The election was therefore set aside; but although the relator had notified the electors of the objection to the defendant's qualification, the seat was not awarded to the candidate having the next largest vote, on account of the resolution of the council, which taught the electors to disregard the relator's warning, and a new election was ordered.

Held, by MACMAHON, J., that the Master-in-Chambers had, by the combined effect of Rule 30, 51 Vict., c. 2, s. 4, all the powers of a judge to determine the validity of the election of the defendant, and that his determination was final; and it was within the competence of the provincial legislature to clothe the Master with such powers.

Held, by the Divisional Court, following the principle of the decision in *Re Wilson* v. *McGuire*, 2 O.R. 118, that the provincial legislature had power to invest the Master with authority to try controverted municipal election cases.

Aylesworth, Q.C., and *Latchford*, for the relator.

J. H. Macdonald, Q.C., for the defendant.

Irving, Q.C., for the Attorney-General for Ontario.

Practice.

Chy. Div'l Court.] [March 26.

TOOTHE *v.* FREDERICK.

Arrest—Application for discharge—Rule 1051 — Discretion—R.S.O., c. 67, s. 1—Intent to quit Ontario—Intent to defraud creditors.

An application under Rule 1051 to discharge from custody is an original proceeding, independent of the order to arrest, and the judge to whom it is made is invested with a very large discretion.

If the Appellate Court has doubt as to the proper result of all the evidence, that doubt should lead in favor of personal liberty.

Our statute, 22 Vict, c. 96 (now R.S.O., c. 67, s. 1), differs from the original, the Imperial Act 1 & 2 Vict., c. 110, and was expressly enacted so as to restrain the freedom of those only who were believed to be contemplating fraud as against their creditors; under it, it cannot be said that a person indebted, without substance, who contemplates removing from Ontario to better his condition, is leaving with intent to defraud creditors; two things must concur before the statute operates: the quitting of Ontario, and an intent thereby to defraud creditors.

Robertson v. *Coulton*, 9 P.R. 18, observed upon.

Upon the evidence in this case, the Court was not satisfied that the defendant had any intention to flee the country at the time of his arrest, or that there was such dealing with his property as was within the meaning of the statute, and affirmed an order of a Judge-in-Chambers discharging him from custody.

Aylesworth, Q.C., for the plaintiff.

W. R. Meredith, Q.C., for the defendant.

MEREDITH, J.] [May 19.

IN RE WILSON.

Infants—Maintenance — Interest on funds in hands of trustees—Order for application of—Jurisdiction—Summary application—Judge-in-Chambers—Evidence—Safeguards.

Under the will of their father two infants were entitled each to a sum of $500, which trustees were directed to invest at interest until the infants should be of full age, and then to pay to them.

Held, that a Judge-in-Chambers had jurisdiction, upon a summary application, to make an order authorizing the trustees to apply the interest for the maintenance of the infants; but such an order should not be made except upon the clearest and most satisfactory evidence; as much evidence, at least, as is required upon an application for the sale of infants' lands for their maintenance should be required, and the like safeguards against deception and mistake should be insisted upon.

Purdom for the applicant.

F. W. Harcourt for the official guardian.

ROSE, J.] [May 23.

ROGERS *v.* KNOWLES.

Arrest—Intent to quit Ontario—Intent to defraud creditors—Absence of assets in Ontario.

Application to discharge the defendant from arrest under an order, upon the ground that the defendant was not at the time of the making of the order about to quit Ontario with intent to defraud his creditors,

Held, that there was no sufficient ground for keeping the defendant in custody, as upon the