

"The Committee to whom was referred the Petition of Robert Randall, Esquire, with power to send for persons and papers, and report thereon, have enquired into the same, and respectfully submit the following Report :

"It is admitted that the demand of Mr. Boulton against Mr. Randall was for professional services, rendered by himself and the Honorable D'Arcy Boulton, late a Judge of the King's Bench. The principal charges are £50 for business alleged to be done by the Honorable D'Arcy Boulton, before his elevation to the Bench, and £50 to Henry J. Boulton, being principally a charge of five guineas a day, for eight days in attending an arbitration at Niagara, in the Niagara District, for the Petitioner, in a suit, Robert Randall *vs.* Elijah Phelps, in the Court of King's Bench, in which five guineas had been previously paid as a retaining fee, and not included in the account for which the bond was given. In security for the payment of the said sum of one hundred pounds, the Petitioner gave a mortgage to Mr. Boulton of Lot No. 11, in the first Concession on the Rideau, in the Township of Nepean and which mortgage is recited in the condition of the bond upon which the action was brought. The cause R. Randall *vs.* Elijah Phelps, came on for trial at the Niagara Assizes, in the year 1818, where Mr. Justice Boulton presided, and Mr. Henry J. Boulton, attended, as Counsel for the Petitioner, the Plaintiff in the cause. On the day upon which the trial was to take place, and a short time before it was called on, the Petitioner, at the request of Mr. Boulton, gave him his note for twenty-five pounds, payable the first of May following, as a Counsel fee for the expected trial. The Petitioner proceeded to collect his witnesses, and Mr. Boulton called on the cause, when the Judge refused to try it on the ground of his having formerly acted as Attorney in it for the Plaintiff. The case was therefore not tried. Upon this note, as well as upon the bond, Mr. Boulton recovered the judgment, against which the Petitioner complains.

"At the subsequent trial, Mr. Boulton did not attend, and it appears that taking offence at the want of confidence which he inferred from a letter written to him by the Petitioner, he did not feel himself bound, without a further request, and a further fee, to continue his professional aid in the suit. This will be seen from the copies of Mr. Boulton's letters annexed, one dated 24th May, 1819, and the other 8th July, 1819. The Petitioner complains, in the first place, that Mr. Boulton, at the time he took the note for twenty-five pounds, knew the cause would not be tried. This is denied before Your Committee by Mr. Boulton. The Attorney General,* states in his evidence that he expected the refusal of the Judge to try the cause, though unapprised of it. He also states that he has an indistinct recollection that the Judge, about the time of arranging the Circuits, expressed his reluctance to try the cause. The House can judge how far it would have been judicially correct for Mr. Justice Boulton to try the cause, in which he had been Attorney and Counsel; and therefore how far there was a reasonable presumption for Mr. Boulton, that the cause would not be tried, under such circumstances; and how far the note for twenty-five pounds should have been retained after the immediate failure of the consideration for which it was given.

"Mr. Boulton prosecuted Mr. Randall for the recovery of the one hundred and twenty-five pounds, upon the bond and note, and the following is an abstract of the proceedings in the suit:—

"IN THE KING'S BENCH.

"Henry John Boulton, Plaintiff,
vs.
 "Robert Randall, Defendant. }

"This action was commenced by a writ of summons in a plea of debt, issued from the Crown Office, at York, in the Home District, on the thirty-first day of May, 1819,

* Now Mr. Chief Justice Robinson.