SELECTIONS.

COMMITTAL OF DEBTORS.

The case of *Brown* v. *Watson*, *Dod*, *and Langstaffe* was an action brought against the sheriff of Surrey and the attorneys of the execution creditor for unlawfully imprisoning the plaintiff under an order made by Baron Pigott at Chambers. The plaintiff was ordered to pay a debt and cost within two months, or in default to be imprisoned for six weeks. The plaintiff did not pay, and was arrested. He brought an action; the defendants pleaded the judge's order, and this then was demurred to on the ground that the order was a nullity. The Court of Exchequer held that the sheriff could not be made responsible in an action for obeying a rule or order of the Court, and there was judgment for the defendants.

Was the order of Baron Pigott in accordance with the statute? We think not. Imprisonment for debt is abolished, except in certain specified cases. If a debtor is ordered to pay a sum of money by a certain day, and he does not do so, the judge, after being satisfied that he could have complied with the order, may commit him to prison. The law does not say, "If you do not obey the order or judgment of the Court you may be liable to imprisonment;" but "If you do not obey the order of the judge, and if it is proved to his satisfaction that you have the means of paying, then the judge has the power to commit you." The imprisonment is not contingent on the non-payment, but on the creditor being able to prove that the disobedience is willful. The debtor is not to be imprisoned for his inability to pay, but for his refusal to do so although he has the means at his disposal. It seems to us that a contingent order of committal is bad. It is not within the authority of a judge in any case to make an order of committal for an offence which may or may not be committed. The proof of the offence must be precedent to the judgment. And, further, we remark, that, though a debtor may have the means of paying when the order for payment is made, he may by some occurrence be without means when the day of payment comes, and in that case his imprisonment would be contrary to law. To this there is the reply that it is the business of the debtor to apply to the judge and explain the circumstances, and therefore we rest our objection to the contingent order on the principle and rule we have stated.

We doubt not that the judges would be gladly relieved of the burden cast upon them by the statute. Give the judges, both of the Superior Courts and of County Courts the authority to levy a distringas upon a part of the debtor's income, however derived, and then there might be a total abolition of imprisonment for debt, without injury to creditors or to the credit system.—*English paper.*

ONTARIO REPORTS.

QUEEN'S BENCH.

Reported by C. ROBINSON, ESQ., Q.C. *Reporter to the Court.*]

REGINA v. HOGGARD.

Conviction—Certainty—Objections to certiorari—Practice.

A conviction, for that one H., on, &c., "did keep his bar-room open, and allow parties to frequent and remain in the same, contrary to law:" *Held*, clearly bad, as shewing no offence.

A conviction, for that the said H. "did sell wine, beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law:" *Held*, bad, for uncertainty, as not shewing whether the offence was for selling without license or during illegal hours.

The charge in a conviction must be certain, and so stated as to be pleadable, in the event of a second prosecution for the same offence.

In shewing cause to the rule *nisi* to quash the conviction, it was objected that the recognizance was irregular, being dated before the conviction; but *Held*, that this was ground only for a motion to quash the *certiorari*, or the allowance of it.

[30 U. C. Q. B. 152.]

In this matter two convictions were brought up by *certiorari*.

The first was dated 10th December, 1869, made at Aurora, in the county of York, before Benjamin Pearson, Charles Doan, Jared Lloyd, and John Petch, and convicted George Hoggard, for that he "did, on the ninth day of October, 1869, at the village of Newmarket, in the county of York, keep his bar-room open, and allow parties to frequent and remain in the same, contrary to law"—George Boardman being the complainant; and they adjudged the said George Hoggard, for his said offence, to forfeit and pay the sum of $20, to be paid and applied according to law, and also to pay to the said George Boardman the sum of $3 45 for his costs, the said sums to be levied by distress if not paid within twenty days, and in default of sufficient distress they adjudged Hoggard to be imprisoned for twenty days, &c.

The second conviction, also on the complaint of Boardman, was dated the same day, before the same Justices, for that Hoggard did "on the thirteenth day of November, 1869, at Newmarket, in the county of York, sell wine, beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law:" and they adjudged the said George Hoggard, for his said offence, to forfeit and pay the sum of $20, to be paid and applied, &c. (as in the other conviction.)

On the 7th of January, 1870, application was made in Chambers to Mr. Justice Wilson to issue a *certiorari* to bring up these convictions into this Court. The recognizances were entered into by Hoggard and his sureties on the 4th of January. The writs of *certiorari* were issued on the 10th of January. The convictions, with the writs of *certiorari*, appeared to have been returned and filed on the 7th of February.

In Hilary Term last, *Harrison*, Q.C., obtained a rule calling on the convicting Justices and the informer to shew cause why the first-mentioned conviction should not quashed, with costs to be paid by the informer, upon the following grounds:

1. The conviction does not state any offence.