rendered to him by the bail on the 5th January 1866, since which time the defendant has been, and still is in the sheriff's custody by virtue of such render.

S. Richards, Q. C., for the plaintiff, contended that the sheriff having shewn that he has the defendant in custody under a writ valid on its face, no enquiry can be made as to whether the writ was properly issued or not. *In re Cobbett*, 3 L. T., N. S., 631.

J. A. Boyd, for defendant.

The present application is not too late, it being for a material defect in the affidavit produced to the judge, and on which he made his order to hold to bail, it may be made at any time while the suit is pending. *Walker* v. *Lumb*, 9 Dowl., 133 (per Patteson, J.)

The affidavits produced to the judge are deficient in not shewing that the deponent believed the defendant was about to quit Canada or that he believed the facts stated to him; and in not shewing what the facts and circumstances were upon which any belief was founded, or upon which the judge could form an opinion *Bateman* v. *Dunn*, 5 B. N. C., 49; *Graham* v. *Sandrmelli*, 16 M. & W. 191; *Demill* v. *Easterbrook*, 10 U. C. L. J. 246.

A prisoner will be discharged when illegally arrested under the process of an inferior court. *Perrin* v. *West*, 3 A. & E., 405.

Want of jurisdiction can be shewn by affidavit, *Bailey's case*, 3 E. & B., 607.

As to relief given by *habeas corpus* in the United States: see *Nelson* v. *Catto*, 3 McLean's Rep., 326; *Jones* v. *Kelly*, 17 Mass., 116; *Bank of United States* v. *Jenkins*, 18 Johnson, 305.

Adam Wilson, J.—I must firstly decide whether—after an arrest on the 2nd November, putting in special bail on the 9th November, a verdict rendered sometime before the 12th December, the render by the bail on the 5th January, the application to the judge on the 2nd January, and the discharge of that application on the 5th January, and the final judgment given sometime in the same month,—I can now entertain an application upon a *Habeas Corpus* issued on the 8th March, to discharge the defendant from custody because the affidavit upon which the judge made his order to arrest, were and are not sufficient in law (assuming them to be so,) to justify him in making the order.

The judge had jurisdiction over the cause, and over the person of the defendant; he had the power to make such an order to arrest, and the defendant could have moved against it in time, on account of the supposed defects in the affidavits, but he did not do so till more than two months' after his arrest; and after having put in bail and having a verdict rendered against him—and then the judge determined that the application to procure the rescission of the order and the setting aside of the *capias* was too late; or perhaps more strictly that the defendant consented to a verdict against him.

If there had been no affidavit at all, or if the affidavit had been, or were a complete nullity, the application possibly could have been entertained, even at so late a stage of the proceedings, and so long as the defendant continues in custody upon this *capias*; but I cannot determine that the affidavits which were produced to the judge, were, and are an absolute nullity. They may be imperfect and unsatisfactory, but I do not say they are, I need only say they are not of that character that I must now, after the lapse of more than four months, and after all that has been done in the court below, assume to exercise a power of review and appeal of so extensive a nature that will bring the whole County Court business of the Province before a Judge in Chambers at Toronto. I believe that a judge of the superior courts of common law has a very great jurisdiction in cases of the proper description and the case of *Hawkins*,* which was before me in Chambers some short time ago was one which I still think required me to afford him relief by *Habeas Corpus*; for in that case, in no way of putting it could that arrest and imprisonment be supported; he was a *plaintiff*, and was therefore not within the section of the statute, which applied, as it stood at that time, only to defendants.

The jurisdiction, which did not exist in that case, did, and does exist here; the complaint is, as to the mode in which that jurisdiction has been exercised. I now decide that what has been done is not defective, or at any rate not so defective that it amounts either to an abuse of jurisdiction or to a mere nullity. I am not, therefore, called upon to say how far a judge of one of the superior courts could properly act in a case of the kind; but I may say that unless I am compelled to exercise such a power, I shall not do so, for it is an indirect, circuitous, and not very satisfactory mode of appeal which was not intended to have been, and has not been granted from the decision of the judges of the County Courts.

The statute requires that the party shall shew by affidavit, "such facts and circumstances as satisfy the judge that there is good and probable cause for believing that such person unless he be forthwith apprehended, is about to quit Canada with intent to defraud his creditors."

Now all this appears upon the affidavits in question; how much, if any more should appear, I am not required to say. It is sufficient as before stated, that the affidavits are not void or a nullity.

I think, therefore, this application must be discharged with costs, which I fix at twenty shillings.

Trust and Loan Company v Dickson.

Legal holiday—Easter Monday—Signing judgment.

The Crown offices should not be opened for business on Easter Monday, and a judgment entered on that day was set aside for irregularity with costs.

[Chambers, April 9, 1866.]

The defendant obtained a summons calling upon the plaintiff to shew cause why the interlocutory judgment, signed in this cause on the second day of April last, and all subsequent proceedings, should not be set aside with costs for irregularity, as having been improperly signed and taken for the following reasons: that the said judgment was improperly signed on Easter Monday, being a statutory holiday, and was not signed or filed by R. D. Chatterton, the Deputy

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* 9 U. C. L. J. 295; 10 *Ib.* 38.