

Mercers and Ironmongers of Chester v. Bowker, 1 Strange, 640; nor if the interest be ever so small; it is the inconsistency of the thing the law forbids. *The City of London v. Wood*, 1 Strange, 674. *Hesketh v. Braddock*, 3 Bur. p. 1858, where the judgment of the whole Court was given by Lord Mansfield, p. 1856. Nor is it necessary that the judge be nominally a party, if he have a bias—p. 1855. And the rule applies equally to judges and jurors—p. 1858. And so when the defendant was accused of saying of a Justice of the Peace, "He is an old rogue for sending his warrant for me," C. J. Holt said, "He deserved to be bound to his good behaviour, though it be not proper for that justice to do it; but rather to get one of his brothers to do it for him." *R. v. Lee*, 12 Mod. p. 514. There is no exception to this rule in matters of contempt. In *Mr. Driscoll's case*, Mr. Justice Rolland, the senior judge, was not on the Bench on the 28th of March, 1854, when Mr. Justice Aylwin took notice of it first. He sat, but took no active part in the proceedings the day the rule was read, and he was not on the Bench at all when the case finally came up.

[AYLWIN, J. Mr. Justice Rolland did take part.]

I read from a report made at the time, which Mr. Justice Drummond admitted to be a good report.

(The entry book was procured, and it maintained Mr. Ramsay's assertion.)

[DUVAL, C. J. Do you know of no case where a judge took notice of an attack on himself out of Court?]

I believe not; but, at all events, he never moved himself to avenge himself. It must be on the motion of a person disinterested, not of the judge himself. I shall now show that a judge cannot act in his judicial capacity if he be a witness. *Hacker's case*, Kelynge, 12; 5 Howell, St. Tr., 1181, 2; St. Tr. 384; Hawkins, book 2, cap. 46, sec. 84; 1 Chitty, 607. This case is much stronger, for a judge was actually complainant and witness. To pass from the law of the question to the ethical view of the case, what advantage can be gained by the opinion of a judge whose judgment carries no moral weight? What moral weight could Mr. Justice Drummond's judgment in this case

carry with it? To say that a judge can move himself to give judgment for himself, is to contradict the terms of his official oath, by which he swears neither by himself nor any "other, privily or apertly, to maintain any plea or quarrel hanging in the Queen's Court, or elsewhere in the country." This case furnishes an example of the dangers of infringing these rules. When Mr. Justice Drummond was Solicitor General, he introduced a bill declaratory of the law of contempt.

[DRUMMOND, J. Is that in the Statute-book?]

No, it was dropped, but I intend to show by it that Mr. Solicitor General Drummond, when he had no interest, held in the most solemn way directly the reverse of what he held the other day when he was interested.

Mr. Ramsay read the Bill, which was as follows:

No. 257—BILL.

"An Act declaratory of the Law concerning contempts of Court in Lower Canada:

"Whereas doubts have arisen as to the powers and jurisdiction of the Courts of Lower Canada in matters of contempt, and it is expedient to remove such doubts;

"Be it therefore declared and enacted, &c., and it is hereby declared and enacted by the authority of the same, that the power of the several Courts of Justice in Lower Canada to issue attachments and inflict summary punishments for contempts of Court, *does not extend, and shall not be construed to extend* to any cases except the misbehavior of any person or persons in presence of the said Courts, or so near thereto as to obstruct the administration of justice—the misbehavior of any of the officers of the said Courts in their official transactions,—and the disobedience of or resistance to any lawful writ, process, order, rule, decree or command of the said Courts by any person whomsoever."

[DRUMMOND, J. That bill was dropped because we all thought in Council that it went too far.]

Of course I cannot know except from what Mr. Justice Drummond says, why it was dropped; but I supposed it was owing to the burning of the Parliament Houses in 1849, two or