

he could not revoke it, and the by-law was in this respect modified and controlled by the statute. *Mingeaud v. Packer*, 21 O.R. 267; 19 A.R. 290, applied and followed.

F. A. Anglin, for the widow. *R. S. Smellie*, for the executor. *G. F. Macdonnell*, for the beneficiaries under the will.

Divisional Court.] FRASER v. ORBERNDORFER. [Jan. 15.
Division Court—Certiorari—Descretion of High Court Judge—Res judicata—Refusal of Divisional Court to interfere.

After a trial and judgment in a Division Court as to the right of a landlord to recover a month's rent under a lease, another action was brought for three months' subsequent rent, whereupon the defendant applied to a Judge of the High Court for a certiorari, which was refused, on the ground that though the case might be of importance as affecting cases of a similar nature, that was not of itself sufficient, no difficult questions of law or fact appearing to be involved.

On appeal to a Divisional Court the judgment was affirmed, the Court holding that the granting of the certiorari being left to the descretion of the judge, and he having exercised it the Court would not interfere; and moreover by the judgment of the Division Court in the first action the matter was *res judicata*.

E. Tayleur English, for the appellants. *Slaght*, contra.

Meredith, C.J., Rose, J., MacMahon, J.] [Jan. 18.
 PHAIR v. PHAIR.

Arrest—R.S.O. c. 80, s. 1—Intent to quit Ontario—Intent to defraud creditors.

It is not sufficient for a creditor applying for an order for arrest under R.S.O. c. 80, s. 1, to shew the existence of a debt, and that the debtor is about to quit Ontario; he must shew some other fact or circumstance which, coupled with those facts, points to an intent to defraud. *Shaw v. McKensie*, 6 S.C.R. 181, *Tooth v. Frederick*, 14 P.R. 287, and the opinions of BURTON and MACLENNAN, J.J.A., in *Coffey v. Scane*, 22 A.R. 269, followed. The opinions of HAGARTY, C.J.O., and OSLER, J.A., in *Coffey v. Scane*, and the case of *Robertson v. Coulton*, 9 P.R. 16, dissented from. *McVeain v. Ridler*, 17 P.R. 353, discussed.

Whether or not there is good and reasonable cause for believing that the intent to defraud exists, is a question of fact.

Where the defendant believed that his wife had no claim against him for alimony:—*Held*, that he could not be intending to defraud her by leaving Ontario.

Grayson Smith, for plaintiff. *J. H. Moss*, for defendant.