

## Province of Prince Edward Island.

## SUPREME COURT.

FULL COURT.]

Dec. 4, 1895.

DIXON v. GORMAN.

*Arrest—Ca. sa.—Bona fides.*

Statutes of Prince Edward Island, 42 Vict., c. 15, s. 17, enacts that where the plaintiff by an affidavit satisfies a judge of the Supreme Court "that there is good and probable cause for believing either that the defendant, unless he is forthwith apprehended, is about to quit Prince Edward Island, with intent to defraud his creditors generally, or the plaintiff in particular, or *that the defendant has parted with his property*, or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, such judge may, by special order, direct that a *capias ad satisfaciendum* be issued out of the Supreme Court, and such writ may thereupon be issued upon such judgment according to the practice of the said Court."

The plaintiff's affidavit herein stated that plaintiff obtained a verdict in the above court in July, 1895, against the defendant for \$180.80 and costs, that plaintiff gave defendant notice of taxing costs on the 5th Sept., 1895, and that between that time and the entering up of the plaintiff's judgment several encumbrances were registered against the defendant: viz., a judgment (confessed on warrant of attorney), chattel mortgage and land mortgage, each respectively for \$447.00, to his mother; a judgment (confessed), a chattel mortgage and land mortgage securing \$597 42, to his solicitor; a rent charge on his farm securing an annuity of \$60.00 to his mother-in-law, and other encumbrances.

The plaintiff entered up judgment on his indictment, and issued *fi. fa's* thereon which were returned *nulla bona*.

Plaintiff further stated that he had reason to believe "that the defendant had parted with his property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution."

On this affidavit, an order for a *Ca. sa.* against the defendant was granted and defendant was arrested accordingly. An order *nisi* was afterwards granted to set aside the order for arrest, and to discharge the defendant from custody. This was issued on the affidavits of the mortgagees and judgment creditors, stating that the transactions were *bona fide*, and were not done at the instance or suggestion of the defendant, but were solicited and demanded from him. The plaintiff produced no affidavits contradicting the *bona fides* stated in the defendant's affidavits, but contended that, notwithstanding the *bona fides*, the defendant having parted with his property so that the plaintiff was prevented from realizing on his judgment, brought the order within the statute. On the return of the order, it was referred to the full court for argument.

*Held*, (HODGSON, J., dissenting) that the circumstances of the giving of the securities, being suspicious enough to warrant the arrest, the order for arrest must stand, but that the prisoner be discharged from custody without costs.