

It will be seen that while the latter proceeds on a definite adjudication of contempt: the writ of attachment is more in the nature of a summons to shew cause. The party is to be brought before the justices to answer his *alleged* contempt. Should he attempt to answer and fail to make out any defence, then, strictly speaking, an order of committal should be made.

It may be well asked how did these two proceedings come to be in a measure confounded with each other. We can only offer a conjecture. An attachment being issued against a party for contempt and he being in custody, if he desired to shew cause he would have to obtain, according to the ancient procedure, a *habeas corpus cum causa*,* and on the return of that writ apply for his discharge by shewing that he had not been guilty of the contempt charged. If, however, he had in fact no cause to shew, there would obviously be no object in incurring the expense of a *habeas corpus*, and he would remain in custody under the attachment as if there had been a formal adjudication made against him. In this way an attachment would come to have the same effect as a committal and the distinction between the two proceedings would be apt to be lost sight of.

Under the former procedure in Chancery, attachments were in some cases issuable on praecipe as of course. These were cases in which the contempt appeared by the records of the Court, as, for instance, where an affidavit was required to be filed, and no affidavit was in fact filed, or the alleged contempt appeared by affidavit filed. There the contempt was *prima facie* made out and the writ issued as of course, without any formal adjudication. But in such a case it would be competent for the party attached to rebut the *prima facie* case of contempt, and to shew if he could that he was in fact guiltless. The attachment would not be conclusive evidence of contempt any more than a *ca. re* would be evidence that the defendant was liable to the plaintiff as alleged. But in the case where a party in contempt was not liable to be attached in this summary way and a

*See Tidd's Forms (6th ed.) 130.