

with the buying and selling. I endorsed their paper—on which they effected a loan at the bank, without any remuneration whatever. They occupied the pasture until the close of the season, and I was paid for my co-tenants and for myself \$18 73 for the use of it, which is all I ever received, either directly or indirectly. The defendant contends he had a right to engage in this operation.

Per Cur.—On the ninth charge we find that the said judge for a long time during the year 1859, and previously had a direct pecuniary interest in the business of one Sylvester Farrell and one James Mitchell, both of St. Thomas, either as a partner or under an agreement, whereby the said judge endorsed the negotiable paper of the said Sylvester Farrell and James Mitchell, in consideration of receiving a share of the profits of certain business in which they were engaged, or a per centage for so endorsing. The court finds that the judge is *not guilty*; and this finding is on the merits, and not by reason of the misnomer of Farrell in the charge. The charge is unsupported by the facts admitted in the answer of the judge—which was the only evidence advanced—and therefore the court considers this charge *taxation*.

11th Charge.—That the Judge made a profit out of the Division Court patronage, by getting his children taught by John Powell, the Clerk of the Court of St. Thomas, the said Powell getting no other remuneration than the fees of the office, both for doing the duties thereof and teaching the children of the Judge.

Reply.—That the charge is untrue; and if it were true, that neither inability nor misbehaviour is shown.

Per Cur.—Upon this charge the Court finds the following proved: 1. That John Powell up to some time in Oct. 1854, was employed in the Post Office at Woodstock, and was recommended by Mr. Barwick, the Postmaster, to Judge Hughes, to be appointed a Division Court Clerk.—2. That on the 18th Oct., 1854, Judge Hughes addressed a letter to the said Powell, containing the following passage: "I guarantee to you enough to pay Mr. Warren £50, and £100 a year besides for yourself. In consideration of that guarantee you promise to perform the duties of clerk during that four years, and to give instruction to my children at certain hours that we may hereafter fix upon. If the fees of the office do more than pay all I guarantee to you and to Mr. Warren they are to be your own; and I will pay you whatever sum you and I shall fix upon as a proper remuneration for teaching my children, because I do not want them to be taught for nothing. If I have to supply any deficiency on my guarantee to you of course I should wish that to be considered as paying for their instruction."—3. That one Henry Warren was at the date of that letter, Clerk of the Division Court, which was held at St. Thomas, in the County of Elgin.—4. That the said Henry Warren was a very old man and incapable of discharging the duties as such Clerk, and that he resigned his office upon the suggestion of Judge Hughes, who held out to him the expectation that the successor, who was to be appointed by the Judge himself, should pay to him (Warren) for four years, if Warren should so long live and the successor retain the office, an annuity of £50 per annum; and that it was stipulated by the Judge that Warren should afford the new clerk such aid and explanation as should enable him to understand the business of the office and facilitate the discharge of its duties.—5. That the letter of the 18th October, 1854, was written in furtherance of the communication between Judge Hughes and Mr. Warren; and that early in November, 1854, Powell was appointed to succeed Mr. Warren, and gave to Mr. Warren his bond conditioned to pay £50 per annum for the time above stated, and that while Powell continued to hold the office (say fifteen months) he paid quarterly the sum of \$50 to Henry Warren.—6. That the fees which accrued to Powell as such clerk during the time he held the office, and which, if he had insisted on immediate payment as Judge Hughes told him to do, he might

have received, amounted to as much or more than £100 a year after paying the stipulated annuity to Warren, but that Powell actually received less than at the rate of £100 a year for himself.—7. That in February, 1856, Powell was dismissed by the Judge as incompetent to do the duties of clerk.—8. That while Powell held the office of clerk he gave instruction to Judge Hughes' children for about three hours per diem.—9. That no sum was ever fixed upon as a proper remuneration to be paid by Judge Hughes to Powell for teaching his children while Powell was clerk of the Division Court.—10. That soon after Powell's dismissal he applied to Judge Hughes for remuneration for teaching his children during the time he held the clerkship, and that Judge Hughes refused to pay anything unless Powell could show that the fees received did not amount to £100 a year, besides yielding enough to pay Warren.—11. That Powell never has made up any statement of the fees of his office for that or for any purpose, and that Judge Hughes never has paid him anything for teaching his children during the period that Powell was clerk of the Division Court.—12. That in appointing Powell to be clerk of the Division Court, Judge Hughes intended to secure the services of a person who could, in addition to the duties of the office, instruct his (the Judge's) children during certain hours each day on the terms expressed in the letter of 18th Oct., 1854.

The court finds that the result has been that the said judge did obtain indirect profit from the appointment of Powell, inasmuch as he paid Powell nothing for instructing his children while Powell was division court clerk, although upon a proper construction of the agreement contained in the letter of the 18th October, 1854, he might have been liable to Powell for such services, until the latter, in the final settlement made between him and Judge Hughes in 1859, abandoned all further claim on the judge. On these grounds we find the judge *guilty* on this charge.

12th Charge. That since the said John Powell was discharged from his office of clerk of the said division court, he was employed for a considerable time by the present clerk of that court at a salary of £100 per annum, and has been paid by the said clerk 'and judge' (interlined), and that during the time of such subsequent engagement the said Powell taught the children of the said judge who has refused to pay him any further remuneration therefor, on the ground that the said £100 per annum covered the same, which it did not.

Reply.—Denial and justification.

Per Cur.—Upon charge 12 we find the following facts as proved by Mr. Powell, the only witness who has been called on either side to give testimony in reference thereto:—1. That after Powell's removal from the office of clerk of the division court, he made an agreement with Judge Hughes to teach his children for three years ending 1st April, 1859, at the rate of £50 per annum; the time given to this teaching appears to have been from 9 to 12 each morning; and up to October, 1857, the judge paid him at this rate quarterly.—2. That in October, 1857, Powell was engaged by Mr. Farley (who had succeeded him as clerk of the division court) as a copying clerk, for the remainder of his time, after the hours of teaching the judge's children; and that Powell thereupon gave up an afternoon school which he had kept.—3. That Farley agreed to pay Powell (as he, Powell, swears) £100 per annum, and that Powell was not informed then, and did not suppose, that this payment was intended to cover anything but his services as copying clerk.—4. That when this change took place the judge ceased to make any payment directly to Powell for teaching his children.—5. That either six or nine months after Powell's employment by Farley, he rendered an account to Judge Hughes, and some time after he asked Farley to advance him some money, saying that the judge had not paid him for teaching, upon which Farley told him that the £100 per annum was to cover both his services in the office and his tuition of the judge's children, and Judge