from the Practice Court, authorised by the previous section.

I am therefore of opinion that I must sustain the objection as to jurisdiction.

It was also contended by Mr. McMichael that if I had no authority to rescind the decision of my brother Wilson, that that part of his rule which asked to set aside the amendment pleaded under the judge's order should be made absolute, as the only power given by the order was to add a plea, and not to amend; but I think the proper course in such a case is that pointed out in *Rennie et al.* v *Beresford et al.*, 3 D. & L. 467, where Alderson, Baron, said: "If there be any objection to the mode of compliance with the order I made at Chambers, that is a proper matter to go to Chambers again, for application should be made to the judge to enforce his own order. It is only proper to come to the Court when you deny the exercise of the judge's discretion at Chambers."

The rule will be discharged, and there can be no costs; and, as plaintiff desires it, all proceedings will be stayed until the first four days of next term.

Rule discharged without costs.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law, Reporter to Practice Court and Chambers.)*

McInnes v. Davidson.

Insolvent acts—Order by judge to produce books—Insufficient compliance—Contempt—Punishment, nature of.

An insolvent was ordered by a county judge to produce certain books and papers. These were at the time at Bruce Mines, and the insolvent did not feel called upon to go there for them, and an order was made *ex parte* for his committal for disobedience of the order. The insolvent had, however, in the meantime, taken the books to Montreal and given them to one H. to hand to the assignee. He was then arrested, and subsequently applied for his discharge, which was refused. The books were afterwards handed over to proper person, though in a mutilated condition, which the insolvent said must have been done at Montreal. He then again applied for his discharge on the ground that he had complied with the order, and that the imprisonment was for compulsory purposes only. The county judge, however, made an order refusing the application, and the insolvent then appealed from this last order to a Judge in Chambers in Toronto.

It was urged that the warrant of arrest was insufficient on its face; that no demand was made of the books, or refusal to give them shewn, and therefore no contempt; and that the power of imprisonment was only to enforce compliance with the order, and not *in pœnam*.

Held, 1. That the judge at Toronto had no right to enquire into the legality or propriety of the warrant for arrest, or as to the nature or object of the imprisonment authorised by the statute, or whether the warrant was an order and so an appealable matter under the acts.

2. That the last order of the county judge was not improperly made, and the appeal was merely an appeal from that order.

The purposes for which imprisonment is imposed enumerated.

Quære, whether in this case the imprisonment was coercive or punitive.

(Chambers, November 15 1867.)

Notice of appeal, dated the 10th of October, 1867, was served by the defendant (an insolvent) that he would appeal to one of the judges of Common Law at Toronto against the order and decision of the judge of the County Court of the County of Wentworth, made on the 16th of September last, refusing and discharging the petition of the insolvent, wherein he prayed to be discharged from further imprisonment under the warrant of the said judge of the County Court of the 17th August last; and, the appeal having been allowed, notice was further given that the insolvent would present a petition to the presiding judge in Chambers at Osgoode Hall, and that the insolvent would (amongst other things) insist on the following ground of appeal, namely, that he had complied with the order of the said judge of the County Court, on the 26th of June last, fully, or as fully as it was in his power to do, and therefore should have been discharged by the said judge—the power of imprisonment conferred on the said judge being intended for compulsory purposes only, and not for purposes of punishment.

The petition stated that the insolvent, who had been carrying on business as a country merchant at the Bruce Mines, assigned on the 16th of November, 1866, all his property and assets to John Whyte, an official assignee, then and now of Montreal, in trust for the payment of his debts, and his estate having been subsequently placed in compulsory liquidation, such proceedings were had that the appointment of John Whyte as such assignee was confirmed:

That on the 26th of June, 1867, the said judge of the County Court, acting in Insolvency, made an order requiring the insolvent to deliver to the said assignee, or such agent as he should name, all letters, books containing copies of letters in any way connected with his late business, and all letters, vouchers, notes, deeds and documents relating thereto, which order was served on the insolvent, in Hamilton, on the same day:

That at the time of serving the said order the insolvent had only some letter books, some registered deeds for lands, and a bundle of old letters, retired notes and accounts, or invoices of no use in ascertaining the state of his affairs, all of which at that time were at Bruce Mines, some hundreds of miles from Hamilton, and much further from Montreal, where the assignee lived:

That the insolvent was never after the service of the said order asked for the said books and documents by the assignee, or by any one professing to be authorized by him to receive them, but nevertheless, on the 17th of August, 1867, a warrant was issued by the said judge of the County Court, on the *ex parte* application of the plaintiff, ordering the insolvent to be committed to the common gaol of the county of Wentworth for six months, under which warrant he was arrested in Montreal, and conveyed thence to Hamilton, and lodged in the common gaol, where he is now incarcerated under the said warrant:

That on the 24th of August, 1867, the insolvent applied to the said judge of the County Court to be discharged from imprisonment under the said warrant, which application was refused by the judge:

That the insolvent did not understand that the order for the delivery of the books and documents imposed on him the obligation of going or sending to Bruce Mines for them, or of carrying or conveying them to the assignee at Montreal, as the insolvent was informed the said judge in effect held in refusing the application of the insolvent: and that if it did impose upon him