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CONTEMPT OF COURT.

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I. Of the offence at Common Law.

1. *What constitutes a contempt.*

(a) *By any person.*

Contempt, "is a disobedience to the rules and orders of a court which hath power to punish such offence." "And this word is

used for a kind of misdemeanor, by doing what one is forbidden, or not doing what he is commanded:" Jacob's Law Dictionary, tit. *Contempt.*

Lord Chancellor HARDWICKE, in 2 Atk. 469, says: "There are three different sorts of contempt." "One kind of contempt is scandalizing the court itself." "There may be likewise a contempt of this court in abusing parties who are concerned in causes here." "There may be also a contempt of this court in prejudicing mankind against persons before the cause is heard."

Blackstone's definition is much more full and precise; he enumerates various contempts which may be committed by any one "under the degree of a peer," and even by peers when enormous and accompanied with violence, "such as forcible *rescous*, and the like, or when they import a disobedience to the king's great prerogative writs of prohibition, habeas corpus and the rest." "Some of these contempts may arise in the face of the court, as by rude and contumelious behavior; by obstinacy, perverseness or prevarication; by breach of the peace, or any wilful disturbance whatever: others in the absence of the party, as by disobeying or treating with disrespect the king's writ, or the rules or process of the court, by perverting such writ or process to the purposes of private malice, extortion, or injustice; by speaking or writing contemptuously of the court or judges, acting in their judicial capacity; by printing false accounts (or even true ones without proper permission) of causes then depending in judgment; and by anything in short, that demonstrates a gross want of that regard and respect which, when once courts of justice are deprived of, their authority (so necessary for the good order of the kingdom) is entirely lost among the people:" 4 Blackstone 285; Vin. Abr., *Contempt* A.

In 2 Hawkins's Pleas of the Crown 220, "the most remarkable instances of contempts," for which "any person whatsoever is punishable," are reduced to the following heads: 1. Contempts of the king's writ; 2. Contempts in the face of a court; 3. Contemptuous words or writings concerning the court; 4. Contempts of the rules or awards of the court; 5. Abuse of the process of the court; 6. Forgeries of writs, and other deceits of the like kind, tending to impose on the court. "But against peers an attachment for contempt lies for such only as are of an enormous nature."

"Anything either for the purpose of obstructing justice or which will have that effect, may be punished as a contempt of the court

before which the proceedings are had:" *Rex* v. *Clement*, 4 B. & Ald. 233.

The clearness of these definitions needs but little illustration, only cases specially noteworthy will therefore be cited.

Insulting language to a judge relative to his conduct in a suit pending before him, even though out of court, is a contempt punishable by fine and imprisonment. The offender in this case was a party to the suit, but this fact seems to have been considered unimportant: *Commonwealth* v. *Dandridge*, 2 Va. Cas. 408. See also *Charlton's Case*, 2 Myl. & Cr. 316, where it is said by the court: "Every insult offered to a judge in the exercise of the duties of his office is a contempt."

An article, "tending to degrade and scandalize the court, to overawe its deliberations and extort a decision against the accused," in a criminal case before it, and, "calculated to embarrass the administration of justice," is a contempt and punishable as such. Even though the publication were made in another city, it would be "considered as done in the presence of the court:" *People* v. *Wilson*, 64 Ill. 195 (1872). See also *Matter of Sturoc*, 48 N. H. 428.

An attachment for contempt may be granted against one who threatened the prosecutor of another person with danger of his life, &c.: *Rex* v. *Carroll*, 1 Wilson 75. And for causing to be arrested a plaintiff while attending arbitrators under a rule of court, to prevent him from being heard: *Rex* v. *Hall*, 2 Bl. Rep. 1110.

Formerly it was held to be a contempt to publish an advertisement as to proceedings in court: 2 Vesey 520. The power to punish such acts as a contempt was taken away from the United States courts by Act of March 2d 1831: *United States* v. *Holmes*, Wall., Jr., 1. Advertising that a reward would be given for evidence disproving a marriage adjudged by the Spiritual Court and the Common Pleas, was punished as contempt, tending to subornation of witnesses: *Pool* v. *Sacheverel*, 1 P. Wms. 675.

It is a contempt to publish matter tending to prejudice and prepossess the minds of the public or the jury, or to obstruct the administration of justice, as to a cause in court; as by printing a brief before the cause was heard: Com. Dig. *Chancery*, D 3; 2 Atkyns 469; *Ex parte Jones*, 13 Vesey, Jr., 237; *Matter of Sturoc*, 48 N. H 428. Or after an order of court prohibiting the

publication of reports of a trial: *Rex* v. *Clement*, 4 B. & Ald. 218. See also *Respublica* v. *Oswald*, 1 Dall. 319; *Bayard* v. *Passmore*, 3 Yeates 438; *Hollingsworth* v. *Duane*, Wall. 51; *U. S.* v. *Duane*, *Id.* 102.

It is a contempt to prevail on one's wife by menaces to put in an answer against her belief: Com. Dig. *Chancery*, D 3; to sign a counsel's name to a bill in equity without his consent: Com. Dig. *Attachment*, A 2; *Yates's Case*, 4 Johns. 317; or put an attorney's name to process without his authority: 1 Burr. 20; to appear as an attorney without having been admitted: 2 Hawk. 210; *Rex* v. *Faulkner*, 2 M. & A. Cas. in Bk. 343; to insert a defendant's name in a writ after it is sealed: Com. Dig., *supra;* or to alter a writ: Hawk. 223; to put in bail in feigned names: Strange 304; procure worthless bail and suborn perjury in connection therewith: *In re Lucas Hirst*, 9 Phila. 216; *Hull* v. *L'Eplatimer*, 49 How. Pr. (N. Y.) 500.

It is a contempt to solicit a juror to give a signal after the jury have retired, to indicate whether or not they are likely to agree, and thereby to enable an outside party to make a bet on the question of their agreement to better advantage; though nothing is said by the person making the solicitation as to how he wishes the jury to decide: *State* v. *Doty*, 3 Vroom (N. J.) 403.

Unfair practices toward a witness who is to give testimony in court, or oppression under color of its process, although acted out of the district in which the court was sitting, may be punished by attachment, if the offender come within the jurisdiction of the court: 1 Burr's Trial 352.

The definition of this offence has been held to include such acts as using means to prevent and preventing a witness duly summoned from attending court: *Commonwealth* v. *Feely*, 2 Va. Cas. 1. So for an acquitted prisoner to threaten vengeance against the witnesses within the precincts of the court: *U. S.* v. *Carter*, 3 Cr. C. C. 423. To call another a liar in presence of a court, and in hearing of its officers, is a contempt: *United States* v. *Emerson*, 4 Cranch C. Ch. 188. So to strike a defendant in the lobby of the court, after the trial was over: *Rex* v. *Wigley*, 32 E. C. L. Rep. 415. And arresting a party or a witness (but not serving a summons on him) while attending court, or serving process on him in presence, actual or constructive, of the court: 2 Bishop's Crim. Law, sect. 252; *Davis* v. *Sheeran*, 1 Cranch C. C. Rep. 287; *United*

States v. *Schofield*, Id. 130; *Blight* v. *Fisher*, Peters C. C. 41; see also *Cole* v. *Hawkins*, Strange 1094; And. 275. And sending a fictitious letter, signed "summoning bailiff," to special jurors, falsely stating that the trial was put off, whereby they were absent at the trial: *Rex* v. *Lucas et al.*, 3 Burr. 1564.

An attempt by a master to remove his slave beyond the jurisdiction of the court, pending a petition for freedom, is a contempt: *Richard* v. *Meter*, 3 Cr. C. C. 214; see also *Thornton* v. *Davis*, 4 Cr. C. C. 500. And encouraging an infant ward of the Court of Chancery to leave his committee, in whose care the court had placed him, and to marry a ward of the court, even though the parties concerned had no notice that the infant was a ward: Vin. Abr. (A), pl. 46, 48. And carrying away an infant ward of the court, from the person to whom it had been intrusted by the court, and refusing to make known its whereabouts. So mustering a body of militia so near a court as to disturb its deliberations: *State* v. *Coulter*, Wright 421; *State* v. *Goff*, Id. 78. And taking papers from the file of the court, and refusing to return them after being so ordered: *Barker* v. *Wilford*, Kirby 235.

Where a corporation is enjoined from doing a certain act, every member thereof who afterwards joins in doing that act is guilty of contempt of court: *Davis* v. *Mayor of New York*, 1 Duer (N. Y.) 457; *People* v. *Compton*, Id. 512.

An act which may clearly invade the constitutional powers of the Supreme Court of the state, may be treated by it as a contempt, and it can go beyond statute provisions to preserve and enforce such powers: *State* v. *Morrill*, 16 Ark. 384.

A person assessed or taxed by reason of his personal property, may be committed as for a contempt on account of neglect to pay the tax. This was under the New York Statutes: *Kahn's Case*, 19 How. Pr. 475.

A purchaser at a master's sale, under decree of court, may be attached for non-compliance with the terms: *Haig* v. *Commissioner*, 1 Dessaus. (So. C.) 112; *Brasher* v. *Cortlandt*, 2 Johns. Ch. (N. Y.) 505.

Both grand and petit juries are part of the court while sitting. It is a contempt for a witness or a bystander to communicate with a grand juror touching a complaint under examination before them without their request: *Bergh's Case*, 16 Abb. Pr. (N. S.) 266. Speaking disrespectfully of a grand jury, or publishing in a news-

paper defamatory notices concerning them, is a contempt: *Van Hook's Case*, 3 City Hall Rec. (N. Y.) 64 (1818); *Matter of Spooner*, 5 Id. 109 (1820). But as to this point in Illinois, see *Storey* v. *People*, 79 Ill. 45. Also sending a letter to a grand jury to improperly influence them in a matter pending, or about to pend, before them: *Commonwealth* v. *Crans*, 3 Penna. Law Jour. 442 (1844). So, under the New York Revised Statutes, sending a letter to a grand jury by a person, not an official, aspersing their motives: *Bergh's Case, supra.*

(b) *By those acting in an official, ministerial, or some special capacity.*

Besides contempts of which any one may be guilty, there are others which are constituted by the misbehavior of those in certain positions, such as officers of the court or parties to proceedings therein. These may be divided as follows:

1. Inferior judges and magistrates.
2. Counsellors at law.
3. Officers of the court, which comprises attorneys and "others acting as such," solicitors, sheriffs, bailiffs, gaolers and those performing other like functions.
4. Jurors.

Hawkins, 2 P. C. 207, denominates those enumerated in the last two divisions "ministers of the court."

5. Parties to proceedings before the court.
6. Witnesses: 2 Hawk. P. C. 206–7–17; 4 Bl. 284–5.

Both the public welfare and the dignity of courts of justice require that they should have the power summarily and effectually to restrain and punish wrongdoings by those whose official duties are performed under their superintendence, who to some extent share their powers or form a part of their machinery, as well as by those who claim their aid to obtain or preserve their rights.

As regards those in official position, it may be laid down that all *corrupt conduct, oppression or injustice in execution of an office by color thereof, gross or wilful neglect of duty, and generally all misbehavior in office*, constitutes a contempt of court: 2 Hawk. P. C. 207–12–17; 4 Bl. 28, &c. The power of courts over this offence may be exerted to punish the perversion, maladministration or denial of justice by inferior judges or magistrates, "since the superior courts have a general superintendence over all inferior

jurisdictions," in all cases where these officers, 1. Proceed without jurisdiction; 2. Or unjustly, oppressively or irregularly; 3. Refuse to do justice; 4. Disobey the superior courts, as "by proceeding in a cause after it is put a stop to or removed by writ of prohibition, error or *supersedeas*, and the like;" or, in short, are guilty of "any corrupt or iniquitous practices:" 2 Hawk. 217; 4 Bl., *supra*. "All misdemeanors of judicial officers are contempts of the Court of King's Bench:" Walk. 201. Refusing to seal a bill of exceptions without sufficient cause, is a contempt on the part of a Court of Common Pleas, and the Supreme Court (of New York) will award a *mandamus* to compel the Court of Common Pleas to sign it. In this case, the bill of exceptions was untrue, which was held sufficient cause for the refusal: *People* v. *The Judges of Westchester*, 2 Johns. Cas. 118; *People* v. *The Judges of Washington Co.*, 2 Caines 97. See also *Conrow* v. *Schloss*, 55 Penn. St. 28, where it was held that the remedy was not by *mandamus*, but by a special writ. And such contempt is punishable even though the judge has since gone out of office, and is therefore no longer compellable to sign the bill: *People* v. *Pearson*, 3 Scam. 189.

Disobedience of a peremptory *mandamus* from the Supreme Court of Georgia to a county court, held a contempt in *Ex parte Carnochan*, Charlton 315 (1810). See also *State* v. *Hunt*, Coxe 287 (1795); *Patchin* v. *The Mayor of Brooklyn*, 13 Wend. 664; *State* v. *Smith*, 9 Iowa (With.) 334.

Counsellors at law in the United States are also attorneys. In England it is otherwise; but the doctrine there is, that although "they are neither officers of any court nor invested with any judicial office," "they are punishable for any foul practice, as other ministers of justice are:" 2 Hawk. P. C. 219.

It has been held a contempt in an attorney to attempt "anything which he cannot or ought not to do;" "mishehave himself in view of court, practise fraud or vexation to another under color of legal procedure;" act after being forejudged, *i. e.* disbarred: Com. Dig., *Attorney*, B 13; *Chancery*, D 3; *Attachment*, A 2; and not to put in his warrant of attorney till verdict or judgment: Vin. Abr., *Contempt*, A 2; and a solicitor is liable for contempt if he be negligent in managing his client's business: Com. Dig., *Chancery*, D 3. But the misconduct of an attorney which will constitute contempt, or which is punishable summarily by the court in like manner, though not strictly a contempt, must have occurred

in the exercise of his office: Com. Dig., *Attorney*, B 15; *Commonwealth* v. *Newton*, 1 Grant 453.

An attorney is punishable as for a contempt for "any base and unfair dealing towards his client in the way of business;" also for disobedience of any rule of court, or "any such ill practice as is against the known and obvious rules of justice and common honesty;" for undertaking to appear and not doing so: 2 Hawk. P. C. 211, and note 1, 212; or for appearing and confessing judgment without authority: *Denton* v. *Noyes*, 6 Johns. 296; for serving process on a party attending his business in court: 2 Strange 1094; for assigning for error the death of a plaintiff in ejectment, who is but nominal, the court saying, "it was to defeat the proceeding instituted by the court to try the right:" *Moore* v. *Goodright*, 2 Str. 2899. See on this point generally, 1 Tidd's Pr., 3d Am. ed. 88.

The court will relieve in a summary way against the misconduct of an attorney: *People* v. *Smith*, 3 Caines 221.

For an attorney to write a letter to a judge, after learning of his decision of a cause which he had argued before him, containing sneering and insulting language concerning the decision, is a contempt: *Re Pryor*, 18 Kansas 72.

A court has power to require members of its bar to purge themselves from a charge of contempt in assailing the integrity of the court by a libellous publication, made by part of its bar: *In the Matter of Moore*, 63 N. C. 397; see also *Ex parte Biggs*, 64 N. C. 202. Nor will the fact that such publication was made by an attorney in his character as editor of a newspaper relieve him from responsibility therefor as an attorney: *Ex parte Greevy*, 4 Weekly Notes of Cases (Philadelphia) 308; *contra*, *Ex parte Steinman*, 8 Id. 296; 9 Id. 145.

As regards sheriffs, bailiffs of franchises and sheriffs' bailiffs, they are guilty of this offence by "any corrupt practice" in relation to the service of writs, as by refusing to serve one unless paid an unreasonable gratuity; receiving a bribe not to serve one; giving warning to defendant so as to prevent service; depriving the party suing out the writ of its advantages, as by embezzling the money from an execution; oppressive practices in executing writs, as by "using needless force, violence and terror in making an arrest;" making unlawful arrests, or treating prisoners cruelly, and making a false return: 2 Hawk. P. C. 208–9 and cases cited;

Com. Dig., *Attachment*, A 2. And an attachment for contempt will be issued against an under-sheriff for remitting part of a sentence in not putting an offender properly in the pillory: 2 Burr. 792; and for redelivering a writ of appeal to an infant: 1 Salk. 176. For not returning a writ, a rule for an attachment was granted, though twelve years had elapsed since the issue of the writ: *Brockway* v. *Wilber*, 5 Johns. 356.

To pocket a venire is a contempt: *Keppele* v. *Williams*, 1 Dall. 29; to pertinaciously refuse or culpably neglect to collect a debt in gold or silver: *Rice* v. *McClintock*, Dudley (So. C.) 354; to make a levy after the appointment of a receiver: *Commonwealth* v. *Young*, 33 Leg. Int. 160; *Russel* v. *E. A. Railroad Co.*, 1 Eng. L. & E. 101; for carelessly allowing a prisoner to escape: *Craig* v. *Maltbie*, 1 Ga. 544; for not paying money collected on execution: U. S. Dig., *Attachment*, against a sheriff.

Gaolers "are not only punishable in this manner, as all other officers are, by the courts to which they more immediately belong, for any gross misbehavior in their offices, or contempts of the rules of such courts, but they are also punishable by any other courts for disobeying writs of *habeas corpus*, awarded by such courts." And the Court of King's Bench, in virtue of its general superintendency over all ministers of justice, "may award an attachment against any gaoler using a prisoner barbarously and inhumanly:" 2 Hawk. P. C. 219.

Other officers of courts are: clerks and prothonotaries; receivers appointed by a court; boards of canvassers of election; county commissioners, in their function of selecting jurors, and those filling similar positions.

Gross neglect on the part of a prothonotary of a court may constitute official misconduct under the Pennsylvania Act of 3d April 1809, relative to contempt: *Commonwealth* v. *Snowden*, 1 Brewster 218.

The embezzlement or misappropriation of funds, or the failure to pay them over when so ordered, is a contempt on the part of a receiver appointed by the court: *Cartwright's Case*, 114 Mass. 230. The opinion of Chief Justice GRAY in this case is an admirable statement, succinct but clear, of the nature and extent of the power to punish for contempt.

An application to compel an officer of the court to pay over money due in his official capacity, is a proceeding for a contempt,

and the court has jurisdiction under the Act of Congress of March 2d 1831: *Pitman's Case*, 1 Curtis C. C. 186.

When a court makes a corporation a depositary of the funds of the court, and such corporation, through its officers, accepts the deposit, it becomes *pro hac vice* an officer of the court, and failing, upon the order of a writ, to return the money, without showing some valid reason, it is guilty of contempt, and its officers having control of the fund may be attached therefor: *Re Western, &c., Insurance Co.*, 38 Ill. 289.

A public officer is guilty of contempt who refuses to furnish copies of papers wanted on a trial, even though the application be made after office hours: *Delaney* v. *Regulators*, 1 Yeates 403.

Referees under a rule of court who do not report, may be compelled to do so by attachment. See cases cited U. S. Dig., *Contempt*, pl. 54, 55.

County commissioners, in the selection of jurors, are officers of the court, and as such liable to process under the Pennsylvania Act 3d April 1809: *Hummel & Bishoff's Case*, 9 Watts 421.

Jurors act in a twofold capacity, a ministerial and a judicial. While acting strictly within the latter, and deciding matters of fact, jurors are entirely independent and irresponsible to the court or any other power; according to the old authorities, the only remedy against them for a false verdict being a writ of attaint.

In early English history, and as late as the time of Charles II., there are instances where both grand and petit jurors were punished, or held punishable, for "refusing to agree," "making false oaths," "finding manifest offenders not guilty" (held by Lord COKE, 12 Rep. 23, 24, that they might be so charged in the Star Chamber); finding an offender guilty of a less offence against "clear evidence and the direction of the court," "going against plain evidence and the direction of the court:" 2 Hawk. 214, 215. "This question was at last fully considered and debated in *Bushell's Case*" (22 Car. 2 (1671), Vaughn 135), where the Common Pleas determined "that the jury are by law the proper judges of matters of fact, as the judges are of matter of law:" 2 Hawk., *supra*. Even if they find "against the direction of the court in matter of law, it will not follow they are therefore finable, for if an attaint will lie upon the verdict so given by them, they ought not to be fined or imprisoned by the judge for that verdict:" Vaughn 144. In their ministerial capacity, *i. e.*, "as persons bound to attend the

court, in order to perform the duty for which they are returned," jurors are punishable for a contempt for making default when summoned; refusing to be sworn, or to give any verdict; offering a verdict to which all have not agreed; casting lots for a verdict; separating from one another; eating or drinking without leave of court; sending or receiving instructions from either party, much more for receiving a bribe: 2 Hawk. P. C. 212–14; *Gourlay* v. *Hutton*, 10 Wend. 595; *Harrison* v. *Rowan*, 4 Wash. C. C. 32; holding a communication, after retiring, with persons other than officers of the court: *The State* v. *Helvenston*, R. M. Charlton 48; conversing with a bystander during the trial of a cause; leaving the court without consent of the court: *Barlow* v. *State*, 2 Blackford 114; *Ex parte Hill*, 3 Cowen 355; and so for a juror voluntarily to express an opinion as to the guilt of a prisoner, for the purpose of disqualifying himself: *United States* v. *Devaughan*, 3 Cr. C. C. 84.

The 5th and 6th subdivisions comprehend persons concerned in proceedings in court, viz.: *Parties and witnesses.*

In the first capacity, they are guilty of a contempt if they disobey "any rule or order made in the progress of a case:" 4 Bl. 284–5. Any abuse of the process of the court is a contempt, as taking out process without color of right; making use of it to help the jurisdiction of an inferior court, or in a vexatious manner, or oppressively, or unjustly trying a feigned issue without consent of court: 2 Hawk. P. C. 222–3; bringing any action in the name of another without his consent: *Scott* v. *John*, 15 Ala. 566; *Butterworth* v. *Stagg*, 2 Johns. Cas. 291. It has even been questioned whether an attachment for contempt would lie against an executor for disobedience of a rule of court by his testator: *O'Leary* v. *Harrison*, 6 Jones Law 338.

In chancery, an attachment for contempt lies for not appearing to a subpœna; "for not answering or for answering insufficiently;" "for refusal to obey an order or decree;" "for abusive usage or words of the process or officers of the court;" "for the revocation of a submission to an award made in court by consent;" "for not performing an award made upon a reference by rule of court:" Com. Dig., *Chancery*, D 3; *Attachment*. For contemptuous words on delivery of a declaration in ejectment: *Rex* v. *Unitt*, Str. 567. After a party's business is done, to refuse to pay the fees of the court officer therefor, is a contempt, and the party will

be committed until payment: Bac. Abr. 466, *Attachment.* For a defendant in an execution to institute an action of replevin, is a contempt of the court which rendered the judgment on which execution issued: *Philips* v. *Harris*, 3 J. J. Marsh. (Ky.) 124; and where an attachment has been made in a chancery suit, for the defendant to take the property attached from the possession of the officer by writ of replevin: *Biggs* v. *Garrard*, 6 B. Mon. 484.

Filing a bill in the county court on the same grounds as one in the Chancery Courts of Maryland, by the decree in which a party felt himself aggrieved, without communicating the proceedings in the Court of Chancery, is a contempt of the county court: *Penn* v. *Brewer*, 12 Gill & J. (Md.) 113. For a party, when books are submitted to his inspection by order of court, to break open parts sealed up, not relating to the subject of litigation, is a contempt: *Dias* v. *Merle*, 2 Paige 494. It is a contempt to make default when summoned as a witness, to refuse to be sworn or examined as a witness, or to "prevaricate in their evidence when sworn:" 4 Bl. 284–5; *Rex* v. *Lord Preston*, 1 Salk. 278; *Commonwealth* v. *Roberts*, 2 Pa. L. J. R. 340. But the witness must be material: 2 Hawk. P. C. 220, note 1; U. S. Dig. 5, *Attachment*, C, pl. 288, *Trial of Smith & Ogden.*

Failing to appear before an examiner after being subpœnaed, is a contempt of the process of the law, though not of court, and the examiner has power to punish by fine: *Commonwealth* v. *Newton*, 1 Grant (Pa.) 453. In Pennsylvania, it is provided by statute (Act February 24th 1870, Pamph. L. 34, Purd. Dig. 1478) that persons summoned as witnesses in certain criminal cases, and who abscond, shall be guilty of a misdemeanor, punishable by fine and imprisonment. "This is intended to apply to cases where the party in contempt could not be reached by attachment:" *Commonwealth* v. *Phillips*, 3 Pittsburgh 426.

Two cases, very interesting as touching the liberty of conscience, are reported in *Stansbury* v. *Marks*, 2 Dall. 213 (1793), and *United States* v. *Coolidge*, 2 Gall. 364 (1815). In the first, a Jew, who refused to be sworn as a witness in a cause tried on Saturday because it was his sabbath, was fined by the court; in the second, a person not a Quaker, but who had conscientious scruples against taking an oath, on account of a vow that he never would do so, and therefore refused to be sworn, was committed for contempt, the liberty of affirming being restricted to Quakers under