

In witness whereof, we have to these presents set our hands and seals this       day of       in the year of our Lord one thousand eight hundred and       signed, sealed and delivered  
in the presence of

## CORRESPONDENCE.

TILSONBERG, C. W.

GENTLEMEN,—Your opinion in the following case will oblige.

A, a duly admitted attorney, delivers his bill of costs to B, by depositing it in the post office, directed to B, according to the terms of Consolidated Statutes U. C., chap. 35 sec. 27. Afterwards finding that B had left the country (absconded) A made an affidavit stating the fact of the bill being so served and that B had absconded, &c. A then applied to the county judge for leave to commence an action under section 37 of the above mentioned act, which the judge refused to grant, saying that the application should have been made previous to B's leaving the country, as the section reads as follows, viz.: "Any judge of a superior court of law or equity, or county judge, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to leave Upper Canada may authorize such attorney or solicitor to commence an action for the recovery of his fees, charges, or disbursements against the party chargeable therewith, although one month has not expired since delivery of the bill as aforesaid."

The judge held that the words "about to leave, &c." in the above clause, in this case precluded him from giving the order, which in fact gave B a chance to remove his goods.

Yours truly,

EDWARD STONEHOUSE, Solicitor.

[We think, though the point is doubtful, that the judge would have been justified in granting the order asked.

The prohibition in section 27 of the act respecting attorneys must be read in connection with the 28th section. The object is to secure to the party to be charged a month to enable him to have the bill taxed and paid without further charge; and had the attorney in the case but undertaken and made it part of the order to allow the defendant the same advantages as he would have under ordinary circumstances, we cannot see what reasonable objection could lie to the granting the order. Such a case would certainly seem within the spirit of the act. But it strikes us that the attorney might have prevented B taking his goods by suing out an attachment, which is a proceeding *in rem*, and when the month had elapsed, following it up by suit.

This proceeding would not be held, we think, a violation of the enactment in section 27, that "no suit at law or in equity," shall be brought, &c.]—Eds. L. J.

## U. C. REPORTS.

## COURT OF IMPEACHMENT.

Reported by THOMAS HODGINS, Esq., M.A., LL.B., Barrister-at-Law.

IN RE DAVID JOHN HUGHES, ESQUIRE, JUDGE OF THE COUNTY COURT OF THE COUNTY OF ELGIN, AND JUDGE OF THE SURREGATE COURT IN AND FOR SAID COUNTY.

The charges set forth in this case were made to the Governor General, on the complaint of one Murdoch McKenzie, Agent of the American Express Company, at St. Thomas, against the Judge of the County Court of Elgin, for misbehaviour in his said office of Judge. The Governor General transmitted a complaint—then extending to fifty-six charges,—with the papers and affidavits in reply, to the Court of Im-

peachment; and on the 8th January, 1862, the Court met, and entered upon the case, striking out a number of the charges, and at an adjourned sitting on the 11th January, appointed the 3rd July, 1862, for the trial of the charges laid. On the 2nd July, the Court met, and proceeded each day with the case until the 11th July, when the evidence on both sides was closed. On the 19th July, the Court gave judgment—the Judges being, the Honorable Archibald McLean, Chief Justice of Upper Canada, the Honorable Philip Michael Matthew Scott Vankoughnet, Chancellor of Upper Canada, and the Honorable William Henry Draper, C.B., Chief Justice of the Court of Common Pleas. The charges struck out are not given in this report.

Richards, Q. C., for the prosecution.

John Wilson, Q. C., for the Judge.

(No counsel appeared for the Crown.)

5th Charge.—That the said Judge on 22nd July, 1859, became assignee of the real and personal estate of J. White and James Mitchell, by the terms of which he is entitled to receive 10 per cent.

Reply.—The defendant replies that he was chosen assignee of the real but not of the personal estate of the parties mentioned for a specified purpose, at the rate of 2 per cent. only, but that he has a personal and pecuniary interest in the estate in common with other creditors, and he has lately resigned the trust. He also replies that the charge, if it were true, shows neither inability nor misbehaviour in office.

Per Cur.—Upon the 5th charge we find 1st. That before the assignment therein mentioned, the Judge had purchased a house and portion of the lands assigned, which were encumbered, and liable to the creditors of White and Mitchell, and that the assignment was taken for the purpose, and with the hope that Judge Hughes might protect himself from heavy loss. 2nd. That the per centage to be received by him was two and not ten per cent., and, according to the evidence, might not do more than pay the expenses attending the execution of the trusts. 3rd. On this charge we adjudicate and decide that the said Judge is not guilty of any misbehaviour in office, and that the charge is false.

6th Charge.—That the holding of the said office of assignee has caused the Judge to exhibit partiality in suits where said parties had interests antagonistic to the interests of the assignors—instance *Thos. B. Hart v. Benson*.

Reply.—That the charge is untrue.

Per Cur.—Upon the 6th charge, we find that the adjudication thereon must depend upon the adjudication of other charges connected with the case of *Hart v. Benson*, (See 22nd et al.)

9th Charge.—That previous to and during 1859, the Judge had a pecuniary interest in the business of Thomas Farrell and James Mitchell, both of St. Thomas; that he endorsed their negotiable paper in consideration of receiving a portion of their profits or a per centage for endorsing.

Reply.—That the charge is untrue; and if it were true, that neither inability nor misbehaviour is shown. I never had any transactions with Thomas Farrell and James Mitchell. Probably the charge is intended to refer to a transaction I had with Sylvester Farrell & Co., which was negotiated by me with Mr. Mitchell, whom I understood to be in the business. It was this: Mr. Wilson of London, Mr. Barwick of St. Catharines, and I, own a farm in Southwold, which has been in my charge for some years. In the fall of last year I was desirous of letting the after-grass for the season. Mr. Mitchell told me Messrs. Farrell & Co. were intending to buy cattle to export if they could get money from the bank by way of loan where-with to buy, and a pasture to keep the cattle and sheep until ready to send away. He stated they did not like to give a fixed rent for the pasture. I offered him the pasture for the season for one-third of the profit to be realised from the sale of the stock, and to endorse the paper at the bank. This was the basis of the agreement. It had nothing whatever to do