

Judge Fournier's judgment, is one that will not commend itself to any lawyer: that is, that as Judge Tuck issued the rule *nisi* without jurisdiction, he was not acting judicially, and his lordship implies that, in consequence thereof, the defendant could not be guilty of contempt in charging corrupt and improper motives against him in so issuing it. This doctrine would lead to very dangerous consequences if accepted and acted upon; every day a judge has to perform an act which he considers judicial, and in every case in which he mistakes his authority, or it should turn out that he makes an order, issues a writ, etc., without jurisdiction, and so is not acting judicially, he could be assailed by litigants or others for such act with impunity. Moreover, a corrupt judge could accept bribes for such act, and be free from liability as a judge if the act done was beyond his authority. And it would extend further. The only consequence of want of jurisdiction would be to render the proceedings void, and the same result might follow in case of certain irregularities, and then it might be said the proceeding was not a judicial act.

The remainder of Judge Fournier's judgment deals with the jurisdiction of the Supreme Court to entertain the appeal. To that no exception can be taken, except as to the repetition of the fallacy pointed out in the opinion of the Chief Justice, that the appeal in *Re O'Brien* was properly entertained, because the judges of the court appealed from were unanimous. Taschereau and Gwynne, JJ., who also took part in the latter case, gave no reasons for quashing the present appeal. It should be stated that Mr. Justice Taschereau, although he did not formally dissent in the former case, expressed a doubt as to the jurisdiction to hear it.

Mr. Justice Patterson also gave judgment in *Ellis v. The Queen*. Not having been a member of the court when *Re O'Brien* was decided, he had no *amour propre* to be wounded, and is somewhat unkind to his brother judges in his method of dealing with the question at issue. For instance, he cites the case of *Re Pollard*, and points out that contempt was held by the Judicial Committee of the Privy Council to be a criminal matter as early as 1868, though the Chief Justice declares that *The Queen v. Jordan*, decided in 1888 by the Court of Appeal, was the leading authority on the question until 1891. Again, he holds that s. 27 of the Supreme Court Act prohibits an appeal in the