

It may be mentioned that the omission of the Court to make any order as to the prisoner supports the conclusion I have arrived at on the first point for decision.

I see nothing, therefore, in the Act preventing the issue of a new writ of habeas corpus, and I accordingly order it. A new return will be made, but, by consent, the presence of the prisoner will be dispensed with. This is the practice that is almost invariably followed in our Courts. I remember only one case in my experience in which the prisoner was actually produced in Court; and this seems to be a practice approved of by the Supreme Court of the United States: *Re Medley*, 134 U. S. 160, 162.

The matter may be brought before the Judge of the week, or, if the parties desire, the matter having been partly heard by me, I shall fix a day for the argument before myself. . . .

It will be seen that this judgment proceeds upon the theory that, so far as the former writ is concerned, the prisoner has destroyed its efficiency by his own act—but, in respect of the application for a new writ, while the prisoner has sinned against the laws of our land, he has been punished for, and has thereby expiated his offence, and is entitled to the same consideration as though he had not offended.

It is not, in my view, necessary, on my dismissing the motion for judgment, to do so without prejudice to the application for a second writ, or in granting the application for a second writ to reserve leave to raise upon the argument all objections against the issue of the same—to avoid question, I do both.

And I do not consider whether it would not be a perfect answer to an application for discharge under the second writ to shew that the prisoner is not in involuntary but in voluntary confinement—the sheriff came in possession of him only with his own consent, as it was his acceptance of the condition in the pardon of His Excellency which alone permitted or would justify his being in custody at this time of the sheriff of Welland. It may be considered by the Court hearing the application that the act of the prisoner in voluntarily placing himself in the custody of the sheriff should be considered a waiver of any right he otherwise