

hended if the receiver is regarded as the debtor's attorney by judicial appointment, or as assignee, by compulsion, of the chose in action: McGuin v. Fretts, 13 O. R. 699; Stuart v. Grough, 14 O. R. 255; Mones v. McCallum, 17 P. R. 356, 398; Flegg v. Prentis, [1892] 2 Ch. 428.

The order will, therefore, go for the appointment of a receiver to demand and receive the fund in question or any part thereof as and when the same may become payable by the City of Stratford. The order must be so framed as to conform to the requirements of 9 Edw. VII. ch. 48, sec. 25; and the costs of the application here and below will be dealt with as there provided.

BOYD, C.

OCTOBER 8TH, 1910.

### FITCHET v. WALTON.

*Malicious Arrest—Arrest on Civil Process—Ca. Re.—Affidavit to Hold to Bail—Intent of Debtor to Leave Province—Knowledge of Creditor—Reasonable and Probable Cause—Suppression of Facts—Attempt to Force Settlement—Malice—Action for Wrongful Arrest—Damages — Discharge of Judgment in Action in which Arrest Made.*

Action for damages for the wrongful and malicious arrest of the plaintiff upon an order for arrest in the nature of a ca. re., obtained by the defendant upon an ex parte application, based upon an affidavit that the plaintiff was about to leave the province.

This was the second trial of the action, and took place before BOYD, C., without a jury, a previous trial with a jury having resulted in a verdict for the plaintiff for \$1,500, which was set aside.

John W. McCullough and James McCullough, for the plaintiff.  
W. E. Raney, K.C., and T. H. Lennox, K.C., for the defendant.

BOYD, C., after referring to Coffey v. Scane, 25 O. R. 22, 34, 22 A. R. 269, 272, 274, Scane v. Coffey, 15 P. R. 112, 119, 121, Beam v. Beatty, 2 O. L. R. 362, 363, proceeded:—

The application (for the order to arrest) must be based on sworn, written, evidence contained in the affidavit. In this case it was sought to eke out or modify a part of the affidavit by some