

out an inducement to the latter to pay the debt, while his continued imprisonment will in no way benefit his creditor's pocket, though it may gratify his feelings.

We quite agree with Mr. Durand as to the principle involved, that when anything is to be done which touches the rights or standing of the judgment creditor, he should have full notice beforehand. But he ought to be the last to deprecate anything which imposes further costs or trouble upon him. Payment by the debtor after he has been imprisoned places the creditor in the same position as if the order for payment had been promptly obeyed in the first instance; and certainly, if this had been done, the creditor would not have been in a position to ask any further order against him without a fresh summons being taken out against him.

We think the section in question deprives the Judge or any one else of the right to oppose or refuse the debtor's discharge if he has complied with the conditions necessary to it. But, while the debtor has thus a right to his discharge where he has complied with the order, it does not follow that the Judge has not the power to order his discharge at any time, if he is satisfied that his previous order ought to be rescinded, and that without notice to the creditor. If the Court is satisfied that the contempt is purged, there seems to be no necessity for allowing the creditor to have a "say" in the matter.

Next, as to sec. 243. It does seem to us that before any further order is made, as is there permitted, the creditor should have some notice of the application. We believe the practice adopted by some Judges is this: Where facts brought to the notice of the Judge shew that it would be inequitable or unnecessarily harsh to allow the existing order to continue in force, he directs either that both parties appear before him in Chambers, or he stays his first order till the next sitting of the Court, when all parties appear and are heard.

Our opinion, then, briefly is this: As to sec. 244, (1) the payment therein mentioned is a necessary condition precedent to the debtor's discharge, and such payment gives him an absolute right thereto; but we think, whether the discharge takes place under the Clerk's certificate or by the order of the Judge, no notice to the creditor is required. (2) There seems to be no distinction between the power of the Clerk and that of the Judge. We would infer that the Clerk has no right to give his certificate unless payment has been made to him as such Clerk. If it has not been made to him, then it would appear to be necessary to apply to the Judge, who would, no doubt, in the absence of the creditor, require to be perfectly satisfied as to the debtor having complied with the order made against him.

Next as to sec. 245. Where the Judge has made an order against the debtor at the instance of his creditor, it would appear to be only right to give the latter an opportunity to be heard before altering the terms of that order, except, indeed, where the commitment is one for contempt of court only. But the hearing of such an application need not necessarily be at a regular sitting of the court.

ED. C.L.J.