

The right to make a motion to be discharged from custody upon the merits and upon the ground of concealment by the plaintiff of material facts upon the application founded upon Con. Rule 1047 is confined to the case of an order for arrest made before judgment and does not extend to a ca. sa.

The defendant had been arrested under an invalid concurrent writ of ca. sa. and was in the custody of a sheriff to the knowledge of the plaintiff's solicitor who prepared an affidavit entirely suppressing the fact of the arrest and upon which he obtained an order for and issued a new writ of ca. sa. Upon an appeal to a Divisional Court from a judgment of a Judge in Chambers refusing to set aside the latter order and writ and motion to be discharged,

*Held*, that the application should not be treated as an appeal upon new material from the discretion of the Judge who made the order, as such an application having for its object the setting aside of the order and writ must upon the authorities have failed: *Damer v. Busby* (1871) 5 P. R. 356, at p. 389, but was really one to the undoubted jurisdiction of the Court to set aside in its discretion orders which had been made by the wilful concealment or perversion of material facts and that a clear case had been made out and the order and writ should be set aside and prisoner discharged from custody.

Judgment of FALCONBRIDGE, C. J. K. B., reversed.

*J. F. Jones*, for appeal. *J. H. Moss*, contra.

Street, J.]

REX EX REL. MCFARLANE v. COULTER.

[Sept. 26.

*Quo warranto—Election of Reeve—Fiat of County Judge and Proceedings in County Court—Order of County Judge setting aside—Appeal to Judge in Chambers.*

In a quo warranto proceeding in which the fiat giving leave to serve a notice of motion to set aside the election of a township reeve had been granted by a County Court Judge and the proceedings entitled in his County Court, a motion was made before him to set aside all the proceedings in the relation, and he made an order setting them aside and quashing them with costs. On an appeal to a Judge in Chambers,

*Held*, that no appeal from such an order lies to a Judge in Chambers, as appeals from the County Courts in ordinary cases are given to a Divisional Court, and the appeal from the decision of a County Court Judge to a Judge of the High Court given by 55 Vict., c. 42, s. 187, sub-s. 3 (O.) "under this section" is from the decision of the County Court Judge upon the merits on the trial of the contested election, and not the quashing without a trial of the fiat upon which the proceedings were founded.