

to pay since the judgment was obtained, an order of committal is made. The plaintiff then says he does not want to send defendant to prison, and asks the judge to add the condition that the warrant is not to issue if (say) £1 a month be paid. The judge says he has no power to make such a condition, but he can suspend the issue of the warrant for (say) six months, that is, for the time it would take to pay a debt of £6 by instalments of £1 a month. The plaintiff is thus placed in this unsatisfactory position: if he accepts an unconditional commitment he may issue his *ca. sa.* at once, or at any time within twelve months, but it must be for the whole amount, when in all probability the defendant is utterly unable to pay such a sum at one time, however long might be the patience of the plaintiff, and as the cash office will only accept the specific amount ordered by the Court, the defendant has no means of propitiating the plaintiff by paying instalments. Hence one of three things commonly happens: 1st. The defendant is arrested at once, and being unable to pay, serves his term in prison, and the plaintiff is worse off by the costs of the judgment summons and the *ca. sa.*, and he has to repeat the process, with the probability that the result will be the same. 2nd. He may have the issue of the *ca. sa.* suspended six months, and at the end of that time he finds himself in exactly the same position as at first: the defendant goes to prison, and comes out without the slightest probability of ever being able to raise £6 at one time, 3rd. (And this is by far the most likely case of the three) long before the six months have expired the defendant has vanished, or, as high bailiff will endorse on the *ca. sa.*, *non est inventus*.

Now take the court that makes conditional commitments, and let us suppose a similar case. The judge, being satisfied of the defendant's ability to pay the debt by instalments, says to the plaintiff—"I will commit the defendant to prison if you will agree not to take out the warrant if he pays £1 a month; you will be more likely to get your money in that way, and you don't want to send the man to prison." "Of course I don't," says the plaintiff, "I will agree to those terms." An attorney perhaps appears for the defendant, although that is very unusual in judgment summonses. The professional man knows that technically the judge has no power to make the condition part of the order of committal, and immediately puts the question to the judge, "Suppose, sir, the plaintiff *does* take out the warrant in spite of his agreement, for he is not legally bound by that?" "In that case," says the judge, "apply to me, and I will at once set the committal aside as having been obtained *contra bonas fides*." Thus, by an ingenious fiction the condition of the committal has all the force of law without being

technically legal, and the plaintiff almost certainly gets his money, as the cash office is ordered to take any instalments that the defendant may offer, and the plaintiff will perhaps in nine cases out of ten be content with even less than he bargained for.

The difference between the two systems is a matter of far greater importance than superficially appears; so much so indeed that collectors and tradesman, who go much to county courts, declare that they get quite thirty per cent, more under the conditional commitment system than they do under the unconditional and suspension system. And yet the conditional system is nothing more than applying to the *ca. sa.* the law and the universal practice of all the judges with regard to the *fi. fa.* When a judge, on an original hearing orders payment by instalments, he simply orders (not in words, for the law provides the condition) that the *fi. fa.* shall not issue if the instalments be duly paid. The judge ought to be entrusted with the discretionary power of dealing with both the *fi. fa.* and the *ca. sa.* in the same way, without having to resort to the transparent fiction we have referred to.

PREVENTION OF CRIME IN ENGLAND.

At the Meeting of Magistrates for the county of Middlesex, in November last, Mr. Serjeant Payne laid before them the following resolutions on Penal Servitude and the Prevention of Crime:

"1. That the great object of all classes of society should be the prevention of crime, and the consequent avoidance, as far as possible, of the necessity of punishment.

"2. That in the earlier periods of this kingdom, those who had committed offences were allowed to abjure and leave the realm, and were not to return without permission.

"3. That the difficulty which now exists in providing a penal settlement to which to transport criminals, renders it desirable that in cases not requiring capital or severe punishment, certain offenders, after repeated convictions, should be expelled the kingdom for such period as might be considered proper, without their being transported to a penal settlement—by which means great expense would be saved to the country in their maintenance either in the colonies or county prisons; and such a proceeding would be justifiable, inasmuch as foreign nations transport their criminals to England and other countries.

"4. That in order to check and prevent the commission of crime, which from recent investigations appears to exist to an extent hitherto unheard of, the magistrates of the several petty sessional divisions should meet once a week, or oftener if occasion requires it, and that such meetings should be open to any person desirous of communicating information of any offence committed or about to be committed; such information to be received confidentially by the magistrates, and by them communicated at their discretion to the police authorities, and to be authenticated by