

The matter, gentlemen, upon which your decision is now called for, is a claim by Louis Blanchard, formerly a trader of this city, against Messrs. Smith & Lindsay the Defendants, merchants of this city, and gentlemen of respectability and standing in society, and of reputed wealth—as a recompense and in compensation for the damages suffered by him in consequence of an unfounded and malicious prosecution and arrest issued at the instance of these gentlemen, the Defendants. In order, gentlemen, to put you fully in possession of the facts from which the present contest has originated, it will be necessary to carry back your attention to a period as remote as the months of November and December

1829, and I have to crave your attention to the facts, as I shall successively detail them to you.

In the month of November, 1829, the Plaintiff, Mr. Blanchard, purchased of Messrs. Smith & Lindsay, the Defendants, a large quantity of hats of the value of £347, in payment of which he gave them two promissory notes payable in two and six months—the one becoming due in April 1830, and the other in the June following. About a fortnight after his purchase from Smith & Lindsay, the Plaintiff, Blanchard, sold one half of the hats purchased by him to Mr. Stanley Bagg, a merchant of this city, for the same price which he himself had given for them to Smith & Lindsay; and you will observe, gentlemen, that by this transaction, Blanchard paid off a debt of £78 due by him to Bagg, and received that person's note for the balance of about £95, payable at the same periods at which his notes to Smith & Lindsay would become due. About the 29th of December, a month or five weeks from the original purchase of the hats in question, Blanchard sold out his entire stock in trade to one Daniel Bridge, (then a merchant hatter of good credit in this city,) including a considerable quantity of old stock and the new hats from Smith & Lindsay, which he had on hand. The new hats constituted about one-third of Blanchard's entire stock in trade, and they were sold at the same price which he paid for them. The old stock sold well in consequence of being brought forward in connection with the new, and the sale appears to have been of a highly advantageous nature The entire amount of the sale to Bridge was £460, for which Bridge granted his promissory notes payable at three, four, five, six, seven, eight, nine, ten and eleven months; a considerable portion of which was indorsed with names of respectability and credit, and this portion was made payable at periods which would have enabled Blanchard to make good his payments to Smith and Lindsay.

Such, gentlemen, was the posture of my client's affairs on the 29th of January, 1830. He had disposed advantageously of his purchases from the Defendants—he had approved securities ready and available to make good his first payment to the Defendants, and could look with confidence to a punctual discharge of his remaining obligations. On the 29th of January, 1830, however, Mr. Smith, one of the Defendants, thought proper to make an affidavit *that he was credibly informed, and did verily and in his conscience believe that Blanchard intended to leave this Province of Lower Canada, whereby they the Defendants would be deprived of their remedy against him;* and upon this affidavit they sued out a writ of *capias ad respondendum* for the amount of the notes granted by Blanchard to them, and neither of which was then due, or within half the time of being due.

On this process the Plaintiff was arrested, and lodged in the Common Gaol of this city, where he remained in confinement for a fortnight—when he procured his liberation by putting into the hands of those who were induced to come forward as bail, every sixpence he possessed, to indemnify them against any possible loss or injury they might sustain by their interference in his behalf.

In the pleadings filed by the Defendants—declaring the grounds upon which they sought to establish a right to arrest Blanchard, and receive from him the amount of his notes, notwithstanding that they had not yet arrived at maturity—it is admitted by them that the notes would not in the ordinary course become due until the months of April and June following. But the Defendants alleged that they were entitled to claim *immediate* payment, because Blanchard was immediately *about to abscond.* Upon this pretended absconding, they seem to have placed their whole reliance, as no other act of *insolvency* was alleged. After hearing the evidence on this point, it will be for the consideration of the Jury whether any such intention did, or was likely to exist in the Plaintiff's mind.

The Defendants in support of their pretensions endeavour to establish in evidence certain communications which they alledged that they had received relative to a design on Blanchard's part to leave the Province, and to throw over the two sales from Blanchard to Bagg, and afterwards to Bridge, such a complexion as might justify a suspicion that Blanchard's intentions were to defraud them of their debt. With regard to the latter of these attempts it completely failed, as

the sales in question were (as has already been intimated to you) not only destitute of any circumstances tending to invest them with a suspicious character, but were (in the progress of the evidence adduced in the Plaintiff's original action) satisfactorily proved to be of a nature highly advantageous to the Plaintiff Blanchard; to have been open and unconcealed, and by no means inconsistent with the ordinary course of dealing. The other position adopted by the Defendants to justify them in their proceedings was not much, if at all, more tenable. The information relied upon is alledged to have been received from two individuals at that time resident in this city—one of these individuals is Mr. Luman Vaughan, and Mr. Peter Teulon is the other. It is pretended by the Defendant Smith that he derived information from Mr. Vaughan to the effect that he would not have trusted Blanchard six months before the period in question, and that he had sold out his stock in trade to Bridge. From Teulon was obtained the additional information that Blanchard owed him a note of some five and twenty pounds, which had been for some time due, and still remained unpaid. These were the communications upon which the Defendants in this cause acted; this was the entire information which they received or pretended to have received; this is what Mr. Smith calls being *credibly informed* that Blanchard was immediately about to depart from the Province—and upon these grounds, unsubstantial and unfounded as they were, he did not hesitate under the solemn responsibility of an oath to declare, that he *verily and in his conscience* believed that Blanchard was immediately about to depart from the Province! How he can justify this oath to his *conscience* it devolves not upon us to enquire. But how he can justify it to the laws of his country is a question which you, gentlemen, with the sanction of the Court, are called upon this day to decide.

It is worthy of remark, gentlemen, (though now, perhaps, from circumstances that have since transpired, it is of no great moment,) yet still it is worthy of notice, that the communications above alluded to, scanty as they are, were not given to us from the mouths of Messrs. Vaughan and Teulon, though both these gentlemen were then resident in Montreal, but were detailed at second hand by Mr. William Suter and Mr. George Proctor, two clerks in the employ of Messrs. Smith & Lindsay—thus presenting, through the suspicious medium of two individuals subordinate to the defendants, and dependent upon them for daily subsistence, that evidence which the Defendants were bound to furnish from an original source—a source from which, if consistent with truth, it might have been obtained with perfect facility.

Without dwelling upon the minor and collateral points upon which the Defendants vainly sought to rest their desperate cause, (which they commenced by the writ of *capias* on the 29th January, 1830,) we come at once to its termination on the 2d of April, 1831, when, by the solemn judgment of this Court, it was finally dismissed with costs. Thus testifying the opinion of this tribunal as to the precipitancy and illegality of Mr. Smith's proceedings.

In consequence, gentlemen, of the measures thus rashly and unjustifiably adopted by Messrs. Smith & Lindsay, the present action for damages was instituted in the term of June, 1831. The declaration filed by the Plaintiff sets forth in the usual terms, the making of the affidavit by Mr. Smith; the suing out of the writ of *Capias* consequent thereon; the subsequent admission to bail, and the final determination of the suit. These facts will be proved by the production of the record of the former cause. The Plaintiff also alledges that all these proceedings were malicious, and lays his damages at £5000. Upon this declaration, the Defendants have joined issue by a general denegation.

The first and most important matter that presents itself for the consideration of the Jury, and as necessary for the maintenance of the present suit, is the *malice of the Defendants* in the proceedings adopted by them. The law, gentlemen, in its contemplation of the kind of *malice* necessary to be established in actions of the nature of that now in discussion before you, does not require the manifestation of any positive malignancy or vindictiveness of feeling. The want of a *probable cause* to justify the proceedings adopted, affords a sufficient presumption that the party complained of acted from a *malicious motive*. It is upon the malice as presumed by law from the want of a probable cause that the

Plaintiff chiefly relies; though circumstances are not wanting in the present case which thoroughly indicate on the part of the Defendants an active and bitter feeling of hostility towards the Plaintiff. As an instance of this I might call to your attention the fact of the Defendants having issued an execution upon a judgment obtained by them against the Plaintiff subsequent to the suit of which we complain; and having caused the miserable furniture of his bedroom, all that he possessed in the world, to be publicly sold by the Bailiff. We may perhaps be told, gentlemen, that they had a right by *law* to do so—that the *law* entitled them to enter the bedroom of the Plaintiff, and to strip him of the scanty necessaries of life—that the *law* authorized them to make known to the public the destitute condition to which they had reduced my Client—that the *law* permitted them to derive enjoyment from his wounded feelings. Be it so—they exerted their prerogative to the very utmost, and left no doubt as to the feeling that impelled them. There cannot be a question as to the motive that influenced them in rigorously availing themselves of their strict legal rights. Was it to obtain the paltry pittance of *nine pounds*, the sum for which the property of the Plaintiff was sold?—or was it to gratify their vindictive feelings, their appetite for persecution against this unfortunate debtor? Whether does the proceeding look more like a just and fair assertion of their rights, or a cold-hearted perversion of those laws which they invoke into instruments of cruelty and oppression? These questions, gentlemen, you will answer to yourselves—I leave you sufficient circumstances from which to draw your own conclusion.

We return to the want of probable cause. In this case, as in the former one from whence it has arisen, the chief reliance of the Defendants for justification, or, what is the same thing, for shewing a probable cause for their proceedings, must rest upon the information received by them from Vaughan and Teulon. We have already adverted to the testimony of these gentlemen—the former of whom was personally brought forward by the Defendants, not upon the first trial, but upon that immediately preceding the present one—and whose examination (under a commission issued for that purpose,) will be produced to you on the present occasion. The evidence of Vaughan, as given by himself, does not materially differ from what I have already stated it to be. The only information—credible information we will call it for the sake of the Defendants—which he gave to Mr. Smith, was, that Blanchard's credit was bad, and that he had sold out his stock in trade to Bridge. To this he volunteered, it is true, the expression of an opinion, avowedly derived from these circumstances and these alone, that Blanchard was about to quit the Province to defraud his creditors. I beg leave, gentlemen, to call your attention to this point, as material to the correct appreciation of the merits of the case. For the expression of an opinion upon facts equally in the possession of both parties, was not, nor can it in any case be considered as, *credible information*. It was no information at all. It was a far-fetched and absurd conclusion from premises totally insufficient to warrant it—an arbitrary deduction—an inapplicable inference. Vaughan himself states, in answer to one of the Plaintiff's questions, that he did not tell Mr. Smith, *as a fact*, that Blanchard was going to leave the province, but that he only communicated to him the circumstance already alluded to, and then stated his opinion,—an opinion with which, no doubt, the self-interest of Mr. Smith greedily fell in. So implicit, in fact, seems to have been this gentleman's confidence in Mr. Vaughan's reasoning powers, that I dare to say, that had Mr. Vaughan stated, as the grounds of his opinion, that Blanchard had sold £10 worth of hats in one day, and had gone home to dinner at three instead of four o'clock, Mr. Smith would not have hesitated in at once adopting the same conclusions, swearing that he had been credibly informed and had every reason to believe, that his debtor was immediately about to leave the Province. We must say that the logic of Mr. Smith, whether derived from his own mind, or gathered from the reasoning faculties of Mr. Vaughan, was, to say the least of it, very bad, and akin to the *reductio in absurdum* of the schoolmen; and the consequences of such blind, eager, and headlong credulity, wherever they may fall, at all events ought not to rest upon the head of my unfortunate client. This testimony of Mr. Vaughan, gentlemen, is the strong-

hold of the Defendants—their rock and fortress of defence. We shall not, however, leave them to repose there in fancied security, because we have another individual to introduce to you, Mr. Teulon, who was also a creditor of Blanchard, and with whom Mr. Smith had an interview shortly after,—please to remark and remember, gentlemen, *after* his conversation with Mr. Vaughan. In answer to the eager enquiries of Smith whether Blanchard was not about to leave the Province, Mr. Teulon, who, be it remembered, gentlemen, was a creditor, who, having his suspicions excited, had seen Blanchard himself, had examined into his affairs, and made himself acquainted with his circumstances, his conduct and his designs—this very Mr. Teulon stated to Mr. Smith, that there was no reason to believe that Blanchard was about to leave the Province, but that the grounds and reasons were strong to the contrary opinion, and that if the Defendants would arrest him, they would expose themselves to an action of damages! This is not the opinion of an indifferent individual—it is that of a person looking out sharply for his own interests—it is an opinion from the mouth of a creditor, who will declare to you, that though his debts had been for some time due, he would not have considered himself justified in arresting the Plaintiff, because no grounds existed for such a step. An opinion thus expressed by such a person in such a relation towards the Plaintiff, ought most certainly to have been sufficient to have removed from Mr. Smith's mind the impressions he pretended to have received from Vaughan's communication. Upon any man not pre-determined to act as the Defendants in this cause have done, rashly and unjustifiably, the conversation with Teulon would have satisfactorily and conclusively wiped away the unwarrantable suspicions they entertained relative to the conduct of the Plaintiff.

There is another and a very strong view of the present case, to which I would most respectfully call the attention both of the Court and Jury,—and I would more particularly invite your attention to it, as it appears to me to have been too much overlooked during the whole progress of the present litigation. I have hitherto treated the claim of the Defendants against the Plaintiff as if it had been one of an ordinary nature and in the common course—as if it was a debt actually due. This, however, gentlemen, as you are aware, was not the case. The proceedings adopted by them were for the premature recovery of a debt, for which they had themselves granted a term of payment, of which term two and four months still remained unexpired. The general principle which governs the relations between creditor and debtor is, that no debtor can be called upon for the payment of a debt until the expiration of the term stipulated for the payment of that debt. The term granted is a part of the contract in favour of the debtor, which the creditor cannot be allowed to violate at will. The law has, however, made two exceptions in favour of the creditor—the one, in cases of mortgage upon lands; the other, in cases of the insolvency of the debtor. Within this latter exception it was necessary for the Defendants to bring Blanchard, in order to justify their proceedings against him; and not by detailing suspicions, opinions, and information, but by proving the substantial fact of *insolvency*. For the *proof* of this fact of insolvency, the mere information given by a third person, or by fifty persons, of an intention on the debtor's part to leave the Province, however positive in its nature, or credible in its character, is totally insufficient. The justification ceases to depend upon the information given, but must rest upon *proof of the fact*, springing from and communicated by, that information.

The Plaintiff then, gentlemen, founds his present claim upon two distinct grounds, the former of which is, his arrest by the extraordinary process of *capias*, without information to justify the proceeding—and the latter ground is, the institution of an action against him for the recovery of a debt not then due. It must be apparent to you that should the Defendants even succeed in justifying themselvee upon the first—should they fully prove that they did receive credible information to the effect alleged, such proof can in no degree affect this claim of the Plaintiff upon the second ground, namely, the institution of legal proceedings for the recovery of a debt not yet due. Of justification for their conduct in this respect the Defendants stand before you utterly destitute. With-

out dwelling longer, gentlemen, upon this branch of the case, I will merely mention that the solvency of the Plaintiff will be fully established, and that you will hear from the mouths of several respectable witnesses, conversant with the affairs of the Plaintiff, that had he been left unmolested by the Defendants, he would undoubtedly have made good his engagements towards them.

We now come, gentlemen, to the important question of damages. The money demanded is £5000. I am well aware of the difficulty which a jury must necessarily experience in coming to a decision upon the amount of damages to be awarded in reparation of personal wrongs. In the present instance, however, I am enabled to facilitate you in the execution of this part of your duty, by laying before you certain important facts connected with the case, which, to a considerable extent, will afford you a criterion in making your estimate.

The Plaintiff, when he found himself suddenly and unexpectedly arrested and imprisoned by the Defendants, for the large amount of their claim, had one of three courses of conduct to pursue. He might either have submitted to the injury he had received, have paid to the Defendants their unjust demand, and thus acknowledged to the world that the imputations upon his character were well founded, and that he was a fraudulent debtor about to abscond from his creditors; or, he might have lingered in prison during the period of his resistance to their claim—a period of sixteen months; or, he might, by sacrificing all his available means, procure his personal liberty upon bail. The last evil was the least, and he accordingly chose it in preference to the former two. After remaining in gaol some twelve or fifteen days, he placed his monies and notes, to the amount of about £350, and also his books of account, containing the entry against his various customers in the hands of Mr. T. S. Brown, of this city, who, in conjunction with Mr. Stanley Bagg, came forward and entered bail in his behalf.

The immediate and natural consequence of this hard necessity will readily suggest itself to you. The Plaintiff was at once and entirely thrown out of business—his hands were tied—his efforts were completely paralysed—and he was obliged to seek out the situation of a clerk, which after the lapse of some months he obtained in a retailing establishment, and from which he barely derived the means of a scanty subsistence.

This, however, was a result so necessary and obvious, that I need not dwell upon it, and I turn to circumstances of a more strikingly disastrous nature. The Plaintiff in this cause, in the spring of the year 1829, had succeeded in opening a correspondence with Messrs. Midgely and Wilkinson, a mercantile house in Great Britain, of high respectability and very extensive business, from whom he had already received a small invoice of goods to the amount of £150 on very favorable terms of credit. So high, in fact, was the confidence he enjoyed with those gentlemen, as also with Mr. Leaycraft, a large dealer in hats and articles connected with this line of business, that towards the close of the month of December, 1829, he adopted the design of relinquishing his retail trade and manufacturing of hats, and of making importations in the spring of 1830, to be disposed of by wholesale. With this view he availed himself of a favourable opportunity of disposing of his retail stock, a large portion of which was of an unsaleable nature, and also of his manufacturing utensils, for which in the wholesale trade he could have no use. In the month of January, 1830, while engaged in making up orders for Messrs. Midgley & Wilkinson, to the amount of from £1000 to £1500, to be shipped to this country in the early spring vessels, and preparing remittances to accompany his orders, he was arrested and thrown into prison—his means were locked up in the manner already mentioned—he was deprived of the power of making remittances to meet his engagements in England, and consequently forfeited the confidence and lost the credit which he had previously enjoyed with his correspondents there—and which, as will appear from their letters, they were not only willing but anxious to continue towards him. Upon these facts, gentlemen, I will merely observe, that the Plaintiff in this case had opened to himself the prospect of a successful career in life. Through the correspondence that he had already established he might reasonably hope to extend his commercial connections, and with

ndustry and integrity to arrive at wealth and respectability. The chances were altogether in his favor. Thousands with means and hopes not to be compared with his, are daily rising to influence and importance among us. The obstacles that oppose themselves to us in our outset in life, are the most difficult to overcome—these, however, he had surmounted—his path seemed plain before him; but while endeavouring to realize the advantages of his situation, he was at once crushed by the hand of the Defendants, and in all probability crushed for ever. For no reasonable expectations can be entertained that the opportunities which have been wrested from him will ever again present themselves to his acceptance—he has been thrust back into the situation of a subordinate clerk, from which in all likelihood he will never emerge. But, gentlemen, fatal as these proceedings of the Defendants have been in this point of view to the interests of the Plaintiff, they have not been less so in others. During the pendency of the suit against the Plaintiff in the autumn of 1830, Bridge, to whom he had sold out his stock in trade, became bankrupt. The notes granted by Bridge, constituted a large portion of the assets placed by Blanchard in the hands of his bail. By being deprived of these notes, he was of course rendered unable to make such exertions as he would otherwise have done for securing their payment from Bridge; and by the failure of Bridge he lost the whole or greater part of them. Thus, in consequence of the proceedings of the Defendants, losing a sum sufficient, and more than sufficient to have made good their claims against him. Thus far, gentlemen, we have proceeded upon substantial facts, susceptible of being estimated in pounds, shillings and pence. But there are other considerations of a moral nature, which ought not to be omitted in your deliberations upon the subject before you—I allude to the distress of mind suffered by the Plaintiff throughout the progress of this unfortunate litigation. I shall make no efforts, gentlemen, to excite your sympathies or work upon your feelings, by a highly drawn picture of this distress. The attempt, if made, would probably prove unsuccessful, and would certainly be useless. But you, gentlemen, are as well aware as I can be, that there are injuries which sink more deeply into the heart, and exercise a more lasting and fatal influence upon the destiny of their victim than those of merely a pecuniary nature—such injuries has the Plaintiff in this cause undergone. Was it an inconsiderable outrage to be dragged like a criminal through the streets, a public gazing-stock, an object of scorn or pity to the crowd?—to be thrust into a common gaol among the refuse of mankind?—to linger there for many days and nights with no thought but ruin before him, with no hope of relief but in the relentings of a merciless creditor. Are these injuries of no importance?—I am persuaded, gentlemen, I need not enlarge upon them. You will at once perceive the influence they must necessarily exert upon the character of any person—you must at once recognize their power to paralyze any energy—to discourage every honest exertion. You have, in fact, gentlemen, standing before you in the person of the Plaintiff, a man who has been deprived of advantages which few possessed, who has suffered injuries of no ordinary nature. His credit ruined—his reputation destroyed—his plans cut short—his prospects blighted—his golden opportunities snatched from his hand, and himself consigned to the walls of a prison—a prison, gentlemen, to which in all probability he will be forced to return, if his present appeal to you for redress and protection be in vain.

Gentlemen, we feel strong in our case. We leave it to your common sense—to your perceptions of right and wrong—your justice and humanity. Should the Defendants exclaim that the damages demanded by us are enormous; we admit that the sum is large, but the injury that we have suffered is greater. It is large, but the means of those who inflicted that injury are proportionably great. We ask remuneration adequate to *our* injuries—adequate to *their* means.—The evidence, gentlemen, will now be presented to you, and, I trust, you will find from it that I have not exaggerated the strength of the Plaintiff's case.

Mr. DAY then called the following witnesses in support of the Plaintiff's case:—

Mr. ABNER BAGG, who deposed that he knew the Plaintiff Blanchard from his youth. Plaintiff was a clerk to witness, and in 1823 entered into business

on his own account. Plaintiff was always considered by witness as an honest, industrious and moral person. Witness had confidence in him, and assisted him to a certain extent in getting into business. Witness is aware of a transaction between the Plaintiff and the Defendants in this cause. In the fall of the year 1829, Mr. Lindsay, one of the Defendants, called on witness and offered him a quantity of hats for sale; but as witness did not like the price, he declined to buy, and afterwards ascertained that the Plaintiff had purchased them. Witness believes that Plaintiff gave 10 or 12 *per cent.* more than witness offered. The entire amount agreed upon by the Plaintiff and the Defendants was about £350, and perhaps more. The credit given to the Plaintiff Blanchard was not extraordinary at that season of the year, and the bargain was not an extraordinary one on either side. Witness knows that after the Plaintiff had bought the hats, he told the witness that he had purchased them. Witness was rather displeased that the Plaintiff had done so by offering 10 or 12 per cent. more than witness, and witness let Plaintiff know his dissatisfaction. A week afterwards Plaintiff came to witness and offered witness half his bargain at the price Plaintiff gave for them. Witness closed with the offer, and acquired thereby an exact moiety of the lots of hats, and agreed to pay for them on the same terms as the Plaintiff—first of all, deducting from the price witness was to pay, viz. £175, the sum of £78 10 which Plaintiff owed to witness. Witness thought it ungrateful, and was surprised and vexed at Plaintiff interfering in witness's bargain. Witness expressed himself so to Plaintiff, and when Plaintiff told witness that he had bought the hats, witness said shortly to him, "Oh! very well," and so left him. The circumstance of the Plaintiff's giving up his bargain to witness is not unusual—it is of daily occurrence. Witness thinks that the transaction was fair between all the parties. The hats were of a fine quality—and as the Plaintiff was likely to sell them before the next arrivals witness wished to have part of them. Witness considered it an advantageous bargain for the Plaintiff, but as the purchase was too large for him, witness thinks he acted advantageously in letting witness have half of it. If Plaintiff had wanted an advance on the price from witness, he would not have given it. Witness is aware of Plaintiff disposing of his effects to Daniel Bridge, towards the end of 1829. The witness could not say whether Plaintiff consulted him—perhaps he did. Witness recollects the terms of the affair. Bridge was to give endorsed notes for the whole of his purchase from Plaintiff; and the Plaintiff's motive for selling off, was to relinquish his retail, and embark in a wholesale business, in the following spring. The sale did take place, and witness thinks that the terms between Bridge and the Plaintiff were advantageous to the latter. Bridge was then in good credit. About five or six months afterwards witness sold goods to Bridge on his own note, without an endorsement, contrary to the usual custom, and contrary to the conditions of the sale, which was by auction, at Le Roy & Company's. The other buyers were obliged to give endorsed notes, but witness did not require it from Bridge. On the 29th of January, 1830, the Plaintiff Blanchard's credit had suffered, from his having allowed a demand against him to stand over. The Plaintiff owed witness's brother the sum stated, and other sums to other individuals in town. Witness believes that there was a running account between his brother and the Plaintiff Blanchard. The circumstances of the sale from Plaintiff to Bridge did not induce me to think he intended to leave the Province, or to defraud his creditors, but that his intentions were honest. The witness thought that the object of the Plaintiff in the sale to Bridge, was to enable him to pay what he owed to a house in England, in order to obtain a further consignment of goods from them. The witness was consulted by Plaintiff as to the way of remitting a Bill of Exchange to England. The Plaintiff was born at La Prairie, and his family resides in town. The Plaintiff's plans were fair, in the opinion of witness, and would have been practicable had he succeeded in retaining his credit in England. Witness thinks that if the Defendants had not arrested the Plaintiff, they would have been paid the first note, because the Plaintiff had effects in hand; but the second note would only have been paid, in my opinion, supposing the goods from England had been sent out. Witness is aware that Plaintiff has been ar-

rested by the Defendants. Witness was informed of this circumstance by common report, and was certainly surprised at it. There is no doubt the Plaintiff has suffered seriously by it. There is a good deal to be said upon the question as to whether his future prospects have been injured thereby. It was Bridge's failure that inflicted the injury upon him, because his means were not sufficient to bear it. Bridge did not fail until eight or ten months subsequent to the arrest of the Plaintiff by the Defendants. Witness cannot say precisely whether the Plaintiff's business would have been profitable to him by care and attention—but the competition was great.

Cross-examined by Mr. WALKER,

The Plaintiff began business in February, 1823, on a small scale, and witness furnished him with the means. The house of Bagg & Wait furnished him with goods to a considerable amount, say £175, and he paid them by instalments of various small sums, until he reduced the amount to £78, and this sum he owed Bagg & Wait when he transferred the moiety of the hats to witness. The Plaintiff and the Defendants were utter strangers. Witness applied twice at Defendants to purchase hats, and thinks Mr. Lindsay called on him. The Plaintiff gave for the hats 10 or 15 *per cent* more than witness offered. Witness does not recollect how many packages of hats there were—ten or twelve. It was the object of witness to purchase all the hats. Witness does not recollect—denies entirely—in fact, can explain—that he did not call at the warehouse of the Defendants with the Plaintiff. The witness met the Plaintiff there accidentally, and examined the hats with him. Witness did not think at that time the Plaintiff wanted to purchase the hats—and could not think what motive induced Plaintiff to go there. Witness has no knowledge that Plaintiff had any business there, but to purchase hats. Witness never heard that Plaintiff had any intention of purchasing the hats until he informed witness that he had bought them—when witness expressed to Plaintiff a good deal of resentment for his having stepped in and interfered. Witness thinks he told Plaintiff that he had made an offer to the Defendants for these hats—and then the Plaintiff's buying them was the reason he was angry. Witness does not think that the Defendants made him any offer—they shewed him the invoice, and he made the offer. The Plaintiff bought the hats at the price for which the witness could have had them, had he been disposed to purchase. It was after witness met Blanchard at the Defendants' that I informed him of my offer to them. The Plaintiff's purchase from the Defendants took place in the latter part of November. Witness' bargain with Blanchard for the moiety of the hats took place on the 23d of December. We began to talk together about it ten or fifteen days after the purchase from Smith & Lindsay. Witness obtained the hats from Blanchard immediately before the sale to Bridge; about three or four days previous thereto. The Plaintiff's stock before his purchase from Defendants could not have been extensive—it could not have been more than £200 before the purchase from Smith & Lindsay. Blanchard's sale to Bridge comprehended stock in trade, stoves, implements of trade, and lease of shop. Witness is personally acquainted with Mr. Lindsay, one of the Defendants, but has no remembrance of Mr. Lindsay's calling on him respecting the Plaintiff Blanchard's credit and character—perhaps he might have done so indirectly, but not formally for that purpose. Has no recollection of Mr. Lindsay's calling upon him, and asking in express terms his opinion of the intended sale to Blanchard, and whether the latter would be likely to pay a sum of money equal to the amount of the sale; and witness did not then say that he had a high opinion of the young man, and would trust him to the extent of £400. It is in the recollection of the witness that Mr. Lindsay did call on him, and took a chair. Witness took half the hats from the Plaintiff for the price paid for them by him, although such price was about 15 *per cent* more than witness had originally offered. There were some hats that witness refused to buy from the Defendants. Witness does not recollect having formerly stated, that his principal inducement for buying the hats from the Plaintiff was to secure, by some means or other, the payment of his debt. Such a feeling might have influenced him—it was an express condition of the agreement. The notes of witness' brother (Mr. Stanley Bagg) were given for the balance. Witness is not positive in stating that these

notes fell due concurrently with those given by the Plaintiff to the Defendants. The conditions upon which the witness purchased the moiety of the hats from the Plaintiff, were the same as those upon which the Defendants sold them to the Plaintiff. The witness has no knowledge that Stanley Bagg's notes were payable at four and twelve months. Does not remember having stated that Bagg & Wait's debt was in jeopardy, but might have stated that Bagg & Wait urged him to press Blanchard for payment thereof. Neither did he remember stating that Plaintiff's debt had been contracted upwards of two years. Witness did state that he had been obliged to *dun* Blanchard, and knew that he owed money to others. The Defendants sold the hats to Plaintiff for unindorsed notes. Witness, from this transaction, thought that the Defendants must have been very liberal merchants, to sell hats to such a person as the Plaintiff on such terms. Witness would not have given such credit to the Plaintiff—although he would have given the Plaintiff credit, it would not have been to such an extent. From witness' knowledge of the Plaintiff and his circumstances, he would not have refused him a small credit. Witness is not in the habit of granting credit to those who fail in liquidating their previous debts. When witness applied to Plaintiff for payment of Bagg & Wait's debt, and expressed his surprise at the default, the witness could never get any decisive and satisfactory reply from him. Witness ascertained the Plaintiff's intention of embarking in wholesale business about the time of his selling off his stock to Bridge. The sale to Bridge was a sudden transaction, and witness does not think that the Plaintiff had contemplated it long before it actually took place. Plaintiff intended to remit home a bill of exchange accompanied with an order for more hats. Plaintiff intended to procure hats of a similar description to those he had purchased from the Defendants. The Plaintiff, in witness' opinion, could not have procured them on more favourable terms than he had purchased them for from the Defendants. The purchase was a large one for a man in the Plaintiff's situation, and he acted prudently in delivering up the half to the witness; but witness did not think the purchase beyond the Plaintiff's means, because if he had retailed them he might have been enabled to pay for them. Witness thinks that Plaintiff's intention was to get out from England from £1000 to £1500 worth of goods. The Plaintiff obtained equally as favourable terms from the Defendants as he could have gotten from England. The Plaintiff's debt to the house in England amounted to £170 sterling. To meet that amount £220 of current money of this Province would be required. It was in January, 1830, that Plaintiff communicated to witness his desire to commence a wholesale business, and also that he had offered Bridge's notes for exchange, but was refused, as no one would take such notes. The Plaintiff's means of paying his debts depended on Bridge's notes. The means by which the Plaintiff would have been enabled to meet his first notes to the Defendants was the note of witness' brother for £100, and Bridge's notes. Notes at six, nine, or twelve months could not purchase exchange, although signed by the first merchant in town. Exchange is considered to be equivalent to cash. Witness knows from the information of Mr. Fisher, that one of the best of these notes was given to that gentleman in payment for a debt—and that another was paid to Mr. Hough. Plaintiff was arrested in January, 1830. No exchange had then been purchased by the Plaintiff, nor had he effected a disposal of the notes. In the month of January, exchange from Montreal gets to England in about forty-five days. It would reach England about the 15th of March. The witness has had bills of lading dated in the latter end of March. Vessels generally leave England for this country about the 1st of April. Hats are always sent out by the earliest vessels. Goods to be shipped to this country should be in Liverpool by the latter end of March. After the receipt of the bill of exchange in England, two or three days would be necessarily occupied in its transmissal to London for acceptance. The English correspondents of the Plaintiff, from whom he expected to procure hats, lived in a provincial town. Orders are soon made up and prepared in England. An extensive English house gets ready an order for £1000 in ten or a dozen days; but a small order would require a longer time. It is witness' practice always to make out his orders in the fall, and to despatch them with his remittance by the fall vessels. At present orders are sent by the way of

New York, and not by Quebec. Orders for shipments by the spring vessels are often received in the fall. The witness has often received his goods for the ensuing spring by the fall vessels; he is not aware whether this is a general practice. The Plaintiff's goods arriving in June would be too late for the market. The witness knows that Bridge commenced business without capital, but he was sober and steady. The profits on retailing are usually 20 *per cent.* A still larger *per centage* is sometimes realized; but from 20 to 25 *per cent* is the average profit. Bridge's purchase, to which I alluded before, from Le Roy & Co. amounted to only £30. In ten or fifteen months from his purchase of Plaintiff's entire stock, Bridge failed. Bridge's credit was bad during the summer months. Witness is doubtful whether Bridge ever took up any of his notes. In the end of 1830 or beginning of 1831, Bridge made an assignment of his estate and effects. The brother of witness was a creditor, and co-assignee with Mr. Shedden—and his effects came into the hands of witness' brother.

Mr. DAY was then proceeding to prove various facts by documentary evidence, when Mr. WALKER, to save the time of the Court and Jury, consented to admit them.

Mr. WALTER FIELD was then sworn, and examined by Mr. DAY, to the following effect. I am a merchant in Montreal, and have known Blanchard for a number of years, six or seven. I am acquainted with Blanchard's business in 1828, and during the early portion of 1829. I thought he was doing a tolerable business—so much so, that it appeared to me good enough to induce me to entertain the idea of entering into partnership with him. I proposed investing in his business the amount of capital I then possessed. From conversation with the Plaintiff, and from an inspection of his daily sales, I offered to invest the whole amount of my capital with him. My capital amounted to £80. I was persuaded to do this, not from an intimate knowledge of his circumstances, but from the amount of his daily sales. I had full confidence in him, and lent him about £29. When I engaged in other business in 1829, he returned this sum to me. After this I had no further communication with him or his affairs, and, therefore, cannot say whether his credit had suffered. In January, 1830, I heard of his arrest by the Defendants, and was surprised. Blanchard once shewed me a letter from England favourable to his credit there. In consequence of this letter, he informed me, he had it in contemplation to extend his business. I conceive that the arrest was injurious to the Plaintiff, considering his prospects at the time. It must have affected the Plaintiff's credit in England. I was in the habit of seeing Plaintiff occasionally in January, 1830. I saw him about the streets, and heard no rumour that he was about to run away. It is my belief, that had he not been arrested, had he continued in business, and extended his credit, he could have negociated the Bills he held, and paid the Defendants. Bridge become insolvent in the August or September of 1830, and till then his credit was good. He frequently borrowed small sums from me, and always returned them.

Cross-examined by Mr. WALKER,

I know nothing of Blanchard's affairs since the middle of 1829. When he began business in 1828, he had no means that I am aware of. It was in the autumn of 1828 that I first thought of connecting myself in business with him. I had then in my hands about £2000. Mr. Hobart supplied me with leather; I was to be paid a commission, and return the proceeds to Mr. Hobart. I was not acting as Mr. Hobart's agent, and no co-partnership existed between him and me. It was in January, 1829 I first heard from Blanchard that he had credit in England. He never represented himself to me as possessed of capital. I cannot say whether any house in town, in the month of January, 1830, would have given Blanchard credit to the amount of £10. The credit of Blanchard and Bridge being united, would, I think, have secured the payment of the notes. A note of nine or twelve months might, I think, be received as collateral security; but I cannot point out any house in town which would have discounted Plaintiff's notes indorsed by Bridge, at six or nine months. By depositing notes for £100, I think he might have got £50. Blanchard spoke to me of his intention to get exchange on England. Such exchange can only be procured here for money, or the very best paper. I do not think Blanchard or Bridge's

bills could have obtained exchange. I have no reason to believe that he wished to conceal his goods in the month of June. I do not think that at this time he was engaged in any other business than to look for exchange. I myself thought that he was looking for a store. Blanchard was not, to my knowledge, possessed of any visible property. I heard that he had obtained credit from the Defendants. I knew that he had sold out entirely to Bridge, but I did not know any of the particulars connected with the sale. The last time I conversed with Blanchard previous to his arrest, I know that he had not succeeded in obtaining exchange. He stated to me that the object of his wish to obtain exchange was to remit it to England, to be enabled to set up a wholesale concern. I am not aware that the Plaintiff had any other means of obtaining exchange than by converting into money the goods he obtained from Defendants. I did not know that Blanchard had purchased hats from the Defendants until he was arrested by them. I am aware of the transaction now.

Mr. STANLEY BAGG was then called and examined by Mr. DAY,

I have known the Plaintiff for many years. He was in my brother's employment. He commenced business on his own account in 1828. I advanced him goods to the amount of £370, which was to be paid by instalments, and for which he gave me his own notes, payable at three, six, nine, twelve and fifteen months. Witness had a running account with the Plaintiff independent of this debt, which was kept open till 1829. A balance of £78 was due to us when we settled up with the Plaintiff. Half the hats purchased by the Plaintiff from the Defendants were obtained from him by Abner Bagg, for Le Roy & Co., whom we had set up in business. I was interested in this transaction. The value of the moiety was about £170. The terms upon which we acquired the moiety were—that our amount against the Plaintiff should be deducted, and the balance paid by us by notes at three and six months. I cannot state exactly the date of the sale from Plaintiff to us. I was consulted by my brother before he effected the purchase from Plaintiff. I cannot say whether the object of my brother's purchasing the hats from Blanchard was to obtain payment of the debt due by Blanchard. I have a knowledge of the arrest of Blanchard, and of all the circumstances connected therewith. I became bail for Plaintiff at the instance of my brother, or of Mr. T. S. Brown; I am not sure which. No funds were placed in my hands by the Plaintiff. With regard to the means which Plaintiff possessed of paying the demands against him, I think they depended upon whether Bridge paid him. If Bridge had paid the Plaintiff, I think the latter would have paid the Defendants. I thought Daniel Bridge was in a fair way in 1829. Bridge became bankrupt eight or ten months afterwards. I was appointed Trustee of Bridge's estate, which paid 2s. 6d. in the pound. No rumour ever reached me, nor did any circumstances connected with the sale to Bridge, induce me to think that Plaintiff intended to leave the Province, or to conceal his goods. I always thought his intentions honorable. I considered the sale of Defendants' hats to my brother by the Plaintiff, as an ordinary transaction. I think that the sale would have been advantageous to the Plaintiff, had Bridge fulfilled the conditions agreed upon between them.

Cross examined by Mr. WALKER,

The Plaintiff Blanchard was brought up in my brother's store. When he left my brother's employ he embarked in business on his own account. In March, 1828, I sold him hats to the amount of £370, at three, six, nine, twelve and fifteen months. Bagg and Wait, (the firm I am connected with,) bought the hats from my brother Abner Bagg, the first witness in this cause—and then sold them again to the Plaintiff Blanchard. This sale to Plaintiff was a matter of mutual accommodation to him and us; both parties, I suppose, were benefitted thereby. In 1830 I know that Bridge had much difficulty in fulfilling his obligations. Before I would become bail for Blanchard, I stipulated that funds should be placed by him in the hands of a third person to indemnify me against any risk to be incurred thereby. Under the circumstances I would not have become bail without surety. I insisted that security should be given by the Plaintiff before I bailed him, as I knew he possessed it.

Mr MATTHEW CAMPBELL. I have known the Plaintiff for eight or nine years. I was acquainted with him in 1829. I did not particularly know his affairs at that time. I heard of his having bought hats from the Defendants in 1829. I knew that a sale took place between Blanchard and Bagg to the amount of £173. Mr. Bagg paid for the hats by deducting an amount due from the Plaintiff to him, and by giving him a note for the balance at three and six months. This amount was due from the Plaintiff on account of a sale made by Bagg and Wait to him. I am not aware of any running account between them, except what trifling purchases Bagg and Wait might have made from him occasionally.

THE CHIEF JUSTICE thought it would be as well if the Plaintiff's counsel would restrict themselves to prove new facts. It appeared that this witness was only proving what was already in evidence.

The witness resumed.—Blanchard informed me of the terms of the sale to Bridge, and asked my opinion of the advantages of the sale to Bridge. I thought it a favourable sale. I am not aware that the Plaintiff told me to keep it a secret. I think the Defendants would have been paid if they had not arrested the Plaintiff. Blanchard's intention in selling out was to get rid of his retail business and to commence on a larger scale. I was aware of the Plaintiff's correspondence with an English house, and I know that the English credit would have been advantageous to him. I think that I saw the notes from Bridge to Plaintiff, and that some of them were endorsed by other persons. After the sale Bridge's name was placed on the iron doors of the shop. It is not extraordinary for a person who has sold out to leave his name on the door, after he has no longer any interest in the property. The name of Bridge has remained on the door until very lately.

Cross-examined by Mr. WALKER,

I am thirty years of age, and a clerk. I have held this situation in Bagg and Wait's employ for many years. I was with Bagg and Wait when the Plaintiff Blanchard and Bridge were in Abner Bagg's employ. I have been particularly intimate with the Plaintiff. I am not aware that the Plaintiff had any means when he entered into business. When the Plaintiff sold the moiety of the hats to Abner Bagg, he owed Bagg and Wait £175. Messrs. Bagg and Wait were in the habit of giving orders on the Plaintiff for goods and money, in order to liquidate their demand against him, and such orders went accordingly in diminution of their claim against him. A few days after his sale to Bridge the Plaintiff first told me his intentions, and gave me as his reason his plan of opening a wholesale business. To effect this it was necessary to remit to England. The goods the Plaintiff had obtained from England were comprised in what he had sold to Bridge. and he had some claims on individuals in Upper Canada, which, with Bridge's notes, might have aided him in remitting to England. These Upper Canada debts have not yet been collected—they amount to £80, and were considered as a cash transaction. I know from Mr. Mills that the Plaintiff endeavoured to obtain Exchange for Bridge's bills—these bills were payable at different periods, six, nine and twelve months. I did not know that the Plaintiff was indebted to Mr. Fisher or Mr. Hough. I know that Bridge's credit was good in May 1830, but I know nothing of the state of his affairs when he purchased from Blanchard. Bridge was a dealer in the same line as the Plaintiff, and his store was at a little distance from the Plaintiff's. I think Bridge got a little money by the death of his father, but it could not be much. From my knowledge of Blanchard's means, it is my opinion that he could have paid the Defendants,—these means consisted of Bagg's note for £100, and Bridge's notes at three, six, nine and twelve months, amounting to £460. I made up a statement of Plaintiff's means from his books—and from the comparison of his debts and credits, the balance was in his favour. This favourable balance amounted to some pounds. I myself told Plaintiff that some of the means he relied upon to meet the Defendants' demands were doubtful; but he said in reply to this, that before his notes to the Defendants became due, he should have his English consignments to assist in meeting them. The remittance to England was not yet made—it would amount to £225, and unless this sum was remitted

he could not expect goods from England. I knew that Plaintiff was in debt to other persons in this country. I know also that he could not succeed in obtaining exchange to remit to England, and I am not aware that any thing has been yet remitted to England. I do not think any person in Montreal would have cashed Bridge's notes without a sure indorser. When I was a clerk in Bagg and Wait's employ, I frequently went to Plaintiff to demand payment for what he owed them; sometimes on these occasions I got small sums, and sometimes nothing at all.

Mr. T. S. Brown. I have known the Plaintiff for five or six years, when he was bar-keeper at a tavern in the Market. I know that the Plaintfff was arrested. Application was made to me to become bail for him, and after he had been in prison I consented. Security was given to me. It consisted of Bridge's notes; a *bon* for £30; the sum of £45 in cash, and some other small notes; the whole amounted to £325. Mr. Stanley Bagg was the other bail. I cannot say whether I should have become bail without security. The Plaintiff's books where put into my hands after his imprisonment, and from my examination of these books my impression is that he was solvent, and that if he had not been arrested, he could have paid his debts.

Mr. Walker objected to this sort of evidence founded on opinion—inasmuch as the opinions themselves were founded on the books, and the books could not be received in evidence. The books might have been fabricated for the purpose of the present testimony.

Mr. Day urged upon the Court, that in all commercial questions the evidence must arise from the inspection of the books. The object of tendering the present evidence was to corroborate other evidence.

The Chief Justice wished to know to what other evidence Mr. Day referred.

Mr. Day. What we intend afterwards to adduce.

The Chief Justice. Then adduce it now. The present evidence is not legal, and cannot be admitted.

Mr. T. S. Brown then proceeded with his evidence to the following effect. It is always advantageous for a dealer to get rid of his old stock, and buy new; and this is more particularly the case when such dealer is in difficulties. Nothing but the subsequent failure could have induced me to judge unfavourably of this sale. It is my opinion that Blanchard would have been enabled to have remitted to England, and to have paid Smith & Lindsay, if he had not been arrested.

Cross examined by Mr. Walker.

My knowledge of the Plaintiff's affairs arose only from his books. I had no personal knowledge of his concerns. Three notes of £50 drawn by Bridge were put into my hands—and two others of the same amount afterwards. The entire amount put into my hands was £345. One of them was paid, but the other four were never paid. I think Blanchard might have got good exchange for some of these notes—but he did not. He was solvable, if unmolested. The notes placed in my hands were about equal to the Defendants' demand against the Plaintiff. Bills of exchange can be obtained upon almost any paper in Plaintiff's situation. I think the second note would have been paid by Bridge if he had been pushed. When it approached maturity it was put into the Bank here for collection. I was not in town myself, and when I returned I was very angry with my clerks for having withdrawn it from the Bank at Bridge's request. Had it been regularly presented, and payment pressed for, it is my opinion it would have been paid.

Mr. Peter Teulon. I have been a merchant hatter for many years. I knew the parties in this cause—and was aware that a sale had taken place from the Defendants to the Plaintiff. I did not know this circumstance until after it had taken place. I heard by accident that Blanchard had sold out to Bridge, and as the former was indebted to me in the amount of a note, I re-

quired an explanation from him as to the circumstance, and whether he could pay the bill that was due to me. He told me that he had sold out all to Bridge, —that the latter had paid him by endorsed notes—and that when these were due he would pay me. He also informed me that he had applied to many persons to get cash or bills of exchange on such notes. I asked him what amount of bills of exchange he required, and was told by him between £100 and £200. I wished to know from him how, if he applied the bills to pay his debts in England, he intended to pay his Montreal creditors; and he answered, from money due to him in the country. He mentioned a sum of £40 due to him from one Barnard, of Niagara.

Mr. WALKER here objected to this mode of examination, by which the Plaintiff's own statements would be received as evidence. It was impossible that the Court could listen to statements afforded by the Plaintiff to a creditor when taxed by him for his conduct, and to whom it was his object and interest to render a plausible explanation. It amounted to the same thing as if the Plaintiff himself was placed in the witness box, and his own explanations were received in evidence direct from himself.

The Court supported Mr. WALKER's objection.

Witness resumed. I was satisfied with regard to the safety of my debt. On the day after this conversation with the Plaintiff I saw Mr. Smith, one of the Defendants, at his office. This was previous to the arrest, and the day after Plaintiff's sale to Bridge. I think it was the day after such sale—but it was undoubtedly the day after I heard of it. Mr. Smith asked me if Plaintiff did not owe me money. I said yes; on a note. He asked my opinion of the sale to Bridge; and whether I thought it was an honest transaction. I said, that I had doubted it at first; but that I had gone to the Plaintiff and examined his affairs. I added, that I was satisfied from the quantity of his old stock on hand, that it was the best thing he could do. In conversation with Mr. Smith I told him that the Plaintiff had received in payment some notes at such distant dates that they were not negotiable; and that he was trying to get bills of exchange for £200 to meet his English debts. Mr. Smith then said, that if Mr. Blanchard would pay him out of these bills, he would give him money for the balance. Mr. Smith asked me to see the Plaintiff upon it—I tried several times, but could not find him. Mr. Smith asked me whether I did not think that Plaintiff had sold out to Bridge with an intention of absenting himself from the Province. I explained to Mr. Smith that the Plaintiff's only means of paying his debts was by selling out as he had done. Mr. Smith then asked me if I did not think he would be justified in arresting Blanchard. I told him that if he had any right to arrest, it would be on different grounds and by a different remedy—it would be by criminal process against Blanchard for having obtained the goods on false pretences—purchasing them for sale by retail, and then disposing of them by wholesale. This was two or three days previous to the arrest. Mr. Smith himself, or one of his clerks, said something about information of some kind afforded to them by Mr. Vaughan. I told Mr. Smith that if he arrested the Plaintiff before the notes were due, he would subject himself to an action for false imprisonment. My claim against the Plaintiff amounted to £28, which I have since been paid. No concealment was affected by Plaintiff of the sale to Bridge—he offered to shew me the papers relating to it. I was surprised when I heard that Mr. Smith had *capias'd* the Plaintiff. My information of the sale from Blanchard to Bridge came from one of my workmen, among whom the fact was generally known.

Cross-examined by Mr. WALKER,

My note against Plaintiff has been paid, by my deducting it from his wages, he being in my employ. I think it was the day after the sale to Bridge that I went to the Plaintiff, from the fact of my finding both him and Bridge engaged in taking stock. I was never on intimate habits with the Plaintiff—I knew him *en passant*. When I heard of the sale to Bridge, I thought it a very suspicious circumstance; but the explanation soothed my apprehensions. The Plaintiff told me he had been at the Defendants to explain the circumstance. I know nothing of Mr. Smith's knowledge of the Plaintiff. My conversation was not with Mr. Lindsay.

I never said to Mr. Smith that the Plaintiff's conduct was unjustifiable—what I said was about the false pretences under which he had obtained the goods. Mr. Smith appeared to be deeply indignant at what he heard about Plaintiff's sale to Bridge. I thought Mr. Smith's offer to take the Bills, and give the balance in cash, after his claim was satisfied, very liberal on his part. The rest of this witness' cross-examination tended to recapitulate Mr. Bagg's opinion as to execution of orders in England, their date, arrival, &c. Mr. Suter was present during part of my conversation with Mr. Smith. The return for goods very rarely comes round in six months. The later in the year, the more injudicious I should deem the purchase. I should think the Plaintiff's engagements at the time of the sale to Bridge, amounted to between £600 and £750.

Mr. JOHN DOUGALL.—I am in the habit of purchasing Exchange on England. I am not aware that to obtain such Exchange it is at all times necessary to offer the very highest character of bills, that is to say, when the Exchange is not of a very high character itself.

Mr. JAMES R. ORR.—Knows the house of Midgely & Wilkinson, of Colne, in Lancashire, the English correspondents of Plaintiff. The witness proved their hand-writing. They are very extensive hat manufacturers. I hold their Power of Attorney.

Mr. WM. THOMPSON.—I knew Bridge in 1830. I knew nothing contrary to his reputation. I indorsed a note of £40 for him, which was regularly paid. I lent him several small sums of money, which he paid—one sum so lent was £30 and another £5.

Mr. WILLIAM CLARKE.—I knew Mr. Smith in January 1830. I met him in that month somewhere in Montreal, and I was present at a conversation between him and Mr. Jones, his Solicitor. The latter was very strenuously advising Mr. Smith to arrest the Plaintiff, on the grounds which Mr. Smith had stated to him. Mr. Smith declined doing this at present, and stated that it was an extremely delicate matter, and that he did not wish to be precipitate. I thought that if the information as Mr. Smith represented it, was correct, he would be justified in the arrest. I did not say any thing to discourage him from pursuing this course.

Cross-examined,

I recollect that Mr. Smith said to Mr. Jones, that it was the first instance of the kind he had ever been called upon to adopt such a course, and that before he did so, he would sleep upon it. He seemed very reluctant to do it.

Mr. SAMUEL M'CLURE.—I know the Plaintiff, and have never known any thing but what is good of him. I should not think him capable of a dishonest transaction. I know nothing about Bridge.

The Court here adjourned to the next day.

FRIDAY, *Oct.* 4, 1833.

The Court met, pursuant to adjournment.

Mr. JEREMIAH BLANCHARD was called, and was examined by Mr. DAY, to the following purport :—

I was a clerk in the service of the Plaintiff, from the month of June, 1828, until he sold off his stock in tradet o Mr. Bridge. The Plaintiff was a wholesale and retail trader, and had country customers. He kept books of account, into which the Plaintiff and myself made entries The balance on the books, in my brother's favour, amounted to the sum of £883 13s. 4d., and was due to him when he left off the retail business. The witness, here, enumerated the names of five or six country dealers, who did business with the Plaintiff.

Cross-examined by Mr. WALKER,

The document in my hand, to which I referred to refresh my memory, during my examination in chief, was handed to me, this morning, by Mr. T. S. Brown, a witness who was examined yesterday. I do not know whether my brother, the Plaintiff, possessed any funds at the time of his arrest. The books of account were always regularly kept, and the debt to the defendants was entered therein.

Mr. LOUIS LALANNE. I am a merchant in Montreal, and know the Plaintiff. I knew him in December 1829, and January 1830. I saw him daily, and I was for a short time in his store. I deal in furs. My uncle, Louis Lalanne, the notary, who is since deceased, was then alive. Some two or three months before the arrest of the Plaintiff, I saw him and my uncle engaged together. I was told that they were engaged in making orders. I think I saw orders, amounting to £1000, or £1200. The Plaintiff applied to me for advice respecting Bills of Exchange, and the best mode of procuring them. I think Exchange might be procured on bills at six months. I believe that there was a good deal of Exchange in the market at the time to which this transaction refers. My opinion of the Plaintiff's character was always good; and I had a great respect for him, as an honest, industrious, and steady young man. There was a talk of the Plaintiff's going to the Indian country, in Upper Canada, on my account, to purchase furs for me. He did not make any attempts to conceal his sale to Bridge. I advised the sale to Bridge, when I was consulted on its propriety and advantages by Blanchard. Bridge's sign remained over the door of the shop for ten or twelve months, after he had quitted the place.

Cross-examined by Mr. WALKER,

I know that *long* notes have been exchanged, and I think that it often occurs. In the month of January 1829, there was a quantity of Government Exchange in the market. The rate of Exchange is determined by the amount of money in the market. The present rate of Exchange is from 7½ to 9 *per cent.* In 1828 Exchange was high. I was formerly examined in this cause. I have had conversations with the Plaintiff and his brother on these matters since the last trial. About the middle of January 1830, I had a conversation with the Plaintiff relative to his going to Upper Canada—this intention was prevented from being carried into effect by the arrest of the Plaintiff. I know that, had Plaintiff succeeded in obtaining Exchange, he intended to go to Upper Canada.

Mr. HENRY HEBERT. I know the parties in this cause, and I worked for the Plaintiff in 1829. I was foreman in the Plaintiff's manufacturing shop. He had a manufactory of hats, both in town and country. I was present when the Plaintiff bought the hats from the Defendants. I was in the Plaintiff's shop at the time Mr. Lindsay bargained for the sale of the hats, and also when the hats arrived. I recollect that the Plaintiff observed to Mr. Lindsay that the hats were high. The Plaintiff sold hats by wholesale, and witness assisted in making up the packages.

Cross-examined,

I speak of the Plaintiff's success in business from actual observation. I do not know the names of the country traders who had dealings with the Plaintiff, but he was in the habit of sending hats into the country every week. The Plaintiff once told me that he intended to sell out entirely, and to embark in another line of business.

Mr. EUSTACHE ST. DENIS. I know Daniel Bridge. He had transactions with Mr Young, the auctioneer, and purchased from him on credit, for small amounts—this was in 1829. Bridge paid for them all, with the exception of one purchase, which remains still unpaid, and which was contracted two or three months before his failure. Bridge's credit was good at the time he contracted this last debt. Bridge's name was on the door of the shop which the Plaintiff had previously occupied. It sometimes occurs that, when a merchant sells out,

he leaves his name on the premises for some time—this is more likely to occur when the party leaving enjoyed a good credit.

Cross-examined by Mr. WALKER,

My only knowledge of Bridge arose from his small purchases at Mr. Young's. The credits were for small sums. These small debts were collected in the usual manner, by calling for them, and then they were paid. I, myself, purchased the stock in trade of Mr. Bruneau, and left his name on the premises for some months. Bridge put his own name on the store he had from Plaintiff, a short time after he acquired it from him. The object of leaving the name over the door, is to secure the custom of those who dealt with the former occupier. I cannot assign any reason why Bridge should have been induced to leave the Plaintiff's name over the door. I do not suppose merchants would grant credit to me, because Bruneau's name was over my door.

The evidence of DANIEL BRIDGE, as taken under a *Commission Rogatoire*, at New York, on the 25th Sept. 1833, was here put in and read, to the following purport:—

I know the Plaintiff, but only know the Defendants by sight. I was a merchant hatter at Montreal, in November and December 1829; and in the latter month, I purchased from the Plaintiff, hats, trimmings, and hatting tools, to the amount of £460, Halifax currency, by notes of hand, payable at different times. Plaintiff was a hat merchant at that time, and engaged in the importation and manufacture of hats. The Plaintiff dealt both by wholesale and retail. Part of the stock transferred to me by the Plaintiff, was old stock. The new hats had been previously purchased by Blanchard from the Defendants. I gave promissory notes in payment for the stock of the Plaintiff. There were nine notes in all, drawn by me. Two or three of them, I think, were made payable to, and endorsed by, N. Parker; the others were made payable to the Plaintiff—the first was at three months after date—the others at intervals of a month, except the last, which was at one year from date, and all without interest. They were each for £50, except the last, which was for £60. The sum at which I purchased the Plaintiff's entire stock, was its just value. I understood the Plaintiff's motives in selling out, and his intentions after were to embark in a wholesale concern. I have no reason to suspect that the Plaintiff intended to abscond from the Province. At the time of the sale to me, I believe that the Plaintiff was solvent—but my belief arises from representations made, and documents exhibited to me, by the Plantiff himself. Know Mr. Luman Vaughan, and have been indebted to him; but I do not recollect having had any conversation with him relative to the purchase made by me from the Plaintiff. I never told Mr. Vaughan that Blanchard had desired me to keep the transaction secret; and I never requested him not to mention to any one that I had bought Blanchard's stock. I never gave Vaughan to understand that there were any suspicious circumstances connected with the Plaintiff's selling out to me. I never told Mr. Vaughan, or gave him to understand, that Blanchard was about to leave the Province. This is all I know.

To the cross interrogatories, he replied—

I purchased from Blanchard at the invoice price; and the Plaintiff could not realize any profit on them, by his sale to me. The sale consisted of the entire stock, and the lease of the shop. I paid the Plaintiff no consideration for the assignment of his lease. I do not think that my purchase of the Plaintiff's stock was an advantageous one.

Mr. DAY then put in a notarial copy of the sale and transfer by Blanchard to Bridge, which will be found in the Appendix.

This was the Plaintiff's case.

Mr. WALKER, who led the case for the Defendants, then addressed the Court and Jury, and prefaced his remarks by observing—that exhausted as the Jury must be from the time and attention already devoted to a trial which had run so far into the second day, he should consider himself highly culpable, were he to occupy their attention beyond the further time which might be absolutely necessary to put them in possession of the case on the part of the Defendants.

The case to him also was deprived of the attractions of novelty. The pretensions of the respective parties had undergone the ordeal of public investigation upon several occasions—that in all the discussions he had borne a part—and that his assumption of responsibility upon the present occasion, with a mind jaded and fatigued by its previous efforts, and an indifference to the result approaching to apathy, must be attributed to a sense of professional duty springing out of the relation in which he stood towards the Defendants, and an anxiety in some measure to justify their generous but misplaced confidence in his exertions.

That the case has been already under the consideration of two successive Juries, and the verdict upon each occasion set aside—in the first instance, on the ground of excessive and unwarrantable damages—in the latter, because there was more than reasonable cause to suspect that the opinions of the Jury had been influenced by representations proceeding from individuals connected with the Plaintiff, who had espoused his cause with more zeal than discretion—and betrayed an anxiety far from becoming, in the result of the suit.

That no allusion to the former proceedings, however, could or ought to interfere with the sentiments of impartiality which the Jury were bound to bring to the consideration of the case. They would discard all previous impressions, and consult their own deliberate judgments, unaffected by any of the various opinions which might have been already expressed.

That a third trial of the same cause was of rare occurrence in this Province, but the case was one of a peculiar character; of considerable moment in point of law; of great interest to the parties; and of general importance to trade.

That it concerned the public that the law under which the Defendants acted should not be misunderstood. An ordinance of this Province had given a remedy to the creditor against the person of his debtor about to depart from it, without declaring what overt acts should justify an appeal to its provisions, or constitute a reasonable proof of the debtor's intentions. That it argues an extremely superficial knowledge of the laws and principles of human action, to contend, as had been done by the Plaintiff here, that the evidence of an intention to abscond should be of a conclusive nature and tendency. That covered crimes or fraudulent intentions must be detected by circumstances or not at all—that there existed no means of establishing an internal act of the mind—that the conclusion drawn by the creditor from circumstances of no very unequivocal character, falling under his own observation, or communicated by others, might possibly prove to be erroneous, without exposing the creditor to the imputation of being influenced by motives of an improper character, or subjecting him to the animadversions of the law.

That if the construction of the law which had been contended for by the Plaintiff's counsel were to be sanctioned by the deliberate opinion and judgment of the Bench and Jury, the security interposed for the protection of creditors, would prove to be a delusion—that the vague and naked generality of the language in which the Legislature had pronounced itself had suggested the opinion, that the fact of an intention to abscond must be established by direct evidence, as if it was consistent with our experience of human nature, that our first knowledge of crime, or the existence of a criminal intention, was to be derived from the spontaneous and unsolicited avowals of the party. That the direct evidence of the intention could only be collected from its accomplishment. That this impression had in numberless instances deterred creditors from adopting the conservative process against the persons of their debtors, in cases where circumstances afterwards disclosed went to confirm the suspicions previously entertained.

That debtors had not been remiss in taking advantage of the creditor who had acted upon moral convictions, created and strengthened by circumstances; however unsupported by positive proof; and had rendered their own fraudulent

or equivocal conduct instrumental to their pecuniary advantage ; seeking as was sought by the present Plaintiff, to expunge a debt by damages.

That the Defendants were admitted to have lost £400 by the act of the Plaintiff. His counsel could hardly deny that his conduct was obnoxious to suspicion. It was indirectly admitted that his conduct might have justified an attachment of his effects. He therefore could have no just cause of complaint against the Defendants—his situation was the consequence of his own misconduct—of the deceit which he had practised ; and, however considerations of humanity might prompt a sympathy with his arrest and its possible consequences, no feelings of indignation could justly attach to the creditor who had suffered so largely by his folly, his misconduct, or his fraud.

The learned Counsel contended that the justification of the Defendants' conduct might be collected from the Plaintiff himself ; from the palpable grounds of defence which he himself had unconsciously furnished in evidence. That although the Plaintiff had enjoyed every advantage in the maturing and preparation of his case, and the more odious features which had shocked and revolted the public mind in the course of the former trials had been softened or concealed, and all unfavourable circumstances endeavoured to be explained away ; yet that the facts, as they were even now submitted, were little calculated to reflect credit upon the Plaintiff, or to enlist the sympathies of the Jury in his behalf, and when taken in connection with the evidence which the Defendants had it in their power to adduce, would show how slender were the Plaintiff's pretensions to appropriate to himself any share of the eulogiums which had been so lavishly bestowed. That the case submitted to the consideration of the Court and Jury, was not that of a young man in the dawn and morning of his days, whose prospects had been blighted by the mistaken rigour or relentless cruelty of a creditor ; it was that of a debtor seeking to derive a benefit from his own misconduct. That from the case as disclosed by the Plaintiff, it was manifest that at the time of effecting the purchase of the hats in question his credit was prostrated ; and that he laboured under an inability to meet his engagements. That the purchase was evidently made at a time when no necessity dictated ; and was to an amount unjustified either by the means of the Plaintiff, or the extent of the business in which he was engaged. That the purchase was not one dictated by necessity ; neither could it have been made with reference to the pretended wholesale business of the ensuing spring. for it could not have escaped the attention of the Plaintiff, that the contemplated importation of articles of a similar description, to the extent of £1000 or £1500, would materially diminish the advantages of the purchase, and reduce the profits which might otherwise have been calculated upon. That the Plaintiff, while in a state of acknowledged insolvency, had been guilty of bestowing preferences—that he had discharged debts of long standing by surrendering a part of the Defendant's goods—that this was almost immediately afterwards followed by a disposal of his entire stock at cost prices—a sale justified by no exigency ; prompted by no decently plausible motive ; and which comprehended articles of indispensable necessity, even in the new and more extensive business in which the Plaintiff professed it to have been his intention to engage. That it evinced a reckless contempt on the part of the Plaintiff, for the understandings of the Jury, gravely to contend that he had it in contemplation to pay for the goods purchased from the Defendants, by means of his spring importations. The few of the notes obtained from Bridge, which, under any circumstances, were susceptible of being employed in the purchase of exchange, had been given to creditors here,—and no remittances, however large, could have overcome physical impediments and enabled the Plaintiff to introduce into this Province in the month of May, goods which could not be expected to leave England till the middle of April. That a comparison of the Plaintiff's means with his debts betrayed an utter inability to embark in a wholesale business, or to establish a credit in England ; or to make those remittances by which alone the credit of the preceding season could be extended or confirmed. That one fact, admitted on all hands, was conclusive : namely, that none of the creditors had been paid up to the present hour. That it betrayed an unexampled hardihood on the part of the Plaintiff, under all the circumstances of

the case, to place his pretensions to damages on the score of loss of character and prostration of credit. His case was one of lofty promise, but of small performance. It was one of intentions which were never accomplished; of expectations which were never fulfilled; of a credit which existed purely in imagination; of remittances which were never made; and of debts which were never discharged.

That such was the case as shadowed forth by the Plaintiff. It would be for the Defendants to complete the outline, and to fill up the picture.

The learned Counsel then entered into the particulars of the transactions which preceded the issuing of the writ of *capias*. The Plaintiff, on the 30th November, 1829, effected a purchase of hats in the package from the Defendants to the amount of £347 2 4, payable, one half (£173 11 2) at four, and the other half at six months' credit; for which the Defendants accepted the Plaintiff's notes, payable respectively on the 1st of April and the 1st of June, 1830. The Plaintiff was personally a stranger to the Defendants. He was no otherwise known to them than as the occupant of a small retail store in their immediate vicinity; and that but scantily furnished. He expressed an extreme anxiety to obtain the hats in question—he had his option of taking the whole or a part. Prudence, perhaps, would have dictated the latter course; but the Plaintiff was eager to obtain possession of the whole. He informed the Defendants that he required the goods for his spring retail trade; that he would be unable to effect sales to any extent before the spring; that he had no other means of paying for the goods than from the proceeds of their sale; and, in consequence he stipulated for a credit beyond the usual period, and running far into the spring and summer months; at which time only, as he repeatedly and urgently endeavoured to impress upon the Defendants, could he be enabled to provide for their notes. The Plaintiff succeeded in conciliating the confidence of the Defendants, who yielded to his representations in the honest confidence of an unsuspicious nature; and granted to him an unusual term of credit upon his own personal security. The purchase was a decidedly advantageous one for the Plaintiff—the hats had been laid in on the most favourable terms; and were sold to the Plaintiff at a heavy reduction upon the invoice, and at unusually low prices. The Defendants, it was to be observed, had no security for the payment of their debt, save the honor and integrity of the Plaintiff; but they relied upon his assurances; and the proximity of his shop would enable them to overlook the Plaintiff's conduct, and to provide from time to time for their own security. The Defendants had no reason to suppose that it was the intention of the Plaintiff to dispose of the hats otherwise than by retail, or in the usual course of dealing. No allusion was had to the pretended wholesale business, of which the Jury had heard so much; although, if credit could be attached to the witness Field, the Plaintiff had matured his intentions in that respect as early as the preceding winter. The learned gentleman added that it was his duty to lay a peculiar stress upon this circumstance, as the facts which would be declared in evidence on the part of the Defendants, would place it beyond a doubt that the Plaintiff even then meditated the fraud which he was soon after prompted to commit. The property was conveyed to the Plaintiff's premises, a part was opened and exposed to sale upon his shelves; the concerns of the Plaintiff were enabled to assume a more imposing attitude; and his shop, which the Defendants and their clerks had occasion to pass daily, if not hourly, offered to their eyes every indication of an increasing retail business, arising from the means thus generously placed at his disposal by the Defendants. The latter reposed in this state of fancied security until towards the close of the January following; when their misplaced confidence in the honor and integrity of the Plaintiff, was for the first time disturbed, by information communicated to them by a Mr. Vaughan, to the effect that the Plaintiff had parted with his shop and sold out his stock in trade, for which he had been paid by means of negociable notes. That he was engaged in converting these notes into British exchange, apparently with a view to abscond, and that he was in fact about to depart from the Province. Vaughan had dealt with Bridge. He had also formed a pretty correct estimate of the Plaintiff's concerns; was aware of his involvements; dis-

trusted his intentions, and had refused him credit. This gentleman had occasion several times to notice Bridge engaged about the premises which he supposed to belong to Blanchard, apparently to the neglect of his own concerns. His curiosity was excited. He was a creditor to Bridge to a small amount, and self interest prompted the enquiry. He accosted Bridge at the door of the Plaintiff's shop, and enquired his motive for being so frequently there. Bridge betrayed confusion, and after some hesitation, acknowledged that he had purchased from Blanchard the entire of his stock in trade, including the unexpired term of his lease. The difficulty which he had experienced in eliciting this information created distrust in the mind of Vaughan, which was not diminished when he was made acquainted with the conditions of the sale; namely, payment by notes at unusually long dates. He insisted on knowing who were the creditors of Blanchard; he learned that the present Defendants were his principal creditors, and that the goods which he had obtained from them, formed no inconsiderable portion of the stock thus unaccountably transferred to Bridge. He enquired if the Defendants possessed any knowledge of the transaction—he was answered in the negative. He then declared his intention of communicating the circumstances to the Defendants, with the suspicions he had imbibed, in order to place them on their guard against the designs of the Plaintiff. Bridge intreated Vaughan not to commit his name in any communication he might make to the Defendants. Mr. Vaughan lost no time in calling upon the Defendants, and prefaced his information by enquiring if they were creditors of Blanchard, and to any and what extent. Satisfied upon this point he, spontaneously and unsolicited, communicated to them his suspicions of their debtor's intentions, and unhesitatingly expressed his opinion that the Plaintiff was about immediately to abscond. The Defendants were naturally alarmed and anxious—they elicited from Vaughan every fact within his knowledge, and discovered that their confidence had been abused. They caused enquiries to be immediately set on foot, which tended to confirm the information of Vaughan.

But the conduct of Blanchard, independently of the circumstances afterwards disclosed, justified every suspicion. The clandestine disposal to Bridge of the whole of his stock in trade, was a breach of the implied understanding between the parties at the time of the purchase, that the property should be disposed of by retail. This breach of confidence was aggravated by the concealment practised, and the stratagem used to blind the Defendants by continuing the Plaintiff's name upon the premises which he had thus abandoned. The only security of the Defendants was the visible stock which they were assured would be continually under their eyes. They knew it to be an unusual thing for a retail dealer to dispose of his stock by wholesale. They were aware that such a thing could not be done but at a sacrifice. Their distrust of their debtor's intentions must have been confirmed when they learned that he had derived no profit or advance upon the sales; and that he had parted with their property at prices corresponding with those of the original purchase.

The Defendants were extensively engaged in mercantile pursuits; they enjoyed a deserved and extended reputation for liberality in dealing; and severity towards their debtors was no part of their character. They resorted to the advice of a professional gentleman; they disclosed to him the circumstances as they had been detailed to them by Vaughan, and were advised that the law would justify their debtor's arrest. They hesitated—not from any doubts of the propriety of the course suggested, but from a laudable reluctance to render the assertion of their rights instrumental to the perpetration of an injury. The remedy by arrest was urged—strenuously urged upon them; but as the Defendant Smith feelingly expressed himself in the hearing of the witness Clark, "He had never before been called upon to arrest a debtor. He was sensible of the responsibility which attached to the proceeding; he distrusted neither his own impressions nor the information he had received—*but he would sleep on the suggestion.*"

The Defendants caused enquiries to be set on foot, and the Plaintiff was sought for at his supposed premises. He was not to be found; the possession had passed into the hands of Bridge, and the information of Vaughan was confirmed.

The sale was for negotiable paper, divided into small amounts, and payable at unusually long dates. If the Plaintiff's purchase from the Defendants to the extent of £350 at that season of the year might be deemed imprudent under all the circumstances, the transaction with Bridge was infinitely more so; for the standing of that individual was fully as equivocal as that of the Plaintiff, and he was already engaged in a similar line of business, and to an extent fully commensurate with his means. The notes granted by Bridge being given at a distant date, were to be regarded more in the light of a security than a payment, and viewed in the most favourable light, unavoidably led to the conclusion that the transaction was nothing more than a contrivance for a discharge; that the object of the sale was to place the property beyond the reach of the Defendants, and so enable the debtor at his pleasure to dictate to the creditor the terms of a ruinous compromise.

But in the further progress of these enquiries, the Defendants were startled by the disclosure of a fact still more unequivocally indicative of a fraudulent intent on the part of the Plaintiff. The sale to Bridge comprehended something less than a moiety of the hats which had been obtained from the Defendants; yet the season was peculiarly unpropitious for the vending of that description of property by retail; and the disappearance of the other moiety in an incredibly short space of time was singularly suspicious. The Defendants with some difficulty ascertained, that Blanchard had, a few days after the purchase, parted with a moiety of the hats to Mr. Abner Bagg. They at first distrusted this information, and with reason, for Mr. Abner Bagg had called at their premises upon more than one occasion to examine the hats; had in fact examined them in company with Blanchard; had declined the purchase at the Defendants' limits; had expressed his opinion that the prices charged were not such as would justify a purchase even by the more extensive establishment with which he was connected, and had withdrawn. This was a few days before the sale to Blanchard, which was made at the same prices at which the property had been offered to, and declined by Bagg. But the Jury would judge of the astonishment and dismay of the Defendants, when they learned that Blanchard had in fact parted with one half of his purchase to Mr. Abner Bagg at cost prices, and that by this transaction he had secured the payment of a debt of long standing, due to the late firm of Bagg and Wait. The Plaintiff had endeavoured to escape the unavoidable inference to be drawn from this circumstance, by describing the transaction as one justified by the relation in which the parties had at one time stood towards each other, that of master and servant—to a sense of gratitude flowing from the remembrance of benefits conferred; and from an anxiety to sooth a feeling of dissatisfaction on the mind of Mr. Bagg, arising from Blanchard's having appropriated to himself the purchase which he had it in contemplation to make. These fallacious reasonings hardly required to be refuted. The conclusion from the facts disclosed, and which it would be in the power of the Defendants to disclose, was irresistible. Mr. Bagg had examined the hats in company with the Plaintiff; he could not for a moment have misunderstood the intentions of the latter; the examination was obviously made with a view to purchase. Bagg, in the hearing of the Plaintiff, had declined the bargain. How then could he feel, or express indignation, at Blanchard's acceding to the offer which he himself had rejected? It was infinitely more probable, that the clandestine negotiation with Bridge had not escaped the vigilance of Bagg; and that, alarmed and anxious for his own security, he had insisted upon Blanchard's relinquishing to him a portion of the hats, and this on the eve of the sale to Bridge. This conjecture derived support from a comparison of dates. The transaction, according to the representation of the Messieurs Bagg, was entered in their books as of the 23d of December; the different notes granted by Bridge, were dated as of the 24th; and the final agreement between Blanchard and Bridge, appeared to have been executed a few days afterwards.

In extending these enquiries, information flowed into the Defendants from all quarters. Vaughan had placed another of the Plaintiff's creditors upon his guard, by disclosing to him the particulars which he had communicated to the Defendants. That creditor had, in consequence, lost no time in securing him.

self by means of one of Bridge's notes. The Defendants were, for the first time, apprised that they had thoroughly mistaken the situation and intention of the Plaintiff. They found that suspicions were rife with respect to him; that debts of long standing were unpaid; that his paper had been dishonoured; that credit, even for small accounts, had been refused to him, by individuals who professed distrust of his means and integrity; that the importunity of some of his creditors, had succeeded in wresting from him a part of the negotiable paper which he had obtained from Bridge; that, in one transaction at least, with Mr. Macnider, he had acted dishonestly—in fact, a series of actions, on the part of the Plaintiff, irreconcileable with honor, honesty, or mistaken good intentions.

The Defendants were advised that the circumstances, in connection with each other, could leave no doubt of his intention to abscond; but before acting upon the suggestions proceeding from various quarters, they sought to obtain an interview with Blanchard, in the expectation of prevailing upon him to relinquish to them a portion of the notes which he had obtained from Bridge, to an extent sufficient to cover their claim. These notes, in fact, were the representative of their property. They authorized Teulon to make this proposal to the Plaintiff. Had it been acceded to, it would have been an additional proof of liberality on their part, as extending the credit from four and six, to nine and twelve months—the greater part of which Bridge's notes had to run. The offer was not acceded to, for reasons best known to the Plaintiff and his friends.

The Defendants were sensible that where there existed a right, there must also exist a remedy to make it effectual; that the law which professes to interpose for the security of the creditor, must be understood to will the means of rendering that security available. It was apparent that the Plaintiff meditated a fraud. The conversion of his means into negotiable paper, and that paper withheld from his creditors; the attempts which were said to be in progress to convert this paper into British exchange; and the concurring opinions of other persons, justified a suspicion of meditated flight. The Defendants caused a process of attachment to issue against the body of the Plaintiff, upon an affidavit taken in the spirit of the *ordonnance*, but, modified in its language by a recent statute, to the effect that the creditor *had been credibly informed: had every reason to suppose, and did most conscientiously believe, that the Plaintiff, his debtor, was immediately about to depart the Province.* The affidavit imputed no corrupt practices to the Plaintiff; it conveyed no stigma upon his character;—however it might be incumbent upon the creditor, in the future progress of his case, to lay before the Court the facts and circumstances to justify the institution of an action before the debt had accrued.

The Plaintiff was arrested by his body on the 20th day of January, 1829, and committed to gaol. His remaining in prison, even for that brief period of time, was to be attributed to the expectation of exciting the sympathy of some future Jury on his behalf, and not to any inability of procuring his enlargement upon bail; for he was, at that time, in the possession of the means which he afterwards placed at the disposal of Bagg and Brown.

There were reasons why the proceeding by *capias* was resorted to, upon this particular occasion, in preference to the remedy by an attachment of the personal property of the debtor, upon a presumption of his intention to secrete his estate, debts, and effects, with an intent to defraud his creditors. There, in fact, existed no personal property which the process of the Court could attach. The time which had elapsed disabled the creditors from following that portion of their property which had passed into the hands of Bagg; and the transaction with Bridge, for which an ostensibly valuable consideration had been given, effectually protected the remainder of the Plaintiff's effects. There existed no means of procuring intermediate security; the Plaintiff evaded all enquiry; and, secure in the possession of the notes which he had taken, unblushingly sported with the feelings and interests of his creditors.

The Counsel for the Plaintiff were correct in stating that the action of the creditors was dismissed by the Court; but they had not treated it fairly in stat-

ing the grounds of dismissal, as they were assigned by the Court. The Court felt that the circumstances offered in evidence by the creditors, by whatever motives prompted, afforded strong presumption of fradulent intention. Candour and integrity were the basis of confidence among mercantile men. The conduct of the debtor, and the concealment practised, was not in the usual course : it became him to explain his conduct to his creditor ; but the Court saw no ground to be satisfied the debtor was immediately about to leave the Province. The Defendants had manifestly acted under a conscientious belief of the existence of the intention which they imputed to their debtor ; but to support an action for the recovery of a debt, months before the term of credit would expire, required direct and unequivocal proof of an intention to abscond.

The learned gentleman contended that no inference unfavourable to the pretensions of his clients (the Defendants) was to be collected from the dismissal of the first action. The pretensions which the Court refused to sanction upon that occasion, were altogether different from those which were put in issue by the present proceeding. In the one case the Defendants were seeking to cancel a contract deliberately entered into ; to justify the breach of an engagement which formed a law and rule of action for the parties. The Court, perhaps rightly, felt that a demand of that nature should be supported by evidence of the most unquestionable description ; that nothing should be left to conjecture. But the evidence which might not apply in support of the creditor's pretension, would be effectual for his defence. Justice would not support an individual in the prosecution of a right, where the error or misconduct of his antagonist was to be attributed to his own fraud. The case of the Defendants, although perhaps within the letter, was not within the spirit of the law ; for it never could be the intention of the Legislature to sanction the principle, that a man should be allowed to reap a benefit from his own wrong, or from the misconception which his conduct was designedly calculated to foster.

The Defendants, in an action of this description, were undoubtedly bound to assign the reasons of their suspicion. They were unable to establish any explicit avowal of intention on the part of their debtor to abscond ; but they relied upon all the circumstances, as affording a justifiable ground for the proceedings which they had adopted. The fraudulent representations which had preceded the purchase ; the now notorious insolvency ; the clandestine disposal ; and the concealment practised towards the creditors, must have been prompted by some powerful motive. The circumstances would enable the Jury to judge how far the Plaintiff had acted in the spirit of the law which he invoked, and the principles upon which he rested his appeal to their sense of justice.

The insolvency of the Plaintiff, at the time of the purchase, was beyond a doubt. The law contemplated the interest of creditors as well as debtors. In other communities than this, it was held to be in vain to think of detecting fraud by the evidence of the parties immediately concerned ; and the Legislature had accordingly directed its attention to the establishment of certain *criteria* of insolvency, calculated to place the creditor upon his guard. What should constitute a legal act of bankruptcy had been well defined in other countries. Daily experience had shewn that men commonly became bankrupts, long before they were known or suspected to be so. It was on the eve of a declining credit, that the debtor was most commonly prompted to the commission of the acts by which the interest of his creditors was impaired. The proof of a fraudulent design was at all times a matter of extreme difficulty ; and a sense of the hopeless nature of the attempt, had in England, and in other countries, given to Bankruptcy a retrospective effect. It was undoubtedly true that in this Province, as well as in other countries, where the interests of creditors were protected by ably digested systems of Bankrupt Law, the principle was recognized, that from the moment of insolvency the debtor ceased to have the right of efficient controul ; the inadequate estate became the common property of the creditors ; and alienations in favour of particular creditors were uniformly discountenanced as a fraud upon those who suffer. But in this country commerce was subjected to great and serious inconveniences from the defect of the local jurisprudence, and the absence of some provision

enabling creditors to unite together for the general benefit. There existed no means of procuring security otherwise than by the judgment of a Court, with all the delays incident to legal proceeedings. The consequence was, that in almost every case of insolvency which occurred, preferences were found to have been bestowed upon favourite creditors. An instructive example was to be found in the case of the Plaintiff here. A creditor of long standing, (Mr. Bagg,) is protected by the surrender of a large portion of the debtor's effects ; the suspicious character of the transaction was enhanced by the circumstances which attended it. Delivery of goods in payment was, in almost every instance, obnoxious to suspicion. It was not to be denied that a debtor was bound to discharge his obligations,and the creditor to receive payment ; but every authority went to the effect, that if the payment were made or received, under circumstances which indicated an advantage over other creditors, it was to be regarded as fraudulent. " Payment of a debt in the ordinary course would not excite suspicion ; but when instead of payment security was given, suspicions of the debtor's intentions might be justly excited."

The learned Counsel further contended that the purchase from the Defendants was made in immediate prospect of bankruptcy, or at least with a view to enable the Plaintiff to discharge other debts of long standing by means of the Defendants' goods. Upon either supposition the conduct of the Plaintiff was indefensible ; it was a deceit upon the Defendants, which bound him in common honesty to restore the goods ; but the most revolting feature of the transaction was the clandestine disposal by *wholesale*, almost immediately after the purchase, and out of the usual course. Taking all the circumstances in connection with each other, it would baffle human ingenuity to suppose a case more justly obnoxious to suspicion. The purchase was made on the 30th November ; the notes granted by Bridge were dated as of the 21th of December. The sale to Bridge could not be the work of an hour, or a day, or even of a week. Much time must have been consumed in the previous negotiation ; some delay must have occurred in the adjusting the terms of the purchase ; and more than one day, at least, in the preparation and perfecting of the lengthy inventory attached to the deed of conveyance. Could the Jury then, for a moment, hesitate to express their conviction that this was a transaction contemplated by the Plaintiff, when he obtained the Defendants' goods ? Could the Plaintiff deny that the purchase was made without any view of paying the price ?

The sale included the Defendants' hats at cost price, and was studiously concealed. The purchase, both as to price, and to term of credit, was a decidedly advantageous one. The Plaintiff, by adhering to his original represention, and vending the property by retail, might have cleared from 40 to 50 *per cent.* upon the sales. This was no imaginary advantage ; the witness Bagg admitted that 25 *per cent.* might have been obtained. Other witnesses, equally competent to form an opinion, would double the estimate. The Plaintiff, without any ostensible motive, was thus shown to have relinquished a certain profit, to the extent of at least £150 upon his purchase ; an advantage for which the pretended wholesale business of the following spring could have offered no equivalent. Every rule and principle of mercantile dealing was opposed to a sale of this description, from a reason far from inapplicable to the present case ; that to permit a debtor, in a state of insolvency, to dispose of his effects privately, even for a just price, was holding out a temptation to defraud his creditors, by the opportunity afforded to him of absconding with the proceeds. But the pretended wholesale business was, in fact, the creation of a luxuriant imagination. A wholesale hatter was unknown to this Province, in the usual acceptation of the term. The largest dealer in that description of property, blended the retail with the wholesale. The sale to Bridge, included every thing which might have sufficed for the wholesale. The shop itself was surrendered ; yet it was amply adequate for all the purposes of the new business ; and, it would be shewn in evidence, that the Plaintiff, but a short time previously, had fitted up a part of the premises, with a view to the retail business of the ensuing spring. Moreover, the quality of hats obtained from the Defendants, added to his former stock, was more than adequate to any business in which the Plaintiff could

with prudence engage. The notes obtained from Bridge, were utterly worthless for all the purposes of Exchange. No Exchange had been bought, or remittances made, at the time of the arrest; and the season for transmitting orders to England had been allowed to pass away. These facts give an emphatic contradiction to the Plaintiff's pretensions.

The sale to Bridge was not in the ordinary course of business; nothing approaching to adequate security had been obtained; the notes given by Bridge, being at extremely distant dates, could hardly be regarded in the light of a payment. The transaction bore the aspect of a temporary expedient; of a contrivance set on foot to cover the Plaintiff's effects; a sale without the consent of the creditor, and concealed from him; and the conversion of the debtor's means into negotiable securities, and these too at unusual dates, without a syllable of explanation, were to be regarded as indications of an intention to abscond. The suspicions of the creditor were more than justified. To have paused in adopting the course suggested would have been a breach of duty on the part of the Defendants, who as factors, were bound to watch over the interests of their principal. The case was not one of fraud in the common acceptation of the term, but of mercantile fraud. In every country there were peculiar principles applicable to those who lived by buying and selling, whose business was conducted by means of extensive credits. Absence from home, or sudden relinquishment of trade are considered so far conclusive of intentions as to justify legal proceedings. The transaction throughout was replete with the characteristics of fraud. False representations; purchases on the eve of insolvency; preferences bestowed; fraudulent alienations and concealment.

The learned Counsel in commenting upon the evidence of the different witnesses, described the case as one gotten up by the Plaintiff himself. The impressions of the two witnesses Bagg, were avowedly derived from the representations of Blanchard; a remark applicable to all the other evidence adduced. Of the Messrs. Bagg it ought to be observed that they stood in a peculiar relation towards the Plaintiff; they had introduced him to business: the transaction which had terminated so disadvantageously for the Defendants, had proved highly beneficial to them; they had secured the payment of their own debt by means of the Defendants' goods; they were in some degree identified with the Plaintiff in the transaction, and were naturally interested to exculpate themselves from any imputation of having derived an unwarrantable advantage over the other creditors of the Plaintiff, by offering a plausible explanation of his conduct. The assistance extended by the Messrs. Bagg to Blanchard when the latter first engaged in business, was dictated by self-interest; it also consisted of the stock of an establishment broken up; they also had the security of the visible stock, which they turned to better account than the Defendants. Mr. Abner Bagg is forced to admit that the hats had been offered to him and declined, as being too high priced; yet in the same breath he professes to have entertained a feeling of indignation towards the Plaintiff for having afterwards stepped in and appropriated the bargain to himself. The Jury were bound to remark that he had examined the hats in company with the Plaintiff; that in the hearing of the latter he had declined the purchase. He must have surmised the intentions of Blanchard, and he had therefore no cause of complaint. There was an absence of *vraisemblance* in this part of the story. Blanchard, he says, offered him half on the same terms; less the debt due to Le Roy and Company. Did Bagg require the hats to complete the assortment of Le Roy and Company, or was it his object to secure his debt? Circumstances went to confirm the latter conjecture. Le Roy and Company had no occasion for the hats; they broke up their establishment in the following month of March; and the intended relinquishment of the trade must have been in the contemplation of Mr. Bagg some time before. The purchase then, if made in good faith, must have been a disadvantageous one. Mr. Bagg thought that some time in December 1829, he was consulted about the sale to Bridge. Was this confidence voluntary, or extorted when his own suspicions were awakened, and he obtained from Blanchard the surrender of half his purchase? He admitted that the Plaintiff's credit was doubtful in the month of January 1830, in consequence of his suffering small demands to stand over. Was conduct like

this on the part of a trader, a passport to credit either at home or abroad? Was it less easy to accomplish a large English remittance than to discharge a small demand? Blanchard was endeavouring to convert the notes into Exchange. How could such notes procure Exchange. Blanchard asked him how he should remit; he also consulted Campbell his clerk. The intended wholesale dealer was so thoroughly ignorant of the business in which he was about to engage, that he enlisted the services of a Mr. Lalanne to prepare his orders, and consulted a clerk in the employ of the Messrs. Bagg, as to the manner in which remittances should be made. The witness was of opinion that if the Defendants had not arrested Blanchard, the latter might have provided for the first note; the spring importations would have paid the other. The evidence throughout consisted of nothing but hearsay and conjectures; of possibilities to the exclusion of probabilities; of delusions to which no rational person could subscribe. The virtue which the Plaintiff and his witnesses attributed to the *ifs* and *buts*, which had been so plentifully introduced in aid of the conjectures offered to supply the absence of facts, was wonderful. Fortified with these little adjuncts, the Plaintiff rioted in imaginary opulence, and indulged in his visionary expectations. *If* the notes of Bridge had not been utterly worthless, Blanchard might have procured Exchange. *If* Exchange had been procured, he might have remitted to England. *If* the remittances had reached England in time, he might have obtained a further credit. *If* the contemplated importation had reached this Province, he might have been in funds to meet the claims of his creditors. *If* Bridge had not failed, he might have had something to show to his creditors. Was the case of an individual seeking a compensation in damages to the extent of £5000, for an alleged injury to his character and credit, ever before presented under such auspices, or exhibited under such colours? Mr. Abner Bagg had informed the Jury, that the Plaintiff had suffered in consequence of Bridge's failure. The result had shewn Bridge to have been also unworthy of credit. He failed some months after his pretended purchase; he was a declared bankrupt in the autumn of 1830.

The evidence of the witness Field, was no otherwise material than as he declared that Blanchard, as early as the month of January, 1829, and many months anterior to the purchase from the Defendants, spoke of a wholesale business, and predicated upon the credit he had secured. The representations, then, which had been made to the Defendants, were shown to be false, by the avowal of the Plaintiff's own witnesses. The witness professed to be of opinion, that if Blanchard had continued in business, with the credit he possessed, he might have negotiated Bridge's notes, and procured Exchange. The credit was already disposed of; but the absence of this material feature was compensated by something altogether novel and unexpected: the negotiable character of Bridge's paper, and its applicability to the purposes of Exchange. If Exchange, not of the most worthless description, was to be procured in the market by means such as had been suggested by this witness, and the other witnesses, Campbell and Brown; if circuitous transactions of the character alluded to, were a matter of common occurrence, the Province ought justly to forfeit its character with the rest of the commercial world. Who had ever heard of converting £100 of dubious paper into a moiety of the amount, and applying that moiety to the purchase of Exchange? Had the Plaintiff done so in this particular instance, the whole of the notes obtained from Bridge must have been deposited as collateral security, to obtain £200 for remittance to England—and where would have been the creditors here?

Of the evidence of Mr. Stanley Bagg, one part was eminently calculated to arrest the attention of the Jury. He stated that the closing of his transactions with Blanchard, by means of a surrender of a portion of the Defendants' hats, in discharge of the debt due by Blanchard, appeared by the books to have taken place on the 23d of December—closed at the suspicious moment, when Blanchard was about closing with Bridge. The witness had heard of the transaction with Bridge, but was not consulted. Was it this that prompted him to secure his debt?

The evidence of Brown, suggested an important consideration. He became bail for the Plaintiff on the strength of the funds placed in his hands, to the extent of about £345, includiug a considerable portion of the paper obtained from Bridge. He was put in possession of the whole of the Plaintiff's means. What then had become of the notes granted by Bagg for the balance of the hats transferred to him in December, and which had been so triumphantly held out by the Plaintiff's Counsel, as affording to him a means of meeting his engagements towards the Defendants? To what purpose had they been applied? Had they bought Exchange? Where was the proof of it? Where was the Exchange?—or had they also been applied, to appease the importunities of clamorous creditors? What had become of the proceeds of the English importation of the preceding summer? Had they been applied in reduction of the debt to Bagg and Wait?

The Plaintiff had ascribed to the Defendants, an intention of appealing to information supposed to have been afforded by Mr. Peter H. Teulon, in corroboration of that obtained from Vaughan, in justification of the arrest; and he had, accordingly introduced that gentleman, for the purpose of disproving the justice of the inference which the Defendants were supposed to have drawn from his communication. The stratagem had recoiled upon its author. The evidence of Teulon could not shake the case for the Defendants. He was also a creditor of the Plaintiff—he was, moreover, a friend; he also heard of the sale to Bridge by accident; he also deemed it an extremely suspicious circumstance, and felt alarmed for his debt of £25. He called upon Plaintiff, and extorted from him an avowal of the circumstances. *He* had the advantage of an interview and explanation with the Plaintiff, who satisfied *him*. He afterwards conversed with the Defendants, who communicated to him the substance of what had been stated by Vaughan, and asked his opinion. His opinion was, that Blanchard was not about to leave the Province. Was this opinion predicated upon a conviction of the integrity of the Plaintiff—the sincerity of his intentions—or the extent of his means? Did he express himself respecting Blanchard in the language of panegyric? By no means. He appeared to have acquiesced in all which the Defendants stated of the fraud and misconduct of their debtor; he fanned the flame of their resentment; he expressed his opinion that the remedy of the Defendants under all the circumstances was by prosecution for obtaining goods under false pretences; and he only distrusted the intention of the Plaintiff to abscond, as attributed to him by the Defendants, because the notes which he had taken from Bridge were at long dates, and could not be readily negotiated in a foreign country. The inference was obvious. The Defendants were aware that the Plaintiff was straining every nerve to convert these notes into British exchange. Had he succeeded, Teulon himself would have acquiesced in the justice of their suspicions. The witness betrayed some correct feeling upon this occasion; he felt for the situation in which a too generous confidence had placed the Defendants, and sought to obtain an interview with the Plaintiff, with a view of prevailing upon him to relinquish to the Defendants the notes he had obtained from Bridge. His efforts were ineffectual. The evidence of the witness was valuable as respected the period when hats could be sold to the most advantage, and the time when English remittances should be made. January, February, and March were decidedly unfavourable months for the sale of that description of property; and English remittances with a view to spring importations, would accomplish nothing if not sent forward by the early part of January. What could the Defendant expect to accomplish by remittances leaving Canada in the month of February? Still the circumstances suggested the enquiry, where was the exchange which was to have been remitted, or to whom was application to obtain it made? Upon neither of these points had the Plaintiff deigned to offer any explanation to the Jury.

The learned gentleman here took up the assignment from Blanchard to Bridge, and contended that a bare enumeration of the notes which were given, with the amounts and periods of their payments respectively, would shew the utter inapplicability of this paper to any useful purpose. He also read and commented

upon a part of the correspondence between the Plaintiff and the house at Colne in England, which betrayed a dissatisfaction on the part of the English correspondent with the manner in which the Plaintiff had met their applications for remittances in discharge of the debt previously contracted.

That it was under all these circumstances that the Defendant Smith, in the exercise of his human, and therefore fallible, judgment, had come to the conclusion that the conduct of his debtor was irreconcileable with any other than an intention to abscond; and acting upon the information communicated by Vaughan, upon his own moral convictions, upon the suggestions of persons wholly disinterested, and upon the opinion of his professional adviser, had taken an oath in the form prescribed by law, to the effect "*that he had been credibly informed, had reason to believe and did conscientiously believe that the Plaintiff, his debtor, was about to depart the Province.*"

That no imputation of deliberate malice could attach to the Defendants; there were moral considerations to exclude any such presumption. Their conduct in the first instance had been marked by a spontaneous and unusual liberality; the property which they had confided to the Plaintiff was not their own; it belonged to a principal in England; they were not acting under a guarantee, or *del credere* commission; they were aware that in the event of loss the consequences would attach to the foreign consignor; they did not act until unsought for information was obtained. The act of arrest was in itself prejudicial to their interests, and those of their principal, on whose behalf they were acting. For the remedy adopted was one which nothing but an apprehension of total loss could have dictated. That the Defendants must be supposed to cherish gain preferable to loss; and they could have anticipated no advantage from the arrest of their debtor, under all the circumstances which had been disclosed, beyond that of providing against his evasion. Imprisonment for debt was not to be viewed in the light of a punishment; its object was to coerce the debtor to payment by means of concealed property which the creditor was unable to reach. Could it be denied that the Defendants had been forced to the adoption of this alternative?

The learned Counsel here entered into an examination of the supposed means of the debtor as contrasted with his acknowledged engagements; from whence the Jury were bound to infer an insolvency beyond all hope of revival. At the time of the purchase from the Defendants, he stood indebted to Miller, Fisher & Co. in a sum exceeding £50; to Hough in £12 or £14; to Bagg in £78; to Macnider in £14; to Teulon in £25; to the mechanic who had been employed in fitting up his premises, in £14. He was bound to remit to England, in currency, to the extent of £220; the debt which he had contracted in favor of the Defendants was £347; and all this exclusively of other debts of which the creditors could derive no knowledge. To meet all this amount of engagements the Plaintiff, it would appear, had nothing beyond the notes obtained from Bagg and the worthless paper of Bridge. The notes granted by Bagg had not been accounted for; the better portion of Bridge's notes had been yielded to the importunities of Fisher & Co. and of Hough. There remained not wherewith to purchase exchange, or to provide for the Defendants.

The learned gentleman concluded by directing the attention of the Court and Jury to the combination of circumstances, which in his judgment ought to weigh with the Jury in pronouncing an opinion of the Plaintiff's pretensions. The circumstances under which the Plaintiff had introduced himself to the Defendants—the false and fraudulent representations which preceded the purchase—its unnecessarily large amount—the advantages which might have flowed to the Plaintiff from an adherence to the terms of the purchase—the probable profits—the surrender of a moiety of the purchase to Bagg; the terms, time, and conditions—the sale to Bridge; the terms, time, and conditions—the number and character of the notes which were given in payment—the concealment practised—the purposes to which many of those notes were applied—the purposes to which the Plaintiff had it in contemplation to apply the remainder—and the preposterous story of a wholesale business by means of spring importations, based upon a credit more than dubious.

It would be for the Jury to determine the character of the Plaintiff's pretensions.

Mr. LAFONTAINE then addressed the Jury in the French language for the Defendants.

The evidence of LUMAN VAUGHAN, as taken by virtue of a *Commission Rogatoire*, at New York, on the 23d September, 1833, was read, to the following effect:

I am a broker; I know all the parties in this suit. I know nothing of the purchase of hats by the Plaintiff from the Defendants, except from hearsay. Before the Plaintiff was arrested by the Defendants, I heard that his paper had been dishonoured, and I considered his credit doubtful. I should not have given him credit. In fact I have denied having goods when he has applied to buy of me, for fear he should ask me to trust him. I have refused to give him credit. I thought him embarrassed, and heard others express the same opinion. I thought his credit bad. When I heard of Blanchard's purchase from Defendants I was surprised. I first heard of the transfer to Bridge from the latter, and from the manner in which he represented the sale to have taken place, I considered it a clandestine transaction. Bridge informed me that the payment for the stock in trade of the Plaintiff was made in his negotiable notes, some of which he had used to pay a debt to one Bagg, and that Blanchard was endeavouring to obtain foreign Exchange with the remainder. I then asked Bridge who were Blanchard's creditors, and he mentioned Smith & Lindsay as being the principal. This conversation took place in the Plaintiff's shop. I then went to Mr. Smith, and made him acquainted with this conversation, and expressed my opinion that the Defendants would never recover their debt from the Plaintiff. I mentioned the same conversation, and expressed the same opinion to Mr. Hough, another creditor of the Plaintiff, and advised him to secure his debt if possible. The Plaintiff was always, I believe, engaged in a retail business, and was not supposed to be possessed of means adequate to a wholesale concern. The months of December, January, February and March are not favourable to the sale of hats by retail. I knew Daniel Bridge; I think I have lent him small sums of money. I had no thorough insight into his business. My knowledge of the sale to Bridge arose from Bridge's information. I had no difficulty in eliciting from Bridge the particulars of the transaction. I expressed my intention of communicating what I had heard to the Defendants, when Bridge appeared unwilling that I should do so, and seemed to regret that he had told me of the affair. I told Mr. Smith from what I had seen and heard, that it was my decided opinion that the Plaintiff intended to leave the Province. I asked Smith if he had not been apprized of the sale by any one else—he told me he was utterly ignorant of it, and seemed much surprised. I told the Defendant that my opinion proceeded upon what I had heard from Bridge, but from no other source. I gave the same information to Mr. Hough, and recommended him to get one of Bridge's notes. To this Mr. Hough replied that he would have to give the difference between the amount of his claim and that of the note, which I advised him to do. On this occasion I informed Mr. Hough that I had just been to Mr. Smith to put him on his guard, and I acquainted him with all the conversation that had passed between me and Bridge. I believe Hough acted upon my information and advice, and thereby secured his debt. It was the conviction on my mind that the Plaintiff intended to abscond from the Province with an intent to defraud his creditors, and I called upon Smith and Hough with a view of impressing upon their minds a belief of such being the intention of the Plaintiff; and, as I believe, I did so impress them.

To the cross-interrogatories the witness answered: I had no means of judging of the Plaintiff's manner of trading, otherwise than from appearance and general report. I have no recollection of being in the Plaintiff's shop previous to his sale to Bridge. I have no recollection that Bridge ever expressed to me a suspicion that the Plaintiff intended to leave the Province, or otherwise to defraud his creditors. It was from my conversation with Bridge, connected with

the state of the Plaintiff's credit at that time, that I formed the opinion that he was about to leave the Province, and from no other circumstances. I have never been on terms of close intimacy or friendship with either of the Defendants.

The examination of Mr. VAUGHAN having been read, Mr. WALKER then called—

The Honorable Mr. GATES, who deposed to this effect:—I have known Mr. Vaughan for many years—he is now in New York. He was a man in whom I should place the most perfect confidence, having had a very extended business with him. I should have reposed implicit confidence in any communication in matters of business made to me by Mr. Vaughan. (Mr. GATES here inspected copies of the notes from Bridge to the Plaintiff, and being asked to state his opinion as to the notes, he said) I should not think they were entitled to much credit, from the limited trade and connection of the drawer. I am a Director of the Bank of Montreal, and I can say that Mr. Bridge's paper did not possess much credit at that establishment. If exchange could have been obtained at all, it would have been of a similar description to the notes. To have manufactured goods by the spring arrivals, it is necessary that the order should be sent before the 1st of January; and orders sent in the beginning of February for £1500 worth of hats would be entirely too late for the spring arrivals. I have known the Defendants ever since they have been in business, and never heard anything against the liberality of their dealings—my transactions with them have been very extensive. If a retail dealer, without the knowledge of his wholesale creditor who had trusted him in that character on his own personal security, should sell out his entire stock a fortnight after having made a purchase to the amount of £360, I should not think badly of such a transaction, if the sale was entered into to pay me as the seller; but, if otherwise, I should deem it a very suspicious affair. Exchange at that time of the year (January and February) is generally scarce; and in proportion to the scarcity of exchange, so is the necessity of most unexceptionable paper. Exchange is generally considered as equivalent to money, and to be purchased by money only. A person selling out his stock, tools and implements of trade, must necessarily incur a very heavy expense, should he commence business anew.

Cross-examined by Mr. DAY,

Mr. Vaughan was a money broker, dealing in bills and bank stock. He imported French silk, and fancy goods, from the United States. I cannot speak as to the general opinion respecting the manner in which Vaughan traded, but I have heard some few surmises that he was a smuggler. I cannot say that I have heard this as a general rumour. I had some reason to suppose that Vaughan introduced goods indirectly, and not by the ordinary road. My opinion is not strong enough for me to say that Vaughan was a smuggler—all I have heard on the subject was rumour. I should have, and do still have, implicit confidence in Mr Vaughan; and the many very extensive and confidential transactions I have had with him, would induce me to believe any thing he said. My transactions with him, and my opinion founded thereon, were subsequent to any of these smuggling transactions imputed to him. It is to the latter period of his residence here, that my high opinion of him refers. No application was ever made to me to join in a subscription to defray the expences of this defence.

Mr. FROTHINGHAM. I have known Vaughan for a long time, and never heard any thing contrary to his high character. I should place confidence in Vaughan's integrity from his character. For many years I have imported largely from England; and it is an object that orders for importations should be sent home in November, and beginning of December. No man of sense would send orders in February, if he wanted goods by the spring arrivals. I should not consider the notes (mentioned in the schedule attached to the transfer from the Plaintiff to Bridge,) to be available for any mercantile purposes; never having known any thing of either Blanchard or Bridge. I should not even know what to do with their notes, if they had come under my notice in the way of business. I give credit to retail dealers. It is not a common occurrence for retailers to sell out their entire stock, without the knowledge of their wholesale creditors. An opinion of such a transaction would entirely depend upon the

character and respectability of the retailer. If a debtor of mine were to act so, it would excite my suspicion.

Cross-examined by Mr. DAY,

I have not had much intercourse with Vaughan, and have had very little knowledge of the nature of his trade. I have heard that Vaughan introduced goods into the Province, without paying the duties. His credit and character is good.

Mr. HOUGH. I occupy premises in St. Paul Street. In the fall of 1829, the Plaintiff had a store opposite to me. He was a retail hatter, as far as I could perceive. He purchased a small amount of goods from me; from £10 to £12 worth. I remember Mr. Vaughan calling upon me in the month of January 1830. I was intimate with him. He told me that he had just left the Defendants' office, and narrated to me the circumstances of the Plaintiff's sale to Bridge. He told me he did not think that the Defendants would ever be paid; and that his opinion was, that Blanchard intended to "clear out," as he was employed in converting Bridge's notes into foreign Exchange. As he had heard that the Plaintiff was indebted to me, he recommended me to look out for my claim; and that I had better get from him one of Bridge's notes, and pay him the difference, This is my impression of what passed; and, in consequence, I applied to the Plaintiff for my debt, and got a note of Bridge for £25, and gave him the difference in cash. I should not have accepted such a note, had I not been urged by Vaughan's information, and, in order, to secure my debt. The note was payable at three or four months. This was the first intimation I had of the transfer of the Plaintiff's property to Bridge. The Plaintiff's name continued over the door; and, until Vaughan informed me to the contrary, I thought that the Plaintiff still continued to carry on the business of the shop which bore his name. My suspicion of the Plaintiff's leaving the Province, arose from Vaughan's information.

Mr. GEORGE PROCTOR, examined by Mr. WALKER,

I was in the confidential employ of Messrs. Smith & Lindsay, in 1829. I knew the Plaintiff Blanchard to be a small retail hatter. His business was on a limited scale, and his shop consisted of a small room. I remember seeing the Plaintiff come down several times to the Defendants to buy the hats. He seemed anxious to get possession of the hats. There were twelve or more cases of them, and he proposed to buy the whole. I was present at the negotiation respecting them, between Mr. Lindsay and the Defendant. The Plaintiff made several propositions, and the difficulty seemed to be, that he asked a longer credit than the Defendants usually gave. His reason for demanding the protracted term of credit was, that the goods would not be saleable until the spring; that he did not possess much capital; and that he wished to pay for the bills which he was to give for the hats, by the produce of the hats themselves. On these grounds, Mr. Lindsay granted him the extended credit he asked for. Blanchard distinctly said, several times, that he could not retail the hats until the spring, and that he wanted them for his spring retail trade. It was upon these assurances only, that he got the hats; and without such assurances, he could not have obtained them. The Plaintiff's apparent candour seemed to influence Mr. Lindsay. The Defendants had no other security, than the appearance of the hats in the Plaintiff's shop, in the way of retail trade. That, and their opinion of his honesty, was their only security. He was an utter stranger to the Defendants. I remember Vaughan calling on the Defendant in January, 1830. Up to that time, Blanchard's store continued open, and I had occasion to pass it daily, three or four times. I saw no change in the shop. I saw the hats, which I suppose were those bought from the Defendants, occupying the shelves. The first intimation the Defendants had of the sale from the Plaintiff to Bridge, came from Mr. Vaughan, who asked Mr. Smith if he was aware that Blanchard had sold out his stock; adding, that he was glad that he was no creditor of Blanchard's. He then made some remarks, to the effect that Blanchard was about to leave the Province. This was the substance of what Vaughan

said. He said that the Plaintiff had sold out to Bridge for negotiable paper. Mr. Vaughan was a man in whose representations I should have reposed confidence; and on that occasion I placed implicit reliance in what he spontaneously stated. He had no other business at Defendants' store. I believe he came expressly to acquaint the Defendants with the suspicions he entertained of the Plaintiff's intentions. The other transaction that had occurred between the Defendants and Vaughan, related to the sale of a piano. From what Vaughan stated, I entertained the impression that Plaintiff intended to quit the Province, and I perceived that Mr Smith had the same opinion. It could indeed have had no other effect. Mr. Jones was Defendants' professional adviser at that time. Mr. Smith left the office with Mr. Vaughan. I then told Mr. Suter what had occured, and expressed to him my opinion upon Vaughan's information. The hats were sold to the Plaintiff at a loss of 20 *per cent.* to the manufacturers, and the sale was consequently very advantageous to him. He might have realized a profit of 40 *per cent.* by retailing them. If he had retailed them, he would have cleared £120. It was his interest to retail them; and, indeed, that was the express understanding upon which they were sold to him. When I heard of the sale to Bridge, it excited my suspicions of the honesty of the Plaintiff's intentions. If he refused to hand over the notes which he received from Bridge for the hats, I should consider it a great breach of mercantile integrity. The Plaintiff never came to offer the notes. I heard Mr. Vaughan say to Mr. Smith, that these very hats were among those sold to Bridge. Mr. Smith felt great reluctance in suing out the *capias*. In consequence of Vaughan's information, Mr. Suter was sent to make inquiries, and Blanchard came down to the office, but Mr. Smith was not within. This is the only instance of Defendants' arresting any person.

Cross-examined by Mr. DAY,

I have never received any pecuniary accommodations from the Defendants. Mr Lindsay receives money for me, and then hands it over to me. It passes through his hands, but is under my controul. In the civil action, brought by the present Defendants against the Plaintiff, I gave in evidence all that I considered important in the communication made by Vaughan to Smith. I persist in the evidence I gave in the civil action.

The Court here rose.

SATURDAY, *Oct.* 5, 1833.

The Court met, pursuant to adjournment.

Mr. WILLIAM SUTER was called, and examined by Mr WALKER,

I was a clerk in the employ of the Defendants in 1829 and 1830. They carried on the business of commission merchants. In the fall of 1829, they possessed a considerable quantity of hats, consigned to them from England, to be disposed of on commissions. They were to receive a commission of 5 *per cent.* It was not a *guarantee* commission. The guarantee commission, over and above the ordinary commission, is 2½ *per cent.* The Defendants did not guarantee the sale of the goods, and were not responsible to the London house. I remember well the circumstances connected with the sale of the hats to the Plaintiff. He called on the Defendants about the hats two or three times, accompanied by Mr. Bagg. I remember one occasion, when the Plaintiff and Bagg came down together, to examine the hats. I did not then understand which of the two wanted to purchase, but I am certain they came together. I was not present at the sale. It amounted to £360, at a credit of four and six months—this is the longest term they ever granted for goods of this description. Blanchard insisted on being allowed the longer credit, as he wished to retail the hats; and should he give a note for three months, he could not at that season of the year retail the hats. I was surprised, in my own mind, at this long credit; but I learned that it was granted at the instigation of Mr. Bagg, in whose em-

ploy the Plaintiff had been. The Plaintiff's business was trifling; he had a small retail store. December to March, are unfavourable months for retailing hats. At that time I am not aware that the Plaintiff possessed any means. He told Mr. Lindsay that his ability of paying for the hats, depended upon his retailing them. Up to this time he has not paid for them. I do not think Mr. Lindsay would have sold Plaintiff the hats, if it had not been for his representations about retailing them. Blanchard had never previously had any dealings with Defendants I do not think the Defendants had ever seen Plaintiff before this period. I remember hearing that Mr. Vaughan called on Defendants, but I was not present. After the sale, and before Vaughan had called, I had occasion to pass two or three times a day by Plaintiff's store, over which his name continued; and I never supposed for an instant that Plaintiff had dispossessed himself of the hats, or of his business. I never knew that Plaintiff, in his dealings about the hats with Mr. Lindsay, told him that he was to transfer half the hats to Mr. Bagg, for an ancient debt. Mr. Blanchard never said any thing about a wholesale business, but he represented that he bought the hats to retail them. Mr. Lindsay would never have sold the hats to Plaintiff, without Bagg's recommendation. The Defendants' only security depended on the Plaintiff's honesty, and the retail sale of the hats. Feeling an interest in the sale of the hats, under these circumstances, I frequently looked into the shop—every thing seemed to be going on as usual—there was no alteration in the shelves. The hats were fine beaver hats. After the communication by Vaughan, (of which I was informed by Mr. Proctor,) I was directed to get information thereon, as we thought the debt in jeopardy. I then went to Blanchard's store, and asked to see him. I was told that the Plaintiff was not there; that Plaintiff had nothing to do with the store and the business; but that it belonged to Bridge. This was the first time I had heard of this transfer; and up to this period, I had thought the store was Plaintiff's. My impression was, that Plaintiff had acted unfairly; and, from what I ascertained, I made up my mind that Plaintiff intended to quit the Province. I apprised Mr. Smith of this, and he shewed great repugnance to adopt proceedings; and I am convinced that nothing short of the actual necessity, made him so act. I made inquiries as to Plaintiff's credit; the results of which were very unsatisfactory, and confirmed my previous unfavourable opinion of him. The result of my inquiries also tended to prove that his credit was bad, and his character doubtful. I heard something unfavourable of him at Mr. Macnider's—I am not certain whether this was before the arrest. I think it was Mr. Macnider's clerk who gave me the information: he is now absent from the Province. The hats were invoiced as low as possible. Defendants would have been justified in exacting 50 per cent. more for the hats; but, in consequence of Mr Lindsay being on the point of going to England, and wishing to close the sales previously, the hats were on that account sold lower than the usual rate. Had Plaintiff retailed the hats, he ought to have made 36 *per cent.* profit. I frequently met Plaintiff in the street after the sale to him, and he never acquainted me with his intention of changing his mode of dealing. He never told me of the transfer of half the hats at cost prices to Bagg. We heard of this first from Vaughan. The vendors of hats in this city, sell both by wholesale and retail. A wholesale hatter, I should suppose, would require tools and implements of trade. Exchange in this market is considered as a cash article. To obtain it, cash or the very best paper at three months is necessary. Exchange for bills at nine months could only be obtained at a great sacrifice. I should doubt very much, if Bridge's notes would have obtained Exchange at all. The 8th of January packet is considered a late conveyance for orders for goods, by the spring arrivals. Orders transmitted on the 1st of February, could not, I think, leave England, before the end of April, even if they were ready for shipping. Orders for spring arrivals ought to be sent by the end of March, or beginning of December. People who had but a scanty stock, ought to dispatch their orders early in the fall. If fine hats did not arrive early in the spring, it would be very disadvantageous to the importer. I never heard of such a transaction as that of Plaintiff's sale to Bridge—it excited my suspicion immediately. It is not possible, I think, to

dispose of such a trade, at such a time of the year, without a great sacrifice; and this it was that excited my suspicions. I remember Teulon's coming to Defendants, previous to Plaintiff's arrest, and stating to Mr Smith that he held a note of Plaintiff's which had been due for some time, and was not paid. Any thing Teulon said of Plaintiff, did not remove my suspicions, but increased them. Although the purchase was large, I did not think it extraordinary, as it was so favourable for Plaintiff. The Defendants would have sold the hats by single packages, if so required. Mr. Vaughan, when he gave the information to Defendants, had no business transactions with Defendants; and I think his only object in coming, was to apprise them of Plaintiff's proceedings. I attached implicit credence to Vaughan's information, as he was a person of credit and character. Had I been in Mr. Smith's place, I should have acted on the information of so respectable a man as Mr. Vaughan. Mr. Jones was then the attorney of Defendants, to whom, I believe, Mr. Smith immediately went. I recollect Mr. Jones coming down to Defendants, previous to Plaintiff's arrest, on this business.

Cross-examined by Mr. Day,

I do not think Plaintiff and Bagg met at the Defendant's house by accident. I have not been instructed by Defendants as to the purport of my evidence this day. I come here to tell the truth. I have heard that Vaughan imported goods from the United States, without paying duties. I have heard this as a rumour. I have never expressed myself distrustful of Vaughan's testimony, nor has Mr. Smith, to my knowledge. I never remember Mr. Smith speaking about Vaughan's evidence. It is possible that I might have said that I would not appear here, unless Vaughan was a witness, but I do not think I said so to any one.

Richard Robinson. I am a carpenter. In 1829, I was called on by Blanchard to fit up a work-shop for him behind his store. I fitted it up in Oct. 1829. I understood from him and his men, that the shop was wanted for making and selling hats. I never heard that he had the shop fitted up to dispose of it again; I understood quite the contrary, My bill was £15. I had a great deal of difficulty in obtaining payment. I was paid in June 1830. I took part of my bill, and gave a receipt for the rest; and I was glad to get part. I often saw Plaintiff at the shop when I went for my money. I wanted a hat for one of my men in December, and went to the shop, where Bridge then was. He told me he would sell me a hat, but on his own account, and not for Plaintiff. I was surprised at hearing that Plaintiff had sold the business to Bridge. The family Lalanne, with whom Blanchard boarded, told me that Blanchard was going to quit the Province. This was just after Plaintiff sold to Bridge, and before the arrest. I was very intimate with old Lalanne, who also informed me that Blanchard intended to quit the Province.

Cross-examined,

The Plaintiff disputed my account, but without reason. I am not aware that the account was submitted to arbritrators. I think I received somewhere about £7—my bill was about £11 10s. I have never before given evidence on this trial.

James R. Orr. I am a partner in the house of Orr & Blackader, and deal in hats wholesale and retail. I am not aware of there being a wholesale hatter in Montreal. A variety of implements for manufacture, repair, and alteration of hats, are not requisite for a wholesale dealer, when the hats are completed and finished. The articles of tools sold by Blanchard to Bridge, would be necessary for unfinished hats—and all the wholesale dealers in this city possess them. Midgley and Wilkinson have not yet been paid. Blanchard told me that the very first debt he would pay, when he realized Bridge's notes, should be Midgley and Wilkinson's.

Mr. J. G. Mackenzie. I am a wholesale dealer and importer of goods. I knew Blanchard in 1829. He was a small retailer of hats in St. Paul Sreet. I should not have been disposed to trust him.

Cross-examined,

I knew nothing about his character—my reluctance arose from his want of capital. I think he applied for credit to me in 1829. I declined trusting him, because I knew nothing about him.

Mr. Shuter. I have imported extensively from England for many years past I have frequently imported packages of hats; and generally send my orders to England in the beginning of December. It requires time to execute an order in England. An order sent in the beginning of February, would be rather too late for the spring arrivals. Unquestionably the early arrival of hats is more necessary than that of other goods. I often remit Exchange to England. I cannot obtain Exchange except for money, or good paper. The best paper must be given for Exchange. Looking over the schedule of notes given to Bridge, I think that no Exchange could have been procured by such paper. I never heard of Exchange being obtained in this city, even by good notes, at six, nine, and twelve months, except at a great sacrifice. I have always understood that all the hatters of Montreal have shops, where they work up hats, and finish them. For this object a variety of tools is required.

Cross-examined,

I have spoken to Mr. Smith on this subject, as it has occupied the attention of society a good deal. No proposition was ever made to me, to enter into a subscription to defray the expences of this trial. I have never heard it said, that this suit was the common cause of the wholesale importers. I feel an interest in the result of this case, as I wish justice to be done.

Mr. Bradbury. I remember a transaction between Bradbury & Co. and the Plaintiff, about some cloth, in the month of May, 1829. The Plaintiff came to our store for cloth, which he wanted to make into caps. We shewed him some cloth; and he said if we would let him have a yard, and if it suited him, he would take a piece. He came back, and wanted four yards more, for which he was to pay in cash. The amount was more than £3. We refused him credit, but as he solemnly pledged himself to pay in cash, we let him have the cloth. We have never yet been paid, although I have frequently demanded it.

Mr. Thompson. I was a clerk in Miller, Fisher & Co.'s house in 1829. They were always importers of hats. It is their practice to forward orders for spring importations of hats, at the latest by the 1st January. They sold to the Plaintiff, in June 1829, a quantity of hats, for £54, on his bill, at three months. The bill became due on the 10th September 1829. Plaintiff gave £20 on the 10th. and a note for £35. When this second bill was due, it was dishonoured, and protested. Blanchard, after frequent conferences, came and offered us one of Bridge's bills. We made frequent demands for payments. He wanted us to take a note of, I think, £100, and give him the balance in cash. He then offered a bill of £50, which we refused, as we thought the paper very unbusiness-like. He then got a bill from Bridge for the exact amount, £35. Tools, and apparatus, are required by every vendor of hats.

George Dixon. I import woollen goods. Orders for spring importations should be sent in November. Orders sent in February would procure the goods in July, if they had to be manufactured after the receipt of the order.

Mr. Walker here begged to enquire whether His Honor Mr. Justice Rolland had in his possession his notes of the former trial, and more particularly the evidence of Abner Bagg. The object of his enquiry was that he might be enabled by the examination of the learned Judge to bring the notes of the former testimony of Bagg before the present Jury, and so contrast what that person had formerly stated before the Court with the evidence he had given on this occasion.

The Court could not allow this, as if Mr. Justice Rolland was examined as a witness, he must then go into the witness-box to give his evidence, which

would leave only one Judge on the bench—and the Court would thus be incompetent to proceed with the trial.

Mr. WALKER then called—

Mr. J. T. BARRETT.—I import goods. Orders for goods from England are sent by me in December. I should not think that orders sent in the beginning of February could be executed in time for the spring arrivals. I have known exchange sold over ninety days credit. Exchange can only be obtained by very unexceptionable paper. I never knew exchange bought by notes at six, nine and twelve months. I never heard of a retail dealer selling off all his goods to embark in wholesale business.

Mr. WALKER here closed his case.

Mr. BUDDREAU called by Plaintiff.—I know Mr. Luman Vaughan; he has been in business a good many years here. He imported French silks and fancy goods into the Province. His general reputation was that of *marchand contrabandier*—such was his reputation among retail dealers. He was always considered a tattler (*babillard*)—a tale-teller. Witness would not give credit to what he said, since he experienced instances of his unfairness. I would not believe what Vaughan stated on his oath in mercantile matters.

Cross-examined.

I am a retail dealer. I have experienced losses in business. I once bought a quantity of goods at an auction where Vaughan was present. On this occasion Vaughan told me to bid up for ribbons at 1s 5d per yard. The purchase was knocked down to me, and I expected Vaughan would have taken them from me and paid for them. But Vaughan denied that he had done so, and I was obliged to pay, and lost about £25. Witness understood that the ribbons belonged to Vaughan.

Mr. DAY moved that a particular passage of the former evidence of Mr. Proctor might be read; but Mr. WALKER objecting to a detached portion only being received, the Plaintiff withdrew his request.

Mr. WALKER re-called Mr. J. T. BARRETT.—I knew Mr. Luman Vaughan as a merchant, and never heard his character impeached. If Mr. Vaughan had informed me that a debtor was acting in the way Blanchard acted towards Defendants, I should have proceeded on the information in the same way as the Defendants did.

Cross-examined.

My opinion of Vaughan's character is that it is unimpeachable.

Mr. ANDREW SHAW.—I know Mr. Vaughan; he was a merchant here for many years. He was a wholesale dealer, and for some time a money broker. The latter business renders it necessary to possess a good capital. From Mr. Vaughan's standing in the commercial world, and from his general character, I should readily believe what he told me.

Here the Defendants closed their case, and Mr. CHERRIER, in reply thereto, addressed the Jury in the French language.

After which His Honor the CHIEF JUSTICE charged the Jury to this effect:—

That it was to be regretted that the time of the Jury had been so long occupied in a case of so simple a nature. The only circumstance necessary to be observed appeared to be this. An individual complains that he was unlawfully arrested, when he had no intention of leaving the Province; that is to say, that the Defendants arrested him with a malicious view of doing him injury.

The opinion of former Juries was to have no effect on the minds of the present panel, whose duty it was to form a decision upon what had been heard upon this and the two foregoing days. The Jury must banish from their minds all

that they may have heard in society, and must come to their duty uninfluenced by feeling or prepossession.

The Plaintiff asks £5000 to recompense him for an illegal arrest, and imprisonment without cause. There are considerations on both sides of the question, and when a man comes to ask justice against others, he must first prove that he also has acted justly towards those against whom he urges his complaint. His Honor here recapitulated the circumstances of the case as borne out by the evidence. There is no doubt that Vaughan's communication must have excited alarm in the Defendants; they would necessarily feel surprise, anxiety and suspicion thereat. There are no grounds to suppose that Mr. Smith was influenced by malice, or a wish to injure the Plaintiff. His determination to *sleep upon it*, shews the feeling of his mind. The affidavit seems to have been literally true—but it is necessary that all information should be correctly appreciated. The question arises from what source did Vaughan's information spring. The only grounds, he states to be, the sale from the Plaintiff to Bridge. This was not sufficient, more particularly as it did not appear in evidence that the Plaintiff took any steps to leave the Province. The payment of his debts by the Plaintiff would seem to argue that he had no intention of quitting the country—and Mr. Teulon seems to have been under a similar impression. The opinion of the Court in this view of the case was, that the verdict must be for the Plaintiff—but the amount of the damages, whether for one penny or for £1000, it was the province of the Jury to pronounce.

But, on the other hand, it was the Jury's duty to observe the manner in which the Plaintiff had acted. His credit was low, and his object in the purchase ought to be considered. The Defendants believed that the Plaintiff was an honest man; they thought him attentive to business; and the sale on such indulgent terms shewed great liberality on their part. The terms of the purchase were extremely advantageous to the Plaintiff;—and what was his first step?—the transaction with the man Bagg, which appears to have been a very fortunate transaction for him. But was the Plaintiff following up the good faith he owed to the Defendants. Suppose the Plaintiff, when he bought the goods, had told the Defendants that he wanted £360 worth of hats, and that he wished to give one half of them to Bagg—would Mr. Smith have let him have them for such a purpose? This was a transaction which, in law, would have set aside the sale, as being contrary to the terms on which it took place. The law is equitable between the buyer and seller, and gives the latter great privileges of following his goods in certain cases. The Plaintiff here was evidently acting against the Defendants' interests. Then follows the transaction with Bridge; to whom he sells the whole of his stock, and entirely changes his mercantile character—but did he give the intimation which he ought to his principal creditor? His Honor felt himself bound to say that the funds thereby acquired ought to have been handed to the Defendants, as they arose from the Defendants' goods; and Mr. Smith's proposition to that effect was but fair and equitable. The transactions with both Bagg and Bridge were for the consideration of the Jury—and they would recollect that the Plaintiff's conduct, by whatever motives he was actuated, was unfair, dishonest and injurious to the Defendants. The endeavour to obtain exchange, seemed not to be influenced by a fair object. If the Jury thought these points available, they would go in diminution of damages.

The Jury then retired, and in an hour and a half returned into Court, with a verdict for the Plaintiff, and awarded him £200 for his damages.

APPENDIX.

Sale and transfer by Mr. Louis Blanchard to Mr. Daniel Bridge.
28th December, 1829.

On the twenty-eighth day of the month of December, in the year of our Lord one thousand eight hundred and twenty-nine, before the undersigned Public Notaries, duly admitted and sworn, in and for the Province of Lower Canada, residing at the City of Montreal in the said Province, came and appeared, Lewis Blanchard of the City of Montreal, merchant hatter, of the one part; and Daniel Bridge, of the same place, also merchant hatter, of the other part. Which said Lewis Blanchard, for and in consideration of the sum hereinafter mentioned, and to be paid as hereinafter stated; has voluntarily sold, transferred and made over, and by these presents doth make, sell, assign, make over and deliver, unto the said Daniel Bridge, present and accepting, all and every the goods mentioned and set forth in the schedule hereunto annexed, marked A, and all his the said Lewis Blanchard's right, title, and interest therein and thereunto.

To hold to and to the use of the said Daniel Bridge, his executors, administrators and assigns for ever, the said goods as mentioned in the said schedule; with promise of warrantry against all former sales and demands; the present sale is thus made for and in consideration of the sum of four hundred and eighty-five pounds three shillings and four pence, currency, on which sum the vendor acknowledges to have received the sum of twenty-five pounds three shillings and four pence, of which sum the purchaser is hereby acquitted and exonerated. And as to the balance the purchaser has paid the same by his promissory notes, of which a copy will remain hereunto annexed, which when paid will be in full payment of the said sum. This done and passed at the City of Montreal, at the office of N. B. Doucet, the day and year first above written; and the parties have signed with us the said Notaries, these presents, having been first duly read in their presence.

(Signed.) Louis Blanchard, Daniel Bridge, G. D. Arnoldi, N. P., N. B. Doucet, N. P., as it appears on the original remaining in the subscribing Notaries office.

N. B. Doucet, N. P.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Seven months after date I promise to pay to Mr. L. Blanchard, or order, the sum of fifty pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£25 0 0 Currency.

Six months after date I promise to pay Mr. L. Blanchard, or order, the sum of twenty-five pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£25 0 0 Currency.

Six months after date I promise to pay to Mr. Peter Spink, or order, the sum of twenty-five pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£25 0 0 Currency.

Three months after date I promise to pay to Mr. William Thompson, or order, the sum of twenty-five pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£25 0 0 Currency.

Three months after date I promise to pay to Mr. P. Spink, or order, the sum of twenty-five pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Four months after date I promise to pay to Mr. Wm. Thompson, or order, the sum of fifty pounds, currency, for value received.

(Signed) Daniel Bridge.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Five months after date I promise to pay to Mr. P. Spink, or order, the sum of fifty pounds, currency, for value received.

(Signed) Daniel Bridge.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Eight months after date I promise to pay to Mr. L. Blanchard, or order, the sum of fifty pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Nine months after date I promise to pay to Mr. L. Blanchard, or order, the sum of fifty pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£50 0 0 Currency.

Ten months after date I promise to pay to Mr. L. Blanchard, or order, the sum of fifty pounds, currency, for value received.

(Signed) D. Bridge.

Montreal, 24th December, 1829.

£60 0 0 Currency.

Twelve months after date I promise to pay to Mr. L. Blanchard, or order, the sum of sixty pounds, currency, for value received.

(Signed) D. Bridge.

(Signed) Louis Blanchard,
Daniel Bridge,
G. D. Arnoldi, *N. P.*
N. B. Doucet, *N. P.*

As it appears in the original remaining at the subscribing Notaries office.

N. B. Doucet, *N. P.*

Schedule referred to in the annexed Assignment, marked A.

48	Beaver Hats,	*a* 20s 3d	...	...	...	...	...£	48	12	0
24	do do	*a* 23s 0½	...	...	...	...	...	27	13	0
24	do do	*a* 25s 10d	...	...	...	...	...	31	0	0
24	do do	*a* 28s 8d	...	...	...	...	...	48	14	0
17	Plated do	*a* 11s 8d	...	...	...	...	...	9	11	3
15	do do	*a* 10s 1½d	...	...	...	...	...	7	19	10½
15	Black and Drab Hats,	(Smith,) *a* 25s	...	...	...			18	15	0
6	do	do (Wm. R. & Co.) *a* 18s..					...	5	8	8
2	do	do (Mems.) *a* 18s	...	...	...		...	1	16	0
1	do	do *a* 27s 6d	...	...	...		...	1	7	6
7	do	do *a* 27s 8d	...	...	...		...	9	14	3
10	do	do *a* 26s 5d	...	...	...		...	13	4	2
3	do	do *a* 13s 10d	...	...	...		...	2	1	6
1	do	do *a* 32s 6d	...	...	...		...	1	12	6
24	Drab Silk	do *a* 6s 8d	...	...	...		...	8	0	0
2	Plated	do *a* 7s 8d	...	...	...		...	0	15	4
10	Imitations	do *a* 7s	...	...	...		...	4	10	0
5	do	do *a* 6s 3d	...	...	...		...	1	11	3
7	Drab	do *a* 11s	...	...	...		...	3	17	0
5	Bonnets, *a* 9s 6d	...	...	...	...		...	2	7	6
11	Black Bonnets, Trimmed, *a* 9s	...	...	...			...	4	19	0
1	Drab do	do Plume, *a* 12s 6d		...	...			0	12	6
13	Black do	do *a* 8s	...	...	...		...	5	4	0
1	do do	do *a* 5s 3d	...	...	...		...	0	5	3
4	OldStock do	do *a* 4s	...	...	...		...	0	16	0
24	Cloth Caps, *a* 6s 8d	...	...	...	...		...	8	0	0
64	Wool Hats, *a* 1s 3d	...	...	...	...		...	4	0	0
44	do do *a* 6d	...	...	...	...		...	1	2	0
4	Caps, *a* 2s 6d	...	...	...	...		...	0	10	0
75	Band Boxes, *a* 5d	...	...	...	...		...	1	17	6
1	Pair Scales, *a* 6s 3d	...	...	...	...		...	0	6	3
Weights, *a* 4s	...	...	...	...	...		...	0	4	0
3	Bows and Strings, *a* 8s 4d	...	...	...	...		...	1	5	0
10	Bonnet Bodies, W. P., *a* 2s 3d	...	...	...	...		...	1	2	0

30 Blocks, *a* 7s 6d	£	13	10	0
1 Hardening Skin, *a* 4s		0	4	0
Stove and Pipes, *a* 11s		0	11	0
2 Bonnet Bodies, W. P., 2s 3d		0	4	6
20 Bonnets, Old Stock, *a* 10s		20	0	0
2 Wool Hats, *a* 1s 3d		0	3	9
16 Imitation Wool Hats, *a* 7s 6d		6	0	0
1 Basket, *a* 1s 6d		0	1	6
50 Bonnets and Hats, *a* 8s 2d		20	8	4
5 Block Bottoms, *a* 5s		1	5	0
1 Tin Cannister, *a* 7s 6d		0	7	6
1 Shovel, *a* 3s 9d		0	3	9
2½ dozen Strenches, *a* 5s		0	12	6
6 Brushes, *a* 5s		1	10	0
1 Sewer, *a* 1s 6d, and 1 Tub, *a* 2s 6d		0	4	0
1 Puncheon, *a* 5s		0	5	0
1 Steaming Box, *a* 3s		0	3	0
1 Pair Irons, *a* 15s		0	15	0
1 Stamper, *a* 3s		0	3	0
2 Beating Boards and Pins, *a* 2s 6d		0	5	0
1 Whirly Gig, *a* 1s 6d		0	1	6
2 Buckets, *a* 1s 8d		0	3	4
1 Stiffening Table. *a* 5s		0	5	0
Glass and Putty, *a* 7s 8, Iron at Door to Hay-house, *a* 15s		1	2	8
1 Door, *a* 7s 6d		0	7	6
Shelves, *a* 35s		1	15	0
Do *a* 15s		0	15	0
Brick Laying, ...		3	15	0
Steaming Kettle, *a* 10s		0	10	0
Finishing Bench, *a* 10s 6d		0	10	6
Rack, *a* 10s, Paving Shop, *a* 20s		1	10	0
Brick Laying, ...		4	0	0
Plank Kettle, ...		0	10	0
Coloring do Grates, &c.		5	0	0
4000 Bricks, *a* 25s		5	0	0
Desk and Stool		0	15	0
Bunk, ...		0	10	0
Painting Shelves		1	0	0
Stove Pipes, ...		1	4	0
Stove Pan, ...		0	5	0
Shelves in Window		0	4	0
Window Blind		0	9	0
3 Baskets, *a* 10d		0	2	6
Steps and Sprinkler, ...		0	6	0
2 Bonnet Stands, *a* 2s 6d		0	5	0
Sundries, ...		1	0	0
320 Bodies, ...		20	0	0
39 Skivers, *a* 3s 4½d		6	11	7½
48 Band Boxes, *a* 6d		1	2	0
1 Bonnet Stand;		0	2	6
11 dozen Stitched Leather, *a* 2s 8d		1	9	5
17 do do do *a* 2s 6½d...		1	14	9½
19 Cap Straps, *a* 6d		0	9	0
Thread, ...		0	1	3
Cotton Balls, ...		0	3	2
Cloth, ...		0	10	0
Sundries, ...		0	1	6
Piping Cord		3	10	0
1¾ yds Gloz Cotton, *a* 5s		0	8	9
Sundries, ...		7	5	0

3 gross Black Batkles, *a* 3s	£	0	12	9
38 pieces Banding, *a* 6s		0	19	8
Do		0	3	0
Bands		0	6	0
1 gross Binding, *a* 9s		0	9	0
2½ do do *a* 11s 6d		1	8	9
1¼ do do *a* 11s 6d		0	14	5
1 do do *a* 14s		0	14	0
1½ do Bands, *a* 10s 8d		0	16	0
⅝ do do *a* 14s		0	9	5
2 pieces Black Band, *a* 7s 6d		0	15	0
114 yards Ribbon, *a* 3s		1	8	6
Do		0	5	6
10 do do *a* 7d		0	3	11
15 Feathers, *a* 1s		0	15	0
Ribbon, ...		0	2	6
10 yards Gloz Cambries, *a* 10d		0	8	4
100 Hat Tips. *a* 2s ¼d		0	18	8½
Blacking Card, ...		0	1	0
7 yards Persian, *a* 1s 9d		0	12	3
10 do. Satin, *a* 3s 5d		1	14	2
6½ do. do. *a* 4s		1	6	0
236 Muskrats, *a* 10s		9	10	8
337 do. *a* 9s		12	12	9
5 lb. Coney Wool, *a* 10s 9½d		2	13	11½
3¾ do. Hase Sildes, *a* 14s 10d		2	14	7½
1¼ do. Russia, *a* 4s 3½d		3	15	3
2 do. Coney, *a* 13s 4d		1	0	8
3 do. do. *a* 10s 9½d		1	12	4½
2 Band Boxes, and Basket, ...		0	1	10
16 oz. Muskrats, *a* 1s 8d		1	8	0
2¼ do. Russia, *a* 2s 3d		0	5	7½
1 Bey, *a* 10d		0	10	0
1 pair Raisin Cords, *a* 4s		0	4	0
2 do. Buckles, *a* 1s 10½d		0	3	9
1 Trunk, *a* 4s		0	4	0
Carpenters Work, ... —		10	0	0
16 lb. Gum Shella, *a* 2s		1	12	0
4 gallons Alcohol, *a* 5s		1	0	0
3 lb. Raisins, *a* 3d		0	0	9
	£	485	3	4
By amount of Account, ... £12 12 11½				
Discount, ... 12 10 4½		25	3	4
	£	460	0	0

(Signed) LEWIS BLANCHARD,
DANIEL BRIDGE,
J. P. GRANT, N. P. And
N. B. DOUCET, N. P.

N. DOUCET, N. P.

L. BLANCHARD, Esq.

To D. BRIDGE, *Dr.*

1828.								
Aug.	7.	To ¾ yard Gloz Silk, *a* 10s	£0	7	6
,,	,,	To 1 Cap Peak, *a* 2s	0	2	0
Sept.	11.	To 1 yard Gloz Cotton, *a* 5s	0	5	0
,,	27.	To 2 pieces Binding, *a* 5s 6d	0	11	0
Oct.	11.	To ½ yard Gloz Cotton, *a* 5s	0	5	0
,,	,,	To Covering Hat, *a* 6s 3d	0	6	3
,,	27.	To 2 Bonnets, *a* 13s 9d	1	7	6
Dec.	6.	To 1 piece Band, *a* 4s	0	4	0
,,	21.	To 1 Seal Skin Cap, *a* 8s	0	0	0
1829.					
March	28.	To 1 London Hat, *a* 30s	1	10	0
,,	,,	To 1 yard Gloz Cotton, *a* 6s	0	6	0
April	20.	To 1 Patent Leather Skin, *a* 8s	0	8	0
June	4.	To ¾ yard Gloz Cotton, *a* 8s	0	4	0
Aug.	11.	To 12 Muskrats, *a* 1s 8d	1	0	0
Oct.	16.	To 3 yards Wire, *a* 1s	0	3	0
,,	28.	To 1 Bonnet, *a* 15s	0	15	0
Nov.	17.	To 2 Satts Ribbon, *a* 30s	3	0	0
,,	19.	To 12 Plated Hats, *a* 9s 9d	5	14	0
,,	,,	To 12 do. do. *a* 8s 6d.	5	2	0
Dec.	22.	To Ribbon, *a* 9s	0	9	0
		Coals, *a* 10s	0	10	0
			£22	15	9
		By amount of my Account, ...	15	2	9½
			£7	12	11½
		To Goods, ...	5	0	0
			£12	12	11½

ERRATUM.

P. 30, line 2, for *less* read *more*.