

in certain cases.

out of custody if it shall be made to appear to him on affidavit either that the cause of action having arisen in a foreign country the defendant was not liable to have been arrested or held to bail there for such cause, or that no sufficient reasons have been assigned by the plaintiff for the belief that the defendant was immediately about to leave the Province with intent and design to defraud the plaintiff of his debt or that the defendant hath made any fraudulent assignment of his property to defraud the plaintiff of his debt; or the defendant may, in his discretion in either case, plead the special matter in abatement of such process, in addition to any plea in bar of such action, upon which he shall have been so arrested as aforesaid; and in case a verdict shall be rendered in favour of the defendant, on such plea to the process, the Jury may thereupon in their discretion assess damages to be recovered by the defendant as for a malicious arrest.

Or defendant may plead in abatement of the process and obtain damages.

Amount and condition of the recognizance when any party is held to bail.

II. And be it enacted, That whenever any person shall be holden to bail in any form of action whatever, the recognizance of bail shall be taken in double the sum sworn to or for which bail may be ordered by a Judge, and shall be subject to the condition, that if the defendant or defendants shall be condemned in the action, and shall neglect or refuse to pay the costs and condemnation money, or to appear personally in open Court, or before any Judge or Commissioner of the Court wherein such bail shall be taken, when thereunto required by notice, to be left with either of such bail, and with the defendant, or at his or their last place of abode, at least twenty days before the day on which he shall be required to appear, and there to answer such questions or interrogatories as shall be propounded to him touching his lands, tenements, goods, chattels, money, rights or credits, then and in such case the bail will pay the costs and condemnation money for him: Provided always, that nothing hereinbefore contained shall prevent the bail surrendering their principal in discharge of themselves at any time before judgment shall have been rendered against them on such recognizance, and upon payment of costs.

Proviso.

Affidavit to hold to bail to be taken in a certain manner.

III. And be it enacted, That no affidavit to be made for the purpose of obtaining any process for the arrest of any person whomsoever, shall be sworn before any attorney or other person promoting such arrest, nor until it shall have been read over and explained to the deponent by the party administering the oath, and to be so certified in the jurat to the affidavit.

Defendants appearing to have acted fraudulently or refusing to discover their property, &c.,

IV. And be it enacted, That if such defendant or defendants upon examination upon oath, either upon interrogatories or *vis à voce*, in open Court or before a Commissioner of the Court in which the suit shall be pending, or a Judge of any County Court; or upon the