

not subject to be recused in any subsequent proceedings in the same cause, even where he was the complainant in the cause.

2nd. That no writ of error lies from the judgment in a case of contempt.

Leave to appeal to the Privy Council from these judgments refused, though the Attorney General consented.

This case came up on Writ of Error from a judgment of Mr. Justice Drummond, holding the Court of Queen's Bench, Crown side, at the last term of the said Court, for the district of Montreal, on a rule for a contempt of the Court of Queen's Bench by the plaintiff in error, in publishing two articles in the *Montreal Gazette* of the 27th and 29th of August last. (See *ante*, p. 121.)

It was submitted by the plaintiff in error :

1st. That the rule shows no offence known to the law.

2nd. That even if the rule did set forth a contempt, it was an offence which this Court, as now constituted, had alone the power to take notice of, at its term held from the 1st to the 9th days of September, and that this Court, as constituted, not having taken any notice thereof, the said pretended offence was passed over and condoned, and it was not competent for any single judge of Assize, on the Crown side of this Court, afterwards to take up the said pretended offence, and to deal with it.

3rd. That as no man can be a judge in his own cause, and as Mr. Justice Drummond was himself the complainant, he was precluded from sitting or giving any judgment on the said rule.

4th. That the said rule does not allege that plaintiff in error wrote the said letters in question.

5th. That it is not alleged in the said rule where this pretended contempt was committed, and it does not appear that this Court has any jurisdiction in the premises.

6th. That the said pretended contempt not being in face of the Court, the rule should have been supported by affidavit, which it is not.

7th. That the said pretended rule was not under seal as required by C. S. L. C., c. 77, sec. 73; and the absence of seal in writs and process issuing out of this Court on the Crown

side is not covered, as in the case of writs and process issuing out of this Court on the Civil side.

March 6.

PRESENT—Duval, C. J., Aylwin, Drummond, Badgley, and Mondelet, JJ.

Mr. Ramsay. Before proceeding to the merits of this case I recuse Mr. Justice Drummond. He is incompetent to sit in this case for two reasons—one statutory and the other derived from general principles. 1st. Because he gave the final judgment in this case in the other Court. On this point the statute is express. By sec. 7, Consolidated Statutes of Lower Canada, cap. 77, it is laid down who shall be the judges of this Court "in appeal and error," while section 8 is in these words : "No judge of the Court of Queen's Bench shall be disqualified from sitting in any case, by the mere fact of his having been a judge of the Court whose judgment is in question, while such case is there pending, *unless he sat in the case at the rendering of final judgment*," &c.

This legislation is doubtless borrowed from the French ideas on the conformation of Courts of Justice, in this respect much more sound in principle than the English common law notions on the subject; for in England a judge may sit in error on his own judgment. But in any case the statute leaves no room for doubt,—the judge who rendered the judgment attacked cannot sit either in error or in appeal. The second point is that Mr. Justice Drummond is the party complainant in the cause. The rule of English law on this point is most decided. Chief Justice Hobart, in the case of *Day and Savage*, said that a statute which declared a man should be judge in his own case would not be binding. Coke said the same thing in *Bonhams* case, 8 Co. And so did Lord Ch. J. Holt in the case of the *City of London v. Wood*, 1 Strange 674. The general principle too is to be found in the 1st Inst. 141.

[MONDELET, J. Mr. Justice Drummond's name is not in the case.]

No; but it is the same thing, if he be interested, whether his name appears or not. And it does not signify whether the entering of the judgment be a mere form. *The Company of*