gested the eighteenth day of February, instant, as the day he would be prepared to give his judgment: that on said last mentioned day I attended before the said judge, and Mr. Elwood appeared for the plaintiff, when the judge of said Division Court expressed his opinion adversely to the defendant: that he did so with great hesitation, as he expressed it, on the ground that the decisions bearing on the point appeared contradictory, that I suggested to the said judge the propriety of his delaying his delivery of judgment until I had an opportunity of applying for a *certiorari* to remove the case to one of the superior courts of law, the case being one of great importance to the defendant, and one involving some questions of law which had not then come up for decision in any of the superior courts of law in the manner raised by the facts of this case: that the said learned judge remarked that he certainly thought it a fit case to be removed by *certiorari* and would grant time to enable me to apply therefor, and postponed the delivery of judgment until the fourth day of March next, for the purpose of such application"

The plaintiff's attorney, in his affidavit filed on shewing cause, swore "That on the return of the said summons (in the Division Court) the said John Reeve appeared, and also the said Richard Holmes: that James Shaw Sinclair, of the said town of Goderich, Esquire, appeared as counsel for the said John Reeve, and I this deponent appeared as counsel for the said Richard Holmes: that the said cause was duly called on for hearing on that day before Secker Brough, Esq., judge of the County Court of the County of Huron, who is also the judge of the said third Division Court: that after the said case had been thoroughly gone into, and after several witnesses were examined, both on behalf of the said Richard Holmes and the said John Reeve, and after a lengthy legal argument had taken place, and when the said judge had expressed his opinion that his judgment should be for the said Richard Holmes, and just as he was about to endorse his said judgment on the said summons, the said James Shaw Sinclair got up and asked and pressed on the said judge, that if he would not then enter his judgment but would defer same to some future day, he could produce to him authority to shew that in law he was entitled to his judgment: that the said Judge, in pursuance of the said request, adjourned the said cause until the sixth day of February: that on that day the said Mr Sinclair on behalf of the said John Reeve, and John Y. Elwood, of the said town of Goderich, barrister-at-law, my partner, on behalf of the said Richard Holmes, appeard before said judge, and further argued the said case. That after hearing the said argument, the said judge informed the said parties that he would be prepared to give his judgment on the thirteenth day of February: that on that day the said Sinclair and Elwood appeared before the said judge to hear his said judgment, but he not being prepared to give it then, said he would give same on the eighteenth day of February."

It also appeared from another affidavit, that on the 18th February, the learned judge said he was then prepared to deliver his judgment, and then proceeded to deliver, and did deliver the same; and said that "in his opinion the plaintiff Richard Holmes was entitled to his judgment," and then proceeded to give, and did give his grounds for said judgment, and reviewed the authorities cited to him on the said argument: that after the said judge had delivered his said judgment, Mr. Sinclair, on behalf of the said John Reeve, applied to, and urged upon the said judge not to endorse his judgment on the back of the said summons, but to refrain from doing so until the fourth day of March instant, as in the meantime he would apply for a writ of *certiorari* to remove the said plaint.

Spencer shewed cause, and contended that the application was made too late, the case having been considered by the judge of the court below and judgment in effect given though not formally entered: *Black* v. *Wesley*, 8 U. C. L J 277; *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73

John Patterson, *contra*, urged that the judge had given no judgment, and had expressly postponed his decision to enable the *certiorari* to be applied for. He had merely expressed an opinion. He cited *Paterson* v *Smith*, 14 U. C. C. P. 525.

RICHARDS, C J.—On principle I do not think this case ought to be removed from the Division Court. If the case was one fit to be tried before the judge of that court, the mere fact that he may have formed and expressed an opinion which was erroneous, is no ground for taking the case into the Superior Court. The defendant knew all the facts of the case before the day of trial, and if it was considered it ought to have been removed from the Division Court, steps should have been taken for that purpose before it was heard.

It seems to me to be an unseemly proceeding, that the defendant, after having argued the matter before the judge, and obtained his opinion, and having had the cause adjourned for the purpose of furnishing new authorities, and after consideration of those authorities, the judge had expressed an opinion, that the case should then be taken out of his jurisdiction by a *certiorari*. The fact that the judge himself may have been willing or even desirous to have the matter disposed of in the Superior Court can make no difference. After he has taken on himself the burthen of disposing of the case, having heard the evidence, and expressed his opinion, I do not think, as a general rule, a *certiorari* ought to issue. The cases of *Black* v. *Wesley*, 8 U. C. L. J. 277; *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73, seem to me to lay down principles inconsistent with removing this case. The case of *Patterson* v. *Smith*, 14 U. C. C. P. 525, does not, I think, lay down any doctrine contrary to that of the other cases referred to, for although there had been an abortive attempt to have a trial there was no verdict, and the court no doubt looked at that case in the same way as if no jury have been sworn at all.

I think the summons should be discharged on the grounds I have mentioned, but as the learned judge of the County Court delayed the entry of judgment to enable the defendant to make this application, it will be without costs. I arrive at this conclusion as to the costs more readily from the fact that one of the affidavits filed on behalf of the plaintiff states the belief of the deponent, that the attorney for the defendant speculated on the chance of getting a decision in his favor, and it being against him, he now makes