the hands of the plaintiff, whose object it was to keep defendant in custody, and who, of course, could ask just such questions as he chose, to accomplish that purpose; that defendant should be allowed to explain answers at his examination, which, although to him they might seem satisfactory, yet to a professional gentleman quite the contrary, and that he must have an opportunity of doing this at some time and in some way, and that the proper course was by affidavit upon this application; and that, taking the examination and affidavits together, a case was made out clearly entitling defendant to his discharge.

The learned Judge, without deciding whether or not the examiner was correct in refusing defendant's counsel to take part in the examination, said he though' defendant should be allowed to explain his answers, and so allowed the affidavits filed by him to be read, and on the 23rd March following gave his judgment, which concluded as follows:

"I think the defendant has made a case which entitles him to be discharged, on the ground of having *satisfactorily answered* according to the statute. I am not, however, satisfied that he has dealt with his property in the manner represented fairly towards the plaintiff as his creditor; and as I do not think I should decide what imprisonment to impose upon him without hearing him expressly upon that point, I shall forbear making any order until he serves notice on the plaintiff, or his attorney, that he will apply to be discharged, because he has answered satisfactorily, and because he has not made away with his property to prevent its being taken in execution."

Defendant immediately thereafter served notice that he would apply for his discharge to Mr. Justice Adam Wilson, on the ground that his answers had been held satisfactory; and accordingly application was made on the 10th day of April following, when—

J. A. Boyd shewed cause, and contended that the defendant had been examined three times, and every examination on the face of it showed that he (defendant) had made away with his property for the purpose of defrauding plaintiff, and that he should not be discharged from custody without a committal for some time at least; and that it should be made a condition precedent to his discharge that he should give the plaintiff an assignment of a number of debts due to him and disclosed in the examination.

For the defendant, it was argued that his first examination was had under sec. 41 of c. 24 Con. Stat. U. C., at the instance of the plaintiff, and upon which the plaintiff did nothing. The last two examinations were had under sec. 7 of c. 26 Con. Stat. U. C., and an examination under this latter Act is for an entirely different purpose than one under the former. The former is for the benefit of the creditor, the latter for the benefit of the debtor; the one enables the plaintiff to obtain a writ of *capias ad satisfaciendum* against the defendant for fraudulent distribution of property, or, in case of contempt, in refusing to attend the examination, or improperly answering an order of committal; the other (cap. 26) provides for the examination of a debtor in close custody, and is an examination which a debtor must submit to as a condition precedent to his obtaining his discharge (see sec. 8 of cap. 26), and there is no punishment provided in case a debtor refuses to be examined under this section, only that it deprives him of the right to apply for his discharge, and as long as he refuses to be examined he will have to remain in custody. In other words, the former examination is compulsory, the latter voluntary. There is, therefore, no power to commit defendant on his two last examinations, unless his case comes within sec. 11 of c. 26, which it does not. Then, as to the first examination under sec 41, c 24, there are two modes of punishment pointed out: the Judge has power either to order a *ca. sa* to issue, or to order defendant to be committed; and it has been held in *Wallis* v. *Harper*, 7 U C. L J 72, that an order to c mmit can only be granted when the defendant has been guilty of some act of contempt, as in refusing to be examined. In other cases, as when the examination discloses a fraudulent disposition of property, the proper course is to order a *ca. sa.* to issue; therefore, in this case, no order to commit could be made, for defendant has been guilty of no contempt; at most, a regular *ca sa.* could be ordered, and defendant is now in custody under a *ca sa.*

Plaintiff has waived his right to ask to have defendant committed on first examination by allowing some eight months to elapse since that examination, and in the meantime has twice examined defendant under cap 26 He (plaintiff) cannot now, when he finds defendant is going to be discharged, fall back upon that examination and ask to have him committed; and as defendant's examination has been "held satisfactory," and as his case does not come within section 11 of cap. 26, he is entitled to his *immediate* discharge. See Con. Stat. U. C., cap 24 sec 41, cap. 26, secs. 7, 8 & 11, *Wallis* v. *Harper*, 3 Prac. Rep. 50; *Ib.* 7 U C. L J. 72.

ADAM WILSON, J.—The 41st sec. of ch 24 does not apply to cases in which the party is in *close* custody. In such cases the general rule of law is—the creditor can have no other species of execution, and therefore an examination as to property is of no moment.

In such a case, the debtor cannot be compulsorily examined by the creditor.

The direction that a *ca. sa* may be ordered, or a committal to *close* custody, if the debtor be in the limits, supposes this construction of the Act.

The 26th section is the one precisely applicable to this case, for here the debtor is in *close* custody, and though, by sec 13, the like examination may be had of the debtor though on the limits as may be had in close custody, yet, in either of these cases, it is not properly a *compulsory* examination, but one which the debtor must undergo as the condition on which his application to be discharged from confinement can alone be entertained. He is not obliged to answer interrogatories or to submit to an examination—that is, he cannot be specially punished for not doing so; the only result is that his application for discharge will not be received, or will not be successful.

I cannot award imprisonment for wrongly parting with his property to evade the payment of this judgment, for such conduct is not within the enactment of the 11th section—this is manifest from the section itself, and is confirmed