being in the Insolvent Debtor's Court, and an interim order of protection having been granted to him, and running till the 15th of January, could not be arrested or detained under the order of the Division Court while such interim order was in force. The Judge refused to discharge the defendant on the mere production of the interim order, although granted by himself; but said, that upon an affidavit of the facts, he would give a summons to shew cause why the defendant should not be discharged. Accordingly, Mr. Lees produced the defendant's affidavit, in which he merely states that he was arrested and is in custody, and that an order for protection from process, &c.. under the Insolvent Debtor's Act was made by the Judge of the County Court, which continues in form until the 15th day of January. A summons in the Division Court is accordingly granted "to shew cause why the defendant should not be discharged from custody under the Warrant of Commitment upon the ground that the defendant was protected from process by virtue of the interim order from the Insolvent Debtor's Court." The summons was personally served on the plaintiff, and —— *Campbell, Esq.*, Barrister, appears to shew cause, and refers to the 95th sec. of the Division Court Act of 1850, the latter part of which says that, no protection order or certificate granted by any Court of Bankruptcy, or for the relief of Insolvent Debtors, shall be available to discharge any defendant from any commitment under an order from the Division Court according to the provisions of the 92nd section of the Act of 1850.

Mr. Lees does not contend that the order for commitment was void, or should not have been made at all, but urges that now as the entire facts of the case are brought to the knowledge of the Judge of the Division Court, he should order the discharge of the defendant, his commitment being in the face of the order for protection.

When the party was called upon for the summons of enquiry, I asked the Clerk whether he was the person then in the Insolvent Debtor's Court, and although I had no doubt he was the same, yet his not appearing or offering any excuse for his non-attendance, left me no alternative but on the application of the plaintiff to order his commitment under the authority of the 92nd section of the Division Court Act of 1850. Had the defendant appeared and submitted himself to examination, it is possible such facts in his conduct with regard to his dealings with the plaintiff might have been brought to light as would, notwithstanding the order for protection, justify me in ordering his commitment; but with such an order in force, nothing short of direct fraud on the part of the defendant would have caused me to order his commitment.

The defendant, if advised that his order of protection justified him in disregarding the summons of Enquiry, was led into error—he should have appeared to the summons; his absence was the cause of the order having been made, and now that it has been enforced, and no reason or argument advanced against it other than the existence of the order for protection. I do not see how I can in direct opposition to the latter portion of the 95th section of the Act of 1850 order his discharge, nor can I bring myself to the conclusion that as Judge of the Division Court I have such knowledge of facts or circumstances beyond what are disclosed in the affidavit and summons as would justify me in annulling the order of commitment, and particularly as it is not attempted to be shewn that I had not authority to make the order.

The summons is discharged, but without costs.

First Division Court, County of Essex,—A. CHEWITT, Judge.

C. B. v. J. C.

Jurisdiction—Where cause of action arose—Where and how to be tried..

J. C. residing at H. in the County of W. by letter directed C. B. an attorney of Sandwich, in Essex, to bid for him at Sheriff's sale in Essex up to a certain sum (£95) on lands owned by A. M. D.—under H.'s own executions and an execution for one B., for whom H. was attorney, saying, that if there was higher bidding, he would send other executions to cover the difference, and sending a prepared Sheriff's deed to himself for the land advertized, to be executed as soon as land was bid in, to secure himself—he having as he said some incumbrance (not shewn) on the same; besides which he wished to have perfected by the Sheriff's deed. C. B. bid in the land in J. C.'s name at £20, but Sheriff refused to execute deed to J. C. till the poundage, being £11 7s 6d, was secured and paid. C. B. signed a draft on J. C. in favor of Sheriff for the sum, which J. C. did not pay on presentation—having knowledge previously of the deed executed to J. C. on giving the draft. The Sheriff sued C. B. in the Division Court at Sandwich, in Essex, and recovered the amount of the draft and interest £12 3s., which J. C., though required, did not pay—though he admitted that bidding and getting the deed was requested, but said C. B. had bid too high, but said he would pay £10 in full, which however was not tendered or accepted. C. B. sues J. C. in First D. C. of Essex; J. C. before trial moves on affidavit (that he resides in and the cause of action arose in another county) to quash proceedings. The Judge held that this could not come up on affidavit, but must be urged at trial. At which, the above facts being elicited by defendant's letter and Sheriff's evidence and that of the Clerk of the D. C.

The Court was of opinion, that the cause of action arose in Essex within the limits of the First D. C., and not in the county from whence J. C. sent his letter of authority to bid; J. C. having sent the prepared Sheriff's deed to himself to be executed immediately after the bidding to secure the land (and not having sent the money to pay the poundage, &c.) which deed the Sheriff would not execute till the Fees were secured or paid, which was then and there done for J. C.'s benefit and advantage—the sending the Sheriff's deed with request to have it executed, carried (it is conceived) with it the *implied request*, to pay the necessary fees to obtain the deed when so executed. The defendant argues that as the request to do the work of bidding and getting deed came from another county, that the cause of action arose in the county where the letter of *authority* to bid in J. C.'s name was written. This is thought erroneous. It is apprehended that if C. B. had sued J. C. in the First D. C. of Essex for the charges for agency for attending at the bidding, &c., postage, &c., attorney, sheriff for deed, &c., the cause of action for this work (not however charged for) could only be said to arise within and where the work was commenced and finished; none arose when the letter was written or even when received. C. B. might have refused to act; but when he did act at Sandwich, in Essex, the cause of action was in its inception; and when the work was completed, the cause of action arose where it was so commenced and completed. The letter was only the authority to do a thing in another's name *at this* place by the agent or attorney. The charges of the agent or attorney were earned by acting from beginning to end at this place, and the assumpsit, express or implied, arose here also. The letter, it is true, (written at H. in W.) contained the request to bid, &c., but it was no request to C. B. until he received it, which was at S. in E.—*Breckley v. Hann*, U. C. L. J. 119.

So where C. B. pays out money for J. C. at Sandwich, in county of Essex, on his implied request (not contained in this letter from H.) but arising from the peculiar nature of the necessity in doing J. C.'s business as his agent or attorney pursuant to an authority to do something in J. C.'s name *there, i. e.*, bidding in and getting Sheriff's deed to same title *at once*, (even if not assented to afterwards, as in this case.) The paying the money necessary to complete that business as required, raises then and there for the first time an implied promise to repay it without express words, at the time and place, when and where it was so paid—and where, in fact, all the evidence necessary was on the spot, and to be had at a very small expense; but which would have been very heavy if tried