And section 145 enacts:—"Upon such filing and entry the plaintiff or defendant may, until the judgment has been fully paid and satisfied, *pursue the same remedy* for the recovery thereof, or of the balance due thereon, *as if the judgment had been originally obtained in the County Court.*"

Under these sections there is no doubt that the judgment which the plaintiff in the inferior court had, has by the filing and entry of the transcript "become a judgment of the County Court," and that the plaintiff is upon such judgment entitled to "pursue the same remedy for the recovery thereof as if the judgment had been originally obtained in the County Court."

One of these remedies is the right to examine his debtor, under section 41, before alluded to. This is an answer to the second cause of demurrer.

But it is said that there being a recovery for a less sum than $100, such a right of examination and committal does not exist at all, whether the recovery was had in the County Court or in one of the superior courts. No doubt this is so where the plaintiff in the proceeding is the actor, for he certainly cannot sue out process for the satisfaction of his debt unless his recovery is for at least $100, exclusively of costs, according to section 12 of the act.

It is not so, however, where the proceedings are founded upon the special provisions contained in section 41, in which there is no such limitation as to amount, and under which the process awarded is not obtainable by the plaintiff, but is grantable by the court or judge, even although it is by way of satisfaction, and not as when an order is issued to punish the party for his disobedience or contempt.

The case in 4 H. & N. 712, *Brooks* v. *Hodgkinson*, shews the difference between the plaintiff issuing the writ, and the judge doing so, and also shews that the judge may act when the debt is below the general statutory amount, which would not authorise the plaintiff in acting. I see then no direction that, under the special circumstances where a judge is called upon to act, there is any limit placed to the sum below which, upon a judgment an examination shall not be allowed to be had when the statute itself imposes no such restriction. Nor do I think there can be any reason why, until the last shilling of the claim is paid, the the debtor should not be bound to account for his property whenever the judge in his discretion thinks it proper to call upon him to attend for the purpose.

The supposed minimum of $100 may in many cases be relatively quite as large a sum to some creditors as twenty times that amount may be to others, and the effect of construing the statute according to the plaintiff's view of it, would be to make this very wholesome provision of discovery, operative for the larger and wealthier creditors, but a dead letter to those of smaller means and in needier circumstances.

We must take the clause as we find it, and I read it as an independant provision, and not governed by any of the preceeding sections in the act.

As against these objections, I have no difficulty in determining them in favour of the defendants.

Per cur—Judgment for defendant.

Prouse v. Glenny and Corporation of Mariposa.

Trespass, qua. clau. freg.—Highway—Bridge—Con. Stat. U. C, ch. 54, sec. 313—Notice of action.

Declaration in trepass, *quare clausum fregit*, on the south half of lot 19, in the sixth concession of Mariposa, alleging the erection and construction of a bridge and other works thereon. The defendants pleaded not guilty, per stat. 14 & 15 Vic., ch. 54, sec. 2, and Con Stat. U. C., ch. 126, sec 1.

On the trial it appeared in evidence that plaintiff was the owner of the *locus in quo*, and that a line had been run intended for a road about twenty years before by one H., between lots 19 and 20, intended to be four rods wide; the line was marked, and about fifteen years ago a bridge was built and the *locus in quo* was improved by the township council, and that statute labour has been done thereon, and money expended by the township council for fifteen years past. The old bridge having been carried away by a freshet, it was replaced by a new one, which was so placed that it encroached about eighteen inches on the plaintiff's land Another witness, a provincial land surveyor, stated it to be about a chain on plaintiff's land

The defendants contended they were entitled to notice of action, upon this point leave to move was reserved, the jury finding for the plaintiff $50 damages.

On motion for a new trial,

Held, that the road and public bridge having been constructed many years ago, and public money and statute labour having been expended thereon, under the authority of the 313th section of Con. Stat. U. C. ch., 54, it must be deemed a public highway. The verdict was therefore set aside and a new trial ordered, notwithstanding the amount recovered was less than £20, a public right being involved, the rule as to smallness of damages did not apply.

Held, also, that the corporation was entitled to notice of action, but the other defendant was not. (C. P. M. T., 27 Vic., 1863)

Plaintiff's writ was sued out on the 27th of October, 1862. Declaration in trespass, *quare clausum fregit*, alleged that defendants entered certain lands of the plaintiff, being the south half of lot No. 19, in the sixth concession of the township of Mariposa, in the county of Victoria, and constructed, erected, and built a bridge, road and other works on the same. Plaintiff claimed £250. Defendant pleaded: 1. Not guilty per statute 14 & 15 Vic., ch. 54, sec. 2, and Con. Stat. U. C., ch. 126, sec. 1. 2. Lands not the lands of plaintiff. 3. Leave and license.

At the trial, before Hagarty, J., at the spring assizes for the county of Victoria, it appeared that the plaintiff was the owner of the south half of lot No. 19 in the sixth concession of the township of Mariposa; that about twenty years ago one Huson ran the line of a road between lots Nos. 19 and 20 in that concession, the road intended to be four rods wide, but whether the road was laid out under the authority of the quarter sessions, or of the county council, did not appear. The line of the road was marked out, and about fifteen years ago a bridge was built and the road improved adjoining the *locus in quo*, by the township council. One of the plaintiff's witnesses stated he had done statute labour on the old road and bridge years back, and that the township had expended money for the road and bridge for fifteen years past. The same witness, who had resided near the place for twenty-nine years, stated that not much of the road was kept on Huson's line, they moved it west in to plaintiff's land, which was then cleared. They did not keep to the road very closely. He thought it was an accident building the old bridge in the wrong place. The old bridge was travelled for about fourteen years, then a freshet came, and the township council determined to build a new bridge, the north end of which was about two rods to the west of the old bridge, and threw the south end some eighteen inches on to the plaintiff's land, and where the line crossed the bridge it was some five feet more on plaintiff's land than the old bridge; this witness also stated the bridge injured plaintiff's access to the water; that there was no fence at the bridge, and the present bridge did not occupy more land than the road as travelled, nor any more land than the road would occupy if no bridge was there.

A provincial land surveyor took an observation, and ran a line from the post at the south end of the concession, marking the road parallel to the side line of the towhship as far north as the creek over which the bridge stretches, and he found the bridge west of the road allowance nearly a chain on the plaintiff's land.

All parties considered the travelled road on the proper line until about a year before the trial, when the surveyor ran the lines. Another witness for plaintiff, an old inhabitant, stated that it was more feasable to build the old bridge a little further west than the true line, and so it was done.

For the defence it was urged, that the corporation was entitled to notice of action, the act complained of being done by them in discharge of a public duty. For the plaintiff it was objected, that in the way in which the statute was referred to the question could not arise. Leave was reserved to the defendant to enter a nonsuit on this point as to the corporation.

It was further objected, that the place referred to was a public highway, and that in putting up the new bridge the defendant did not go further west than the line of the old travelled road. For the plaintiff it was urged, if plaintiff permitted the old bridge to be constructed, and the road travelled on his land off the line of road surveyed, he did so in ignorance of his rights, and was not bound thereby.

The presiding judge referred the question to the jury. The defendants witnesses to prove there was no difference to any amount between where the old and new bridge were placed as affected plaintiff's land; that from the west side of the old road to the fence of plainliff on the west side of the road was about three rods, the bridge was about sixteen feet wide, and on the east side of the bridge there was no fence. One of plaintiff's witnesses, re-called for defendant, said the new bridge was about five feet more west than the old one, but he did not consider the new bridge