

MEREDITH, C.J.C.P., IN CHAMBERS.

SEPTEMBER 17TH, 1915.

*SIMPSON v. GENSER.

*Arrest—Fraudulent Debtors Arrest Act, R.S.O. 1914 ch. 83—
Proof of Debt and of Intent to Quit Ontario and Intent to
Defraud — Questions of Fact — Effect of being about to
Leave without Providing for Debts.*

Motion by the plaintiffs for an order for the arrest of the defendant for debt, under the Fraudulent Debtors Arrest Act, R.S.O. 1914 ch. 83.

T. S. Elmore, for the plaintiffs.

MEREDITH, C.J.C.P., said that the extraordinary process which the plaintiffs sought ought not to issue until they had fully complied with the provisions of the enactment, that is, they must prove (1) an indebtedness by the defendant to them in amount not less than \$100; (2) that the defendant is about to quit Ontario; (3) with the intent to defraud his creditors in general or the plaintiffs only. Whether or not these three things were proved was a question of fact; and, in that view, the finding in one case is really not binding in any other case.

The fact that the quitting Ontario is about to take place without any provision for the payment of debts may, in certain circumstances, be evidence of a fraudulent intent, but not in all circumstances. The Act does not provide for the arrest of persons about to quit the Province without paying their debts.

Toothe v. Frederick (1891), 14 P.R. 287, and Coffey v. Scane (1894-5), 25 O.R. 22, 22 A.R. 269, sometimes spoken of as being in conflict, may both have been well decided.

Upon the evidence, the plaintiffs had brought the case within the provisions of the Act in regard to the debt—which, if the testimony is true, is not barred by the Limitations Act, and is the debt of the defendant, and also in regard to the intent to quit and to defraud.

The application is almost necessarily made ex parte; and the defendant may displace the case made by the plaintiffs. The order for arrest is made. An application to discharge the defendant out of custody will be heard by the Chief Justice at any time.