

of a weekly sum to the guardians of a union for the support of his mother:—and it was held that the process under which the plaintiff was arrested was of a criminal nature and not for a debt; and that he was, therefore, not protected from arrest under s. 113 of 12 and 13 Vic., c. 106.

Blackburn J. (at p. 555 of the report), said: "The question remains, what is the nature of the process under which the plaintiff was arrested? What is it that the plaintiff has done or omitted to do? He is the son of a woman who is chargeable to the parish, and he is of sufficient ability to support her. By statute 43 Eliz., c. 2, s. 7, it is enacted that the children of every poor person not being able to work, being of sufficient ability, shall, at their own charge, relieve and maintain every such poor person, in that manner and according to that rate, as by the justices shall be assessed, upon pain that every one of them shall forfeit 20s. for every month which they shall fail therein. It was as a *punishment* for the disobedience of an order made under this section that the plaintiff was arrested. . . . The statute makes what was a duty of imperfect obligation a positive duty. . . . The offence here is that the plaintiff being of ability would not support his impotent relative—that is a duty the neglect of which though only morally wrong before the statute, is made a *crime* by the statute."

In the same case (at p. 556) Mr. Justice Mellor said: "But I have come to the conclusion that the duty of a son to support his mother, having been originally moral only, was made a positive duty by the statute which requires that in the event of the son neglecting that duty, he shall pay such sum as the justices shall order, and then the ultimate enforcement of that duty is carried by fixing a penalty, and in the event of the non payment of that penalty, a punishment of not more than three months' imprisonment is imposed. That is in the nature of a punishment for a criminal offence."

In *Ex parte Graves in re Prince*, L. R. 3 Ch. Ap. 642, where a debtor was convicted under the 6th section of the Copyright Act (25 & 26 Vic. c. 68), for violations of copyright in engravings, and sentenced to pay a fine to the proprietor of the copyright, and in default was imprisoned, and after his conviction executed a deed of composition with his creditors, it was held by the present Lord Chancellor, Lord Hatherley, then Sir W. Page Wood, L.J., and Sir C. J. Selwyn, L.J., that the process under which the debtor was arrested was of a criminal nature, and not for a debt, and that he was not entitled to a discharge. Lord Hatherley (at pp. 644, 645) said: "The case of *Bancroft v. Mitchell* has thrown great light on the construction of the provisions of the sections referred to. The *Copyright Act* clearly makes that which the debtor has done an offence against the law. . . . The scope of the statute through-

out is to make the act done an offence; the penalty is to be paid to the person injured, but it is not to be the measure of the damages which he may recover, for he may bring his action and recover damages independently of the penalty. . . . I think, therefore, that the arguments that the debtor escapes by paying money, and therefore the imprisonment is only a process to enforce a payment of money, is answered by Mr. Justice Blackburn's judgment."

Sir C. J. Selwyn, L.J. (at page 645) said, after referring with approval to Mr. Justice Mellor's opinion in *Bancroft v. Mitchell*, "Whether we take the letter or the spirit of the Act, the result is the same. If we look at the letter, the words used are 'penalty' and 'conviction,' all pointing to a criminal offence. If we look to the spirit of the Act, we find certain acts prohibited and treated as offences and certain penalties imposed, and in addition to the penalty, the prosecutor may recover damages by action."

In the 5th edition of Paley's Law and Practice of Summary Convictions, edited by H. T. J. Macnamara, Esq., Recorder of Reading, at pp. 112, 113, the question of what is a "criminal proceeding" is treated in the following manner: "The question, therefore, what is a 'criminal proceeding' as the subject of summary conviction, depends on the manner in which the legislature have treated the cause of complaint, and for this purpose the scope and object of the statute, as well as the language of its particular enactments, should be considered. It may be, as a general rule, that every proceeding before a magistrate, where he has power to convict in contradistinction to his power of making an order, is a criminal proceeding, whether the magistrate be authorized, in the first instance, to direct payment of a sum of money as a penalty, or at once to adjudge the defendant to be imprisoned; and it must be borne in mind that where a statute orders, enjoins, or prohibits an Act, every disobedience is punishable at common law by indictment; in such cases the addition of a penalty, to be recovered by summary conviction, can hardly prevent the proceeding in respect of the offence from being a criminal one."

T. W. Saunders, Esq., Recorder of Dartmouth, in his work on the Practice of Magistrates' Courts, p. 58, (2nd ed.) thus expresses himself: "Except, therefore, in criminal proceedings, which include an offence punishable on summary conviction, the parties and their husbands or wives (as the case may be) are eligible as witnesses on either side, and even in criminal cases the disqualification only applies to the defendant."

J. F. Stephen, Esq., Recorder of Newark on Trent, in his work entitled "A General View of the Criminal law of England," says: "A law is a command enjoining a course of conduct; a command is an intimation from a stronger to a weaker rational being that if the weaker does or forbears to do some specified