

utterly meaningless. It cannot be intended to abolish the liability of an *aval* in the Province of Quebec altogether, while it must mean something in its application to the whole Dominion.

In regard to the evidence of waiver of presentment and notice, I think the language of the defendant testified to by the plaintiff amounts to waiver, and believe it more likely that the defendant, before he became aware of the supposed technical difficulty in the way of recovery, used that language than that the plaintiff fabricated the story. Therefore I find for the plaintiff, on the law, in respect to both notes, and on the facts in dispute in respect to the one, and there will be judgment for the amount of both notes and interest.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[March 3.]

COFFEY v. SCANE.

Arrest—Order for—Discharge from custody under—Order not set aside—Action for malicious arrest—Reasonable and probable cause—Departure from Ontario—Inference of intent to defraud—Action for imposing on judge by false affidavit—Material facts—Burden of proof—"Absconded," meaning of—Excessive damages—Misdirection.

The plaintiff brought this action for damages for his arrest under an order made in the former action of *Scane v. Coffey*, he having been discharged from custody thereunder by an order made therein, affirmed by a Divisional Court; 15 P.R. 112. The plaintiff recovered a verdict for \$1,000. Upon motion to set it aside made before a Divisional Court composed of ARMOUR, C.J., and FALCONBRIDGE, J.,

Held, per ARMOUR, C.J., that so long as the order for arrest stood, an action for maliciously, and without reasonable and probable cause, arresting the plaintiff could not be maintained.

Erickson v. Brand, 14 A.R. 614, distinguished.

(2) Where a creditor shows by affidavit such facts and circumstances as satisfy the judge that there is good and probable cause for believing that his debtor, unless he be forthwith apprehended, is about to quit Ontario, the inference is raised that he is about to do so with intent to defraud his creditors generally, or such creditor in particular; for he is removing his body, which is subject to the jurisdiction of the courts of Ontario, and liable to be taken in execution, beyond the jurisdiction of such courts, and beyond the reach of their process.