

for the usual allowance of five shillings, defendant being an insolvent debtor in the gaol of the Niagara District; J. B. Macaulay, Esq. for defendant. Granted and issued."

The unfortunate defendant had had a judgment entered against him, and the plaintiff had caused a writ of ca. sa. to be issued under the then existing practice, under which the defendant was arrested by the sheriff and committed to the common gaol till he should pay the debt—this "arrest on final process" was a not unusual proceeding. The district should not be called upon to support a debtor in gaol and often the debtor himself could not. Much suffering was the result as any reader of Dickens will have seen; Mr. Jingle's lot was not unique. Accordingly the Provincial Act was passed (1805), 45 George III., C. 7, which provided "that if any prisoner in execution for debt shall apply to the court whence such execution issued and make oath that he or she is not worth five pounds, the plaintiff at whose suit, he or she is detained, shall be ordered by the court . . . to pay to the defendant . . . the sum of five shillings weekly maintenance . . . in advance . . . on failure of which the court . . . shall order the defendant to be released." Many stories were told of releases under this Act—one of the favourites and one I have heard from old Canadians scores of times, is that after an order of this kind had been made, the plaintiff one morning unfortunately paid as part of the five shillings, a bad half-penny, whereupon the defendant, being in the Cobourg gaol, applied to the court, and the court was forced to release him from custody. There is much virtue in a "shall."

The court went so far as to decide that it was no excuse for the non-payment of the allowance that the defendant had become possessed of property subsequent to his obtaining his order for allowance; *Williams v. Crosby* (1823), Taylor 16. But where a defendant had applied to the court for his release, and, expecting to succeed in this application, had while the application was pending, refused to accept the weekly allowance, he was not allowed the arrears when his application failed: *Moran v. Maloy* (1827), Taylor, 563, *ignorantia legis neminem excusat*.