

## CHAPTER XXXIII.

### OF CONTEMPTS AND THE PUNISHMENT THEREOF.

§ 597. When may punish for.

§ 599. Warrant may issue.

§ 598. How may punish.

§ 597. **When may punish for contempt.**—"In the following cases a justice of the peace may punish, as for criminal contempt, persons guilty of the following acts:

1. Disorderly, contemptuous, or insolent behavior towards such justice, while engaged in the trial of a cause, or in the rendering of any judgment, or in any judicial proceeding, which shall tend to interrupt such proceedings, or to impair the respect due to his authority;

2. Any breach of the peace, noise, or other disturbance, tending to interrupt any official proceedings of a justice;

3. Resistance wilfully offered by any person in the presence of a justice, to the execution of any lawful order or process made or issued by him.'<sup>1</sup>

§ 598. **How may punish.**—"Punishment for contempts, in the foregoing cases, may be by fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding five days, or both, in the discretion of the justice; but no person shall remain imprisoned for the non-payment of such fine more than ten days.'<sup>2</sup>

"No person shall be punished for a contempt before a justice until an opportunity shall have been given him to be heard in his defence; and for that purpose, a justice may issue a war-

1—C. L., § 980. Unless the justice has jurisdiction of the cause, he cannot punish for a contempt. There can be no contempt where there is no authority: *Piper v. Person*, 2 Gray, 120.

2—C. L., § 981. A judgment punishing a contempt which provides that respondent should "pay a fine of \$25,

within one hour, and, in default of the payment of said fine within the time specified that he be imprisoned in the common jail of the county for the period of five days" is bad for being in the alternative: *Turner v. Smith*, 90 Mich., 309; 51 N. W., 282; *Sloman v. Judge of Wayne Circuit*, 95 Mich., 264; 54 N. W., 869.

rant to bring the offender before him; or, if the contempt was committed in the presence of the justice, he may cause the offender forthwith to be arrested therefor, without issuing any process in the first instance.”<sup>3</sup>

“Upon convicting any person of contempt, the justice shall make a record of such conviction, stating therein the particular circumstances of the offence; and the warrant of commitment for any contempt shall also state the circumstances of the offence, or it shall be void.”<sup>4</sup>

§ 599. **Warrant may issue.**—If any person guilty of contempt has left the court before being called upon to show cause why he should not be punished for it, a warrant must issue for his arrest.<sup>5</sup>

If he is still present in court, he may be required to answer without any warrant being issued.

After making the record of conviction, the justice will make out a commitment, if the judgment requires that respondent be imprisoned, which he will deliver to a constable as his authority for taking respondent into custody and delivering him to the keeper of the jail.

3—C. L., § 982.

4—C. L., § 983. The justice acts judicially in convicting for contempt, and it is held in New York, under a statute like ours, that no civil action can be maintained against the justice for the conviction. The proceedings, however, must be regular, and show upon their face a compliance with the statute: See, *Robbins v. Gorham*, 26 Barb., 586; *Robbins v. Gorham*, 25 N. Y., 588; also, *Mather v. Hood*, 8 Johns., 44; and see, *Mallory v. Benjamin*, 9 Howard, 419.

5—This warrant will be served in

the same manner as a civil warrant. When the offender is brought before the justice, he should state distinctly to the offender the offence with which he is charged, and call upon him for his defence. If the offender can show any facts which will excuse his conduct from being considered as contemptuous, the justice may discharge him. But if he fails or refuses to do so, the justice will proceed to convict him. No evidence is necessary in such a case, since the justice proceeds entirely upon matters which occurred in his presence.