ing the order when in the judgment of the superior tribunal he should not have done so. A single Judge then having no jurisdiction, as it appears to me, over the judicial act of another Judge without statutory provision giving such jurisdiction, we have to look to the Act to see whether any such jurisdiction is given, and there we find that after the arrest a particular jurisdiction is given, which may be exercised by the Judge who granted the order, even by the Judge of a County Court who may have granted an order for arrest in a superior court case, or by any other Judge, or by the court out of which the process shall have issued upon the order; and the particular form in which this jurisdiction shall be exercised is defined, namely, by an order or rule on the plaintiff *to show cause why the person arrested should not be discharged out of custody*. This is the only form in which, as it seems to me, the jurisdiction given by the statute to a single Judge can be exercised. Doubtless an application may be made to a Judge to set aside the writ of capias, and also *the arrest*, for any irregularity or defect in the writ of capias itself or in the mode, time or place of effecting the arrest and for non-compliance with the rules of practice or procedure subsequent to the making of the order for the issue of the capias, but that would be an application to the general jurisdiction of the Judge in Chambers over procedure, and not an application under the special jurisdiction conferred by the Act; for such an application, it is plain, being upon a point of procedure independent of any judicial act, must be made according to the ordinary practice regulating procedure in causes pending in the superior courts, and could not be made to *the Judge of a County Court*, although the Judge who may have made the order for arrest. The application authorised by the Act to be made to the court or Judge after the arrest, is, as it seems to me, plainly an application founded on new matter for the purpose of shewing that the matters laid before the Judge upon the application for the order, (which was necessarily *ex parte*), are capable of clear explanation, or can be shewn to have been either intentionally or through mistake misrepresented to the Judge. In such a case provision is made that upon both sides being heard, the court or a Judge to whom the application may be made, may *discharge the prisoner from custody*, leaving the judicial act which authorized the arrest to remain unaffected as a security to all parties engaged in the arrest; and in this respect a difference is made between the jurisdiction of the court and that of a Judge, for it is expressly provided that the *court may discharge or vary the Judge's order*. This being so expressed in the clause, the conclusion is irresistible that the Legislature had no intention that a single Judge should have power to discharge or set aside the order of another Judge, and the case of *Burness* v. *Guiranovich*, 4 Ex. 520, is conclusive upon this point. The observations also of the several learned Judges in *Needham* v. *Bristowe*, *Gibbons* v. *Spalding*, *Heath* v. *Nesbitt*, *Graham* v. *Sandrinelli*, *Pegler* v. *Hislop*, *Cunliffe* v. *Maltass*, and *Bullock* v. *Jenkins*, lead, I think, to the same conclusion. The result, as it appears to me, upon a consideration of the Act itself, and to be deduced from a comparison of all the cases, is, that the court out of which the process issues has general jurisdiction, independently of the statute, over the acts and decision of the Judge granting the order, to revoke the order, or to discharge the prisoner, proceeding upon the same identical material that was before the Judge. The court out of which the process issues, has, after the arrest, by the statute, concurrently with the Judge of any of the superior courts sitting in Chambers, and with the Judge of a County Court who may have made the order for the arrest in a superior court case, jurisdiction upon new matter to entertain the question whether upon both sides being heard, not the *order itself* authorising the arrest, but *its effects*, may be modified as justice may require, *by an order for the discharge of the prisoner*; and beyond this jurisdiction so given by the statute to a Judge co-ordinately with the court, the court has given it by the statute the superior jurisdiction proper to be entertained by the court, though not by a single Judge, that upon such application to discharge the prisoner being made to the court, *it* may *discharge*, if it thinks fit, the *original order*, the court, therefore, has its original jurisdiction over a Judge's order which it may exercise *by appeal* upon the original matter before the Judge without more; and it has also an express jurisdiction, by statute, enabling it to discharge the Judge's order, and it has, concurrently with the Judges of the Superior Courts singly in Chambers, and with the Judges of County Courts in the special case of an order for arrest in a superior court case made by such Judge, *original* jurisdiction to entertain the question of the discharge of the prisoner, upon the merits presented, upon both sides being heard. No appellate jurisdiction whatever, as it seems to me is given to a single Judge. It is hardly to be conceived that the Legislature contemplated giving to a County Court Judge in a superior court case, an *appellate* jurisdiction (merely upon the original materials) over *his own* order for arrest made in the case; and the jurisdiction which the statute gives to any single Judge is that given to a County Court Judge where he has himself made the order. When appellate jurisdiction is exercised, the judgment proceeds wholly upon the original material, which must be brought into the appellate tribunal. The court never acts as an appellate tribunal without compliance with that condition. Now the material laid before a Judge for an order for arrest is filed in the court out of which the process issues: when it issues, that material so filed can never be removed from the court to be transferred to a Judge in Chambers, but it is *in the court itself* to enable it to exercise jurisdiction over it as justice may seem to require, and this, as it seems to me, is what is meant by the observation of Baron Parke in giving the judgment of the court in *Graham* v. *Sandrinelli*, viz.: "but whether the learned Baron (Platt) was right or not in refusing to make an order to discharge only this summons, is not material *now*, *for* we are all of opinion that we may consider that my brother *Erle's order* (authorising the arrest) *and the affidavit* in support of it, *are before the court*, and that under *our general* jurisdiction we have