has or has had, since the date of the order or judgment, the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same." Then follows the part of this section 5 (as before adverted to) enacting, so far as County Courts are concerned, that section 5 is to be deemed to be substituted for sections 98 and 99 of the County Court Act of 1846, and it enacts that "No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place" If the enactment were declared to be in substitution of section 103 (Act of 1846), or if these two sections (sections 5 & 103) cannot be reconciled, it seems to me that the more recent shall prevail over the earlier enactment; consequently, that section 5 of the Debtors' Act 1869, is the enactment to be followed in the case under consideration. Section 4 of the Debtors' Act 1869, enacts that, "with the exceptions hereinafter mentioned," and none of these exceptions affect the present subject, "no person shall, after the commencement of this Act" (1st Jan. 1870), "be arrested or imprisoned for making default in payment of a sum of money" It might be urged in support of plaintiff's present application for the commitment order, that as the former imprisonment of the defendant, "is in nowise a satisfaction of the debt;" but in the nature of a punishment for a contempt of court, each succeeding day wherein, having the means, the defendant witholds payment, he makes another substantive default, rendering himself liable to be anew summoned and imprisoned for his neglect or refusal to pay all arrears unsatisfied. Or it might also be proposed for the plaintiff to attain the same end (the commitment of the defendant) by rescinding the original order, and varying the instalments pursuant to the authority given in the Debtors' Act 1869 (sec 5, proviso 2, sub-sec. 4). But I think that in cases like the present, where there has been an imprisonment of the defendant covering the default for the entire residue unpaid, the remedy for further imprisonment is gone. Indeed it seems to me doubtful if, since the statute 32 & 33 Vic. c. 62, part 2 (For the punishment of Fraudulent Debtors), where each offence is clearly defined, the resort to what might be called the fiction of a contempt of court is any longer available. A careful consideration of the expressions used in section 103. (1846.) and section 5 Debtors' Act (1867,) leads to the conclusion that it was never intended, and that it is not intended that there should be a second imprisonment for one and the same default. The two enactments are in nearly the same words, and limit the plaintiff's ultimate remedy for the recovery of his debt (after defendant has before been imprisoned) to the right to take out execution against the property of the person before imprisoned in the same manner as if such imprisonment had not taken place. The enactments of the statute law on the subject of commitments, are encroachments on the principles and usages of the common law, and are not to be extended, or put in force unless where the enactments are clear and explicit. By the common law if a creditor once takes the body of a debtor, this being the highest kind of execution known to the law, it is a satisfaction of the judgment, and the debt is gone. Under the circumstances of this case, seeing that the defendant has been before imprisoned for non-payment of the remaining instalments, I must now refer the plaintiff to such remedy as he may have by execution against the lands, goods, or chattels of the defendant, as freely as if such imprisonment had not taken place. Though it is unquestionable that a defendant may be summoned anew, and imprisoned for each new or other default in paying another instalment when due, yet I think that any order of commitment that included the sum for the defaut in paying which the judgment-debtor had been before imprisoned, would be an invalid order. I trust the effect of this view of the matter may be to induce traders to be more cautious in giving credit to their customers.

Strutton v. Johnson.

The meaning of "forthwith" in an order for payment.

Execution cannot issue on an order of the Court until the record is complete—*i.e.*, signed by the registrar.

Mr. Fullager, for the plaintiff, after proving his case, one of no interest except for what followed, asked for and obtained an order for payment forthwith, and shortly afterwards returned into court to make an application. He said, acting on his honour's order he had applied in the issuing department for an execution against the goods of the defendant, but the registrar's clerk had refused to grant it, on the ground that "forthwith" did not mean the same day, and the execution could not issue until the next morning. Believing the clerk to be wrong he begged to ask his Honour to allow the process to issue immediately There was a case in point heard before the Exchequer Chamber on appeal, *Ely* v. *Moule and Tombs*, 20 L. J. Ex. 29 The case arose out of an action in the Droitwich County Court, where a forthwith order had been made and an execution levied on the goods of the defendant the same day. The defendant (Ely) then brought an action against the plaintiff and the registrar (Moule and Tombs) for trespass, when the Court found that the proceedings in the County Court were regular, and therefore no trespass had been committed. The Exchequer Chamber affirmed this decision, and he (Mr Fullager) now asked his Honour to act upon that precedent, and allow the execution to issue.

Mr. Pitt Taylor said in the case quoted the Court was not asked to decide the point now raised. The plaintiff in that case contended that he ought to have been served with an order before his goods were seized, and the Court decided that was not necessary according to the Acts and Rules regulating County Courts, and the proceedings were therefore regular. The point now raised was a very different one. The record of the court was not complete until signed by the registrar, and proceedings could not be taken until such completion. That officer did not sign each judgment, but, as provided by the Act, only every page, and it was necessary he should have time to make his record complete before allowing process to issue. The application would therefore be refused.