Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lawrence M'Dermott against certain Orders and Proceedings of the Judges of the Court of Civil Justice of British Guiana; delivered 1st *December*, 1868.

Present:

LORD CHELMSFORD.
SIR JAMES WILLIAM COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.
LORD JUSTICE PAGE WOOD.

IN this case an application was originally made *ex parte* for leave to permit the Appellant to appeal from an Order of the Supreme Court of Civil Justice of British Guiana, committing him for a contempt, and their Lordships upon that occasion advised Her Majesty to allow the Appellant to enter and prosecute his Appeal without prejudice to the question of the competency to entertain an Appeal from an Order of a Court of Record, inflicting punishment by fine or imprisonment for a contempt of Court. It is quite clear that, upon that *ex parte* application, and upon the leave which was conditionally granted, the Respondents might have come in, and have moved to discharge the Order, upon the very ground which has been taken to-day, namely, that there can be no Appeal against an Order of a Court of Record committing a person for contempt. The Appellant, therefore, is exactly in the same condition now as if the application had been made to rescind that Order, and he would be bound to support the propriety of the leave to appeal by showing either that the Court was not a Court of Record, or that, if it was a Court of Record, yet there was something in the Order committing the Appellant for contempt which rendered it improper, and therefore the subject of Appeal.

The first question, therefore, which the Appellant had to establish was that the Supreme Court of

Civil Justice of British Guiana was not a Court of Record. For that purpose he has argued at very considerable length—not at too much length—that originally by the constitution of the Court, which in its origin was a Dutch Court, it was not, according to the Dutch law, a Court of Record, and that, according to that law, it was a Court which did not possess the power of committing for contempt.

In the year 1802, in the Articles of Capitulation, upon the conquest of Demerara, there was a stipulation that the laws in use in the colony should remain in force and be retained. The constitution of the Supreme Court at this time, and down to the period of the Ordinances which established it on its present footing, by the account given of it in Mr. Clarke's book on 'Colonial Law,' appears to have been that it consisted of a President and eight members, of whom four and the President were to be present to constitute a Court. The President was appointed by the King, and removable at his pleasure. The other members were planters or merchants of the colony, elected by the College of Keysers, who, when vacancies occurred, returned a double number, from which the Court of Justice made a selection. In the month of May of every second year one-third of these colonial members vacated their seats, beginning with the oldest member, and, as their number was eight, three and two would vacate every alternate second year. The constitution of this Court might be satisfactory to the colonists, but it does not appear to have been one very desirable to be continued.

Accordingly, by Ordinances passed in the years 1831 and 1855, an entirely new Supreme Court of Justice was established—by the former Ordinance for Demerara and Essequibo, and by the latter this Court, which had been united with the Court of Civil Justice of Berbice, was "to be consolidated into one "Court, styled the Supreme Court of Civil Justice "of British Guiana, and to continue to have the "same jurisdiction as each of the Supreme Courts "of Civil Justice of Demerara and Essequibo and "of Berbice, and as such consolidated Court then "possessed; and it provided that the Judges of the "said Supreme Court, and each of them should "have, possess, exercise, and enjoy such and the

"same jurisdiction, powers, and authority in every "respect as the Judges of the said Supreme Courts "had theretofore lawfully possessed, exercised, or "enjoyed."

Now, it is to be observed that this Ordinance is, in fact, equivalent to an Act of Parliament. Therefore the question is whether this Act of Parliament, as it may correctly be styled, did not establish this new Court in the Colony to be a Court of Record.

What then were the powers which the Supreme Court lawfully possessed, exercised, or enjoyed at the time of the passing of this Ordinance? For these we are referred to the Order in Council of the 20th of June, 1831, which provided for altering the original constitution of the Court, and ordered "That henceforth the Court of Criminal and Civil "Justice of Demerara and Essequibo, and the Court "of Civil Justice and the Court of Criminal Justice "of Berbice, shall be holden by and before three "Justices, and no more, and that the first or presiding "Judge of the said Court shall be called and bear "the style and title of Chief Justice of British "Guiana, and that the second and third of such "Judges shall be called and bear the respective "styles and titles of first Puisne Judge and second "Puisne Judge of British Guiana." In the provision made for the jurisdiction of the Judges in civil cases, it is ordered, "That in each of the said "Courts respectively the said three Judges of the "respective colonies shall in all civil cases have, "possess, exercise, and enjoy such and the same "jurisdiction, powers, and authority in every re- "spect as the Judges of the said Courts have here- "tofore lawfully possessed, exercised, or enjoyed; "and that the decision of the majority of such "three Judges shall, in all civil cases at any time "depending in the said respective Courts, be taken "and adjudged to be, and shall be, recorded as the "Judgment of the whole of such Court."

It might be said, without going further, that this provision in the Ordinance of June, 1831, with respect to the powers and authority of the Judges (which are preserved to them by the Ordinance of 1855), in terms constituted the Supreme Court a Court of Record, for no other interpretation can be fairly put upon the words "that the decision of

"the majority of the Judges shall be taken and "adjudged to be, and shall be recorded as the Judg-"ment of the whole of such Court."

But it was argued by Mr. Coleridge, that in the year 1846 a Criminal Court was established in British Guiana, and that this Criminal Court was expressly ordered to be a Court of Record. For by the second Article of that Ordinance it is enacted "That the Supreme Courts of Criminal "Justice in British Guiana shall be Courts of "Record, and shall have cognizance of all crimi-"nal pleas and jurisdiction in all criminal cases "whatsoever as fully and amply, to all intents "and purposes, in British Guiana, as Her Ma-"jesty's Courts of Queen's Bench, Common Pleas, "and Exchequer, at Westminster."

From this Ordinance he drew the following argument:—Here (he said) is an Ordinance in the year 1846, which orders that the Court of Criminal Jurisdiction shall be a Court of Record. It says nothing with regard to the Supreme Court of Civil Justice, and therefore impliedly, it must be taken that that Court was not to be a Court of Record. In other words, the Ordinances of 1831 and 1855 having, according to the view of their Lordships, constituted the Supreme Court of Civil Justice a Court of Record, an Ordinance of 1846, referring solely to the establishment of a Criminal Court, is to have the effect by force of the words making it a Court of Record of proving that the Court of Civil Justice is not a Court of Record.

Their Lordships were referred by the Solicitor-General to an Ordinance which immediately preceded that upon which Mr. Coleridge laid so much stress, which was the Ordinance, No. 19, of the year 1846, which provided that there might be a trial by jury in all issues in civil cases, and that the Supreme Court of Civil Justice might try at bar with a jury any cases which they thought it was right and proper should be so tried.

Now, in the case of *Rainy* v. *The Justices of Sierra Leone*, where a question arose whether the Recorder's Court of Sierra Leone was a Court of Record or not, and whether the Court, being a Court of Record, would have power to commit for contempt, their Lordships said:—

"The Recorder's Court is created by the Charter of "Justice, dated the 17th of October, 1821, and is authorized to hear and determine all civil suits, actions, "and pleas, which may happen within the colony, and the "charter directs that, in all cases where the action would, "if the parties were resident in England, be tried by a "jury, such action shall be tried before a jury in the "Court of the Recorder, according to the practice in "England. That being the constitution of the Court, in "regard to trial by jury, we are of opinion, that it is a "Court of Record, and that the law must be considered "the same there as in this country, and, therefore, that "the Orders made by the Court in the exercise of its discretion, imposing these fines for contempts, are conclusive and cannot be questioned by another Court; and "we do not consider that there is any remedy by petition "to the Judicial Committee to review the propriety of "such Orders."

If, therefore, it had been shown to their Lordships in the clearest and most satisfactory manner, that, according to the old Dutch law and the original constitution of this Court in the colony of British Guiana, it had no power whatever to commit for contempt, still, under the Ordinances of 1831 and 1855, they would entertain no doubt that the old Dutch law was completely superseded, and that this Court was established as a Court of Record by that which is equivalent to an Act of Parliament.

Under these circumstances, the Supreme Court of Civil Justice being a Court of Record, it is only necessary to refer to cases in which Appeals have been made to the Judicial Committee from Orders committing parties for contempt by colonial Courts of Record, to see whether this is a case in which their Lordships would think it proper, according to those authorities, that the Appellants should have a right to Appeal. Not a single case is to be found where there has been a committal by one of the Colonial Courts for contempt, where it appeared clearly upon the face of the Order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt was an appropriate one, in which this Committee has ever entertained an Appeal against an Order of this description.

The cases to which we have been referred are all cases very special in their circumstances, and in

which leave was given, owing to some peculiar objection to the committals for contempt. In the case of Mr. Smith, in 3rd Moore, there was an Order of the Recorder's Court of Sierra Leone, disbarring and striking off from the Rolls a practitioner of that Court for alleged contumelious conduct. But, in addition to this Order, there was a distinct and separate one, ordering Mr. Smith to be fined and imprisoned for the same alleged contempt. Now, the mode in which the Committee dwelt with these Orders brings out the distinction as to the right to appeal in these cases in the clearest manner. Mr. Smith's petition was presented through the Secretary of State, and, after considerable delay, it was, by an Order in Council, referred to the Judicial Committee. Their Lordships in that case entertained the petition against the Order for disbarring Mr. Smith and striking him off the Roll, because they held that that was not an appropriate punishment for a contempt of Court. They took no notice of the Order for imprisonment, which they seemed to consider to be in the same category with the fine; but with regard to the fine imposed by the Court for contempt, they held that they had no jurisdiction over it, and that they could not entertain the Appeal.

In the case, in the same volume, of *Downie* and *Arrindell*, there was an application first of all, and special leave granted to Appeal from two Orders of the Supreme Court of British Guiana suspending the Petitioners from practice for six months. The Orders in this case were reversed upon the same ground as in the previous case to which we have referred.

In Rainy's case both the cases previously referred to were cited, and, therefore, their Lordships had before them the consideration of the whole question as to the propriety of entertaining Appeals of this description.

Under these circumstances, their Lordships entertain no doubt whatever as to the propriety of deciding that in this case the leave to appeal ought not to have been granted; that the Supreme Court of Civil Justice was a Court of Record; and that as a Court of Record it had power to commit for this particular contempt.

As their Lordships do not enter into the merits of the case, they will say nothing as to the character of the libel upon which the Court thought it proper to commit the publisher for contempt; but their Lordships will humbly report to Her Majesty as their opinion that Her Majesty's Order in Council of the 10th November, 1866, whereby leave to appeal was conditionally granted in this case ought to be rescinded, and this Appeal dismissed with costs.