

1875. And in *Bickford v. Skewes* (a) a plaintiff endeavoured to postpone a trial directed to be brought by him, on the ground that the defendant was in contempt for non-payment of costs, but he did not succeed.

Mitchell  
v.  
Mitchell.

In *Cattell v. Simons* (b) the plaintiff was in contempt for non-payment of costs, and there being costs which the defendant was ordered to pay to the plaintiff, the plaintiff moved to set off the costs, being an application for relief against the process of attachment. The defendant filed an affidavit, which was alleged to be scandalous and impertinent. It was held that pending the proper motion, the plaintiff, though in contempt, was entitled to an order referring the affidavit for scandal and impertinence.

Judgment. In *Futvoye v. Kennard* (c) the plaintiff moved to discharge an order authorizing the defendant *Wesley* to rent a space in the Crystal Palace Bazaar, at a rent which he alleged was insufficient, and charging the receiver with acting in the interest of the other defendants, and he was permitted to do so although he was in contempt for non-payment of costs of a motion.

In *Haldane v. Eckfrid* (d) a defendant, in contempt for not having made an affidavit of documents, was held entitled to an order that plaintiff should make an affidavit of documents. The Vice-Chancellor held that though the contempts committed had been of the most flagrant kind, as these documents were required by the defendants for the purpose of defending themselves, he had no jurisdiction to refuse the order.

In *Fry v. Ernest* (e) Wood, V. C., says, "There can be no doubt that notwithstanding a defendant is in

(a) 10 Sim. 193.

(c) 2 Giff. 110.

(e) 9 Jur. N. S. 1151.

(b) 5 Beav. 396.

(d) L. R. 7 Eq. 425.