

Could we have any assurance upon which we can rely, we would be willing to wait a reasonable time. We have a right to know upon what he founds his suggestions. But it is staying the hand of the law. We shall prepare our affidavits in the case of the Commissioners and ask your Honor to compel the immediate attendance of the warden with his prisoners.

Alexander Rogers, Esq., deputy State's attorney, said; The only question in this case is, is the warden *in delicto* for non-return of the writ. There is no return of the writ. There is not a legal presumption that the men are in his custody, nor has there been any delinquency. Mr. Rogers justified the warden in delaying his return, and suggested that the proper course would be to wait for it.

Mr. Schley.—If the counsel knows that a return will be made, he ought to know what the return will be.

Mr. Rogers.—I do not know what the return will be.

Mr. Schley.—Then I shall persist in my application, and will prepare the affidavits, &c., for a writ to compel the presence of the warden and those in his custody.

Mr. Schley then occupied considerable length of time in the preparation of the necessary papers, setting forth the facts in the case &c., which were sworn to in court before Wm. H. Hayward, Esq.

Before presenting the papers Mr. Schley inquired of Mr. Alexander what assurance he could give that a satisfactory adjustment of the difficulty was being made?

Mr. Alexander.—I will say now, what I said before, that an arrangement will be made that is satisfactory, but further I say nothing.

Mr. Schley.—The first motion that I have to make is that your Honor issue an order to the deputy sheriff to produce the warden and all the parties immediately in court. Mr. James is evading the writ. Has he a right to take the ground that he will, upon his own motion, keep in custody three citizens without any reason assigned, and for some purpose not assigned? He has been within the walls of the court-house within the hour. Is this not contempt of your Honor? Is it not contumacy? What right has he to take outside counsel without consulting your Honor? He has a motive, for it is known to everybody. Three important persons are stayed in their action, and are kept in prison for the purpose of preventing their action. The law would protect him if he obeyed the law. But is he not in sympathy with others? Mr. Schley next discussed the acts of Assembly relating to the subject, and said: In this case the order of the Governor disrobes the old commissioners of all official authority, and they are now acting without authority. But we cannot act upon these matters until the parties are produced.