business connected with the suits mentioned, but who happened to be in attendance before the judge on the 24th of November, upon another matter. Mr. Parke adds in his affidavit, that the judge seemed to treat the matter as if the affidavit stated an interest in him, and when the question was put to Mr. Abbott, he neither admitted nor denied, nor did he explain what he meant by it; and Mr. Parke says he was under the impression at the time that if Mr. Abbott had disclaimed any desire to impute interest to the judge, or had withdrawn or explained the affidavit, the judge would have gone on with the matter; but it was enlarged that in the meantime Mr. Abbott might satisfy himself with regard to the judge's interest. What took place on the 4th of December, the judge says was this: when Mr. Abbott was proceeding to argue the matter, the judge stopped him until the question of the judge's interest was settled, and it was disclaimed that he had any interest; whereupon Mr. Abbott said he had not read his affidavit to shew that the judge had any interest, but to contradict Horton's affidavit, and as the judge did not like his name used he would make use of the other affidavit in which his name was omitted; and to this the judge remarked that it was only dealing with the shadow and not the substance; what was required was a disclaimer of imputing to the judge that he was interested in the matter he was called upon to adjudicate about. Mr. Abbott making no offer as the judge says, to retract the suggestion that he was interested, he declined to act further, and so endorsed the summons.

The point about the interest of the judge appears to be this from the affidavits: the judge and Mr. Horton, and the other two named gentlemen, joined together in the purchase of what is called the Thompson farm, for the purpose of laying it out into village lots and selling them. Mr. Horton had the management of selling the lots and accounting to the others for their different shares of the purchase money. He sold two of the lots on his own account to the judgment debtor, and there were also other accounts between them, and to settle up all the matters between them, and pay for the lots, as Horton contends, the judgment debtor assigned to him the debt due by Burke, the garnishee. The portion of the purchase money of the two lots which would be going to Kains, one of the proprietors, has been settled for with him by Horton, but he has not yet settled with the judge or Mr. Yarwood; and as Mr. Horton states, he will either owe each of them a share, or they will be entitled to take an equal portion of the land, and sell it for their own benefit. Evidently the question ultimately to be decided will be whether the assignment of the debt due from the garnishee to the judgment debtor was made, and whether done legally to vest the right in Horton of calling upon the garnishee to pay him. The judge and Mr. Horton are brothers-in-law.

There are many things in the affidavits on both sides which shew that the members of the profession at St. Thomas are not only not on good terms with each other, but are also at variance with the judge. Such feelings never conduce to the ends of justice, but on the contrary often thwart it, and the clients are made the victims in the way of unnecessary delays in the transaction of their business, and their pockets suffer by both unnecessary and very often unjust expenses, incurred in proceedings having no other end to serve than mere gratification either of pride, envy, or malice. I do not intend to say who are most to blame, or who are most in the wrong on this occasion, but it is evident, I think, if the feelings of the parties beyond the mere question in the case itself had not crept into it, there surely ought to have been no difficulty in the disposition of the matter upon the summons. The question was whether Burke should pay Allworth, the judgment creditor, or pay Horton. As we see it explained, whether Mr. Horton would have to pay the judge a proportion of the purchase money of the two lots, or whether the judge might sell some of the land and pay himself, was not of the slightest consequence. Why, therefore, Mr. Abbott should have inserted in his affidavit any account of the manner in which the title of the property was held it is difficult to perceive, unless his object was to annoy and unnecessarily mix up the judge's name in the matter. He could have obtained information upon the point, if he had thought it necessary that he should have the matter explained. The judge was quite right in putting the question to Mr. Abbott, and insisting upon an answer, as to whether he intended charging him with having an interest in the matter to be disposed of; but then, on the other hand, if the judge had been, perhaps, a little less punctilious, and at once have stated what now appears, and particularly if Mr. Horton had stated in his affidavit what the meaning of the memorandum of Horton & Co was, and had stated what appears in his affidavit now, that he sold the lots on his own account, we might have been spared the necessity of deciding an unnecessary dispute. Then again, had Mr. Ellis, who represented Mr. Horton and the bank, accepted the offer made by the other side of withdrawing the consideration of the matter from the judge, and left it to a barrister, the question might have been decided.

The question of the judge's interest being removed out of the way, as it is by the affidavit, a more serious one remains, and that is the relationship existing between the judge and Mr. Horton. The interest of Mr. Horton was not that of an attorney in his client's business, and to which the judge alludes in his memorandum of the 31st January that he has been accused of favouring by his partiality; but his interest was direct, which was to be determined, that is, whether he had or not a valid assignment of the debt due by Burke. The judge might well be excused from being called on to determine that question if he could avoid it.

The case of *Becquet v. Lempriere* (1 Knapp, P. C. C 376) throws a great deal of light upon the point. Among the questions brought up on appeal from the Royal Court of Jersey, one was whether one of the jurats who sat in the court below was incapacitated. He had been objected to on the ground that his first wife was aunt to the respondent Lempriere. It appeared that the wife had died without children many years before, and that the jurat had married two other wives afterwards, by whom he had had children. The court held him incapacitated according to the law of Jersey.

In the argument of that case, it was mentioned that Mr. Justice Lawrence on one occasion refused to try a case in which one of his relatives was concerned, though he was not incapacitated by law to try it.

The question, therefore, now is, whether we should issue a mandamus to compel Mr. Hughes to proceed in a matter in which his brother-in-law has a direct interest. The writ of mandamus is not a writ grantable of right, but is a prerogative writ, and the absence or want of a specific legal remedy gives the court jurisdiction to dispense it; and if there be a legal remedy, either at common law or by act of parliament, it will be refused.

Now, when we look at the constitution of the county court, we see that the crown may appoint two persons, one to be the judge of the county court, and the other to be the junior judge. Of course it is provided that both shall reside within the county, and shall not practise the profession. No doubt the Crown would not desire to incumber the fee fund with the appointment of an additional judge to a county where perhaps the fund will scarcely pay the salary of one judge, but I am not sure this court should be governed by such a consideration of the subject. It so happens that the county of Elgin has but one judge, but if another were appointed, all difficulty in the way of the parties proceeding would at once be removed.

Then again, the 8th section of the act, ch. 15, of the Consolidated Acts, U. C., provides for the appointment of a deputy judge for temporary purposes, allowing him to practise his profession in the meantime. The question upon this section is whether such an appointment must necessarily be confined to the case of death, illness, or unavoidable absence, or the absence on leave of the judge. It may be that it would be held to be so confined, and yet it may be urged that the provision should be construed liberally in favour of justice, and to enable the Crown to appoint so that justice may be done.

Whatever may be thought about either of these courses to be attempted, I feel clear there is another course open to the plaintiff in the suit in the court below, and that is to apply to the superior court for a writ of *certiorari* upon the facts, to remove the record and proceedings to the superior court, in order that justice may be done. Mr. Tidd in his treatise on Practice, (vol. 1, 9th ed., p 400,) says: "And in cases of absolute necessity, as where the inferior court refuses to award execution, the court above will grant a *certiorari* after judgment, for the sake of doing justice between the parties," and for this he quotes 1 Lil. P. R. 252, 253.