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CONTEMPT OF COURT.

(*Continued from February No., ante, p.* 93.)

2. *What is not a contempt.*

As illustrating the nature of this offence, it may be well to refer to various decisions as to what is not a contempt, which establish exceptions to the general rule.

For a bare non-feasance in not performing the command of the first writ in any case whatsoever, "the court do not usually proceed to punish for a contempt:" 2 Hawk. P. C. 221.

"An attachment will not be granted, where the offence is not strictly an offence to the court, nor where there is another remedy, unless that remedy be difficult to obtain:" Comyn's Dig., *Attachment* (A 3). A *rescous* is no contempt, when the matter on which process is grounded is one of which the court had no cognisance: *Sparks* v. *Martin*, Vent. 1; or the order disobeyed was beyond their jurisdiction: *People* v. *O'Neill*, 47 Cal. 109. A contempt for acting against an erroneous order of court will be discharged: Vin. Abr., *Contempt*, c. 14. Where the court had no jurisdiction of the cause, their order is void, and disobedience of it is no contempt: *People* v. *Sturtevant*, 5 Seld. 263. See also *Rex* v. *Clement*, 4 B. & Ald. 218.

The rule for an attachment was discharged, the offence being indictable at common law: *In re Lucas Hirst et al.*, 9 Phila. 216. See, also, 1 Tidd's Pr., 3 Am. ed., 88; *In re* ———, 3 Nev. & Perry 389.

Where, in pursuance of a decree of the Supreme Court of the United States, an injunction had been issued forbidding the re-

building of a bridge, and subsequent to the decree, but before the injunction, an Act of Congress had been passed making lawful such rebuilding, a majority of the court held that the re-erection of the bridge, in disobedience of the injunction, was not a contempt: *State of Pennsylvania* v. *Wheeling Bridge Co.*, 18 How. 421.

On the ground of public policy, the governor of the Commonwealth (and it would seem the secretary also) is not compellable in his official capacity to appear in court, in obedience to a *subpœna duces tecum*, or to give his deposition under a rule of court, and the refusal to do so is not a contempt: *Gray* v. *Pentland*, 2 S. & R. 23 (1815). It is no contempt to refuse to answer in a proceeding before a justice, who, under the Michigan statutes, had no jurisdiction thereof nor right to issue a subpœna and compel witnesses to attend and testify: *In re Morton*, 10 Mich. 208. See, also, *Bear* v. *Cohen*, 65 N. C. 511. Nor before a grand jury, when such refusal is the assertion of a constitutional right; in such case the commitment for contempt is illegal, and may be examined in the Supreme Court by certiorari, even if not on a habeas corpus. This was under the New York statutes: *People* v. *Kelly*, 24 N. Y. 74. An attorney advised his client, who was under indictment for assault and battery, if he could not procure a continuance to escape and forfeit his recognisance, which would work a continuance. *Held*, that he was not guilty of contempt of court in giving such advice, and if fined therefor that he could have a writ of error: *Ingle* v. *The State*, 8 Blackf. 574. A mere omission to plead, except where the object of the bill is to compel an answer, is no contempt in Minnesota: *Perrin* v. *Oliver*, 1 Minn. 202. Reading an affidavit for a change of venue, on the ground of prejudice in the mind of the judge, is not a contempt of the court to which it is presented: *Ex parte Curtis*, 3 Minn. 274. It is no contempt in a witness to leave court when permitted by the party summoning him, and the costs of the attachment will not be put on him: *State* v. *Nixon*, Wright (Ohio) 763. If the order of the court disobeyed were doubtful, or could be construed in any way consistent with innocence of intention on the part of the violator, the court should not punish for contempt: *Weeks* v. *Smith*, 3 Abb. P. R. 211. Under the statutes of New York, it is not a contempt for a witness to refuse to answer before a justice of the peace: *Rutherford* v. *Holmes*, 5 Hun 317.

Some interesting cases have arisen under the United States Internal Revenue Acts, as regards how far disobedience to the requirements of the supervisors will constitute a contempt which a court of the United States can punish. It has been decided that an attachment will not be granted on the application of a supervisor, where his proceedings had been marked by undue haste, had been rather unreasonable, and the respondents were refused their reasonable request to consult counsel before obeying his order: *United States* v. *Stanwood*, 13 Int. Rev. Rec. 77, and other cases in Bright. Dig. Fed. Dec., Supp., tit. *Contempt.*

3. *Of direct and constructive contempts, and the general proceedings in case of contempt.*

Contempts are again divided into direct and constructive or consequential contempts: the first being those which are committed in the presence of the court or by disobedience of its orders or process, &c.; "which openly insult or resist the powers of the court or the persons of the judges" (even though not in court. See *Charlton's Case*, 2 Myl. & Cr. 316; *Com.* v. *Dandridge*, 2 Va. Cases 408); the second, those which are not so committed and do not involve such direct disobedience, but "plainly tend to create a universal disregard of their authority:" 4 Blk. 283; these depend solely on evidence and are inferences from facts, an example of which last are improper publications reflecting on the court, abusing parties, &c.: 4 Blk. 286; 2 Hawk. 206; *Hummel's Case*, 9 Watts 421; *Watson* v. *Citizens' S. Bank*, 3 S. Car. 164.

Contempts in presence of a court by violence, insulting language, &c., are sometimes termed criminal contempts: *Androscoggin & K. Railroad Co.* v. *Androscoggin Railroad Co.*, 49 Maine 400.

From this distinction between contempts in *facie curiæ* and those not, arises a difference in the method of procedure thereon. A direct contempt which is committed in presence of the court, it will of its own motion notice and punish summarily, those not so committed, as well as constructive contempts, must be brought before the court by affidavits of persons who witnessed them, and thereupon a rule is made on the offender to appear and answer, or a rule to show cause why an attachment should not issue against him, "or in very flagrant instances of contempt, the attachment issues in the first instance, as for contemptuous expressions of the court:" 4 Blk. 287; 2 Hawk 222; 1 Tidd's Pr., 3d Am. ed. 88; *In re Judson*, 3 Blatch. C. C. Rep. 148; 6 Dane Abr. 528, ch. 193,

art. 28; 7 Id. 307-8, ch. 220, art. 5; *Commonwealth* v. *Dandridge*, 2 Va. Cases 408; *State* v. *Mather*, 37 N. H. 450; *Clay's Case*, Pr. Dec. 221; *Crow* v. *State*, 24 Texas 12. And even some constructive contempts, the court will take notice of, and punish of its own motion: *Ex parte Steinman et al.*, 9 Weekly Notes of Cases 145, Supreme Court of Pennsylvania. To award the attachment is at the discretion of the judge, and may be awarded on his own knowledge, or a bare suggestion: Comyn's Dig. *Attach.* (A. 1.) The process of attachment is only to bring the party into court; when brought in, either by attachment, or the rule to appear, or the rule to show cause, he is committed or bailed that he may answer on oath, interrogatories in the nature of a charge or accusation, touching the alleged contempt. "If the party can clear himself upon oath, he is discharged, but if perjured, may be prosecuted for perjury." The object of process of contempt is to bring in the offender and proceed with him; it is indispensable that the accused be arrested or summoned, except in case of contempt in *facie curiæ*.

If a mere acknowledgment of the fact of contempt will give the court all needful information (as in the case of a *rescous*) the defendant may be admitted to make such acknowledgment and receive his judgment, without answering interrogatories; "but if he wilfully and obstinately refuses to answer, or answers in an evasive manner, he is then guilty of a high and repeated contempt:" 4 Blk. 287; *United States* v. *Dodge*, 2 Gall. 313. If he confess part of the contempt alleged and deny part, the court will not discharge him, but will examine further as to the whole, and inflict such punishment as may seem proper: 2 Hawk. P. C. 207, n. 1.

Persons guilty of contempt can be arrested at any time thereafter when they come within the jurisdiction of the court: *Bowery's Bank* v. *Richards*, 6 Thompson (N. Y.) 59; 3 Hun 366. Even though the contempt were committed out of the jurisdiction: 1 Burr's Trial 352.

Where a contempt is committed in the presence of the court, the court has immediate jurisdiction of the person of the offender, and although he leaves the court-room and absconds before any action had, yet the court may in his absence sentence him for contempt, and may do it within any reasonable time before the end of the term, and without process issued for his arrest. And in case of such contempt the offender may be instantly apprehended

and imprisoned at the discretion of the court: *Middlebrook* v. *State*, 43 Conn. 257; 4 Blk. 287.

In cases of contempt the party must appear in proper person and not by attorney: Vin. Abr. *Contempt*, F 7; Com. Dig. *Attorney*, B 6; *People* v. *Wilson*, 64 Ill. 195; *Vertner* v. *Martin*, 10 Sm. & M. 103. And it has been held in Alabama that he has no constitutional or statutory right to be heard by counsel in the matter of the contempt: *Ex parte Hamilton*, 51 Ala. 66 (1874). Nor under the Constitution of the United States has he any right to a trial by a jury: *Hollingsworth* v. *Duane*, Wall. 77. See also *Res* v. *Oswald*, 1 Dall. 319. There are like decisions in several of the states: see *infra*, II.

But the arrest and imprisonment must be made by some warrant, mittimus, or act of record, a copy of which ought to be given to the officer committing the offender, for his security: 6 & 7 Dane's Abr., *supra*.

Where the sentence of the court adjudicates the contempt, setting forth the facts, a warrant is not essential—an order of court is sufficient: *Regina* v. *Wilson*, 51 E. C. L. Rep. 619. So, too, if the contempt be committed in the presence of the court an order is sufficient: 8 Conn. 379; 2 Daly (N. Y.) 530. But a justice of the peace cannot commit for a contempt without a warrant in writing: *Mayhew* v. *Locke*, 2 Marshall 377; s. c. 7 Taunt. 63.

In a commitment for contempt by a superior court it is not necessary to set out on the warrant the cause of commitment; *contra*, as to an inferior court, "to which credit is not to be given for conforming itself to the appointed limits of its jurisdiction," and whose proceedings must therefore be set forth to show that they are regular and authorized: *Ex parte Fernandez*, 10 C. B. (N. S.) 3, 40. See also *Doyle* v. *Falconer*, Law Rep., 1 P. C. 328; 2 Hawk. P. C. 168; Bac. Abr., *Courts*, D 2; statute 13 Car. II, s. 2, c. 2.

On a habeas corpus and certiorari from the King's Bench to Quarter Sessions the return was for contemptuous words; *per cur.* held ill, for it should express what were the words: Vin. Abr., *Contempt* [C] 3.

But, "if a warrant be made out stating the facts, and showing on the face of it that the alleged contempt was no contempt in point of law, that warrant would no doubt be bad:" *Ex parte Fernandez*, *supra* 58. Even the warrant of a superior court if it

show on its face want of jurisdiction would be bad: *Howard* v. *Gossett*, 10 Ad. & E. N. S. 359; *Carus Wilson's Case*, 7 Id. 1018.

Blackstone thinks that this method of making a defendant answer on oath to a criminal charge, so contrary "to the genius of the common law," was derived from courts of equity, and he notes a very important difference between the proceedings in contempt in the courts of law and equity, viz., that when in a court of equity the party has answered the interrogatories on oath, "his answer may be contradicted and disproved by affidavits of the adverse party," whereas in courts of law, "if he clears himself by his answers the complaint is totally dismissed;" although as we have seen if the accused have sworn falsely he may be prosecuted for perjury; and this method of procedure is as old as the process of attachment: 4 Blk. 288. See also Comyn's Dig., *Chancery*, D 3; *Thomas, Lessee*, v. *Cummins*, 1 Yeates 40; *Whittem* v. *State*, 36 Ind. 196; *Buck* v. *Buck*, 60 Ill. 105; *Stuart* v. *People*, 3 Scam. 395; *United States* v. *Dodge*, 2 Gall. 313; *Cartwright's Case*, 114 Mass. 230. Process of contempt in chancery has in England been regulated by a number of modern statutes: see 11 Geo. IV. & 1 Wm. IV., 4 c. 36; 2 & 3 Wm. IV., c. 58; 23 & 24 Wm. IV., c. 149.

In cases of contempt by an inferior court in usurping jurisdiction, "it seems to be rather the more usual way, first to award a writ of prohibition to such court, and afterwards an attachment upon its proceeding after such prohibition:" 2 Hawk. P. C. 217; *Regina* v. *Lefroy*, 8 Queen's Bench 134; 4 Moak 250.

An attachment for contempt is a criminal proceeding: Com. Dig., *Attachment*, A 4; 4 Blk. 288; *Hummel's Case*, 9 Watts 421; *Cartwright's Case*, 114 Mass. 230. Proceedings for contempt are criminal in their nature, the United States being plaintiff: *Durant* v. *Supervisors*, 1 Woolworth 377. Whence it seems to result that a commitment in contempt is a commitment in execution: *Kearney's Case*, 7 Wheat. 38.

As regards the question whether or not a person committed can be admitted to bail much conflict of authority exists. There is a case where a person committed by the Court of Quarter Sessions for refusing to be sworn as a witness before a grand jury, was brought before the King's Bench on habeas corpus, and HOLT, C. J., said: "it was a great contempt, and that, had he been there he would have fined him and committed him till he paid the fine.

but being otherwise he was bailed." *Rex* v. *Lord Preston*, 1 Salk. 278. See also *Chambers's Case*, Cro. Car. 133.

The sheriff may take a bail-bond on an attachment, but cannot oblige the prosecutor to accept it: Vin. Abr., *Bail*, pl. 24; *Rex* v. *Daws*, 2 Salk. 608. But another case is cited in Viner, where the contrary is held, that the sheriff cannot take a bail-bond on an attachment for a contempt, for it is not within the words or intent of statute 23 Henry VI., and judgment accordingly: Id., pl. 29, citing *Field* v. *Workhouse*, Comyn 264, Case 145. The statute 13 Car. II., s. 2, c. 2, provides that on attachments for contempt security shall be taken for appearance therein, "as hath been heretofore used."

"A person committed for contempt cannot be bailed:" *Ex parte Alexander*, 2 Am. Law Reg. 44. "No court can discharge or bail a person that is in execution by the judgment of any other court:" DE GRAY, C. J., *Crosby's Case*, 3 Wilson 199. But it has been done in case of commitments by an inferior court: *Chancey's Case*, 12 Rep. 82; and in *Yates's Case*, the court wishing to consider (4 Johns. 317), though the commitment here was not by an inferior court.

A commitment for contempt is equivalent to a commitment in execution: Hurd on Hab. Corp. 415 n.; *Crosby's Case*, *supra*, 188; *Kearney's Case*, 7 Wheat. 38.

II. OF THE PUNISHMENT FOR CONTEMPT.

1. *Kind and degree thereof at common law.*

All courts of record can punish contempts by fine and imprisonment at discretion, or sometimes even by a "corporal or infamous punishment:" 2 Hawk. 4, sect. 15; 4 Bl. 287. Of this latter sort of punishment I find no instance in this country, and the case cited by Blackstone (*supra*), in support of his statement regarding its existence, is *Royson's Case*, Cro. Car. 146, about 1625. Royson offered himself as bail in an action and made oath that he possessed the necessary qualifications. On examination he confessed that he had not these qualifications and had perjured himself, and on further examination of "*this misdemeanor*," that he had moreover in like manner been bail in other actions and sworn falsely. For "this cause" he was adjudged to be committed to prison and to stand upon the pillory.

In a very old case of a very outrageous contempt, it was debated whether the offender should not lose his hand: Vin. Abr., *Con-*

tempt, A, pl. 6, citing Brook's Abr., *Contempt*, pl. 9. In the case of the *Lord Mayor of London* (1771), 3 Wilson 202, Lord C. J. DE GRAY mentions that the Court of Common Pleas, not long since, sentenced a man to stand in the pillory for contempt. See also *Ex parte Alexander*, 2 Am. Law Reg. 44, 57; *Re Hirst et al.*, 9 Phila. 216.

For any direct and positive contempt a defendant may be committed during the pleasure of the court; for disobedience of an order, till he obey: Vin. Abr., *Contempt*, B 21; stat. 1 Anne, c. 6; *Tome's Appeal*, 50 Penn. St. 285.

A witness refusing to answer, may be committed till he answer: *Lott* v. *Burrel*, 2 Rep. Con. Ct. 167; *People* v. *Phelps*, 4 Thompson (N. Y.) 467.

Commitment till the further order of the court is good: *Yates's Case*, 4 Johns. 317; *Williamson's Case*, 26 Penn. St. 24; *Tome's Appeal*, 50 Id. 285. *Contra*, *In re Alexander*, 2 Am. Law Reg. 44; *Matter of Hammel*, 9 R. I. 248.

If the fine for contempt be not paid, the party may be committed to prison: *People* v. *Bennett*, 4 Paige 282.

In the Court of Chancery, if a defendant in a bill do not appear, a sequestration will go against his real and personal estate till he purge his contempt: Vin. Abr., *Contempt*, B 20, C 6.

Where the imprisonment is designed only as a punishment, and not as a means of compelling obedience, like a sentence, it should be certain and be for a definite period: *In re Crawford*, 13 Ad. & E. 613, citing *Rex* v. *James*, 5 B. & Ald. 894; *Birkley* v. *Commonwealth*, 2 J. J. Marsh. 575; *Ex parte Alexander*, *supra*; *Commonwealth* v. *Roberts*, 2 Clark (Pa.) 340.

Where a party is ordered to pay a sum of money, and committed by way of enforcing such order, the commitment is in the nature of a *capias ad satisfaciendum*, and if unable to pay, the party may be discharged as insolvent. But he cannot be discharged on this ground where his contempt is wilful; he is then in the position of one fined on conviction of a criminal offence: *Matter of Watson*, 3 Lansing 408 (1870).

Of a fine for contempt to a rule of court, the injured party can have but a third part: HOLT, C. J., in *Rex* v. *Cudmore*, Comb. 250, cited in Vin. Abr., *Contempt*, B 24.

A fine imposed by court for contempt, is a punishment for a wrong to the state, and goes to it, not to a party to the suit, pending which the contempt was committed: *Matter of Rhodes*, 65 N.

C. 518; *Morris* v. *Whitehead*, Id. 637. But where the statutes of Michigan order the payment to an injured party, the imposition of a criminal fine in addition is unlawful: *Haines* v. *Haines*, 35 Mich. 138.

A contempt against a court of the United States is a contempt against the United States, and the court cannot, because an offender is unable to pay, either discharge him or remit the penalty, his case being subject to the pardoning power vested exclusively by the Constitution in the President: *Ex parte Kearney*, 7 Wheat. 38; 3 Opinions Att.-Gen. U. S. 622; 4 Id. 458; 5 Id. 579; *Re Mullee*, 7 Blatch. 23. See also *State* v. *Sauvinet*, 24 La. Ann. 119.

In *Re Mullee*, 7 Blatch. 23, the offender had been fined and committed till payment thereof. The court held that the offence was none the less a contempt, the punishment for which could be remitted by the President of the United States alone, in that the fine had been ordered by the court to be paid to the opposite party, to reimburse his expenses in the attachment proceedings, and a vested private right in shape of a judgment had thence accrued. An application to the president for pardon had been denied, but Judge BLATCHFORD still refused to discharge the applicant on the ground of his inability to pay the fine, "at least until the executive disclaims its power to relieve the party by a pardon;" intimating that in such case the matter might again be brought before him.

A contempt against a federal court being a crime, may be prosecuted by indictment or information as a misdemeanor: *United States* v. *Jacobi*, 14 Int. Rev. Rec. 45.

The summary punishment for contempt is not an infringement of the state constitution, which guarantees to the citizen a trial by jury: *State* v. *Doty*, 32 N. J. L. 403. There are like decisions in New Hampshire: *State* v. *Matthews*, 37 N. H. 450; New York: *Patrick* v. *Warner*, 4 Paige 397; *People* v. *Bennett*, Id. 282; Arkansas: *Neel* v. *State*, 4 Eng. 259; Iowa: *Ex parte Grace*, 12 Iowa 208; and in Minnesota, where it is further held that the statutes abolishing imprisonment for debt do not apply in cases of contempt: *State* v. *Becht*, 23 Minn. 411. On the last point, in Pennsylvania, see *Tome's Appeal*, 50 Penn. St. 297 The privilege of a member of Parliament is no protection in case of a criminal contempt; for instance, carrying off a ward of chan-

cery and refusing to inform the court of her whereabouts. The offender was committed to the Fleet, "till he shall clear his contempt." A committee of the House of Commons decided that this claim of privilege ought not to be admitted: *Long Wellesley's Case*, 2 Russ. & Myl. 639.

A barrister and member of Parliament, for writing an insulting and threatening letter to a master in chancery, was ordered by the lord chancellor to be committed to the Fleet. He evaded arrest till Parliament met, was then arrested and the House of Commons decided that his privilege did not protect him: *Charlton's Case*, 2 Myl. & Cr. 316.

Nor will the privileges of a member of Parliament protect from imprisonment for a gross contempt of court, which in this case consisted in making public speeches abusing the lord chief justice: *Reg.* v. *Onslow & Whalley*, 12 Cox Cr. Cases 359 (1873). This was in connection with the *Tichborne Case*, and for a subsequent and like contempt, a barrister was fined 500*l.* and sentenced to three months' imprisonment, and the claimant, who had offended in a less degree, was ordered to find security for his good behavior: *Tichborne Case*, 370–1.

Proceeding pending or not.

Most cases of contempt, other than those *in facie curiæ*, arise in a proceeding pending in court, or are connected therewith, and it is questioned whether this be not an essential condition to the existence of this power, the reasons for which view are set forth in *Re Pryor*, 18 Kansas 72. See also *Robertson* v. *Bingley*, 1 McCord Ch. 333, 349; Hurd on Hab. Corp. 410, &c.; *Rex* v. *Clement*, 4 B. & Ald. 218.

Where the proceeding is discontinued, the person committed for contempt in not answering as a witness should be discharged, as he can no longer purge his contempt: *In re Hall*, 10 Mich. 210. But it was held in *Johnson* v. *Wideman*, Dudley (So. C.) 70 (1837), that a witness may be committed for contempt even though the case be terminated before the attachment be moved for. Mr. Bishop (2 Cr. Law, sects. 259, 262) agrees with this view, holding that the rule cannot be without exception, and that there may be circumstances in which a court of justice should exercise the power after the termination of the cause. For this he cites a number of cases.

If the matter has been decided, it seems that in England send-

ing an insulting or threatening letter to a judge would not be punishable as a contempt: *Reg.* v. *Faulkner*, 2 M. & A. 311; Cases in Banc 343. Nor to criticise in a newspaper the ruling of a judge in a case not pending. *Contra*, if pending: *State* v. *Anderson*, 40 Iowa 207.

The resignation of his office by an officer of the court, does not oust the court of jurisdiction to proceed against him by attachment for contempt for any acts of misconduct committed by him while in office: *The Laurens*, 1 Abb. Adm. 508; see also *People* v. *Pearson*, 3 Scam. 189.

2. *Avoidance of the penalty or purging the contempt.*

Although a contempt have been committed, it may sometimes be purged by the submission of the offender, in which case the court will forbear to inflict a penalty therefor. But an unwilling compliance with a decree of a court of equity, after service of a writ of attachment for refusing to obey, will not purge the contempt: *Snowman* v. *Harford*, 57 Me. 397. That a party acted under the advice of counsel, is only a mitigation of the contempt: *Columbia W. P.* v. *Columbia*, 4 Rich. N. S. 388. But where he does not give the name of the counsel, or alleges that he was advised and believed that the court had no jurisdiction of the matter enjoined, this is no mitigation: *People* v. *Compton*, 1 Duer (N. Y.) 512.

That no contempt of court was intended may excuse the offender, especially when the contempt is only constructive, but the nature of the act is chiefly regarded. "As regards the question whether a contempt has or has not been committed, it does not depend upon the intention of the party, but upon the act he has done:" TANEY, C. J., in *Wartman* v. *Wartman*, Taney 362, 370. See also *People* v. *Few*, 2 Johns. 290; *Matter of Moore et als.*, 63 N. C. 397.

Where an injunction is disobeyed, the motive or intent in so doing does not, as a rule, alter the responsibility: High on Injunctions 498.

Some contempts, it is worthy of notice, belong to that class of offences, of rare occurrence, which are constituted by the mental action or state of feeling of the person committing them, being *evidenced* only by physical acts and manifestations, which latter are held guilty or guiltless according to the character of the motive confessed or denied. A very strong case, where innocence of intention was held to excuse an offender, is the *Matter of Fitton*, 16 How. Pr. 303, where a police officer, having in charge a prisoner,

brought him up on a writ of *habeas corpus*, and made return that he had no opposition to his discharge, and no further return to make; whereupon the prisoner was discharged. The officer immediately re-arrested him in the court-room, without any warrant or process, and took him to prison on another charge. On a rule for an attachment, the officer answered that he acted under the instructions and orders of one of the police commissioners, whom he supposed it was his duty to obey, and that he intended no disobedience of the orders of the court. *Held* sufficient to relieve him from the charge of contempt.

For contempt by a clerk of court in not making his return on a writ of error, ignorance of the law is no excuse: *State* v. *Simmons*, 1 Ark. 265. A declaration under oath by the parties accused that they were ignorant that they were violating an injunction of court, and a submission to the direction of the court, will avail to purge the contempt by undoing or reversing the acts complained of where practicable: *Vose* v. *Reed*, 1 Wood (Fla.) 647. But where an injunction has been violated, and no regret for the wrong done or offer to repair it was made, a mere disavowal of intentional contempt will not purge the contempt: *Watson* v. *Citizens' Saving Bank*, 5 So. C. 159, 170. Contempt in not performing a decree of court, may be purged by showing the party's inability to do so: *O'Callaghan* v. *O'Callaghan*, 69 Ill. 554.

Words apparently scandalous or offensive, but susceptible of a different construction may be explained by the speaker or writer, and he be relieved of the charges of contempt, on sworn disavowal of intent to commit it; but where the words are necessarily offensive and insulting, such disavowal may excuse, but cannot justify: *Re Woolley*, 11 Bush 95, 110 (1874); citing *People* v. *Freer*, 1 Caines 484. A disclaimer of "intentional disrespect or design to embarrass the administration of justice," is no excuse, where the contrary would appear on a fair interpretation of the language used: *People* v. *Wilson*, 64 Ill. 195.

"The party called before the court is made his own witness in his own cause. If he be innocent he will have no trouble in disclaiming the contempt, and avowing his innocence. The question is the *quo animo*. His purpose is known to himself, and he is permitted to purge himself by his own avowal: *Re Woolley*, *supra*, citing Mr. Wirt's argument in case of Judge Peck, before the High Court of Impeachment.

Where a party relies on an excuse, he must appear in court in his own person: *People* v. *Wilson*, 64 Ill. 195; *Vertner* v. *Martin*, 10 Sm. & M. 103. See also Vin. Abr. *Contempt* (F) 7. A stranger to a suit cannot purge himself of contempt in reference to order or process made or issued therein, by showing that the court had no jurisdiction, where the court is one of general jurisdiction and acts within it: *Ex parte Stickney*, 40 Ala. 160, 169. A party in contempt, until it be purged will not be allowed to ask the favor of the court, nor take any aggressive measure against his adversary, but he may protect himself, and make any motion designed to show that an order adjudging him in contempt was erroneous: *Brinkley* v. *Brinkley*, 47 N. Y. 40.

3. *Of the penalty as a remedy for civil wrongs to another person.*

There are certain contempts, such as the disobedience of an order of court for payment of costs, the non-performance of awards of arbitrators, &c., the punishment for which is "to be looked on rather as a civil execution for the benefit of the injured party, though carried on in the shape of a criminal process for a contempt of the authority of the court." For which reason being a civil remedy they are not affected by a general act of pardon: 4 Bl. 285; *Buck* v. *Buck*, 60 Ill. 105.

Contra as to the last point. In *Re Mullee*, 7 Blatch. 23. Perhaps this last case may be distinguished on the ground that the pardon there spoken of was special, not a general act of pardon.

The criterion for determining whether process for contempt is civil or criminal may be stated thus:

"If the contempt consists in the refusal of a party to do something which he is ordered to do for the benefit or advantage of the opposite party, the process is civil, and he stands committed till he complies with the order. The order in such case is not punitive but coercive." The private party alone is interested in its enforcement, and when he is satisfied the imprisonment terminates: *Phillips* v. *Welch*, 11 Nev. 187; citing 4 Bl., chap. 20. In New York the power to enforce a civil remedy by proceedings as for contempt exists under 2 Rev. Stat. 534, 538; *People* v. *Compton*, 1 Duer 512; *Ludlow* v. *Knox*, Abb. App. Dec. 326.

Punishment of a party for contempt is sometimes a remedial process to which the opposite party is entitled; though it may not be necessary for the vindication of the authority of the court: *Howard*

v. *Durand*, 36 Geo. 346. When used to enforce civil rights commitment under attachment for disobedience of orders of court is a civil remedy: *Tome's Appeal*, 50 Penn. St. 285. Where the civil rights of a person are concerned, a mandamus may issue from the Supreme Court to an inferior one to punish for contempt: *Ex parte Chamberlain*, 4 Cow. 49. See also *Mining Co.* v. *Freemont*, 7 Cal. 120. But the party against whom the attachment issues, and who has committed a contempt is not entitled to costs, it would be "contrary to all practice and precedent: *Deeds* v. *Deeds*, 1 Iowa 394. In an English case on rule *nisi* for attachment for contempt in not appearing to a subpœna, which was discharged, the accused having cleared himself of the comtempt, his costs were refused him, there appearing to have been some "approximation," to the offence charged. For the injury done the plaintiff by the non-appearance of the defendant, he was remitted to his civil remedy: *Marshall* v. *The York N. & B. Railroad Co.*, 18 Eng. Law & Eq. 500. It would seem that if innocent of any contempt, the costs should not be put on him. They were put on the party applying for the attachment in such case in *State* v. *Nixon*, Wright (Ohio) 763. A fine for contempt of an injunction may properly include the plaintiff's costs and counsel fees incurred in consequence of the defendant's resistance to the application for an attachment: *Doubleday* v. *Sherman*, 8 Blatch. 45. But under the New York statute, counsel fees so named cannot be so included; they may, however, form part of the costs: *People* v. *R. & S. L. Railway Co.*, 14 Hun 371; *Van Valkenburgh* v. *Doolittle*, 4 Abb. N. C. 72. Where a man is fined for a contempt to a rule of the court, the party aggrieved can have but a third part of the fine, and it must be returned into the exchequer before *lev. fac.*: HOLT, J., in *Rex* v. *Cudmore*, Comb. 250; Vin. Abr. *Contempt* (B) 24. Under the statutes of Michigan, where the court in a proceeding for contempt, order the payment of money to an injured party the imposition of a criminal fine in addition is unlawful: *Haines* v. *Haines*, 35 Mich. 138.

It has been held in the District Court of the United States for the Southern District of New York, that where an injunction has been violated, it is no less a punishment for contempt and as such within the pardoning power of the President of the United States, because the fine therefor had been ordered by the court to be paid to the opposite party to reimburse his expenses in the proceedings