

seemed to him of little moment being merely a question of costs, we may refer to the words of Mr. Justice Strong: "Then it is said that this is merely an appeal on a question of costs. This objection also appears to be wholly untenable. The proceeding to commit for contempt is of a penal and quasi-criminal character. The order complained of contains, in the first place, a distinct adjudication that the appellant has been guilty of a contempt of court, and it then proceeds (waiving other punishment) to inflict what is in substance, if not in form, a penalty or punishment by ordering the appellant to pay costs. The adjudication that the appellant, a solicitor and officer of the Court and moved against in that quality, has been guilty of a contempt is, by itself, an appealable judgment, and would have been so even if it had not (as in fact, however, it has) been followed by sentence. As Mr. Blake forcibly urged, the order under appeal affixes to the appellant as a professional man, a stigma from which he is entitled to be relieved if he has been found guilty upon insufficient evidence or for insufficient reasons. Again, by ordering him to pay costs as a consequence of this conviction, the Court inflicts upon the appellant a punishment which, if not so in name and form, is yet in substance and effect, a fine for his contempt. There can be no analogy between an appeal from such an order as this, and one from a decree or order in an ordinary case relating to property or private rights which is confined to an adjudication as to costs to be paid by one party or the other. The authorities to this effect are clear and entirely support what is said on this head in the judgment of Mr. Justice Burton in the Court below."

The same learned Judge also says in regard to the letter in question: "The letter certainly does allege that the learned Master had pronounced an erroneous decision, but it does not contain any imputation that such alleged error proceeded from any improper motive."

Their Lordships fully and freely concede that Judges are no more protected from fair criticism than other servants of the public, and that, as Mr. Justice Gwynne puts it, whether such and such a writing is a contempt of court or not "is an issue which for its determination calls for a judgment not rendered in the exercise of an arbitrary discretion of the Court to which the question of law is submitted, but rendered in accordance with the principles of law and justice equally as any other point of law in an action, suit, or judicial proceeding is submitted."

Let it not be supposed that this journal or its editor would so far depart from their past record as to wish to derogate in any way from the legitimate dignity of the Bench. It is, however, a melancholy fact that no body of men can, especially in a comparatively small community as ours still is, be trusted to exercise power over the persons or property of others, except under well-guarded rules of law, and subject to rights of appeal. Judges are no exception to this rule, and while we would, in a proper case, be their most ardent supporters in resisting improper strictures directed against them, especially if they were defending the position of the Bench against some powerful public journal, we think that in this case Mr. O'Brien may claim to have done a public service in not having dropped this matter until it was placed by the highest Court of the Dominion in a more satisfactory position than that in which it was first by our Provincial Courts.