

give to the said party of the first part, a clear receipt for the two hundred dollars' worth of work before mentioned, and will also pay the costs incurred by the said party of the first part, and his loss of time and personal expenses in and about the premises, and will in addition thereto pay all the law costs and agencies fees of the said party of the first part, and all his retaining fees which he has made himself liable for, and all his agents' costs and charges, and all his attorneys' cost and charges, of every kind, that he the said party of the first part would thereon cause the said suits to be abandoned, and all further proceedings stayed, both against the said party of the second part, and against the said Elias Hedges. And the said party of the second part agrees to the before mentioned propositions in manner following, that is to say: that he the said party of the second part will pay the rent before mentioned, and get for the said party of the first part a receipt therefor, that the suit in the county court of Victoria, *Hedges v. Mollison*, is hereby cancelled and withdrawn, the debt of two hundred dollars on which said suit was instituted being hereby paid; that he will also pay all the agents' fees and charges in the premises, which were incurred by the said party of the first part; and will also pay all the attorneys' fees and costs of the said party of the first part, and also all agents' fees and costs, and all attorneys' fees and costs that he the said party of the first part is in any way liable for up to the present time, and will pay the retaining fee in *Mollison v. Elias Hedges*, *Mollison v. Daniel B. Hedges*, and *Mollison v. Hedges*; and will also, as far as the costs of the party of the first part is concerned in the premises, and his loss of time and damage consequent on the arrest and proceedings before mentioned, submit the same to an arbitration, to be adjudicated on by three arbitrators indifferently chosen; and the said party of the first part agrees to each proposition; and it is agreed by and between the parties hereto, that the arbitration only applies to the personal costs of the party of the first part, to his loss of time and damages before mentioned only.

It is further agreed that the costs of the party of the first part incurred by him, a bill of the same shall be furnished to the said party of the second part, by the agent or attorney of the party of the first part, within a reasonable time; and the parties are agreed to the several matters herein contained.

In witness whereof the parties hereto have hereunto set their hands and affixed their seals, the day and year first above written.

Signed and sealed in presence of JOSHUA JONKSTON, THOMAS SMITH, (Signed) DAVID S. B. MOLLISON, [L.S.] DANIEL E. HEDGES, [L.S.]

Robert A. Harrison showed cause. He filed an affidavit by Mr. Greenwood, to the effect, that he is a duly admitted practitioner of all Her Majesty's Courts in Upper Canada; that he was retained by Mollison to prosecute D. E. Hedges in two superior court suits, and also E. Hedges in the Queen's Bench; that the parties, or some of them, settled the suits about the 16th November last; that Mollison had paid and satisfied him for his costs, that he did not know anything of Hedges in the matter of his bills, nor were his bills by his instructions ever served on Hedges; that he sent his bills to his client Mollison, who, on the 2nd January last, paid and satisfied him for the same in full, and he was satisfied therewith, that he never notified Hedges that he would sue him for the amount of the bills if not paid to him, but he did notify him that he had been instructed by Mollison to proceed against him to recover the costs paid to him by his client Mollison; and that previous to the proceedings in the several cases referred to, his client Mollison gave him the written retainers annexed to the affidavit, and which retainers had been respectively paid to him by Mollison.

Mr. Harrison argued, that neither court nor judge had power to refer an attorney's bill to taxation, independently of Con. Stat. U.C. cap. 35 (*Weymouth v. Knight*, 3 Scott, 764; *Slater v. Brooks*, 9 Dowd, P. C. 249; *Ex parte Cardross*, 5 M. & W. 515. *In re Jones*, 3 U. C. L. J. 167; *In re Smith and Henderson*, 13 U. C. P. 262); that sec. 38 of that statute commonly called "the third parties' clause," did not say this application; that applicant was not a party "liable to pay, or who had paid," the bills within the meaning of that section; that it was clear he had not paid them; that he was not a party "liable to pay," because the liability intended was one to the attorney, and not the case of a mere volunteer, who, for purposes of compromise, had agreed, as between himself and the client, to pay the attorney's bill (*Longford v. Nott*, 1 Jac. & W. 291; *In*

*re Becke & Flower*, 5 Beav. 406); that the cases to which he referred, decided under the corresponding English enactment, sec. 38 of 6 & 7 Vic. cap. 73, were conclusive on the point, that the reference might in England be made under what is commonly called "the trustees clause" (sec. 39 of 6 & 7 Vic. cap. 73), that for some reason or other the trustees clause had not been made a part of our act, that *Ex parte Glass*, 10 U. C. L. J. 111, is erroneous, because based on decisions had in England under "the trustees clause," which is not in force in this country; that the attention of the learned judge who decided that case was not drawn to the fact that "the trustees clause" was not made a part of our act; that even if the reference could be made under our "third parties clause," it could only be successful in case the party chargeable himself made the application; that after payment he could not make it, unless under "special circumstances" (Con. Stat. U. C. cap. 35, sec. 42); and that no special circumstances were shown (*In re Kinwar*, 5 Jur. N. S. 423).

Mr. Hamilton supported the summons, contending that the third parties clause was applicable, and that if special circumstances were necessary to the success of the application, the enormous nature of the charges made were sufficient special circumstances.

ADAM WILSON, 1.—The retainers in the four suits amount to \$110; and the total amount which this distress for rent and arrest of Mollison appears to cost Hedges, is as follows:

The four suits .....	\$248 08
Rent mentioned in the agreement .....	130 00
Carpenter's work released .....	200 00
	578 08

To which, from some memoranda on the papers, would appear to be also claimable the agent's costs .....	64 00
Mollison's account (referred to in the agreement) for his personal expenses .....	214 00

Making a total claim of ..... \$856 08 imposed upon Hedges, besides all his own costs in these four suits and proceedings for some kind of action taken by him, which does not seem to me to call for such heavy vengeance.

These circumstances seem to me to entitle him to the protection of the court against such monstrous charges, so far as it is possible for the court or a judge to extend protection to him.

It is argued by Mr. Harrison that as Mollison has settled these bills with his attorney, so that he cannot call upon him to have them referred for taxation, so neither can Hedges call upon the attorney to refer them; and that under any circumstances Hedges cannot, under our statute, have these bills referred (even if Mollison could do so), because Hedges has not paid them.

The agreement referred to is drawn with extraordinary care to compel Hedges, among numberless other penalties, "to pay all the law costs and agency fees of Mollison, and all his retaining fees which he has made himself liable for, and all his agent's costs and charges, and all his attorney's costs and charges of every kind." So that it seems very improbable this could have been done, or was in fact done, without Mr. Greenwood's knowledge and advice, if it were not actually prepared and approved by himself. And as it is provided in this agreement that Mollison would furnish a bill of these costs to Hedges in a reasonable time, I must assume that Mr. Greenwood knew, when he was furnishing these bills, he was furnishing them for the purpose of Hedges paying them according to the agreement. As they were delivered in December last, I cannot allow a supposed settlement between Mollison and Greenwood in February afterwards to be made for the purpose of excluding Hedges in any manner from the fullest revision of these bills, and as it may be necessary to have Mollison before me, I shall retain the present application, and enlarge it until Mollison can be called upon to show cause why the bills should not be referred to taxation.

If Hedges had been told, at the time of the settlement, how much his costs were, and had assented to them, and had paid them, or if Mollison had then paid the amount, I should not have felt at liberty to re-open the matter; but when it does not appear that Hedges knew anything of the amount, or even if he did, that he is yet concluded from disputing it, so long as it has not been paid by him, I think I am not warranted in refusing a reference.

The control exercised by the court over its own officers is for the protection of suitors; and an attorney can no more insist upon an