out any affidavit, in our case (*Ex parte Bulmer*).

We conclude by two words of observation on this *dictum* of Mr. Justice Aylwin in the *Blossom & Clayton* case: "... The sitting was also "as a Court of general gaol delivery, and the "term was to last until such time as it was to be "deemed by the Judge to be closed. The "order of the Judge, therefore, that the "prisoner should be held to remain in gaol, "without bail or mainprize, until the Court "should again meet, was absolutely necessary," 10 L. C. J. 59. To this we submit as a reply, first, that the order was only necessary if justice required prisoner to be incarcerated and deprived of his liberty, and secondly, that the Crown side of the Queen's Bench is not an ordinary court of general gaol delivery. It is, as we are told by the masters of common law, the supreme court of general gaol delivery, and possesses the fullest and most extensive powers.

W. A. P.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 25 and 29, 1881.

DORION, C. J., RAMSAY, CROSS and BABY, J J.

Ex parte W. BULMER, petitioner for writ of *habeas corpus*.

The Court of Queen's Bench on the Appeal side, will not interfere, upon a writ of Habeas Corpus, with an order to remand a prisoner to gaol made by the Court on the Crown side.

On August 17, 1881, petitioner was, after preliminary examination, committed to gaol to await his trial on a charge of shooting at one Benj. Plow, with intent the said Plow to kill and murder.

On the 27th and 28th September following, he was tried in the Queen's Bench, Crown side, (Monk and Cross, JJ.,) upon an indictment for shooting with intent, and containing six counts. The jury convicted him on the first count, which purported to charge the offence laid in the commitment, but found no verdict on the other counts wherein various intents were averred.

A Case having been Reserved for the consideration of the Court sitting in Appeal, the conviction was quashed, and an entry ordered to be made on record to the effect that defendant should not have been convicted on said indictment (Nov. 18). *The entry was made accordingly.

*A full report of the judgment on the Reserved Case will appear in the L. C. J.

W. A. Polette, for the defendant, thereupon moved (*ore tenus*) the Crown side of the Court (Monk, J.,) to discharge defendant from custody.

C. P. Davidson, Q. C., and *Ald. Ouimet, Q. C.*, for the Crown, resisted the motion.

On the 22nd November, Monk, J., said that he could not, unaided by another judge, establish so important a precedent as the one he was asked to do by the motion. He left that task to a higher Court, where a writ of *habeas corpus* would answer the purpose. The Court gave the following order:—

"On motion to discharge.

"Motion refused and rejected, and prisoner "remanded to common gaol to be there detained until otherwise ordered by this Court."

On the 24th, *Polette* applied to the Court in Appeal for the issue of a writ of *habeas corpus* with a view to liberate petitioner, which was granted.

The next day, on the return of the writ and the production of the body of petitioner and also of the indictment, verdict and above-mentioned entry on record, *Polette* proceeded to argue the merits of the application for liberation, when he was directed by Ramsay, J., to argue the question whether the Court on that side could interfere, under that process, with the order made by the Court on the other side.

That question being discussed, the case was argued on the merits and the application was taken *en délibéré*.

On the 29th November,

RAMSAY, J. said that Mr. Justice Monk, sitting on the Crown side, had already refused to discharge the petitioner. The words "until otherwise ordered by this Court," applied only to the Crown side. The Court sitting here on the civil side could not reverse that decision on a writ of *habeas corpus*. If the prisoner was entitled to a writ of error he should take it. The only question that could be examined on the present petition was whether there was a good detainer, and it was impossible for the Court to say at present whether the commitment had been exhausted.

Petitioner remanded.

W. A. Polette, for the petitioner.

C. P. Davidson, Q. C., for the Crown.

W. A. P.