

Upon the publication of these articles, Mr. Baird, as a suitor whose case might be prejudiced by the attacks made upon the court and upon himself, took proceedings before the Supreme Court of New Brunswick to compel Mr. Ellis to answer for his contempt. After due hearing and deliberation, the Supreme Court of New Brunswick unanimously adjudged him to be guilty, and finally, after a variety of proceedings, including appeals to the Supreme Court of Canada, which that body declined to entertain, sentenced him to a fine of \$200, one month's imprisonment, and to pay the costs of the suit, six years having elapsed between the commission of the offence and its final adjudication.

The record thus brings us to the doctrine of constructive contempt on which the debate in the House of Commons, in its legal aspect, chiefly turned. In its constitutional aspect the main point of the contention was as to the extent to which it was expedient, in the public interest, for Parliament to take cognizance of the conduct of the judges, their right and power to do so not being called in question. A point of lesser importance, but still of moment, was as to whether the functions of returning officers are judicial or merely administrative, and whether a county judge in making a recount acts in his judicial capacity or as an officer of the House of Commons.

With regard to the first question, while the right of a judge to deal with acts committed outside of the court, such as the publication of articles libellous in their character, or likely to bring contempt upon the judges, or interfere with the course of justice, was not absolutely denied, it was contended by those who argued in support of the resolution that such a proceeding, being arbitrary in its character, allowing of no appeal, and constituting the court accusers, jurors, and judges in their own cause, was contrary to the spirit of the constitution, unjust in its application, opposed to modern ideas of free discussion, subversive of the liberty of the press, and only to be resorted to if such other preferable modes of procedure as a civil action for libel, or criminal information, when both parties would stand upon the same footing, and be judged by their peers, could not be availed of.

In support of this contention, Mr. Davies quoted a remark by Lord Chief Justice Campbell in his lives of the chief justices in reference to the case of *Rex v. Almon*, and also a judgment by Sir George Jessel, which, as it was frequently quoted and sums up the whole case, we give in full as read by Mr. Davies :