

the statute, or by *habeas corpus* at the common law; Deacon's Law of Bankruptcy, 727; *Ex parte Jones*, 1 Mont. D. & D. 145.

The warrant should have stated that the insolvent had the books and documents in his possession which he was committed for not delivering; *Crowley's case*, 2 Swan. 1.

No jurisdiction is shown on the face of the warrant.

No demand of books was ever made of the insolvent, nor was any refusal by him to deliver them shown. There was therefore no contempt. It is not mere disobedience that is punished—it is wilful disobedience, and none is shewn here; *Miller v. Knox*, 4 B. N. C. 574.

That the power of imprisonment is conferred only to enforce compliance with the orders of the Court, and when that has been secured the imprisonment should no longer be continued. It was not intended strictly to be a proceeding in *pœnam*: *Ex parte Oliver*, 1 Rose 407, 2 V. & B. 245; *Ex parte James*, 3 Jur. 538.

ADAM WILSON, J.—The clause under which the original order of the 26th of June, 1867, for the delivery by the insolvent of his letter books to the assignee or to any agent he might name, is sec. 29 of the Act of 1865. But the judge must have possessed such power, independently of that clause, under sec. 3, sub-secs. 9, 11, 22, of the Act of 1864, although what his power of punishment would have been in the absence of the express provision contained in the act of 1865 is not quite certain.

No complaint has been made in this present appeal against the order of the 26th of June, for the delivery up of the letter books, nor has any complaint been made against the warrant of commitment dated the 17th of August last, imposing six months' imprisonment upon the insolvent, "or until this Court (the County Court judge) shall make order to the contrary." Nor is any complaint made that the petition of the insolvent to the judge of the County Court, dated the 22nd of August last, praying to be discharged from custody under the warrant of commitment was improperly disposed of, the judge having been of opinion "that the insolvent was disobeying the order of the 26th of June," and "refusing to rescind or set aside the order for commitment, or to make any order for discharge of the insolvent, unless he complied with the order requiring him to deliver up these books and papers."

The appeal is merely against the order of the Judge of the County Court of the 16th of September last, refusing to grant the application of the insolvent, of the 30th August, to be discharged from further imprisonment, because he had complied with the order for the delivery up of the letter books, &c., so far as it was in his power to do.

In disposing of that application, the learned judge said that he considered sec. 29 of the Act of 1865 both compulsory and punitive, because the time fixed by it was definite and not "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 *punitivè*, as in criminal sentences.