

C. L. Cham.]

MCINNES v. DAVIDSON.

C. L. Cham.]

"until further order:" that the term of imprisonment awarded under the Con. Stat. U. C. ch. 24, sec. 41, was of the same nature, and the punishment under it had been considered as final when it had been ordered: That he had before thought the insolvent had wilfully disobeyed the order of the 26th of June, and he was not satisfied the insolvent had done all in his power since to comply with it. "It was his duty to hand the books and letters to the assignee, but instead of doing so he hands them to the person whose claim upon the estate is, apparently with good reason, disputed by the assignee, and whose interest it was to destroy any letters tending to shew that his account is incorrect. Certain letters have been removed apparently by Mr. Hingston, for the insolvent swears that the letters were in the book when it was handed to him. He also says that the books and letters were handed to Mr. Hingston to be delivered to the assignee; he was therefore the agent of the insolvent for the purpose of delivery, and the insolvent is bound for his acts and omissions. For all that appears, these missing letters may still be in the hands of his agent, Mr. Hingston, and until the insolvent shews how these letters were abstracted and what has become of them, or produces them, he does not come into Court with clean hands to ask for his discharge. . . . I refuse to grant the prayer of the petition for the discharge of the insolvent." In pursuance of this, the order of the 16th of September now appealed from was drawn up.

As I have before stated, I do not consider I have to determine on the regularity, legality, or propriety of any of the proceedings prior to the application of the 30th August, and the order made thereon, unless so far as the grounds of appeal necessarily extend to them, and bring them within the operation of the appeal—and a ground of appeal, that the judge should have discharged the insolvent because the insolvent, as he maintained and now maintains, had complied with the order of June, so far as it was in his power to do so, will not, in my opinion, let in objections to the validity or invalidity of the warrant because it was *ex parte*, or because it does not set out a full enough cause for commitment, nor because the insolvent could not or should not have been required to go to the Bruce Mines without a tender of his expenses for the purpose of getting the books and taking them to the assignee. Nor have I to consider whether the warrant is an order, and so appealable or not, because the warrant has not been appealed from. Nor am I required to determine whether the 29th section of the Act of 1865 makes the imprisonment unconditional for the term awarded, or whether its purpose and object are not just as the warrant in this case is, in fact punishment in substance, but determinable on submission made—"six months imprisonment or until this court shall make order to the contrary."

Imprisonment is imposed for different purposes—for *prevention*, as by a constable to hinder a fray, or by any person to restrain a misdemeanor or prevent a felony: for *security*, as in cases for debt or other civil demand before judgment: or in criminal cases before investigation or trial, or until sureties for the peace are given, by way of satisfaction as upon a *capias ad*

satisfaciendum: in *coercion*, to ensure the performance of some particular act, as in cases of actual contempt, until the contempt be purged; and in cases of supposed contempt, as for not making a return of legal process: or for not paying over monies raised by such process by officers of the court, until return or payment is made, and to enforce the payment of pecuniary fines: and *punitive*, as in criminal sentences.

In cases of contempt the warrant of commitment is properly expressed, that the party be kept until further order; *Green v. Elgie*, 5 Q. B. 99.

Whether the imprisonment here is coercive or punitive it is not for me at present to express an opinion, nor is it for me to say which it is in cases arising under ch. 24, sec. 41, before referred to.

When a party is "recommitted to close custody for any period not exceeding twelve months and to be then discharged," under the Con. Stat. U. C. ch. 26, sec. 11, because it appears to the court or judge that the debt was contracted by fraud, &c., is a case, I should think, of plain and direct punishment, nothing can be done or is to be done compensatory or in mitigation of it. Whether the same can be said where the principal purpose is to procure the delivery of books, or the giving of full information which may benefit the creditors, and when the refusal is sure to be persisted in if the imprisonment is to be maintained, is not very clear; that it may be till answer made or until further order is perhaps quite probable: *The King v. Jackson*, 1 Q. B. 653; *Groome v. Forrester*, 5 M. & R. 61.

The reason I am not called upon to consider what the nature of the imprisonment which has been awarded under the 29th section before mentioned is, that on the merits of the application, assuming the judge could review and alter his former decision, I think the learned judge was quite right in treating the delivery over of the books in a mutilated form, and which mutilation to some extent might not unfairly be attributed to the insolvent, and at any rate that it had not been satisfactorily accounted for or explained, or what had become of the missing leaves, was not conduct which amounted to a compliance by him of the order of the 26th of June, so far as it was in his power to comply with the same.

If I had been of opinion that the insolvent had truly complied with the order referred to, I should have been obliged to have considered whether it was or was not within the jurisdiction of the learned judge to have reopened the question and term of imprisonment.

Because I conceive the order of the learned judge of the 16th of September was not improperly made discharging the application of the insolvent of the 30th of August, I must dismiss the appeal with costs, to be paid by the appellant to the present plaintiff.

Appeal dismissed with costs.