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PRACTICE OF SUBPŒNAING COUNTY JUDGES.

The practice of subpœnaing Judges of the Superior Courts to produce their notes to prove what took place before them at a trial has long been discouraged; but we were not aware till lately that there had been any ruling in this country respecting County Judges. Our attention has been directed to the subject by a case which arose at the last Assizes for the County of Simcoe.

In an action of trespass (*Cole v. Ellison et al.*) *Judge Gowan* was called as a witness on the part of the plaintiff and answered, but at once addressed the presiding Judge, *Mr. Justice Burns*, stating that he had no knowledge of the facts in question but such as he derived in the course of a trial before him at the Quarter Sessions between the same parties on an Indictment for riot, and that he had reason to believe that he was called for the purpose of speaking in reference to the evidence taken before him on that trial. The plaintiff's Counsel, *Mr. McMichael*, at once admitted that such was the case. *Judge Gowan* protested against being called on to prove what had occurred before him as Chairman of the Sessions, on the ground of inconvenience both to the public and the Judge, and especially as any one who was present at the Court might as well be called to supply the evidence desired to be obtained from him. The Judge mentioned two cases in the County of Simcoe, in which he made a similar protest, which prevailed; one *Reg. v. Millady*, for forgery, before the *Hon. Chief Justice Draper*, to prove what took place on a trial in the Division Court; the other, *Switzer vs. Gilchrist*, which was an action on the case for maliciously suing out an Attachment from the Division Court, before the *Hon. Chief Justice Macaulay*.

The *Hon. Mr. Justice Burns* said he could not allow *Judge Gowan* to be called to prove what took place before him as a Judge—such a practice would be attended with great inconvenience—and that no peculiar necessity was urged in this cause; and *Judge Gowan* was not examined.

On looking at the practice in England we find two cases directly in point, and supporting the ruling of *Mr. Justice Burns*; *Florance v. Lawson*, an action on the case for a libel said to have been committed in a newspaper report of certain proceeding at Judges Chambers, was tried before *Lord Campbell*,—sittings at Westminster after Trinity Term, 1851. To prove what took place at Chambers it was proposed to call *Baron Platt*, the Judge before whom it took place. *Lord Campbell* said: "I shall not examine Mr. Baron Platt on such a subject." *Humfrey, Q. C.*, said he remembered several instances of Judges having been examined as witnesses. He instanced *Lord Cottingham*.

Lord Campbell said: "I shall not follow the example. I believe *Lord Cottingham* was examined "to say how far he had been influenced by a nod "from Counsel. No doubt there are cases in which "it would be necessary that the Judge should be "examined, but it would be very unseemly that "this should be done when the same facts could, "as in this case, be equally well proved by other "persons."

In principle there is no difference between a Judge of the Superior Courts sitting in Chambers and a County Judge acting as sole judge in a Division Court. Indeed in the case of *R. v. Amos*, in which it appeared that a Judge of an English County Court, (similar to our Division Courts) was requested to take down evidence, and declined doing so. He took down what he considered material, but wished "to guard against its being supposed that he took down the evidence in such a way that it could be used in an Indictment for perjury"; and *Lord Campbell* expressed his approval of the wish "to discourage a proceeding which