

schedule, and this is not sufficiently done by putting in a copy of the schedule, without swearing that the plaintiff's name is there.

A Clerk of the County Court, being also *ex officio* Deputy Clerk of the Crown and Clerk of Assize, is privileged from arrest only while engaged in his official duties, or while going to and returning from his office; and this Court therefore discharged a rule to prohibit the County Court Judge from issuing an order of commitment against such officer.

During last Trinity Term, *Harrison Q. C.*, obtained a rule calling on the plaintiffs, and upon the Judge of the County Court of the County of Brant, to shew cause why a writ of prohibition should not be issued, directed to the said Judge, to restrain all further proceedings in the said Division Court under the order made by the said Judge for the arrest and imprisonment of the said Goodson, who is and was at the time of the making of the said order Deputy Clerk of the Crown and Pleas, Clerk of the County Court, and Clerk of Assize, in and for the County of Brant, on the following grounds: 1. That the said Goodson being such Deputy Clerk of the Crown, &c., is privileged from arrest. 2. That the said Goodson before the making of the said order for his arrest had obtained a discharge from his creditors under the Insolvent Act of 1864; and on grounds disclosed in affidavits and papers filed in chambers; and why the order of Mr. Justice John Wilson discharging a summons herein for a prohibition with costs, should not be rescinded.

It appeared from the affidavits and papers filed, that the defendant was Clerk of the County Court holding his office under the Great Seal, &c.: that in December 1859 the plaintiffs recovered a judgment against the defendant for \$42: that in May 1864 he was examined before the Judge, under section 160 of the Division Courts Act, and then ordered to pay \$5 a month to the plaintiffs, there being then due \$37.53. By the 19th September, 1864, the defendant had paid the plaintiffs \$16, but paid nothing since. On the 3rd April, 1866, defendant made an assignment of his estate to the official assignee for the County of Brant. He had been previously summoned by the Judge to appear before him on the 4th April, to shew cause why he should not be committed for not obeying the order to pay \$5 a month, and he then appeared and claimed that no further order could be made against him, and the matter stood over until the 28th April.

In the interim the defendant obtained the consent in writing of the requisite number of creditors, representing the requisite proportion in value required by the Insolvent Act of 1864, as he contended, to give validity to such consent to his discharge under the Act and his discharge from the debt in question. Notwithstanding such proceedings, on the 28th April the learned Judge in the Court below made an order in this cause directing the defendant to be committed for not paying the said money according to the terms of the order of May 1864, the Judge staying the issue of the order for twenty days to give the defendant time to pay the money or to take steps to relieve himself from the order.

The defendant then obtained a summons in the Court below on the 4th May, to rescind the order, on the ground that he had obtained a discharge under the insolvent Act, which summons was discharged, but the issue of the order for commitment was stayed to give the defendant an opportunity of applying for a writ of prohibition.

And on the 3rd May a summons was obtained in Chambers for the issuing a writ of prohibition to restrain all further proceedings in the cause, on the ground that the defendant had obtained his discharge, &c., and on the ground of the defendant being Clerk of the County Court, &c., and as such being privileged from arrest.

That summons was discharged with costs, the learned Judge in Chambers being of opinion that the Judge of the County Court was right in refusing to rescind his order, upon the ground of the defendant not being discharged from the debt under the Insolvent Act. And as to the point of privilege from arrest, he was of opinion that, on the authority of the case of *Henderson v. Dickson* (19 U. C. R. 592) the defendant was not entitled to the privilege he claimed. *Mackay v. Goodson* (2 U. C. L. J. 210, N. S.)

During this term *Moss* shewed cause, citing *Abley v. Dale*, 11 C. B. 378; *Copeman v. Rose*, 7 E. & B. 679; *George v. Somers*, 11 Ex. 202; *Ex parte Christie*, 4 E. & B. 714; *Henderson v. Dickson*, 19 U. C. R. 592; *Ex parte Dakins*, 16 C. B. 77.

*Harrison, Q. C.*, contra, cited, *Mackay v. Goodson*, 2 U. C. L. J. 210, N. S.; *Adams v. Ackland*, 7 U. C. R. 211; *Dyer v. Disney*, 16 M. & W. 312; *Ockford v. Freston*, 6 H. & N. 466; *Ex parte Foulkes*, 15 M. & W. 612; *Ex parte Kinning*, 4 C. B. 507; *George v. Somers*, 16 C. B. 538; *Thomson v. Harding*, 3 C. B. N. S. 254; *Wallinger v. Gurney*, 11 C. B. N. S. 182; *Markin v. Aldrich*, 11 C. B. N. S. 599; *The Queen v. Owen*, 15 Q. B. 476; *In re Boyce*, 2 E. & B. 521; *Naylor v. Mortimore*, 10 C. B. N. S. 566; *Basterfield v. Sprye*, 6 E. & B. 376; *Kinning's case*, 10 Q. B. 730; *Re Kinnaird*, 7 L. T. Rep. N. S. 25; *Re Willsmere*, 8 L. T. Rep. N. S. 853.

MORRISON, J. delivered the judgment of the Court.

It is much to be regretted that a question of privilege of this kind should arise.

The defendant holds office under the Great Seal as Clerk of the County Court of the County of Brant, the Court over which the learned Judge presides who is made a party to this rule. By Statute the defendant is also *ex officio* Deputy Clerk of the Crown, and as such an officer of this Court. He is also by Statute *ex officio* Clerk of Assize and Marshal. These are all offices entirely connected with and necessary to the administration of justice.

The defendant contends that by virtue of his discharge under the Insolvent Debtors Act of 1864, he is not liable to be committed upon a judgment summons, and that if he is liable he is privileged from arrest, holding the offices above mentioned.

As to the first point taken, we are of opinion that the decision of the learned Judge in Chambers was correct, and that a discharge under the Insolvent Debtors Act does not prevent a party being committed upon a judgment summons under the provision of the Division Courts Act. The cases of *Abley v. Dale*, (11 C. B. 378), and *George v. Somers*, (16 C. B. 539), are conclusive authorities on the point.

But if any doubt existed in that respect, we do not think that the defendant has shewn that the names of these plaintiffs were inserted in his schedule. Upon an application of this nature, it is the duty of the applicant to shew specifically