with intent to defraud his creditors generally or the plaintiff in particular." As to this objection, Richards, J., disposes of it by saying:—"I am uncertain whether I ought to set aside the arrest on this ground or not. I have doubts as to the propriety of doing so, *and stronger doubts as to my authority as a Judge in Chambers to do so.*"

In *McGuffin* v. *Cline*, 4 Prac. Rep. 135, the summons was to shew cause why a County Court Judge's order to hold to bail in a superior court action, and the arrest, &c., should not be set aside, on the ground that the affidavit was insufficient, that the reasons assigned for the plaintiff's belief were insufficient, untrue and unfounded, because defendant was not about to quit Canada, &c., or why the amount for which defendant was held to bail should not be reduced to $500. Many affidavits were filed on both sides on the merits. Hagarty, J., giving judgment, says:—"I at once say that I should not have ordered the defendant's arrest on such an affidavit as seems to have satisfied the County Judge. But I have several times had occasion to express my difficulty in assuming the right to review the exercise of the Judge's discretion in a matter clearly within his jurisdiction. I draw," he says, "a broad distinction between the case of an order based on affidavits clearly deficient in certain statutable requirements, and those which state facts from which differently constituted minds may in good faith draw different conclusions. I think I should await the positive judgment of the court in *banc* before taking on myself to set aside a Judge's order, merely because the statements on which it was granted failed to bring my mind to the same conclusion as that of my fellow Judge," and in support of this view he refers to *Howland* v. *Rowe*, a case under the Absconding Debtor's Act before himself in Chambers, and in the Queen's Bench in 25 U. C. Q. B. 467.

The two questions stated in *Graham* v. *Sandrinelli*, in respect of which the court were not agreed, and therefore gave no decision, do not appear, so far as I have been able to discover, ever yet to have received judicial solution.

The clauses of our Act, 22 Vic., ch. 96, which are consolidated in the Consolidated Statutes of Upper Canada, ch. 22 sec. 31, and ch. 24 sec. 4, are in substance identical with the clauses of the Imperial Act, 1 and 2 Vic. ch. 110, so that the decisions under that Act are express decisions governing the cases arising under our Acts.

With a view to enable the parties in these two cases, one of which is in the Queen's Bench, and the other in the Common Pleas, to bring the matters before the courts if so advised, I have perused all the cases I have been able to find upon the subject, and I have thought it best to enter at large into the question, and to state explicitly the opinion which I have formed. The point involved is one of great importance, and one which should not be permitted to remain any longer in doubt.

Arrest upon civil process since the passing of 22 Vic. ch. 96 is no longer the act of the suitor as it was formerly—the order authorising the issue of the writ of capias, the writ issued thereunder, and the arrest made in virtue of such writ, are all judicial acts, deliberately sanctioned by the decision of a Judge satisfied of the existence of a cause of action wherein a plaintiff has sustained damage, and of an intent on the part of the defendant of leaving the country with intent to defraud the plaintiff in particular or his creditors in general. The whole proceeding down to and including the arrest is judicial, except in so far as the arrest itself may be vitiated by any illegal or irregular procedure in the control of the party or his agents subsequent to obtaining the judicial order, but in that case the order and the writ, unless there be some defect in their form, still remain judicial acts. To the Judge to whom the application for an order to hold to bail is made, is confided by the Legislature the duty of *satisfying himself* of those matters which the law requires him to be satisfied of before he shall grant the order, as the sole condition of the making of the order. To his judicial mind are submitted all points, as well of form as of substance, which the law requires to be supplied before the order shall be made. The Legislature, I think, was well satisfied that this precaution afforded ample security that every requisite preliminary should be substantially complied with before an order for the arrest of a party should be made, and for any purely technical irregularity which may have escaped the observation of a Judge, or which he may have deemed to be too trifling to interfere with his making an order, it was never, as it appears to me, contemplated to be capable of being brought up before any other tribunal by way of appeal.

The Act providing that it was the mind of the Judge to whom the application was made that should be satisfied of the propriety of making an order authorising the issue of a capias, the exercise of that Judge's judgment and discretion never could have been brought in question before another Judge sitting out of court for any suggested error in judgment without an express statutory provision giving such jurisdiction to a single Judge. The court in the general exercise of its jurisdiction over the acts of a single Judge sitting out of court could set aside the order without any statutory provision, but no single Judge sitting in Chambers could, in my opinion, exercise any such jurisdiction without express statutory provision. The arrest then of a party under a capias issued upon an order made by a Judge (there being no intervening irregularity in *the procedure* between the issuing of the order, and the making the arrest) being a judicial act, and no longer the act of the party, it is not expedient that either the order, the capias, or the arrest, should be *set aside* by another Judge for any suggested irregularity in point of form or insufficiency in point of substance in the material laid before the Judge as the foundation for the order. Any such irregularity or insufficiency must be regarded as the oversight of the Judge, and therefore after the order is acted upon, and the party arrested, that judicial act should be only called in question by a superior tribunal, which should exercise its jurisdiction in such a manner as not to make persons who acted in the arrest or applied for the order, trespassers by reason of any miscarriage of the Judge in grant-