

*O'Brien* is based on error both of law and fact. If he had contented himself with the opening remark, that the objection was not taken in the former case, his position would not have been open to adverse criticism; but by the reference to *The Queen v. Jordan*, and the concluding sentence of the above quotation, he takes a position which is distinctly contradicted by the authorities he invokes.

The report of *Regina v. Jordan* in 36 W.R. shows that the case was considered on the merits, and the appeal dismissed. Lindley, L.J., and Lopes, L.J., gave reasons for coming to that conclusion, and at the end of the report is the following remark by Lindley, L.J.: "It is doubtful whether this is not a criminal matter upon which we could not have heard an appeal. At any rate, this must not be taken as a precedent for hearing such appeals." In the face of this, how can his lordship say that *The Queen v. Jordan* was the governing authority on the question of the criminal or non-criminal nature of contempt, or on any question? How can a case be a "governing authority" when the very court deciding it says it is not to be followed?

But there is another reason for objecting to the statement that this case would have governed *Re O'Brien* under the circumstances stated by his lordship. *Regina v. Jordan* was decided by the Court of Appeal in 1888. Twenty years earlier the case of *Re Pollard* was before the Judicial Committee of the Privy Council, and in the report to Her Majesty, which was embodied in an Order in Council, their lordships of that board said: "No person should be punished for contempt of court, which is a criminal offence, unless," etc. And yet it is said that *Regina v. Jordan* is a leading case to the contrary. (*Re Pollard* is reported in L.R. 2 P.C. 186.)

And, lastly, the court could not, on the authority of *Regina v. Jordan*, have decided against this objection to hearing *Re O'Brien* at the time it would have been taken. *Re O'Brien* was argued in March, 1888, and *Regina v. Jordan* was not decided until June of the same year, so the court would not have had the benefit of the latter case at the argument, and probably would have quashed the appeal on the authority of *Re Pollard* and s. 68 of the Supreme Court Act.

Then his lordship says, and Mr. Justice Fournier repeats the statement in his delivered opinion, that *Re O'Brien* was a proper