absurd to discharge this order, merely to substitute another of the present date," and in giving judgment the court say, "We have carefully perused all the affidavits, and think that if it were not for the matter disclosed on the affidavits used on shewing cause, the defendant would be entitled to have the deposit returned, but those affidavits raise a question on which the defendant has not had any opportunity of being heard, viz., whether he has not since the arrest, broken up his establishment and gone to reside abroad, and whether this be the fact the court wish to ascertain, before they decide on the question, whether the deposit ought to be returned," and that question was therefore referred to the Master.

In *Pegler* v. *Hislop*, 1 Ex. 437, A. D. 1847, the form of the rule was to shew cause why an order of Williams, J., for the arrest of the defendant, and under which he had been arrested, and had given bail to the sheriff, should not be rescinded, and why the bail bond should not be given up to be cancelled. The affidavits in support of the rule denied the existence of the debt, and also that the defendant was about to quit England for a period of two months. It being objected that the question of the existence of the debt could not be gone into, and that the only point open was as to the intention of the defendant to quit England, Parke, B., says:—"I think the words of the statute leave the whole matter at large, and the defendant is not precluded from disputing, at this stage of the proceedings, either the cause of action or other matters which the plaintiff's affidavits contain. It must, however, be a very clear case that the plaintiff had no cause of action, or we should not interfere." The decision in the case was, that as the court was of opinion that the intention of the defendant to go abroad was not made out, *the bail bond should be cancelled*, but the judge's *order and the capias were undisturbed.* That was a decision of the full court, consisting of Pollock, C.B., and Parke, Alderson and Rolfe, B.B.

In *Burness* v. *Guiranovich*, 4 Ex. 520, A. D. 1849, Lush obtained a rule in full court, calling upon the defendant to shew cause why so much of an order of Talfourd, J., of the 15th September, as set aside a former order made by the same learned Judge on the 1st of September, should not be rescinded. On the 1st September, an order had been made for the arrest of the defendant. After the arrest a further application was made to the same Judge upon additional facts, and he made the order of the 15th September, as follows:—"I order that my order to hold the defendant to bail, dated the 1st day of September instant, and all subsequent proceedings, be set aside with costs to be taxed, and that the defendant be discharged out of the custody of the sheriff of the city and county of Bristol." On the argument it was contended that the judge, upon the occasion of the second order, had exercised his discretion in a matter which was proper for his discretion, and that the court ought not, therefore, to interfere by setting the second order aside. To this, Parke, B. says:—"The defendant still may have his remedy by an action on the case," and Alderson, B. says:—"The *statute* (1 & 2 Vic. ch. 110) *says nothing about setting aside the writ: the proper course is to order the discharge of the party out of custody.* The order of the learned Judge cannot be revoked. *Can the defendant show* any instance of such an order being revoked?" The learned Baron here plainly refers to the first order as the one which was revoked, but which he considered could not be. Counsel replied that "where an order has been obtained by fraud, the learned Judge may revoke it by reason of his general jurisdiction *quia improvide emanavit*," to which Alderson, B., answers, "As long as the order exists, the person who obtained it is not a trespasser. *If the party has obtained the order by fraud*, the other party has a remedy against him by an action upon the case," and the judgment of the court is given in these words, "*the proper course was to apply to discharge the defendant out of custody.* The rule must be made absolute to set aside the order of the 15th September *so far as it relates to rescinding the order of the 1st of September.*"

In *Cunliffe* v. *Maltass*, 7 C. B. 695, A.D. 1849, an order to hold the defendant to bail in the sum of £1.050 had been made by Patteson, J. Upon the defendant being arrested, he applied to the same Judge under the 6th section of the Act, and obtained a summons calling upon the plaintiff *to shew cause why he should not be discharged out of custody*, upon the ground that the affidavit to hold to bail, which stated several causes of action, was defective as to the statement of one for £500, which, however constituted part of the £1,050. The learned Judge being of opinion that this cause of action for £500 was defectively stated, declined to discharge the defendant, but made an order reducing the amount for which the defendant should be held to bail to £550. The defendant afterwards perfected special bail for the lesser amount, namely, $550, and applied to the full court for, and obtained a rule calling upon the plaintiff to shew cause why the two orders of Patteson J., should not be rescinded, why the writ of capias issued in pursuance of the first order should not be set aside, and why the recognizance of the defendant's special bail put in and perfected, should not be vacated, or why an *exoneretur* should not be entered on the bail piece on the defendant's entering a common appearance. Wilde, C. J., in giving judgment in that case, after stating the facts, including the application made by defendant for his discharge after arrest, says:—"I apprehend that the defendant is not now in a situation to make an application different from that which he made before the Judge at Chambers. The motion is founded on the 6th section of the statute, which enacts that 'it shall be lawful for any person arrested upon any such writ of capias to apply at any time after such arrest to a judge of one of the superior courts at Westminster, or to the court in which the action shall have commenced, for an order or rule on the plaintiff in such action to shew cause why the persons arrested should not be discharged out of custody; and it shall be lawful for such judge or court to make absolute or discharge such order or rule, and to direct the costs of the application to be paid by either party, or to make such order therein as to such judge or court shall seem fit, provided that