

commitment be for a certain time. The defendant ought to know for what he is in custody, and how and when he may regain his liberty.

Dr. Grosvelt's case, 1 Ld Raymond, 213.
 R vs. Rogers, 1 D & R. 156.
 Ex parte Addis, 2 D & R. 167.
 R. vs. Helps, 3 M. & S. 331.
 Robson vs. Spearman, 3 B. & Ald. 593.
 R. vs. Hall, Cowp. 60.
 Clark vs. Woods, *et al*, 2 Exch. 395.

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(f) Had the commitments recited valid convictions with the fine adjudged, and the imprisonment in lieu of payment imposed in such case, both the gaoler and defendant would have been able to know when the latter could be legally discharged "in due course of law." Under these commitments the gaoler may have to consult a legal adviser as to his right to detain the defendant.

(g) The commitments in question, if upheld, would condemn the defendant to perpetual imprisonment, in case of non-payment of the fine. The penalty is a punishment, and it is submitted he could not be discharged under the Insolvent Act (Appendix, Revised Statutes, p. 96), because he does not come within the purview of that statute. If he does, he can apply at once and be discharged, although the very statute under which he is committed expressly fixes the period of his imprisonment.

(h) A consideration of the manifest absurdities into which we are driven by the contention that Form F is the form to be used in the case of convictions like the one under discussion, would lead to the conclusion that such form is not applicable except to cases where a penalty alone is imposed, and where it may be collected in the same way as an ordinary debt.

Where it is impossible to reconcile a form with a statute, upon ordinary principles, the form must give way.

Reg. vs. Baines, 12 A. & E. 227.
 Potter's Dwaris, 113.

V. The prisoner should have been discharged under the second commitment, even admitting the respondent's contention below, viz., that the matter in question was civil in its nature, and that the forms used were applicable to the circumstances, because if the plaintiff's demand was a debt, and recoverable as a debt, it could only be recovered under the provisions of chapter 91 of the Revised Statutes relating to procedure before Justices of the Peace in civil cases. Section 8 of that chapter is as follows: "When the defendant does not personally appear, the Justice shall not proceed in the cause unless the constable shall make an affidavit that he has delivered a copy of such writ with a statement in writing of the plaintiff's particulars annexed to the defendant." * * * The defendant was not personally present at the trial, and no affidavit was produced that he was served with the summons. It has been decided by our own Supreme Court that unless such affidavit was produced at the trial below, and that fact appeared upon the conviction, the commitment was void, and the prisoner entitled to be discharged.

Re Donald McEachern, Supreme Court, N. S., January, 1880.

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