

cation was disposed of, I will assume that the provisions of the act have been complied with. He seems to have grounded his decision on the authority of *Abley v. Dale*, 11 C. B. 378; *George v. Somers*, 11 Exch. 202; and the same application in 16 C. B. 539; *Ex parte Christie*, 4 El. & B. 714. The defendant rests his case upon the authority of *Copeman v. Rose*, 7 El. & B. 679, and the cases which arose after the repeal of the 102 sec. of the English County Court Act, by the 2 sec. of the 19 & 20 Vic. cap. 108. But the 172 sec. of our Division Court Act is the same as the 102 sec. of the English Act, which was there repealed. The authority therefore upon which *Abley v. Dale* was decided still remains in force here.

I think, therefore, the learned judge was right in the view he took of the law.

The second point now raised here does not appear to have been made before him—that the defendant was privileged from arrest.

I am referred to the case of *Adams v. Achland*, 7 U. C. Q. B. 211, and of *Michie v. Allen*, 7 U. C. Q. B. 482, to show that a judge of a County Court or a Surrogate Court are not liable to arrest for debt; and to *Swan v. Dakins*, 16 C. B. 77, to show that one having privilege as a public officer is not liable to arrest for contempt of this kind charged upon the defendant, but on the analogy of *Henderson v. Dickson*, 19 U. C. Q. B. 592, I think the defendant is not entitled to the privilege he claims. The interests of the public service, it is to be feared, will suffer more from allowing gentlemen holding an office to set their creditors at defiance, on the ground of privilege, than by holding them responsible, as much as possible, for the consequences of that kind of imprudence which this case discloses.

The summons will be discharged with costs.

### CHANCERY.

(Reported by ALEX. GRANT, Esq., Barrister at Law, Reporter to the Court.)

#### BRUMMELL V. WHARIN.

*Injunction—Obstruction of view.*

The owner of two adjoining shops leased one to the plaintiff and the other to the defendant. The plaintiff's shop window had been so constructed as to present a side view to persons coming down the street, the object being to attract their attention, and to obtain their custom for the wares displayed in the shop; and the privilege was shown to be a very important one. The tenant of the adjoining shop having placed a show case in an open space or doorway of his shop, so as to intercept the view of the plaintiff's window, was restrained by injunction from continuing the obstruction.

This was a motion for an injunction to restrain the defendant from placing a certain show-case, or any other show-case or article of a similar nature or description, and from retaining the same, in such a position as to darken and obstruct the window of the shop occupied by the plaintiff, or as to prevent a full and uninterrupted view of said window by persons passing along the south side of the street on which the shop is situate, or from in any way depriving the plaintiff of the full use, benefit and advantage of the said window.

The plaintiff filed an affidavit stating that this window was of great use to him for the purpose of displaying to the public his goods, and that it was of the utmost importance to him that all

persons passing along the street should have a full and uninterrupted view of the window, and of the goods and articles displayed and set out therein, the window being in part constructed in the manner it is, for the express purpose of presenting as large a space suitable for displaying goods as possible, and by that means attracting the attention of the public so passing along the street before and past the plaintiff's shop.

Other affidavits to the same effect were filed on behalf of the plaintiff.

The defendant filed several affidavits against the motion, but his cross-examination was held by the Vice-Chancellor to support the plaintiff's case as to the principal facts.

*Blake, Q. C.*, and *Doyle*, for the plaintiff, cited *Riviere v. Bower*, Ky. & Mo. 24; *Curtis v. Union Bank*, 2 Giff. 685.

*Roaf, Q. C.*, and *Ince*, contra, cited, *Clark v. Clark*, 1 L. R. Ch. 16; *Smith v. Bowen*, Gale on Easements, 82; *Carriers' Company v. Corby*, 11 Jur. N. S. 719; *Suffield v. Brown*, 10 Jur., N. S. 1; *Radcliffe v. Duke of Portland*, 3 Giff. 702; *Ismberg v. East India Company*, 10 Jur., N. S. 221; *Johnson v. Wilde*, 9 Jur., N. S. 1832; *Jackson v. Duke of Newcastle*, 10 Jur. N. S. 688; *Yates v. Jacke*, 13 Law T. N., S. 17; *Deverill v. Pritchard*, 12 Law T., N. S. 769; *S. C. an appeal*.

MOWAT, V. C.—This is a motion for an injunction. The plaintiff is a druggist, and the defendants are jewellers. They occupy adjoining shops in the principal street in Toronto. Both the shops belong to the same proprietor. The plaintiff's lease bears date the 24th of March, 1862, and the defendant's the 13th of April, 1864. The shops are each twelve feet wide, and the fronts have been constructed with a special view to affording the greatest possible advantages for displaying goods. With this object the door of each has been placed four feet back from the line of the street; and the plaintiff's window has been divided into three compartments, the westerly one forming an obtuse angle with the middle compartment, and extending from the line of the street to the partition wall between the two shops. It thus forms the easterly side of the defendant's doorway, and is valuable for attracting the attention of persons passing easterly, to the goods displayed in it. The plaintiff, and the previous tenants of the shop he occupies, had the free use of the window for this purpose, without obstruction, for ten years. Lately, however, the defendants, being desirous of attracting the attention of persons passing in the same direction, to their own wares, have procured a moveable show-case of suitable construction, which they place during the day on the easterly side of their doorway, and which to a considerable extent intercepts the view which passers-by would otherwise have of that compartment of the plaintiff's window. This show-case extends from the line of the street to the partition wall, viz.: about four feet. It is eleven inches deep, and three feet two inches high, and is placed on a stand thirty-two inches high, the height of both together being nearly six feet from the floor of the step.

The plaintiff complains that this show-case is an illegal interference with his rights, and is a serious injury to him in his business.