thereto, should not be set aside, on the ground that both the plaintiff and defendant were at the time of the issue of the writ citizens of a foreign country; or why the arrest should not be set aside, *and the defendant altogether discharged from custody*, on the ground that the defendant had not, either at the time of the making of the affidavit to arrest, the issue of the writ of capias thereon, or the arrest of the defendant thereunder, any intention to quit Canada, with intent to defraud his creditors generally, or the plaintiff in particular, or for any other purpose. Draper, C. J., in giving judgment, says:—"In this application to set aside the defendant's arrest and discharge him from custody, the only point for decision raised is, that the defendant had not at the time of the granting the order, the issuing of the capias, or the making of the arrest, any intention of quitting the Province of Canada with intent to defraud. *It was not pressed upon me to review the decision of the learned Judge who made the order for the arrest, upon any suggestion of the insufficiency of the affidavit before him to sustain such an order.* The application was based entirely on the new matter disclosed upon affidavits. *Had the former course been taken I should have referred the matter to the full court.*"

In *McInnes* v *Macklin*, 6 U. C. L. J. 14, the application was by summons to shew cause *why the defendant should not be discharged from custody* and the bail bond be cancelled "on the ground that the affidavit on which the order had been obtained did not disclose the name of the party from whom the plaintiff received the information that defendant was going to New Caledonia, *and upon grounds disclosed in affidavits and papers filed.*" These affidavits, which were very numerous, were offered for the purpose of shewing the dealings between the parties, and that, although defendant was going from Canada, it was but for a short time on business, and that he was leaving his family here, and negativing all intention to defraud. Hagarty, J., after referring to these affidavits, and to *Graham* v. *Sandrinelli*, and the points there stated as undecided, says:—"*It is not necessary further to discuss the question of my jurisdiction in Chambers, as I dispose of this case upon my view of the merits.*"

In *Swift* v. *Jones*, 6 U. C. L. J. 63, the application was in Chambers for a summons to shew cause why the order of the Judge of the County Court of the County of Brant, the writ of capias issued thereon, the copy and service thereof, and the arrest of the defendant under the said writ, should not be set aside with costs, for (among several grounds stated,) the following, which was the only one held to be tenable, namely—that the writ was issued out of the Court of Common Pleas, and one of the affidavits on which it was issued was entitled in the Court of Queen's Bench. Richards, J., giving judgment in that case, says:—"The case cited from 5 E. & B. 272 (*Hargreaves* v. *Hayes*) seems to me to be a strong one in favor of the plaintiff, and there would always be great reluctance to set aside the order of a judge directing the arrest, when there are strong grounds from which he might draw the conclusion that the defendant was about to leave the Province of Canada. At all events I am not prepared, *even if I had the authority so to do*, to set aside the arrest on the ground that the learned Judge of the County Court ought not to have ordered it, from the insufficiency of the affidavits placed before him." The learned Judge, however, was of opinion that the not having the head of "In the Queen's Bench" erased when the affidavit was filed in the Common Pleas, and the title of the Court of Common Pleas inserted, was the act of the plaintiff and an irregularity, and for that reason he set aside the arrest. He says:—"One of the affidavits here is entitled in the Court of Queen's Bench and the other is not entitled at all. It may be argued that the affidavit might now be entitled, which has a blank for that purpose; but that would not get over the difficulty as to the other, and *both* affidavits are necessary to justify the arrest. I have seen no case which goes so far as to decide that a plaintiff is not guilty of an irregularity when he entitles his affidavit in one court, and uses it in another. I think, independently of the question of irregularity in using the affidavit entitled in one court for the purpose of issuing bailable process out of another, that our statute was intended to provide expressly for the mode in which affidavits to hold to bail were to be sworn and entitled when used in either of the courts. The plaintiff, not having followed that course, is, I think, clearly irregular in his proceeding." I would infer from the same learned judge's decision in *Molloy* v. *Shaw*, 6 C. L. J. N.S. 294, that he would not have made use of his language if *Ellerby* v. *Walton*, 2 Prac. Rep. 147, which was a decision of the full court, had been cited, and which in *Molloy* v. *Shaw* he followed. It is singular that neither in *Swift* v. *Jones* nor in *Allman et ux.* v. *Kensel*, 3 Prac. Rep. 110, nor in *Palmer* v. *Rodgers*, 6 U. C. L. J. 188, was *Ellerby* v. *Walton* cited.

In *Allman et ux.* v. *Kensel*, the application was in Chambers to *set aside* the order for the defendant's arrest made by the County Judge of Essex, with the writ and arrest, on various grounds, viz., the insufficiency of statement of any good cause of action, and the absence of any facts indicative of an immediate departure from Canada, the absence of any heading to the affidavit shewing what court it was in, and other minor grounds. Hagarty, J., following *Swift* v. *Jones*, set aside the arrest upon the ground of irregularity in the title of the court not having been inserted in the affidavit when it was filed on process issuing, but he adds, after referring to *Terry* v. *Comstock* and *McInnes* v. *Macklin*, "I desire to be understood as expressing no opinion as to my right to review the County Court Judge's decision in a case like the present."

In *Palmer* v. *Rodgers*, 6 U. C. L. J. 188, the form of the summons was *to shew cause why the defendant should not be discharged from custody*, and the order to hold to bail, the capias, the arrest of the defendant thereunder, and subsequent proceedings had thereon, set aside upon several grounds, among which was the following:—"4th. Because there was not at the time of making such affidavit to hold to bail or said order, or the issuing of such writ of capias, a good and probable cause for the plaintiff believing that the defendant unless he should be forthwith apprehended was about to quit Canada