any such order made by a judge may be discharged or varied by the court, on application made thereto by either party dissatisfied with such order.' When, therefore, the parties come before the court, the court is to make such order as it conceives the justice of the case to require. Now, justice requires that we should deal with the case as it was presented before the judge." Coltman, J., says:—"By the 3rd section of the Act, two matters are referred to the Judge—the one, whether the plaintiff has a cause of action against the defendant to the amount of £20, or has sustained damage to that amount; the other, whether there is probable cause for believing that the defendant is about to quit England. When the judge makes an order to hold the defendant to bail for a particular amount, *he is doing a judicial act.* The question is, what is the mode of relief where the judge has directed a defendant to be held to bail for a larger sum than is warranted by the affidavit? The remedy is pointed out by the 6th section, which provides that *any order* made by a Judge may be *discharged* or *varied by the court* on application made thereto.

In *Gadsden* v. *McLean*, 9 C. B. 283, A. D. 1850, the application was to the full court, and the form of this rule was to shew cause why the Judge's order to hold the defendant to bail, and the capias issued in pursuance thereof should not be set aside, and why the bail bond should not be delivered up to be cancelled on the ground that the affidavit to hold to bail disclosed no cause of action. Wilde, C. J., in giving judgment says:—"The court is of opinion that the affidavit upon which the order for the capias in this case issued, does not disclose any good cause of action. Upon the whole we think that remedy enough will be given to the defendant by ordering the bail bond to be delivered up to be cancelled without costs."

In *Bullock* v. *Jenkins*, 20 L. J. Q. B. 90, A. D. 1850, the application was to the Bail Court, and the form of the rule was to shew cause why an order of Platt, B. to hold the defendant to bail, should not be rescinded, or why the defendant should not be discharged out of custody. After having been arrested, the defendant upon affidavits that he had no intention of leaving the country, applied to Platt, B. for his discharge. His Lordship dismissed that application, but made an order reducing the amount of the bail. It was contended that the defendant, having applied to Platt, B., for his discharge, was not entitled to come to the court by way of appeal from his decision. Patteson, J., in giving judgment, says:—"The application is divided into two parts; the granting or refusing the first part must depend upon whether the order was rightly made in the first instance, and that again will depend upon whether the affidavit upon which it was founded was sufficient to justify the learned judge in making the order. I take it to be quite clear, that on a motion to set aside an order of a judge warranting the arrest of a party, it is not competent for the party making the application to produce affidavits as to collateral facts not submitted to the notice of the judge. In considering, then, whether the order of Platt, B., ought to be set aside I must confine myself to looking at the affidavit on which the order was made." After reviewing the affidavit the first part of the rule was discharged. He then proceeds:—"Then as to the second part of the application, which is for the discharge of the defendant out of custody, it appears *that an application to discharge the defendant* had been made to the learned judge, but that the latter had refused it. It is competent nevertheless for the defendant to come to this court and ask for his discharge. The application is not by way of appeal, but is a substantive application, and therefore new facts may be introduced." Now this case seems to warrant the conclusion that the application to a judge which the 6th section of the Act authorises to be made *after the arrest*, is not by way of appeal from the order authorising the arrest. It may be made to the same Judge as the one who ordered the arrest, or to any other judge, and if by way of appeal no new matter could be introduced; and moreover the decision of the judge made under the 6th section, does not exclude an *appeal* to the *court* against the *first* order to hold to bail, without taking any notice of the order of the judge to whom the application had been made after the arrest.

In *Hargreaves* v. *Hayes*, 5 El. & B. 272, the application was to the full court, and the form of the rule asked was to set aside the order of Erle, J., directing the defendant to be held to bail. The grounds of the motion were alleged defects in the affidavit to hold to bail. The court there sustained the order, notwithstanding the objections, and refused to grant a rule, holding that the affidavit to hold to bail was sufficient, which alleged that the defendant was indebted to the plaintiff in a stated sum for railway shares *sold* by the deponent to him without adding *and delivered*, and that the entitling the affidavit in a court, and with a style of cause, although made before writ of summons issued, did not vitiate the affidavit.

In *Stammers* v. *Hughes*, 18 C. B. 527, A. D. 1856, the plaintiff had most grossly imposed upon a Judge by swearing that the defendant was indebted to him in £63, and had thereby obtained an order to hold the defendant to bail, and, upon arrest, the defendant being about to sail for America, deposited with the sheriff the full amount of the alleged debt. Afterwards upon affidavits denying the existence of the debt, and shewing the contract, by which it appeared that no debt or claim did or could be alleged to exist against the defendant, and although the plaintiffs claim was so utterly devoid of foundation as a induce the learned judge to characterize the conduct in swearing to the debt, and thereby obtaining the order for arrest and the capias, as a gross abuse of the process of the court, and another learned judge to say that he had no hesitation in saying "that the plaintiff had not a shadow of claim," and another that "the plaintiff's claim is wholly unfounded," still the form of the rule was merely calling upon the plaintiff to shew cause *why the money deposited with the sheriff should not be restored to the defendant.*

In *Stein* v. *Valkenhuysen*, El. Bl. & El. 65, A. D 1858, the form of the rule is not precisely stated, but as the whole proceeding was a gross abuse of the process of the court, the order, capias and arrest, all appear to have been set aside.