

was a fraudulent scheme. It was also alleged and denied that the defendant in 1893 absconded from this province to the United States of America. The defendant was a citizen of the United States, and was in Ontario in 1893, and again in 1900, when arrested, for temporary business purposes. It was not shown that he ever had any property in this province, nor that he took any away with him in 1893, nor that at the time of his arrest he had any in his hands or under his control. The evidence did not show that he was at the time of the arrest about to leave the province hurriedly, but that he intended to stay until he had finished the business which brought him to the province, and then return to his own country as of course.

Held, FERGUSON, J. dissenting, that the Court could not, upon this application, try the question whether defendant did or did not abscond in 1893; that the onus was upon the plaintiff to make out the fraudulent intent in the departure now proposed, by more than mere suspicion; and that, upon all the facts and merits disclosed the arrest could not be maintained.

Kersterman v. McLennan, 10 P.R. 122, distinguished.

Per FERGUSON, J.—Upon this application the burden was upon the applicant of showing that, upon the facts as they actually existed, the arrest should not have been ordered or made. Before, and at the time of his arrest, the defendant was not in a like position as to residence as was the defendant in *Clement v. Kerby*, 7 P.R. 103, or at all in the position of a mere traveller or visitor found in this country, but was living here and transacting important business here. His former conduct in respect of the same debt was also to be considered on the question of intent to defraud; and, having regard to that and all the facts appearing, the defendant was about to leave this country with intent never to pay this debt, or presumably any of the debts that he owed in this country, which was the same as an intent to defraud.

A. C. McMaster, for plaintiff. *Masten*, for defendant.

Province of Manitoba.

QUEEN'S BENCH.

Bain, J.]

THE QUEEN v. FOWCETT.

[May, 1900.

Real Property Act—60 & 61 Vict. (D.), c. 29, s. 18—Dominion lands—Charge on land for indebtedness to Crown on seed grain mortgage of other land—Costs against the Crown.

The caveat applied for a certificate of title for the N. E. quarter 10-11-8 W., under the Real Property Act, and the Minister of the Interior filed a caveat to establish his claim that the Crown was entitled to a lien or charge