1 Dowl. N. S. 93; *Owen* v. *Hurd*, 2 T. R. 644, where it was held, that if either style of cause or court be omitted, the court cannot take any notice of the affidavits, even if objection waived by opposite side. *Doe Clark* v *Stillwell*, 6 Dowl. 306; *Bill* v. *Foster*, 8 Bing 335; Arch. Pract. 837, 840; *Edmunds* v. *Keats* 6 Dowl. 359; *Keough's Bail*, 1 Arnold, 243; *Hutchinson's Bail*, 2 Cr. & J. 487; *Rogers* v *Jones*, 1 Cr & M. 323; *Henshaw* v. *Woolwich*, 1 Cr & J. 150.

3 After the county judge has certified the proceedings, he has no authority to interfere, and this is the proper court in which to move. This court will go behind the certificate of county judge and see if proceedings regular. *Wood* v. *G T R.* 16 U.C.C P. 275; *Pentland* v. *Heath*, 24 U C. Q B. 464; *Tozer, qui tam* v. *Preston*, 13 U. C Q. B. 310.

Adam Wilson J.—The Con. Stat. for U. C., ch. 15, s. 68, provides that in case the party wishing to appeal gives security to the opposite party, by bond, executed by himself and two sureties, in such sum as the judge of the court to be appealed from directs, conditioned to abide by the decision of the cause by the court to be appealed to, and to pay all sums of money and costs, as well of the suit as of the appeal awarded and taxed to the opposite party.

And in case the sureties in such bond justify to the amount of the penalty of the bond by affidavit annexed thereto, in like manner as bail are required to justify.

And in case such bond and affidavit of justification, and also an affidavit of the due execution of the bond are produced to the judge of the court appealed from, to remain with the clerk of such court until the opinion of the court appealed to has been given, and then to be delivered to the successful party Then, at the request of the party appellant, the judge of the court appealed from shall certify, under his hand, to either of the superior courts of common law named by such appellant, the pleadings in the cause, &c.; whereupon the matter shall be set down for argument at the next term of the court appealed to, and that court shall give such order or direction to the court below, touching the judgment to be given in the matter, &c; and upon receipt of such order, the judge of the court below shall proceed in accordance therewith.

The first question then is, whether this court, as respecting the full or appellate court, has power to enquire into the regularity of the proceedings in the court below, upon and in respect of which the judge has certified the pleadings on to the court above?

He has certified them in fact, and if this court of appeal be now seized of the cause, what has now to be decided is—what order or direction shall be given to the court below, touching the judgment to be given in the matter, and what award shall be made as to the costs?

In *Kernahan* v. *Preston*, 21 U. C. Q. B. 461, to which I was referred by Mr. Kerr, the court of Queen's Bench refused to grant a mandamus, to certify a case, by way of appeal, to the judge of a County Court who had refused his certificate because the bond did not contain the clause; that the party appealing should abide by the decision of the cause by the court to be appealed to. The Court of Queen's Bench holding that the judge below had rightly declined to certify for such a cause, and they would not compel him by mandamus to violate the statute, even in a point of form. The chief justice said, in that case, "it is not necessary for us to say whether such a bond might or might not with propriety have been accepted."

In *Pentland* v. *Heath*, 24 U. C. Q. B. 464, the court made absolute a rule striking an appeal from the County Court out of the paper, because the condition of the bond was that the sureties instead of the appellant should abide by the decision of the Court.

In *Wood* v. *Grand Trunk R. Co.*, 16 U. C. C. P. 275, the court refused to hear an appeal in a case in which final judgment had been entered in the court below, and ordered the case to be struck out of the paper for argument.

In England, under the Imperial Act 13 & 14 Vic., ch. 61, s. 14, an objection may be taken in the appellate court that the conditions of the statute have not been complied with, and the case will be struck out of the paper, *Stone* v *Dean*, 1 E B. & E. 504; *Griffin* v. *Coleman*, 4 H. & N. 265, because the act gives the appeal, *provided* the appellant, within ten days, gives notice of appeal and do certain other acts to entitle him to appeal, which constitute these different acts to be done by him, conditions precedent to his appealing to the Superior Court. But our statute makes the acts conditions precedent *only to the judge of the court certifying the case*, and when he certifies it, the court above is authorized, and, I am inclined to think, compelled to act upon the case so certified.

It would seem that when a writ of error was brought, the court below was the proper court to make all amendments of the record. Pr. 114, 5. For any such reason as that error was brought against good faith, the court below too would vacate the allowance of the writ, *Gerard* v. *Tuck*, 8 C. B. 268.

The court above could only quash the writ for some defect apparent on the face of the writ, or where the record brought up was inconsistent with it. *Ibid.* See also fol. 262.

If the party did not under the former practice have the writ of error allowed and also put in, and perfect bail, there was no stay or supersedeas in the court below of any of the proceedings. So under the present County Court Act it has been held that if the necessary proceedings to procure the judge's allowance of the bond and to file it with the clerk have not been taken, the party who has the decision in his favour may proceed with his cause, for there is nothing to stay it. 16 U. C. C. P. 275.

I do not think, however, that if the judge had allowed a bond as sufficient which he should not have allowed, that the party having the decision in his favour could, if the bond was also filed, proceed in his cause in disregard of the judge's allowance granted; he would first have to move to set it aside. Now, why cannot he do so in the present case? Why should the court above not assume that everything has been rightly done in the court below, so long as it is not a condition precedent to our acting, that we must first be satisfied that all the preliminary steps have been duly taken in that court to support the appeal here?