80 U.S. 335, 1871 WL 14737 (U.S.Dist.Col.), 13 Wall. 335, 20 L.Ed. 646
(Cite as: 80 U.S. 335)

Supreme Court of the United States
BRADLEY
v.
FISHER.
December Term, 1871

***1** ERROR to the Supreme Court of the District of Columbia.

This was an action brought by Joseph H. Bradley, who was, in 1867, an attorney-at-law, practicing in the Supreme Court of the District of Columbia, against George P. Fisher, who was then one of the justices of that court, to recover damages alleged to have been sustained by the plaintiff, 'by reason of the wilful, malicious, oppressive, and tyrannical acts and conduct' of the defendant, whereby the plaintiff was deprived of his right to practice as an attorney in that court. The case was thus:

On the 10th of June, 1867, the trial of John H. Suratt, for the murder of the late President Lincoln, was begun in the Criminal Court of the District and continued until the 10th of August, when the jury, failing to agree on a verdict, was discharged. The defendant was the presiding judge in the court during the progress of the trial, and until its termination, and the plaintiff was one of the attorneys who defended the prisoner. Immediately on the discharge of the jury, the court thus held by the defendant made the following order, which with its recitals was entered of record:

'On the 2d day of July last, during the progress of the trial of John H. Suratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, Esq., accosted him in a rude and insulting manner, charging the judge with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention of passing any insult whatever, and assured Mr. Bradley that he entertained for him no other feelings than those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, threatened the judge with personal chastisement. No court can administer justice or live if its judges are to be threatened with personal chastisement on all occasions whenever the irascibility of counsel may be excited by imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked or go unpunished.

'It is, therefore, ordered that his name be stricken from the roll of attorneys practicing in this court.

'GEORGE P. FISHER,

'Justice of the Supreme Court, D. C.'

The present suit was founded upon this order, which was treated in the declaration as an order striking the name of the plaintiff from the roll of attorneys of the *Supreme Court of the District*, and not as an order merely striking his name from the roll of attorneys practicing in the *Criminal Court of the District*. The declaration had two counts, and was entitled and filed in the Supreme Court of the District.

The *first* count alleged that the defendant caused the order (which was set out at length) to be recorded ' on the minutes of the Criminal Court, *being one of the branches of the said Supreme Court;*' that the several statements, contained in the order were untrue, and were specifically denied; and that the defendant 'falsely, fraudulently, corruptly, and maliciously intended thereby to give a color of jurisdiction' for making the order that the name of the plaintiff '*be stricken from the roll of attorneys practicing in this court*,' whereby the plaintiff had been injured, and claimed damages, $20,000.

***2** The *second* count alleged that the defendant ' wantonly, corruptly, arbitrarily, and oppressively intending to remove the plaintiff' from his office as an attorney-at-law, 'caused to be entered *on the records of the Supreme Court of the District of Columbia, Criminal Court*, March Term, 1867,' the order in question, which was set forth at length, '*the same being an order removing the plaintiff from the office of an attorney-at-law in the said Supreme Court of the District of Columbia*,' whereby he was greatly disturbed in the enjoyment of his office and prevented from having the use and benefit thereof, in so full and ample a manner as he otherwise might and would have had.

The declaration also averred that the order was made without notice of any kind to the plaintiff, and was summary, that there was no complaint made by him to the justice, and that he did not accost him while the court was in session, nor immediately on the court's taking a recess and as the presiding judge was descending from the bench, as was stated in the order, nor did he, the plaintiff, at the time and place mentioned in the order, address the justice at all after the court had taken the recess, until the judge had passed some time in a private room, and had left the same and gone out of the court-house; and the great body of auditors, jurors, witnesses, clerks, and officers of the court, and the jury impanelled, and the prisoner on trial had left the court-house; and so the declaration proceeded to say, 'the said judge *wilfully, maliciously, corruptly, and unlawfully fabricated the said order to give color and pretence to his jurisdiction in the premises*.'

By reason of which unlawful, wrongful, unjust, and oppressive acts of the defendant, the plaintiff alleged that he had been deprived of emoluments, and had lost sums of money which would otherwise have accrued to him from the enjoyment of his office and from his practice as an attorney in the courts of the county and district, &c., &c., and therefore he claimed $20,000 damages.

Pleas: 1st, the general issue, 'not guilty;' and 2d, a special plea, that before and at the time of the alleged commission, &c., the defendant was one of the justices of the Supreme Court of the District of Columbia, *and, as such justice, was regularly and lawfully holding, by appointment of said Supreme Court of the District of Columbia*, in general term, at the city of Washington, in said District, a court of record, to wit, the Criminal Court of said District, created by authority of the United States of America, and having general jurisdiction for the trial of crimes and offences arising within said District, and that the said supposed trespass consisted of an order and decree of said Criminal Court, made by said defendant in the lawful exercise and performance of his authority and duty, as the presiding justice of said Criminal Court, for official misconduct and misbehavior of said plaintiff (he being one of the attorneys of said Criminal Court), occurring in the presence of the said defendant as the justice of said Criminal Court holding the same as aforesaid and not otherwise; as appears from the record of said Criminal Court and the order or decree of the defendant so made as aforesaid.

***3** Wherefore he prayed judgment, if the plaintiff ought to have or maintain his aforesaid action against him, &c.

The defendant joined issue on this plea.

On the trial the plaintiff produced the order entered by the Criminal Court, which was admitted to be in the handwriting of the defendant, and offered to read it in evidence, but upon objection of the defendant's counsel to its admissibility, it was excluded, and the plaintiff excepted. Subsequently the plaintiff read in evidence the order, as entered, from the records of the Criminal Court, and offered to show that the order was prepared, written, and published by the defendant with express malice against the plaintiff, to defame and injure him, and without the defendant having any jurisdiction to make the order; and that there was no altercation on the 2d July, 1867, between him and the judge, and that no words passed between them; and that they were not near each other when the Criminal Court took its recess, until the next day or immediately thereafter, and as the presiding justice thereof was descending from the bench; but upon objection of the defendant's counsel the proof was excluded, and the plaintiff excepted.

The plaintiff also offered to prove that the only interview between him and the judge, which occurred on the 2d of July, 1867, after the Criminal Court had taken a recess, began after the court had adjourned, and the judge had left the court-room and the building and returned to the court-room, and in that interview he did not address the judge in a rude and insulting manner; that he did not charge him with having offered him, the plaintiff, a series of insults from the bench from the commencement of the trial; that the judge did not disclaim any intention of passing any insult whatever, nor assure the plaintiff that he entertained for him no other feelings but those of respect; that the plaintiff did not threaten the judge with personal chastisement, but to the contrary thereof, the said judge was from the opening of the interview violent, abusive, threatening, and quarrelsome; but upon objection the proof was excluded, and the plaintiff excepted.

The plaintiff thereupon asked a witness to state what passed between the plaintiff and defendant on the said 2d of July, 1867, the time when the parties met, and whether it was before the adjournment of the court on that day, or after it had adjourned, and how long after it had adjourned, and to state all he knew relating to that matter; the object of the evidence being to contradict the recitals in the order, and show that the justice had no jurisdiction in the premises, and had acted with malice and corruptly. But upon objection the evidence was excluded, and the plaintiff excepted. And the court ruled that, on the face of the record given in evidence, the defendant had jurisdiction and discretion to make the order, and he could not be held responsible in this private action for so doing, and instructed the jury that the plaintiff was not entitled to recover. The jury accordingly gave a verdict for the defendant, and judgment being entered thereon, the plaintiff brought the case to this court on a writ of error.

***4** To understand one point of the case the better, it may be mentioned that in *Ex parte Bradley*,[FN1] this court granted a peremptory mandamus to the Supreme Court of the District to restore Mr. Bradley to his office of attorney and counsellor in *that* court, from which in consequence of the matter with Judge Fisher in the Criminal Court, he had been removed; this court, that is to say the Supreme Court of the United States, holding that the Criminal Court of the District was, at the time the order in question was made, a different and separate court from the Supreme Court of the District of Columbia, as organized by the act of March 3d, 1863.

1. An order of the Criminal Court of the District of Columbia, made in 1867, striking the name of an attorney from its roll, did not remove the attorney from the bar of the Supreme Court of the District, the Criminal Court being at that time a separate and independent court; and in an action by the attorney against the judge of the Criminal Court, that order was inadmissible to show a removal by order of the defendant, or by order of the court held by him, from the Supreme Court, notwithstanding that an act of Congress, passed in 1870, changed the independent character of the Criminal Court, and declared that its judgments, decrees, and orders should be deemed the judgments, decrees, and orders of the Supreme Court of the District. The act of Congress, in enlarging the operation of the order, did not alter its original character.

2. Judges of courts of record of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction as to their liability made between acts done by them in excess of their jurisdiction and acts done by them in the clear absence of all jurisdiction over the subject-matter.

3. The power to remove attorneys from the bar is possessed by all courts which have authority to admit attorneys to practice; but, except where the matters constituting the grounds of its action occur in open court in the presence of its judges, the power of the court should not be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defence.

4. The obligation which attorneys assume when they are admitted to the bar is not simply to be obedient to the Constitution and laws, but to maintain at all

times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but includes abstaining out of court from insulting language and offensive conduct towards the judges personally for their judicial acts. A threat of personal chastisement, made by an attorney to a judge out of court for his conduct during the trial of a cause pending, is good ground for striking the name of the attorney from the rolls of attorneys practicing in the court. Such an order is a judicial act for which the judge is not liable to the attorney in a civil action.

West Headnotes

Attorney and Client 45 ⚿43

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k43 k. Contempt of Court. Most Cited Cases
The obligation which attorneys assume when they are admitted to the bar is not discharged by merely observing the rules of courteous demeanor in open court, but includes abstaining out of court from insulting language and offensive conduct towards the judges personally for their judicial acts. A threat of personal chastisement, made by an attorney to a judge out of court for his conduct during the trial of a cause pending, is good ground for striking off the attorney from the rolls of attorneys practicing in the court.

Judges 227 ⚿36

227 Judges
227III Rights, Powers, Duties, and Liabilities
227k36 k. Liabilities for Official Acts. Most Cited Cases
Judges of courts of record of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly; otherwise, as to acts done by them in the clear absence of all jurisdiction over the subject-matter.

FN1 7 Wallace, 364.

***5** It may also be stated that on the 21st of June, 1870, after the decision just mentioned, Congress passed an act entitled, 'An act relating to the Supreme Court of the District of Columbia,'[FN2] which declared 'that the several general terms and special terms of the circuit courts, district courts, and criminal courts authorized by the act approved March 3d, 1863, entitled 'An act to reorganize the courts in the District of Columbia, and for other purposes,' which have been or may be held, shall be, and are declared to be severally, terms of the Supreme Court of the District of Columbia; and the judgments, decrees, sentences, orders, proceedings, and acts of said general terms, special terms, circuit courts, district courts, and criminal courts heretofore or hereafter rendered, made, or had, shall be deemed judgments, decrees, sentences, orders, proceedings, and acts of said Supreme Court.'

FN2 16 Stat. at Large, 160.

It may be well also, as counsel in argument refer to it, to state that an act of Congress of March 2d, 1831,[FN3] enacted:

FN3 4 Id. 487.

'That the power of the several courts of the United States to issue attachments and *inflict summary punishments for contempt of court*, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obtruct the administration of justice; the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.'

Messrs. J. M. Harris and R. T. Merrick, for the plaintiff in error:

1. By the act of Congress of June, 1870, the

judgments, decrees, and orders of the Criminal Court of the District are to be deemed the judgments, decrees, and orders of the Supreme Court. All the effects, therefore, of the decision by this court of the case *Ex parte Bradley*, and argument that the order of the Criminal Court is not an order removing or disbarring the plaintiff from the Supreme Court, fall to the ground, in virtue of this act, and irrespectively of other reasons which might be adduced.

2. The judge relies in effect upon the order of court made by him. The plaintiff in reply alleges that the judge has himself fabricated the statement of facts set forth in that order-made it falsely and fraudulently-and by such fabircation, and by a false and fraudulent statement that certain things which never took place at all, did take place, corruptly sought to give himself jurisdiction in the case where he has acted. Now, the evidence which the plaintiff offered and which the court refused, tended directly to prove that the whole statement ordered by the judge to be put on record, was false and fabricated; and that it was made but to give color to a usurped jurisdiction; in other words, that the statement was fraudulently made. Certainly the plaintiff had a right to show *such* facts; for the judge had no power or jurisdiction to make the order complained of, if the matters recited never occurred. Under such circumstances, a judge, knowing the facts, is liable, even though he did not act corruptly;[FN4] and *à fortiori* is liable in a case where he did so act.

FN4 Houlden *v.* Smith, 14 Queen's Bench, 841.

***6** 3. The courts of the District are, of course, courts of the United States; and whether the proceeding for which this action is brought, be regarded as a punishment for contempt, or as a punishment for alleged misbehavior in office-a matter which the form of the order leaves quite uncertain-it was in the face of the statute of March 2d, 1831. This is undoubtedly so if it was for contempt; and even if it was for misbehavior in office the statute would still seem to apply; for it prohibits a summary proceeding except in the cases which the act specifies; cases which all look to misconduct that interferes with the administration of justice. But for a man who may have been once admitted to the bar, to threaten out of court, with assault, another man who happens to be a judge, and so occasionally in court, is neither misbehavior in office nor a contempt of court.

4. But if the offence for which Mr. Bradley was disbarred was misbehavior in office, and if that be not within the statute of March 2d, 1831, still, undoubtedly, he should have had notice and an opportunity of defending himself. Admit that the court may proceed summarily, still summary jurisdiction is not arbitrary power; and a summons and opportunity of being heard is a fundamental principle of all justice.[FN5] The principle has been declared by this court in *Ex parte Garland*,[FN6] to be specifically applicable to the case of disbarring an attorney; and so declared for obvious reasons. Without then having summoned Mr. Bradley, and having given to him an opportunity to be heard, the court had no jurisdiction of Mr. Bradley's person or of any case relating to *him*. It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void *ab initio*.[FN7] The whole subject is set forth in Smith's Leading Cases,[FN8] where the authorities are collected and the principle deduced, that when the record shows that the court has proceeded without notice to the party condemned, the judgment will be void, and may be disregarded in any collateral proceeding.

FN5 Rex *v.* Chancellor of Cambridge, 2 Lord Raymond, 1348.

FN6 4 Wallace, 378.

FN7 Mitchell *v.* Foster, 12 Adolphus & Ellis, 472; United States *v.* Arredondo, 6 Peters, 709; Walden *v.* Craig's Heris, 14 Id. 154.

FN8 Vol. 1, p. 1023, edition of 1866, Crepps *v.* Durden.

Mr. A. G. Riddle and W. A. Cook, contra.

Mr. Justice FIELD delivered the opinion of the court.

***7** In 1867, the plaintiff was a member of the bar of the Supreme Court of the District of Columbia, and the defendant was one of the justices of that court. In June, of that year, the trial of one John H. Suratt, for the murder of Abraham Lincoln, was commenced in the Criminal Court of the District, and was continued until the tenth of the following August, when the jury were discharged in consequence of their inability to agree upon a verdict. The defendant held that court, presiding at the trial of Suratt from its commencement to its close, and the plaintiff was one of the attorneys who defended the prisoner. Immediately upon the discharge of the jury, the court, thus held by the defendant, directed an order to be entered on its records striking the name of the plaintiff from the roll of attorneys practicing in that court. The order was accompanied by a recital that on the second of July preceding, during the progress of the trial of Suratt, immediately after the court had taken a recess for the day, as the presiding judge was descending from the bench, he had been accosted in a rude and insulting manner by the plaintiff, charging him with having offered the plaintiff a series of insults from the bench from the commencement of the trial; that the judge had then disclaimed any intention of passing any insult whatever, and had assured the plaintiff that he entertained for him no other feelings than those of respect, but that the plaintiff, so far from accepting this explanation, or disclaimer, had threatened the judge with personal chastisement.

The plaintiff appears to have regarded this order of the Criminal Court as an order disbarring him from the Supreme Court of the District; and the whole theory of the present action proceeds upon that hypothesis. The declaration in one count describes the Criminal Court as one of the branches of the Supreme Court, and in the other count represents the order of the Criminal Court as an order removing the plaintiff from the office of an attorney-at-law in the Supreme Court of the District. And it is for the supposed removal from that court, and the assumed damages consequent thereon, that the action is brought.

Yet the Criminal Court of the District was at that time a separate and independent court, and as distinct from the Supreme Court of the District as the Circuit Court is distinct from the Supreme Court of the United States. Its distinct and independent character was urged by the plaintiff, and successfully urged, in this court, as ground for relief against the subsequent action of the Supreme Court of the District, based upon what had occurred in the Criminal Court. And because of its distinct and independent character, this court held that the Supreme Court of the District possessed no power to punish the plaintiff on account of contemptuous conduct and language before the Criminal Court, or in the presence of its judge. By this decision, which was rendered at the December Term of 1868,[FN9] the groundwork of the present action of the plaintiff is removed. The law which he successfully invoked, and which protected him when he complained of the action of the Supreme Court of the District, must now equally avail for the protection of the defendant, when it is attempted to give to the Criminal Court a position and power which were then denied. The order of the Criminal Court, as it was then constituted, was not an order of the Supreme Court of the District, nor of one of the branches of that court. It did not, for we know that in law it could not, remove the plaintiff from the office of an attorney of that court, nor affect his right to practice therein.

FN9 Ex parte Bradley, 7 Wallace, 364.

***8** This point is distinctly raised by the special plea of the defendant, in which he sets up that at the time the order complained of was made, he was regularly and lawfully holding the Criminal Court of the District, a court of record, having general jurisdiction for the trial of crimes and offences arising within the District, and that the order complained of was an order of the Criminal Court, made by him in the lawful exercise and performance of his authority and duty as its presiding justice, for official misconduct of the plaintiff, as one of its attorneys, in his presence; and upon this plea the plaintiff joined issue.

The court below, therefore, did not err in excluding

the order of removal as evidence in the cause, for the obvious reason that it did not establish, nor tend to establish, the removal of the plaintiff by any order of the defendant, or of the court held by him, from the bar of the Supreme Court of the District. And the refusal of the court below to admit evidence contradicting the recitals in that order, could not be the ground of any just exception, when the order itself was not pertinent to any issue presented. Nor is this conclusion affected by the act of Congress passed in June, 1870, nearly three years after the order of removal was made, and nearly two years after the present action was commenced, changing the independent character of the Criminal Court and declaring that its judgments, decrees, and orders should be deemed the judgments, decrees, and orders of the Supreme Court of the District. [FN10] If the order of removal acquired from this legislation a wider scope and operation than it possessed when made, the defendant is not responsible for it. The original act was not altered. It was still an order disbarring the plaintiff only from the Criminal Court, and any other consequences are attributable to the action of Congress, and not to any action of the defendant.

FN10 16 Stat. at Large, 160.

But this is not all. The plea, as will be seen from our statement of it, not only sets up that the order of which the plaintiff complains, was an order of the Criminal Court, but that it was made by the defendant in the lawful exercise and performance of his authority and duty as its presiding justice. In other words, it sets up that the order for the entry of which the suit is brought, was a judicial act, done by the defendants as the presiding justice of a court of general criminal jurisdiction. If such were the character of the act, and the jurisdiction of the court, the defendant cannot be subjected to responsibility for it in a civil action, however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff. For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to every one who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. As observed by a distinguished English judge, it would establish the weakness of judicial authority in a degrading responsibility.[FN11]

FN11 Justice Mayne, in Taaffe *v.* Downes, reported in a note to 3d Moore's Privy Council, 41.

***9** The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any wellordered system of jurisprudence. It has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country. It has, as Chancellor Kent observes, ‘a deep root in the common law.'[FN12]

FN12 Yates *v.* Lansing, 5 Johnson, 291.

Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry. This was adjudged in the case of *Floyd and Barker*, reported by Coke, in 1608,[FN13] where it was laid down that the judges of the realm could not be drawn in question for any supposed corruption impeaching the verity of their records, except before the king himself, and it was observed that if they were required to answer otherwise, it would ‘ tend to the scandal and subversion of all justice, and those who are the most sincere, would not be free from continual calumniations.'

FN13 12 Coke, 25.

The truth of this latter observation is manifest to all persons having much experience with judicial

proceedings in the superior courts. Controversies involving not merely great pecuniary interests, but the liberty and character of the parties, and consequently exciting the deepest feelings, are being constantly determined in those courts, in which there is great conflict in the evidence and great doubt as to the law which should govern their decision. It is this class of cases which impose upon the judge the severest labor, and often create in his mind a painful sense of responsibility. Yet it is precisely in this class of cases that the losing party feels most keenly the decision against him, and most readily accepts anything but the soundness of the decision in explanation of the action of the judge. Just in proportion to the strength of his convictions of the correctness of his own view of the case is he apt to complain of the judgment against him, and from complaints of the judgment to pass to the ascription of improper motives to the judge. When the controversy involves questions affecting large amounts of property or relates to a matter of general public concern, or touches the interests of numerous parties, the disappointment occasioned by an adverse decision, often finds vent in imputations of this character, and from the imperfection of human nature this is hardly a subject of wonder. If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. Few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the acts which would be essential to the maintenance of the action.

***10** If upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party-and that judge perhaps one of an inferior jurisdiction-that he had decided as he did with judicial integrity; and the second judge would be subjected to a similar burden, as he in his turn might also be held amenable by the losing party.

Some just observations on this head by the late Chief Justice Shaw, will be found in *Pratt* v. *Gardner*,[FN14] and the point here was adjudged in the recent case of *Fray* v. *Blackburn*,[FN15] by the Queen's Bench of England. One of the judges of that bench was sued for a judicial act, and on demurrer one of the objections taken to the declaration was, that it was bad in not alleging malice. Judgment on the demurrer having passed for the defendant, the plaintiff applied for leave to amend his declaration by introducing an allegation of malice and corruption; but Mr. Justice Compton replied: 'It is a principle of our law that no action will lie against a judge of one of the superior courts for a judicial act, though it be alleged to have been done maliciously and corruptly; therefore the proposed allegation would not make the declaration good. The public are deeply interested in this rule, which indeed exists for their benefit, and was established in order to secure the independence of the judges, and prevent them being harassed by vexatious actions;'-and the leave was refused.[FN16]

FN14 2 Cushing, 68.

FN15 3 Best & Smith, 576.

FN16 In Scott *v.* Stansfield (3 Law Reports, Exchequer, 220), a judge of a county court was sued for slander, and he put in a plea that the words complained of were spoken by him in his capacity as such judge, while sitting in his court, and trying a cause in which the plaintiff was defendant. To this plea a replication was filed, that the words were spoken falsely and maliciously, and without any reasonable, probable, or justifiable cause, and without any foundation whatever, and not *bonâ fide* in the discharge of the defendant's duty as judge, and were wholly irrelevant to the matter before him. To the replication the defendant demurred; and

> the Court of Exchequer held the demurrer well taken. 'I am of opinion,' said the Chief Baron, 'that our judgment must be for the defendant. The question raised upon this record is whether an action is maintainable against the judge of a county court, which is a court of record, for words spoken by him in his judicial character, and in the exercise of his functions as judge in the court over which he presides, where such words would as against an ordinary individual constitute a cause of action, and where they are alleged to have been spoken maliciously and without probable cause, and to have been irrelevant to the matter before him. The question arises, perhaps, for the first time, with reference to a county court judge, but a series of decisions uniformly to the same effect, extending from the time of Lord Coke to the present time, establish the general proposition that no action will lie against a judge for any acts done or words spoken in his judicial capacity in a court of justice. This doctrine has been applied not only to the superior courts, but to the court of a coroner, and to a court martial, which is not a court of record. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. *This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences*.'

***11** In this country the judges of the superior courts of record are only responsible to the people, or the authorities constituted by the people, from whom they receive their commissions, for the manner in which they discharge the great trusts of their office. If in the exercise of the powers with which they are clothed as ministers of justice, they act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively, they may be called to an account by impeachment and suspended or removed from office. In some States they may be thus suspended or removed without impeachment, by a vote of the two houses of the legislature.

In the case of *Randall* v. *Brigham*,[FN17] decided by this court, at the December Term of 1868, we had occasion to consider at some length the liability of judicial officers to answer in a civil action for their judicial acts. In that case the plaintiff had been removed by the defendant, who was one of the justices of the Superior Court of Massachusetts, from the bar of that State, and the action was brought for such removal, which was alleged in the declaration to have been made without lawful authority, and wantonly, arbitrarily, and oppressively. In considering the questions presented the court observed that it was a general principle, applicable to all judicial officers, that they were not liable to a civil action for any judicial act done by them within their jurisdiction; that with reference to judges of limited and inferior authority it had been held that they were protected only when they acted within their jurisdiction; that if this were the case with respect to them, no such limitation existed with respect to judges of superior or general authority; that they were not liable in civil actions for their judicial acts, even when such acts were in excess of their jurisdiction, 'unless, perhaps, when the acts in excess of jurisdiction are done maliciously or corruptly.' The qualifying words were inserted upon the suggestion that the previous language laid down the doctrine of judicial exemption from liability to civil actions in terms broader than was necessary for the case under consideration, and that if the language remained unqualified it would require an explanation of some apparently conflicting adjudications found in the reports. They were not intended as an expression of opinion that in the cases supposed such liability would exist, but to avoid the expression of a contrary doctrine.

FN17 7 Wallace, 523.

In the present case we have looked into the authorities and are clear, from them, as well as from the principle on which any exemption is maintained,

that the qualifying words used were not necessary to a correct statement of the law, and that judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend. Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offences, jurisdiction over the subject of offences being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offences committed within a certain district, should hold a particular act to be a public offence, which is not by the law made an offence, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convincted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked. Indeed some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind, and for the same reasons.

***12** The distinction here made between acts done in excess of jurisdiction and acts where no jurisdiction whatever over the subject-matter exists, was taken by the Court of King's Bench, in *Ackerley* v. *Parkinson*. [FN18] In that case an action was brought against the vicar-general of the Bishop of Chester and his surrogate, who held the consistorial and episcopal court of the bishop, for excommunicating the plaintiff with the greater excommunication for contumacy, in not taking upon himself the administration of an intestate's effects, to whom the plaintiff was next of kin, the citation issued to him being void, and having been so adjudged. The question presented was, whether under these circumstances the action would lie. The citation being void, the plaintiff had not been legally brought before the court, and the subsequent proceedings were set aside, on appeal, on that ground. Lord Ellenborough observed that it was his opinion that the action was not maintainable if the ecclesiastical court had a general jurisdiction over the subject-matter, although the citation was a nullity, and said, that 'no authority had been cited to show that the judge would be liable to an action where he has jurisdiction, but has proceeded erroneously, or, as it is termed, *inverso ordine*.' Mr. Justice Blanc said there was 'a material distinction between a case where a party comes to an erroneous conclusion in a matter over which he has jurisdiction and a case where he acts wholly without jurisdiction;' and held that where the subject-matter was within the jurisdiction of the judge, and the conclusion was erroneous, although the party should by reason of the error be entitled to have the conclusion set aside, and to be restored to his former rights, yet he was not entitled to claim compensation in damages for the injury done by such erroneous conclusion, as if the court had proceeded without any jurisdiction.[FN19]

FN18 3 Maule & Selwyn, 411.

> FN19 Calder *v.* Halket, decided by the Judicial Committee of the Privy Council (3 Moore's Privy Council Rep. 28), goes to the extent of holding that an action will not lie even against a judge of an inferior court of limited jurisdiction, for his judicial acts, when acting without jurisdiction, unless he knew or had the means of knowing of the defect of jurisdiction, and that it lies upon the plaintiff in every such case to prove that fact.

The exemption of judges of the superior courts of record from liability to civil suit for their judicial acts existing when there is jurisdiction of the subject-matter, though irregularity and error attend the exercise of the jurisdiction, the exemption cannot be affected by any consideration of the motives with which the acts are done. The allegation of malicious or corrupt motives could always be made, and if the motives could be inquired into judges would be subjected to the same vexatious litigation upon such allegations, whether the motives had or had not any real existence. Against the consequences of their erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort. But for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction, the judges of these courts can only be reached by public prosecution in the form of impeachment, or in such other form as may be specially prescribed.

***13** If, now, we apply the principle thus stated, the question presented in this case is one of easy solution. The Criminal Court of the District, as a court of general criminal jurisdiction, possessed the power to strike the name of the plaintiff from its rolls as a practicing attorney. This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession. And, except where matters occurring in open court, in presence of the judges, constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defence. This is a rule of natural justice, and is as applicable to cases where a proceeding is taken to reach the right of an attorney to practice his profession as it is when the proceeding is taken to reach his real or personal property. And even where the matters constituting the grounds of complaint have occurred in open court, under the personal observation of the judges, the attorney should ordinarily be heard before the order of removal is made, for those matters may not be inconsistent with the absence of improper motives on his part, or may be susceptible of such explanation as would mitigate their offensive character, or he may be ready to make all proper reparation and apology. Admission as an attorney is not obtained without years of labor and study. The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the bar should therefore never be decreed where any punishment less severe-such as reprimand, temporary suspension, or fine-would accomplish the end desired.

But on the other hand the obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar, is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts. 'In matters collateral to official duty,' said Chief Justice Gibson in the case of *Austin and others*, 'the judge is on a level with the members of the bar as he is with his fellow-citizens, his title to distinction and respect resting on no other foundation than his virtues and

qualities as a man. But it is nevertheless evident that professional fidelity may be violated by acts which fall without the lines of professional functions, and which may have been performed out of the pale of the court. Such would be the consequences of beating or insulting a judge in the street for a judgment in court. No one would pretend that an attempt to control the deliberation of the bench, by the apprehension of violence, and subject the judges to the power of those who are, or ought to be, subordinate to them, is compatible with professional duty, or the judicial independence so indispensable to the administration of justice. And an enormity of the sort, practiced but on a single judge, would be an offence as much against the court, which is bound to protect all its members, as if it had been repeated on the person of each of them, because the consequences to suitors and the public would be the same; and whatever may be thought in such a case of the power to punish for contempt, there can be no doubt of the existence of a power to strike the offending attorney from the roll.'

***14** The order of removal complained of in this case, recites that the plaintiff threatened the presiding justice of the Criminal Court, as he was descending from the bench, with personal chastisement for alleged conduct of the judge during the progress of a criminal trial then pending.

The matters thus recited are stated as the grounds for the exercise of the power possessed by the court to strike the name of the plaintiff from the roll of attorneys practicing therein. It is not necessary for us to determine in this case whether under any circumstances the verity of this record can be impeached. It is sufficient to observe that it cannot be impeached in this action or in any civil action against the defendant. And if the matters recited are taken as true there was ample ground for the action of the court. A greater indignity could hardly be offered to a judge than to threaten him with personal chastisement for his conduct on the trial of a cause. A judge who should pass over in silence an offence of such gravity would soon find himself a subject of pity rather than of respect.

The Criminal Court of the District erred in not citing the plaintiff, before making the order striking his name from the roll of its attorneys, to show cause why such order should not be made for the offensive language and conduct stated, and affording him opportunity for explanation, or defence, or apology. But this erroneous manner in which its jurisdiction was exercised, however it may have affected the validity of the act, did not make the act any less a judicial act; nor did it render the defendant liable to answer in damages for it at the suit of the plaintiff, as though the court had proceeded without having any jurisdiction whatever over its attorneys.

We find no error in the rulings of the court below, and its judgment must, therefore, be affirmed, and it is so ordered.

JUDGMENT AFFIRMED.

Mr. Justice DAVIS, with whom concurred Mr. Justice CLIFFORD, dissenting.
I agree that judicial officers are exempt from responsibility in a civil action for all their judicial acts in respect to matters of controversy within their jurisdiction. I agree, further, that judges of superior or general authority are equally exempt from liability, even when they have exceeded their jurisdiction, unless the acts complained of were done maliciously or corruptly. But I dissent from the rule laid down by the majority of the court, that a judge is exempt from liability in a case like the present, where it is alleged not only that his proceeding was in excess of jurisdiction, but that he acted maliciously and corruptly. If he did so, he is, in my opinion, subject to suit the same as a private person would be under like circumstances.

I also dissent from the opinion of the majority of the court for the reason that it discusses the merits of the controversy, which, in the state of the record, I do not consider open for examination.

U.S.,1871
Bradley v. Fisher
80 U.S. 335, 1871 WL 14737 (U.S.Dist.Col.), 13 Wall. 335, 20 L.Ed. 646

END OF DOCUMENT