In the Matter of the Application of JOHN FERGUSON for a Writ of Prohibition against the District Judge of Colombo.

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District Courts—Power of, to punish for contempt not committed ex facie—Appearance of accused—Plea to jurisdiction after application for time to adduce evidence—Ordinance No. 11 of 1868, s. 78—Power of Supreme Court to issue writ of prohibition—Contempts cognizable by Superior and Inferior Courts of Record.

When a party appears before a District Court on a rule *nisi* issued on him to show cause why he should not be attached for contempt, and asks for time to adduce evidence, he is not precluded from subsequently pleading to the jurisdiction of the Court.

A writ of prohibition is a remedy *ex debito justitiæ*, and lies before or after sentence, and it is not necessary that a party applying for it should, as in applications for injunctions, show that he would be otherwise without remedy.

If a party have two remedies given him by law, the existence of one will not prevent his taking advantage of the other, particularly if the latter remedy is likely to be more prompt and certain than the former. And so, a writ of prohibition on a District Judge may issue in cases in which an appeal lies upon his orders.

A District Court is a Court of Record, and has power to punish summarily contempts committed in the face of the Court, such as insult to the Judge, interruption of the proceedings of the Court, disobedience to its lawful orders or process, obstruction to its officers in the execution of its processes or orders, &c.

District Courts cannot be viewed as representing in this Colony the Superior Courts of Law and Equity in England, and they have not the powers vested in these Courts as to summary attachment for contempts in respect of acts done out of Court.

The Supreme Court of Ceylon has all the powers for punishing for contempt, wherever committed in this Island, possessed by the Superior Courts of Westminster.

Semble, there is no distinct recognition in Roman-Dutch law authorities of the right of a Judge to deal summarily with contempts not committed in the face of the Court, nor committed by way of obstruction to its orders, or with reference to any suit or proceeding pending in the Court.

THE facts of this matter are fully stated in the judgment of the Supreme Court.

Ferdinands, with *Alwis*, appeared for the applicant.

Samuel Grenier, for Mr. Thomas Berwick, the District Judge of Colombo.

Cur. adv. vult.

3rd November, 1874.

The following judgment of the Collective Court, consisting of MORGAN, A.C.J., STEWART and CAYLEY, J.J., was delivered by MORGAN, A.C.J. :—

This is an application for a writ of prohibition to restrain the District Judge of Colombo from further proceeding in the matter

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of a certain rule *nisi* issued by him against one of the Editors of the *Observer* newspaper, calling upon him to show cause why he should not be attached for the publication of an alleged false and defamatory libel on the administration of justice and the conduct of judicial business in the District Court of Colombo, contained in the form of a letter entitled "The Same," and signed "A B C," in the issue of the newspaper of Friday, the 25th September.

This Court, having heard counsel in support of the application on the 6th ultimo, considered that cause had been shown for a rule *nisi* being granted, and ordered the same to issue with a stay of proceedings in the District Court until the application for the writ of prohibition could be disposed of in this Court. The rule came on for hearing on the 16th ultimo, when both parties were ably represented, and this Court derived valuable assistance from the arguments advanced and the authorities quoted by the counsel respectively.

Certain preliminary objections were taken to the prohibition applied for, on the grounds (1) that the applicant having appeared before the District Court, and having failed to take at the outset a plea to the jurisdiction, but having, on the contrary, asked for time to adduce evidence, was debarred from afterwards taking such objection ; (2) that prohibition only lies after sentence ; (3) that the applicant has failed to show, as it was necessary for him to do, that the refusal of the writ would leave him without remedy ; and (4) that prohibition was not the proper remedy, inasmuch as a full right of appeal is given to parties aggrieved by the order of a District Court.

The parties are not agreed as to whether the applicant applied for time to call evidence only, or to show cause generally, adducing evidence if necessary. But this is not material, for in appeals from the decision of Police Courts, where, as in applications like the present, there are no written pleadings, this Court commonly allows objections to the jurisdiction to be made, although not taken in the first instance. It may be observed, moreover, that the course adopted by the District Court in the present case was a novel one, and the proceedings being of a summary nature, the applicant might reasonably be unprepared, in the first instance, to take all the objections to which they were fairly open.

The case is not one of a criminal information or of a civil suit in a District Court, where the defendant, who is required to enter into a formal plea, is bound to plead to the jurisdiction, if he intends to rely on that defence ; and consequently it is not such a case as is provided for by the 78th section of Ordinance No. 11 of

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1868. It is also to be observed that the present objection is not one of jurisdiction simply. It relates not merely to the competency of the District Judge to take judicial cognizance of a certain act, but to the mode of procedure to be adopted. Indeed, it goes to the whole root of the case.

With regard to the second and third objections, we may observe that a writ of prohibition is a remedy *ex debito justitiæ*, and lies before or after sentence (7 *Com. Digest, Prohibition, D*), and that it is not necessary that a party applying for this writ should, as in applications for injunctions, show that he would be otherwise without remedy. As to the fourth objection, it may be answered that the relief of appeal may not prove adequate, for it is left discretionary with a Court to stay the execution of a sentence pending appeal.

If a party have two remedies given him by law, the existence of the one will not prevent his taking advantage of the other, particularly if the latter remedy is likely to be more prompt and certain than the former. If, indeed, a prohibition will not issue in any case in which an appeal could lie, it is difficult to see to what cases arising in the District Courts it could ever be made applicable ; for the appellate jurisdiction of the Supreme Court extends to the correction of all errors of fact or law committed by the District Courts ; there is an appeal against any order, whether final or interlocutory ; and yet the power of issuing writs of prohibition is given to the Supreme Court by the Charter and the Ordinance No. 11 of 1868, without any qualification.

The preliminary objections being thus disposed of, the right of the applicant to the writ applied for remains next to be considered. That right is based on the alleged want of jurisdiction in a District Court to punish contempts not committed in the face of the Court, or by way of obstruction to its lawful orders or process.

This is set out in the affidavit on which the application for prohibition is based, and, on reference to the newspaper containing the letter constituting the alleged contempt, which is filed of record, it appears to contain comments on the conduct of judicial business in the Court, having no reference, however, to any pending cause.

A Court empowered like our District Courts to fine and imprison and to keep a record of its proceedings is a Court of Record (*Hawkins' Pleas of the Crown, cap. 1, section 14*), and Courts of Record have undoubtedly the power to punish summarily contempts committed in the face of the Court. Such power is inherent in such Courts, and rests on the necessity of preserving

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for them that decent respect, without which they cannot carry on their proceedings or maintain their just authority.

It would be difficult to give a specific enumeration of such acts of contempt, but they may be referred to generally as including any insult to the Judge while in the discharge of his duties, such as interruption of the proceedings of the Court, disobedience to its lawful orders or process, obstruction to its officers in the execution of its process or orders, and other acts of a like nature.

The question for consideration, however, in this case is more limited in its character.

It is contended by the learned counsel for the applicant that, though Courts of Record have power to punish contempts committed in the face of the Court or by way of obstruction to its lawful order or process, yet that contempts such as the act in question can fall within the cognizance of Superior Courts only; and this point was fully argued on both sides. The immediate questions for consideration, therefore, are (1) the existence of such distinction; and if this be established, (2) whether our District Courts are to be considered Superior or Inferior Courts.

As to the existence of such distinction, all the reported English cases, in which the power of summarily punishing contempts committed not in the face of the Court or by way of obstruction to its orders has been upheld, are cases from the Superior Courts and the Court of Assize and *nisi prius*, of which latter the Lord Chief Baron, in delivering the judgment in *ex parte* Fernandez, observed that it was a Superior Court. "The "Court," said Mr. J. Willes, "held for that purpose" (Judge sitting at *nisi prius* for the trial of Crown causes) "is the Superior "Court itself, sitting by one of its members, with a jurisdiction "limited for a time to certain special matters, but with all the "powers of the Supreme Court as to such matters." (*1 Jur., pt. 1, p. 529; 30 L. J. Exch. 86*).

The particular question as to the right of Inferior Courts to punish contempts committed out of Court arose in the case of *ex parte* Jolliffe, which came before the Queen's Bench last year. At the hearing of a case, a County Court Judge made observations reflecting upon the conduct of an attorney. While the case was pending, the attorney published letters in a newspaper, accusing the Judge of tyranny and injustice. The Judge cited the attorney to appear before him for contempt of court. A rule for prohibiting to restrain the Judge from taking proceedings having been applied for, a discussion arose as to the power of Inferior Courts of Record to commit persons for contempt in respect of acts done out of Court (*Law Times*, November 23.

1873). Mr. Justice Blackburn asked the counsel pointedly if he was aware of any authority as to the power of an Inferior Court of Record to take cognizance of such contempts. Sir J. Karslake could not cite any express decision precisely in point, but referred to two cases, one from the Isle of Man (*re Crawford, 3 Jur. 955*) and the other from British Guiana (*MacDermott, 5 Moore P. C. 469*), adding that they were both cases from the Supreme Court of those places.

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The Supreme Court of the Isle of Man, as the Court of Chancery, is in no way subject to the jurisdiction of the Court of Chancery in England, and the powers given to the Court of British Guiana are very much the same as those possessed by the Supreme Court of this Colony. The rule in *ex parte* Jolliffe came on for argument on February 8, 1873; and on the general question (*42 L. J., Q. B. 121*) Lord Chief Justice Cockburn expressed himself as follows :—

It is very true that it is laid down by high authorities, and it is according to the reason of the thing, that every Court of Record has power to fine and imprison for contempt committed in the face of the Court, while the Court is sitting in the administration of justice. Such a power is obviously necessary for the administration of public justice, which may be interrupted or obstructed unless there is a power to summarily repress such outrages. But it is a very different thing to say that a Court shall have power to fine and imprison for contempts not committed in the face of the Court, and not amounting to an actual obstruction of the course of justice, but only to the use of contumelious language, or the publication of articles or comments reflecting on the conduct of the Judge. It is laid down in Hawkins (*Pleas of the Crown*) and other writers of authority that the power of committing for contempts committed in the face of the Court is given to Inferior Courts, but it is nowhere said that they have power so to punish contempts committed out of Court. There is an obvious distinction between Inferior Courts created by statute, and Superior Courts of Law and Equity. In these Superior Courts the power of committing for contempt is inherent in their constitution, has been coeval with their original institution, and has been always exercised. The origin can be traced to the time when all the Courts were divisions of the Great *Curia Regis*—the Supreme Court of the Sovereign—in which he personally, or by his immediate representative, sat to administer justice. The power of the Courts in this respect was therefore an emanation from the royal authority, which, when exercised personally or in the presence of the Sovereign, made a contempt of the Crown punishable summarily, and this power passed to the Superior Courts when they were created.

It is a very different thing when we come to the Inferior Courts, which have never exercised this power, or have never been recognized as possessing it, and I should be prepared to hold that it does not exist.

Can our District Courts, then, be regarded as Superior Courts in the sense in which the word was used in the decision last referred to? Superior and inferior are relative terms, and our District Courts undoubtedly have powers much larger than those appertaining to English County Courts. It does not follow, however, that they are therefore Superior Courts in the sense in

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which the Superior Courts at Westminster and the High Court of Chancery are Superior Courts.

A case came on in appeal before this Court in 1861 from the District Court of Kandy, in which that Court claimed the right to issue writs of *habeas corpus*. The constitution of District Courts and their jurisdiction were considered in that case, and we cannot do better than quote from the judgment of the Collective Court delivered by Sir Edward Creasy on the point (*D. C., Kandy, 6,625*, in re *Shaw, Rámanáthan's Rep., 1860–62, p. 116*) :—

When we consider the general nature and character of the District Courts in this Island, we find that (as their name imports) they have jurisdiction not over the whole Island, but each over a limited area. Within these limits each District Court has jurisdiction over all civil pleas, suits, and actions, over idiots and lunatics, over administrations and revenue causes, and over matrimonial causes.

There is a criminal jurisdiction also, but that jurisdiction does not extend to offences of a grave character, which the provisos in the Charter and in the subsequent Ordinances in that respect define. An appeal from any proceedings of the District Court lies to the Supreme Court, which also may issue writs of *mandamus, procedendo*, and prohibition to the District Courts The jurisdiction of the Supreme Court is general over the Island, and it has expressly given to it an original jurisdiction in respect of all crimes and offences wheresoever in the Island they are alleged to have been committed. The Charter gives it expressly the power to issue writs of *habeas corpus;* and a subsequent Ordinance gives that power to any Judge of the Supreme Court, at all times and in any part of the Island.

After thus generally setting out the jurisdiction of the District Court, the learned Judge proceeded to consider whether those Courts had the right to issue writs of *habeas corpus*. "We are "quite clear," he proceeded to say, "that the District Courts have "it not. Were we to decide as desired by the respondent, we "should decide that a Court of *limited criminal authority* can "issue process in the course of which it must deal with committals "for offences expressly set out of and above its jurisdiction ; and "that an Inferior Court might by such process try the validity of "committals by this, its Superior, Court. We should be giving this "right to a mere local Court that can only act and enforce its orders "within its own limited area. Above all, we should be forgetful of all "sound constitutional principles if we were to uphold the present "proceeding. Once more let us remember (and Lord Mansfield's "judgment in *King v. Crowle, 2 Burrows*, may remind us) what in "the eye of the law a proceeding by writ of *habeas corpus* is. The "Sovereign is supposed to be acting and inquiring why one of her "subjects is deprived of his liberty. Here then we have an order "of the District Court of Kandy before us by which the Sovereign "is supposed to be acting and using one of her highest pre-"rogatives in an Inferior and local Court, liable at any time to be

"controlled by *mandamus, procedendo*, or prohibition from this, its "Superior, Court, and subject in all matters to the appellate juris- "diction of this, the Supreme Court of this part of Her Majesty's "dominions."

Here we may refer to a passage in *3 Blackstone* in support of the views above quoted as to a partial and limited local jurisdiction being incompatible with the attributes inseparable from a Superior Court :—" These are the several species of Common Law Courts, " which, though dispersed universally throughout the realm, are " nevertheless of partial jurisdiction, and confined to particular " districts, yet communicating with, and, as it were, members of " the Superior Courts of a more extended and general nature, which " are calculated for the administration of redress, not in any one " lordship, hundred, or county only, but throughout the whole " kingdom at large."

Mr. Justice Byles, in his judgment in the case of *ex parte* Fernandez, in pointing out several of the reasons why Courts of Assize must be considered Superior Courts, refers, among other matters, to the fact that the appeal, not as to error in fact, but on matters of law, did not exist by the common law, to their unlimited powers as Courts for the trial of criminal offences ; to their power of deciding on the lives of the Queen's subjects without appeal ; and to the high qualifications of the persons who constitute the Commission of Assize.

Now District Courts cannot be regarded as Superior Courts in this sense. It is true that they are Courts invested with very important functions, and with an unlimited original civil jurisdiction within their own districts ; but their jurisdiction is territorially very limited in all cases, and in criminal matters is confined to the trial and punishment of the lighter classes of offences. Unlike the Supreme Court and the Superior Courts at Westminster, a District Court has no control or superintendence over any other tribunal whatsoever. An appeal lies to the Supreme Court for the correction of all errors of fact or law committed by a District Court, and from all judgments and orders of such Court whether final or interlocutory. The Supreme Court, or any Judge thereof, has full power and authority to inspect and examine the records of District Courts ; and to transfer any cause or prosecution from one District Court to another whenever there is reason to conclude that the ends of justice will gain by such transfer. These District Courts are numerous (there being at present nineteen), and it is competent for the Governor by mere Proclamation to increase or diminish their number. The Supreme Court can by *mandamus* further enforce the due exercise by

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District Judges of their judicial and ministerial powers; can by *certiorari* compel the production of their records, to the end that a party may have more sure and speedy justice; can by *procedendo* prevent those Courts delaying parties by not giving judgment when they ought; and by prohibition can direct them to cease from prosecuting any cause or proceeding, if it appear that the cause originally was not, or, owing to some collateral matter arising therefrom, be not within their jurisdiction.

The Court was referred, under this head of the arrangement, to certain local enactments, with the view of showing that the powers of District Courts in cases of contempt were co-extensive with those belonging to the Supreme Court. But they fail to show this. The power to punish for contempts generally is not expressly given to the Supreme Court by the Charter of 1801.

The 82nd clause gave power to that Court to issue mandates in the nature of a writ of *mandamus*, *certiorari*, *procedendo*, *or error*, and "to correct or punish any contempt thereof, or wilful "disobedience thereunto, by fine or imprisonment." The power to punish for contempts generally—a power which, with the qualification already stated, is inherent in every Court—is not expressly given, nor is it, on the other hand, expressly taken away. The Regulation No. 2 of 1816, which purports to regulate the practice in criminal proceedings before Provincial and Sitting Magistrates' Courts, described in that enactment as "Inferior Courts," expressly provides that nothing therein contained "shall be "construed to extend to or in any wise affect the proceedings or "authority of the Supreme Court." All cases of contempt were by it to be transmitted to the Advocate Fiscal, for that officer to decide whether such accusation was fitting to be tried before the Supreme Court or referred to an inferior jurisdiction; in the latter case, the matter was to be referred to the nearest Court to that in which such contempt was committed. This Regulation was amended by the Regulation No. 15 of 1820, which authorizes the Provincial Courts and the Sitting Magistrates' Courts of Colombo "to punish by fine or imprisonment, or both, to the extent "of their general powers in that respect, all contempts committed "before them before their own view, and also upon due proof, all "contempts of their process or of the officers acting in the execution "thereof." Contempts alleged to have been committed before any Sitting Magistrate other than the Magistrate of Colombo, or before any Justice of the Peace, were to be tried before the Provincial Court of the district, unless the same should have been committed for trial before the Supreme Court. This Regulation expressly provides that nothing therein should be "construed to extend to

"or in any wise affect the proceedings or authority of the Supreme "Court." The Charter of 1833 contained no reference to the power of the Supreme or District Courts (the two Courts which that instrument established) to dispose of cases of contempt; but it drew the distinction between the two tribunals, and gave the larger powers to the one over the other referred to in a preceding part of this judgment. The Rules and Orders of Court framed under the authority of the Charter, and promulgated with that instrument, provided for District Judges punishing by fine or imprisonment, or by both if necessary, "all contempts committed "before themselves, and also upon due proof all contempts of their "process or of their officers acting in the execution thereof," and also directed that the form of proceeding prescribed by Regulation No. 15 of 1820 was to be adhered to. That rule was repealed by a subsequent rule of the 21st October, 1844, but the effect of such repeal was only to leave the powers of the District Court as respects contempts to be determined by reference to the general constitution of such Courts as established by the Charter. Certain cases were also quoted to show that District Courts have theretofore punished parties guilty of contempt. All those cases, however, refer to contempts committed in Court, or by way of obstruction to its lawful orders or process; such, for instance, as disobedience of process (*Marshall, p. 62*); refusing to give evidence (*ibid, pp. 63 and 129*); attempting to bribe an officer of the Court to steal a record (*D. C., Jaffna, 318, 1 Lorenz 15*); acting in defiance of a decree of the Court (*D. C., Colombo, 12,029, Morgan, p. 14*); attempting to practise frauds on or through the Courts.

Brodie's case, on the other hand (*2 Lorenz, 85*), drew the distinction between Superior and Inferior Courts, and pointed out that in the former alone is vested the power of punishing contempts committed not in the face of the Court or in obstruction of its orders or process.

"A contempt thus promptly punishable" (by Courts of Record generally), said Chief Justice Rowe, "consists for the most part "in contumelious or contumacious behaviour by words or acts in the "face or in the immediate precincts of the Court." "Further, upon "the same principle, in the Superior Courts of Record is vested the "power to fine and imprison, not only for contempts committed in "the face or in the precincts of the Court, but for contempt of or "disobedience to the process and judgments of such Courts wherever "within the realm, and whenever committed, for defamatory or "libellous matter touching the Court itself, or any of its Judges, when "acting in their judicial capacity." "It is in the Judges of the "Supreme Court only, as in men whose education, experience, and

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"habitual self-control exercised daily in the face of the public, the "Bar, and the Press, may be presumed to qualify them to be safe "depositories of such power, that this large discretion in committing "for contempt is vested. To Inferior Courts the common law has "conceded a more restricted jurisdiction." Two other instances (*ex parte Staples* and *ex parte Patterson*) may be cited to show instances of the Supreme Court having taken cognizance and dealt with contempts committed not in the face of the Court or in obstruction of its process. Having thus considered the general law bearing on the subject, the Charter and local enactments on the constitution and jurisdiction of the Supreme and the District Courts, and the precedents to be gathered from our records, we have come to the conclusion that the District Courts, though discharging important functions, and exercising unlimited civil jurisdiction, each within its district, cannot be viewed as representing in this Colony the Supreme Courts of Law and Equity in England; and that they have not the powers, vested in those Courts, as to summary attachment for contempts such as the one charged in this case. It is not material for the purposes of this case to consider whether or not the Supreme Court has those powers; but as the question has been submitted and argued, we have no hesitation in declaring that we are quite prepared to hold and maintain that this Court, as the Supreme judicial tribunal in and throughout this Island, vested with all the high prerogative powers conferred on it by the Crown, has all the power of punishing for contempt, wherever committed in this Island, possessed by the Superior Courts of Westminster.

It was further contended that, whatever the English law may be, the Roman-Dutch law gives District Judges the power claimed by the respondent in this case. We are not prepared to admit, without qualification, the authority of that law in matters purely of procedure, and in Courts constituted and regulated, like ours, under very different circumstances from the Courts of the United Provinces. The proceeding adopted in this instance was entirely under the English law, and in accordance with its forms, and our decision is based on the English decisions, which have always been recognized and acted upon in our Courts in matters of contempt. We fail to find, however, in the authorities quoted, and in those we have referred to, any distinct recognition of the right of a Judge to deal summarily with contempts against his authority such as the one charged in this case, *i.e.*, contempts committed not in the face of the Court nor by way of obstruction to its orders, nor with reference to any suit or proceeding pending in the Court. Voet, our leading Dutch Law

authority, lays down the rule, as it appears to us, in accordance rather with the general rule of the English law than with the position advanced by the respondent's counsel. "The injury," says Voet (*lib. 5, tit. 1, sect. 2*), "must be committed against a Judge not only *qua judici* but also *munus implenti.*" Gaill (*Obs. 39*) lays down the position that a Judge has in certain cases authority to punish summarily injuries done to himself, notwithstanding the general rule that no one can act as Judge in his own cause; but in such cases the injury must be done to the Judge *ut judici*, and must be *notoria*, and he adds it would be otherwise "*si injuria* "*non esset evidens et notoria, sed altiorem probationem adhuc* "*requireret: quo casu ad superiorem recurrendum est, ut ipse tan-* "*quam judex competens de ea cognoscat.*" An insult offered to a Judge in open Court would no doubt be (in the words of Gaill) *tale notorium quod inficiari non possit*, but the same cannot be said of the contempt charged in this case; indeed, time was given to the applicant to adduce evidence, and the matter adjourned for further inquiry. It is clear from the nature of the case that it was one which required an *altior probatio* before the applicant should be punished, and should, therefore, according to the rule laid down by Gaill, have been referred to a higher tribunal. Van Leeuwen, in his *Censura Forensis* (*part II., book II., c. 14*) strongly expresses his disapproval of the practice in some tribunals of a Judge taking cognizance of a matter in which he is interested, notwithstanding that the act complained of is *evidens et notorium.* Such a practice, he says, "*neque legi neque rationi consentaneum* "*mihi videtur, quicquid pro constitutionis aut indultæ consuetu-* "*dinis colore affingere nitantur alii.*" We were referred to a passage of *Christinaeus (vol. II., dec. 152)*, where he speaks of the power of a Judge to punish wrongs done to himself; but he limits it to cases when the *injuria* is *illata judice publice et maxime dum sedet pro tribunali.* And he goes to say, "*Ideoque ad tuendam judicum* "*dignitatem coercendamque temere riorum licentiam, supremus* "*senatus nunquam ægre tulit, juridicum, illatam sibi injuriam* "*pro tribunali sedentem ex temporali judicio vindicasse,*" clearly referring to contempts either public and notorious, or committed in face of the Court. Damhouder *(Praxis, Per. Crim., cap. XI.)* is still more explicit with regard to the power of a Judge to punish summarily. After laying down the rule that Judges have power to punish summarily offences committed before them in open Court, he proceeds: "*Verum enimvero si crimen perpetratum* "*fuerit præsente testeque judice extra tribunal seu locum sena-* "*torium, non pro tribunali sedente, foris uspiam, procedendum* "*fuerit judici per inquisitionem, atque processus legitimo ritu*

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"*instituendus. Quod scilicet crimen tali loco commissum, non "fuerit ipsi notorium seu cognitum tanquam judici, sed veluti "privato. Itaque eo casu omnis ordo judiciarius est necessarius.*"

We may here notice some of the reasons for the distinction between the powers of Superior and Inferior Courts in dealing with contempts, restricting the powers of the latter Courts to cases of actual contempt, *i.e.*, cases of direct insult to or attack on the Court itself, disobedience of its orders, or obstruction of its process; while to the former is given the right to take cognizance, not only of actual, but of constructive, contempts, such as attacks on Judges, suitors, or witnesses, tending indirectly to interfere with the course of justice.

The reason for such distinction, given by Chief Justice Rowe in the judgment in *Brodie's case*, may be inapplicable to the Judges of the Provincial towns, whose age and experience will guard them against the danger to which large and uncontrolled powers may expose them.

But we have to deal with systems, not men, and we cannot shut our eyes to the danger of confiding such a power as the one claimed in this case to young men in remote stations; a power which, as Lord Abinger has observed in the case of *Rex v. Faulkner* (*2 C. M. and R., p. 525*), is a very important one, and requires the greatest nicety in its exercise.

Indeed, a careful study of the English decisions will show that even the Judges of the Superior Courts have refrained from pursuing the course of summary attachment, and have preferred the procedure by criminal information, except in cases where the nature of the contempt called for instant action on the part of the Court; *e.g.*, if the proceedings of a Court are impeded by disturbance during its sitting, or by obstruction of its process, or disobedience of its orders. In the early case (1,742) of *Roach v. Garden* (*2 Atkyns, 469*), whilst evidence was being taken in a pending case, a libel was published calculated to deter parties from giving evidence in favour of one of the parties by exciting prejudice against him. Lord Hardwicke interfered summarily by committing the guilty parties. In *Rex v. Jollife (4 Term Rep., 285* and *1791)*, where the defendant awaiting his trial on a criminal information, distributed handbills in the assize town vindicating his own conduct and reflecting on the prosecutors, the case was postponed, and another information granted.

In *Rex v. Fleet (1 B. and Ald. 379, 1818)*, where a party published in a newspaper a statement of the evidence given before a coroner's jury, accompanied with comments, the proceeding taken was by information. So in the case of Sir Francis Burdett

(4 B. and Ald. 95 and *314, 1820)*. In the case of the *Observer* newspaper (*Rex v. Clement, 4 B. and Ald. 218, 1821*) the summary proceeding was adopted because the case was one calling for immediate repression. The defendant published proceedings contrary to the express order of the Court in the course of a trial likely to continue for several successive days, there being other prisoners also charged with the same offence, whose trials were to be taken up one after the other. Summary proceeding was also pursued in *Rex v. Davidson* (*4 B. and Ald. 329, 1821*), but that was for contempt by a party in the course of addressing a jury, and for which he could not be indicted. Strong as was the case of *Rex v. Clement*, yet two of the Judges, Littledale and Gaseley, J. J., refused to act upon it. In the case of *Rex v. Gilham* (*Moodey and Malkim, 165*), a case of murder was to be tried during the assize. Whilst it was being held, an artist was exhibiting in the Town Hall of the Assize town models of the murdered woman, and of the supposed murderer, who was then to stand his trial. Application was made that he be committed for contempt, but Mr. Justice Littledale said: "I think the "exhibition highly indecorous and improper, and one that may "subject the man to punishment; but it does not appear to me "or to my learned brother to be a contempt; therefore I cannot "interfere in the mode proposed to commit the person exhibiting." And this decision has been followed by several decisions in the Court of Queen's Bench.

In Long Wellesley's case (*2 Russ. and Myl. 69, 1831*), when the Court of Chancery punished a person for contempt for the clandestine removal of a ward from the custody of the person under whom the guardians appointed by the Court had placed the ward, and who, when examined by the Court, admitted the fact, but refused to state where the ward was, the necessity for prompt and efficacious action was fully established and acknowledged by the House of Commons, when Mr. Wellesley claimed the privilege of Parliament. In Lechmere Charlton's case (*2 Mylne and Craig, 326, 1837*) the offender was punished for contempt for writing a threatening letter, and one provocative of a duel, to the master with reference to proceedings actually going on before the master, whom he had to meet daily. His offence was also repeated by the sending of another offensive letter to the Lord Chancellor. In Vansanden's case the contempt was the distribution of papers in and out of Court, but as in *Rex. v. Gilham*, the remedy pursued was by information. In the recent cases against Messrs. Whalley, Onslow, and Skipworth, the defamatory remarks were made against witnesses who were forthcoming to prove the charge of

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perjury, which the Chief Justice had directed to be brought against the claimant, and against whom the grand jury had found a true bill. It will thus be seen that even the Judges of the Superior Courts of Westminster have only followed the remedy of summary information in cases where a necessity existed for prompt action. In other cases they have left the matter to be dealt with by ordinary course of procedure.

We consider, for the reasons given, that it was not competent to the District Judge of Colombo to take the proceedings he did in this case; and the order of the Court is that the rule for prohibition allowed on the 6th ultimo should be, and the same is hereby made absolute; and the said District Judge is hereby directed to refrain from further proceeding in the matter of the rule *nisi* issued by him against the Editor of the *Observer* newspaper, referred to in the first paragraph of this judgment.