

any animus on the part of the judges was concerned, the defendant had been made aware that his articles had been written under a misconception of the action of Mr. Justice Tuck ; that at any time he might have purged himself of contempt by retracting the statements he had made under that misconception ; and, though not mentioned as having any bearing upon the legal aspect of the case, it was well known that he was at one time prepared to make such retraction, but, being ill-advised, had, on the contrary, fought the matter from court to court till six years had elapsed before it was finally concluded. And it was further stated, as well known to the Bar, that it was neither Mr. Justice Tuck, whose character had been chiefly assailed, nor Mr. Justice Palmer, who was charged by Mr. Davies with having been actuated by personal motives against Mr. Ellis, but the Chief Justice, Sir J. Allan, a man who was held in the highest estimation by all parties, who was the most severe in the condemnation of Mr. Ellis ; that Mr. Justice Tuck took no part in the proceedings, and that Mr. Justice Palmer, by whatever motives actuated, was in favour of the lightest punishment being inflicted. It must also be remembered that on the Bench which concurred in the judgment there were, besides Mr. Justice Tuck and Mr. Justice Palmer, the Chief Justice, Mr. Justice King, now of the Supreme Court of Canada, and Mr. Justice Fraser. We think it proper to give this portion of the debate in refutation of the idea which might otherwise be entertained that the proceedings against Mr. Ellis were the result of a vindictive feeling on the part of the two members of the court whom he had personally assailed.

Upon the general question, it was contended that, practically, there was no other way in which a court could vindicate itself from attacks upon its members such as were made in the present instance than by the course then pursued. That for a judge to enter the court as plaintiff in a civil suit for libel, or as prosecutor in a criminal one, was clearly impossible. That proceedings for punishment for constructive contempt were not founded upon statute law, but were coeval with the existence of the courts, and had always and everywhere been found necessary to maintain their dignity and authority. Besides English precedents, the general practice of courts of law in the United States was referred to in support of this view; and, while admitting the high