

might be enquired of as against the higher courts of law even on *habeas corpus*. This seemed to be conceding more than I asked, more than I could agree to. Now, if the proceedings had no kind of form, would they be beyond the reach of the Writ of Error? To take an illustration from the circumstances connected with this very case: Mr. Justice Drummond took a rule before this one. In form it was an order to the Clerk of the Court to issue a rule. I showed it to Judge Drummond, and he asked me if it might be amended, which I consented to, and signed the amendment.

[DRUMMOND, J. This has nothing to do with the case. It was one of those conversations—confidential conversations—which formerly took place between the representative of the Attorney General and the Judges, and bringing it forward now will perhaps put the Judges on their guard.]

If it puts Judges on their guard to prevent them doing what is wrong so much the better; but this observation contains an insinuation against my character which I must answer. It is a most unfounded insinuation that there was any breach of confidence in my allusion to that first rule. How could there be a confidential communication between the Judge and me as to the prosecution of myself? How could there be any secret as to a matter of record? I think it is very unwise of Mr. Justice Drummond to wish to conceal that matter; there was nothing disgraceful to him in the proceeding, and I have only mentioned it as an illustration of such error as might occur in a rule. But since the mention of the particular case is offensive to any one, I shall generalize and say, suppose a rule was of the nature mentioned, could it not be reviewed in error? To take another illustration from this case. Suppose the rule was in no case? Or suppose a seal was required for authentication, and there was no seal? I put my argument in the form of a perfect syllogism. There may be a writ of error in *all* criminal cases. This is a criminal case. My minor is admitted, my major is in two lines of a Statute. It will be for those who try to deprive me of my remedy to establish the exception which is not in the Statute.

The case was taken *en délibéré* on the question of whether a writ of error would lie.

March 9.

MONDELET, J. This case is one of vast importance to the interests of public justice, to the bar, and to the public. Judges, it is true, must be protected in the discharge of their duties; but I cannot see that it is necessary for their protection to put an end to free criticism of their acts. If they are honest, they have no reason to fear free discussion. At the present moment we have not to decide whether or not there has been a contempt of this Court. The only question is as to whether a Writ of Error lies from a judgment for contempt. Some authorities may be cited, perhaps, to show that there is no way of examining a judgment for contempt; but on turning to our Statute (C. S. L. C., cap. 77, Sec. 56) I find that a Writ of Error lies to this Court "in all criminal cases before the said Court on the Crown side thereof, or before any Court of Oyer and Terminer or Court of Quarter Sessions." Now the only question in the case now before us is, is this a criminal case? It must be either a criminal or a civil case? There cannot be any case which is neither the one nor the other. Cases are but of two kinds: civil and criminal, and the Writ of Error lies in both. How then can we create an exception? Is it because there are no cases in the English books? But that cannot control our Statute—the Statute constituting this Court. As for the argument of inconvenience, it will not do for me. It may be inconvenient to have a judgment revised; but it must be likewise very inconvenient to be sent to jail or fined illegally. But is there any such inconvenience? I have nothing to do with the definition of contempt to-day; but if anything is said on that subject I may have something to add. But whatever may be the nature of the offence, how can it be more inconvenient to allow a writ of error in the case of a contempt than of any other offence? To say that in cases of contempt a writ of error lies is not so utterly absurd as some would have us believe, for the Lords of the Privy Council have recently ordered a record in a case of contempt in British Guiana to be sent up on the petition of Laurence McDermott, the publisher and printer of the *Colonist* paper, who had