

the judge on the trial of the cause at a former term. This was held to be a contempt.

Assuming then the existence of this inherent power in Courts of justice to punish for contempt, is their judgment liable to be controlled by any other Court or Tribunal? As introductory to the answer to this question, it must be observed that in the organisation of the Provincial Judicature, the Court of Queen's Bench has been established by statute as the highest judicial tribunal in Lower Canada, but divided into two jurisdictions separate and distinct the one from the other, the one being constituted on the Civil side a Court of Appeal and error in civil suits, and the other on the Criminal side, being constituted an original Criminal Court for the trial of criminal offences, and also a Court of Criminal Error. As to the Civil side, the Legislature has provided for the disqualification of a judge from sitting in Appeal or Error, if he has sat on the case appealed from at the rendering of the final judgment, but has not extended this disqualification to judges, sitting on the Criminal side upon Criminal Appeal or Criminal Error, who sat in the original Criminal Court. The Court, therefore, as at present personally constituted, is according to the statute, and the proposed recusation by the plaintiff in Error against the judge who judged the contempt has been legally rejected.

It must also be inquired, what is the nature of the judgment or conviction for contempt? It may be briefly answered that it is judgment in execution, and wherein bail may not be taken. This fact, that is, the negation of bail, indicates as well the stringent nature of the judgment in itself as its immediate enforcement upon the party convicted by it. It was held in *Brass Crosby's case*, 3 Wils. 188, that the adjudication for contempt is a conviction, and the commitment in consequence is execution, and no Court can discharge on bail a person that is in execution by the judgment of any other Court. This doctrine, which has not since been interfered with in England, has also been sustained in the United States, and so held almost in the same words by Story, J., in the case of *Kearney* in the Supreme Court, 7 Wheat. 43, following *Crosby's case*, and likewise maintained in many other report-

ed cases. Arguing from the mere reason of the thing, it is a plain consequence, that contempts would necessarily fail of their effect, and the authority of Courts of Justice would become contemptible, if their judgments could in such matters be subjected to revision by any other Tribunal.

It has been very strongly urged that this power itself from its very nature must necessarily be independent of all other tribunals: for if it depends upon another whether a punishment can be inflicted or not, that very dependence defeats and overturns it. The insulted judge must go to law before some other tribunal with every one whom his decision offends, and leaving his own duties in his own Court, must attend upon other Courts and before other judges who may not be disposed to discourage the contempt, and it might happen set aside and quash the proceedings, and arrest or reverse the judgment, and, therefore requiring the renewal of the proceedings to encounter similar difficulties.

Under such a state of law, no one would be afraid to offend; the delay of punishment and the manner and chances of escaping it, would disarm the expected punishment of all its terrors, nor could the insulted Court or Judge ever think of the attempt to cause the infliction of punishment under so many discouragements. It would be idle for the law to have the right to act, if there be a power above it which has a right to resist. In Criminal matters penal law must enforce satisfaction for the present acts and security for the future; in other words it *must have* a remedy and a penalty. How could there be either a remedy or a penalty, if the judgment of contempt was subject to review by any other tribunal?

Apart from this most conclusive reasoning, no reported cases can be found in which other tribunals have interfered with such convictions of other Courts, whilst on the other hand numerous direct authorities are to be found the other way. *Brass Crosby's case* has already been adverted to, which settled that point many years ago in England, and American authorities are at one with the English decisions. Mr. Justice Blackstone says, "the sole adjudication of contempt and the punishment thereof belongs exclusively and without inter-