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CONTEMPT OF COURT.

(*Concluded from June No. Ante, p.* 373.)

(*Power of Inferior Courts.*)

THE power of all inferior courts is limited to direct contempts committed in the presence of the court. This is especially so as to such courts as the recently created county courts in England, whose powers are limited by the statutes creating them: 4 Stephens's Com. 342, note g; *Rex* v. *Faulkner*, 2 Mon. & Ayrton's Cases in Bankruptcy 332, 339. An inferior court, even of record, cannot punish contempt committed out of court: *Reg.* v. *Lefroy*, L. R., 8 Q. B. 134; 4 Moak 250. For contempt to inferior jurisdictions, not of record nor having a general power to fine and imprison, unless committed in the presence of the officer and punished instanter, there is no other remedy than by indictment. Bac. Abr., *Courts*, E., and cases cited: *Hollingsworth* v. *Duane*, Wallace 77, 92; *Lining* v. *Bentham*, 2 Bay 1; *State* v. *Johnson*, Id. 385; *State* v. *Applegate*, 2 McCord 110. The Commissioners of Sewers, though a court of record, can imprison only for contempt committed in their presence, not for disobedience of their orders: Siderfin 145, A. D. 1663.

As has been mentioned, in speaking of the superior courts, the jurisdiction of inferior courts has no presumption of law in its favor. "Nothing shall be intended to be within the jurisdiction of an inferior court but what is expressly alleged to be so." Of their jurisdiction courts do not take "judicial notice:" *Peacock* v. *Bell*, 1 Saund. 74. But if they have jurisdiction, everything

shall be intended in favor of their judgment: *Brown* v. *Gill*, 2 M., Gr. & Scott 860.

(*Subject to the supervision of the higher courts.*)

A logical result of this principle is, that the power of inferior courts over contempts is subject to examination and control by the higher courts.

The jurisdiction of an inferior court or magistrate must appear on the face of the proceedings, and the warrant or order of commitment must set forth the facts and circumstances of the contempt, so that it may appear affirmatively that the court had jurisdiction, both of the subject-matter and of the offender, and its proceedings must appear to be lawful and regular. This is necessary that the superior court may be fully advised of the rightfulness of the commitment, as otherwise the inferior court could deprive the superior court of its right of review.

As a general rule these principles apply also to courts of limited and special jurisdiction: *Reg.* v. *Paty*, 2 Ld. Raym. 1106; Bac. Abr., *Courts*, D. 2, and D. 4; Vin. Abr., *Contempt*, C 3; 9 Madd. 95; Hurd on Hab. Cor. 415 n; *Kempe* v. *Kennedy*, 5 Cr. 173; *Ex parte Watkins*, 3 Pet. 205; *Ex parte Fernandez*, 10 C. B. N. S. 36; *Matter of Dimes*, 14 Q. B. 555; *Beaubien* v. *Brinckerhoff*, 2 Scam. 274, and note *ad fin.*

To an inferior court "credit is not to be given for conforming itself to the appointed limits of its jurisdiction," and its proceedings must be "holden by averments to show that they were beyond all question authorized and regular:" *Ex parte Fernandez*, *supra* 40.

The jurisdiction of a justice of the peace is limited and contrary to common law, and, therefore, it is necessary to see on the face of his proceedings that he has gone beyond his jurisdiction. ALDERSON, Baron, in *Gosset* v. *Howard*, 10 Q. B. 440; *Reg.* v. *Vickery*, 12 Id. 477. His commitment must be in writing; *Mayhew* v. *Locke*, 2 Marsh. 377; s. c., 7 Taunt. 63. And if a man be committed for contempt by an inferior court or magistrate, and the commitment does not set forth the particular nature of the contempt, the Court of King's Bench, on habeas corpus, will bail the party committed: 2 Hawk. 168, sect. 77. A certiorari lies to all inferior jurisdictions to have their proceedings removed into the King's Bench, to see that they keep themselves within their jurisdiction: 2 Hawk. 399; *Groenwelt* v. *Burwell*, Salk. 145; *Rex*

v. *Clement*, 4 B. & Ald. 218; *Ex parte Fernandez*, 10 C. B. (N. S.) 36, 40; *Hummel and Bishoff's Case*, 9 Watts 421.

If an inferior court have no jurisdiction, or exceeds its jurisdiction, its proceedings are *coram non judice* and void, and its judgments mere nullities: 3 Term Rep. 185; 8 Id. 181, 182; *Beaubien* v. *Brinckerhoff*, 2 Scam. 274, and authorities cited in note; *Thompson* v. *Lyle*, 3 W. & S. 166; *McCormick* v. *Sullivant*, 10 Wheat. 192; *Wilcox* v. *Jackson*, 13 Pet. 498.

We have now to see to what extent the proceedings of inferior courts in matters of contempt will be examined and revised by higher courts.

It is a universal rule that the reviewing court will examine and determine: 1st. If the court below had jurisdiction. 2d. If its proceedings were regular and lawful.

Beyond the limits of this principle there is a great dissimilarity of opinion and practice.

As authorities to sustain this universal rule, decisions which extend this power of review of proceedings for contempt, in these two particulars, to the proceedings in superior courts are, *a fortiori*, in point here, free, of course, of the limitations and qualifications which they attach to the power of review, which may, or may not, apply in case of inferior courts.

Such are the decisions in *Hummel and Bishoff's Case*, 9 Watts 421; *Commonwealth* v. *Newton*, 1 Grant 453; *In re Cooper*, 32 Vt. 253; *Ex parte Mitchell*, 12 Abb. Pr. 249; *People* v. *Kelly*, 24 N. Y. 74; *In re Stokes*, 5 S. C. 71; *Ex parte Burr*, 9 Wheat. 529; *Romeyn* v. *Caplis*, 17 Mich. 449; *Bickley* v. *Commonwealth*, 2 J. J. Marsh. 572; *Rex* v. *Clement*, 4 B. & Ald. 218; *Middlebrook* v. *State*, 43 Conn. 257; *Ex parte Fernandez*, 10 C. B. (N. S.) 3; *Sparks* v. *Martyn*, Ventris 1; *Carus Wilson's Case*, 7 Q. B. 1015.

We come now to cases in accord with those just cited, in which proceedings in an inferior court have been examined in a higher. Taking first, the English cases, we find it laid down by COCKBURN, C. J., in *Re Pater*, 5 B. & S. 299, which was a rule, &c., for a certiorari from the Queen's Bench, to the justices of the Quarter Sessions, to bring up certain orders made by them, that in case of punishment for contempt by a court of inferior jurisdiction, the Court of Queen's Bench has authority to interfere and prevent any usurpation of jurisdiction, and if there is no reasonable ground

for treating as contempt that which the inferior court has considered as such, the Court of Queen's Bench may interfere to protect the party upon whom the power to commit for contempt has been improperly exercised. "We are to see whether there is evidence upon which the Court of Quarter Sessions could reasonably come to the conclusion that a contempt had been committed; we are not to try the effect of the evidence and determine whether their decision was right or wrong." "All we have to see is whether the Quarter Sessions had jurisdiction in the matter complained of." It was, moreover, said by BLACKBURN, J., that "it is very important to bear in mind the distinction between a court of appeal and a court of supervision over inferior tribunals," citing Lord DENMAN in *Carus Wilson's Case*. The Queen's Bench is not in such case a court of appeal. See also *Ex parte Fernandez*, 10 C. B. (N. S.) 25; Ventris 336.

A fine for contempt by an inferior court, and the cause of imposing it will be considered and determined by the Court of Exchequer, the fine being returned into the exchequer on a mandate from the Chief Baron: *Rex* v. *Sheriff of Middlesex*, Sir T. Jones 169.

In *Reg.* v. *Lefroy*, Law Rep., 8 Q. B. 134; 4 Moak 450, a writ of prohibition to the judge of a county court restraining him from proceeding for contempt, was awarded on the ground of want of jurisdiction. Though a court of record, it was an inferior court created by statute. As to examinations on habeas corpus, of commitments by inferior courts, see cases cited by KENT, C. J., in *Yates's Case*, 4 Johns. 358.

A judge of the highest court of South Carolina on habeas corpus for one committed by a justice of the peace, discharged the relator on the ground that the commitment was unauthorized by express law of the state, and there was no precedent to support it. On error to the court in banc, judgment affirmed: *State* v. *Applegate*, 2 McCord 110 (1822).

On habeas corpus in the Supreme Court of New Hampshire (*State* v. *Towle*, 42 N. H. 540, 1861), for one committed for nonpayment of a fine for contempt by a justice of the peace, held, that the court, on habeas corpus, would examine into the jurisdiction of the court which sentenced; if it had no jurisdiction, its judgment would be void, and the prisoner would be discharged. If it had jurisdiction, its judgment could not be collaterally examined on

habeas corpus, but would be final and conclusive till reversed by appeal, writ of error, certiorari, or other proceeding in some higher court. It was doubted whether there was any mode of revising such judgment. The court did not distinguish the case before them from those of contempt to a superior court, citing *Crosby's Case* and others. In a similar case in Wisconsin, the Supreme Court said: "Here we can only inquire if the commissioner had jurisdiction to make the order:" *In re Perry*, 30 Wis. 268.

In cases of contempt, "the rule is well settled" that "unless the proceedings leading thereto are so grossly defective as to render them void, the judgment of commitment cannot, in the absence of statute, be reviewed in another tribunal," certainly not on habeas corpus: *Robb* v. *McDonald*, 29 Iowa 330.

A principle adopted in many cases is that proceedings in matters of contempt are not reviewed upon their merits.

The reviewing court will not examine into the facts of the case and re-try the question of contempt or no contempt, if by any fair intendment the facts or the words used could constitute contempt. This is a matter for the decision of the court which punishes, provided that they had jurisdiction, and in such case the examining court will not control their discretion and re-open a matter already decided by a court of competent jurisdiction.

This principle is stated in terms comprehensive of all courts in various cases cited before, where proceedings in superior courts were brought under examination in another court. Such are *In re Crawford*, 13 Ad. & E. (N. S.) 613; *In re McAleece*, 7 Irish C. L. 152; *Carus Wilson's Case*, 7 Q. B. 1015; *Hummel & Bishoff's Case*, 9 Watts 421; *In re Cooper*, 32 Vt. 253; *Bickley* v. *Commonwealth*, 2 J. J. Marsh. 575.

And it has been held to be in force as regards inferior courts in cases where their proceedings were reviewed (*In re Pater*, 5 B. & S. 299), even as regards justices of the peace: *Clark* v. *People*, Breese 266.

In contradistinction of this principle on the other hand, several cases have been cited above, where proceedings for contempt in superior courts were reviewed on their merits, the examining court entering fully into the facts of the case; such are *Whittem* v. *State*, 36 Ind. 196; *Stuart* v. *Commonwealth*, 3 Scam. 395; *Ex parte Biggs*, 64 N. C. 202; *Re Pryor*, 18 Kan. 72; and where even the discretion of the committing court was criticised, as in *Cabot* v. *Yar-*

borough, 27 Ga. 476; *Dobbs* v. *State*, 55 Id. 272; in these states it is to be presumed that the same action would be taken in regard to proceedings of inferior courts.

In *People* v. *Justices, &c.*, 1 Johns. Cas. 181 (1799), the Supreme Court of New York considered the case of an attorney stricken off its rolls by the Court of Common Pleas of Delaware County, and after hearing affidavits, &c., decided that the grounds of removal were insufficient, and awarded a mandamus to the lower court to restore the attorney. It was held that the Common Pleas was an inferior court. It is to be noted that by Act of Legislature one removed from office as an attorney of the Common Pleas could not practice in the Supreme Court, and had the Supreme Court no power to revise the proceedings in the Common Pleas, their control over their own officers would have been interfered with.

And it seems that in South Carolina in a collateral proceeding, a suit for damages, evidence will not be received to contradict the commitment of the magistrate as to the facts of the contempt; certainly not that of one connected in the matter with the offender: *Lining* v. *Bentham*, 2 Bay 1 (1796).

But in the *State* v. *Johnson*, Id. 385, which was an indictment for oppression by a justice of the peace in committing for a contempt before him, the Court of Errors, on motion for a new trial on conviction, considered the facts of the case fully, and decided that they fully justified the commitment.

In contradiction of *Lining* v. *Bentham*, it has been held in Michigan (*In re Morton*, 10 Mich. 208), where a habeas corpus was brought in the Supreme Court for one committed by a justice of the peace in not answering as a witness before him, that the court would go behind the commitment to receive evidence to show want of jurisdiction of the proceeding by the justice.

In *Stokeley* v. *Commonwealth*, 1 Va. Cas. 330 (1812), the General Court of Virginia, in the case of one fined for contempt by a county court, from which a writ of error to the Superior Court had been taken, and the case adjourned thence to the General Court, held that the Superior Court had jurisdiction of the case, the fine being imposed by an inferior court, and that from the facts stated in the record, the accused was not guilty of contempt to the county court. On habeas corpus in the Supreme Court of New York for one committed by the Surrogate's Court, the Supreme Court held that "the acts set forth in the commitment do not amount to a criminal contempt:" *Matter of Watson*, 3 Lansing 408 (1870).

From an order of court refusing to punish for a contempt, it was doubted in *First Church* v. *Muscatine*, 2 Clarke (Iowa) 69, whether any appeal lay.

But in *Ex parte Chamberlain*, 4 Cowen 49, it was held that the exclusive power of courts over their own contempts was subject to an exception where the civil rights of a person are involved, and the object of the proceeding is to secure them. In such cases the Supreme or Appellate Court will compel the lower one by mandamus to issue an attachment for contempt offered to the lower court: *Mining Co.* v. *Fremont*, 7 Cal. 130. In such cases there is a right of appeal in New York and Wisconsin: *Sudlow* v. *Knox*, 7 Abb. Pr. N. S. 411; *Shannon* v. *State*, 18 Wis. 604.

(*One court will not punish contempt to another.*)

As a corollary to the rule that courts are exclusive judges of their own contempts (*Ex parte Chamberlain*, 4 Cowen 49), it follows that no court will punish or take cognisance of contempt to another: *Johnston* v. *Commonwealth*, 1 Bibb 598.

In *Ex parte Tillinghast*, 4 Pet. 108, the Supreme Court of the United States, MARSHALL, C. J., refused to consider as an objection to the admission of a counsellor to its bar that he had been stricken off the rolls of the United States District Court, saying: "This court does not consider itself authorized to punish here for contempts which may have been committed in that court."

In England, the King's Bench would not issue an attachment for a contempt to an inferior jurisdiction as that of a justice of the peace: *Rex* v. *Burchett*, Str. 567.

Nor will the Supreme Court of Pennsylvania punish contempt to the process of another court, such as the Common Pleas of a county: *Penn* v. *Messinger*, 1 Yeates 2.

IV. STATUTORY CHANGES AND LIMITATIONS OF THE COMMON LAW AS TO CONTEMPT.

A full discussion and statement of the modifications of the comlaw as to contempt of court made by the several states would occupy too much space here. It would, moreover, be of little use, such modifications in any state being comparatively unimportant in the others.

Some observations on this general tendency may not be out of place.

As a rule, the design and effect of such alterations has been to

narrow the definition of the offence, diminish the classes of persons to whom it can be imputed, and restrict the power over it of the courts, especially by limiting their power to fine and imprison.

Very noticeably is this the case as regards constructive contempts by publication, &c., (which have been abrogated as regards the federal courts: *United States* v. *Holmes*, Wall. Jr. 1; Rev. Stat. U. S. 137, sect. 725), in Pennsylvania, where, till the Act 3d April 1809, the common law regulated the power of the courts (*Hummel & Bishoff's Case*, 9 Watts 431), and in Mississippi and several other states where contempts not *in facie curiæ*, by persons other than officers of the court, jurors, parties and persons served with process do not exist: Bishop Cr. Law, sect. 257; *Ex parte Hickey*, 4 Sm. & M. 751. The change has done away with a power which might infringe the liberty of the citizen: PORTER, J., of C. P. in *Hummel & Bishoff's Case*, *supra*, 423.

As an illustration of this tendency may be mentioned two very interesting cases which occurred shortly after the Revolution, in Pennsylvania, and just after the adoption by that state of the Constitution of the United States. These were *Res.* v. *Oswald*, 1 Dall. 329, and *Res.* v. *Passmore*, 3 Yeates 441.

In the first, the contempt was a publication in the newspaper of the offender relative to a case pending in court, calculated to prejudice the public and excite doubts as to the integrity and impartiality of the judges. The offender refused to answer interrogatories and was fined and imprisoned for a month, and till payment of the fine and costs. He memorialized the General Assembly, where the matter was much discussed, and an unsuccessful effort made to impeach the judges. The second case was similar and resulted in impeachment of the judges, who were acquitted, and in the passage of the Act of 1809.

In the United States the power of the courts in this respect has been looked on with jealousy, and a very strong disposition shown to restrict it, as in the instances just cited.

It has been declared to be "arbitrary" in its nature (*Batchelder* v. *Moore*, 42 Cal. 412), to be an exception to the provisions of the Constitution of the United States, and not to be extended in the least degree beyond the limits imposed by statute. *Rutherford* v. *Holmes*, 6 Hun. (N. Y.) 317; *Bergh's Case*, 16 Abb. Pr. (N. S.) 266; *People* v. *Jacobs*, 66 N. Y. 8.

A commitment "till the further order of the court" has been said not to "consort with our free institutions:" *Ex parte Alexander*, 2 Am. Law Reg. 57.

The result of the tendency which has prevailed in this country to limit the power of the courts over this offence is strikingly exemplified in a case of recent occurrence in Pennsylvania (*Commonwealth* v. *Curtis*, 37 Leg. Int. 83). A habeas corpus had been issued for the body of an infant, and duly served on one of the parties having custody of it; the other avoided service by absconding with the infant, being aided and warned by the party who had been served; the child was taken out of the state, and the process of the court rendered nugatory. The offence had not "one mitigating feature to break the force of the law's condemnation;" legal process had been treated with "utter contempt," yet the court could only fine the offender, the party served, who, in default of payment thereof, could only be imprisoned for three months.

In some states, the common law as to contempt of court has been but little changed; such is the case in Illinois, where the constitution of the state regulates the common law: *Storey* v. *People*, 79 Ill. 45 (1875); Connecticut, where, however, the power of the courts to fine and imprison is limited: *Middlebrook* v. *State*, 43 Conn. 257; *Tyler* v. *Hamersley*, 44 Id. 393; it is also provided by statute that grand jurors shall have in this respect the powers of a justice of the peace; Maine, see Rev. Stat. 1871; New Hampshire, in which it is provided by statute that contempts by an attorney shall be summarily inquired into, and that the Supreme Court, or a justice thereof, may revise proceedings for contempt where a person is imprisoned or restrained by any other authority than the Supreme Court (Revision of 1867).

In Rhode Island, there is no statutory law of contempt (Gen. Stat. 1872); and in Vermont the only provisions are those giving a writ of habeas corpus in the Supreme Court to persons imprisoned therefor, regulating the proceedings thereon, and specifying certain causes of discharge (Gen. Stat. 1870).

In Kentucky (Gen. Stat. 1873), no court can fine beyond thirty dollars, or imprison for more than three hours without sending the offender before a jury, where the truth of the matter may be given in evidence; the jury can fine and imprison at discretion.

In the Code of Virginia (1873), and of West Virginia (1868),

the same peculiarity is found, the power of the court to punish without the intervention of a jury being limited; but the court can call a jury to determine the proper amount of punishment. It is also provided by the Code of Virginia that the governor may remit the punishment for contempt.

By the Code of Tennessee, the power of the courts over contempt is statutory only, their common law powers being entirely abrogated (Statutes 1871).

In Massachusetts, a limited power to fine and imprison is conferred by statutes on courts-martial (Rev. 1859); in New Hampshire on notaries public (Rev. 1867); in South Carolina, on county commissioners acting as such (Rev. Stat. 1873); and in Missouri, arbitrators of causes have, in this respect, the power of justices of the peace (Rev. Stat. 1845).

The New York statutes provide, among other things, that in case of injury to any one, the fine for contempt shall be made of such amount as will indemnify him (Fay's Dig. 1874).

And in Oregon, in the like case, the court may adjudge in addition to the punishment for contempt, a sum sufficient to indemnify the injured party (Gen. Laws of Oregon 1843–1872).

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[1] Since the above was written, there has been decided by Judge HAMMOND, D. J., in the United States Circuit Court, Western District, Tennessee, the case of *United States ex rel. Southern Express Co.* v. *Memphis & Little Rock Railroad Co. et al.*, 6 Fed. Rep. 237.

This was a contempt of court by breach of an injunction by a foreign corporation, acting through its agents within the jurisdiction of the court. The violation was deliberate and intentional on the part of the superior officers of the corporation who were *out* of the jurisdiction of the court, and issued their orders to their subordinates *within* it.

The necessity of obedience to their superiors would have mitigated the offence of these subordinates had not the evidence disclosed a too great readiness on their part to obey the order of their superiors and disregard that of the court; certain of them were, therefore, fined, and committed till payment of fine and costs. This was authorized by the Acts of Congress, which have prescribed the punishment of fine or imprisonment for contempt of court.

The corporation also was fined, on the ground that a corporation, where amenable to the criminal law, may be so punished (citing Bish. Cr. Law, 6th ed. sect. 424).

As a corporation, though it has no soul, nor indeed, a body, has a pocket, it would seem to be in accordance with reason and justice that it should be fined, whenever guilty of any offence so punishable. No difficulty stands in the way of enforcing this penalty, such as exists in carrying out that of imprisonment. A corporation

may be guilty of a tort, is liable for damages for neglect of duty, and may be sued in trover, and in trespass for the act of its agent when "*directed, suffered or ratified by the corporation;*" Angell & Ames on Corp., sects. 384, 385, 386–9. For a non-feasance it is indictable without doubt, and even for certain wrongful acts, it has been held that an indictment may be maintained: Id. sects. 395–6. See also U. S. Dig., *Corp.* V., pl. 1311–1326; 1 Bish. Cr. Law, sect. 420. It would seem to be a logical sequence of these principles, that, as is said in 2 High on Injunction (6th ed.) sect. 1460: "A court of equity has jurisdiction to punish a corporation as well as a private person for contempt in violating an injunction." As authority for this are cited *Mayor* v. *N. Y. & S. I. F. Co.*, 64 N. Y. 622 (1876), where for violation of an injunction by its president, a corporation was fined, and the president fined and imprisoned; and *Stokes* v. *Banbury Board of Health*, Law Rep., 1 Eq. 42, where, in a like case, sequestration was granted against the property of the corporation. And also *People* v. *A. & V. Railroad Co.*, 12 Abb. Pr. 171.

Two very interesting cases, involving conflict of jurisdiction between federal and state courts, have recently occurred in Missouri, reports of which have been forwarded by T. K. Skinker, Esq., Reporter of the Supreme Court of Missouri.

In the case of *United States ex. rel. Knapp* v. *The Judges of the County Court of Scotland county, Mo.*, United States Circuit Court, Eastern District Mo., May 21st 1881, a peremptory writ of mandamus had been issued and served on the respondents, requiring them to levy a tax in their county to pay a judgment obtained by the relator on certain railroad bonds of the county. Summoned to show cause why they should not be punished for contempt in disobeying said writ, they answered that, on service on them of said writ they had at once, under a state statute (Rev. Stat. Mo. 1879, sects. 6798–6806), caused the county attorney to present a petition to the judge of the Circuit Court of Scotland county, for leave to levy said tax. The Supreme Court of the state having previously decided that the subscription under which plaintiff's bonds were issued was void, the Circuit Court judge, feeling himself bound by said decision, had declined to grant leave to make said levy. That said statute prohibited respondents from making such levy without leave as stated, under penalty of fine and vacation of their offices. This statute, which had been passed long after the issue of the bonds in question, had been held by the federal courts of this circuit to be inoperative as against such bond. See *United States* v. *Lincoln County*, 5 Dillon C. C. 184.

TREAT, D. J., accordingly held this answer insufficient, and, respondents declining to answer further, sentenced them to imprisonment for three months, or until such time within the three months as they might sign and file a paper expressing a willingness to make the levy.

The same order was made in a second case against the same respondents.

In the case of *Hoff* v. *The Collector of Jasper County*, United States Circuit Court, Western Division, Western District, Mo., May 19th 1881, before MILLER and KREKEL, JJ., the County Court of Jasper County, in obedience to a peremptory writ of mandamus from the United States Circuit Court, had caused a tax to be levied in Marion township to pay a judgment on railroad bonds of the county obtained by Hoff. The Circuit Court of the county had enjoined the collector from enforcing collections; thereafter an alias peremptory writ had been issued and served on the collector requiring him to proceed with the collections. Three months after service of the writ his term of office had expired, and his successor had been installed, but meanwhile he had made no effort to obey the writ, but had rather dissuaded such persons as were willing to pay their taxes.