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 June 15, 16.

IN THE MATTER OF THE PETITION OF EDWARD
 HUTCHINSON POLLARD, ONE OF HER
 MAJESTY'S COUNSEL AT THE COLONY
 OF HONG KONG. } APPELLANT;

AND

THE CHIEF JUSTICE OF THE SUPREME
 COURT OF HONG KONG } RESPONDENT.

Contempt of Court—Barrister—Fine—One fine for several offences—Jurisdiction—Judicial Committee—Statute, 3 & 4 Will. 4, c. 41, s. 4.

A contempt of Court being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated, and an opportunity given him of answering.

A Barrister engaged in his professional duty before the Supreme Court at *Hong Kong*, was, without notice of the alleged contempt, or rule to shew cause, and without being heard in defence, by an Order of that Court, fined, and adjudged to have been guilty of several contempts of Court in disrespectfully addressing the Chief Justice while conducting a cause. Such Order, upon a reference by the Crown to the Judicial Committee, under the Statute, 3 & 4 Will. 4, c. 41, s. 4, set aside, and the fine ordered to be remitted, first, on the ground that the Order was bad, inasmuch as the offences charged were not of themselves such contempts of Court as legally constituted an offence; and secondly, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard, before passing sentence.

THE Appellant, a Barrister-at-law and a Queen's Counsel at *Hong Kong*, complained of a sentence of the Chief Justice (*Smale*) of that Colony, whereby he was fined and, in the alternative, ordered to be suspended for fourteen days for an alleged contempt of Court.

It appeared, according to the Appellant's uncontradicted statements contained in his case, that on the 27th of June, 1867, he appeared in the Supreme Court of the Colony as Counsel for the Plaintiffs in the case of *Olyphant & Co. v. Loo-a-Hung*, Mr. *Whyte* being Counsel for the Defendant. The action, which was one for breach of warranty, was tried before the Chief Justice

* *Present*:—SIR WILLIAM ERLE, LORD JUSTICE WOOD, LORD JUSTICE SELWYN, SIR JAMES WILLIAM COLVILLE, and SIR EDWARD VAUGHAN WILLIAMS.

and a jury. The Appellant having stated the Plaintiffs' case to the jury called one of the Plaintiffs, *Hitchcock*, but as, in answer to a suggestion from his Lordship, the Defendant's Counsel had, while expressing a willingness if possible to settle the case, requested to be allowed to hear the Plaintiffs' witnesses before deciding on a settlement, and also asked the Appellant to examine a Chinese witness, the Plaintiffs' *Comprador*, first, as he had been the medium of communication between the Plaintiffs' and Defendant, *Hitchcock*, by consent, stood down, and the *Comprador* to the Plaintiffs was put into the box and examined by the Appellant in chief. During the examination, the witness having one small jar and three tins, each containing samples of sugar before him, on the table, the answers given by him, as interpreted by Mr. *Rozario*, the Court Interpreter, appeared so inconsistent and incoherent that it seemed evident some confusion existed in the mind of the Interpreter about the relation of these four samples to each other, and the bulk of the sugar, the subject matter of the action. Under these circumstances the Appellant put a direct question to the *Comprador* as to one of the samples of sugar, in order to clear up the confusion, when the Chief Justice said, "You should not lead (or press) him, Mr. *Pollard*; he is your own witness." The Appellant replied, in a deprecatory manner, "Yes, my Lord, but he is not my own Interpreter," upon which the Chief Justice said, "He is the Court Interpreter, and, therefore, your Interpreter as well as for the other party," or words to a like effect. At the conclusion of the examination-in-chief, Mr. *Whyte* proceeded to cross-examine for the Defendant. The Appellant was seated at the Bar Table looking at an authority intended to be referred to for the Plaintiffs, and taking notes, when necessary, of the cross-examination, when the witness, having stated that one of the Coolies in the service of the Plaintiffs had been to the Defendant's place about the sugar, and had seen it put into the Boats, Mr. *Whyte* asked his name, and, on learning it, turned round to the Appellant, still seated in the next chair to him, and said, "*Pollard*, are you going to produce this man, as if not, I can subpoena him." The Appellant jocularly replied to Mr. *Whyte*, "I can't produce him as if he were a piece of paper or a Book, but I shall not call him, though I dare say he is at the Plaintiffs'

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place" (near to the Court) "and you can easily send for him." Mr. *Whyte* then directed the managing Clerk of the Defendant's Attorney to get him subpoenaed. The Chief Justice then said, "Mr. *Pollard*, do I understand you to say that you are not going to produce this Coolie?" and the Appellant replied, "No, my Lord, I do not want him, but he can easily be sent for if my learned friend wants him." The Chief Justice then said, "Do you mean to say you are not going to call the Plaintiff's own Coolie, but will put the Defendant to the expense of sending a subpoena for him?" and on the Appellant replying "Yes, my Lord," the Chief Justice said, in an angry manner, "Very well, then, I shall take very good care to comment on it when I charge (or address) the jury." The Appellant then rose, and, addressing the Court, said, "My Lord, I am the Plaintiff's Counsel, and have the sole discretion as to what witnesses I shall call, and if I fail my Client may suffer; but it is solely in my discretion, and I decline being taught my duty by any one;" and the Chief Justice, in a most passionate manner, said, "No one wants to teach you your duty, Sir; sit down:" and on the Appellant attempting to speak, he said, "Silence, Sir," and left the Court.

The Chief Justice, after an absence of a few moments, returned, and without acknowledging the reverence made by the Bar on his re-appearance, sat down and said, still in a very angry and excited manner, "Mr. *Pollard*, do you apologize?" The Appellant rose and said, respectfully, "For what, my Lord?" and on the Chief Justice saying, "You know what for," assured His Lordship that he did not know. The Chief Justice then said, "You taunted me with the fact that a Coolie was not a piece of paper, as if I did not know that," and the Appellant then respectfully asked, "Is it for that your Lordship wishes me to apologize?" intending, if His Lordship had said it was, to have explained that His Lordship was in error in supposing that those words had been addressed to the Court, as they had been said jocularly to the learned Counsel on the other side, and to have satisfied his Lordship on the matter. The Chief Justice, however, said, "No, that is not all; you know very well what it is." The Appellant thereupon, in a respectful manner, addressed the Court to the following purport:—"My Lord, I have never knowingly been disrespectful to the Court in my life, and

am utterly unconscious of having been so to-day, and would be glad to know what your Lordship complains of, as no one is more ready to apologize if he have done wrong than I am." The Chief Justice said, "You would not have dared to speak to any other Judge as you have to me;" and the Appellant said, "I have done my duty for a number of years, and was never attacked in such a way before, and would defend myself, if similarly attacked, anywhere." The Chief Justice said, "You do your duty, and I will do mine," to which the Appellant replied, "If that rule be followed, my Lord, it will be much better." The Chief Justice then ordered the Appellant, who vainly attempted to address the Court several times, to sit down, and exclaiming, "Silence, Sir," "Sit down, Sir," "Hold your tongue, Sir," told the jury he would adjourn the Court till Saturday, and not proceed with the case until (or unless) Mr. *Pollard* apologized. The Appellant then rose and said, "My Lord, with the greatest respect I submit that though your Lordship has very large powers to deal with me if I have done wrong, which I am not conscious of, it is not competent to the Court to prejudice the Plaintiffs, who may choose to appear by another Counsel," to which the Chief Justice angrily replied, "I don't care, I will not proceed with the case unless Mr. *Pollard* apologizes," and, telling the Registrar to adjourn the Court *sine die*, left the Court. On the proposition of the Defendant's Counsel the record was withdrawn, and the case referred to arbitration.

On the 29th of June the Appellant was engaged as Counsel for the Plaintiffs in a case set down for trial before the Chief Justice and a common jury, and Mr. *Whyte* was Counsel for the Defendant in this case also. Before coming into Court, the Registrar came into the robing-room and asked the Appellant if he was going to apologize, because, if not, the Chief Justice would, on some future day, give his decision. The Appellant asked if he was told this as from the Judge, and the Registrar said, "No not as from the Judge, but His Lordship told me, and I think he wishes you to know." On the Chief Justice coming into Court, His Lordship asked if any one had anything to say to the Court, and after some communication to His Lordship by Mr. *Whyte*, he proceeded to read some remarks referring to the Appellant, though not addressed to him. The Appellant asked to be allowed to speak, which the

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Chief Justice refused to allow him to do, but, on his requesting that a note of such refusal might be taken, the Chief Justice then said, "Oh! if you put it in that light you may address the Court if you wish," and the Appellant then said he had never sought to be aggressive, and had always respected the Bench, as he was bound to do; but as he had been accused of some contempt of Court, and did not know what it was, he wished it to be stated as publicly as possible that he disavowed ever having intentionally insulted the Court, or been guilty of contempt, and was utterly unconscious what it was that he was accused of, but was perfectly ready to apologize if informed of what he had done, and that as His Lordship had not told him, if any Gentleman, present in Court on Thursday, would say he ought to apologize he would do so unhesitatingly, and that he was not the only member of the Bar who had been present on that occasion; adding, that he also had his position, as a member of the Bar, to maintain, for his own sake and that of the profession. The Appellant, as he was uttering the concluding words of this address, was sitting down, so that the last word or two were spoken while no longer in an erect position, but before he had actually taken his seat, when he was told by the Judge to stand up, which he did, saying that he had nothing more to say. The Chief Justice did not in any way intimate to the Appellant that he thought his manner disrespectful, or that he had been guilty of any new contempt on that day, but on the contrary, at the rising of the Court, late in the day, said, "I shall give my decision on the Thursday's occurrence on Tuesday instead of Monday."

The Appellant conducted the case for the Plaintiffs, which lasted for some time, and, at the close of his reply, the Chief Justice called the Appellant and Mr. *Whyte* up to the Bench, and made suggestions which resulted in the Defendant agreeing to a verdict against him for a specific sum.

The Appellant appeared in Court on Tuesday, the 2nd of July, 1867, and on his Lordship taking his seat he directed the Registrar to call on the Appellant to rise while the Court proceeded to address him. The Appellant thereupon objected to the jurisdiction of the Court to proceed at that time and in that manner against him for any contempt alleged to have been committed by him on a pre-

vious occasion. The Chief Justice then again ordered the Registrar to call upon the Appellant to stand, while the Court delivered its decision. The Appellant repeatedly requested to be allowed to speak, and be heard in defence or explanation, but was refused. The Chief Justice then pronounced the following judgment:—
 “Mr. *Pollard*: After several delays, it now becomes my painful duty to deliver the decision of this Court on your conduct on Thursday, the 27th of June last. These delays have been interposed in order to give you time to reflect calmly on your conduct, and by submission and apology to render the exercise of the indisputable authority of this Court to punish for contempts towards it unnecessary. In expressing what appears to be my duty on the present occasion, I shall in substance adopt the language of the Chief Justice *Abbott*, of Mr. Justice *Bayley*, of Mr. Justice *Holroyd*, and of Mr. Justice *Best*, preferring to use language frequently since repeated, always with approbation, to any less forcible words of my own selection. The language of Mr. Justice *Holroyd*, in *Rex v. Davison*, is (1):—‘In the case of an insult to himself, it is not on his own account that he commits, for that is a consideration which should never enter his mind. But, though he may despise the insult, it is a duty which he owes to the station to which he belongs, not to suffer those things to pass which will make him despicable in the eyes of others.’ And Mr. Justice *Best* (2) also says: ‘No man who pretends to any knowledge of the law can doubt that a Judge of a Court of Record has authority to fine or imprison for any contempt, committed in the face of the Court. From the earliest period of our history, this authority has been exercised.’ Every man who comes into a Court of Justice, either as a party or Barrister, must know that decency is to be observed there, that respect is to be paid to the Judge. Of the power of a Judge to fine for contempt I have not the least doubt. When a case is conducted by Counsel they know perfectly well, what the rules of law are, and they have that regard for their own character which generally prevents them from doing anything which may break in upon the rules of decency and decorum. Chief Justice *Abbott*, in the same case (3), says:—‘If I thought that the decision I am about to pronounce could have the effect of

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(1) 4 B. &amp; Ald. 339.

(2) *Ibid.* 340.(3) *Ibid.* 333.

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restraining any person who may hereafter stand on his trial, from making a bold, as well as a legitimate course of defence, I would pause before I pronounced that decision. The question, indeed, is a momentous one. It is absolutely a question, whether the law of the land shall, or shall not, continue to be properly administered. For it is utterly impossible that the law can be so administered, if those who are charged with the duty of administering it, have not power to prevent instances of indecorum from occurring in their own presence. That power has been vested in the Judges, not for their personal protection, but for that of the public. And a Judge will depart from his bounden duty, if he forbears to use it when occasions arise which call for its exercise.' I have now quoted enough to shew that this Court has the power of punishment by fine or imprisonment, and in the case of a Barrister, as the learned Queen's Counsel has drawn a distinction between an Attorney and a Barrister, I would refer him to this case. Of the power of a Judge to fine for contempt of Court, I have not the least doubt. The duty to punish contempts of Court, and the right of the Court to fine and imprison the offender, and, in the rare case of his being a Barrister, to suspend him from practice, being proved by abundant cases. It is more satisfactory, however, that I should go into a detail as well as I can, and so far as I deem necessary, of the circumstances as they occurred. In the case of *Olyphant & Co. v. Loo-a-Hung*, you opened the case for the Plaintiffs as a breach of warranty to ship sugar to *Shanghai* of a specified quality. Your first Chinese witness, the *Comprador* of the Plaintiffs, proved the signature by the Defendant to a contract in English, and that he had translated the document to the Defendant. In the course of that examination you persistently, though more than once stopped by me, put leading questions to the *Comprador*. And I felt that under his Master's eye—that Master sitting close to you—and with your peremptory leading questions, one sort of answers only could be expected from him. I at length again objected to your persisting in putting such leading questions, saying to you 'Why, he is your own witness.' Your answer to me was inferentially insisting that you had been right. 'The Interpreter is not.' This answer offended propriety. It inferred an imputation on the Interpreter, who has been a zealous and honest Interpreter

for some seven years, and it ignored the rule being, as it always has been, imperative as to a Chinese as well as to an English witness. Your answer was pointed and curt, and was apparently made to raise, and only to raise, a laugh against me. This was your first contempt of Court, on which I said nothing then. The case proceeded. Mr. *Whyte* asked the *Comprador* of your Clients, in cross-examination, questions to shew that he had examined the sugars as they were packed by direction of the Plaintiffs so as to shew an approval by the Plaintiffs of the sugars before they were shipped. So far as it went, the evidence of Plaintiffs' *Comprador* tended to sustain the defence. You, with unnecessary vehemence, insisted to me that this evidence could not be received. I decided to receive it, and your demeanour was, to say the least, offensive and disrespectful in consequence. It appeared to be a point with the Defendant to shew that the Plaintiffs, by their servants, had approved of each package of sugar before it was shipped, and it was extracted from your Clients' *Comprador* that when the *Comprador* was absent a trusted Coolie of the Plaintiffs' was present. Mr. *Whyte*, for Defendant, asked where that Coolie was. Thereupon I said to you that, as he was a servant of the Plaintiffs, you should produce him in Court:—Thereupon you turned to me, and, looking me steadfastly in the face, you said with a scornful expression of countenance, our eyes meeting, and in a discourteous and defiant manner. 'He is not a piece of paper to be produced in Court. Let the Defendant subpoena him in the usual way.' On that I, considering that the Defendant was a Chinaman, said to this effect, 'Do you mean, Mr. *Pollard*, to put them to the expense and difficulty of finding and subpoenaing your own servant.' Upon this you, with vehemence of tone and manner, said to me, 'I will put only those witnesses into the box which I, as Counsel for the Plaintiffs, think fit. I will not be dictated to or talked down by anyone as to what I am to do.' I was taken aback, and said, 'I was not dictating to you, or talking you down; you will do your duty, and I will do mine.' I meant, as you must have known, indeed, I believe I added, that you would call or not call witnesses according to your duty, and that I, in directing the jury, would do mine in directing them to make the proper inferences from your keeping back such a witness. What you said, added to your tone

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and manner, inferred that I had improperly dictated to you, and that I had improperly attempted to talk you down. This was your second contempt of Court. Now, there at least should have been an end, but, acting on your all but universal rule, you would, and did, reply to me, and you said, 'That is all right if we would only stick to it,' in a tone and with a manner which inferred, and must have been meant to infer, that I would not. Now, this was your third contempt of Court. By this time your manner towards me appeared to me to be violent, and your general bearing was such as that I felt the cause could not then proceed with any chance of justice. I felt that the Court had been grievously insulted. I felt it to be my duty then and there, either to have committed, or to have imposed a fine on you, but at the same time I feared that anger might be present in my mind, and I left the Bench as the least evil before me, and to avoid what from experience I had too much reason to expect—a continuance of insult. After an absence which I now wish had been longer, I returned to the Bench. On my return, your manner was contemptuous towards me. Not noticing that, I asked whether you would apologize. Your curt notice of this was, 'For what, my Lord?' You then went into wide generalities, that if you had offended no one was more willing to admit it and apologize. You then referred to my having asked you if you would produce a witness, on which I said that you had tauntingly told the Court a witness was not a piece of paper, as if I did not know a witness was not a piece of paper. Thereupon you said, admittingly inferentially that you had said so, but still in a defiant manner, 'Is it that you wish me to apologize for?' I said, 'Yes,' and that there were other matters requiring an apology, and you proceeded to address me in a manner and tone as offensive as before, from which I felt satisfied your only object was to get me into a most unseemly wrangle. Not choosing to trust myself then to punish the contempt as I felt was necessary, and feeling that until you had apologized, or, at least, in the then state of excitement and indecorum into which the proceedings had been thrown, the cause could not properly be proceeded with, I adjourned the Court as the least objectional course. You then, still persevering in your defiant tone, protested against the adjournment as being entirely without precedent. I said I should adjourn the

Court till Saturday (the Friday being a holiday), adding ‘as we cannot get on in the present circumstances;’ and you still, as if you had not caused what happened, desired me to take a note of your objection. You then said, ‘If I have done any wrong, there are certain steps which may be taken by the Court,’ and you requested me to take a note of your objection. By this language you adopted deliberately all you had previously said, and, so far from apologizing, courted the consequences on yourself personally of your contempts. I replied, there were such steps, but that I would not then take them, it being my duty merely to decide that you were guilty of a contempt of this Court on Thursday, the 27th of June last. It is thought to be a rare case to suspend a Barrister from practice, but, as I have said, there are many such cases. I can refer you to a case in which then and there, for contempt of Court, a Barrister had his gown, by order of the Court, pulled off his back. You proceeded, and I had peremptorily to say, ‘Silence, Sir.’ I said you would not dare to use elsewhere such language as you had used. I added, the Court is adjourned. Still you persisted in renewing your unseemly language to the Court, addressing me after I had requested you to be silent, and after I had adjourned the Court. One of your observations was, ‘I always answer when I am attacked, and not without.’ Your speaking at all was an indecorum: what you said was a contempt in imputing to the Court that it had attacked you, which was the converse of what had occurred. I consider this your fourth contempt. I was thus, by what you said after the Court was adjourned, driven to adjourn the case so far indefinitely, and I said I could not hear it, you being Counsel, till you should have apologized. I am glad to find that the cause out of which the above occurrences arose has been referred to arbitration, because I feel sure that the arbitrators will decide according to the right of the case, which unfortunately this Court, being tied by technical rules applicable to another state of society, can scarcely do. On Saturday another case came on, in which you again appeared as Counsel. I, having previously directed the Acting Registrar to communicate with you my intention to give a decision unless you previously apologized, asked if any Gentleman had anything to say in reference to Thursday. You were present, looking very indignantly at me, but said

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nothing. I then shortly referred to and cited the leading cases, shewing that, *ex necessitate*, I was bound to punish an insult to the Court, and advised consideration of those cases to persons interested in the matter. My intention was, obviously, to give you another opportunity, after referring to the law, to apologize. I said I would give my decision on Monday, and that you had due notice. You, taking the matter as one of dry notice, said, 'I have received no notice.' It seemed that the Acting Registrar had told you I should give my decision, but he omitted to say on Monday, as I had intended he should. The spirit in which the objection, that you had not received notice, was made, satisfied me that you did not understand what had passed in its true bearings. Having obtained leave to address me, you began thus:—'Merely this, my Lord, I don't seek to be aggressive.' This language, under the circumstances of your being before me as charged with contempt, was a contempt, and I designate it your fifth contempt. You proceeded, 'It is the Bench I respect.' This was said in a tone which clearly inferred, and was meant to infer, that it was the Bench as distinguished from its occupant—that you, a Queen's Counsel, had such respect for as you professed to have. This was a contempt, according to the highest authority, of a very grave character. This was your sixth contempt. You then proceeded to say that you had done nothing which could be properly called an insult. You then sat down and continued to address me, sitting on, and I had to request you to stand whilst you addressed the Court. You then said that was all you had to say. I give you credit for having uniformly insisted, as you did in your defence, that you have said and done nothing which can properly be called an insult to the Court. I have no desire to conceal the fact, that the difficulty you have imposed on me has very deeply pained me ever since Thursday last, and that it will continue greatly to pain me, probably more than it will pain you, not because I am anxious as to my own personal position other than as it is important to sustain the judicial *status* in this Colony, but because I respect your legal learning, and because our own forensic contests have left on my mind pleasant remembrances of kindly feelings towards you, which even present circumstances cannot change, and because you have many qualities which deservedly make you popular. If, in duty

to my office, I could have overlooked your conduct, I would have done so, but to mark my sense of your conduct is, in the words of Mr. Justice *Holroyd* in *Rex v. Davison* (1), a duty which I owe to the station to which I belong. You say you have never insulted the Court. Whether you are justified in distinguishing the Court and its successive occupants in that language, I leave for you to consider at leisure; you have insulted me, and in insulting me you have insulted the Court. I may add that the more humble is the occupant of the Bench for the time, the less learned and competent he may be for his office, the more important is it to surround him with those forms of respect which have been devised to support authority against those who would usurp, subvert, or destroy it. I now proceed to pronounce my decision as, *ex necessitate rei*, the only judge of fact and law. I pronounce you guilty of grave contempts, and as, from equal necessity, this is the only Tribunal that can award the punishment, I now fine you in the sum of \$200, and, further, I suspend you from practising before this Court as a Barrister and Advocate for a period of fourteen days, or until the fine shall be sooner paid. I have purposely fixed the fine and penalty at the lowest point possible compatible with its being an expression of my opinion of your conduct. Some persons may think that you have only shewn the just independence of the Bar in your habitual demeanour and language towards the Bench. I, however, think I have seen in it impediments to a Judge in the due administration of justice; sometimes, indeed, as I am inclined to think, to the undue advantage of Clients. The penalty I impose is, indeed, small, but the effect of the decision is more serious."

The Appellant remained suspended from practice under the sentence for several days, but ultimately paid the fine, under protest.

The Appellant, aggrieved by this sentence, forwarded to His Excellency, the Governor of *Hong Kong*, a petition to Her Majesty, setting forth the facts hereinbefore stated, and praying that the matter of the petition, and the proceedings of the Chief Justice, on the 27th and 29th of June, and the 2nd of July, might be investigated and inquired into, and that the sentence might be wholly rescinded, reversed, and expunged from the minutes of the

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Court. The Appellant supported the above facts, which were set forth in his petition, by his own affidavit, and the affidavits of Mr. *Whyte*, the Counsel engaged in the case of *Olyphant & Co. v. Loo-a-Ilung*, and of all the jurors in that case, also of Mr. *Blakeman* and Mr. *Bain*, both present in Court on the occasion of the alleged contempts of Court, which, in substance, sustained the case as alleged by the Appellant. Copies of the petition, and the affidavits in support of it, were transmitted by His Excellency, the Governor, to the Chief Justice for his information. In consequence of an objection taken by the Chief Justice to the affidavits being made upon oath, they were afterwards made in the form of declarations under the 5 & 6 Will. 4, c. 62.

The petition, together with the evidence in support of it, was forwarded by the Governor to Her Majesty, who referred the matter to the Judicial Committee for their opinion. The Appellant prayed that the proceedings of the Chief Justice, on the 27th and 29th of June, and the 2nd of July, 1867, respectively, might be investigated, and rescinded, reversed, and expunged from the minutes of the Supreme Court.

No case was lodged or evidence entered into by the Chief Justice.

Mr. *Watkin Williams* (Mr. *Coleridge*, Q.C., with him) for the Appellant:—

It is not disputed that a Court of Record in the Colonies has power to fine and imprison for contempt of Court, but such power must be properly exercised, not, as was done in this case, arbitrarily and capriciously. Here the sentence complained of was oppressive and illegal. Upon the face of the judgment itself, the Appellant was not guilty of any contempt of Court. It is settled law that where a Court of competent jurisdiction imposes a fine, no appeal lies in respect of such fine: *Rainy v. The Justices of Sierra Leone* (1); but to prevent the denial of justice, the Crown has referred the matter of the Appellant's petition to this Tribunal under the Statute, 3 & 4 Will. 4, c. 41, s. 4, and it is competent for your Lordships, under that reference, to examine into the merits: *Rainy v. The Justices of Sierra Leone* (1), and for us to prove by affidavits that no such contempt as was assumed by the

(1) 8 Moore's P. C. Cases, 47.

Chief Justice took place: *Smith v. The Justices of Sierra Leone* (1). That course was adopted in *Re Pater* (2); there a Barrister was fined by the Court of Quarter Sessions for contempt, and the Court of Queen's Bench, which has a general superintendence over Courts of inferior jurisdiction, on a writ of *certiorari*, investigated the merits, as to the reasonable grounds, of the contempt. Here the declarations in evidence conclusively establish that no contempt was committed or intended to the Chief Justice or the Court. The case of *Rex v. Davison* (3), relied on by the Chief Justice, has no application to the case. It related to the power of a Judge at *Nisi Prius* to fine for a contempt. Both the proceedings as well as the sentence here were irregular, and, therefore, void. The Appellant had no notice of the offence with which he was charged, neither was he heard in defence before sentence was pronounced. He had a right to know what offence he had committed, and notice, and a rule to shew cause, ought to have been served on him before any sentence of suspension could be pronounced against him. No such course was pursued here. The Chief Justice entirely overlooked the maxim, "*Audi alteram partem*," so universally recognised—*Bagg's Case* (4)—and refused to hear the Appellant in explanation or defence. In *Capel v. Child* (5), it was held by the Exchequer Court, that where a Bishop issued a commission, upon a requisition, under a Statute, on which the whole of the proceedings were founded, such proceedings were in the nature of a judgment, and void if the party had no opportunity of being heard. So in *Reg. v. The Archbishop of Canterbury* (6), where the Archbishop confirmed a revocation by the Bishop of the Diocese of a license of a curate, without hearing the party or his Counsel, a *Mandamus* issued to him to hear the case on its merits. Again, it was not competent for the Court to punish the Appellant for an alleged contempt of Court committed on days anterior to that on which the judgment was pronounced, and after having heard the Appellant as Counsel in Court in the meantime.

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(1) 7 Moore's P. C. Cases, 174.

(2) 5 B. & S. 299.

(3) 4 B. & Ald. 329.

(4) 11 Co. Rep. 99c; and see *Rex v. Benn*, 6 T. R. 198.

(5) 2 C. & J. 558.

(6) 1 E. & E. 545.

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Mr. *James*, Q.C., and Mr. *Hulme*, appeared for the Chief Justice :—

The Chief Justice has not deemed it consistent with his duty to bring forward evidence in reply to the affidavits of the Appellant, or to appear as a litigant in the matter. Without contesting the case brought forward, we submit that the tone of the affidavits filed by the Appellant is not respectful to the Chief Justice or the Supreme Court.

At the close of the argument, their Lordships intimated that they would certify their opinion to Her Majesty upon the matter.

No judgment was given, but the following report was made by their Lordships, and confirmed by Her Majesty's Order in Council, dated the 19th of June, 1868 :—"The Lords of the Committee, in obedience to your Majesty's Order of Reference, have taken this petition into consideration, and having heard Counsel on behalf of *Edward Hutchinson Pollard*, and having likewise been attended by Counsel on behalf of His Honour the Chief Justice of *Hong Kong*, their Lordships do agree humbly to report to your Majesty that, in their judgment no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him, and that in the present case their Lordships are not satisfied that a distinct charge of the offence was stated, with an offer to hear the answer thereto, before sentence was passed: their Lordships further report to your Majesty that, on the proceedings before them, it appears that Mr. *Pollard* has received one sentence as for six several offences, and that in the statement of those alleged offences in the judgment pronounced by the Chief Justice, their Lordships are not satisfied that each of the six amounted to a contempt of Court, or was legally an offence: for these reasons their Lordships humbly recommend to your Majesty that your Majesty should be graciously pleased to remit the fine of 200 dollars which was imposed on *Edward Hutchinson Pollard* by the Order of the 2nd of July, 1867." Her Majesty, having taken this report into consideration, was pleased, by and with the advice of

Her Privy Council, to approve thereof, and of what was therein recommended, and to order, that the fine of 200 dollars, which was imposed on *Edward Hutchinson Pollard* by the Order of the 2nd of July, 1867, be remitted. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of the Colony of *Hong Kong* for the time being, and all other persons whom it may concern, were to take notice, and govern themselves accordingly.

Solicitors for the Appellant: *Freshfields*.

J. C.
1868
In re
POLLARD.

THE NATAL LAND AND COLONIZATION COMPANY	} APPELLANTS;
AND	
CHARLES HENRY GOOD AND JOHN CECIL BOWES	} RESPONDENTS.
ON APPEAL FROM THE SUPREME COURT OF THE COLONY OF NATAL.	

J. C.*
1868
July 2.

Natal — Roman-Dutch Law — Fraudulent Purchase — Registration — Notice — Mortgage — Foreclosure — Priority — Interdict — Judgment — Evidence — Res inter alios acta.

By the law prevailing in *Natal*, the registered title of an innocent purchaser clothed with the legal estate, prevails over the title of a Claimant of a mere equitable estate, although such equitable estate may be of priority of time.

A. purchased from *B.* lands in the Colony of *Natal*, and registered the same. *A.* afterwards mortgaged the lands to *C.*, and delivered to him the *grosse*, or copy, of his registered title deed. This mortgage was also registered. Default having been made in payment of the principal and interest of the mortgage money, *C.* brought a suit in the nature of a foreclosure suit, and obtained a provisional sentence, by which the same was declared executable in satisfaction of the mortgage debt, and the lands attached for the amount due upon the mortgage. Before any sale took place under such attachment, *D. & E.* obtained an interdict from the Supreme Court against the transfer, on the allegation that previously to the sale to *A.*, *B.* had sold the lands to them, and that *A.* had notice of such previous sale. *D. & E.* afterwards instituted a suit against *A.* (without making *C.*, the mortgagee, a party). The object of the suit was to set aside the original sale from *B.* on the ground that the sale

* *Present* :—LORD ROMILLY, THE LORD CHIEF BARON (SIR FITZ-ROY KELLY), SIR JAMES WILLIAM COLVILLE, AND SIR EDWARD VAUGHAN WILLIAMS.

ERRATA.

Page. Line.

- 120 1 from top, *for* "Mr. Hulme" *read* "Mr. Ayrton."
191 10 from bottom, *for* "Respondent" *read* "Appellant."
193 7 from bottom, *for* "Barque" *read* "Steamer."
374 14 from bottom, *for* "Mr. E. Charles" *read* "Mr. Arthur Charles."
386 7 from bottom, *for* "rights" *read* "rites."
388 16 from top, *for* "right" *read* "rite."