ment upon that point in favor of the applicant, as he had failed to bring before the court the materials used in Chambers upon which that order had been made; but as to setting aside the bail bond the application might be entertained under the 6th section of the Act, as a motion to discharge the prisoner. Tindal, C. J., says, "although the defendant in this case may not be in a condition to set aside the order, he may be entitled to insist on his discharge under the 6th section of the Imprisonment for Debt Act, (1 & 2 Vic. c. 110). *The proper form of the rule in that case would be to call on the plaintiff* to shew cause why the defendant should not be discharged out of custody or why the bail bond should not be delivered up to be cancelled; but we can decide that now." To this counsel replied, "the only authority the court has under that section, is to discharge the defendant out of custody, but there is no such application in this case." To which Tindal, C. J, replied, that he thought the rule might be made absolute *for cancelling* the bail bond, on the merits disclosed in affidavits.

In *Gibbons* v. *Spalding*, 11 M. & W. 173, A. D. 1843, it was decided by the full court that an order for the arrest of defendant under 1 & 2 Vic. ch. 110 sec. 3, may be made on an affidavit of the plaintiff *that he has been informed and believes* that the defendant is about to leave England, provided it state the name and description of the person from whom he received such information. Parke, B., says, "it is every day's practice to make orders on such evidence. There is, however," he says, "this limitation to hearsay evidence, that no judge ought to make an order of this description merely upon the plaintiff's swearing that he is informed and believes that the defendant is about to leave the country. The plaintiff should be required to state in his affidavit the name of the person giving him that information. The Judge then has before him information which the defendant has the means afterwards of explaining or denying, and if he can do so he will be of course discharged." In that case B. Gurney, had made the order for holding the defendant to bail. An application was subsequently made to him in Chambers under and in the terms of the 6th section of the Act "*for the discharge of the defendant*," but that summons was discharged. The application to the court was for a rule to rescind the above orders on the ground of the insufficiency of the affidavit upon which the order to hold to bail was made. The rule *nisi* was refused upon this ground, but was granted on the merits appearing in affidavits filed in Chambers upon the application *for the discharge of the defendant* The form of the rule would seem to have been to shew cause why the defendant should not be discharged, and the order in Chambers refusing that discharge rescinded. Fresh affidavits, which had not been used in Chambers upon that application, being offered on behalf of the plaintiff on shewing cause to the rule, Thesiger interposed, and contended that fresh affidavits could not be read, "inasmuch as the present application was merely in the nature of an appeal from the decision of the learned Judge under the 6th section of the Act," but the Attorney General, *contra*, insisted that the admission of fresh affidavits was altogether for the discretion of the court: that they might have been used "if *the defendant had applied to the court instead to a Judge at Chambers for his discharge*, and therefore that they would properly be admitted in the present case;" and Parke, B., says "the party who seeks to detain the defendant in custody is certainly at liberty to use other affidavits than those which were brought under the consideration of the Judge;" and Alderson, B., says, "I entertain no doubt that both parties are at liberty to use fresh affidavits. The object of the court must be to ascertain all the facts correctly, that they may determine on satisfactory grounds whether the Judge's order is to be set aside or not."

In *Heath* v. *Nesbitt*, 2 Dowl. N. S. 1041, A. D. 1843, the form of the rule was to show cause why two orders of Gurney, B., one directing defendant's arrest under 1 and 2 Vic. ch. 110, and the other refusing his discharge, *should not be rescinded, and the defendant discharged out of custody.* The rule had been obtained upon fresh affidavits, and those which had been used in Chambers in support of the application for the defendant's discharge were not brought before the court. Hereupon Watson contended that "as the present application was in the nature of an appeal from the decision of the Judge, the affidavits used before him should be brought before the court, in order that they might see whether or no the Judge's discretion had been properly exercised," and it was held by the whole court, consisting of Lord Abinger, C. B, Parke, Gurney and Rolfe, B.B., that although additional affidavits may be used (as decided in *Gibbons* v. *Spalding*), still that those upon which the learned judge *refused to discharge* the defendant should also be before the court, for otherwise it would be impossible to determine whether he had decided correctly or not *in refusing the discharge.*

In *Graham* v. *Sandrinelli*, 16 M. & W. 191, A. D. 1846, the form of the rule which was granted by the court was simply *to show cause why the defendant should not be discharged out of the custody of the sheriffs of Middlesex.* The defendant had been arrested by an order of Erle, J. Upon being arrested the defendant on affidavits of himself and other persons that he intended to remain in England, applied to Platt, B. to set aside the order of Erle, J., and all subsequent proceedings. The learned Judge refused to make any order, whereupon the application was made to the court as above, and was supported by further affidavits besides those used in Chambers. Martin, in showing cause to the rule, contended that it was incorrect in point of form; that it ought to have been a rule to set aside the order of Platt, B., not merely a rule to discharge the defendant; that under section 6 of the Act, the proper course was for the party arrested to apply in the first instance to a judge, or to the court, for an order or rule on the plaintiff to shew cause why he should not be discharged out of custody; that in substance that was the application made to Platt, B., who in effect made an order refusing to discharge the defendant, and that then the subsequent jurisdiction of the court is only to discharge or vary such order made by a judge, on application made to the court by a party dissatisfied with