"cluding words of the order being, the pris-"oner 'not to be discharged without further "orders from this Court.' . . . *It* contemplates "the doing of an act which may be done as well "on one side of the Court as on the other; and "there is no reason for saying, or law which re-"quires us to say, that it ought to be done on "one side of the Court rather than on the "other."

Our order concluding "until otherwise ordered by this Court," thereby grants like the former the implied permission to defendant to move the Court to order otherwise; and as it is as general as regards the Court that should give any further order, viz., the Court of Queen's Bench, as it mentions neither side of the Court, defendant is free to apply to the side he likes. Under the terms of the order, the Appeal side may, as well as the Crown side, remand, bail or discharge defendant, as the circumstances of the case admit. And if Mr. Justice Monk's explanations as he was about making the order, mean anything, they clearly convey to the reader the idea that the order was to be framed in such a manner as to allow it. Nay, he was not only indifferent to allow it; he wished it to be done. It became the Appeal side to take cognizance of the matter, especially when we consider that the proceedings that had just been brought to an end there, were the cause of the movement which was now taking place. The Appeal side might, therefore, have investigated, as well as the Crown side, the merits of the issue, and this was done in the *Blossom and Clayton* case.

It will be proper to observe, according to Mr. Justice Badgley's formal opinion, that by the effect of his remand, W. Bulmer has necessarily been thrown back for detention, not upon the indictment, which was only the accusation and charge formed for his trial, and on which by command of the Court of Appeals an acquittal had, in reality, been recorded, but upon the original commitment for the originally charged offence, namely, "shooting with intent to murder." The question to be determined by the Appeal side was then confined to the limits of this narrow compass—whether for the reasons urged on behalf of petitioner, the original commitment had been exhausted.

But disregarding altogether the exclusive terms of the order, we submit to our readers that the Superior Court, and in vacation time, any Judge of the Queen's Bench or of the other Court, might grant relief to petitioner on the principle that that order, though exclusive in its terms, is not exclusive at law. "If it is an "order," says Mr. Justice Badgley, "it is not "exclusive unless it is declared so by the law. . . ." On the contrary, those judicial powers are virtually invested by an express provision of law with concurrent jurisdiction in this matter; for if the Queen's Bench on the Crown side has adjudicated upon it on a motion, they, as well as said Queen's Bench, may do the same on a writ of *habeas corpus*. C. S. L. C., ch. 95, sec. 1, enacts that, "All persons committed or detained "in any prison within Lower Canada, for any "criminal or supposed criminal offence, shall "of right be entitled to demand and obtain "*from the Court of Queen's Bench or from the* "*Superior Court or any of the Judges of either of* "*the said Courts* the writ of *habeas corpus*."

We now quote freely from Mr. Justice Badgley's judgment:—

"The terms of the order are very extraordin-"ary: their legal effect is to exclude *petitioner* "from the pale of the law—plainly to tell *him* "that there is no beneficial law of liberty for "*him*; and, to use . . . forcible language, . . . to "suspend the *habeas corpus* Act as regards him. "It is not easy to discover whence such judicial "authority has been drawn; it does not belong "to English law; it is not within the attributes "of English Judges. If remands, which are "mere commitments in effect, may be coupled "with such orders of exclusion, why should "not all commitments have similar additions? "It is true that the Court of Queen's Bench "has, by common law, the power to exercise "extraordinary discretions, but no instance in "the books can be discovered where its dis-"cretion has been exhibited in such a "manner. . . .

"Now, to justify the detention, the return "must shew it to be founded on legal autho-"rity. There can be no doubt as to the com-"mitment, and as to the remand here—which is "in the nature of a recommitment; further "than this we cannot legally go upon this "order. Hawk., p. 186, says:—'The conclu-"sion should be according to the purpose of "the commitment. At common law the conclu-"sion usually was *there to remain until he shall*