was not bound by the statute to attend to be orally examined, and even if he did so, he could not be arrested on such examination being unsatisfactory.

Held. 1st, That though the plaintiff could not sue out a *ca. sa. for* a less sum than $100, as per sec 12; still under sec. 41 there is no such limitation, as under this section, the process awarded is not obtained by the plaintiff, but is given by the court or judge, and under section 143, Con Stats U C ch 19, by the filing and entry of the transcript the judgment of the now defendant became a judgment of the County Court, and he was entitled to pursue the same remedy upon such judgment as if it had been originally obtained in the County Court, and hence defendant was bound to appear and be examined, &c., under sec. 41, ch. 24, Con Stat. U. C.

(C. P., M. T., 27 Vic., 1863.)

The declaration charged the defendants with a trespass to the person of the plaintiff, and with imprisoning him.

The plea by Brown sets up a justification of both the trespass and imprisonment under a writ of *ca. sa.* ordered to be issued by the judge of the County Court of the county of Hastings, under sec. 41 of the Con. Stat. for U. C., ch. 24, the substance of which is as follows: that the now defendant Brown sued the now plaintiff in one of the Division Courts of the county of Hastings, and recovered $59.35 for debt, and $3.43 for costs against the now plaintiff by judgment of the said court.

That execution issued from the said court against the goods and chattels of the now plaintiff to levy the sum so recovered with interest, which was delivered to the plaintiff to be executed; and that the bailiff afterwards returned *nulla bona* to the same.

That Brown obtained from the clerk of the said Division Court a transcript of the judgment, &c., and filed the same in the office of the clerk of the County Court of the county of Hastings, and thereupon the same became and was by operation of law a judgment of the County Court according to the statutes.

That Brown retained his now co-defendant Dougall, who was and is an attorney in the superior courts in this province, to proceed upon the said judgment in the County Court for the recovery of the money claimable on the same.

That Brown sued out execution from the County Court against the goods and chattels of the now plaintiff for $63 43 with interest from the 17th of Feburary, 1862, besides the costs of the writ and the sheriff's fees, and delivered the same to the sheriff of Hastings, who returned it *nulla bona*.

That while the judgment was in full force, and the now plaintiff, then still being and residing in the county of Hastings, and within the jurisdiction of the said County Court, Brown, by Dougall as his attorney, under and pursuant to sec. 41, ch. 24, of the Con. Stat. for U. C., made application to, and in due form of law obtained from, the judge of the County Court an order that the plaintiff should attend before Ansom G. Northrup, the clerk of the County Court, at such time and place as he should appoint, and submit himself to be verbally examined on oath touching his estate and effects, and as to the property and means he had when the debt or liability, which was the subject of the action in which judgment had been obtained against him, was incurred; and as to the property and means he had at the time of the making of the said order of discharging the judgment; and as to the disposal he had made of his property since contracting such debt or incurring such liability.

That the now plaintiff attended and submitted to be examined pursuant to the order. And the clerk of the County Court returned the examinations and order together with his report in writing on the proceedings taken thereunder, in compliance with the order.

That the judge of the County Court upon reading the said examination and report issued a summons calling on the now plaintiff (still being resident in the county) to attend before the judge at the court house, in Belleville, on the third day inclusive after the day of service at noon, or as soon thereafter as counsel could be heard, to show cause why the now plaintiff should not be committed to the common gaol of the county of Hastings, being the county in which the now plaintiff then resided; under and by virtue of the said statute, upon the ground that the now plaintiff had not on his examination made satisfactory answers respecting his property, or why upon the like grounds a writ of *capias ad satisfaciendum* should not issue upon the said judgment in this County Court.

That the summons was duly served on the now plaintiff, and at the return thereof no cause having been shown to the contrary, the said judge upon reading the said oral examination, the summons, the affidavit of service thereof, and other papers then filed in the court in the cause, did under the said statute and in due form of law direct that a writ of *ca. sa* should issue within five days thereafter against the body of the now plaintiff, and before the five days was expired a *ca. sa.* was issued by Brown by Dougall, his attorney, out of the County Court, directed to the sheriff of the county in the words following:

[In the usual form but marked in the margin.]

* * * * * * * *

"Issued from the office of the Clerk of the County Court of the County of Hastings, by order of William Smart, Esquire judge of the said county, under and by virtue of the sec. 41, ch. 24, of the Con. Stats. of Upper Canada.

(Signed,) A. G. NORTHRUP, Clerk."

That the *ca. sa.* was endorsed according to law, and when endorsed was delivered by Brown, by Dougall his attorney, to the sheriff to be executed; and thereupon the sheriff took the now plaintiff and imprisoned him as in the declaration mentioned, and as he lawfully might for the reasons aforesaid, which are the trespasses in the declaration mentioned.

The plea by Dougall is to the same effect, showing that he acted as the attorney of Brown the then plaintiff.

The plaintiff demurred to both pleas, and assigned the same causes. 1st. That the sum for which the writ of *ca. sa.* issued and the amount of the judgment on which it is based, is less than $100. 2nd. That the judgment in the County Court is founded on a judgment removed from a Division Court, and on such judgment a defendant is not bound by the statute to attend to be orally examined touching his estate; nor could he, if he did attend and was examined, be arrested by a *ca. sa.* or otherwise in consequence of the answers given on such an examination being unsatisfactory or otherwise, upon which joinder is taken.

R. P. Jellett appeared for the demurrer, and contended, that no *ca. sa.* can issue for a recovery exclusively of costs for less than $100, Con. Stat. U. C., ch. 24, secs. 1 and 12, and that no *ca. sa.* can issue upon a judgment removed from a division court.

Robert A. Harrison, contra. The *ca. sa.* is still in operation, and the defendants are entitled to succeed under their justifications pleaded, unless the writ on its face, or on the pleadings, be wholly void. *Reddell* v. *Pakeman*, 3 D. P. C. 714; *Blachenay* v. *Burt*, 4 Q. B. 707; *Prentice* v. *Harrison*, 4 Q. B. 852; *Rankin* v. *DeMedina*, 1 C. B. 183; *Blew* v. *Steinau*, 11 Exch. 440; *Collett* v. *Foster*, 2 H. & N. 356; *McCarthy* v. *Perry*, 9 U. C. Q. B. 215.

That section one applies only to the *capias* pending the suit, and not to the *capias* issued for satisfaction after judgment. See schedule A, No. 2, of the C. L. P. Act.

That the imperial act, 7 & 8 Vic., ch. 96, secs. 57 and 59, provides, that no person shall be taken or charged in execution, &c., for less than £20, &c., which language is prohibitory, and under which the writ may be void, although not set aside; but that is quite different from the language of the 12th section of our act.

That section 59 of the imperial act allows a *ca. sa.* in certain cases, such as fraud, although the debt be less than £20. *Brooks* v. *Hodgkinson*, 4 H. & N. 712. And if process be irregularly issued it is the act of the court, and no action lies against either the party or his attorney. 10 Co. 76*a*; *Read* v. *Jones*, 4 U. C. C. P. 424; *Perkins* v. *Proctor*, 2 Wils. 382; *Doswell* v. *Impey*, 1 B. & C. 169; *Cave* v. *Mountain*, 1 M. & G. 257; *Mills* v. *Collett*, 6 Bing. 85.

That this *ca. sa.* is as punishment and not as satisfaction. *Henderson* v. *Dickson*, 19 U. C. Q. B. 449.

R. P. Jellett, in reply. This process is illegal on its face, and not merely irregular. *Ley* v. *Louden*, 10 U. C. Q. B. 380.

ADAM WILSON, J.—The Division Courts' Act of Upper Canada, ch. 19 sec. 143, enacts: "Upon filing such transcript" (of the judgment obtained in the Division Court) "in the office of the clerk of the County Court in the county where such judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, *the same shall become a judgment of such county court*, and the clerk of such County Court shall file the transcript on the day he receives the same, and enter a memorandum thereof in a book to be by him provided for that purpose."