

Suppose a contempt at *Nisi prius* and a fine inflicted, would an appeal lie? Perhaps not in England, but in the colonies it is different; thus in *Rainy v. The Justices of Sierra Leone*, an appeal from an order imposing fines and imprisonment on a practitioner of the Court was allowed; and though that case broadly lays it down that, in the case of contempt, the Court making the order is the sole judge of what constitutes the contempt, the appeal was admitted by this Court on the ground of the illegality of the order, and the alleged contempt was inquired into.

“**LORD WESTBURY**: Their Lordships regard this case as one of great importance, and one that may lead to important consequences. On the one hand it is essential to preserve a Court from all obstruction to the course of justice; on the other hand, it is very desirable that there should be a check upon any arbitrary exercise of the powers of the Court. But at present, having regard to the distinction between things done by practitioners of Colonial Courts, and things done *in curia*; things done directly leading to interference with the administration of justice, and things which do not come within either of these categories, their Lordships are disposed to give leave to appeal, but without prejudice to the question, whether there is a right of appeal or not. Our object is that of necessity this important question should be fully argued when it comes before us.”

By an Order in Council, made on the petition, it was ordered that the petitioner should be allowed to enter and prosecute his appeal from the order of the Supreme Court of the 13th April, and the judgment of the 4th May, 1866, without prejudice to the competency of Her Majesty in Council to entertain an appeal from an order of a Court of Record, inflicting punishment, by fine or imprisonment, for a contempt of Court, which question was to be open to argument on the hearing of the appeal, and a copy of the order was directed to be served on the Judges of the Supreme Court, with leave to put in their answer to the appeal.

It is apparent from the report that in this case the judge assailed (**CROSBY**) took no part whatever in the proceedings against **McDERMOTT**. Though a judge of the Supreme Court,

he appears to have been absent on every occasion when the case was before the Court. This may have been merely accidental, or, more probably, in consequence of the natural reluctance of a judge to take part in an inquiry, in the course of which he may be exposed to fresh insult. At all events, no allusion to the circumstance occurs in the report, and there is no ground for supposing that Mr. Justice **CROSBY** deemed himself incompetent. We have as yet received no account of further steps before the Privy Council. Possibly **McDERMOTT**, having undergone the full term of imprisonment, may shrink from the expense of prosecuting an appeal, which can give him no substantial redress.

ACTION QUI TAM.

M. LE REDACTEUR.—Le gouvernement vient de refuser d'obéir à une loi passée en 1864, sous les circonstances suivantes :

La clause 3 du ch : 43, de la 27-28 Vict., dit : “ Il sera loisible à la couronne d'intervenir aux dites actions ou poursuites dans le Bas Canada en tout état de cause, et d'en prendre seule la conduite ; pourvu que s'il appert, après la fin d'icelles, qu'il y a une raison suffisante pour intenter la poursuite, et si le dit pour suivant a fourni à la couronne, qui sera ainsi intervenue, toute l'aide et les renseignements en son pouvoir, pour faire triompher l'action, la couronne rembourse au poursuivant ses frais de poursuite.”

Pour ne compromettre aucune des parties intéressées, nous nous abstenons de les nommer. A. avait souffert des dommages du défaut d'enregistrement de la déclaration de société existant entre B. et C. Il se crut justifiable d'intenter une action *qui tam*, conformément à la loi, contre B. et C. pour le recouvrement de la pénalité, tant en son nom qu'au nom de Sa Majesté. Mais au moment de prendre le bref, il s'aperçoit que B. et C. se sont fait poursuivre par un homme de paille, et il apprend en même temps que l'avocat de cet homme de paille n'est qu'un prête nom, qui sert à déguiser l'intervention des avocats de B. et C. Sous ces circonstances, A se crut justifiable d'informer la couronne de cette tentative de fraude contre ses intérêts, n'agissant en cela qu'en conformité à la loi.