

## CONTEMPT OF COURT.

commit for contempt should be limited to cases where the offence was committed in the actual presence of the judges.

One of the judges in the minority gives expression to opinions which have met with great popular and journalistic approval in the States. He says :

"I am not, however, unmindful that courts of the highest authority in this country and in England have assumed jurisdiction to punish in a summary manner, and on their own motion, what are termed constructive contempts, such an one as is sought to be set forth in the information filed. The exercise of this extraordinary power by a court of final jurisdiction has ever been regarded as of questionable authority, and one liable to great abuse, and which might become dangerous to the liberty of the citizen. The objection proceeds on the ground that the court ought to assume to be the best judge of the offence against itself, and of the mode and measure of redress where the law has provided, and where in the very nature of things there can be no mode of reviewing the action of the court in the premises. There has always existed jealousy against the exercise of arbitrary power by any tribunal supposed to be derived from common law sources, and not expressly granted by constitutions or the laws enacted by legislative assemblies. It must be conceded that public journals have the right to criticise freely the acts of all public officers, executive, legislative and judicial. It is a constitutional privilege that even the legislature cannot abridge. Such criticisms should always be just, and with a view to promote the public good. In case the conduct of any public officer is wilfully corrupt, no measure of condemnation can be too severe ; but when the misconduct is simply an honest error of judgment, the condemnation ought to be mingled with charity. The public have a profound interest in the good name and fame of their courts, and especially of the courts of last resort. Everything that affects the well-being of organized society, the rights of property, and the liberty of the citizen, is submitted to their final decision. The confidence of the public in the courts should not be wantonly impaired. It is all-important to the due and efficient administration of justice that the courts of last resort should in a full measure possess the entire confidence of the people whose laws they administer. All good citizens will admit that he who wilfully and wantonly assails the courts by

groundless accusations, and thereby weakens the public confidence in them, commits a great wrong, not alone against the courts, but against the people of the commonwealth. But who shall furnish the remedy ? Shall the court that is assailed or shall the legislative power of the State ? In my judgment, there are many and politic reasons why the legislative power alone should provide the remedy, if any should be found to be necessary. It is far better that the judges of the courts should endure unjust criticism and even slanderous accusations, than to interpose of their own motion to redress the offence against themselves, where the offence complained of is not committed in their immediate presence. It is a matter of public history that it has been the policy of the press in this country to uphold and maintain the dignity of the courts. If a contrary policy should ever be inaugurated in the state to such an extent as to seriously affect the reputation or impair the efficiency of the courts in the administration of the law, I have no doubt that the Legislature can afford an appropriate remedy. It was said by this court in the case of *Stuart v. The People*, that "respect to courts cannot be compelled ; it is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found on the judgment seat, so long and no longer will they retain the public confidence."

The *Chicago Legal News* (from which we take our report of the case) pronounces the whole proceeding "tyrannical and arbitrary, and contrary to the spirit of the Constitution," and it advocates the passing of an act by which the power of the State Courts to punish for contempt should be defined by statute, and their common law powers in that respect be abolished. This it appears is the position of the Supreme Court of the United States.

However republican license may be defended at the decision of the Court in the Journal Contempt Case, we think there is no reasonable doubt that it is in harmony with the spirit of the English decisions, though none are cited therein, and there is equally little doubt that the tenor of the whole article was a gross insult to the Court. When the power of the press is so much exalted as it is now-a-days, there is a tendency to make it, as "The