could not be entertained, and the parties to the strange colloquy separated, Morrison once more betaking himself to his secret haunts, and the expedition resuming its hunt for him.

SUPREME COURT OF CANADA.

Ontario.]

OTTAWA, March 18, 1889.

O'BRIEN v. THE QUEEN.

Appeal—Contempt of Court—Discretion—Jurisdiction—Constructive Contempt—Interference with a judicial proceeding—Proceedings for contempt—Locus standi—Punishment—Infliction of costs.

An appeal will lie to the Supreme Court of Canada from the judgment of a Provincial Court in a case of constructive contempt. Such a decision is not an order made in the exercise of the judicial discretion of the Court making it, from which, by sec. 27 of the Supreme and Exchequer Courts Act, no appeal shall lie. Taschereau, J., *hesitante.*

Such an appeal will lie, though no sentence was pronounced against the party in contempt, but he was found guilty and ordered to pay the costs of the proceedings.

H. was elected Mayor of Toronto, and was unseated by a master in Chambers on proceedings in the nature of a *quo warranto* instituted for the purpose, the master holding that the property qualification of H., who had qualified in respect to property of his wife, was insufficient. Notice of appeal was given, but a declaratory Act having been passed by the Ontario Legislature removing the disqualification, such notice was countermanded and the appeal abandoned. In the meantime O'B., solicitor for H, had written a letter to a newspaper in Toronto, in which the following expressions occur, after a statement that the fact that the qualification condemned had always been held sufficient and had never before been questioned:—

"Chief Justice Richards, probably the best authority on such matters in Canada, had held in 1871 that under such circumstances the husband had the right we contend for in the present case. This decision has never been over-ruled, is consistent with common sense and with the universally accepted opinion on the subject.

"You may naturally ask: Why then was the decision the other way? This question I am unable to answer. The delivered judgment affords no answer. The arguments addressed were simply ignored, and the authority relied on by us, so far from being explained or distinguished, was not even referred to. This is eminently unsatisfactory to both the profession and the public—an officer of the Court over-ruling the judgment of a Chief Justice who, above all others in our land, was skilled in matters of municipal law."

Proceedings were instituted, by the original relator in the proceedings to unseat H., to have O'B. committed for contempt, and he was adjudged guilty, and ordered to pay the costs. The notice of abandonment of the appeal had been given before such proceedings were begun.

HELD:—1. That the appeal being abandoned, the *quo warranto* proceedings were at an end, and the relator had no *locus standi* in such proceedings to enable him to charge O'B. with contempt in interfering with the judicial proceeding. In such case only the Court could institute or instigate the proceedings.

2. That the publication complained of was a fair criticism of the judicial proceeding, which any person is privileged to make.

3. That the infliction of costs was a punishment for the alleged contempt in the nature of a fine, so that the appeal was not one for costs only.

Appeal allowed.

S. H. Blake, Q.C., for the Appellant.

Bain, Q.C., for the Respondent.

OTTAWA, March 18, 1889.

Ontario.]

CITY OF LONDON v. GOLDSMITH.

Municipality—Construction of Street crossing—Elevation above the sidewalks—Injury to person crossing—Liability of Municipality for.

G. brought an action against the city of L. for damages caused by striking her foot against a street crossing in said city and falling, whereby she was hurt. The principal ground on which negligence was based, was that the crossing was elevated some three or