

CONTEMPT OF COURT ; THE QUEEN V. WILKINSON.

have less to find fault with in what he said than what he left unsaid—that no contempt should be punished, which is not brought before the Court forthwith, either by the Attorney-General or by the person aggrieved, and only by the latter when his case is likely to be prejudiced; or which the Court does not itself, at the time the offence was committed, think proper to take notice of, (even though the contempt be afterwards justified, repeated and enlarged upon before the presiding Judge), and that no person, not even a party to the suit, has a right to initiate proceedings for a contempt (except as aforesaid) which the Court at the time, to use the language of his judgment, “did not think worthy of notice.” “*Worthy of notice*”—in these three words lies the whole difficulty. If the slanders on Mr. Justice Wilson, sitting as one of the Judges of the Court of Queen’s Bench, by the most powerful and most widely-circulated journal in Canada, the slander having been written and justified by one of the most prominent and influential public men in the Dominion are “not worthy of notice”—it will not be worth noticing *any* libel by *any* person on *any* Judge in Canada, from this time forth forever; and it was not worth noticing the contempt for which Mr. Houston a few days before, in the same suit, apologised, and for which he was severely reprimanded by the Court and ordered to pay costs. If this be so, the offence of contempt of Court is abolished, and the dignity of the Courts, and therein incidentally the due administration of justice, must forever depend solely and without other aid upon the good sense and good feeling of the people. If this is to be the law, let it be so enacted, but at present it is not the law, and we doubt the wisdom of the Courts being deprived of a power which, in this country at least, has been sparingly invoked and discreetly exercised.

The profession will deplore that Mr. Justice Morrison did not take the high ground assumed, and rightly so, by the Chief Justice. He may possibly have felt straitened by what are, we believe, generally thought to have been two great mistakes: firstly, the omission by the Court itself, or the Attorney-General on its behalf, to take notice of the insult offered to the Court in the person of Mr. Justice Wilson; secondly, granting the rule nisi *at all*, if Mr. Justice Morrison’s opinion be correct that the application was made too late. And here we may refer to what we respectfully submit was another mistake, though we fully appreciate the motives which therein actuated the learned Judges—allowing the delinquent to repeat and add to these insults in the face of the Court itself.

The Court was somewhat in a false position, and Mr. Justice Morrison was led away, we venture to think, by side issues from the great principle involved. He may have been perfectly right in saying that the person aggrieved had, under the circumstances, no *locus standi* before the Court, but it is impossible to forget the forcible words of Mr. Christopher Robinson, of counsel for the applicant, in an argument said to have been one of the most perfect ever heard in Osgoode Hall: “The contempt is there and the Court is there; it is for the Court to deal with it, and it is for the Court to do what they may consider right and becoming in the discharge of their high office”—The Court and the contempt still confront each other. He also said, “Is the law to prevail or is Mr. Brown to be above the law?”—let each reader answer this question for himself. There is an unhappy feeling abroad that in some way or another, or for some reason or another, and whether justly or unjustly, and whosoever the fault may be, the dignity of our Courts has suffered, and the majesty of the law has been