

is not stated in either conviction. The statute gives the defendant an option. The Justices have no option; they must impose the prescribed punishment, giving the defendant the advantage of adopting either alternative.

*Robson vs. Spearman, et al.*, 3 Barn & Ald. 493.

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In this case, Abbott, C. J., says:

"It was his (the justice's) duty to have pursued the words of the statute of the 49 Geo. III, c. 68. If he had so done, it would have given the party committed the option either of paying the money or of staying three months in prison, and being thereby altogether discharged from payment. This warrant is for his imprisonment till he shall pay the money, and deprives the party of that advantage. The difference is a most material one, and gives the party committed a right of action against the magistrate."

IV. Irrespective of the question as to whether the proceedings below are of a civil or criminal nature, it will also be urged that the detention of the appellant under the two warrants or 160 executions (see page 7) was illegal, by reason of the following considerations:

(a) The first execution or warrant has left out an essential allegation, which Form F (assuming that to be the proper form) absolutely requires. It does not state the offence as in the conviction, "for selling intoxicating liquors without license." The defendant should know which of the fourteen offences under chapter 75 he is charged with. The commitment affords him no information.

(b) Both commitments are bad, as far as they justify detention in gaol, because the Justice cannot commit until he has ascertained the want of sufficient goods to answer the penalty, such want to be regularly certified by the officer's return; and there is no such certificate on the warrants in question.

*Rex vs. Hawkins*, Fort. 272.

*Paley on Convictions*, 333. *et seq.*

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Lord Holt, it is submitted, lays down the proper procedure in *Rex vs. Chandler*, Holt, 214.

(c) The commitment must state the offence, as in the conviction, and must show a good conviction.

*Re Peerless*, 1 Q. B. 143.

*R. vs. Chaney*, 6 Dowl. 281.

Nor will the Court assume a good conviction to support a commitment.

*R. vs. Tordoff*, 5 Q. B. 933.

*R. vs. Cavanagh*, 1 Dowl. N. S. 547.

*R. vs. King*, 1 D & L 723.

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(d) The commitments in question do not lay any foundation for the order to arrest. No adjudication or sentence is recited. The mandatory part is a *non sequitur*, and no legal reason is given for such mandate.

(e) The chief objection, however, to the commitments, is that they do not determine or indicate the period of imprisonment. It must be distinctly stated in the warrant, whether the