

before his assignment, he was in the habit of selling goods under their value and cost, all which was done with intent to defraud. Under these circumstances the plaintiffs arrested the defendant under a writ of *capias ad respondendum*, and in their declaration, they pray judgment for the whole amount due of them (2,662.86 and interest) and also for the maintenance of the *capias* and for imprisonment under the statute, in default of payment of debt and costs. We have had actions of this nature before us already. One in particular, Warner vs. Buss, I myself gave judgment in. In that case, the averments were distinctly made of violations of the express provisions of the 92nd section, which subjects the offender to imprisonment. The averments in the present case seem rather to be under the three things—1st, fraudulent preferential sales and those which are presumed so to be; 2nd, for payments, which in certain cases are made void; and 3rd, for transfers of debts within thirty days of insolvency; but which do not subject those acts to the penalty of imprisonment. The demurrer in the case is taken on the ground that the allegations show no right or action in the plaintiffs; and it is contended that by the 45 section of the Act of 1869, the plaintiffs ought to have used the name of the assignee, either with his assent, or under an order from a judge. The application of the 45th section is the only point on which defendant relies. If I could, without violating the practice of the Court, go beyond the reasons appended to the demurrer, I should have great difficulty to say the least, in holding that imprisonment can be awarded under these averments; but I am held to the one reason which is stated in the demurrer—and though it is stated in four different forms, is the only one that was argued upon at the hearing. I hold that the 45th Section applies only to proceedings in the Insolvent Court, for the benefit of the estate. In the present instance the plaintiffs are taking no proceeding for the benefit of the estate; but are acting apart from the proceeding in insolvency altogether, and entirely for their own benefit. The demurrer must be dismissed. As to the