is no principle on which the city can be prevented from demanding a larger price for water supplied to consumers who have paid no part of the cost of constructing the works than it is willing to receive from those who have.

Appeal allowed with costs.

Reeve, Q.C., and *Wickham* for the appellants.

Robinson, Q.C., for the respondents.

New Brunswick.]

ELLIS *v.* THE QUEEN.

Appeal—Contempt of court—Criminal proceeding—Supreme and Exchequer Courts Act (R.S.C., c. 135), s. 68.

Contempt of court is a criminal matter, and an appeal to the Supreme Court from a judgment in proceedings therefor cannot be brought unless it comes within s. 68 of the Supreme and Exchequer Courts Act (R.S.C., c. 135). *O'Shea* v. *O'Shea*, 15 P.D. 59, followed. *In re O'Brien*, 16 S.C.R. 197, referred to.

The Supreme Court of New Brunswick adjudged E. guilty of contempt, but deferred sentence.

Held, that this was not a final judgment from which an appeal would lie to the Supreme Court of Canada.

Appeal quashed.

Weldon, Q.C., for the appellant.

Currey for respondent.

CANADIAN PACIFIC R.W. CO. *v.* FLEMING.

Appeal—Jurisdiction—Trial by jury—Withdrawal from jury—Disposal of questions of fact by court—Consent of parties.

In an action against a railway company for damages for an injury caused by an engine of the company, the counsel for both parties agreed at the trial as follows: "That the jury be discharged without giving a verdict, the whole case to be referred to the court, which shall have power to draw inferences of fact; and if they shall be of opinion upon the law and the facts that the plaintiff is entitled to recover, they shall assess the damages, and that judgment shall be entered as the verdict of the jury. If the court should be of opinion that the plaintiff is not entitled to recover nonsuit shall be entered." The jury were then discharged and the court *en banc*, in pursuance of such an agreement, subsequently considered the case and assessed the damages at $300, considering plaintiff entitled to recover. The company sought to appeal from such decision.

By the practice in the Supreme Court of New Brunswick all questions of act are to be tried by a jury, and the court can only deal with such questions by consent of parties.

Held, GWYNNE and PATTERSON, JJ., dissenting, that as the court took upon itself the decision of the questions of fact in this case without any legal or other authority therefor than the consent and agreement of the parties they acted as quasi-arbitrators, and the decision appealed from was that of a private tribunal constituted by the parties, which could not be reviewed in appeal or otherwise as