

under the practice to procure an order for arrest, defendant is entitled to be discharged if he negatives that intention, unless plaintiff can state facts from which it can clearly be inferred that it was the intention of defendant to leave.

3. Such an inference was not to be drawn from affidavits merely tending to shew that defendant was keeping out of the way to avoid service of an order for his examination under the Collections Act.

4. It would be futile to allow plaintiff's appeal, as at the time the order for defendant's examination, under the Collections Act, was served the order for arrest was effete, and the bond cancelled, and no stay of proceedings had been obtained, and the liability of the sureties could not be restored.

*D. McNeil*, for appellant. *W. B. A. Ritchie*, K.C., for respondent.

Full Court.]

DILL & WHEATLEY.

[Dec. 28, 1901.

*Draft—Liability of acceptor for accommodation of third party not discharged by payment made by drawer—Case of accommodation acceptance for drawer distinguished.*

Plaintiff agreed to sell certain cattle to M. on condition that M. would procure someone to accept a draft for the price. Defendant at the request of M. accepted a draft for the amount, and the second draft given in renewal for the first, and agreed to accept a third draft in renewal of the second but refused to do so at the instance of M., who, in the meantime, had become insolvent. Plaintiff furnished all the money used to retire the second draft with the exception of the sum of \$10 paid by M.

*Held*, 1. Affirming the judgment of the County Court Judge with costs that defendant was not relieved from his liability on the second acceptance by the payment made by plaintiff, and that plaintiff was entitled to judgment for the amount of the acceptance less the sum of \$10 paid by M.

2. The case was distinguishable from one where the acceptor accepts for the accommodation of the drawer who takes it up at maturity and negotiates it to someone who sues the acceptor.

*F. H. Bell* and *W. B. MacCoy*, for appeal. *W. E. Thompson*, contra.

Full Court.]

MCDONALD & LOWE.

[Dec. 28, 1891.

*Pleading—Practice—Plea set aside as bad.*

Plaintiff's statement of claim alleged that on or about a certain date he was the owner of certain property described, and that on or about the date mentioned defendant converted to his own use the goods and chattels described.