

TEETZEL, J.

OCTOBER 8TH, 1906.

CHAMBERS.

FLEMING v. McCUTCHEON.

*Arrest—Intent to Quit Ontario—Intent to Defraud Creditors
—Evidence—Discharge from Custody.*

Defendant was arrested under an order for arrest made by MACMAHON, J., on material which established a prima facie case that defendant was about to quit Ontario with intent to defraud plaintiff, within the terms of sec. 1 of R. S. O. 1897 ch. 80. Upon his arrest he was released on bail in terms of the order.

He now moved to set aside the order, and in the alternative for his discharge under Rule 1047, upon new material filed by him.

R. McKay, for defendants.

L. F. Heyd, K.C., for plaintiff.

TEETZEL, J.:—Even if I thought the original material insufficient, I could not, as I understand the practice, set aside the order, as that could only be done on appeal to a Divisional Court.

The law now appears to be well settled that to justify defendant's detention in custody, there must be not only the intention to quit Ontario, but also the intention thereby to defraud his creditors in general or plaintiff in particular, and that these are questions of fact in each case to be inferred from the facts and circumstances shewn by the affidavits. See *Phair v. Phair*, 19 P. R. 67; *Beam v. Beatty*, 2 O. L. R. 362.

Upon the motion for discharge defendant must shew such facts and circumstances as, in the opinion of the Judge, outweigh the prima facie case made by plaintiff and which negative an intent to defraud.

After a perusal of all the material filed, I am of the opinion that defendant in this case has established that his departure from Ontario was not with the intention of defrauding his creditors in general or plaintiff in particular, but that his purpose was honestly to better his position by establishing himself in the business of a druggist in the province of Saskatchewan.