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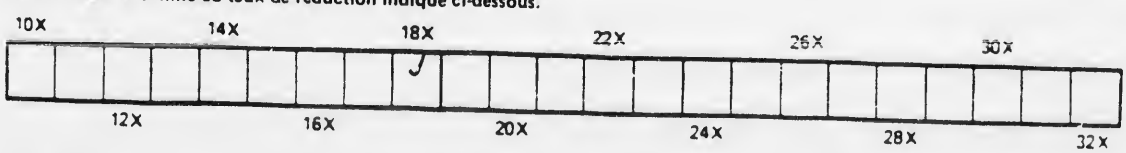

1.

REPORT OF THE PROCEEDINGS

ON THE APPLICATION TO

THE COURT OF COMMON PLEAS

MADE BY

John Keys, of Pittsburgh,

AGAINST

Sir Henry Smith and J. A. Henderson, Attorneys,

FOR DEFRAUDING HIM.

IN THE COMMON PLEAS.

HILARY TERM, 26TH VICTORIA.

MR. GALT, Q.C., moved the following rule, without mentioning the names of the Attorneys :—

IN THE COMMON PLEAS.

HILARY TERM, 26TH VICTORIA,
Wednesday, the Eleventh day of February, A.D. 1863.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

Upon reading the Affidavits and Papers fyled, it is ordered that Sir Henry Smith and Mr. James Alexander Henderson, Attorneys of this Honorable Court, do show cause on the first day of Easter Term next, why they should not deliver to the applicant, John Keys, their Bill of Costs in relation to the business done by them for the said Keys; and also an account of their receipts and payments in respect of John Keys' purchase of the west half of Lot number twenty-one, in the Sixth Concession of the Township of Pittsburgh; and why the said Bill of Costs should not be taxed, and in the taxation thereof they should not pay over to the said John Keys the balance of all sums of money received by them from or on account of the said Keys, after giving credit for the sums of money which the said Smith and Henderson may be entitled to for payments made by them on account of the purchase money of the said half lot of land, and also for the amount of their said Bill of Costs, when taxed; and also, why the said Sir Henry Smith and Mr. James Alexander Henderson should not answer the matters contained in the Affidavits fyled herein, and pay costs of this application and all subsequent proceedings.

On motion of Mr. Galt, Q. C., of Counsel for Applicant.

By the Court.

No. 75.

(Signed) L. HEYDEN.

MR. GALT then proceeded to state that John Keys, being possessed of the West half of Lot No. 21 in the 6th Concession of Pittsburgh, on which he had settled in 1845, and improved to the value of £200 on the price fixed upon it by the College, was informed of the value placed upon it by the College, and required to make a first payment, or be dispossessed. Not

having the sum required—£13 1s. 3d.—he consulted these persons, then practising Attorneys in Kingston, on his position, and finally arranged with them to make the advance for him of the £13 1s. 3d., for repayment of which he gave them his note for £18 15s. at one year—about 40 per cent interest. They took from him in addition to this note a document which he supposed to be a security for the note, but which was in reality an absolute assignment of his rights in the land to one of them. That is, to pay themselves for writing to the College Office and lending £13 1s. 3d. for one year they took a note for £18 15s., and got hold of an interest in the land worth £200 in such a way as to leave their client nothing to show that he had any interest in the land whatever. Keys paid the £18 15s. on the maturity of his note, but got no re-assignment of his land. It was not offered, and he did not know it was required. The College, treating the Attorney as the owner, as they must, of course, have done, from the assignment from Keys which the Attorney had filed, wrote to him in June, 1856, for the instalment then due (£21 18s. 8d.), on which the firm, signing themselves "Attorneys," wrote to Keys to call and pay that sum, which he did pay them for transmission to Toronto for his own land, as he supposed, but in reality, as the papers stood, on the Attorney's land. Their Lordships would note here that, although all this time the Attorney held this land absolutely, he was not in advance one farthing on it, and he and his partner had been paid in full for all services rendered to Keys. The Attorney still holding the land in his own name, things rested till 1858, when Keys got into difficulties. This fact Keys swears he believes was well known to these Attorneys. Notwithstanding that we find that on the 3d of September of that year, they paid to the College $42 93 of their own accord, and without being requested by Keys to do so. In 1859 Keys' affairs were at a crisis, and then they wrote the letter of December 14th, informing him that if he was not prepared to pay up $185 81 immediately, they feared they (the College) would make costs upon him. Now, how could the College make costs upon John Keys for a claim upon another person? Did not this letter show the desire they had to keep Keys in the dark as to his real position with regard to the land, and also a desire to frighten him to a greater extent than he was by the College's first demand for £13 1s. 3d., as to which he had consulted them? They knew he could not pay the money. Shortly after this Keys left the country on account of his difficulties, occasioned by endorsing, to seek employment, and did

not return till the fall of 1860. In the meantime he had been engaged negotiating, through his wife, who remained, for the sale of part of his property to relieve him of his difficulties, but these Attorneys prevented his selling, as appears by paragraph 12 of his affidavit. The affidavit shows the belief under which he took the deed from one of them.

MR. JUSTICE RICHARDS.—I suppose this was a deed without covenants.

MR. GALT said yes, and a deed with no bar of dower, and the affidavit also shows why he granted the mortgage. The final result may be thus summed up :—

1st. That from the 16th of January, 1855, to the 17th of January, 1856, they held John Keys' right in these lands as security for the advance of £13 1s. 3d., which was to bear interest at over forty per cent., allowing them £1 5s. for writing a letter enclosing that sum to the College, and for their interview with Keys.

2nd. That having on the 17th of January, 1856, been paid the £13 1s. 3d. with the 40 per cent. interest, they held his land fraudulently (taking in the meantime a payment of £21 18s. 8d. from him, to be remitted on his own account for the said land) *without any consideration whatever*, until they made a payment of $42:93 on the 3rd of January, 1858, which they did without his request or knowledge.

3rd. That they held Keys' lands, having made that advance of $42:93, until the 29th of June, when they made a further payment of $51:25 without Keys' knowledge or request, he being in distressed circumstances and out of the country at the time.

4. That when Keys tried to sell it in 1860, they claimed the land as theirs, and prevented his selling it.

5. That they gave him a Deed in fee on the 14th of February, 1861, but without full covenants, and with no bar of dower, and took his mortgage, in which they barred his wife's dower for $730, being 12 per cent. interest—$730 being the sum paid by them to the College, as they alleged, for the said lands, whereas in fact they had then only paid to the College for the same the said sums of $42:93 and $51:25.

6. That having sued on their said Mortgage, they secured in payment of it from Keys in October, 1862, the sum of $883:30, making with $22:75 received by them in January, 1856, for transmitting £13 1s. 3d. to the College office and lending the

same for one year, the total sum of $916:05, for having written some three or four letters, and advancing £13 1s. 3d. for one year at the request of Keys, and the sum of $42:93 on the 3rd of September, 1858, and the further sum of $51:25 on the 29th of June, 1860, without his request, and the sum of $423:85 when they were found out by Mr. Campbell, then acting for Keys, and when they knew they were to be paid off by Keys within one week.

Their Lordships would bear in mind that on this sum of $423 which they fraudulently alleged they had paid for Keys when they took his mortgage in February, 1861, but which they did not pay till October, 1862, they charged and made Keys pay *twelve* per cent., while they only paid the College *six* per cent.

The frauds charged are, first, taking and holding Keys' interest, valued at £200, without any equivalent and without his knowledge of the extent to which he had parted with those interests—he being their client.

And secondly, deceiving him as to the amount paid for him to the College, and giving him a Deed when they had no title, (the College Deed to the Attorney having only issued in October, 1862), and then procuring from him a Mortgage, on which they fraudulently realised as nearly as may be $366:05 for an advance of $91, made of their own accord, for an average period of eighteen months.

The account furnished by the Attorney tries to account for $204 of that, by saying that it was a sum paid for expenses, trouble, letters, postages, and extending time over a series of years —whereas, as their Lordships would see, that the real fact was, that in consequence of his transactions with these Attorneys, he was obliged to pay for his land three years before the College required payment, and to pay interest at twelve per cent. instead of six, which was all the College demanded.

Chief Justice Draper.—Take your rule, Mr. Galt.

Mr. Galt handed in the following affidavit :—

I, John Keys, of the Township of Pittsburgh, in the County of Frontenac, Yeoman, make oath and say—

1. That in the year of our Lord 1845 I went into occupation of the West half of Lot No. 21, in the 6th Concession of the said Township of Pittsburgh, owned by the University of Toronto, under its then name, and acquired the right of purchase at a price to be fixed by their Surveyor.

2. That some time, I think, in A.D. 1854, a Surveyor, under instructions from the University authorities, the owners, came and examined the said Lot and valued it.

3. That I subsequently received a communication from the owners of said Lot, stating the amount of the valuation fixed by the Surveyor as aforesaid, and requiring me to make a payment thereon, or that I should deliver up possession of said Lot to them.

4. That I had then cleared and fenced about 46 acres of said Lot, had built a house and barn thereon, had planted an orchard, and otherwise improved the land.

5. That I was greatly alarmed on receiving the communication referred to, having no money to make the first payment on the Lot as required, and came to Kingston to consult the above-named Henry Smith and James Alexander Henderson, then and still practising Attorneys of this Honorable Court, as to my position in reference to said Lot, and saw both of them in their Office at Kingston.

6. That I showed the said Smith and Henderson the communication above referred to, and they requested me to return in a few days, and they would arrange the matter for me.

7. That I afterwards saw them, and it was agreed between us that they should make the first payment, amounting to £13 1s. 3d., to the owners of said Lot for me as required, in order to save the said Lot for me, for doing which I gave them my note of hand for £18 15s., payable on the 16th day of January, 1856, and which said note was paid to them by me at maturity.

8. That at the time when the said note was given, the said Smith and Henderson procured my signature to a document, which I then supposed to be a security, in addition to the said note, on my interest in said Lot, which interest was then valued by me at £200, for the repayment of the said £13 1s. 3d., but which said document, as I have since been informed, and verily believe, was in fact an absolute assignment of all my interest in said Lot to the said James Alexander Henderson.

9. That I afterwards, on the 19th day of August, in the year last aforesaid, made a further payment on the said Lot, amounting to £21 18s. 8d., which money I delivered to the said Smith and Henderson, as my Attorneys and Agents, to forward for me, and which they did.

10. That I had no further communication with the said Smith and Henderson in reference to said Lot until after my return from the United States of America in the fall of the year A.D. 1860, where I had been for about nine months, as I believe, save and except of the receipt of a letter from them in the words and figures following :—

"KINGSTON, Dec. 14, 1859.

"DEAR SIR—We beg leave to inform you that King's College have furnished us with a bill of arrears on Lot 21, 6th Concession of Pittsburgh, and unless you are prepared to pay up $185 81 immediately, we fear they will make costs upon you.

"Yours, &c.,

"SMITH & HENDERSON.

"Mr. JOHN KEYS, Pittsburgh."

The original of which letter is attached to this affidavit and marked "A."

11. That before this time I had got into pecuniary difficulties, which fact I am informed and believe was well known to the said Smith and Henderson.

12. That in the month of January, A.D. 1861, having been informed by one Robert Donaldson and by one John McFarlane, who had been negotiating with me through my wife during my absence for the purchase of portions of said Lot, that the said Smith had told him that I had no right to the said land, and could not sell it; that I had paid nothing on it, and that it was owned by them, the said Smith and Henderson; that they would allow my wife to remain on the Lot for one year, and that if I did not return in the meantime and settle with them for the land, they would turn her out of possession and sell the land themselves. I went to the said Smith and Henderson to see how matters stood, and they then informed me there was a balance of $423 due to the College, and that on payment of that sum and the advances made by them, I would get a deed of said Lot, which payment I told them I was unable to make.

13. That in about a month afterwards I again saw the said Smith and Henderson, when they informed me that they had paid the College in full for said Lot, and that they would give me a deed and take a mortgage for the amount they had paid, with interest thereon at the rate of 12 per centum per annum, to which I agreed.

14. That the said Smith and Henderson did not then, nor at any time afterwards, until I had paid and discharged the said mortgage, render to me any account showing how the sum of $730—the principal sum secured by the mortgage which I gave them on the 19th day of February, A.D. 1861, on receiving a deed in pursuance of said agreement—was made up, but they simply told me that that was the sum they paid to the College.

15. That having made default in payment of the first instalment of the money mentioned in said mortgage, I received a letter from the said Henry Smith, threatening to put me to trouble unless the sum amounting to $233 60 was paid immediately, and I was afterwards sued by the said Smith and Henderson for the same.

16. That thereupon I went to the Honorable Alexander Campbell and borrowed a sufficient sum of money from him to enable me to discharge the said Mortgage.

17. That about this time I became suspicious that the said Smith and Henderson had not paid to the University the said sum of $730 for me, and told my suspicions to the said Mr. Campbell, and it was then discovered that the said Smith and Henderson had not paid the said balance of $423 to the said University which they informed me in January, A.D. 1861, was due to the said University, although they had told me when they gave me the deed and took the mortgage that they had paid the College in full.

18. That the letter mentioned in the 15th paragraph of this affidavit is hereto annexed and marked "B."

19. That after I had paid off the said mortgage I authorized the said the Honorable Alexander Campbell to demand an account from the said Smith and Henderson, showing the particulars of the moneys advanced by them for me on account of said Lot, with the dates of payment, and after a long delay and repeated applications by the said Mr. Campbell for the same to them, I received through Mr. Campbell the account attached hereto and marked "C," from the said Smith and Henderson, and which account is in the handwriting of the said Henderson.

20. That I never asked the said Smith and Henderson to pay for me to the said University the sum of $42 93, mentioned in the said account as having been advanced for me on the 3d day of September, A.D. 1858.

21. That I never asked the said Smith and Henderson to advance for me to the said University the sum of $51 25, mentioned in the said account as having been paid by them for me on the 29th day of June, A.D. 1860, and that I was absent from this Province in the United States of America at the time when the said last mentioned sum is so alleged to have been advanced for me.

22. That I never made any agreement to pay the sum of $204 to the said Smith and Henderson for expenses, trouble, letters, postages, and extending time for payment over a series of years, as mentioned in the said account, and never heard of any such charges to be made against me until I received the said account marked "C."

23. That when I executed and gave to the said Smith and Henderson the mortgage mentioned and referred to in the 14th paragraph of this affidavit, I was under the impression and believed from their statements that the principal sum of money mentioned in said mortgage had been actually paid and advanced by them for me to the said University, and that the rate of 12 per cent interest mentioned in said mortgage was to cover their remuneration for the said advances.

(Signed) JOHN KEYS.

Sworn before me at the City of Kingston, in the County of Frontenac, this 5th day of February, A.D. 1863.

M. W. STRANGE,
A Commissioner in B.R., &c., in and for said County.

A.

KINGSTON, Dec. 14, 1859.

DEAR SIR—We beg leave to inform you that King's College have furnished us with a Bill of Arrears due on Lot No. 21, 6th Con. Pittsburgh, and unless you are prepared to pay up $185 81 immediately, we fear they will make costs upon you.

Yours, &c.,

(Signed) SMITH & HENDERSON.

Mr. JOHN KEYS, Pittsburgh.

This is a copy of paper writing marked A, mentioned and referred to in the annexed affidavit of John Keys, taken before me this 5th February, 1863.

(Signed) M. W. STRANGE.

B.

KINGSTON, 28th March, 1862.

MY DEAR SIR—I regret to find that your first instalment to Mr. Henderson on your land is not paid, and I must request you to come in at once

and meet your first payment, or there will be trouble about it. The amount of your first instalment is $233 60.

Yours, &c.,

(Signed) HENRY SMITH.

Mr. JOHN KEYS, Pittsburgh.

This is the paper writing marked B, mentioned and referred to in the annexed affidavit of John Keys, taken before me this 5th February, 1863.

(Signed) M. W. STRANGE.

C.

1856. January 17.

Received £18 15s., to repay £13 1s. 3d. advanced to College Office on 16th January, 1855.

The difference, £5 13s. 9d., was paid to cover the trouble, postage, interest and charges, &c., as agreed when money advanced in 1855.

1856. August 19.

Received £21 18s. 8d., which was sent to College Office.

The College wrote that on 29th June, 1860, there was due then, after giving credit for all moneys remitted $408 50
Interest to date of Mortgage, 14th February, 1861 ... ... 15 35

$423 85

Advanced $42 93 on 3rd September, 1858, $6 49 interest from that date to date of Mortgage 49 42
And $51 25 on 29th June, 1860, $1 48 interest to date of Mortgage, 52 13

$526 00

Amount given per agreement, which includes expenses, trouble, letters, postages, and extending time for payment over a series of years 204 00

$730 00

This is the paper writing marked C, mentioned and refered to in the annexed affidavit of John Keys, taken before me this 5th February, 1863.

(Signed) M. W. STRANGE.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Robert Mortimer Wilkison, of the City of Kingston, Barrister-at-law, make oath and say—

1. That I obtained from the Office of the Bursar of the University of Toronto, the annexed statement of account marked "A," relating to the

purchase money of the West half of Lot number twenty-one, in the Sixth Concession of the Township of Pittsburgh, and that the same is a correct and true extract from the books of the said office, relating to said half Lot.

2. That the letter hereto annexed, directed to the Hon. A. Campbell, and dated the 7th October, 1862, is, I am informed and verily believe, in the handwriting of David Buchan, Bursar of the said University, and the signature attached thereto is his.

3. That the letter hereto annexed, directed to Mr. John Keys, dated June 9, 1856, and signed "Smith & Henderson, Attorneys," is in the handwriting of the above-named James Alexander Henderson.

4. That the said James Alexander Henderson is married, and his wife is still living.

(Signed) R. M. WILKISON.

Sworn before me at the City of Toronto, this 11th day of February, A.D. 1863.

(Signed) S. J. VANKOUGHNET,
Com'r in B. R., &c.

MR. BUCHAN'S LETTER, REFERRED TO IN MR. WILKISON'S AFFIDAVIT.

OFFICE OF THE BURSAR OF THE UNIVERSITY AND COLLEGES AT TORONTO,
TORONTO, 7th October, 1862.

W. ½ 21. 6 PITTSBURGH.

MY DEAR SIR—I am favored with your letter of 5th instant. It is a rule of this Office not to give information to third parties concerning the state of accounts for purchase of lands without the consent of the purchaser. This rule is only departed from where there are special circumstances which seem to warrant such a departure; and on looking into the present case, it appears to me that it may fairly be considered to form one of the exceptions. The land was offered to John Keys. When Messrs. Smith and Henderson remitted the first instalment they sent an affidavit that Keys was in possession, and a transfer from him to Mr. Henderson for a nominal consideration. These facts, coupled with your statement, seems to entitle you to the information asked for in behalf of John Keys.

The lot was sold at $5 per acre, one-tenth payable down, and the remainder in nine equal annual instalments, with interest annually at 6 per cent on the unpaid balance. These are the usual terms except in the case of town or city property, when the payments are differently arranged. There has been paid on account of principal, $94 93; and on account of interest, $136 64. There is still due on account of principal ... $405 07
And on account of interest (to 10th instant) 55 30

$460 37

There is also fee for deed, $3 ; and at the time of the purchase the fees paid were $2 for transfer and $2 for contracts.

I am, Dear Sir,

Yours very truly,

DAVID BUCHAN,
Bursar.

The Hon. A. CAMPBELL, &c., &c.,
Kingston.

P.S.—Mr. Henderson got a statement of amount due last week for the purpose of taking out the deed.

PAPER MARKED "A," REFERRED TO IN MR. WILKISON'S AFFIDAVIT.

OFFICE OF THE BURSAR OF THE UNIVERSITY AND COLLEGES AT TORONTO.

STATEMENT OF ACCOUNT RELATING TO W. ½ LOT 21, 6TH CON. PITTSBURGH; 100 ACRES, AT 25s. INTEREST FROM 19TH JAN'Y, 1855.

JAMES ALEXANDER HENDERSON.

		Principal.	Interest.
1855.	January 19,—1st Instalment paid	$ 50 00	
1856.	August 20,—Paid on account Principal and Interest	44 93	$ 42 80
1858.	September 4,—Paid on account Interest		42 59
1860.	June 29,—Paid on account Interest		51 25
1862.	October 24,—Balance Principal and Interest ...	405 07	56 36
		$500 00	$193 00
1862.	October 24,—On account of Deed ... $1 94		
"	" 28,—Balance for Deed 1 05		
	$2 99		

SMITH & HENDERSON'S LETTER TO KEYS, REFERRED TO IN MR. WILKISON'S AFFIDAVIT.

MR. JOHN KEYS, Pittsburgh.

Sir :—There is due on Lot W. ½ 21, in 8th Concession Pittsburgh, £21 18s. 8d. ; being the second instalment, £12 10s., and £9 8s. 8d. interest on the principal money. We this day received a letter from the College Office, to

You will therefore please call and pay without delay.

We remain, yours,

SMITH & HENDERSON,
Attorneys.

June 9, 1856.

IN THE COMMON PLEAS.

EASTER TERM, 26TH VICTORIA.

MR. THOMAS GALT, Q.C., moved that the rule obtained, in the matter of Sir Henry Smith and James Alexander Henderson, the object of which was to call on them to account to the Court for alleged misconduct in dealing improperly by John Keys, one of their clients, be made absolute.

MR. R. A. HARRISON appeared to show cause why the rule should not be made absolute. He read the following affidavits:—

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

1. I, James Alexander Henderson, of the City of Kingston, Esquire, above named, make oath and say:—That I never was retained by John Keys, of the Township of Pittsburgh, Yeoman, and at whose instance this application is made, in any cause or way whatever; that the said John Keys never at any time consulted the said Sir Henry Smith or me, or both of us, as Attorneys or professional men; that neither the said Sir Henry Smith nor I were ever employed as Attorneys by the said John Keys; and that before the commencement of the transaction mentioned in the fifth paragraph of the affidavit of said John Keys filed, I did not know nor was I at all acquainted with the said John Keys.

2. That when the said John Keys first came to the office of myself and partner, Sir Henry Smith, he wished to know if he could obtain a loan of money to make a payment on the land mentioned in the first paragraph of said John Keys' affidavit.

3. That it not being a legal matter, I referred him to Sir Henry Smith, who was then in his office, and who wholly attends to and manages any speculation or loans of money connected with lands; that the said John Keys remarked to me that he thought Sir Henry Smith, being a member of Parliament, would be able to obtain favorable terms with the University authorities.

4. That I verily believe that had the said Sir Henry Smith not been a public man as aforesaid, the said John Keys would not have come to the office about the land in question, and also considering that Sir Henry Smith was in the habit of loaning money and making advances on lands.

5. That the said John Keys never informed me that he was under any apprehension or alarm that he would lose the land in question, and I was not aware that the said John Keys was in pecuniary difficulties, the said John Keys appearing to me to be a pretty well to do farmer, but who had not the ready money.

6. That I am not aware, and I do not believe, that any advantage was taken of the circumstances of the said John Keys, as when the agreement hereinafter mentioned was signed by me in the presence of said John Keys he expressed his satisfaction at the arrangement.

7. That the arrangement mentioned in seventh section of said John Keys' affidavit was wholly made by the said Sir Henry Smith, and that I was not aware of the terms until after the said John Keys left the office and the arrangument was completed, when Sir Henry Smith informed me that he had taken an assignment from John Keys of the land in question in my name, and with the understanding that when Keys made all the payments through me to the University, I was to give Keys a deed; and further, that he had advanced the first instalment to the University for Keys, and that Keys had given his note, payable in one year, for eighteen pounds and fifteen shillings.

8. That the contract of sale from the University was made over to me for the said land, and on back of which, and on the twenty-ninth day of August, one thousand eight hundred and fifty-six, and when Keys came to the office after the said arrangement with Sir Henry Smith, I signed an agreement in the following words: "When John Keys makes the annual pay-"ments on the within 100 acres of land to me, and the same shall be fully "paid to the Bursar of the University and Colleges at Toronto, I will, at "his expense, convey the said 100 acres of land to him. Dated this 29th "August, 1856. J. A. HENDERSON."—and a copy of said agreement was then handed to said John Keys with Bursar's receipts for the two first payments on the said land.

9. That I then informed the said John Keys that the land was his, subject to his making to me the regular payments to the University as they fell due, that I stood between him and the University, that I was personally responsible for the payments, and that I hoped he would make them punctually so as I could remit them, all which he promised me that he would do.

10. That from the very commencement of my knowing that the land had been assigned to me by Keys, I intended, and in fact always intended, to re-convey the said land to Keys on his re-paying what I should have to pay the College, and on his paying what was agreed upon between him and Sir Henry Smith; that I never considered the land mine, nor did I ever treat it as such.

11. That when the Bursar of the University and College notified me that payments were due, the said John Keys was written to, informing him of the fact, so that he might make the payments to me in order to remit them.

12. That the letter annexed to Robert Mortimer Wilkison's affidavit filed was written on my receiving a letter from the Bursar, informing me of the amount in arrear, and as is stated in the said letter.

13. That on the twenty-second day of June, one thousand eight hundred and fifty-seven, on the sixteenth day of August, one thousand eight hundred and fifty-eight, and in June, one thousand eight hundred and sixty, letters

were written by the said Bursar, and in due course received by me, informing that payments were in arrear; that on the receipt of said letters respectively I communicated the contents by letter to Keys, but he paid no attention to them, and I have no recollection of seeing him in the office respecting them.

14. That I paid to the Bursar the interest claimed in the letters of eighteen hundred and fifty-eight and eighteen hundred and sixty, all which letters above mentioned in paragraph number thirteen as written by the Bursar are hereunto annexed, marked A, B, C, respectively.

15. That I was not aware that the said John Keys had gone to the United States of America until the wife of said John Keys came to my office and wished to sell part of the land to one William Macfarlane, of the Township of Pittsburgh, Yeoman. I further say that I then informed the wife of the said John Keys and the said William Macfarlane that I could not sell the land or make any transfer without the consent of John Keys, and that I must have a power of Attorney from John Keys to enable me to sell, as I always considered Keys to be the equitable owner; that the said wife of John Keys pressed me to sell the land, and stated she did not know the whereabouts of said John Keys.

16. That one Robert Donaldson, of the said Township of Pittsburgh, Yeoman, also came to me about purchasing said lot, or part of said land, as said wife of said Keyes had offered to sell part to him.

17. That other persons not personally known to me had previously come to the office wishing to buy part of the Keys Lot, as it was termed, the wife of said Keys having offered to sell it; that I informed all of them that I could not transfer or sell it unless Keys returned, or unless he sent me a power of Attorney.

18. That I believe these persons were sent to me by the wife of said John Keys.

19. That in order to put a stop to Mrs. Keys believing she had some claim to the land or some right to sell the land, I informed said Donaldson that the land was Messrs. Smith and Henderson's, and that we had bought it, and that the said land was not for sale, but that it was said with no intention of claiming the land.

20. That after the return of the said John Keys from the United States he came to the office and mentioned that he was glad I had not sold the land to Macfarlane. I told him I never intended doing so, and that I had no power without his consent. I also informed him that I had made two payments to the Bursar, one of fifty-two dollars ninety-three cents in September, 1858, and another of fifty-one dollars and twenty-five cents in June, 1860. He then said he was pleased at my making the payments for him.

21. That I then remarked I regretted he had not kept his promise to pay the instalments to the Bursar as they fell due, and what he intended to do for the future. He then remarked that he should go to Sir Henry Smith's residence and see him and make some arrangements with him. I desired him to do so, as Sir Henry Smith had made the first arrangements with him, and knew more about the matter than I did.

22. That I gave said Keys a memorandum to show to Sir Henry Smith of the amount we had paid for him and were liable to pay for him to the Bursar.

23. That the said Keys saw Sir Henry Smith, and on his return told me that he had made an arrangement by which I was to give him a deed and take back a mortgage for what I had paid the Bursar and interest, and what I had to pay to the Bursar. He also mentioned about offering Sir Henry Smith a sum of money, which it was agreed should be added to the other sums and included in the mortgage.

24. That the amount of the said sum, and the particulars of how the amount of the mortgage was made up, escaped my memory, not having paid much attention to the details of his statement, and as Keys told me that the said deed and mortgage was to be executed and the arrangement carried out by Sir Henry Smith when he was able to come to his office, and that in this instance, as in every other instance connected with land matters or speculation, I leave the sole management to Sir Henry Smith, and do not burthen my mind with them.

25. That in the month of February, eighteen hundred and sixty-one, the said deed and mortgage was drawn out, Sir Henry Smith carrying out the arrangements.

26. That I made no inquiry into the particulars of the said mortgage, which was drawn up by Sir Henry Smith in his room, which is next to mine; that when I went into his room to sign the mortgage I heard Sir Henry Smith read over the amount and terms of payment to said John Keys.

27. That owing to being then engaged in other matters I returned to my room soon again and took no note even of the terms of the mortgage, and when called upon in November last by the Honorable Alexander Campbell to explain how the amount of the mortgage was made up, I was not able to do so correctly, but I remember mentioning I must refer to Sir Henry Smith, who was then confined to his house, and who had a severe attack of quinsy, not being able to articulate, but I promised on his return to the office to make the necessary inquiries.

28. That I did so, and was then informed by Sir Henry Smith how the amount was made up and agreed upon by Keys and him, and then he brought it to my recollection that Keys had mentioned to me the sum of two hundred dollars as the sum he had promised should be added in the mortgage to the other sums, and which I considered and understood was for our trouble, compensation, &c., and for extending the period of payment.

29. That I also then remembered seeing a memorandum in Sir Henry Smith's writing to that effect, and which memorandum I now believe Keys handed me after seeing Sir Henry Smith.

30. That the said Keys never at any time expressed any dissatisfaction with the arrangements he had made with Sir Henry Smith, but on the contrary, he appeared to be satisfied.

31. That I never at any time considered or treated the land in question mine or belonging to Smith and Henderson; that I always and from the first considered the land as belonging to Keys, and without any hesitation gave the deed aforesaid; and I also state that I never at any time told the said Keys that Sir Henry Smith or I, or Smith and Henderson, had paid the College in full.

32. That the long delay and repeated applications made by Mr. Campbell, and mentioned in the nineteenth paragraph of the said affidavit of John Keys, was caused by Sir Henry Smith's illness, and not being

enabled to attend the office, and that my being unable to render an account without obtaining information from Sir Henry Smith, and that the delay mentioned was only about three weeks.

33. That during the whole transaction with the said Keys there was no disposition or intention on my part or on that of Sir Henry Smith, as I verily believe, to injure or oppress said Keys, and I always understood that the giving of the note in the seventh paragraph of this affidavit mentioned, and the premium of the two hundred dollars in the twenty-eighth paragraph of this affidavit mentioned, was free and voluntary, and without any coercion or pressure whatsoever, and I believe it was so.

34. That no charges whatever were made against the said John Keys by me or Sir Henry Smith, or by any of our clerks, in the books of the firm of Smith and Henderson, or in anywise soever, in relation to the business done by myself and partner, or either of us, for the said John Keys.

35. That no demand was ever made upon me or my partner Sir Henry Smith by the said John Keys, or by any person or persons on his behalf, to repay or refund any moneys whatever.

36. That no demand whatever was made at any time by the said John Keys, or by any person or persons on his behalf, that my wife should execute a deed to the said John Keys with a bar of her dower on the land in question.

37. That it never occurred to me that my wife had not barred her dower, or that there was any objection on account of her not so doing until I read over the affidavit of Robert Mortimer Wilkison filed in this matter.

38. That my wife, in conjunction with me, is willing, and I am also willing to execute with her, a deed to the said John Keys containing a bar of her dower.

39. That the omission of barring her dower was not intentional, nor could it in fact prejudice the said John Keys, as I have made provision for my wife in lieu of dower.

40. That Sir Henry Smith and I are solvent, and either of us are worth more than double the value of the land in question, and that my covenant for title and freedom from encumbrances would be and are good.

41. That I remitted fifty-two dollars and twenty-five cents to the said Bursar to pay the first instalment and some expenses charged by the University and Colleges offices, and which moneys the said Bursar received, as appears by Smith and Henderson's cheque marked D, hereunto annexed, payable to the order of the said Bursar, and endorsed over by him, and on which he received the moneys mentioned on the face of the said cheque; that on the nineteenth day of August, eighteen hundred and fifty-six, I paid to the said Bursar a second instalment on the said land of eighty-seven dollars and fifty-three cents, and which moneys the said Bursar received, as appears by Smith and Henderson's cheque, hereunto annexed, marked E, payable to the order of the said Bursar, and endorsed over by him, and on which he received the moneys mentioned on the face of last mentioned cheque; that the said Bursar sent me in due course the receipts for said moneys, and which two receipts I handed to said John Keys on the twenty-ninth day of August, one thousand eight hundred and fifty-six, when I signed the hereinbefore

mentioned agreement; that I paid to the said Bursar on account of said land, on the fourth day of September, eighteen hundred and fifty-eight, a further sum of forty-two dollars and fifty-seven cents, as appears by the annexed receipt marked F, and which receipt is signed by Allan Cameron, the Cashier in the Bursar's office of the University and Colleges at Toronto; that I paid to the said Bursar on account of said land, on the twenty-ninth day of June, eighteen hundred and sixty, a further sum of fifty-one dollars and twenty-five cents, as appears by the annexed receipt marked G, and signed by the said Allan Cameron; that on the twenty-fourth day of October, eighteen hundred and sixty-two, I paid to the said Bursar on account of said land a further sum of four hundred and sixty-three dollars and thirty-seven cents, as appears by the annexed receipt marked H, and signed by the said Allan Cameron; and that I also paid on the twenty-eighth day of October aforesaid the remaining sum of one dollar and five cents, balance of expenses charged by the Bursar on the said land, as appears by the annexed receipt marked I, and also signed by the said Allan Cameron.

42. That I never informed the said John Keys that Sir Henry Smith or myself or Smith and Henderson had paid to the College the sum of seven hundred and thirty dollars, or any sum or sums, except the two first instalments and the sums of forty-two dollars and fifty-nine cents and fifty-one dollars and twenty-five cents.

43. That the payment of the said mortgage by the said John Keys in full was entirely voluntary on his part, and was not demanded by myself or partner.

44. That the annexed paper marked J is an account of the receipts and payments made by Smith and Henderson in respect of John Keys' purchase of the West half of Lot Number Twenty-One in the Sixth Concession of the Township of Pittsburgh.

(Signed) JAS. A. HENDERSON.

Sworn before me at the City of Kingston, this 18th day of May, A.D. 1863.

(Signed) B. M. BRITTON,
A Com. in Q.B., U.C. of F. & L. & A.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, James Alexander Henderson, of the City of Kingston, Esquire, above named, make oath and say—

1. That I never at any time informed John Keys, of the Township of Pittsburgh, Yeoman, the person at whose instance this application is made, that I had obtained a deed for the land in question in this matter and referred to in the affidavit of John Keys filed.

2. That before and at the time the deed given by me to John Keys, and also mentioned in his affidavit, was executed by me to said John Keys,

he knew that I had not received a deed thereof, as I had previously told him that I had to pay, or rather there was to be paid yet to the Bursar of the University and Colleges office upwards of four hundred dollars before I could get a deed of the land.

3. That the said John Keys was willing to take my deed and give such a mortgage.

4. That after the payment of the mortgage mentioned in said affidavit of John Keys, I did not see the said John Keys or speak to him.

5. That neither I nor my partner Sir Henry Smith ever or at any time received any money or moneys whatever from said John Keys as his Attorney or Attorneys, nor did he at any time pay us or either of us any moneys as such.

(Signed) JAS. A. HENDERSON.

Sworn before me at the City of Toronto, this 22d day of May, A.D. 1863.

(Signed) C. S. PATTERSON,
A Com. in Q.B. for U.C. of Y. & P.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Sir Henry Smith, of the City of Kingston, in the Province of Canada, Knight, one of the Attorneys of this Honorable Court, make oath and say—

1. That I never was retained by John Keys, of the Township of Pittsburg, Yeoman, as his Attorney in any manner whatever.

2. That I have been with my partner James Alexander Henderson above named for many years past engaged in the purchase of public lands both for ourselves and other persons.

3. That on the sixteenth day of January, in the year eighteen hundred and fifty-five, the said John Keys came to my office and wished myself or partner to purchase the West half of Lot Number Twenty-One in the Sixth Concession of the Township of Pittsburgh for him.

4. That in order to make the said purchase, I informed the said John Keys that it would be necessary to assign his interest in the said half lot to my said partner James Alexander Henderson, and make an affidavit that he was in possession of the said land and had made improvements upon it.

5. That the said John Keys then in my presence executed an assignment of his interest in the said lot, and that I am a subscribing witness to the same; that he also made an affidavit of his possession and improvements, and swore to the same before William Rudston, Esquire, then an Alderman of the said city.

6. That a true copy of the said assignment and of the affidavit of the said John Keys are hereunto annexed, marked respectively A and B.

7. That before the execution of the said assignment, and before the making of the affidavit of the said John Keys, I read both of the same over to him, and he fully understood the same.

8. That the said John Keys is an intelligent man, and writes a good hand.

9. That the transaction was not with myself or partner as Attorney, nor did the said John Keys employ or consult us or either of us as such.

10. That the said assignment and affidavits, with the first instalment on the land and the fees on the sale and transfer, were duly forwarded and paid by myself and partner to the Bursar of the University and Colleges at Toronto, on the nineteenth day of January, eighteen hundred and fifty-five, amounting to thirteen pounds one shilling and threepence.

11. That on the seventeenth day of January, eighteen hundred and fifty-six, the said John Keys paid to myself and partner the sum of eighteen pounds and fifteen shillings, to cover the first instalment and making the purchase according to agreement made with him the year before.

12. That on the nineteenth day of August following the said John Keys paid to myself and partner the sum of twenty-one pounds, eighteen shillings and eightpence, and on the same day the said sum was remitted to the said Bursar.

13. That the original receipts for the first and second instalments from the said Bursar were delivered to the said John Keys by the said James Alexander Henderson in my presence on the twenty-ninth day of the said month of August.

14. That at the time of the delivery of the said receipts the said James Alexander Henderson endorsed on the contract of sale with the Bursar his undertaking to convey the said lot to the said John Keys, a true copy of which contract of sale and undertaking is hereunto annexed, marked C, and a true copy of the said undertaking was at the same time delivered to the said John Keys.

15. That on the second day of January, in the year eighteen hundred and sixty-one, the said John Keys was indebted to the said James Alexander Henderson and myself in the sum of fifty dollars on his promissory note, hereunto annexed, marked D.

16. That I never knew the said John Keys was in any pecuniary difficulties, save and except he did not make his payments to myself and partner according to his agreement, and was at no time to my knowledge under any pecuniary pressure.

17. That in the year eighteen hundred and sixty I was confined to my house for about six weeks, having had the misfortune to break the sinews of my leg.

18. That during the early part of my confinement I was waited upon by the wife of the said John Keys, who informed me that her husband had written to her to sell the lot or part of it, and I informed her it would be necessary that her husband should send a power of Attorney for that purpose.

19. That I recommended her to write to her husband to come back to Canada from the United States, and shortly after he did return, and came to see me at my house.

20. That the said John Keys then informed me that his wife had made some bargain to sell fifty acres of the land to one Macfarlane, and which he appeared anxious not to carry out, as he would only have fifty acres left.

21. That the said John Keys then proposed to me that if Smith and Henderson would relieve him from all payments to be made to the said Bursar and from the said promissory note, he would give them the sum of fifty pounds, which sum should be added to the sums then due them for payments made by them to the said Bursar and the instalments to be paid by them on the said lot, and that the time of payment should be extended over a period of five years at twelve per cent interest.

22. That I informed the said John Keys that I would accept the said proposal, and the same was then stated and agreed upon as due to Smith and Henderson at seven hundred and thirty dollars.

23. That the said John Keys wished that my partner should give him a deed and take a mortgage for five years according to his proposal, and I promised him that as soon as I could get to the office it should be so done.

24. That I never informed the said Keys that either myself or partner had paid the College or Bursar in full for the said lot, and it was never spoken of, except that he the said John Keys should not be called upon to pay any further sums to the said Bursar, but my partner and myself fully intended to pay up the full amount so soon as the said John Keys had paid the first instalment on his said mortgage.

25. That I never informed one Robert Donaldson nor one John Macfarlane that the said John Keys had no right to the said land and could not sell it, that the said John Keys had paid nothing on it, and that it was owned by Smith and Henderson, or that they the said Smith and Henderson would allow the said Keys' wife to remain on the lot for one year, and that if he the said Keys did not return in the meantime and settle with them for the land, they would turn her out of possession and sell the land themselves.

26. That I never informed the said John Keys that Smith and Henderson had paid any sum to the said Bursar except the two first instalments and the sums of forty-two dollars and fifty-nine cents and fifty-one dollars and twenty-five cents.

27. That during the whole transaction with the said John Keys there was no disposition or intention on the part of my partner or myself to injure or oppress the said Keys, and the giving of the said note for eighteen pounds and fifteen shillings, and the offer of the sum of two hundred dollars in the twenty-first paragraph of this affidavit mentioned, was free and voluntary, and without any coercion or pressure whatever.

28. That no charges whatever were made against the said John Keys by myself or partner, or by any of our clerks, in the books of our firm, or in anywise whatsoever, in relation to the business done by myself and partner or either of us for the said John Keys.

29. That no demand was ever made upon me or my partner by the said John Keys, or by any person or persons on his behalf, to repay or refund any moneys whatever.

30. That the assignment and affidavits referred to in the fifth paragraph of this affidavit are filed in the office of the said Bursar, where I sent them at the time the first instalment before mentioned was paid.

31. That on the twenty-eighth day of October last my partner and myself paid up the College in full the balance due by us, that is to say, four hundred and sixty-four dollars and forty-two cents, before the receipts of any payment on the said mortgage.

32. That the said John Keys at the time of the execution of the said deed and mortgage well knew that the deed from the College had not been issued to my said partner.

33. That the said John Keys knew that Smith and Henderson had paid the sum of forty-two dollars and fifty-nine cents to the Bursar, and requested the said Smith and Henderson to make further payments on the said land for him the said John Keys.

(Signed) H. SMITH.

Sworn before me at the City of Kingston this 18th day of May, A.D. 1863.

(Signed) M. W. STRANGE,
A Com. in Q.B. for U.C. of F. &. L. &. A.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, William Macfarlane, of the Township of Pittsburgh, in the County of Frontenac and Province of Canada, Yeoman, make oath and say—

1. That in the Fall of the year one thousand eight hundred and fifty-nine, I heard from my brother John Macfarlane, of the Township of Pittsburgh, Yeoman, that fifty acres of the west half of Lot number twenty-one in the Sixth Concession of Pittsburgh was for sale.

2. That I accordingly went down to the Township of Pittsburgh to see the said Lot, and found the wife of John Keys in possession of the said Lot.

3. That the said Mrs. Keys informed me at the time, that she had got liberty from her husband to sell half of the Lot.

4. That the said Mrs. Keys made a bargain for one half of the land with me, at the price of seventeen dollars and a half per acre.

5. That the said Mrs. Keys then informed me that the title would have to come through Messrs. Smith and Henderson, or one of them.

6. That the said John Keys was then absent from this country, as the said Mrs. Keys then informed me.

7. That the said Mrs. Keys and myself subsequently, but in the same year, went to the office of Messrs. Smith and Henderson, and there saw James Alexander Henderson, Esquire.

8. That the said James Alexander Henderson then informed me that if I were prepared and would pay up the balance due by him to the Col-

lege, he would give me a Deed of fifty acres, and give to John Keys a Deed for the other fifty acres, which Deed he would give into her possession.

9. That I then informed the said James Alexander Henderson that I was unable to pay up the said amount of arrears, and he then referred me to Sir Henry Smith.

10. That I accordingly went out to see Sir Henry Smith at his own residence, he being then confined to his house with a broken leg.

11. That on seeing Sir Henry Smith he enquired of me where John Keys was, and he then informed me that he could do nothing in the matter without seeing John Keys or producing some authority from him in writing.

12. That the said James Alexander Henderson also, in my presence, about the same time, told Mrs. Keys to send to her husband for a Power of Attorney; and the reply she made to him was, that she was not aware where he Keys then was.

13. That neither the said Sir Henry Smith nor the said James Alexander Henderson ever pretended to hold the said lands for their own benefit, but were desirous of getting the arrears due by the said James Alexander Henderson paid off to the College office at Toronto.

14. That I consider the said Lot to be of the value of Two Thousand Dollars, that is the hundred acres now in the possession of the said John Keys.

(Signed) WILLIAM MACFARLANE.

Sworn before me at the City of Kingston, this 24th day of March, A.D. 1863.

(Signed) EDW. BOYD,
A Com'r in B. R., U. C. F. L. & A.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, John Macfarlane, of the Township of Pittsburgh, in the County of Frontenac, Yeoman, make oath and say—

1. That I am the John Macfarlane mentioned and referred to by John Keys, of the said Township, Yeoman, in the twelfth paragraph of his affidavit filed in this application and matter.

2. That I am personally acquainted with the said John Keys and the said Sir Henry Smith, and that the said Sir Henry Smith never told me that the said John Keys had no right to the land mentioned in the said paragraph, and that the said John Keys could not sell it; that the said Sir Henry Smith never told me that the said John Keys had paid nothing on it, and that it was owned by Smith and Henderson; that the said Sir Henry Smith never told me that Smith and Henderson would allow the wife of the said John Keys to remain on the Lot for one year; that the said Sir Henry Smith never told me that if the said John Keys did not

return in the meantime and settle with them (Smith and Henderson) for the land, they would turn her out of possession and sell the land themselves; nor did I ever inform the said John Keys that the said Sir Henry Smith had told me that the said John Keys had no right to the land mentioned in the said paragraph, and that the said John Keys could not sell it, and that the said John Keys had paid nothing on it, and that it was owned by Smith and Henderson, and that said Smith and Henderson would allow the wife of said John Keys to remain on the lot for one year, and that if the said John Keys did not return in the meantime and settle with them for the land, they would turn her out of possession and sell the land themselves; nor did I use any words to such effect.

3. I further say, that I never had any conversation whatever with the said John Keys respecting the said land, or respecting any dealings or conversation with the said Sir Henry Smith and James Alexander Henderson, or either of them, respecting any of the matters contained in the said affidavit of the said John Keys.

(Signed) JOHN MACFARLANE.

Sworn before me at the City of Kingston, this 23rd day of February, A.D. 1863.

(Signed) EWEN MacEWEN,
A Com'r in Q. B., U. C. of F. & L. & A.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Robert Donaldson, of the Township of Pittsburgh, in the County of Frontenac, Yeoman, make oath and say—

1. That I am the Robert Donaldson mentioned and referred to by John Keys, of the said Township, Yeoman, in the twelfth paragraph of his affidavit filed in this application and matter.

2. That I am personally acquainted with the said Sir Henry Smith and the said John Keys, and that the said Sir Henry Smith never told me that Smith and Henderson would allow his wife to remain in possession on the lot for one year, nor that if the said John Keys did not return in the meantime and settle with them, the said Smith and Henderson, for the land, they would turn her out of possession.

3. That the said Sir Henry Smith never told me that they, the said Smith and Henderson, would sell the land themselves.

4. That I never informed the said John Keys, that they, the said Smith and Henderson, would allow his wife to remain on the Lot for one year, and that if the said John Keys did not return in the meantime and settle with them for the land, they would turn her out of possession and sell the land themselves.

5. That at the time Sir Henry Smith was confined to his house with a broken leg, and while John Keys was absent in the United States of

America, I went to see the said Sir Henry Smith, as I had been in treaty with the wife of said John Keys to purchase part of said Lot.

6. That the said Sir Henry Smith then informed me that although the said land had been bought by them, meaning the said Smith and Henderson, yet they had given him, the said John Keys, a chance to pay for it.

7. That before seeing Sir Henry Smith on the subject, I had seen and applied to said James Alexander Henderson, who informed me that the said land was not for sale, and that they, Smith and Henderson, had bought it, and the land was theirs.

(Signed) ROBERT DONALDSON.

Sworn before me at the City of Kingston, this 7th day of March, A.D. 1863.

(Signed) EDW. BOYD,
A Commissioner.

Having read the rule granted to Mr. Galt, the affidavit of John Keys, and the counter affidavits of Sir Henry Smith and Mr. Henderson, he remarked that the jurisdiction of the Court could only be exercised in this case on proof being furnished that Sir Henry Smith and Mr. Henderson acted in this business of Keys as Attorneys. The Court had no power to interfere summarily, unless it appeared on the affidavits that the business done by them was done in their professional capacity as Attorneys. There were cases which showed that, when it was made to appear to the Court, that an Attorney had been convicted of crime, the Court would not allow him to remain on the rolls. In the present case, that was not alleged. Sir Henry Smith and Mr. Henderson, however, had no desire to avail themselves of any objection of that kind, but were willing to meet the charge on its merits, in order that it might be thoroughly investigated. So far from Keys having employed them as Attorneys, it appeared from his own affidavit that he went to them to get a loan of money, to enable him to pay the first instalment on his land. He got the money he required on giving his note, and a transfer of the land as security. Mr. Henderson, in taking the transfer, became personally responsible for the future payments, and, Keys being unable to pay the future instalments, Mr. Henderson in point of fact paid them for him.

Mr. Justice Richards asked what was the amount of the Mortgage on the property which was taken by Henderson when he gave a Deed to Keys?

Mr. Harrison.—$730.

MR. JUSTICE RICHARDS.—At what interest?

MR. HARRISON.—12 per cent.

MR. JUSTICE RICHARDS.—And what amount had Sir Henry Smith and Mr. Henderson paid to the University at that date?

MR. GALT.—$92.

MR. JUSTICE RICHARDS.—What then was the 12 per cent. interest on $730 for?

MR. HARRISON.—It was part of the agreement. Sir Henry Smith and Mr. Henderson had not to pay 12 per cent., but if they did not pay the instalments accruing to the University, they would have to pay 6 per cent. interest.

MR. JUSTICE RICHARDS.—In what instalments was the amount due to the University payable?

MR. HARRISON.—$5 an acre, in nine annual instalments, and 6 per cent. interest.

MR. GALT.—The instalments were $50 a year, with interest on the unpaid principal.

MR. JUSTICE RICHARDS.—Is there anything to show what was the understanding as to the right to convey the property, at the time the Deed was given to Keys?

MR. HARRISON.—Keys says they told him they had paid the University. Both Sir Henry Smith and Mr. Henderson deny that, and say they told Keys that the University would be paid in full, as soon as the first instalment on the Mortgage matured. They covenanted to give a good title and freedom from all incumbrances.

MR. JUSTICE RICHARDS.—Suppose Keys had paid off the Mortgage next day, what remedy would we have had against Smith and Henderson? Suppose the Deed had never issued to them at all, what remedy would Keys have had?

MR. HARRISON.—If there were any incumbrances, they would be incumbrances of his own sufferance. His contract with the University was to pay so much a year, and, if the University was not paid off, then it would be a breach of the covenant that the land should be conveyed free of incumbrance, "notwithstanding any act by him done or suffered."

CHIEF JUSTICE DRAPER.—These covenants then amounted to nothing. They were merely security against the grantor's own acts, and, as he had done no acts, there was no security.

MR. JUSTICE RICHARDS.—I understand one ground of complaint is, that Sir Henry Smith and Mr. Henderson, being

profe ional men, gave to a gentleman who came to consult them professionally, a Deed which on the face of it afforded him no security, and that in reality he got nothing for what he was giving them. I would wish that point to be met.

Chief Justice Draper.—And, in addition, it is suggested on the other side, that, knowing that the Deed gave no security at all, they induced a party to accept it, believing, as an ignorant or non-professional man might, that it did convey a real security.

Mr. Harrison.—There is no obligation on the part of professional men, or any one else, to give absolute covenants for titles.

Chief Justice Draper.—That is not the gist of the complaint. It is that they were giving something to the man, which, on the faith of their representations, he believed to be something else—to be a security of value—while it was worth nothing.

Mr. Harrison.—I contend that real security was given. Mr. Henderson covenanted to give a good title, "notwithstanding any act by him done or suffered," and he had bound himself to pay to the University a certain amount of money for the land.

Chief Justice Draper.—The meaning of these multiplied and repeated words in covenants is to be found by going back to the full form, and in this way we will find that "suffering" here means "suffering a recovery." When these words are analysed, you will find that they refer to some particular mode by which the land may be incumbered.

Mr. Harrison.—Taxes might be "suffered" to accrue.

Chief Justice Draper.—The word does not include that. The word "omit" would cover it.

Mr. Justice Richards.—Mr. Galt particularly drew attention to this, that a Deed granted under the circumstances under which this Deed was granted, afforded no protection whatever. He said that the parties granting the Deed, took a Mortgage for a certain amount, including some $200 for some kind of services rendered or to be rendered, and yet gave Keys a conveyance which was practically inoperative and of no service to him.

Mr. Harrison.—The conveyance given was the usual conveyance under such circumstances. And that it was given in perfect good faith, is evident from the circumstance that the

parties subsequently paid up the amounts due to the University, and that Keys sustained no loss whatever. If a fraud was designed, if it was intended to cheat him out of his land, by giving him a Deed which was valueless, the fraud would have been carried out. But we find nothing of the kind. We find that what they agreed to do, they did, as to paying the University, so that, as regarded the University claim the man should not be molested.

Mr. Justice Richards.—What is alleged is, that, when a professional man gives his client a Deed under such circumstances, he should give such a Deed as would be valid. But, suppose they had both died, how would Keys have got his land?

Chief Justice Draper.—(To Mr. Harrison).—I do not understand that such a fraud is charged as that against which you were just now defending your clients.

Mr. Harrison.—I would like to know what jurisdiction the Court has in the matter, if there was not a designed fraud. I understand the fraud charged is, that they gave Keys a Deed of one kind when they ought to have given him a Deed of another kind.

Mr. Galt.—When they ought to have given him no Deed at all.

Chief Justice Draper.—It is alleged that they gave him a Deed passing fee simple, when they could not pass fee simple.

Mr. Harrison.—No transaction is more common than that with regard to unpatented lands. Nothing is more common than for a man, holding unpatented land, to give a Mortgage in fee simple on his land, although he has no title—the object frequently being to get money to pay the Crown and obtain the patent.

Chief Justice Draper.—I think that is confined to cases of dealing with Crown Lands.

Mr. Harrison.—I contend that the principle of law which makes a prior Mortgage a good Mortgage, if supported by a subsequent Deed, would apply with as much force when the fee simple is in the University. This is elaborately set forth in the case of Doe Irving and Webster, 2 U. C. Q. B. Reports. It was held that, if a man, having no legal estate, assumes to convey legal estate, supporting the assumption by covenants for title, if he subsequently acquires a title, that subsequent

acquirement the prior Deed. I understand that my learned friend imputes no moral fraud.

Mr. Galt.—I distinctly impute that.

Mr. Harrison.—I contend that, so far as that Deed is concerned, there is no evidence of moral fraud. The conduct of Sir Henry Smith and Mr. Henderson, at the time of giving the Deed and subsequently, shows there was no intention to commit moral fraud. Nothing more can be made out than this, that *per se* it was wrong for Henderson to give a Deed of real estate, not having the estate. If there was moral fraud, it must be proved. The Court cannot presume it. It is too much for my learned friend, in the face of these affidavits, to say there is any proof of moral fraud. And I say he ought not to impute, on such slender materials as he has here, moral fraud to any professional man, probably for electioneering purposes.

Mr. Galt.—My learned friend may have reasons for supposing that. I would like to know what they are.

Mr. Harrison.—The fact that he has brought a short-hand reporter to take the proceedings, I think, is pretty good evidence.

Chief Justice Draper.—The Court can take no cognizance of that. These personal matters between Counsel ought to be avoided.

Mr. Harrison.—He asked a question and got his answer.

Chief Justice Draper.—The tone, "he got his answer," is not the proper tone to assume when a Counsel is interrupted by the Court.

Mr. Harrison apologized to the Court, and proceeded to say that what he contended was, that, when a charge of fraud was made, it ought to be proved. And there was nothing in this case, so far as the giving of the Deed was concerned, to indicate fraud, except it was the circumstance that, at the time when the Deed was executed, Henderson did not own the real estate conveyed. That, however, was a very common transaction throughout the country in the case of University Lands as well as Crown Lands. That it was not designed to work a fraud on this man, was proved by the fact that he had not been defrauded—that there was no act, subsequent to the execution of the Deed, which indicated an intention to defraud, and that in point of fact he had not been defrauded, and had no ground of complaint, so far as actual injury was concerned, be-

yond the fact that these two gentlemen, under the agreement entered into between him and them, enacted from him a payment of $200. Mr. Harrison then read a second affidavit by Mr. Henderson, and the affidavits of John Macfarlane, Robert Donaldson and William Macfarlane, and proceeded:—I have read the affidavits to your Lordships *pro* and *con*, and the question now arises how far my learned friend is entitled to have his rule in any shape or form made absolute. The rule really consists of two parts. In the first place, it calls upon these gentlemen, as Attorneys, to deliver bills for the business done by them as Attorneys for Keys; and, secondly, it calls upon them to answer the matters contained in the affidavits filed. As to the first part of this rule, it was at one time supposed that Courts of Common Law possessed the jurisdiction to order the delivery of bills, and to refer them to taxation, independently of any Statute. But that supposition can no longer be maintained, for the later cases may now, I think, be taken as supporting the point, that the Court has no jurisdiction to order the delivery of an Attorney's Bill, or to refer it to taxation, unless under the terms of the Statute. The three cases on that point are Weymouth vs. Mackintosh, 3 Bingham, new cases, 387; Slater vs. Brooks, 9 Dowling, page 349, *ex parte* Cardross, 5 Meason & Wellsby, 545. Then have your Lordships any jurisdiction under the Statute, to make absolute the first part of this rule? The Statute is chapter 35 of the Consolidated Statutes of Upper Canada, sections 27 and 28. Section 27 enacts that "No suit at Law or Equity shall be "brought for the recovery of fees, charges or disbursements for "business done by any Attorney or Solicitor as such until one "month after a bill thereof, subscribed with the proper hand "of such Attorney or Solicitor, his executor, administrator or "assignee (or in the case of a partnership, by one of the part-"ners, either with his own name or with the name or style of "such partnership), has been delivered to the party to be "charged therewith, or sent by the post to or left for him "at his counting-house, office of business, dwelling house, or "last known place of abode, or been enclosed in or accompa-"nied by a letter subscribed in like manner, referring to such "bill."—16 Vic., c. 175, s. 20. It does not say "any business," but, any business done by any Attorney or Solicitor as such. Now it has been held that mere Conveyancing services are not services performed by an Attorney as such, and that a Court has no power or authority to refer for taxation a bill of an Attorney for Conveyancing, or when

Conveyancing items alone are contained in it. That has been held in this country by the late Justice Burns, and by Mr. Justice Hagarty. The decision of Justice Burns will be found reported in 8 U. C. Law Journal, 825; and the decision was upheld in the matter of John A. Macdonald, 9 U. C. Law Journal, 911—that mere Conveyancing services cannot be said to be services performed by an Attorney or Solicitor as such. How can services performed, in protecting land, or paying money on land, which any man, whether an Attorney or not, can perform, be held to be performed by an Attorney or Solicitor as such? It does not require the skill of an Attorney to write a letter to the University of Toronto with money, or to make an advance of £10 or £15. If, then, Conveyancing services, or services connected with the mere buying and selling of land, cannot be said to be services performed by an Attorney as such, I say that nothing that was done by Sir Henry Smith and Mr. Henderson, on behalf of Keys, can be said to be services done by them as Attorneys, so as to entitle the Court to exercise any jurisdiction in the matter of this application. And the fact that they were not acting as Solicitors, is evident from the circumstance, that, though they were acting for Keys during a period of six or seven years, they have not made a solitary charge in their books for any services performed. They distinctly swear that neither they nor any clerks in their employment have done so, showing not only that they did not act as Solicitors, but that they did not consider themselves to be acting as Solicitors—that they were acting for Keys merely as any other two men in the community might have acted, merely assisting and befriending this man, to put him in a position to have his land, and the improvements he had made upon it, saved; because it is admitted by himself that, if he had not been enabled to pay his first instalment, he would have lost his improvements. We show also that he failed to meet subsequent instalments, and if these had not been paid by Smith and Henderson, he would in all probability have lost his land—so that, so far from having cause of complaint against them for their conduct, he has cause of thankfulness, for, had he been left to himself, we would have had no interest in the land to-day. I submit then to your Lordships, so far as the first part of the rule is concerned, as it has not been shown that the services performed were performed by them as Attorneys, the Court has no jurisdiction to order them to deliver a bill for services performed, or to refer that bill for taxation. Then, as to the second part of the rule

which calls upon these gentlemen to answer the matters contained in the affidavit of Keys, I submit that the practice is not often resorted to, of calling upon an Attorney to answer matters contained in affidavits. It is a practice which is spoken of by Chief Justice Wilde as a very unusual one, and one which ought not to be often resorted to. I refer to the case of Belcher vs. Gooderham, 4 C. B., 474. The Court, however, has granted the rule, on hearing the application of Keys, calling upon them to answer it. The question then is, have they answered it satisfactorily, or have they not? The authorities show that, if the Attorneys positively deny the facts charged against them, the Court will not interfere, for then it is only affidavit against affidavit, and the Court is powerless to decide between them. If any fraud had been committed on this man, in the matter of the original transfer, the remedy would be found by an application to a Court of Equity. If any deception was practised upon him in giving the Deed or taking the Mortgage, the remedy would be in a Court of Equity, and not an application upon affidavit in a Court of Common Law, calling upon the Court to exercise summary jurisdiction. I refer to Wadworth vs. Allan, 1 Chitty's Reports, 186. I refer also to the matter of Charles Durand, where an Attorney called to meet affidavits did so, and the matter was discharged. The case is not reported. Now, if an Attorney, acting in his professional capacity, does a wrong, commits a fraud, or perhaps even less than a fraud, the Court will summarily interfere. But these gentlemen in this matter have not acted as Attorneys at all. But it is said that, if Attorneys are shown to be untrustworthy, if they have been convicted of crime, or have in any way shown themselves not entitled to be on the rolls, the Court may interfere. It is not pretended, however, that these gentlemen have been convicted of any crime, or that they did anything more than to make a bargain, into which this man voluntarily entered, agreeing to pay them a certain sum for services. I refer your Lordships to the matter of Henry O'Reilly, 1 U. C. Q. B. page 392. I am instructed to say that these gentlemen are anxious to have the fullest inquiry into this matter, and they conceive they have met the affidavit in every respect. If your Lordships think so, I ask your Lordships to discharge the rule and to discharge it with costs. There are a number of statements made in the affidavit of Keys, reflecting upon both these gentlemen in the most serious manner. But I think your Lordships will find that all the serious statements are contradicted, not merely by

one affidavit but by several. Keys was pleased to refer to two men for corroboration of a portion of his statements, and I have fyled affidavits from both of them, denying that they made any such allegations as he states, or that they had any authority to do so. I have not found any authority, where Attorneys have been called upon to answer a rule under such facts as are presented to the Court here. I have looked over the English cases, and in most if not all of them, the conduct imputed was conduct in a professional capacity. And I say that here there is no misconduct that I can see, no moral fraud whatever. I strongly assert that no actual wrong has been done. The man agreed to pay the $200, and even as a matter of value I think the services performed were worth it. But that is not the question here. The point is, if the bargain was really made. Keys says it was not. They both say it was. Keys starts by telling the Court, that, when he made the assignment, he thought it was a security merely, and had no idea it was an absolute assignment. In saying so, he attempted to mislead the Court, for I have shown that it was explained to him at the time that it was only a security, and in the following year a Deed was given to him, with an endorsement showing that it was only a security. As regards the giving of the Deed, I have said all, I think, that need be said on that point. My clients, perhaps, without reflection, gave a Deed containing qualified covenants, intending fully to pay up the University, to get the title, and to let Keys have it. In giving that Deed, Mr. Henderson gave all that the law ordinarily requires a man under such circumstances to give, a Deed with qualified covenants. I contend that he gave it in good faith, that he carried out all he undertook to do, and that this man Keys has not been injured; and I therefore ask the Court to discharge the rule with costs.

Mr. Galt then addressed the Court. He said:—I need hardly state to your Lordships that it is an unpleasant task for any one, in the discharge of his professional duty, to be obliged to make an application of this kind to the Court. The manner, however, in which the application has been met, certainly relieves me in a great measure from the hesitation I might otherwise feel in urging it. Had these parties come before the Court and admitted that they had done wrong in taking their client's money; had they stated that it was under a misapprehension of the facts that they gave the deed; if they had said that they thought they had paid the money, then there might

have been some greater hesitation on my part about discharging my professional duty than there is now. But, when they actually instruct their Counsel to ask the Court to discharge the rule, on the ground that they have done nothing wrong, and to discharge it with costs against my client, who has been treated by them in the way which I shall shortly sum up, I feel that I need have no delicacy about discharging my duty, and exposing their conduct as I think it ought to be exposed. I wish to make two preliminary observations. The first is, that if persons are to be allowed to practise the profession of the law as these persons are represented to have practised it, it would be a misnomer any longer to call it an honorable profession; and the second is, that unless we are to adopt the maxim of Talleyrand, that "language is given to us to conceal our thoughts," there can be no doubt or hesitation on the part of your Lordships about making this rule absolute, for this reason, that Mr. Henderson in his affidavit swears that he told certain parties that the land in question belonged to Smith and Henderson, while at the same time he swears that he had no intention whatever to convert it to his own use. I make these observations in consequence of my learned friend having insisted on holding on to this money, which, as I contend, was most improperly exacted. I shall now address myself to the facts of the case, which may be very briefly summed up, and which, I think, are conclusive against the parties. It is proved that in 1855 Mr. Keys went to Sir Henry Smith and Mr. Henderson. He swears that he went to consult them with regard to his position. They meet that by swearing that he never consulted them professionally, and Smith goes further and says that it was part of the business of himself and his partner to be engaged in speculating and purchasing lands for other parties, and that it was only in that capacity that they had dealings with Keys. That is their answer. But Keys swears that he went to them for the purpose of consulting them as to his position, and asking them to assist him, and that this arrangement was made between them; that they agreed to advance him some £13 5s., on his giving them a security over his property, which he himself at that time valued at £200; and that for that accommodation they were to receive from him a note payable at twelve months for £18 5s., being the amount advanced with 40 per cent. interest. He swears that he understood at the time that he was merely to give them a security, and that he did not understand the nature of the instrument he was signing, which was in point of fact an assignment of the pro-

perty. But I will take the case on their own showing. These parties are professional men, and must have very well known what they were doing. Let it be assumed, as Sir Henry Smith says, that Keys understood the transaction fully, and voluntarily entered into it. What in fact was that transaction? It was simply—and as professional men they must have so understood it—simply a security given to them to secure this £18 5s. The £18 5s. was paid when the note fell due, and surely, as professional men, they ought to have known that it was their duty then to make a re-conveyance to the man of his own property. But they did no such thing. They had registered the property in Henderson's name, and, as Keys swears, without his knowledge. They continued to hold the property after the whole advance had been paid. Then, a few months afterwards, Keys goes again and pays them some £23 for the purpose of being transmitted to the University, and they come before the Court and actually claim credit for having paid to the Bursar the money which this man had entrusted to them for transmission. They did remit the money, which was received as a payment on the lot, but to whose credit was it placed? To that of Henderson. Afterwards they made two small payments themselves—one of $50, the other of $42. These are the only sums which these parties ever paid of their own money, because the first payment for which they exacted the enormous shave of 40 per cent. interest was an entirely separate transaction. The only money of their own which they ever advanced from beginning to end was $92. During the time which elapsed between the payment by Keys himself of the $90, and the giving of the Mortgage to which I am now to call your Lordships' attention, it appears that $92 was paid by these parties, and that was all. Now, with regard to what took place during those few months, I have here three affidavits, which I showed to Mr. Henderson, and I left them last night with Mr. Harrison that he might examine them. Susan Keys swears—

Mr. Harrison.—Before these affidavits are read, I wish to say a word. I think my learned friend and myself are agreed that affidavits not filed in answer to new matter brought out by our affidavits, ought not to be received—that statements made merely to bolster up or support what was originally urged, cannot be put in. I submit that these are affidavits, which, if put in at all, should have been fyled at the first. They are not answers to new matter brought out by our affidavits,

but they are the affidavits of the wife of Keys, and of other parties, corroborating the statements made by Keys in the affidavits first fyled. It is true that I saw them last night, but, after looking through them, I came to the conclusion that I must object to their being read.

Mr. Galt.—I think my learned friend, in his speech, said it was the most earnest wish of these parties, that the whole matter should be most thoroughly examined into. I think also that I am right with regard to practice, when I ask that these affidavits be received. The practice is this. Either a substantive motion can be made for leave to fyle additional affidavits, or—which is the usual course—the Court allows them to be read during the argument; but, if the other party objects, then the case may be postponed for the purpose of putting in such affidavits.

Chief Justice Draper.—Can you state any case of this kind, in which the course you contend for has been adopted?

Mr. Justice Richards.—If you wish to answer new matter contained in their affidavits, the Court will allow you to read these additional affidavits. But I understand that your affidavits do not refer to new matter, but are rather confirmatory of the old.

Mr. Galt.—Susan Keys gives an account of what took place when she went to Sir Henry Smith.

Mr. Justice Richards.—Does Sir Henry Smith say anything of that in his affidavit?

Mr. Galt.—Yes.

Mr. Justice Richards.—Don't you refer to that in your original affidavit? Does not Keys speak of his wife going to Sir Henry Smith? If so, this is not new matter.

Mr. Galt.—It is not strictly new matter, but, if your Lordships receive it, you can attach to it what weight you think it is entitled to.

Chief Justice Draper.—I think the Court cannot receive it.

Mr. Justice Richards.—I understand that Mr. Harrison, although he wants to have the case thoroughly investigated, does not give up any legal objection.

Mr. Harrison.—I do not think it is a case in which I should.

Mr. Galt.—I thought, as the assertion was made that they desired a thorough investigation, I would offer the means of

testing it. I have now brought the case down to 1860, between the time when the last payment of the $92 was made, and the time when the arrangement took place with reference to this Mortgage. It was on the 14th February, 1861, that this transaction took place between the parties. Keys swears that when he went to them in January, they told him that some $400 were due to the University, and he swears positively that, when he returned about a month afterwards, they told him they had paid the University that money. Now, where it is thus a question of veracity between the two parties, your Lordships are surely entitled to look at the acts of the parties, in order to ascertain who tells the truth. Keys swears they told him they had got the Deed. And besides, he knew that they were professional men, and he knew that no professional man would dream of giving a Deed of property, when he had no right or title to it whatever. And then what do we find takes place? Sir Henry Smith draws this Mortgage—it is in Sir Henry's own handwriting—in which it is stated that they had lent and advanced money to this man. And Mr. Henderson—whom I deeply regret to have to refer to, because he appears to me to have acted throughout as junior partner to Sir Henry Smith—Sir Henry Smith is the party principally interested; but in an evil hour Mr. Henderson thinks fit to give the Deed, a Deed with limited covenants, to put Keys in possession of this land. They say they had been acting for him and protecting him, but I cannot see the slightest symptom of it, unless it was protecting the man to make over his land to themselves in their own names. Well, they give a Deed by which Mr. Henderson holds himself out to that man as the owner of the property, Sir Henry Smith having previously or at the same time drawn a Mortgage, by which the admission is obtained from Keys that $730 had been lent or advanced to him by Mr. Henderson, and this $730 was to bear twelve per cent. interest. My learned friend says there was no moral fraud in this transaction. Indeed! No moral fraud! They take from this man a Mortgage bearing 12 per cent. interest for money which they had not advanced. And they do not pay a sixpence of the money due to the College from the time that the Mortgage is given till October of the following year. They do not pay the College a sixpence even of interest, while they are charging the man interest at 12 per cent.—they themselves being liable only for 6 per cent., and not paying even that. Yet that is not moral fraud! And why not? Because my learned friend says it

was their intention at some future time to pay the College, and at a future time they did pay the College. But, judging by the dates, it appears that they never paid the College till they were notified by Hon. Mr. Campbell that Keys was prepared to pay the full amount of the Mortgage, and this, as Keys swears, was after he was sued on the Mortgage. We have these two persons, then—officers of this Court—bringing an action to recover the amount of a Mortgage for $730, when they had never paid anything on it except these $92. I ask, is it not a monstrous act? My learned friend says the Court has no jurisdiction in the matter. I will open his eyes as to that, when I refer, as I now do, to a case reported in 2 Jurist, new series, 633, by which it appears that Cheslyn Hall, a Solicitor, was in 1846 appointed a trustee of a settlement, which was prepared by himself and his partner, who, as alleged, continued to act as Solicitors for the *cestuis que trust* and for the petitioners. Hall, in July, 1854, received the Accountant-General's cheque in payment of a sum which belonged to the parties in a cause, which he paid in to his own bankers to his own account, and subsequently sent to the petitioners a statement by which he represented that a certain sum had been received and duly invested. In October, 1855, Hall was required to give information respecting the state of the trust fund, and, in reply, he made out and delivered a memorandum, that a sum had been paid to the trustees and invested; but it afterwards turned out that Hall had made no such investment. On petition presented for that purpose by the co-trustees, the Court held that Hall had been guilty of such a misrepresentation, in addition to a breach of trust, that he could not be allowed to remain an officer of the Court, and his name was accordingly struck off the roll of Solicitors. There are other cases where the same principle is laid down. I have looked through all the cases of the kind, occurring of late years, which I could discover, and in every case where officers of the Court have been guilty of untrustworthy conduct—when acting as Trustees, for example, where there could be no pretence for saying that they were acting in their capacity as Attorneys—the Court has said that they shall not be allowed to continue on the rolls. The case sums itself up in this: Has the Court no jurisdiction over the conduct of these parties, whether in their transaction with Keys the strict relation of Attorneys and client existed between them or not? But, even according to their own showing, such a relation did exist, for they say they were protecting this man, and did pro-

tect him. Yet they took advantage of his ignorance, and gave him a Deed, on the representation, as he swears, that they had paid the money, or at least that that representation was made to him by Sir Henry Smith. As to Mr. Henderson, it seems to me that his complicity in the transaction mainly consists in his having given the Deed, and in his having told persons who applied to him to purchase the land, as he admits in his affidavit, that Keys had no right to the land, that it belonged to Smith and Henderson, and was their property. All the rest of the transaction seems to have been managed by Sir Henry Smith. And I say that when these parties, members of the legal profession, dealt as they did with a person in the position of Keys, who applied to them for assistance and advice, it is a case which calls for the interference of the Court. I call attention particularly to the circumstance, as sworn to by Keys, that they represented to him that they had paid the University. They swear they did not, but we have documentary evidence to support the statement of Keys, for they gave a Deed in which Henderson represented in the most solemn manner that the money had been paid. Mr. Henderson gave a Deed, undertaking to convey the property, and at the same time Sir Henry Smith takes a Mortgage, in which it is recited that the money had been advanced, and yet not only had the money not then been paid, but they never pay one sixpence of it, from the date of the giving of the Mortgage, until the 19th October, 1862—as I stated before, not until after they had brought an action against Keys, as he swears himself, on the Mortgage, and after they had been notified that he was prepared to pay up the Mortgage. Then for the first time they go to the University and pay up these $457. A good deal has been said about the forbearance extended to Keys through their exertions. But the allegation that the $200 they charge above the amounts paid to the University, was for forbearance, is the most monstrous thing I ever heard of. The money would not have been payable to the University for two years from this present date—that is, not until 1865. Taking their own statement, that they gave five years from 1861 for the payments from Keys to them, that would have brought it to 1866, while the University had to be paid in 1865. That is, for the extension of one year for the payment of $50 or $60 to the University, they charged $200. But they made no payments to the University, and never did one thing to prevent the University from taking possession of the land, until they were informed that Keys was prepared to pay up the Mort-

gage, and of course then knew that they would be called upon to produce the Deed from the University. These being the circumstances, I ask, is it right that it should go forth to the world, that persons in the practice of the profession shall be at liberty to act in this way, and shall do such things with impunity? Would any one be disposed to draw the distinction that is sought to be set up, that they were not acting for Keys as a client? This man went to these parties to consult them, and, as they say, to obtain their protection, and I have shown what protection they afforded him. It is a painful duty we owe to the profession when we have to bring such things before the Courts. But I feel satisfied that, when your Lordships consider the affidavits fyled by these gentlemen, and read them as opposed by the affidavit of Keys and by documentary proof, your Lordships will say that there is not the slightest doubt that their conduct has been highly reprehensible, and I think to such an extent, that your Lordships will consider it necessary, for the honor of the profession, to express an opinion upon it. As to their conduct in taking the money, there is little room for difference of opinion that they took it under circumstances which would sustain a charge of a criminal nature. They took a Mortgage for the money, charging 12 per cent. interest for it, on the representation that they had paid the amount due to the University, when they had done nothing of the kind. It is perfectly clear that they had not paid the money, and it is clear also that they could have been under no mistake about it. And even if they were under a mistake about it at first, their attention must afterwards have been particularly called to it, for they paid the College only three weeks before they received from Hon. Mr. Campbell the amount of the Mortgage. They must have known perfectly well therefore that they were doing what was wrong. I say those are circumstances which the Court cannot overlook, that officers of the Court should take a Mortgage from a person on the representation that they had lent and advanced money on his behalf, and should charge 12 per cent. interest for it, when the fact is that they had not lent or advanced one single sixpence, and that they did not lend or advance one sixpence until they were notified that the party was to pay the Mortgage, and then they went to the original creditor and paid the amount with only 6 per cent. interest. I think your Lordships will not allow such conduct. I think it cannot be doubted that your Lordships have perfect jurisdiction under such circumstances. It is admitted that the parties took the money

and 12 per cent. interest. There can be no difficulty in arriving at the amount, and surely the Court has power over its own officers, to say they shall not keep that money, but shall pay it back. They avow they took $200 from this man—and for what?

CHIEF JUSTICE DRAPER.—Supposing they did, they say they were acting for the man not as Attorneys, but in the same capacity as that in which they conducted other land transactions.

MR. GALT.—It is for your Lordships to say, with the whole circumstances before you, whether they were not acting professionally for this man.

CHIEF JUSTICE DRAPER.—You are assuming that.

MR. GALT.—Of course I am. My learned friend assumed that, because there were no taxable items in the charge they made, the Court can exercise no jurisdiction, and I have attempted to meet that. If your Lordships, however, think that there was no relation of Attorney and client between the parties, probably the first part of the rule cannot be made absolute. But your Lordships have another part of the rule to consider, and, if the Court is of opinion that the parties have been guilty of the acts charged, and, I think, conclusively proved against them, then, as they are officers of the Court, I submit that your Lordships have control over them.

CHIEF JUSTICE DRAPER.—Do you dispute the position on the other side, that, if any material facts in the original affidavit, and *a fortiori* if all the material facts are met by a denial, it is the duty of the Court to accept that denial *pro tanto*, and the thing is at an end?

MR. GALT.—I have not directed my remarks to that point, because I say there is no denial of the material facts.

CHIEF JUSTICE DRAPER.—You do not then deny the position taken on the other side, but the application of it?

MR. GALT.—Yes, and for this reason. Under any circumstances, considering the position of these parties, whether the assignment in its form was absolute or conditional, they must have known that in law it was only conditional, being given in security for the £18 5s., and that when that was paid, Keys had a right to get back his property.

CHIEF JUSTICE DRAPER.—Were there no other conditions coupled with it?

MR. GALT.—Not a solitary thing. It was an absolute assignment for the nominal consideration of £5, of the man's interest in this property.

MR. JUSTICE RICHARDS.—When was it registered?

MR. GALT.—It could not be registered, because Keys had never been entered as the purchaser. The original sale was made out in Henderson's name by the University. Keys had merely been a squatter on the land, and as such had made improvements on it.

CHIEF JUSTICE DRAPER.—The only contract from the University was in Henderson's name?

MR. GALT.—Yes. The assignment from Keys was a security for the £18 5s.

MR. JUSTICE RICHARDS.—What is the date of the contract?

MR. GALT.—The 19th May.

MR. JUSTICE RICHARDS.—And of the transfer?

MR. GALT.—The 16th May.

MR. JUSTICE RICHARDS.—Henderson had a right to obtain the assignment as a security.

MR. GALT.—Certainly, but the moment he was paid he should have given it back again.

MR. JUSTICE RICHARDS.—If he was asked. Was he ever asked?

MR. GALT.—Observe that this was a poor ignorant countryman, who was not acquainted with legal forms. They represented to him that it was a security, and he had supposed that, when he paid the note, the security was at an end. And afterwards, acting on that supposition, he went back to them and paid them $90 more of his own money, which they transmitted to the University. My learned friend has spoken of the endorsation on the contract, but I ask, was it not a monstrous thing to make such an endorsation? What business had Mr. Henderson to keep this man's land, when the man owed him nothing?

MR. JUSTICE RICHARDS.—What do you say he ought to have done?

MR. GALT.—The moment that Keys paid the £18 5s., he should, as an honest man, have transferred the land back to him.

MR. JUSTICE RICHARDS.—Would Mr. Henderson not have been liable to the University, when the covenant was made with him?

MR. GALT.—I do not know what the practice of the University may be. But I know that the practice of other Corporations owning land, under such circumstances, is to give up the one covenant and take a new one.

MR. JUSTICE RICHARDS.—The question is, whether after all it was not a proper protection for Henderson, that he should act as he did.

MR. GALT.—Then he should not have claimed the land as his own. When the wife of Keys wanted to sell it, Henderson said that could not be done because it was the property of Smith and Henderson.

MR. JUSTICE RICHARDS.—You say they got the promise of the $200, because they stated that they had paid the University. They say that was not the understanding, but that they got the $200 for their trouble in negotiating the matter.

MR. GALT.—They never had had any trouble for which they had not been well paid. All they did was to write two letters. It is pretended that they got an extension of time for Keys, but it is untrue that they did so, except the extension for a few months of the payment of the last instalment. And did they even fulfil what they undertook with regard to that? No, for after getting the $200 they did not pay the University one sixpence.

MR. JUSTICE RICHARDS.—To Mr. Harrison.—What do you suggest was the consideration they gave for the $200?

MR. HARRISON.—The consideration they gave was this. In the first place, if the man had paid his instalments as originally contemplated, there would have been no further charge against him, except the £5 included in the £18 note. But he failed to do so. He was away in the United States, and was written to repeatedly without effect, and, as Henderson was receiving letters claiming further payments, it became necessary for him to save the land and protect himself by making those payments.

MR. JUSTICE RICHARDS.—It was not then for the protection of Keys?

MR. HARRISON.—Mr. Henderson had to do it for his own protection. He was open to be sued on the covenant, and he saved the land by making those payments.

MR. GALT.—No, no. All he paid was $92.

MR. HARRISON.—When the man returned from the United

States, he asked what was the amount due to the University, and was told $408. This was in January, 1861.

MR. JUSTICE RICHARDS.—That amount was not due then.

MR. HARRISON.—Yes.

MR. GALT.—You are mistaken.

MR. HARRISON.—I do not know if the whole amount was due then, but at any rate, between 1858 and that time, some instalments accrued due, for which Henderson was responsible. Keys was wholly unable to take out his Deed, and he requested Smith and Henderson to do so. This was in 1861, and he agreed that, if they did, and paid the four hundred odd dollars that was due, he would pay them $200 for their trouble.

MR. JUSTICE RICHARDS.—What had they done?

MR. HARRISON.—The effect of the advances they made was to save to Keys his farm, which is sworn to be worth $2000.

MR. JUSTICE RICHARDS.—I have never heard of the University threatening to turn people out of their farms under such circumstances.

MR. HARRISON.—The other side start with the assertion that they never agreed to pay the $200 or any sum whatever for our services.

MR. JUSTICE RICHARDS.—For your services?

MR. HARRISON.—For anything.

MR. JUSTICE RICHARDS.—They gave a Mortgage for it.

MR. HARRISON.—But they say they gave it under a mistake, understanding that it was money which had actually been paid to the University. Keys says that he had no intention of paying anything to Smith and Henderson for their services, and he swears that he never agreed to pay them anything. But the persons to whom he appeals for corroboration contradict him, and, if he is contradicted on so material a point, what faith can be attached to the rest of his statement?

MR. GALT objected that his learned friend, instead of merely answering his Lordship's question, was making another speech.

The Court reserved its decision.

JUDGMENT OF THE COURT.

IN THE COURT OF COMMON PLEAS.

In re Sir Henry Smith and James Alexander Henderson, two Attorneys of this Honorable Court.

In Hilary Term Mr. Galt, Q.C., obtained a rule *nisi* calling on the defendants to show cause why on the first day of this present term they should not deliver to the applicant John Keys their bill of costs in relation to the business done by them for the said Keys, and also an account of their receipts and payments in respect to John Keys' purchase of the West half of Lot No. 21 in the 6th Concession of the Township of Pittsburgh, and why the said bill of costs should not be taxed, and on the taxation thereof they should not pay over to the said John Keys the balance of all sums of money received by them from or on account of the said John Keys, after giving credit for the sums of money which the said Smith and Henderson may be entitled to for payment made by them on account of the purchase money of the said half lot of land, and also for the amount of their said bill of costs when taxed, and why they should not answer the matters contained in the affidavits fyled herein, and pay costs of this application and all subsequent proceedings.

After reciting the affidavits,

By DRAPER, C.J.—The rule consists of two parts—1st, asking that the Attorneys should deliver their bill for business done and an account of receipts and payments in respect of the applicant's purchase of the West half of Lot No. 21, 6th Concession Pittsburgh, and for taxation thereof; 2nd, that the Attorneys should answer the matters contained in the affidavits fyled in support of the rule, and should pay the costs of the application.

The first part is met by the positive affidavit of Sir Henry Smith that he never was retained by the applicant as his At-

torney in any matter whatever; and Mr. Henderson swears that he never was retained by the applicant in any cause or way whatever, that the applicant never consulted Smith and Henderson or either of them as Attorneys or professional men, that neither were ever employed as Attorneys by the applicant.

On his part the applicant asserts that, having settled without right on a University lot and made valuable improvements, the University officers had the lot valued, and called on him to purchase and pay the first instalment of the purchase money or to quit the lot, and that in alarm lest he should be turned out, and having no money to make the first payment, he went to consult Smith and Henderson, Attorneys, as to his position in reference to the lot. I see no sufficient ground to conclude that his idea that he was consulting them professionally was suggested by ulterior events, and in the hope by treating them as his Attorneys to obtain relief against what he treats as a hard advantage taken of his helpless position in regard to this purchase; and though he swears he went to consult them, he does not in terms assert a retainer of them as his Attorneys. Besides the denial of any such retainer, the Attorneys give their explanation of their position. Sir Henry Smith states that he has been with his partner for many years engaged in the purchase of public lands for themselves and for other persons. Mr. Henderson states that the applicant began by expressing to him a desire to borrow money to make a payment on the land mentioned, and that it not being a legal matter, he referred the applicant to Sir Henry Smith, who wholly attends and manages any speculation or loans of money connected with lands; that the applicant remarked that Sir Henry Smith being a member of Parliament would be able to obtain favorable terms from the University authorities—a remark which evidently impressed itself on Mr. Henderson's mind, as he remembers it so clearly after a lapse of seven or eight years; and states further his present belief that had Sir Henry Smith not been a public man, the applicant would not have come to the office about the land, and also "considering" that Sir Henry Smith was in the habit of loaning money and making advances on lands. This Court can only deal with the first part of the rule on the ground that the Attorneys were acting professionally. If in addition to that professional business they engage in land speculations in loaning money and making advances on land, the accounts arising from such transactions are not such that we can order them to deliver bills or

an account of their receipts and payments in reference thereto. Wherever the Court can refer a bill to be taxed they can also order a bill to be delivered; but if a bill were delivered containing no items connected with the professional character of the Attorney, it could not be referred, as Lord Longdale expresses it in Allan v. Aldridge (5 Beav. 601, 8 Jur. 435). Such business must be connected with the profession of Attorney or Solicitor, viz., business in which the Attorney or Solicitor was employed because he was an Attorney or Solicitor, or in which he would not have been employed if he had not been an Attorney or Solicitor, or if the relation of Attorney or Solicitor and client had not subsisted between him and the employer.

Any employment in that character is unequivocally denied by both the Attorneys, and the assertion of their employment by the applicant in their professional character is far less explicit than the denial on their part, and the facts respecting which the parties agree in relation to their dealings about this land do not necessarily involve professional employment. I do not think, therefore, we can properly make absolute the first part of the rule.

As to the second part, in Belcher v. Goodered, 4 C. B. 478, Wilde C.J. says, "The Courts have long since ceased to grant "rules calling upon Attorneys to answer the matters of an affida- "vit. The usual course is: 1st, to dispose of that which relates "to the suit, and then, if the circumstances warrant it, to move "to strike the Attorneys off the roll." See Doe Thwartes vs. Roe, 2 D. and R. 226. The general rule seems to be that the Courts only exercise this jurisdiction over an attorney or solicitor in cases where either the charge against him is of a criminal nature or where the relation of attorney and client existed between the complainant and attorney, although the latter may not, in the actual subject of complaint, have strictly acted in a professional character. But Sir J. Stewart, V.C., carried the rule farther in the case of Dolland v. Johnson, cited by Mr. Galt (2 Jur. N. S. 633), and struck a solicitor off the rolls who had received a sum of money as a trustee, and had misappropriated it and "wilfully and deliberately, with his "own hand, put into the hand of a person interested in the "trust a representation that that trust fund was invested."

The facts of this case appear to be that the applicant, without authority, settled on a college lot, and after improving it for some years, was required to purchase and pay a first instalment without delay; that he was unable to do this, and was

afraid of being turned out of possession, and in January, 1855, went to Smith & Henderson, as he says, to consult them on the matter, in pursuance of an understanding come to between them (for a suggestion made by him that he did not understand the nature of the instrument he signed, viz: an assignment to Mr. Henderson, is positively repelled by the affidavits in reply), he assigned all his interest in the lot to Mr. Henderson, making also an affidavit as to his occupying and improving the lot; that Smith & Henderson agreed to make the purchase and pay the first instalment for him, being £13 1s. 3d., and took from him a note for £18 15s., payable in January, 1856.

They made no charge in their books against him for the assignment nor for corresponding with the University officers. The assignment purported to be made in consideration of £5, but it is not asserted that it was paid or intended to be paid. In the account obtained from Mr. Henderson and annexed to the applicant's affidavit, the difference between the £13 1s. 3d. and the £18 15s. is thus accounted for: "The difference, £5 13s. 9d., "was paid to cover the trouble, postage, interest, and charges" "agreed when money was advanced in 1855." On the 19th of May, 1855, a contract was entered into by the University to sell this land to Mr. Henderson. On the 19th of August, 1856, the applicant paid Smith & Henderson £21 18s. 8d., which was remitted to the Bursar, and was credited as a payment on Mr. Henderson's contract on the next day, and on the 29th of August, 1856, Henderson endorsed on this contract that, when the applicant made the annual payments, "*and the* "*same shall be fully paid to the Bursar*, he (Mr. H.) will, at "applicant's expense, convey the one hundred acres to him." In strictness, though no doubt it was not so intended, this made the applicant's right to a conveyance dependent, not merely on his making the requisite payments to Smith & Henderson, but on the latter or Mr. Henderson paying over the money to the Bursar. On the 4th of September, 1858, Mr. Henderson paid on account of the purchase $42,59, and on the 29th of June, 1860, $51,25. Except the first instalment, which was repaid, as above stated, Smith & Henderson made no other payment of their own money until the 24th of October, 1862, when $463,37 was paid, and on the 28th of the same month $1,05, making together $464,42, which was the full balance of purchase money and interest due to the University. On the receipt of this balance, the land was conveyed to Mr Henderson. After the payment of the 19th of August, 1856, but at what

time does not clearly appear, the applicant, being in pecuniary difficulty, went to the United States, leaving his wife in possession of the land. He returned in the Fall of 1860. During the interval he received a letter from Smith & Henderson, dated 14th December, 1859, stating that the King's College was claiming unpaid instalments, and that unless he was prepared to pay $185,81 immediately, Smith & Henderson feared he would be put to trouble. In January, 1861, having, as he says, received certain information (with respect to which assertion there is a contradiction by affidavits fyled in answer), he went to Smith & Henderson, and they informed him there was a balance of $453 due, and that on payment of that sum and of the advances made he would get a deed.

It appears that on the 2d of January, 1861, the applicant became indebted on his promissory note to Smith & Henderson in the sum of $50—this is stated in the 15th paragraph of Sir Henry Smith's affidavit. The applicant makes no allusions, nor does Mr. Henderson, that I can discover, which, adverting to the 20th, 21st, 22d, 23d, 24th and 28th paragraphs of his affidavit, seems strange. There is no reason for supposing there was any other transaction but this between the applicant and Smith & Henderson, but this one about the land. Mr. Henderson, however, says that he was informed by Sir Henry Smith, and that he brought to Mr. Henderson's recollection, that the applicant mentioned to him the sum of $200, *as the sum he had promised, should be added in the mortgage* to the other sums, and which Mr. Henderson understood was for their trouble, commission, etc., and for extending the period of payment. This statement appears to establish the promissory note for $50 was a gratuity given by the applicant for the assistance he hoped to derive from Sir Henry Smith. It could hardly be for the previous advance of $93,84, and as to the first instalment and the trouble, etc., in getting the contract with the University, that had already been satisfied.

But, whatever was the consideration for this note, it is stated by Sir Henry Smith that the applicant proposed that if Smith & Henderson would relieve him from all payments to the Bursar and from this promissory note, he would give them $200, to be added to the sums already paid by them, being ($93,84) and to be paid on the lot, and that the time for payment by the applicant should be extended over five years, at 12 per cent per annum, and the whole sum so to be paid by the applicant was agreed upon as $730. The applicant's account of the trans-

action materially differs, for he says nothing of the note nor of the giving £50, but represents that he was told that Sir Henry Smith had paid the College in full, but that they were willing to give him a deed and to take a mortgage from him for the amount they had paid, with interest at 12 per cent per annum; that they gave him no account how the $730 was made up, but simply told him that was the amount they had paid the College, and that it was after he had paid the $730 that he got the account showing how that sum was made up. The 29th paragraph of Mr. Henderson's affidavit throws doubt on this statement, though it does not amount to a positive contradiction.

On the 14th (or 19th) of February, 1861, Mr. Henderson conveyed the land to the applicant and took back a mortgage securing the payment of $730, with interest at 12 per cent per annum. At this date the account stood thus :—

Smith and Henderson had on their own showing advanced ...		$93 84
Interest thereon		7 97
The applicant owed them on the note of 2d January, 1861 ...		50 00
They undertook to pay $408 50 and $15 35 interest to the University		423 85
		$575 66
They took a Mortgage at 12 per cent for...		730 00
Being in excess of their actual demand		$154 34
Or treating the note of $50 as a gratuity...		50 00
		$204 34
On the 17th November, 1862, they received		$883 30
On the 24th October preceding they had paid		464 42
Difference		$418 88
Deduct from this sum paid by them	$42 59	
Interest thereon for about 4 years and 2 months ...	10 60	
Also paid by them	51 25	
Interest thereon for 2 years and 4 months nearly ...	7 12	
Also interest on $464 42 from 24th October to 17th November, 1862	2 00	
		113 56
Leaves...		$305 32

Which sum the applicant has paid them for trouble, commission, etc., extending the time for payment, and for interest at 12 per cent per annum on the sums actually advanced and on the sum given by applicant by way of gratuity, making a fraction more than $3 per acre addition to the original price of his land, which was sold to Mr. Henderson at $5 per acre. It is,

however, sworn that all this arose from his own proposal, and that all he has paid was in pursuance of his own agreement, and that he was perfectly satisfied when he obtained the deed and gave the mortgage. It is certain that if all that was actually done had been done by parties acting professionally as Attorneys, including the moneys advanced, no charge approaching in amount the sums the applicant has paid, in addition to the sums advanced and interest thereon at 6 per cent, could have been properly made, or if made, have been allowed. It is difficult to persuade oneself that the applicant, besides giving a gratuity of $200 for services involving in themselves no great trouble or responsibility (for the expense of getting the contract with the University was settled), and agreeing to pay 12 per cent on payments made, or if not made, chargeable only against Mr. Henderson at 6 per cent on his contract, should also agree to pay 12 per cent on the very gratuity of $200, so that at the end of five years, had he waited so long to pay it, the mortgage, principal and interest, would have amounted to $1168. Nevertheless, it is sworn that he understood and agreed to this, and appeared satisfied. The law permits the creditor to collect interest at whatever rate the debtor binds himself to pay it, if there is no such false statement or representation as in Dollard vs. Johnson, nor is there any misappropriation of moneys received by the Attorneys in which the applicant had any interest.

I fail, then, to see that we have jurisdiction to grant the rule, however little we may think the transaction redounds to the honor and credit of the legal profession. The least that can be said is that these Attorneys have made a hard bargain with the man who sought for help when he found himself in difficulty. That acting either as speculators in land or as persons in the habit of loaning money or making advances on land, they have obtained from the applicant in the shape of gratuity and interest an amount perhaps more than three times as large as could have been charged and allowed in the ordinary relations of Attorney and client for the same services. But considering the affidavits and the positive denials of any professional relation between the parties, I apprehend the circumstances do not warrant our granting the rule asked for. I refer to the case of Bartlett, 1 U.C. Q.B. 252. Many of the observations of the learned Chief Justice in that case have a pointed application to the facts now before us. If the precept and example of that eminent and lamented Judge were more closely ob-

served and imitated, charges, or even insinuations, against the honor and integrity of the profession would be of rare occurrence.

I think it must be discharged, and, in my view of the whole case, without costs.

APPENDIX.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Susan Keys, of the Township of Pittsburgh, in the County of Frontenac, wife of John Keys, of the same place, Yeoman, make oath and say—

1. That in the month of December, A.D. 1860, my husband being absent in the United States of America, I received a proposition from one William Macfarlane to purchase fifty acres of Lot number twenty-one in the Sixth Concession of the said Township of Pittsburgh, at and for the price or rate of nineteen dollars per acre, the said Macfarlane undertaking to purchase the remaining fifty acres of said Lot, on the same terms, if I desired to sell them.

2. That at the request of said Macfarlane, I accompanied him to the office of said Smith and Henderson, for the purpose of completing the sale to the said William Macfarlane of the first mentioned fifty acres.

3. That we saw the said Henderson, who told us that he and his partner, Sir Henry Smith, had a small claim against the Lot; that all they wanted was their own, but that nothing could be done until Sir Henry Smith's return home—he being absent on a hunting expedition, as we were informed by said Henderson.

4. That after the return to Kingston of the said Sir Henry Smith, I made an appointment with said Macfarlane to meet him in Kingston, for the purpose of having an interview with said Smith and completing the sale of said fifty acres.

5. That I came to Kingston according to appointment, but I could not find said Macfarlane, nor did he meet me at the time and place agreed upon.

6. That I was subsequently informed by the brother of the said Macfarlane that the latter had come to Kingston on the day he had agreed to meet me.

7. That said Macfarlane not having kept his appointment, and it being then rumored in our neighborhood that said Lot of land belonged to said Smith and Henderson, I became uneasy, and went with my brother Thomas Fox to see Sir Henry Smith.

8. That we saw Sir Henry Smith, who asked me if my husband had run away, and if I was going to follow. I replied that my husband had not

run away, nor was I going after him. He then said, "What do you want me to do for you?" and in answer thereto I said I wished to sell fifty acres of the Lot to pay off the claim against the land, and that I had my husband's authority for so doing, when Sir Henry immediately replied that my husband had no right to give any such authority, and that he had nothing to do with the land.

9. That I was shocked at this announcement, and began to cry, but Sir Henry told me not to be uneasy, and he would allow me to remain on the Lot for another year.

10. That previous to this I had had an offer from one Robert Donaldson of twenty-five dollars per acre, for the fifty acres on which there were no buildings.

11. That said Donaldson refused to complete the purchase of said fifty acres, because he had been informed by Sir Henry Smith that I and my husband had no title to the land.

(Signed) her SUSAN ⋈ KEYS. mark.

Sworn at the City of Kingston, in the County of Frontenac, this 25th day of April, A.D. 1863. And I do hereby certify that the above affidavit was first read over in my presence to the above named Susan Keys; and that she seemed perfectly to understand the same, and made her mark thereto in my presence before me.

(Signed) THOS. PARKE, Jr.,
A Commissioner, &c.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Robert Donaldson, of the Township of Pittsburgh, in the County of Frontenac, Yeoman, make oath and say—

1. That in the month of December, A.D. 1860, I wished to purchase fifty acres of Lot number twenty-one, in the Sixth Concession of said Township; and Mrs. Keys, the wife of John Keys, having offered to sell it to me at the rate of twenty-five dollars per acre, I agreed to give her that price.

2. That having heard rumors that the land belonged to Sir Henry Smith, I came to Kingston, and first saw Mr. Henderson, the partner of Sir Henry, who told me on my saying to him that I intended to purchase a portion of the Lot from Keys, that neither Keys nor his wife had any right to sell the land, which he said was owned by him and his partner, Sir Henry.

3. That I then asked said Henderson if he wished to sell the Lot, and he replied, "No, not at present."

4. That I then went to Sir Henry Smith's private dwelling-house, and on my stating that I wished to purchase the fifty acres from Keys, he replied that neither Keys nor his wife had any right to the land, and

that it belonged to them, the said Smith and Henderson. I then asked him if he would sell to me, and he replied "No, not yet."

5. After the conversations with Smith and Henderson, I declined to purchase the fifty acres from the said Keys, although I was very desirous of procuring the land, as it was adjacent to my farm.

(Signed) ROBERT DONALDSON.

Sworn before at the City of Kingston, in the County of Frontenac, this 25th day of April, A.D. 1863.

(Signed) THOMAS 'ARKE, JR.,
Com'r for taking affidavits in B. R., &c.

IN THE COMMON PLEAS.

In the matter of Sir Henry Smith, Knight, one of the Attorneys of this Honorable Court, and James Alexander Henderson, Gentleman, one of the Attorneys of this Honorable Court.

I, Thomas Fox, of the Township of Pittsfield, in Washtenau County, in the State of Michigan, one of the United States of America, Yeoman, make oath and say—

1. That in the month of December, in the year of our Lord one thousand eight hundred and sixty, I was on a visit to my sister Susan Keys, the wife of John Keys, of the Township of Pittsburgh, in the County of Frontenac, of the Province of Canada, Yeoman.

2. During my stay with my said sister—her said husband being then absent—I was requested by her to accompany her to Kingston on the business of arranging with one Macfarlane the sale to him of a portion of the farm then occupied by her.

3. I accompanied my sister to Kingston, but we failed to meet the said Macfarlane upon the said business, owing to his not keeping his appointment as we supposed.

4. At my sister's request, I then accompanied her to the office of Messrs. Smith and Henderson, in Kingston, in order to have an interview with Sir Henry Smith in reference to a claim my sister had heard he set up to the said farm.

5. That at the interview we then had with Sir Henry Smith, my sister stated to Sir Henry Smith that she wished to sell fifty acres of her land to pay off the claim on it, and that she had her husband's authority to do so. To which Sir Henry Smith replied in effect, that her husband had no right to sell the place; that it belonged to himself; that my sister and her husband had nothing to do with the land; that he, Sir Henry, had never given Keys a Deed of the place. But he said he would not turn my sister off the place for a year at all events.

(Signed) THOMAS FOX.

Sworn before me at the Town of Windsor, in the County of Essex, this 8th day of May, A.D. 1863.

(Signed) S. S. MACDONELL,
A Com'r for taking affidavits, &c.