

POWER OF COUNTY COURT JUDGES TO COMMIT FOR CONTEMPT.

enumerated in the above sections, it would not extend to them. No doubt, as regards the case of a witness refusing to answer, the framers of the Act seem to have treated the case as one not involving a contempt *in facie curiæ*, and by section 98 prescribe another mode of dealing with such a witness—viz. by fine. But what of the other case, and many similar ones which one can easily conceive may at any moment arise? We have very little doubt, had the Court of Queen's Bench foreseen the effect of its decision—not in the merely granting or making absolute the rule for the prohibition, but in founding that decision on the assumption that 9-10 Vict. c. 95 impliedly limited the power of committal for contempt to the cases therein specified—it would have strictly based its conclusion simply on the ground that the contempt in that case was *extra faciem curiæ*. Had the decision gone on this ground alone, the County Court Judge in the present case may consistently with it have ordered a committal, as the case is very different indeed from *Regina v. Lefroy (Ex parte Jolliffe)*; for there there was no pretence for contending that even constructively the contempt was *in facie curiæ*; whereas, in the present case it may very well be contended that disobedience to an order of the Court comes under the scientific conception of a constructive contempt *in facie curiæ*. It was, however, impossible, in the face of the judgment in the Queen's Bench, even assuming this to have constituted such a constructive contempt, to hold that the Court had the power to commit for it, as it is not one of the cases mentioned in section 13.

We confess, however, that we are not altogether satisfied by the reasoning which appears to have led Sir R. Harrington to the conclusion that the Judicature Act of 1873 did not empower him to make the order. He seems to us to attach undue importance to the circumstance that the provision giving the inferior "Court" certain powers, in language certainly wide enough to include that of committal for contempt in disobeying its orders, is not followed by a provision corresponding with that of 29-30 Vict. c. 99, giving the "judge" similar powers. The omission of this in the

Judicature Act of 1873 does not seem to have been intentional; and the word "Court," as applied to County Courts, seems inevitably to include the judge of the Court. Had it been a provision relating to the Court of Bankruptcy, with regard to which it was held that a judge thereof did not come under the word "Court" (*Regina v. Faulkner*, 4 Law J. Rep. Exch. 308), the inferences may have been sustainable. But, as was pointed out in the argument in *Regina v. Lefroy*, that decision could not apply to the County Court, in which there was only one judge. Again, the conclusion drawn from the case of *Dawkins v. Rokeby* (cited from L. R. 8 Q.B. at p. 267; s.c. 42 Law J. Rep. Q.B. 63, in which it was laid down—but only as an *obiter dictum*—that the imprisonment of the defendant is no "redress" to the plaintiff), against including commitment for contempt for disobeying an injunction in the term "redress" used in the Judicature Act, 1873, does not seem to be accurately deduced. In the case of *Dawkins v. Rokeby* it was the imprisonment of a false witness which was stated not to be "redress" to the person against whom the false evidence was given. Here, as the imprisonment would tend, though only indirectly, to cause a discontinuance of the grievance which was the foundation of the proceeding, it may very well be contended that it would come under the word "redress." Again, the ground for holding that in this case imprisonment for disobeying the injunction would not be a "remedy" within the meaning of Judicature Act of 1873, is not more satisfactory. It is simply an opinion that the word applied rather to the granting of the injunction than to the proposed measure for enforcing the remedy already granted. But how can an injunction which the Court itself declines to enforce, by the only means by which it can enforce it, be called a remedy? The learned judge, however, points out that the remedy by injunction is not wholly nugatory, as the defendant may be proceeded against by indictment for disobeying it. As we do not see how an indictment could tend to the discontinuance of the original grievance, except through a corrupt compromise, we fail to see how the liability to