arrested in Montreal and conveyed thereon to Hamilton and lodged in the Common Gaol, where I am now incarcerated under the said warrant." Here there is a plain ground of complaint, for I think the debtor should have been called upon to shew cause why he did not obey the order, before he could be imprisoned for disobedience of it. I think there are other grounds stated which should not, in a case of personal liberty, be too severely scrutinised.

I shall allow the notice to be amended and on the return of it, if no other cause be shown, I shall allow the appeal.

Upon this intimation probably the other side may consent to the allowance being now made.

WEBSTER v. GORE.

Ejectment act—Endorsement on writ—Attorney and Agent.

A writ of ejectment should be endorsed with the name and abode of the attorney actually suing out the same, whether he sues out the same as agent for the attorney, or as himself the attorney for the plaintiff.

[Chambers, October 21, 1867.]

A summons was obtained calling on the plaintiff to shew cause why the writ of summons in ejectment issued in this cause and the copies thereof served on the defendants and the said service, should not be set aside for irregularity, on the ground that the residence of the plaintiff's attorney was not correctly stated in the endorsement on the said writs and copies, and the same were not endorsed with the name and place of abode of the attorney who actually sued out the said writ.

The plaintiff's attorney had an office at the Village of Petrolia, in the County of Lambton, and had resided there, but at the time this writ was issued, he had been abroad on business for some weeks The writ and copies were endorsed, "This writ is issued by O. J. Mackay, of the Village of Petrolia, in the County of Lambton, attorney for the said plaintiff, by Mr. Sullivan, his agent," but the place of residence of Mr. Sullivan was not endorsed.

Kerr, shewed cause, filing affidavits

It is shown by the affidavits that the plaintiff's attorney resided in Petrolia, though temporarily absent on business, and it is shown that his office is in Petrolia; and when attorney resides at one place and has an office at another, the place of his office should be endorsed on the writ, Arch. Prac. 10 ed. 172; *Yardley* v. *Jones*, 4 Dowl. 45; *Ablett* v. *Basham*, 5 E & B 1019; 25 L. J. Q B. 23 *Coppice* v. *Hunter*, 8 Dowl. 504.

The Ejectment act does not require the place of residence of an agent to be endorsed (sec 3)

The name and abode of the attorney issuing the same shall be endorsed thereon in like manner as the endorsement on writ of summons in a personal action. The C. L. P. Act, sec. 12, says that every writ shall be endorsed with the name and place of abode of the attorney *actually suing out* the same, and when he sues out the same as agent for another, the name and place of abode of such other attorney shall also be endorsed thereon. The omission of the word *actually* in the Ejectment act, shows it was not intended that the agent's residence should be endorsed on writs of ejectment.

Crombie, contra. Neither the place of abode of the attorney nor of the agent, has been endorsed on this writ.

ADAM WILSON, J.—I think the attorney issuing the writ under the Ejectment Act, must be read as the attorney *actually suing out* the writ in the C. L. P. Act, as the Ejectment Act refers to the C. L. P. Act in this respect, for the endorsement is to be "in like manner as the endorsements on writs of summons in a personal action."

The place of business is the proper description of the attorney, though it is not where he sleeps. *Yardley* v. *Jones*, 4 Dowl. 45; *Ablett* v. *Basham*, 5 E. & B 1019.

Now this writ appears to have been issued by Mr. Sullivan, as agent for Mr. Mackay, the plaintiff's attorney, and while the attorney's place of abode is sufficiently given, that of Mr. Mackay is not given at all.

I am obliged, therefore, to give effect to the summons. If this ejectment writ is within the 48th section of the C. L. P. Act, it may be amended by that statute; if not, I may amend as under the ordinary common law power, but it ought to be and is a cross-summons.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. v. THOMAS MORRIS AND ANOTHER.

Manslaughter—Death subsequent to a conviction by a magistrate for the assault—Prior conviction for the assault no bar to indictment—24 & 25 Vict. cap. 100, sec. 45.

Where, upon indictment for manslaughter, it appeared that the prisoner had, in the lifetime of the deceased, been summoned before magistrates and convicted and sentenced to imprisonment with hard labour for the assaults which subsequently caused the death, and that he had undergone that sentence, it was

Held (Keily, C. B., dissentiente) that under 24 & 25 Vic. cap. 100, sec. 45, such conviction and punishment was no defence to an indictment for manslaughter.

[C. C. R., May 4; June 1.—15 W. R. 999.]

Case reserved by Pigott, B

Thomas Morris was tried before me at the Stafford Spring Assizes upon an indictment for the manslaughter of Timothy Lymer, by inflicting bodily injuries on him on the 25th of June.

It was proved in evidence that the prisoner had been summoned before the magistrates at the instance of the said Timothy Lymer for the assaults which caused the death, and was convicted and sentenced to imprisonment with hard labour. He underwent that punishment.

Timothy Lymer died on the 1st of September from the injuries resulting from the above-mentioned assaults It was contended under section 45 of 24 & 25 Vic. cap. 100, that the conviction for the assaults afforded a defence to the present indictment for manslaughter (see *Reg.* v. *Elrington*, 9 Cox C. C. 86; 10 W. R. 13.) There was a substantial question raised by the evidence whether the manslaughter was the result of injuries inflicted by the prisoner Morris or the other prisoner Gibbons, joined in the present indictment, and whether they were acting in concert. I thought it desirable to let the prisoner Morris have the benefit of either of the defences, and for that purpose to let the questions of fact go to the jury upon the plea of not guilty, and to reserve the question of law, under the aforesaid section 45, for the opinion of this Court.