J. B. McLennan, a partner of J. S. Macdonald, made affidavit that he was a student of J. S. Macdonald's when settlement was made, and that he is aware the $200 was given for the amount to be charged by way of retainer to plaintiffs as well as for consultations and lengthy correspondence about the suit.

James Shaw, in reply, made affidavit—that the writ was to stand as a security over his lands for the due payment of the notes by H. D. Shaw; that when he asked J. S. Macdonald for a bill of particulars of the £50, J. S Macdonald said "he would give no bill of particulars," and, Mr. Patterson refusing to carry out the arrangement unless he agreed to pay the £50, he was obliged to submit; and that J. S. Macdonald never said to him the £50 was a charge against the plaintiffs alone, irrespective of the costs of the suit; and he (deponent) understood it to be in full of all costs and charges of every kind, save sheriff's fees.

S. Richards, Q. C., showed cause for J. S. Macdonald and the plaintiffs.

Mr. Watt showed cause for the sheriff.

Robert A. Harrison in support of the summons, argued that the $200 note was given for costs; that it covered *all* costs up to the time it was made; that a person who has paid, or is liable to pay, the bill of an attorney, may have an order for the delivery and taxation of the attorney's bill (Con. Stat. U. C. cap. 35, sec. 38; *In re Lees*, 5 Beav. 419; *In re Thomas*, 8 Beav. 145; *In re Beasey*, 8 Beav. 338; *Painter* v. *Lensell*, 8 Scott, 435; *In re Bynold*, 9 Beav. 260; *In re Glass and Macdonald*, 9 U. C. L. J. 111); that where the application is for the *delivery* of a bill, and not merely for reference of a bill to taxation, there is no limitation as to time of application (*Ib.* sec. 28, *et seq.*); that "the special circumstances" clauses are therefore inapplicable in such a case (sec. 30); that even if applicable, the pressure of the attorney at the time the note was given was sufficient "special circumstances" (*In re Bennett*, 8 Beav. 467; *In re Jones*, *Ib.* 479; *In re Wells*, *Ib.* 416; *In re Tyson*, 7 Beav. 496; *Ex parte Wilkinson*, 2 Coll. 92; *In re Rawe*, 22 Beav. 177; *In re Kinnear*, 5 Jur. N. S. 423; *In re Lett*, 8 Jur. N. S. 1119; *In re Pugh*, 8 Jur. N. S. 586); that the reference may be had not only after payment, but after payment and an agreement not to tax (*Woosman* v. *Woods*, 1 Dowl. P. C. 681; *In re Stephens*, 2 Phill. C. C. 562); that he sheriff, not having made the money, was not entitled to poundage, but only to reasonable remuneration for services actually rendered (*Morris* v. *Boulton*, 2 U. C. Cham. Rep. 60; *Corbet* v. *McKenzie*, 6 U. C. Q. B. 665; *Thomas* v. *Cotton*, 12 U. C. Q. B. 1; *Walker* v. *Fairfield*, 8 U. C. C. P. 95; *Henry* v. *Commercial Bank*, 17 U. C. Q. B. 104; *Brown* v. *Johnson*, 5 U. C. L. J. 17).

ADAM WILSON, J.—The first question is—assuming that the two claims of $200 and the costs of the suit might both have been made by the plaintiffs' attorney at the time when the settlement of February, 1860, took place, were they both made or not? If they were both made, or can be presumed to have been both made, then will arise the question, whether they both can be maintained? If they were not both made, or cannot be presumed to have both been made, then it will not be necessary to consider any other than the one which was so made.

To determine this question I must look at the statements made concerning what took place at the time respecting it. James Shaw in the sixth paragraph of his first affidavit says—"When the arrangement was made in February, 1860, the plaintiffs insisted, as a part thereof, that all costs, charges and expenses which their attorney had, up to that time, a right to claim in any way, whether as between party and party, and taxable against the defendants, or as between attorney and client, and only claimable from the plaintiffs themselves, should be fully paid and satisfied by the defendants to the said attorney." Henry D. Shaw confirms the affidavit of James Shaw. The documents filed by the defendants' attorney upon this point are to the following effect:—Letter of J. S. Macdonald to Richard Shaw, in mistake for H. D. Shaw, dated 18th February, 1860 saying—"You will also require to sign the note also herewith to myself for $200, to cover my charges and trouble in this affair, now running over 5 years, I must have this closed now." Same to H. D. Shaw, dated 25th February, 1860—"I will retain the notes you sent until the one you sent to cover charges shall reach me. I care not what arrangement you may enter into as to that amount. The condition of the acceptance of your proposal, according to my instructions, was that the charges to which the plaintiffs were liable should be paid by you." The plaintiffs' letter to H. D. Shaw, 28th February, 1860—"When Mr. Patterson returned from Cornwall we understood from him that the payment of Mr. Macdonald's charges was one of the conditions necessary to give effect to the agreement in other respects." Letter from H. D. Shaw to plaintiffs, 2nd March, 1860—"At the same time my father desires me to say that he is willing to pay what just legal claims you have gone to at his expense; or if you will say that Mr. Macdonald's claim of fifty pounds for what he has done in this case is a just one, he will pay it; wishing, however to be furnished with a bill of particulars, to ascertain what the claim is made up of; also, wanting to know if Mr. Macdonald's claim covers all charges in this case, whether with sheriff here or otherwise whatsoever" Letter from plaintiffs to H. D. Shaw, 5th March, 1860, saying—"Shortly after its receipt" [the receipt of H. D. Shaw's of 2nd March] "we had an opportunity of making known its contents to Mr. Macdonald, who happened to call at our office on his way to Quebec." "He agrees with Mr. Patterson, &c." "He declined to give any detailed account, &c." "We admit he has had a good deal of trouble for which we are liable to him; and although we might not be able to recover over the whole amount under execution, we consider we are entitled to be relieved from the payment of it in consideration of the delay granted, &c." "Mr. Macdonald says his charge is exclusive of sheriff's fees." Letter from H. D. Shaw to plaintiffs, 8th March, 1860, sending therein the $200 note, "being in settlement of *all* claims for legal advice and expenses that Mr. J. S. Macdonald has against you in suit against James Shaw and son up to this date." From the defendants' case I can form no other opinion than that the two hundred dollars was in *full* of all claims which Mr. Macdonald had in that suit against the plaintiffs, and which would necessarily include those which the plaintiffs had against the defendants—that is, the costs between attorney and client necessarily include those between party and party, and something more. Mr. Macdonald in his letter of the 18th February, 1860, speaks of the $200 "to cover my charges and trouble in this affair, now running over 5 years," and making no distinction between party and party and as between attorney and client, and giving no intimation that he still meant to claim the costs in the suit. So again in his letter of the 25th February, 1860, Mr. Macdonald speaks generally of the note for $200 to cover charges, and that his instructions were that the charges to which the plaintiffs were, liable should be paid, &c. Now, to cover charges means, of course, unless clearly and unequivocally explained, *all* charges, and not only a part of them; and that defendants were to pay all the charges "that the plaintiffs were liable for," shows that the defendants had to pay something more than taxed or taxable costs, but still including such costs. The plaintiffs, too, in their letter of the 28th February, 1860, speak generally of "Mr. Macdonald's charges." H. D. Shaw in his letter of the 2nd March, 1860, to the plaintiffs, desires to be informed by them "if the $200 covers *all* charges in this case, whether with the sheriff here or otherwise whatsoever;" and the plaintiffs in their letter of the 5th of March say, that Mr. Macdonald says "the $200 is exclusive of sheriff's fees." Surely if it were also exclusive of any *other* charges, especially the costs of the suit, this sum could have been excepted also? Does not this very letter shew that the $200 did include, in the plaintiffs' opinion, the costs in the suit; for they say we might not be able to recover *the whole amount* under execution, but we consider we are entitled to be relieved from the payment of it! They could not have so written if they did believe that *no part* of the $200 was recoverable under this execution, because it was altogether beyond the costs in the suit. Under this information and impression to be gathered from the very outset, but here very plainly stated, H. D. Shaw gives the note for $200, telling the plaintiffs that the note is in settlement *of all claims* for legal advice and expenses that J. S. Macdonald has against them in the suit against James Shaw and son *up to this date*, and the plaintiffs accepted it.

It is impossible, therefore, that the plaintiffs can compel the defendants to pay the costs of the suit in addition to this $200; and, therefore, Mr. Macdonald, as plaintiffs' attorney, can enforce no such claim, either against the defendants, whatever he may