

POWER OF COUNTY COURT JUDGES TO COMMIT FOR CONTEMPT.

the Act. Lord Chief Justice Cockburn, in giving judgment, pointed out that if the County Courts, in the absence of express provision, possessed the same powers of punishing for contempt as the Superior Courts (that is, by indefinite imprisonment for contempts either *in facie* or *extra faciem curiæ*), there would be an obvious inconsistency in limiting the imprisonment for a gross contempt in the face of the Court to seven days, and to allow it, in the case of a contempt committed out of Court, to be extended to months or even years.

It was mainly on the authority of this case that Sir R. Harrington declined to commit the defendant for contempt for refusing to obey the injunction of the Court, on the ground that he had no jurisdiction to order a committal for a contempt not committed *in facie curiæ*, and not being one of the contempts mentioned in 9-10 Vict. c. 95. While, however, intimating that he felt bound by this decision he does not conceal that he disapproves of the reasoning on which it is founded; and while fully concurring in the opinion of the Court that the jurisdiction of an inferior court, though a court of record, is limited to those contempts which are actually or constructively committed *in facie curiæ*, he strenuously disputes the accuracy of the assumption that the jurisdiction of County Courts to commit for contempt is wholly founded on, and limited by sections 13 and 14 of 9-10 Vict. c. 95. Referring to the argument of Sir Alexander Cockburn, L.C.J., above mentioned, he says:—

“The attention of the learned Lord Chief Justice does not appear to have been called during the argument to the provisions of 28-29 Vict. c. 99, ss. 1 and 2, or we should probably have heard some further observations on the inconsistency and anomaly introduced by the Legislature itself in giving to a judge of these limited powers in ordinary matters the power to punish by imprisonment at discretion the breach of any order of Court, in however trivial a matter, made under the powers of the Act. For, notwithstanding *Regina v. Lefroy* (i.e. *Ex parte Jolliffe* above cited), I do not think it can be doubted that the language of 28-29 Vict. c. 99, s. 2, is strong enough to give the Judge of the County Court the same power to punish contumacious disobedience to orders of court *quoad* the subject-matter

of the Act as was then possessed by the Vice-Chancellor; and, if this had been a proceeding under that Act, I should have no hesitation in exercising, if I had thought it otherwise just, the power of commitment.”

We may add that this view of the power conferred by the Act just mentioned is confirmed by the order, rule, and forms under it. The order and rule prescribe the steps to be taken for committing for contempt for disobeying injunctions, and there is a form of order of committal given for disobeying injunctions. (See Order XVI., Rule 6; and Forms 41, 42, and 43.)

We cannot help remarking here that it seems rather a strange circumstance that the injunction was not applied for under the above Act, instead of under the Judicature Act, 1873. In looking through the form for an order of commitment for breach of injunction, we find, among the examples of matters ordered or forbidden by the injunction, the discontinuance of certain nuisances, as the obstruction of the plaintiff's light, &c.; from which it seems pretty clear that this case would have come under that Act. Again, although the injunction was granted under the provisions of the Judicature Act, 1873, if the application to commit the defendant for disobeying it was made without reference to the provision of any particular statute, would it not have been open to the judge to order the commitment under the above Act.—viz. 28-29 Vict. c. 99?

There is unquestionably some solid reasoning in support of the view that the Court of Queen's Bench erroneously decided that the power of committal by the County Court is limited to the case mentioned in sections 13 and 14 of 9-10 Vict. c. 95. The weak part of that decision is that, in limiting the power to the cases enumerated in those sections, you deprive the Court of the power of committal in cases which are at least constructively contempts *in facie curiæ*. Take for instance, the case of witnesses or others who remain in Court after an order that they should retire. Take, again, the case of a witness who refuses to answer a material question when ordered by the Court to answer it. These would be contempts *in facie curiæ*; but if the power to commit is limited to the cases