plaintiffs' attorney having upon this suggestion of defendant's counsel, abandoned his application to enlarge the summons. The effect of the above arrangement was to exclude from consideration wholly the 8th ground of objection above stated, and all the special matters alleged in the affidavits filed by defendant.

Upon the argument it appeared that in truth the 1st, 5th, and 6th, of the above objections were identical, for the alleged defect in the affidavit stated to exist under the 1st objection turned out to be that the affidavit of John Dwight King, one of the plaintiffs, alleged the defendant to be justly and truly indebted to him and his co-partners (naming them) in the sum of $214.90 for "goods sold and delivered by me, and my said co-partners to the said Busby at his request"—whereas it was contended that the affidavit should have stated Busby to be indebted to King and his co-partners in the sum of $214.90 "*for money payable* by Busby to King and his co-partners for goods sold and delivered, &c., &c., &c.; and also because the affidavit alleged that the deponent King had "*just*" reason to believe, instead of "good" reason; and that he did believe that Busby was immediately about to quit Canada, "*for the purpose of* defrauding me and my co-partners as well as his other creditors of their just debts," instead of "*with intent and design to defraud*," &c., &c.

The 2nd and 3rd objections appeared to be but one, the reason for which it was contended under the 2nd head that the papers filed as affidavits were not affidavits, being that they were not entitled in any court as stated in the 3rd head.

The variance between the original writ and the copy thereof served, pointed at by the 7th objection, was that in the original the plaintiffs were styled, "W. Damer, J. Damer and J. D. King," whereas in the copy served they were styled, "William Damer, John Damer and John D. King."

The defect or irregularity pointed at by the 9th objection appeared to be that King's affidavit ran thus—"I, John Dwight King, of the city, in the county of York, merchant, make oath and say," there being no city named.

Mr. Richie (Morphy & Morphy) shewed cause: The decision of the Judge in granting the order to arrest can only be reviewed by the Court. No single Judge can set it aside and render liable to an action of trespass those who have acted under it; *Burness* v. *Guiranovich*, 4 Ex. 520. If this were true, a County Court Judge, who has by C. S. U. C. c. 24 s. 4, concurrent powers with the Superior Court Judges, might set aside the orders of the latter, which was never intended. *Terry* v. *Comstock*, 6 U. C. L. J. 235; *McInnes* v. *Macklin*, *Ib.* 14; *Allman et ux.* v. *Kensell*, 3 Prac. Rep. 110.

The affidavit need not be entitled until filed with the Clerk of the Process: *Ellerby* v. *Walton*, 2 Prac. Rep. 147; *Molloy* v. *Shaw*, 6 C. L. J. N. S. 294. The word "may" is permissive not imperative: C. S. U. C. c. 2 s. 18 s. s. 2. The words "money payable" are not necessary here, as the form used in the affidavit clearly shows a debt *in præsenti*: *Lucas* v. *Goodwin*, 4 Sc. 502, 3 Hodges 32.

The Court cannot enquire into the existence of a cause of action: *Brackenbury* v. *Needham*, 1 Dowl. 439; unless defendant clearly shew that there is none: *Shirer* v. *Walker*, 2 M. & G. 917. The affidavit sufficiently shows plaintiff's place of abode; there is only one city in the county of York, and defendant could not be misled.

Blevins, contra.

Black v. Wigle.

On the 20th April the defendant obtained a summons from Hagarty, C.J.C.P., calling upon the plaintiff to show cause why the order of the Judge of the County Court of the County of Essex, bearing date the 8th day of April, 1871, the writ of capias ad respondendum issued thereon, and all other proceedings in the cause, should not be set aside with costs on the following grounds:—

1. That the affidavit on which the said order was made and the said writ issued, is not entitled in any court or in the court in which this action is brought.
2. That the said writ of capias issued out of the Court of Common Pleas, while the said affidavit, if entitled at all, is entitled in the Court of Queen's Bench.
3. That no cause of action against the defendant is disclosed upon the said affidavit.
4. That the said affidavit does not disclose any sufficient grounds for making the said order.
5. That the said defendant is not and was not when the affidavit was sworn, about to leave Canada.

This summons was obtained upon a verified copy of the affidavit upon which the order to hold to bail had been obtained, and several affidavits were offered to show that the defendant has not, and in fact never had any idea or intention of leaving Canada, one of the persons making such affidavit being a person named Adams, referred to in plaintiff's affidavit as one source of his information that defendant was immediately about to leave Canada with intent to defraud him unless he should be arrested.

The summons had been enlarged from time to time until the 11th May. At the argument the defendant's counsel abandoned the 1st objection as already decided, and the 2nd also. The plaintiff, in answer to the defendant's affidavits, filed several affidavits, for the purpose of showing that the defendant's intention was and still is to leave Canada with intent and design if he can thereby defeat the plaintiff's recovery in this action, and explaining away the effect of Adams' affidavit, and tending to establish that the plaintiff had good reason to believe and that there is good reason to believe that the defendant would have absconded if not arrested.

It appeared that the defendant was not in close custody, but that he had given bail to the Sheriff.

The defendant's counsel rested his argument chiefly upon the alleged defect in the affidavit to hold to bail, in not disclosing, as he contended a sufficient cause of action. The point of the objection is that although the affidavit alleged positively that the defendant had seduced the plaintiff's daughter, and that on the 30th day of