

Boyd, C., Robertson, J.] SULLIVAN v. ALLEN.

[Feb. 4.

*Arrest—Discharge—Order for—Terms—Restraining action—
Costs—Discretion.*

Appeal by the defendant from an order of the judge of the County Court of Oxford for the arrest of defendant, and from such part of a subsequent order discharging the defendant from custody as refused him costs and restrained him from bringing any action in respect to his arrest under the first order.

Held, that the judge had power to make the order to discharge from custody, and to impose terms of bringing no action, as well as withholding costs, under the ample discretionary powers vested in him by Rule 1047; and this exercise of discretion should not be disturbed, for the order to arrest was made upon materials which satisfied him (R.S.O. c. 80, s. 1), and, though the facts and circumstances were by subsequent affidavits differently represented so as to induce him to order a discharge from custody, the original materials (had they not been answered) would have justified his order to arrest. Appeal dismissed without costs.

Watson, K.C., for defendant. *J. Bicknell*, for plaintiff.

Street, J.]

FAHEY v. JEPHCOTT.

[Feb. 8.

*Master and servant—Injury to servant—"Young girl"—Machinery—
Factories Act, R.S.O. c. 256, s. 14 (3)—Breach of—Negligence—
Necessity for proof.*

The plaintiff, a girl fifteen years old, was employed by the defendant in his factory, her work being to feed and run a machine for stamping cardboard. In removing the stamped and putting in the unstamped material it was necessary for her to place her hands for an instant between the stationary and the moving parts of the machine. After having had a good deal of preliminary practice and instruction and doing a considerable amount of work with the machine upon several different days without accident or apparent difficulty or fatigue, her left hand was one day caught between the two plates at the top of the machine on the right hand side, and so badly crushed that it was necessary to amputate it. She was unable at the trial to state how her left hand came to be in the position in which it was when it was caught, nor to give any explanation whatever of the accident, and no one saw it happen. Her father, with whom she lived, denied any knowledge that she had been put to work at the machine in question. The defendant knew of her employment at this machine, but stated that he did not consider it a breach of s. 14 of the Factories Act, R.S.O. c. 256, providing that "a child or young girl shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion." By s. 2, sub-s. 6, "young girl" means a girl of fourteen and under eighteen.