tion of the appeal as required by the act, and in the form given in the orders of the court, with affidavits of justification and execution.

Notice was given of an intended application for the allowance of this bond. In pursuance of this,

O'Brien, for the plaintiff, now moved for the allowance of the bond, and for a fiat to the Sheriff of Kent, under the Con. Stat. U. C., cap. 13, sec. 16, to stay the execution.

J. B. Read for the defendant, opposed the allowance of the bond.

1. The appeal should be first settled, for otherwise there might be a difficulty in forcing the appellant to proceed with the appeal: *Rowe* v. *Jarvis*, 14 U. C. C. P. 244.

2. The judgment of the court is for the payment of money, namely, the costs of defence; and the case comes within the exception contained in Con. Stat. U. C., cap. 13, sec. 16, sub-sec. 4; and the execution should not be stayed until security is given for these costs.

O'Brien contra.

1. The court can, if the appellant fails to prosecute his appeal, withdraw the leave to appeal, and so prevent any injustice to the defendant: *Clissold* v *Machell*, 25 U. C. Q. B. 546.

2. The Legislature evidently intended, by the words, "judgment, &c., directs a payment of money," a judgment for a plaintiff, on a money demand, not costs merely, or, as in this case, the costs of a defence. This was the view taken by the Chancellor in a late case of *Heward* v. *Heward* (not reported).

Hagarty, J.—Giving the necessary security is a proceeding prior to settling the case for appeal; and the court will protect a defendant, if the plaintiff does not proceed with his appeal, in the manner suggested in *Clissold* v. *Machell*.

Unless there is an express decision to the contrary, I must hold that the statute does not contemplate the necessity of a plaintiff securing a defendant against the costs of the judgment he is appealing against. It would be a great injustice to require security in such a case, and I think the bond produced is sufficient. I shall therefore allow it, and stay the execution

Bond allowed.

Hesketh v. Ward.

Insolvent debtor—Application for discharge—Con. Stat. U. C. c. 24 s. 41 and c. 26 s. 7 distinguished—Reading examination filed on former application—Right of debtor to file affidavits explanatory of his answers on application for discharge—Right of debtor's counsel at examination to cross-examine debtor.

W. a defendant in close custody under a *ca. sa.* applied for the third time for his discharge, under Con. Stat. cap. 26, secs. 7 & 8.

Held—1. That a defendant cannot be committed on a *ca. sa.* ordered to issue against him under that Act.

2. Where several examinations had, plaintiff entitled to read the former examinations, on showing cause to application for defendant's discharge, for the purpose of contradicting answers on last examination only.

3. Defendant entitled to file affidavits explanatory of his answers, but not to make out a new case.

4. When defendant in close custody, execution creditor cannot compel him to be examined.

Semble.—As to right of defendant's counsel to take part in the examination of his client.

Quære.—Can a prior examination under Con. Stat. U. C. cap. 24 sec. 41, be referred to and acted on, and imprisonment awarded on it, after a subsequent examination had under Con. Stat. U. C. cap. 26, sec. 7.

[Chambers, April 13, 1868.]

The defendant, a debtor in close custody in the gaol of the county of York, under a writ of *capias ad satisfaciendum*, pursuant to sec. 7, cap. 26. Con. Stat. U. C., was for the third time examined as to his means of paying the judgment in this cause.

He had failed in two former attempts to obtain his discharge, owing to his answers having been held unsatisfactory.

Mr. Justice Adam Wilson, before whom the application for his discharge, after the second examination, was made, refused it on the ground that the answers were unsatisfactory, and, in his judgment, pointed out in what respect they were so, and suggested information that the defendant ought to give before he would be entitled to his discharge, and gave plaintiff leave to elect either to allow defendant to supply the deficiencies in his examination by affidavit, or to have the application discharged and a new examination of defendant had. The plaintiff elected the latter course. The summons was discharged, and defendant served another ten days' notice under sec. 8 of cap. 26, Con. Stat. U. C., and before the expiration of the ten days he was re-examined.

After the third examination he again applied for his discharge from custody, under Con. Stat. U. C. cap. 26, secs. 7 and 8, filing the usual affidavit, that he was not worth twenty dollars, exclusive of his necessary wearing apparel, &c., and that he had submitted to be examined pursuant to an order granted for that purpose under sec. 7 of said Act. An affidavit of service of the ten days' notice required by sec. 8, an affidavit of his own, explaining some of his accounts, and giving the information required by Mr. Justice Adam Wilson, affidavits of F. H. Bills (his brother-in-law) and others, corroborating his statements, and supplying some deficiencies therein, and an affidavit of his attorney, who stated that he attended the examination on defendant's behalf, and at the close thereof, by plaintiff's counsel, requested leave (1) to cross-examine defendant upon his answers; (2) to ask defendant questions explanatory of his answers; and (3) to examine him touching matters brought out in his examination, and upon extraneous matters;—that plaintiff's counsel objected thereto, and the examiner refused to allow him to ask any of such questions; and that he believed that had he been allowed so to do, he would have been able to bring out at the examination all the matters contained in the affidavit of defendant, filed in support of this application.

This summons also came on for argument before Mr. Justice Adam Wilson, in Chambers, on the 2nd March, 1868.

For the plaintiff, it was contended that the defendant could not file any affidavits in support of his application, but must stand or fall by his answers; that *the examination* must be held satisfactory before the defendant would be entitled to his discharge; that the examination was not satisfactory, and therefore defendant was not entitled to his discharge.

For the defendant, it was urged that his counsel should have been allowed to examine defendant, as above stated; for if the examiner was correct in not allowing him that liberty, the whole conduct of the examination was in