John Carmichael to the custody of the keeper of the common gaol of the united counties of Lanark and Renfrew, for causing the death, by violence, of David Fitzgerald (as it is said), and all inquisitions taken before you the said John D. Clendenning, as such coroner, touching such death, be sent by you before the Honorable William Henry Draper, Chief Justice of our Court of Queen's Bench, at Toronto, do command you and each of you that you and each of you send, under the hands and seals of you and each or one of you the said John Clendenning and Donald Fraser, before our said Chief Justice, at his chambers at Osgoode Hall, in the city of Toronto, immediately after the receipt of this our writ, all and singular the said examinations, informations, depositions and inquisitions, with all things touching the same, as fully and perfectly as they have been taken by or before you the said John D. Clendenning, and now remaining in the custody or power of you the said John D Clendenning, or you the said Donald Fraser, together with this our writ, that we may cause further to be done therein what of right and according to the law and customs of this Province we shall see fit to be done.

Witness The Honorable William Henry Draper, C. B., Chief Justice of our said Court of Queen's Bench, at Toronto, this twentieth day of August, in the year of our Lord 1864, and in the twenty-eighth year of our reign.

(Signed) L. Heyden.

On the 27th August last, the writs of *habeas corpus, certiorari*, and order of remand, were returned into chambers, and the matter came on for argument before Mr. Justice Morrison, then presiding in chambers.

*Robt A. Harrison*, for the prisoner, objected to the reading either of the *certiorari* or return, 1st, because the writ was improperly issued in vacation, upon the authority of a single judge sitting in chambers; 2nd, because such writ is improperly tested in vacation; 3rd, because such writ is made returnable before the Chief Justice, and not before any other judge sitting in chambers; 4th, because the issue of said writ in aid of the prosecution, on an application by the prisoner for his discharge on a void warrant, was without precedent (*per* Denman, C. J., in *Reg.* v. *Dean*, 2 Q. B 731); and contended that even if the depositions were read, there was no power to make or execute a second or valid warrant; so that under any circumstances the prisoner was entitled to his immediate discharge

*S Richards*, Q. C, contra, argued, 1st, that the writ was properly issued; 2nd, that if returnable only before Chief Justice Draper, the hearing should be enlarged before him; 3rd. that upon reading the depositions, the offence of murder was disclosed; 4th, that the warrant was sufficient; 5th, that even if not, there was power either to grant a new warrant or again remand. He cited *Rex* v *Marks*, 3 East. 157; *Ex parte Krans*, 1 B. & C. 258; 1 Chit. Cr. Law, 129.

Morrison, J. (having taken several days to consider)—I am of opinion that this warrant is bad. I do not think I have any right to look at the depositions in aid of it. They are not properly before me. Even if I were to look at them, I, sitting as a judge in chambers, have no power to amend the coroner's warrant. The custody is illegal, and I order the discharge of the prisoner.

Order accordingly.

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## In re Malloch.

*Attorney and client—Taxation of bills—Services not strictly professional—How charged for.*

An attorney, upon the request of his clients, on the 27th March, 1863, delivered to them a bill of costs for services performed. They afterwards, disregarding this, obtained an order upon him to deliver a bill of costs of all causes and matters wherein he had been concerned for them. The attorney complied with this order by the delivery of new bills in all causes and matters wherein he had been concerned for his clients, including the services for which his former bills had been delivered. No objection was made to the taxation of the new bills, till after it was pretty well ascertained that the balance would be against the clients, when they endeavored to hold the attorney to his first bill, which, with a receipt endorsed upon it, would have made a balance against him. *Held*, that the clients having applied for new bills, and having taken the risk of the balance being in their favor on the new bills, could not afterwards be allowed to revert to the old bill, to the prejudice of the attorney. *Held* also, that the attorney was entitled to charge in his bills for service of garnishee papers, the same having been performed at the request of the clients, and the charges therefor appearing in his ordinary bill of costs.

(Chambers, Sept. 8, 1864.)

*McMurray*, on behalf of Thomas Alfred Evans and Samuel Eddy Evans, formerly clients of Mr. Malloch, on the 1st July last, obtained a summons upon him to show cause why the master should not review his taxation of the bills of costs produced before him under the order of Morrison, J., made on the 30th May last, on the grounds: 1st, that a great portion of the costs taxed and allowed to Mr Malloch, were the same costs and charges which were contained in a former bill of costs rendered by Mr. Malloch to his clients, and which were paid and settled in full on the 27th March, 1863, as appears by the receipt endorsed on the bill, and the same should not be charged a second time, but only such costs should be charged as were incurred subsequent to the settlement; 2nd, that many of the charges made in the bills and allowed by the master were for services rendered by Mr. Malloch not of a purely professional nature, but were for such services as are usually charged by and paid to a sheriff's bailiff, and the same should not therefore have been allowed; 3rd, and on grounds disclosed in the master's report, and in the affidavits and papers filed.

This summons was enlarged from time to time from the 7th day of July, when it was first returnable, until the 5th day of September last, when it was finally heard before Mr. Justice Adam Wilson.

It appeared that on the 9th day of May last, Mr. McMurray, on behalf of the Messrs. Evans, applied for and obtained a judge's summons, calling on Mr. Malloch to show cause why he should not deliver to the Messrs. Evans a bill of costs of all causes and matters wherein he had been concerned for them; and why he should not give a detailed statement, with dates, items and amounts, of all monies received by him at any time for the Messrs. Evans; and also produce all books, &c, in any wise connected with the business of the Messrs. Evans; and why he should not also render an account of his professional charges and costs, and submit to have the same taxed by the master; and why he should not pay the costs of the application.

The papers on which this summons of the 9th of May was granted were an affidavit made by Mr. McMurray, dated the same 9th day of May, and sundry copies of papers attached to it. The affidavit verified these copies, and stated that Mr. Malloch, as the deponent believed, and had been informed, had collected large sums of money for the Messrs. Evans, under an order dated the 12th day of July, 1862, to attach monies due to John Bishop, the debtor against whom the Messrs. Evans had obtained a judgment; that Mr. Malloch had never rendered any account of monies received by him under the order, although frequently requested so to do, and that he had only paid to his clients the sum of $212, as the deponent had been informed; that the charges on the bill on which his receipt of the $100 was endorsed, appeared to be very large and exorbitant; that the deponent believed there were several sums still due under the attaching order, which the Messrs. Evans had been prevented from collecting, in consequence of not having received any account of monies received by Mr. Malloch under the order; and that deponent had written to Mr. Malloch on the 19th April last, for an account of monies received by him, and a statement of monies remaining unpaid under the order, but he had not received any answer to the same.

One of the copies of papers attached was a letter from the Messrs. Evans to Mr. McMurray, dated the 15th April last, in which it was said: "Mr. Malloch has only remitted us $212 in two years; and after furnishing us with the accompanying account for $284, he consented to deduct therefrom $124, as you will observe by the receipt on the back of the account, and promising to remit us the difference, which he has not done."

Another of the papers was the bill of costs referred to, amounting to $284 80. At the foot of the bill was the following minute: "The above charges are the ordinary professional charges for services like those mentioned in the above bill. Brantford, 17th October, 1862. (Signed) Hardy & Hardy, Barristers, &c., Brantford." And on the back of the bill was endorsed: "Brantford, 27th March, 1863.—Received from Messrs. Evans & Evans the sum of one hundred and sixty dollars, in full of within account to date. (Signed) George W. Malloch."

Upon this summons and papers filed, an order in the terms of the summons was made, on the 30th May last, directing the delivery of a bill of costs, and the reference of it to the master.

In pursuance of the order of the 30th May, to deliver a bill,