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SLATER.

BOWEN, L.J. I am of the same opinion. The applicant asks for our interference on the ground that there is no order which shews on its face the ground on which it is issued. This is true, but the answer is that the time has not yet come for the existence of such an order. When the order is drawn up, if the prescribed form is adhered to, it will shew on its face the ground on which it is issued. I agree with what has been said by the Lord Chief Justice, and I think that this document which is before us is not the order, but is the minute of an order which is to be drawn up hereafter. The provisions of the County Court Rules and the decision of the House of Lords in *Stonor v. Fowle* (1) shew that the true interpretation of the Debtors Act is that the order is to be made in open court, and is to be drawn up shewing on its face the ground on which it is issued.

Appeal dismissed.

Solicitor for plaintiff: *George Weller.*

P. B. H.

June 19, 20;
July 18, 19.

[IN THE COURT OF APPEAL.]

HENDERSON *v.* PRESTON.

Prison—Governor of Prison—Warrant of Commitment—Action against Governor for False Imprisonment—Protection of Warrant—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 5, 21, 29—Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 12.

The governor of a prison is protected in obeying a warrant of commitment valid on the face of it, and an action for false imprisonment will not lie against him for the detention of a prisoner in pursuance of the terms of such warrant.

The plaintiff having been convicted by a court of summary jurisdiction and sentenced to seven days imprisonment, a warrant of commitment was issued directing that the plaintiff should be imprisoned in a certain gaol for seven days. The plaintiff was arrested on August 24, and lodged in prison on August 25. The governor of the gaol kept the plaintiff in prison until and during August 31 :—

Held, that, whether or not the plaintiff's sentence ran from August 24 or August 25, the governor was protected by the warrant, and was not liable to an action for false imprisonment in respect of the plaintiff's detention on August 31.

POINT of law raised on the pleadings. The action was brought by the plaintiff to recover damages against the defendant, the

(1) 13 App. Cas. 20.

governor of Strangeways Gaol, Manchester, for having illegally kept him in imprisonment on August 31, 1887. It appeared that the plaintiff had been sentenced by a court of summary jurisdiction on August 24 to pay a fine, or in default to seven days imprisonment, and that he was arrested the same day, but was not lodged in prison till August 25. Under these circumstances the plaintiff contended that the imprisonment began on August 24, the date of the arrest.

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The defendant, in his defence, pleaded not guilty by statute (Prison Act, 1865 and Prison Act, 1877), and set out the warrant for the commitment of the prisoner. This warrant, which was dated August 24, 1887, was directed to the constables of the county and to the governor of Her Majesty's prison at Strangeways, Manchester, and, after reciting the conviction of the plaintiff for obstructing a highway, the adjudication of a penalty to be paid by him, the non-payment of the penalty and costs and the failure of sufficient distress, ordered that the plaintiff be imprisoned in the prison aforesaid and there kept for the space of seven days unless the penalty and costs were sooner paid, and directed the constables to take and convey him to the prison, and there deliver him to the governor, together with the warrant, and the governor of the prison to receive him into his custody and keep him for the space of seven days, unless, &c. The defence further stated that on August 25, 1887, the defendant, as governor, received the plaintiff into such prison under and with the warrant of commitment; that the penalty and costs were not paid before the expiration of the period named in the warrant, nor on or before August 31, 1887; and that the plaintiff upon such receipt as aforesaid became and was and thenceforth, until and during August 31, 1887, continued in the custody of Her Majesty's Principal Secretary of State by virtue of the Prison Act, 1877.

The plaintiff in his reply objected that the defence was no answer in law to his claim.

P. Gye, for the plaintiff. The imprisonment of the plaintiff on August 31 was illegal. He was arrested in pursuance of the sentence on August 24, and though not committed to gaol till

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the next day, the 25th, was a prisoner and constructively an inmate of the gaol from the 24th. The sentence dates from the conviction, or, if not, from the arrest. The person sentenced becomes a prisoner as soon as he is deprived of his liberty. In Hawkins, P. C., book 2, c. 18, s. 4, it is stated with reference to statute 1 Edw. 2, de frangentibus prisonam: "It seems clear that any place whatsoever wherein a person under a lawful arrest for a supposed crime is restrained of his liberty, whether in the stocks or the street, or in the common gaol, or in the house of a constable or private person, or the prison of the ordinary, is properly a prison within the statute; for imprisonment is nothing else but a restraint of liberty." The question has arisen with respect to the calculation of terms of imprisonment for debt under warrants issued from the Palace Court, and it would seem from *Bowdler's Case* (1) and *Braham v. Joyce* (2) that the time is to be computed from the date of the arrest. [He also referred to *Reg. v. Cutbush* (3), *Migotti v. Colvill* (4), and *In re Fletcher* (5).]

R. S. Wright, for the defendant. The imprisonment dates from the day on which the plaintiff was lodged in gaol under the warrant. *Ex parte Foulkes* (6) expressly decides this point, and has never been questioned. As to *Bowdler's Case* (1), Lord Denman, C.J., in his judgment refers to *Ex parte Foulkes* (6), and the question was not argued either in that case or in *Braham v. Joyce* (2). The two cases did not decide that imprisonment for debt was to be calculated from the date of arrest as opposed to that of commitment, but merely that the time for which the debtor succeeded in evading arrest after the issue of the warrant was not to be reckoned as part of his sentence.

P. Gye, in reply. *Bowdler's Case* (1) decides that the imprisonment dates from arrest. Erle, J. (7) states it to be the duty of the gaoler to ascertain the date of the arrest, with a view to detaining the prisoner for the proper period.

MANISTY, J. I am of opinion that the imprisonment of the plaintiff on August 31, 1887, was legal under the statute. The

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| (1) 12 Q. B. 612. | (4) 4 C. P. D. 233. |
| (2) 4 Ex. 487. | (5) 1 D. & L. 726. |
| (3) Law. Rep. 2 Q. B. 379; 36 L. J. | (6) 15 M. & W. 612. |
| (M. C.) 70. | (7) At p. 622. |

language of the warrant is plain. The governor of the gaol is "to receive the defendant into his custody," and is "to keep him for the space of seven days," except in an event which has not happened. This is what the governor has done. Could it be contended that, if a prisoner were arrested at five minutes before twelve at night and committed to prison at five minutes past twelve, his first day's imprisonment would have expired before he was lodged in prison? Common sense is a better guide in such matters than authority. As to the cases, *In re Fletcher* (1) does not appear to me to assist the plaintiff. *Ex parte Foulkes* (2) was decided before *Bowdler's Case* (3), and the judgment of Alderson, B., is directly in the defendant's favour. He says: "As to the duration of the imprisonment, I think it is clear that it begins to run from the day on which the prisoner is actually lodged in gaol." *Bowdler's Case* (3) turns on there being no date to a special form of warrant, and *Braham v. Joyce* (4) is an ambiguous decision. Our judgment must be for the defendant.

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STEPHEN, J. I am of the same opinion. The warrant is good, and protects the governor. No more need be said. As to the cases, *Ex parte Foulkes* (2) is entirely in the defendant's favour. *In re Fletcher* (1) is doubted in *Bowdler's Case* (3); and neither in *Bowdler's Case* (3) nor in *Braham v. Joyce* (4) had the Court before it the question of the effect of an interval occurring between arrest and commitment, as regards the duration of the sentence.

Judgment for the defendant.

H. D. W.

The plaintiff appealed.

1888. July 18, 19. *Percy Gye*, and *Waghorn*, for the plaintiff, argued as in the court below.

R. S. Wright, for the defendant, argued that the gaoler's duty lay within the four corners of the warrant. The warrant followed the Form 27 of the Summary Jurisdiction Rules, 1880, which form, by s. 12 of the Summary Jurisdiction Act, 1884 (47 & 48

(1) 1 D. & L. 726.

(2) 15 M. & W. 612.

(3) 12 Q. B. 612.

(4) 4 Ex. 487.

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Vict. c. 43), has the force of a statute. The defendant, therefore, was protected in obeying the warrant.

The following authorities were cited in addition to those already referred to :—*Olliet v. Bessey* (1); *Tarlton v. Fisher* (2); *Moone v. Rose* (3); *Ames v. Waterlow* (4); Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 5, 21, 29.

LORD ESHER, M.R. It is not denied that this warrant is justified by the Act of Parliament, and is not a void warrant. It is not on its face issued by persons who have no jurisdiction to issue a warrant. It is issued by a Court having jurisdiction, and its terms are perfectly clear. It orders the governor of Strangeways gaol to receive the present plaintiff into his custody when he is brought there, and to keep him in that gaol for seven days. That being the warrant, I adopt the judgment of Stephen, J., when he says that the warrant protects the governor, and that no more need be said. In the case of *Olliet v. Bessey* (1) decided about 200 years ago, it was so held, and from that day to this no action can be found in the books to have been maintained against a gaoler where he acted within the terms of the warrant. That is sufficient to determine this case. Whether the plaintiff had any and, if so, what remedy, is a matter we need not inquire into : in any case this action will not lie. The appeal must, therefore, be dismissed.

LINDLEY, L.J. I am of the same opinion. All that one has to do is to read the warrant. What is a governor of a gaol who receives such a warrant to do except to obey it? It is perfectly valid and correct, and is authorized by the Act of Parliament, and issued by persons who have jurisdiction to issue it. It appears to me that the governor by obeying that warrant has simply done his duty, and the warrant protects him and is an answer to the action. In the case of *Moone v. Rose* (3) the plaintiff was committed for contempt in not answering to a bill in Chancery, and the statute which relates to contempt says that, unless the person be brought to the bar of the Court within thirty days from the time of his being in custody, the gaoler

(1) T. Jones' Rep. 214.

(3) Law Rep. 4 Q. B. 486.

(2) 2 Doug. 671.

(4) Law Rep. 5 C. P. 53.

shall thereupon discharge him out of custody. The gaoler in that case had not performed the duty imposed upon him by the statute, and so the action lay. Then there is the old case of *Olliet v. Bessey* (1) and the case of *Butt v. Newman* (2), in both of which it was held that the gaoler was protected by the warrant.

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BOWEN, L.J., concurred.

Appeal dismissed.

Solicitors for the plaintiff: *Ranger & Burton.*

Solicitor for the defendant: *Solicitor to the Treasury.*

E. L.

[IN THE COURT OF APPEAL.]

July 24.

KELLARD *v.* ROOKE.

Negligence—Master and Servant—Person intrusted with Superintendence—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-ss. 2, 3; s. 8.

In an action to recover compensation under the Employers' Liability Act, 1880, it appeared that the plaintiff, with other workmen, was employed by the defendant to stow bales of wool in the hold of a ship. The workmen were divided into gangs, the foreman of the plaintiff's gang being B. B. was himself a labourer, working on deck, and he gave the signal to the men below when the bales were being dropped down the hatchway into the hold. The plaintiff, who was below, was injured by a bale which, according to his statement, was dropped down without sufficient warning being given by B. to enable him to get out of the way:—

Held, that the plaintiff was not entitled to recover, as B. was not a person who had superintendence intrusted to him within s. 1, sub-s. 2, as defined by s. 8, nor was there any evidence that the injury resulted from the plaintiff having conformed to any order of B. within s. 1, sub-s. 3, assuming that B. was a person to whose orders the plaintiff was bound to conform.

Judgment of the Queen's Bench Division (19 Q. B. D. 585) affirmed.

APPEAL from the judgment of the Queen's Bench Division (reported 19 Q. B. D. 585).

The plaintiff brought an action in the Southwark County Court to recover damages under the Employers' Liability Act, 1880. It appeared from the evidence that the plaintiff was

(1) T. Jones' Rep. 214.

(2) Gow. 97.