

exorbitant demand, if it be one, because he has it in writing, than he can do so when he has no writing whatever. If a writing were to be a protection to the attorney, he would be as the roughly beyond the control of the court as if he were a stranger to, instead of being an officer of the court, and exemption has never been claimed to such an extent as this yet.

I do not think it necessary at present to express any opinion upon the other very important point raised by Mr. Harrison.

On the 24th February, Mr. Justice Adam Wilson granted a summons to the applicant entitled in the matter of the attorney, calling upon Mollison to show cause why the several bills of costs rendered by Greenwood to Mollison, and delivered to Hedges, should not be referred to the master for taxation, and at the same time ordered the former summons, calling on the attorney, to stand enlarged until the return of the second summons.

On the 2nd March both summonses were returnable in Chambers before Mr. Justice John Wilson, who was then in Chambers.

Robert A. Harrison shewed cause as well for Mollison as for Greenwood. He filed on the part of Mollison an affidavit of Joshua Johnston, wherein it was sworn: That on or about the fifth day of October last past, Mollison employed him, deponent, as his agent, to attend to a certain matter for him, wherein Elias Hedges and Daniel E. Hedges had by distress for rent seized the goods and chattels of Mollison; that at the time above referred, Mollison gave to deponent the inventory and notice which was served on him, Mollison, by the bailiff who acted for Hedges; that the said inventory and notice stated that the seizure before referred to was made for arrears of rent due in the month of December previous, whereas there was no rent due, Mollison having paid the same and produced to deponent a receipt for all rent due up to the 1st of March, 1863, and signed by the landlord, Elias Hedges; that at or about the time Mollison (who is a carpenter by trade) rented the farm from Elias Hedges, he, Mollison, purchased goods and chattels consisting of horses, harness and waggon, with other farming implements, from Daniel E. Hedges, the son of Elias Hedges, amounting to the sum of two hundred dollars, and which amount Mollison agreed to pay to Hedges in carpenter work, and which work was to be done and performed in one year thereafter; that Hedges did not require the work to be done within the time limited for the performance of the same, and requested Mollison to extend the time for a year longer, and Mollison consented thereto; that before the seizure before mentioned, Hedges required Mollison to give his note for \$200, payable in one year after date, instead of the carpenter work before mentioned, but Mollison refused to pay for the goods and chattels in any other way than in carpenter work, as was agreed on; that subsequent to the periods in the preceding paragraph mentioned, Daniel E. Hedges informed deponent that he, Hedges, was advised to join in the warrant with his father (the real landlord), so that Mollison could not make a witness of Daniel E. Hedges, in the matter of the rent claimed to be due by Mollison to Elias Hedges, by virtue of a certain memorandum by way of lease, made by and between Mollison and his landlord, E. Hedges, and to which memorandum of lease D. E. Hedges was the only subscribing witness, that the seizure before mentioned was made as deponent verily believed, for the purpose of bringing a pressure to bear on Mollison, to compel him to give his note for the goods and chattels before mentioned; that E. Hedges and D. E. Hedges did not sell the goods and chattels seized before mentioned, but did, on the 7th day of October last, surrender the same, that being the day on which they were advertised to be sold, that, on the 8th day of October last, D. E. Hedges did, at the town of Lindsay, make oath that Mollison was about to abscond, whereupon a capias was issued on the ninth day of October, and the sheriff of the county of Victoria, arrested Mollison and conveyed him to the common goal of the county of Victoria where he was kept confined for eight days, at which time he was liberated on bail; one Reuben King, a farmer, residing in the township of Mariposa, in the county of Victoria, and who is a man of irreproachable character, and whose truth and veracity cannot be doubted did make affidavit before deponent to the following effect, namely: That he saw D. E. Hedges, when going to the town of Lindsay, on the 8th of October last, that Hedges informed him, King, that his seizure of the goods and chattels of Mollison was illegal, and that he was forced to surrender the goods and chattels, and that Hedges further said,

that he, Hedges, would capias Mollison, and that he would put him in a tight place; that Mollison employed deponent to retain for him John Hamer Greenwood, attorney at law, to attend to his interests in the premises, and that at such request, deponent communicated with the said Greenwood that in consequence of the said Mollison residing at a considerable distance from any county town, and it being inconvenient for him to attend to all matters himself, and so much as to insure on the part of Greenwood extra diligence, and at the smallest trouble possible to Mollison, he agreed and bound himself to pay to Greenwood a retaining fee in each suit over and above his costs; that the following actions at law were instituted, viz., *Mollison v. Elias Hedges*, illegal seizure, and *Mollison v. Daniel E. Hedges*, malicious arrest and false imprisonment, and by D. E. Hedges *Mollison vs Hedges*, capias; that in each of the causes of the next preceding paragraph mentioned, Mollison gave a retainer to the said Greenwood, and deponent wrote the same; that they were given on the day of the date thereof, that on the sixteenth day of November last, or thereabouts, deponent first spoke to Daniel E. Hedges, he having requested Mollison to stay proceedings and settle all matters, and he also expressed his regret that he acted as he had done, but he excused himself that he got bad advice from his advisers; that Mollison for a length of time refused to compromise, he feeling very indignant and outraged at the course pursued by Hedges, and which Mollison declared to be an outrageous persecution, that deponent advised Mollison to settle with the Hedges; that deponent wrote the agreement entered into between the parties; that deponent, wrote down as nearly as possible the agreement as made; that deponent read it over at least twice, slowly and distinctly, to the parties, before they executed the same; that they clearly and distinctly stated that the agreement was correct and as they made it, and that they understood the same; that Greenwood did not dictate the agreement, that he was not present when it was written; that he did not know the terms of settlement; and that he had not anything to do with it in any way or manner; and that deponent, as Mollison's agent, wrote the agreement; that some time subsequently, the said Greenwood sent to deponent bills of costs to be given to Mollison, and which bills deponent afterwards, as Mollison's agent, delivered to D. E. Hedges, requesting payment of the same.

Mr. Harrison argued before Mr. Justice John Wilson, to the same effect as he had done before Mr. Justice Adam Wilson.

C. S. Patterson supported the application.

JOHN WILSON, J.—I have consulted Mr. Justice Adam Wilson. We have come to the conclusion that there ought to be a reference in this matter, and that the reference ought to be on the usual terms. If Mr. Greenwood is dissatisfied, he must take the opinion of the Court on the questions raised by his counsel.

#### IN RE WILLIAM ROSS.

*Habeas corpus*—Sufficiency of materials—Effect of defective materials—Sufficiency of commitment in default of surties to keep the peace—Power of judge in chambers.

*Held*, 1st. That the affidavit upon which an order for a writ of *habeas corpus* is moved should be intitled in one or other of the Superior Courts.

*Held*, 2nd. That as a general rule the affidavit should be made by the prisoner himself, or some reason, such as coercion, &c. shown for his not making it.

*Held*, 3rd. That it is discretionary with the judge to whom the application is made to receive an affidavit of a different kind.

*Held*, 4th. That it is sufficient to return to a writ of *habeas corpus* a copy of the warrant under which the prisoner is detained, and not the original.

*Held*, 5th. That a commitment in default of surties to keep the peace should show the date on which the words were alleged to have been spoken, and contain a statement to the effect that complainant is apprehensive of bodily fear.

*Quære*. Can a judge in chambers rescind his order for a *habeas corpus*, or grant the writ itself on the ground that it issued imprudently.

*Quære* also. Has a judge in chambers power, by summons to call upon the prosecutor or magistrate to shew cause why a writ of *habeas corpus* should not issue instead of at once ordering the issue of the writ.

[CHAMBERS, March 3, 1864.]

M. C. Cameron, Q. C., on the 29th of February last, had made application to Mr. Justice John Wilson, sitting in Chambers, for an order for a writ of *habeas corpus*, directed to the gaoler of the county of Waterloo, to bring up the body of William Ross, detained in illegal custody as it was alleged.

The application was made upon an affidavit (not intitled in any court) the gaoler of the county of Waterloo, to the effect that on the 25th of February, William Ross was delivered into his custody by Thomas Armstrong, a constable, under and by virtue