

wick v. Hare, 24 O. R. 528; that it might be lawfully resisted may be granted: *The Queen v. Crumpton*, 5 Q. B. D. 341.

If the prisoner were detained under civil process, the illegality or irregularity of his original caption would afford ground for his discharge: *Re Eggington*, 2 E. & B. 717. But detention under criminal process for trial, and a fortiori in execution, is regarded very differently by the Courts. The right to habeas corpus and to discharge does not there depend upon the legality or illegality of the original caption, but upon the legality or illegality of the present detention. "A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody, and if sufficient grounds for his detention by the government is shewn, he is not to be discharged for defects in the original arrest or commitment." *Nishimura Ekiu v. United States*, 142 U. S. at p. 662.

In *Rex v. Gordon*, 1 B. & Ald. 572 n., a prisoner, arrested upon an invalid warrant of a justice of the peace, but for whose detention the same justice had subsequently issued a strictly regular warrant of detainer, which was returned with the writ of habeas corpus, was remanded to custody.

It is well established that if the return to the writ shews a good warrant under which the prisoner is presently in custody for a criminal offence, his prior arrest and detention under a defective process will not avail him upon motion for discharge: *The Queen v. Richards*, 5 Q. B. 926; *Ex p. Cross*, 2 H. & N. 354; *In re Phipps*, 11 W. R. 730; *Southwick v. Hare*, 24 O. R. 528. But the detention, under a second regular warrant, of a prisoner arrested under a prior illegal or defective process is not permitted in civil matters: *In re Eggington* (supra). Again in *In re Scott*, 9 B. & C. 446, a woman, apprehended at Brussels by an English police officer armed only with a warrant issued by the Lord Chief Justice Tenterden, and by such officer carried into England, without any extradition process, applied to Lord Tenterden for a habeas corpus and for her discharge. Her counsel conceded that a prisoner charged with felony will not be released on account of defects in his commitment, but urged that this rule should not extend to cases of misdemeanour, citing *Attorney-General v. Cass*, 11 Price 245. To him Lord Tenterden replied: "That was the case of an information for penalties, and rather in the nature of a civil proceeding to recover a debt than of a criminal one to punish an offence against the public. . . ."

The question, therefore, is this, whether, if a person charged with a crime is found in this country, it is the duty