&c., on information *on oath* of any such offence, to issue his warrant for the apprehension of the offender," &c., and "it shall be lawful for the justice of the peace before whom such offender shall be brought to examine into the nature of the offence *upon oath*, and to commit such person to gaol, there to remain until *delivered* in due course of law," &c.

I cannot presume as against this warrant that the magistrate failed to perform his duty in respect to the taking of the information and the examination into the nature of the indictable offence. Unless the contrary be shewn, I must presume that he did what the statute says he ought to have done.

This disposes of the first five objections raised against the warrant of commitment.

I do not attach any importance to the sixth objection, for I think the warrant substantially complied with the statute.

The seventh objection is not tenable in the face of my decision *In re Smith*, 10 U. C. L. J. 247.

I therefore remand the prisoner.

Order accordingly.

TORRANCE ET AL v. HALDEN ET AL.

Debtor in custody—Time for charging in execution after render—Supersedeas.

In case of a surrender of a debtor by his bail after judgment, plaintiff must proceed to execution within two terms after the surrender and notice, and a render in vacation is to be deemed as a render of the preceding term, so as to make that term count as one

Where judgment was obtained on 14th January, defendant at the time being on bail, and he was on 21st May following, in the vacation preceding Trinity Term, surrendered by his bail, of which notice was given to plaint.'s. and the whole of Trinity Term allowed to elapse without any thing being done towards execution, defendants was superseded.

(Chambers, October 7, 1864.)

Defendant, John Henry Halden, on 27th September last, obtained a summons calling on the plaintiffs to show cause why he should not be superseded as to this action and discharged from custody therein, upon the ground that the plaintiff had not caused him to be charged in execution in due time according to the rules and practice of the court, and on grounds disclosed in affidavits and papers filed.

The affidavits filed, show that the action had been commenced by the issue of a writ of summons on 27th November, 1863, that a writ of *capias* for the arrest of defendant issued on 16 December, 1863, that on 21st of same month defendant having been arrested, put in special bail, that final judgment was obtained on 14th January last, that on 21st July last, defendant was rendered in discharge of his bail and notice thereof served, that ever since he had been a prisoner in close custody, that no *ca sa.* had been issued and, although three terms had elapsed after judgment, he had not been charged in execution.

S. Richards, Q.C., showed cause. He contended that as defendant was not a prisoner in close custody at the time judgment was rendered, he was not within the meaning of Rule 99 (Har. C. L. P. A. p. 637) which requires the defendant to be charged in execution within the term next after judgment, that the only rule at all applicable, is the English Rule in K. B. of H. T. 26 Geo. III. which provides for the prisoner's discharge if not charged in execution within *two* terms after render, and as Trinity Term only had elapsed since his render, he argued his application for discharge was premature. He cited *Brash v. Latta*, 5 U. C. L. J. 226; *Curry v. Turner*, 9 U. C. L. J. 211.

Robert A. Harrison, in support of the summons, admitted that our Rule No. 99 was inapplicable, but argued that upon the proper construction of the English Rule of K. B., H. T., 26 Geo. III. the vacation in which the debtor was surrendered related to the preceding term which was Easter in this case, so as to make that one term, which, added to the Trinity Term, made the two terms necessary to enable defendant to obtain the benefit of the English Rule. He referred to *Borer v. Baker*, 2 Dowl. P. C. 608; *Foulkes v. Burgess*, 2 M. & W. 849; *Baxter v. Bailey*, 3 M. & W. 415; *Thorn v. Leslie*, 8 A. & E. 195.

JOHN WILSON, J.—It is admitted by both parties that the practice as it existed before the Common Law Procedure Act is to govern this case.

The old practice in the Kings Bench was governed by the Rule of H. T., 26 Geo. III, and in the Common Pleas by the Rule of E. T., 8 Geo. I. Tidd, in the 9th Edn. p. 360, lays down this Rule as follows:—"In case of a surrender in discharge of bail after final judgment obtained, the plaintiff should cause the defendant to be charged in execution within two terms next after such surrender and due notice thereof, of which two terms the term of the surrender is one." And at p. 563, Tidd says, "In case of a surrender in discharge of bail after final judgment obtained, unless the plaintiff shall proceed to cause the defendant to be charged in execution within two terms next after such surrender and due notice thereof, of which two terms the term wherein the surrender was made shall be taken as one, the prisoner shall be discharged out of custody by *supersedeas*. Lush in his Practice at p. 657, lays down the same rule. In case of a surrender after judgment the plaintiff must proceed to execution within two terms inclusive; a render in vacation being deemed a render as of the preceding term so as to make that term count as one. See also *Thorn v. Leslie*, 8 A. & E. 195; *Baxter v. Bailey*, 3 M. & W. 415; *Borer v. Baker*, 2 Dowl. P. C. 608.

I am of opinion that this defendant ought to have been charged in execution during last Trinity Term, and that as he was not so charged there must be a *supersedeas*.

Order accordingly.*

CHANCERY CHAMBERS.

(*Reported by* ALEX GRANT, Esq., *Barrister-at-Law, Reporter to the Court.*)

HARRIS v. MYERS.

Contempt—Non-payment of money ordered—Practice.

The court will not detain a person in gaol merely for the non-payment of money; but in order to punish any one who has been guilty of a contempt of court, it may imprison him for a stated period, allowing him to be discharged if he pay the costs of his contempt before the expiration of such period.

The court will entertain applications affecting the liberty of the subject during long vacation.

Poverty is no excuse for delay in making an application to the court, as in such case the party can apply in *formâ pauperis*.

Spencer applied on the 1st September, 1864, for an order to release the defendant from custody, and to discharge the order for his arrest. It appeared that an order had been made by his Honor Vice-Chancellor *Esten*, directing the defendant to pay certain past due rents to the receiver appointed in the cause, and also to execute to such receiver a deed of attornment, to secure the payment of accruing rents, or in default that he should be committed. The defendant had disobeyed this order, and had been committed to gaol, where he had been since the 27th May, 1864. It was alleged that the decree directed the defendant to pay the past due rents, but did not direct him to execute any deed of attornment, and counsel contended that the order granted by his Honor Vice-Chancellor *Esten* was therefore wrong, it being in reality, in respect to the direction to execute the deed of attornment, an order *nisi*, not founded on any previous order, which he contended was clearly irregular by analogy to the ordinary mode of enforcing production, as to which an order *nisi* was never granted without a previous order to produce being taken out and served. He contended that the order was therefore good only as concerned the payment of the past due rents, and as to that, the defendant could not be detained in gaol, as it would be contrary to the statute. He also contended that the defendant had a right to have the deed of attornment settled under the direction of the court.

Hodgins, contra, urged that the defendant had been guilty of laches in moving against the order.

Spencer, in reply, excused the delay on the ground that long vacation had intervened, and that the defendant was too poor to pay fees to get his discharge.

VANKOUGHNET, C., said that the intervention of long vacation was no excuse for the delay, as the court would always hear applications affecting the liberty of any one during vacation, nor could the court listen to the plea of poverty, as the party can in such case come to the court *in formâ pauperis*. But apart from

* A similar order was made by Mr Justice John Wilson, in a case of *Crathern et al. v. Halden et al*, where the facts were substantially the same as in the foregoing case.—Eds. L. J.