

day of the same month, for leave to appeal against the above order.

This did not arrive in time, and another notice was served on the 23rd of September, that a motion would be made before a judge at Osgoode Hall on the following day.

This last notice was the one which was relied upon as the effective one between the parties.

W. Sidney Smith, for the plaintiff, objected that this notice was irregular, inasmuch as one clear day's notice had not been given according to sec. 11, sub-sec. 9 of Insolvent Act of 1864. That the eight days allowed to apply to appeal by the Act of 1865, sec. 15, if computed from the service on the 16th September, expired on the 24th, and then the notice should have been served on the 22nd for the 24th, and so the service on the 23rd did not afford the creditor the time he was entitled to after notice and before the motion was made; and that the material upon which the appeal was asked was insufficient. He cited *Re Sharpe*, 2 Chan. Cham. 75; and distinguished *Re Owen*, 12 Grant. 446; 3 U. C. L. J. N. S. 22.

Curran, for the defendant

ADAM WILSON, J.—The question argued before me was whether the petitioner was in a position to entitle him to the allowance of his appeal?

By the act of 1865, sec. 15, the right of appeal is given against any order of a judge made upon any of the matters or things upon which he is authorised to adjudicate or to make any order by the acts of 1864 or 1865, and the delay for applying for the allowance of an appeal is, by the act of 1865, extended to eight days—which period is by sec. 7, sub-sec. 3, of the act of 1864, to be eight days “from the day on which the judgment of the judge is rendered.”

By the act of 1864, sec. 11, sub-sec. 9, it is provided, under the head “Of procedure generally,” that one clear day's notice of any petition, motion or rule shall be sufficient, if the party notified resides within fifteen miles of the place where the proceeding is to be taken, &c.”

This service was made in Toronto on the 23rd, the one day's clear notice must therefore exclude the day of service and the day of hearing, so that either the service should have been on the 22nd for the 24th, or the motion on the 25th upon a service on the 23rd; but the service on the 23rd and the motion on the 24th do not give the one clear day's notice.

Then it is said that I can amend the notice, and *Re Owen*, 12 Grant 446, is referred to for that purpose. That case goes the full length for which it was cited, and although I am not satisfied with the decision of the learned Vice-Chancellor, I am content to follow it on the present occasion.

It was also argued that the case was not complete without all the papers which were before the judge below. I conceive it is only necessary that I should have before me such materials as will enable me to say whether the learned judge in the court below came to such a decision as should fairly and justly be reviewed, and I perceive in the petition before me, that after the order for the alleged contempt or disobedience of which the prisoner has been arrested, it is stated that the prisoner “was not asked for said books and documents, but nevertheless on the 17th of August, without any notice to me or any opportunity to shew cause against it, a warrant was

issued by the County Court Judge on the *ex-parte* application of the plaintiff, ordering me to be imprisoned for six months, on which I was arrested in Montreal and conveyed thereon to Hamilton and lodged in the Common Gaol, where I am now incarcerated under the said warrant.” Here there is a plain ground of complaint, for I think the debtor should have been called upon to shew cause why he did not obey the order, before he could be imprisoned for disobedience of it. I think there are other grounds stated which should not, in a case of personal liberty, be too severely scrutinised.

I shall allow the notice to be amended and on the return of it, if no other cause be shown, I shall allow the appeal.

Upon this intimation probably the other side may consent to the allowance being now made.

INSOLVENCY CASE.

(Reported by HUGH McMAHON, Esq., Barrister-at-Law.)

Before STEPHEN J. JONES, Esq., Judge County Court, Brant

IN THE MATTER OF WM BEARE, AN INSOLVENT.

Giving up part of stock to a creditor—Evidence of fraudulent preference—Discharge refused—Conditional discharge—Effect of insolvent not keeping proper books of account.

[Brantford, 9th September, 1867.]

The insolvent made a voluntary assignment to the official assignee of the county of Brant; and on his examination before His Honor the Judge of the County Court, on his application for discharge, it appeared that up to September, 1864, he had carried on business as a general merchant, at Widder station, in the county of Lambton, at which time he removed to Walsingham, in the county of Norfolk. He was then solvent. He owned a house and lot at Widder. The house was insured. The property was mortgaged to Kerr, McKenzie & Co., of London. At that time he was owing Kerr, McKenzie & Co. over \$3,000. The buildings were, subsequent to Beare's removal from Widder, destroyed by fire, and Kerr, McKenzie & Co. got \$900 for insurance, and sold the lot under the mortgage for \$400 more.

In January, 1865, the insolvent being behind in his payments to Kerr, McKenzie & Co., they sent their book-keeper to the insolvent's place of business at Walsingham, and advised him to confine himself to groceries, taking away all his dry goods, which had been purchased from Kerr, McKenzie & Co. No account was kept by the insolvent of the amount of goods delivered to Kerr, McKenzie & Co., they promising to send him an account. At the time Kerr, McKenzie & Co. got these dry goods, three or four other creditors had overdue accounts against insolvent. About this time Childs & Co. sued insolvent for a claim of \$300, and the sheriff sold the stock, amounting to \$800 or \$900, to satisfy the executions in Child's case. Beare kept no books while at Walsingham, and kept no account of the cash. The daily sales were not large.

West Brothers' debt was contracted in August, 1863, on four months' credit, and were shipped to insolvent while at Widder, addressed to William Bruce, and taken from the railway station by insolvent, who paid the freight. Some letters were addressed to William Bruce. One was from a lawyer, and had reference to these