

28 2.5 2.2
2

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques


© 1987

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/
Couverture de couleur
- ☐ Covers damaged/
Couverture endommagée
- ☐ Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/
Le titre de couverture manque
- ☐ Coloured maps/
Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur
- ☐ Bound with other material/
Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/
Commentaires supplémentaires:

- ☐ Coloured pages/
Pages de couleur
- ☒ Pages damaged/
Pages endommagées
- ☐ Pages restored and/or laminated/
Pages restaurées et/ou pelliculées
- ☒ Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées
- ☒ Pages detached/
Pages détachées
- ☒ Showthrough/
Transparence
- ☐ Quality of print varies/
Qualité inégale de l'impression
- ☐ Includes supplementary material/
Comprend du matériel supplémentaire
- ☐ Only edition available/
Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

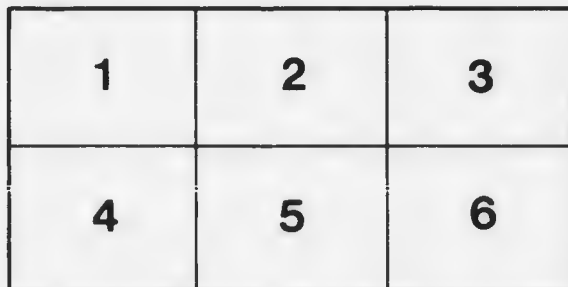
Harold Campbell Vaughan Memorial Library
Acadia University

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▼ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

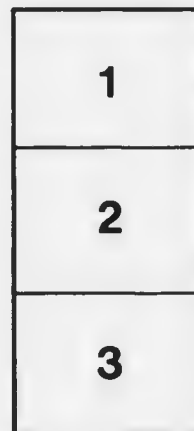
Harold Campbell Vaughan Memorial Library
Acadia University

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "À SUIVRE", le symbole ▼ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



A 346.5
~~347.9~~
F49

FINDINGS OF COUNCIL, &c.,

ON COMPLAINT OF

MR. MEAGHER, Q. C., AND OTHERS.

attendant

INDEX.

	Page
Complaint.....	2
Evidence of J. J. Ritchie.....	3
“ T. Ritchie.....	4
“ D. Archibald.....	4
“ “ “ (re-called).....	5
“ C. E. Craigen.....	4
“ E. D. King.....	5
“ W. L. Basse.....	13
Findings of Council, etc.....	13
Recapitulation.....	16
Notice and Grounds of Appeal.....	16



COMPLAINT.

To the Council of "The Nova Scotia Barristers' Society":

THE COMPLAINT OF THE UNDERSIGNED MEMBERS OF
"THE NOVA SCOTIA BARRISTERS' SOCIETY,"

SHEWETH,

That Edwin D. King, Q. C., and William L. Barss, doing business at Halifax as Barristers and Solicitors, have for some time past, and are at the present time, availing themselves of the services of a certain Broker or Agent, to wit, one W. H. Ferguson, to procure business, the business of Merchants and others in the city of Halifax being personally solicited by the said Ferguson, and by him placed in the hands of said King & Barss.

10

That in soliciting said business, said Ferguson represents, by the use of printed cards and otherwise, that business entrusted to him will be conducted without fee or reward except a commission on the proceeds in the event of success, and business so obtained is handed by said Ferguson to said King & Barss.

And further, that we have reason to believe and do believe that the said King & Barss allow the said W. H. Ferguson to sue out writs of process and prosecute and defend actions in their name in violation of Section 16, Chapter 93, R. S., 4th series.

We complain of the conduct hereinbefore mentioned as improper and unprofessional, and pray that an investigation may be held pursuant to the Bye-laws of the Society.

Dated this 18th day of February, 1885.

(Sgd.)

JAMES J. RITCHIE,

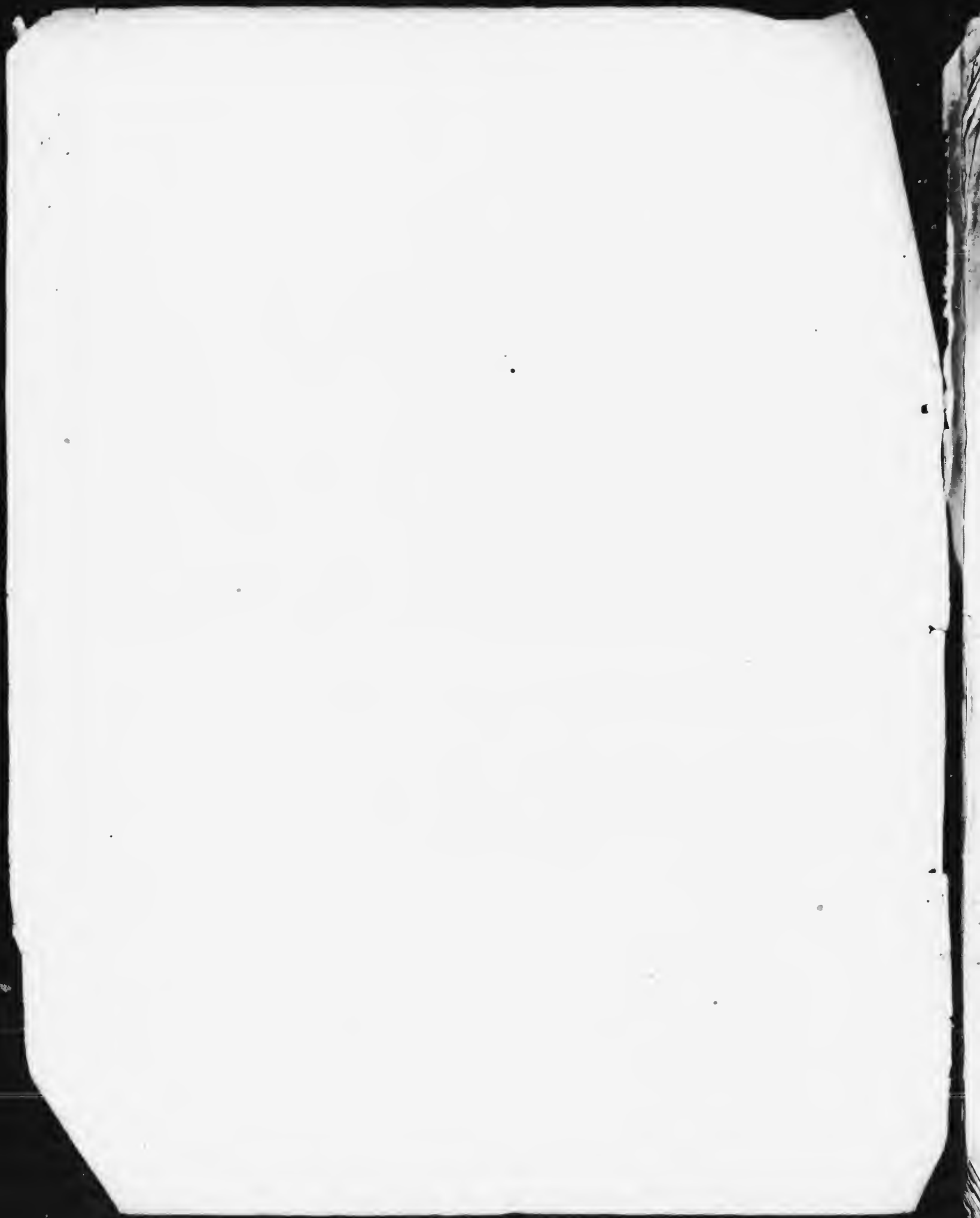
(Sgd.)

N. H. MEAGHER,

(Sgd.)

T. RITCHIE.

20



EVIDENCE.

Investigation of a Complaint vs. Edwin D. King, Q. C., and W. L. Barss, Esq., made
by N. H. Meagher, J. J. Ritchie and T. Ritchie. Esqrs., before the Council of
the N. S. Barristers' Society, at the Barristers' Room, March 9, 1885, 4 p. m.

PRESENT:—J. N. RITCHIE, Prest.; R. SEDGWICK, Vice do.; H. McD. HENRY, W.
GRAHAM, C. S. HARRINGTON, and B. RUSSELL, Council.

Mr. J. J. RITCHIE and Mr. T. RITCHIE, Complainants.

EDWIN D. KING, Defendant.

W. L. BARSS, Defendant.

Complaint read by the President.

10

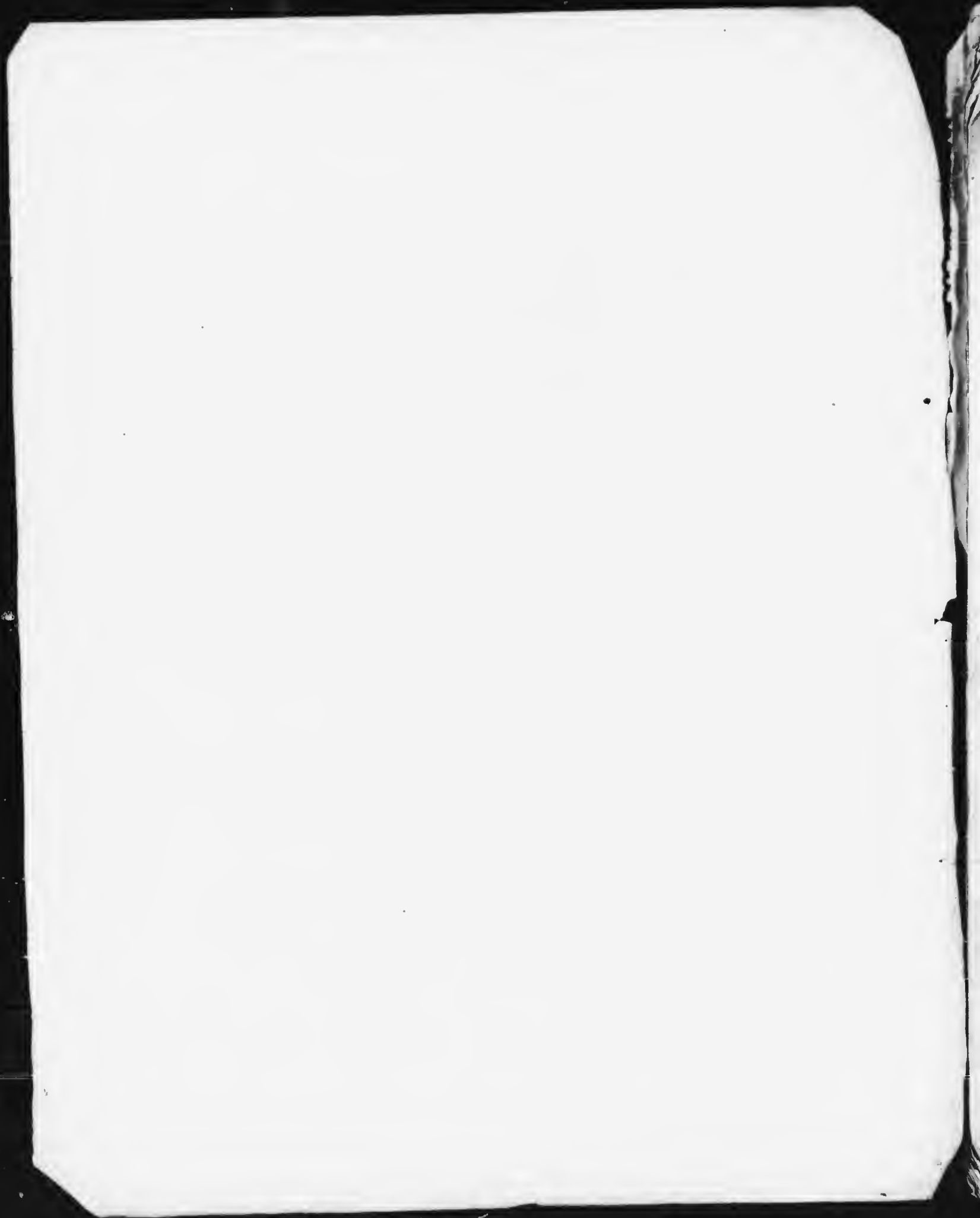
Mr. J. J. RITCHIE :—Some time since a cause was being tried in Co. Court—Moseley vs. Hall; plaintiff was being examined; Counsel for defence interrogated him as to whom he gave account to be collected; plaintiff replied that he gave account to Ferguson to be collected, and that he had not seen Mr. King about it until morning of trial. Mr. King then rose in his place at the Bar and stated that he admitted that the suit in question had come to his hands by means of a Broker (referring to Mr. Ferguson). I have been informed by Mr. V. F. Farrell that Mr. Ferguson offered to collect an account for him from one Sprague, and that Ferguson took the account from him on the express understanding that there should be no charge against Farrell unless debt was collected. If the debt was collected, the charge would be 5 per cent. Sprague was out of the Province (I think). Farrell further stated that Ferguson told him to go to King & Barss's office, which he did. Mr. King in his office administered an oath to Mr. Farrell, and questioned him as to the case. Shortly after, Ferguson came to Farrell's shop and told him he must have \$10 to pay for the deposition—that it would be returned to him whether the claim was collected or not. Mr. Farrell also stated that Counsel in Boston received \$20.00, which he was unable to get, and has not been able to get anything. [Mr. Ritchie produces card marked A, which was left at Mr. W. H. Neal's by Ferguson; subsequently saw a similar one exposed in a barber's shop]. I have frequently seen writs in the Prothonotary's office in the handwriting of Ferguson signed by King, and sometimes by King & Barss. The one I saw in the office signed by E. D. King was in the handwriting of Mr. King (i. e., the signature); the body of the writ in Ferguson's handwriting. Those signatures, King & Barss, were in Mr. Barss's handwriting. I saw Mr. Craigen, who informs me that writs are constantly brought by Ferguson signed by King & Barss or both of them, and that Mr. Ferguson generally attends to all the matters in the Prothonotary's office, including the paying of Prothonotary's fees, entering judgments, etc. I have examined the books in the Sheriff's office. I find writs entered, and in the place in the book where the Attorneys' names are entered, the name of "King & Barss, per Ferguson." This morning I asked to whom these matters were charged. He told me to Ferguson, and that the Sheriff had them charged in a separate account from the firm of King & Barss. I have ascertained that Mr. Ferguson buys his own blank writs from the stationers.

20

30

40

Cross-examined by Mr. KING :—I did not see the Sheriff's accounts. I did not enquire whether King & Barss had authorized the charges to be made in that way. Didn't ascertain whether King & Barss were in any way responsible for the manner in which the Sheriff's books were kept in this behalf. Mr. Craigen did not give me to understand that



Ferguson did any more in the Prothonotary's office than an Attorney or an Attorney's clerk would do. I can't say that Ferguson did not fill up the blank writs which he has used, in the office of King & Barss. I remember the Judge used the word Broker.

(Sgd.)

JAMES J. RITCHIE.

THOS. RITCHIE:—On more than one occasion I have seen Mr. Ferguson come into the Prothonotary's office and issue writs, and pay for them, signed by King & Barss. On one occasion I saw him issuing a writ which I believe to be altogether in the handwriting of Mr. Ferguson, signature and all. Subsequently I inquired and found that the fees upon the executions were charged to Mr. Ferguson (in the Sheriff's office). The Sheriff showed me an account in the name of Ferguson; the fees were charged to him and paid by him.

10

Cross-examined by Mr. KING:—Plaintiff's name in the suit I refer to was Cunard & Co. The writ was issued in the name of Franklyn.

THOS. RITCHIE.

D. ARCHIBALD, Sheriff, examined by J. J. RITCHIE:—I keep an account with King & Barss, and a separate account with Ferguson. [Produces book from Sheriff's office]. When King & Barss bring writs, the fees are charged to King & Barss; when Ferguson brings them, they are either charged to him or paid for by him at the time. [Shows a number of entries where entries are made to Ferguson, others to King & Barss]. I make the charges under instructions from the parties at the time. If Ferguson brought a writ up and said nothing, I would charge it to him. In cases of execution where there is an order to arrest, I get instructions from Attorneys. When I collect for Ferguson, I take receipt King & Barss, per Ferguson.

20

Cross-examined by Mr. KING:—I got no instructions from King & Barss to keep accounts in this way. I continued the accounts as I found them. I did not know from King & Barss that Ferguson was acting any differently for them than Mr. Frye was for Meagher, Chisholm & Drysdale. I have rendered bills to Ferguson, also to King & Barss. Ferguson told me that he was acting for King & Barss. I got instructions from clerks in other offices the same as I got from Ferguson, but I never made charges to the other clerks. Monies collected under executions are credited to King & Barss. In cases where there are only fees to charge, where Ferguson brought the writ the charges were made to him; he instructed me to do so. I never told King & Barss that I had separate account against Ferguson. Mr. Ferguson almost always paid at the time. Mr. Ferguson pays his account, and King & Barss pay theirs.

30

(Sgd.)

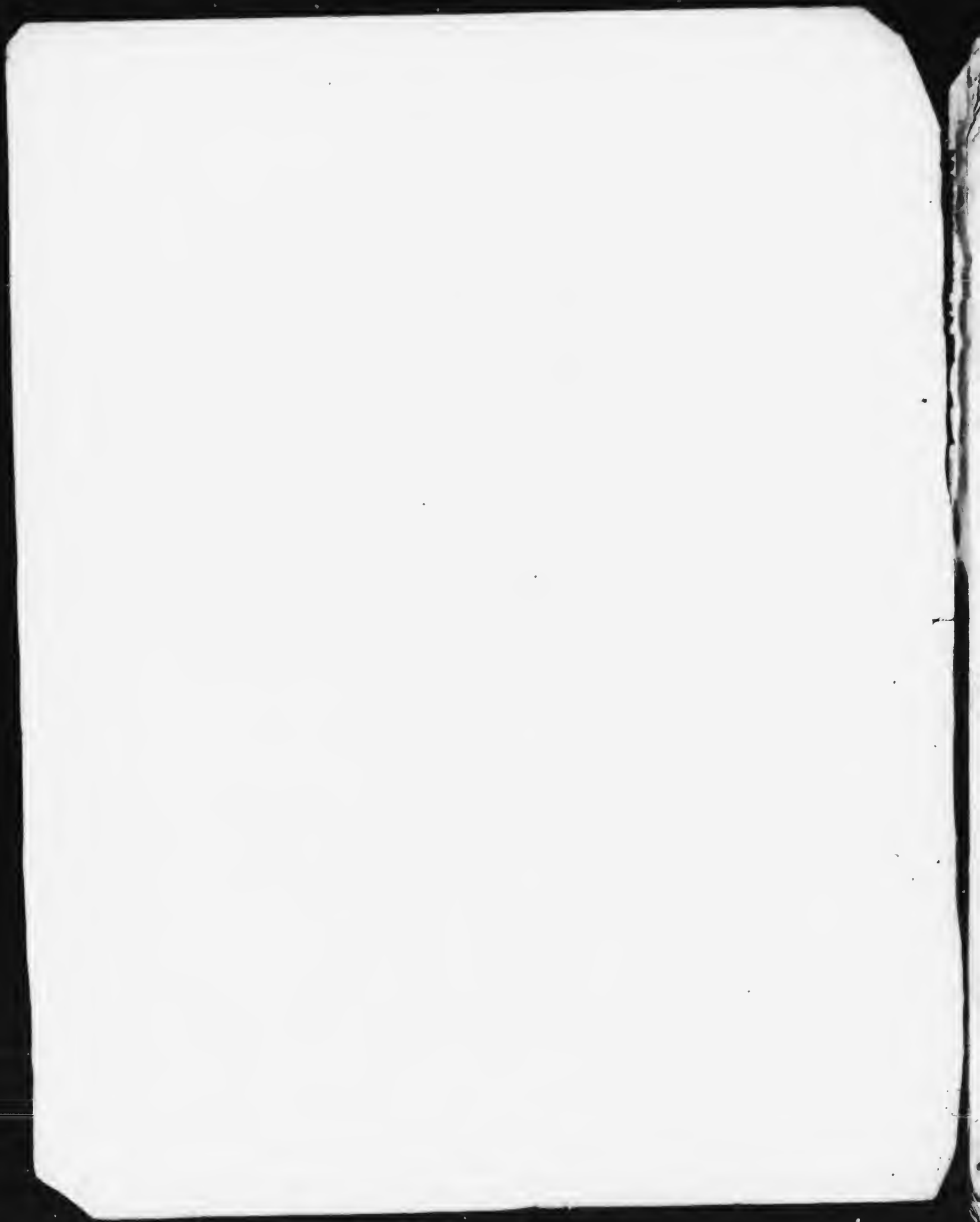
DONALD ARCHIBALD, Sheriff.

WEDNESDAY, March 11, 1885.

PRESENT:—J. N. RITCHIE, Prest.; H. McD. HENRY, C. S. HARRINGTON,
J. Y. PAYZANT, ESQRS.
E. D. KING and W. L. BARSS, Defendants.

C. E. CRAIGEN, examined by FERGUSON:—Ferguson has been issuing writs since July, 1883, after he left Mr. Hunt. Mr. Ferguson brings writs in his own handwriting, signed King and Barss, and sometimes E. D. King. When time is up he enters judgment and

40



issues execution. He makes up costs on slips of paper; generally brings them with him; sometimes makes them up in our office. King & Barss have a book; some of their costs may be on slips. He generally pays at the time. He has no account. King & Barss have an account, but generally pay cash. [Produces papers No. 11821, Franklyn vs. Munro;] body of writ is in handwriting of Ferguson signed by Mr. King, precipe in handwriting of Mr. Barss. The execution record and bill of costs are in Ferguson's handwriting, with exception of signature to execution. Writs issued by him are generally in this way. Moseley vs Hall writ is handwriting of Mr. Barss, copy on file in handwriting of Ferguson.

To Mr. J. J. RITCHIE:—When F. did not pay at the time, I waited until I saw him and got the money from him.

10

Paper B. is in Ferguson's handwriting. King & Barss generally pay cash. I think invariably that in default cases Ferguson taxes the bills; otherwise I believe in contested cases. In these cases King & Barss generally tax the costs. Ferguson may have brought some writs to be issued not in his own handwriting.

(Sgd.)

C. E. CRAIGEN.

DONALD ARCHIBALD, Sheriff, recalled:—All the amounts marked with an "X" on pages 36 and 182 of my ledger were paid by Ferguson. These writs brought in by Ferguson were paid for by him. Hamilton, the Deputy Sheriff, kept the record books the same way as I have done in respect to the business of King & Barss and Ferguson. [Mr. J. J. RITCHIE offers a copy of a letter addressed by him to Messrs. King & Barss, asking them to produce their books of account, etc.] [Mr. KING states that Mr. Ferguson's name does not appear in their books as "a person with whom you have an account." The services rendered by him are paid him at the time they are rendered, or shortly afterwards.] Mr. Ferguson told me that he was an Agent, and that King & Barss were his Attorneys.

20

(Sgd.)

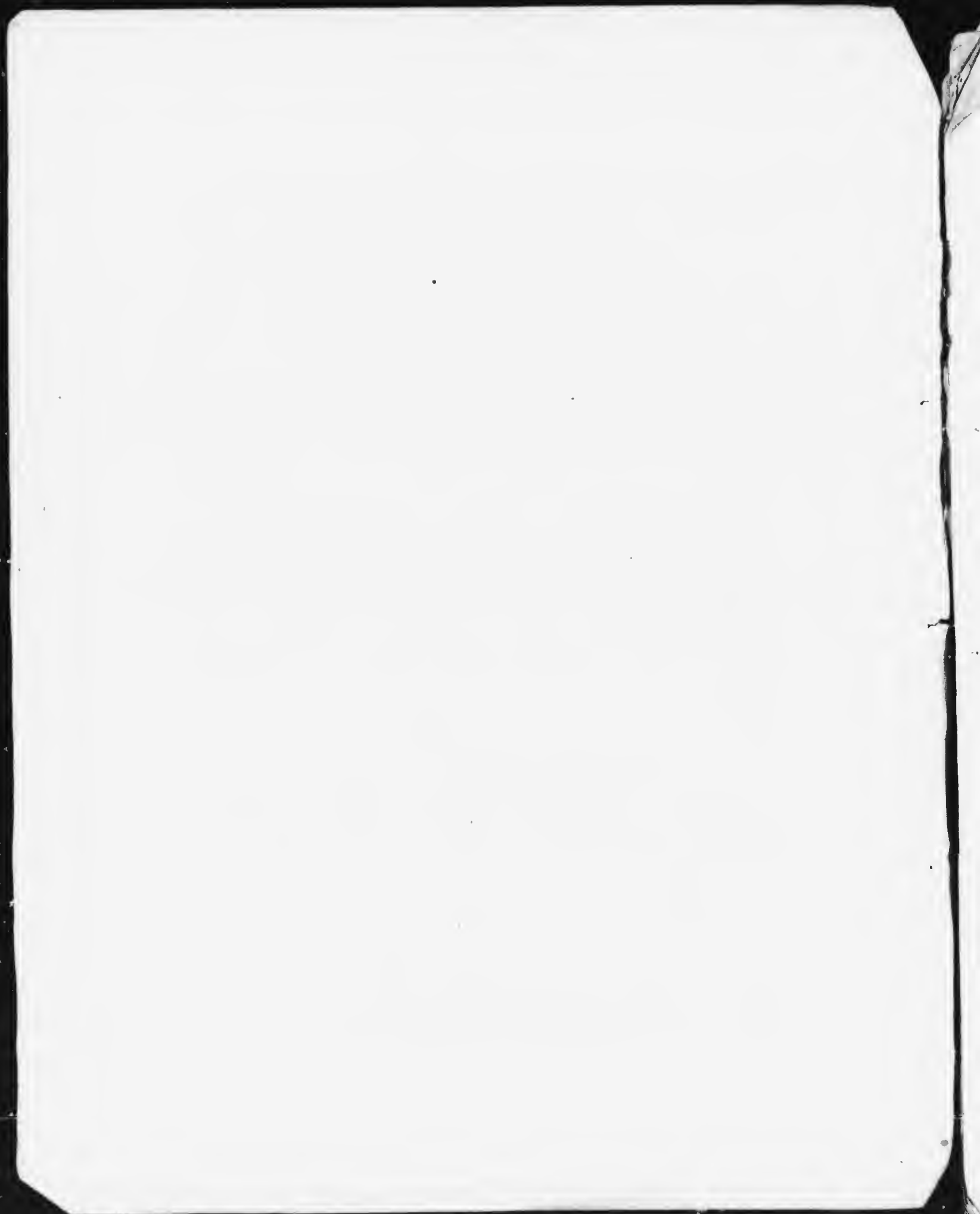
DONALD ARCHIBALD, Sheriff.

MR. KING'S STATEMENT.

Some time in the month of July, 1883, Mr. Ferguson came into the office of King & Barss and said he wanted to have a consultation with me. He came into my inner office. He said he was about opening a Collecting Agency in the city—that he had spoken to Mr. Barss on the Dartmouth boat with regard to the matter, and Mr. Barss had referred him to me, and that he had come to consult me about the matter. He first asked me if there was any objection to his establishing an office for the collection of accounts in the city. I told him I knew of no objection so long as his office was properly conducted. He then said that probably some of the accounts that might come to his office as such Collector might require to be sued: he wanted to know if the suits could be brought by us. My answer was that I was willing to sue for any parties who wished us to sue for them, but if he brought any such accounts he must bring the money necessary for all the expenditures in connection with the suits and the consent of the parties for whom the suits were to be brought. I explained to him that we would act only strictly as Attorneys in the matter, and could not allow him to act for us in any respect by using our names—that if he

30

40



attempted anything of the kind he would be liable to be punished for it, and that he would only get us into trouble. He then said that he might do some of the writing in connection with the matters. I said anything of that kind that was done by him would be for us, and that he must have no interest whatever in the suits. I agreed with him to employ him to do writing in connection with any suits to be brought, copying principally all matters to be brought to our office, and to go to the Court-House from us. This was the first intimation I had from Mr. Ferguson in respect to his business.

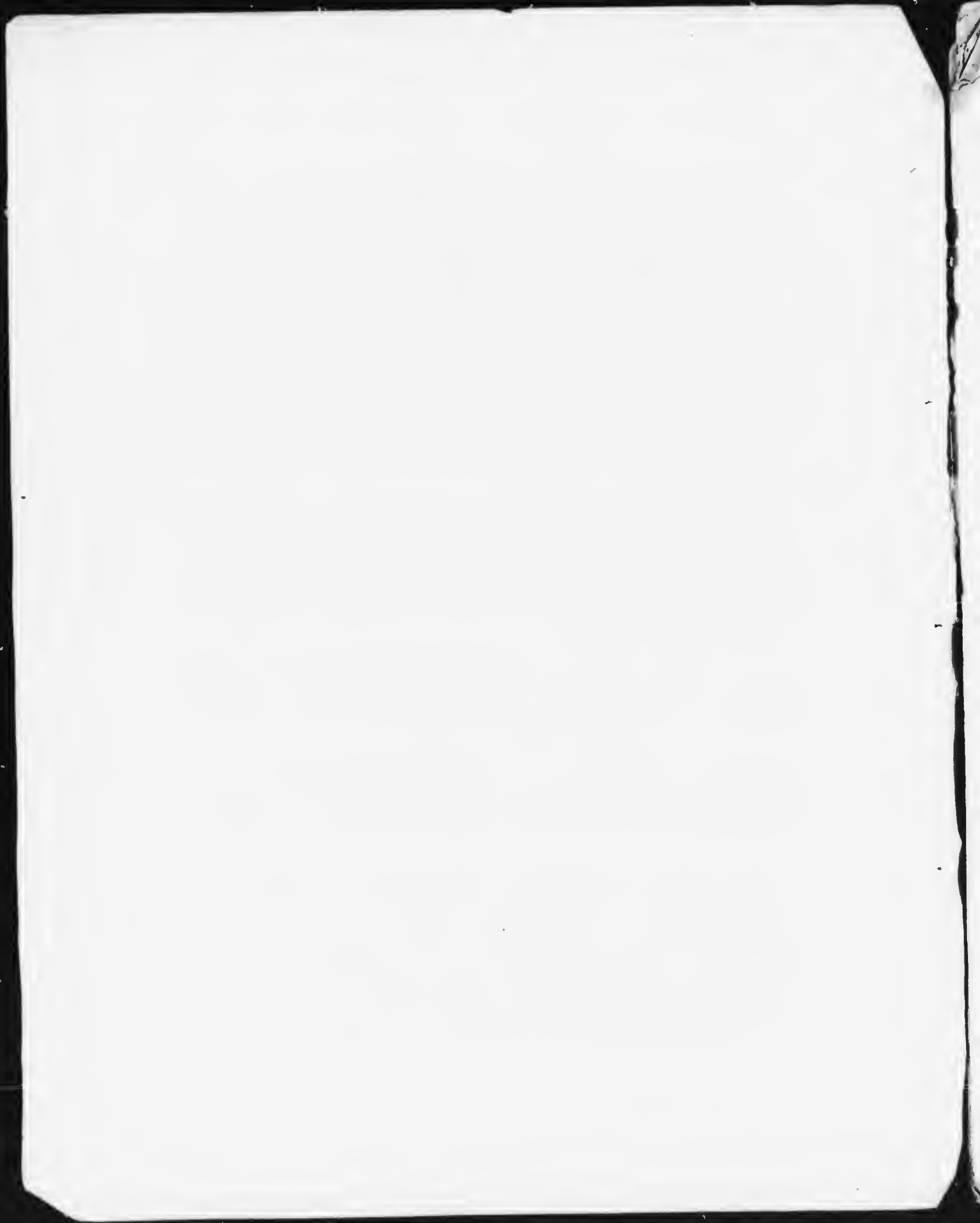
Shortly afterwards he brought some accounts to our office to be sued. The first case that he brought was Smith Bros. vs. James Hemlow. I had not done business for Smith Bros. before, and I asked him, when he brought the account, if Messrs. Smith Bros. had consented to our acting for them. He said they had, and had promised him all the fees necessary to carry on the matter. The writ was issued. The precipe was prepared at our office, the writ was signed at our office after it was filled in, and I asked him to take it up and issue it, and pay the money which he said he had for that purpose. Shortly afterwards E. G. Smith came into my office and recognized the transaction, and consulted me with regard to the case. 10

The next case I had was Farquharson vs. Richey. He brought the account in the same way. Mr. Farquharson I had been doing business for, for some years. Mr. Farquharson called afterwards and consulted me about the case. I say the same with regard to this writ and precipe, as I said with regard to the Smith case. Mr. Ferguson acted in these cases, as in all cases, as our clerk. He did what writing he did as such clerk. He carried the writs to the Sheriff's and Prothonotary's offices as our clerk at our request, and we remunerated him for his services. 20

An account of B. A. Smith was also brought in the same way. The first one was against one Lockhart. I asked him for Mr. Smith's authority. He said he had authority from him, and that Mr. Smith had advanced the funds necessary to pay the disbursements. Mr. Smith a few days afterwards came in and corroborated what Mr. Ferguson had said, and consulted us as his Solicitor in respect to the suit.

All the business that has been done through our office in connection with accounts brought to us by Mr. Ferguson has been done in the way I have described. In every case the plaintiff in the suit has been treated as our client, and in every case, so far as I can recollect, has admitted the authority of Mr. Ferguson to bring the account to us for him, the plaintiff. 30

In no case has any plaintiff pretended to us or given us to understand that there was any arrangement made with Ferguson that there was to be no costs unless we were successful. I say I never made such an arrangement with any of them at all, and I am informed by Mr. Barss, my partner, that he never made such an arrangement. I say, on the contrary, that in numerous cases plaintiffs have paid us costs personally or by their clerks in suits where they have recovered nothing. Bell vs. Zwicker is a case in point. A. M. Bell was the plaintiff. In a score of cases I myself have prepared the original writ, and I think I did in Bell vs. Zwicker. Bell's case was defended, and I examined one witness *de bene*. I advised them that the suit be withdrawn, and got leave to discontinue it. I got a memo. of defendant's costs on the discontinuance from MacCoy & Morrison, defend- 40



ant's Attorneys, which I sent to Mr. Bell. He immediately returned it and requested me to send him a memo. of all the costs in the suit. I did so for \$39.72, being the amount of costs on both sides, including \$10 as the plaintiff's costs, and he sent me back, the same day, his cheque for the amount. The suit was a summary suit in the County Court. The cheque is dated March 9th.

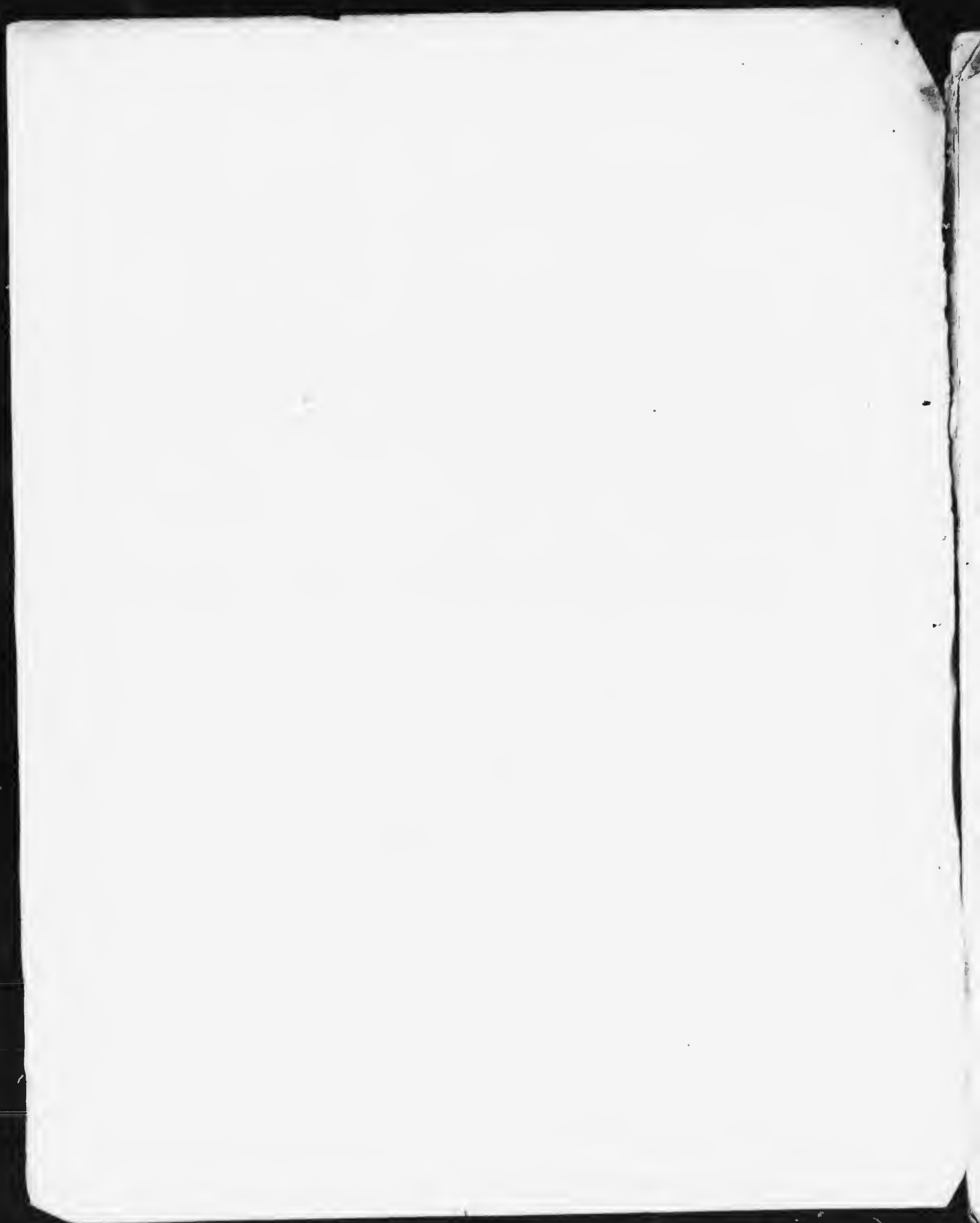
In the case of E. Morrison vs. Pettipas, in which our costs were paid in full by the plaintiff, who himself got nothing. I can cite other cases.

In the case of Franklyn vs. Wisdom (Munro & Wisdom), referred to by Mr. T. Ritchie, the account was brought to us by Mr. Ferguson. It was the first case we had from that firm. I made the same enquiries as I did in the earlier cases to which I have already referred, as to Mr. Ferguson's authority to employ us for the plaintiff. He gave me the same answer. Mr. Ferguson also stated to me that he had a letter from Mr. Morrow, a member of the firm, requesting him to undertake collections for them, and asking him to see him (Mr. Morrow) on the subject. Shortly afterwards I had a case for the same firm in the City Court—Franklyn vs. Pace. Mr. Morrow attended the trial at my request. I conducted the suit there in his presence, and a clerk from the firm was examined as a witness by me. Franklyn et al vs. Byers was a suit I brought for them afterwards. I say the same with regard to this. Ferguson brought all these claims to our office.

In all cases Mr. Ferguson acted as the agent of the plaintiff, and not as our agent; and in all cases, so far as I know, the plaintiff knew that he was bringing the business to us. I never asked Mr. Ferguson to bring any business to us. I never asked Mr. Ferguson to solicit any business for us. I never saw the card referred to in the Complaint until I saw it here day before yesterday. I never knew of Mr. Ferguson representing to any one that business entrusted to us would be conducted without fee or reward in any event. The plaintiffs for whom writs have been issued never in any instance hinted such a thing to me or in my hearing. I have not done all the business of Mr. Ferguson. He has asked me to issue writs in cases where I have declined, and I know that afterwards writs in the same cases were issued by other Attorneys in Halifax. He once asked me to put in a defence for a man named Silver, which I declined doing on the ground that I had in former cases acted for the plaintiff.

In Mosely vs. Hall, referred to by Mr. J. J. Ritchie, I did not state that Mr. Ferguson was acting as my broker in bringing the suit. The Judge on that occasion used the expression "Broker." I remarked "Yes, that is it," meaning thereby that Ferguson had been acting in the matter as the broker or agent of the plaintiff. Although I had not spoken to Mr. Mosely in respect to the suit until that day, my partner had frequently spoken to him about the suit previously. And Mr. Moseley knew that the case was in our hands.

In issuing Executions, the bill of costs was invariably prepared by Ferguson under my instructions where the business was not contested, and was examined by me or my partner and approved before being permitted to go to the Clerk's office. I didn't allow any papers to be put on file by him, or to be taken to the Sheriff's office, without having carefully examined them, and he was not permitted to issue writs or put executions in the Sheriff's office without being furnished with the means of paying the costs, either by our firm or usually by the plaintiffs themselves, as I know both from him and from the plain-



tiff's themselves, and I was not aware until the investigation that an account was kept between him and the Sheriff. I was assured that everything was paid at the time the writs were handed to the Sheriff, or as soon thereafter as the amount of fees could be ascertained.

We were never informed by the Prothonotary or the Sheriff that the fees were not paid when the work was done. Our transactions with him as our clerk have been perfectly satisfactory. We kept no account with him. Everything was cash, and his name don't appear on our ledger.

Mr. Ferguson never acted for us in any of the cases where anything was to be done requiring the exercise of professional skill or judgment, and particularly in all contested suits. Except the issue of the writ, we saw to the work personally, taxing the costs and entering the judgments, issuing the executions, and giving instructions to the Sheriff ourselves.

10

As regards business sent to the Country Sheriffs, so far as I know they knew no one in the transaction but King & Barss; their bills were invariably sent to us.

As regards the Farrell case, I was never asked to undertake it at all. Mr. Ferguson, however, spoke to me about it, and told me that there was a suit in the matter in the United States, and that a commission had been sent down to him to take the evidence. He asked my advice as to the propriety of his taking it. I advised him not to take it, as he was acting for Farrell. The commission was afterwards sent to me. I notified Mr. Farrell. He attended twice at our office to give evidence, and once to make arrangements for the examination. I charged \$10, and was paid for it. I had nothing else to do with the transaction whatever.

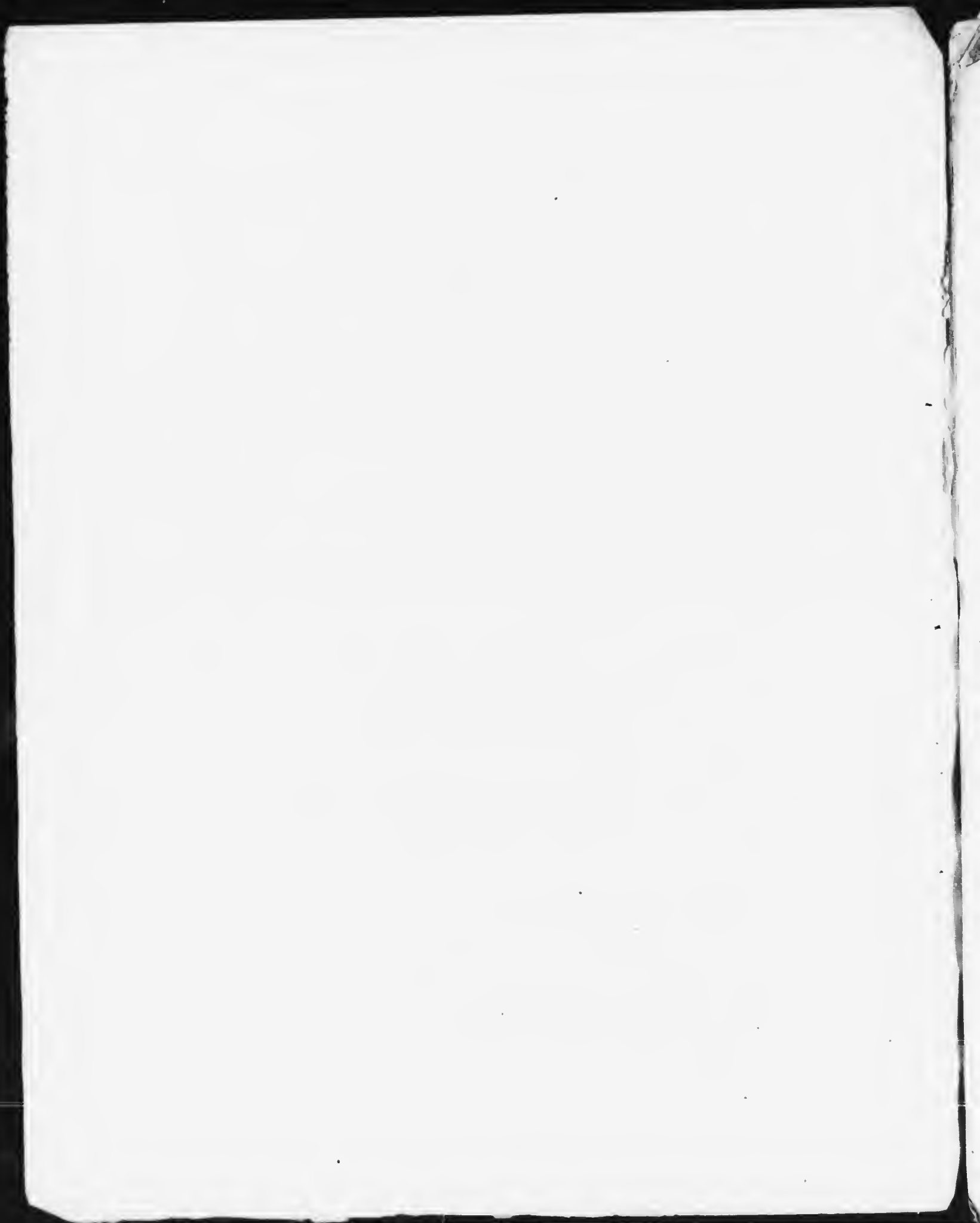
20

Even in default cases Mr. Ferguson did not invariably enter the judgments for us. Mr. Barss frequently did so. With regard to the purchasing of blank forms, I say that for some time after we commenced doing business with Ferguson the blanks were furnished from our office. Subsequently I expressed myself dissatisfied with the forms and drafted a form myself which I gave to Mr. Ferguson, and requested him to get it printed. Messrs. J. Bowes do our printing. I don't know who paid for the forms or whether they are yet paid for. Mr. Ferguson provided pens and ink!

I am informed by Mr. Ferguson that he referred only to his charges for commissions as a collecting agent in the cards sent out by him, and that he so informed the parties when getting their business, and that he had nothing to do with the Solicitor's costs. He told me this in regard to Solicitor's costs before the charge was made. The other conversation was since. I think he showed me a card with W. H. Ferguson, Collecting Agent, on it. There was nothing like the endorsement on the card put in evidence, so far as I know. The card I saw was in a newspaper. I was put on my guard by remarks made by Mr. V. F. Farrell, and enquired of Ferguson, and was informed by him that he had not represented us otherwise than as plaintiff's Solicitor in the suits we brought. In contested suits, bills of costs were made out by us and taxed by us—all the work, in fact, except copies of writs and filling up original writs in some cases preparatory to their being signed. I made search in the County Clerk's office since Wednesday last. I now say that within the last six months, all original writs examined by me are in the handwriting and signed by either Mr. Barss or myself. Commencing with 1st October last, I examined twenty-seven writs in

30

40



the order in which I found them in County Court clerk's books, and every one of them was in handwriting of myself or Mr. Barss. No writs were signed in blank by Mr. Barss or myself, nor signed at all without satisfying myself that I have authority of plaintiff to do so. All copies of writs issued since Oct. 1st last filed in Clerk or Prothonotary's office have been examined and signed by Mr. Barss or myself (i. e., writs from our office or in our name). As to paper put in evidence in handwriting of Ferguson by Mr. Ritchie, I say the same was copy of a garnishee order, Brookfield vs. Johnston. It was done by my direction and at my request, and several other papers were written and copied by him in the same matter in the same way, and he has been paid for them in full, although garnishee proceedings are still pending. Mr. Brookfield, one of the plaintiffs, attended at our office and gave me instructions as to these proceedings. 10

In answer to Mr. GRAHAM :—I paid Ferguson \$5 for what he did in this matter. Mr. Ferguson has done considerable work for us as clerk in matters where the account was not brought to us by him. We have no agreement with Mr. Ferguson whereby he is bound to us or we to him. The Court business in our office is under my supervision. Mr. Barss has also a knowledge of the business brought to us by Ferguson. We have acted as his Solicitor in several matters (personal of his own), and are now so acting. I wish to put in papers, DeWolf vs. Cunningham.

Cross-examined by J. J. RITCHIE :—I have given all the conversation with Ferguson at our first interview which relates to charges made against me 20

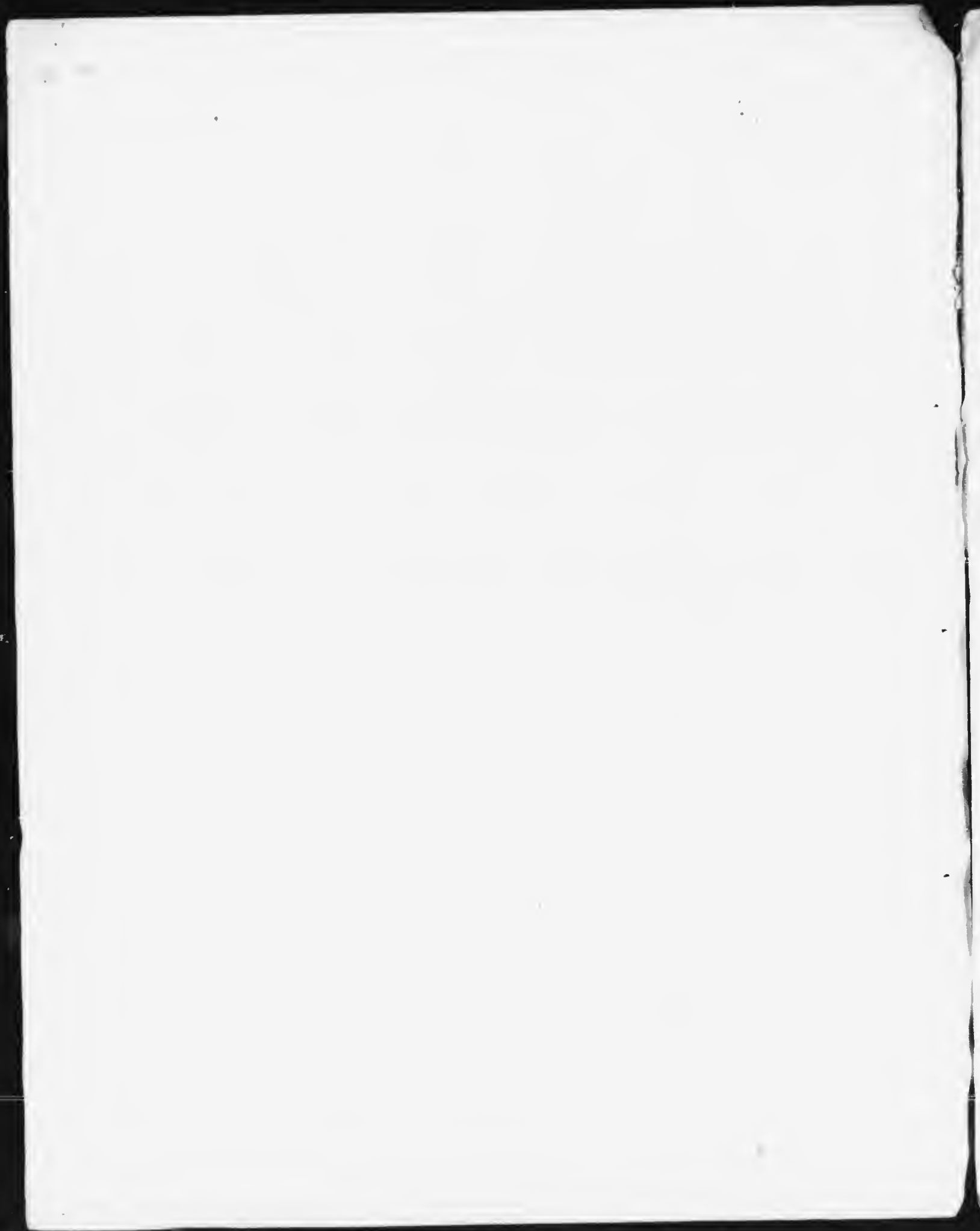
QUESTION :—Were there any additional terms with regard to the way the business was done than those already stated?

ANSWER :—In giving my statement of what occurred between Ferguson and myself, I confined myself to the conversation that related to the charges made against us, and gave all that related to those charges, so far as I can recollect. There may have been other things spoken of in the same conversation relating to other matters.

Q. :—Did you agree as to the remuneration Ferguson received, at that conversation?

A. :—In part I did. I had no definite arrangement with Ferguson as to what he should be paid, and he never knew, when he brought an account to our office, what he would receive in that particular suit. We remunerated him altogether according to the work done and the circumstances of the case. Mr. Ferguson and I, as a rule, arranged what he should be paid after the work was done. There may be one or two original affidavits on file in his handwriting. There is one in Brookfield vs. Johnston. The affidavit was copied from forms in the Judicature Act, under my direction *mutatis mutandis*. Ferguson's name will appear in our cash book only. We do not post cash. I cannot tell what I have paid him altogether. I decline to produce cash book, as it contains a great deal of private matter relating to other persons. 30

To Mr. GRAHAM :—Moneys collected by Ferguson by suit did not always pass through our hands. The costs were always paid us. If I wished, I might possibly tell how much money I have made out of the Ferguson business. When we do not get costs from parties we send to clients. If a case occurred where clients refused to pay, we might hold Ferguson 40



liable. It is a question of law as to his liability. My business commenced in July, 1883. The only record of these accounts for costs is our precipe book. I have rendered accounts to clients. I kept no copy. I did not post them. They have been paid. I remember proving Will of John Dooley in solemn form; Ferguson was there as Mrs. Kelly's friend and agent. He brought Mrs. Kelly to me; she paid me a fee and retained me. I acted as her proctor throughout; Mr. Ferguson did nothing, I paid him nothing. Ferguson brought one account from Neal, White & Co.; I sued it and I got nothing from debtor; I sent plaintiffs a bill; I expect them to pay; have not paid it yet. When bill was first rendered, they sent word that bill was too large, and I learned that one Mr. John M. Chisholm said it was exorbitant. I went to see Mr. Neal. Saw him. He said it was an exorbitant bill. He had consulted a lawyer about it. I offered to tax it with any lawyer. He then questioned my authority to act for him, but afterwards admitted that Ferguson had authority to retain us for him. He said, "Send it (the bill) through Ferguson." I did so, and expect Mr. Neal to pay it. There is no case in which I don't expect to get costs. If defendant is not able to pay, I get them from plaintiff.

10

QUESTION:—Will you elect now to say whether Ferguson is your clerk or client?

ANSWER:—I won't answer. I consider the question insulting, because I have already explained that he has been at different times both clerk and client, and at other times neither clerk nor client. When he goes to Neal, White & Co. and gets an account and brings it to me, he is neither clerk nor client—he is acting as a collecting agent. I never asked him, employed him, or remunerated him for this purpose. He is the agent of the plaintiffs.

20

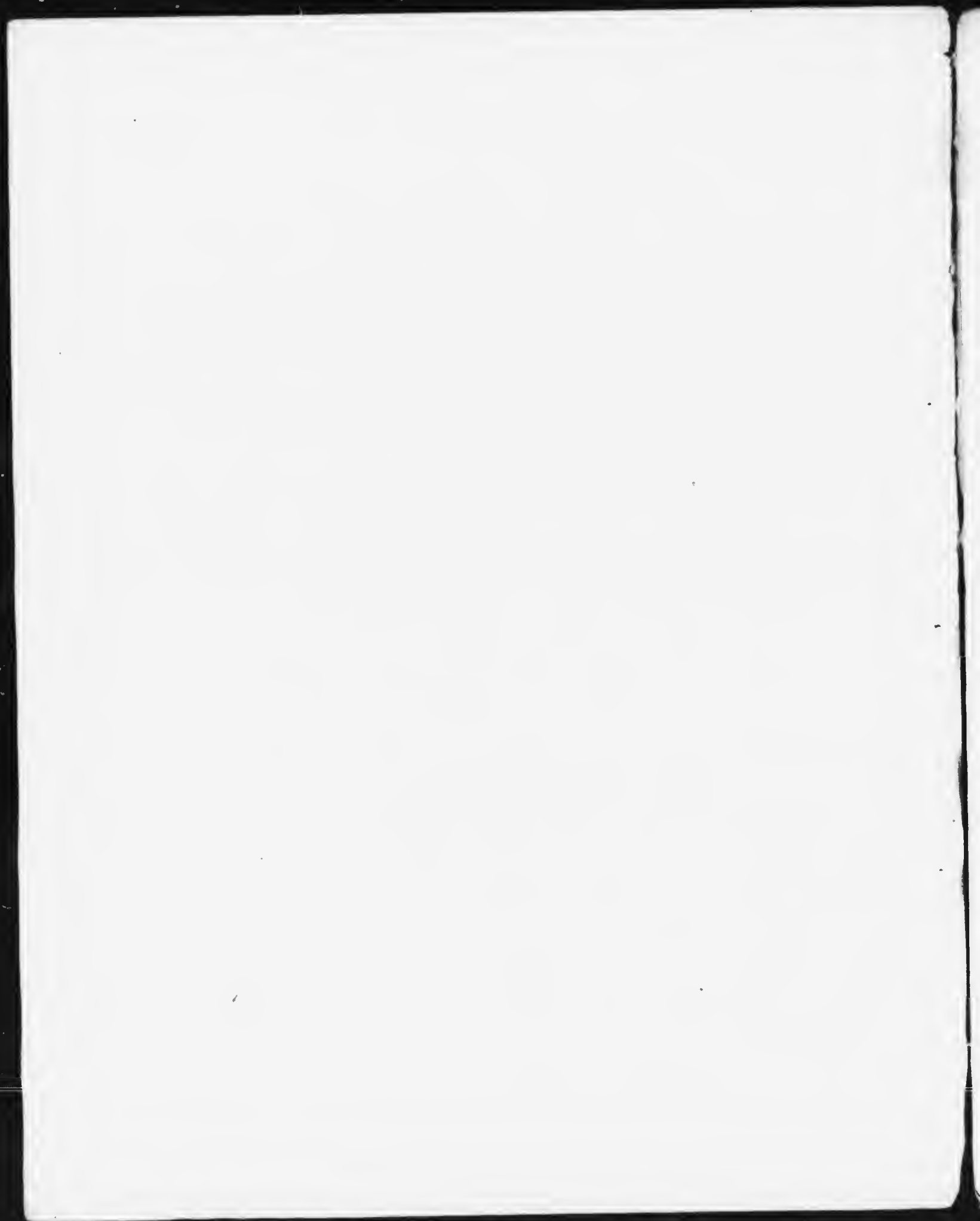
To Mr. GRAHAM:—Ferguson was paid according to the work he did, which was fixed after the work was done. He has a Collecting Agency; we have nothing to do with it. I am not aware of Mr. Ferguson going to get accounts. I never said that Ferguson in every case told parties that I was going to act and to get their authority. What I did say was that when Mr. Ferguson brought accounts to me from persons for whom I had not previously acted, I invariably asked him if the parties had authorized me to act for them. There may have been cases where Ferguson made up costs himself, but in such cases he did so under the direction of myself or Mr. Barss. I have given him money to issue writs. They may have been contested or otherwise. He has brought defences to our office. He brought the parties to us. In every such case the party defendant has paid a retainer before we did anything. I gave Ferguson a draft form of writ to take to Bowes & Son for the purpose of having blanks printed from it for our use. If Ferguson pays for them he will do so needlessly, and we will owe him for such payment, as they are for use in our office business. The card (Ferguson's) I saw a year or six months ago. I have some recollection of seeing a card, but I have no recollection of seeing any card with endorsement as on card in evidence.

30

To Mr. HARRINGTON:—The only one I recollect seeing was the one published in the newspapers. I may have seen the other, but I do not recollect the endorsement, and am quite sure I never saw the card or would recollect it.

To Mr. HENRY:—I did not ask Ferguson to shew me his card. He told me that he was to make no charge when he collected nothing, but had made no such arrangement in respect to Court fees and Attorney's costs in any case. He was employed by us as clerk in

40



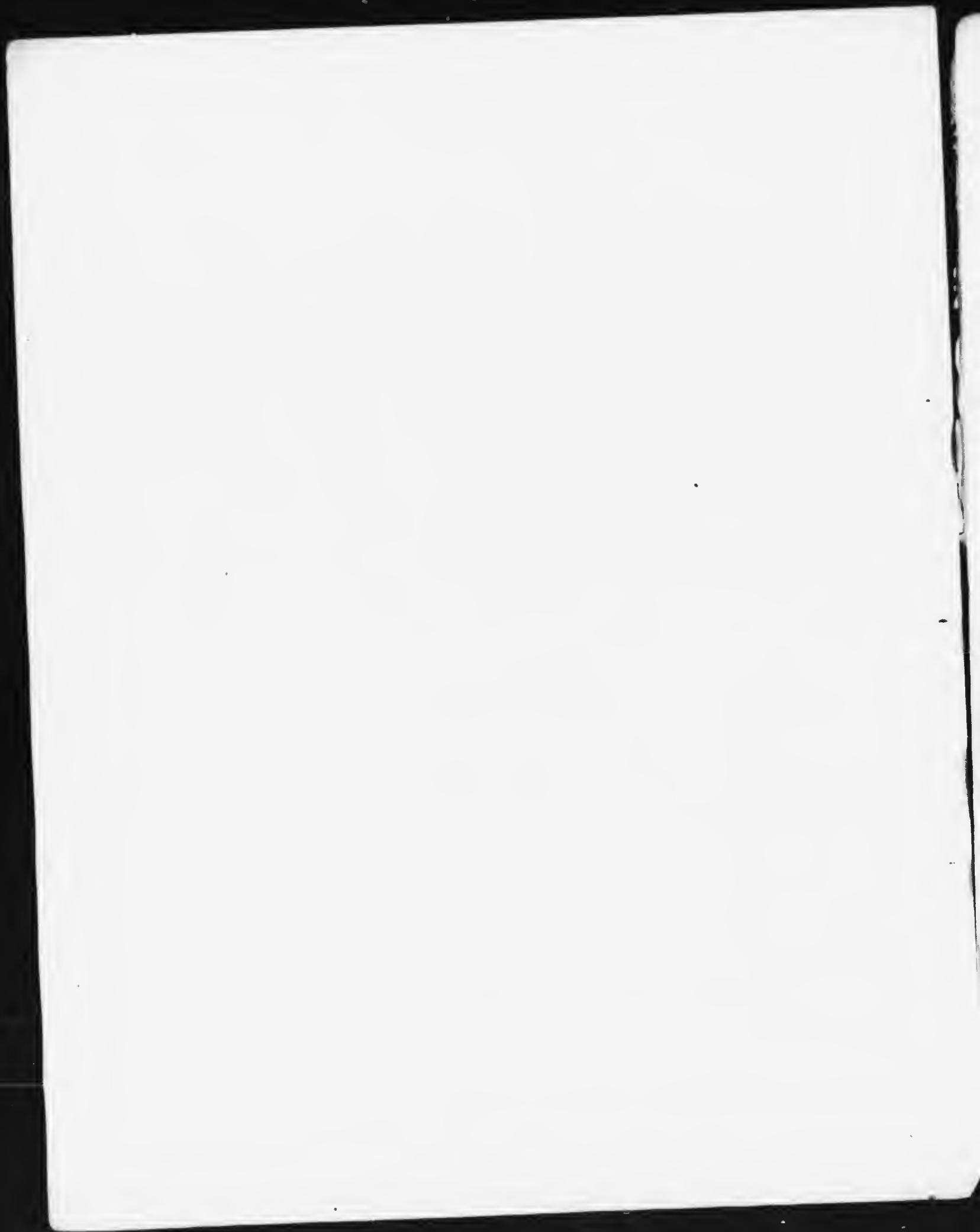
matters which he brought to us. I would not like to say that he has not so acted in other matters also. Where there was default and judgment, his remuneration would be about \$1.50 or \$2 on an average. The most I have ever given him in a declaration case would be \$5 or \$6. The average would be about \$1 to \$2, or even less. We were doing the work ourselves, but had too much to do, and we employed him. The reason why I employed him was that I must employ somebody, and was willing to give him the preference. Ferguson has not the right to do clerk's work in every case he brings to us. I did not get the work from Ferguson on the condition that he was to get something out of it. There was an understanding that we should employ him as a clerk if we had occasion to employ a clerk. Have sent out bills for costs since July 1883, in Ferguson's matters and in contested matters, McAskill and also Neal, White & Co. Ferguson might be liable to us for these costs on the ground that he is the agent of plaintiffs. It is a question of law which I need not decide. His remuneration does not average more than \$8 or \$10 a week. I am putting this at a high figure; \$6 per week would probably be nearer the truth. He is a valuable man. He can do drafting. We have paid him for work where he did not bring the clients; cannot say how much—very little. I have given \$5 to \$10 since July 1883 probably. If the additional business which he brought to our office had not come, we might not have needed his services; but of course I cannot say about that. I would consider him as our clerk for the purpose of making affidavits of service of papers from our office. He is paid for work without reference to the result of suit. Mr. Ferguson does work from day to day; now and then he comes in and we settle. He brings in a memo.; I do not usually take a receipt from him. Have done so, I think, when paying him moneys collected. We do pay him for work when we get nothing from defendants. There may be cases where I pay him less on account of getting nothing from defendants. There may be cases where we would feel justified in not paying him anything. When he has done some work he comes in, we make up what he is entitled to, and we pay him. In an ordinary default case where he does all the work except signing the writ, I do not know what we pay him, as it is mixed up with other work. I think he would get about \$1.50. I frequently settled with Ferguson for work done by him before the suit was settled. In October the Judicature Act came in, which accounts for the large number of original writs in my handwriting; later ones again are in his handwriting. I have no agreement with Ferguson by which he was to get a share of the business which he brought; the costs are ours in every case. I have never directly heard that Ferguson solicited business. Mr. Russell, about six months ago, intimated to me that we were dividing costs with Mr. Ferguson. He also charged me with taking clients from him. I then denied both charges. William Elliot was the client referred to, and he was my client fourteen years ago, and is our client now. There have been numbers of cases where he (Ferguson) has brought business where he has done nothing, not excepting where we are acting for plaintiffs. I have lately, since this charge was made, seen the form of letter which Mr. Ferguson uses. He has on his printed form "\$1 for letter." I have told him that he has no right to charge this \$1 for letter, or anything for letter, but parties might pay it to them if they choose. We tax on our default bill, 50c. I do not know of his practising as a Solicitor. (Mr. King here tendered a written statement made by Ferguson, which was refused.) I do not propose to call Mr. Ferguson. I have no power to do so, but I have no objection to his being called. I will try and get a copy of the form of letter he uses. In default cases, sometimes he may keep the office copy of the writ. In very many cases we have it and all the papers. We keep all the

10

20

30

40



precipes. I do not think he has the office copy of writ in a dozen cases since July 1883. I do not know whether or not he keeps a præcipe book. We have a separate præcipe book for convenience in cases brought to us by him because in such cases we do not get commissions on collections. We have an office boy not able to do much writing.

(Mr. Graham produces book from Sheriff's office.) QUESTION:—Have you repaid Ferguson all the sums paid by him as shewn in this book?

ANSWER:—I think, as a rule, the money was obtained by Ferguson from our clients to pay for these disbursements at the time of the transaction, or so soon as the amount was ascertainable. In some cases we have paid the money ourselves. All such transactions were for cash, and the charges were made by the Sheriff without our knowledge or consent. I don't think our cash book would show in every instance where we had paid money to Ferguson to pay the Sheriff. Sometimes the amounts would be mixed up with other moneys. Hardly a week passes but what we pay money to Ferguson and he to us. The amounts so paid would often include Sheriff's fees. I think he got the money in nearly all cases from the client. That was the understanding when we took the business. Ferguson has told me that he got money from the clients, and the clients have corroborated it. I did not know that the Sheriff was keeping such an account. My cash book will not shew the remuneration which Mr. Ferguson received, because of the manner of making the entries. We do not keep cash in form of daybook. There would be no difficulty in ascertaining how accounts stand between Mr. Barss and me. Ferguson got receipts from clients in some cases. I don't know whether he did in every case. In dealing with Country Sheriffs, money passes through our hands; in the city, through Ferguson's hands generally. We did not authorize Hamilton, when Sheriff, to keep any account with Mr. Ferguson, or to treat him otherwise than as our clerk, and I was not aware until this examination that Mr. Ferguson's name appeared on any of his books. The statement made by Mr. Craigen in his evidence herein that "the Execution record and Bill of Costs are in Ferguson's handwriting, with the exception of signature to Execution," in the case of Franklyn vs. Munro, is incorrect. The signature to the record is in my handwriting, and all the papers in the suit were prepared under my personal direction. The minutes taken by Mr. Foster of my cross-examination are very incorrect. In several instances I am represented as saying just the opposite from what I really did say, and I have found great difficulty in doing myself justice in the corrections made by me. My statements in respect to amount of remuneration paid Ferguson are necessarily imperfect, and so do me great injustice. The matter is not referred to in the charges preferred against me and Mr. Barss by Mr. Meagher and others, and I had no notice that such matters would be enquired into. I made the statement, according to the best of my information and belief, in reply to questions addressed to me by members of the Council who desired to enquire into that matter, but I had not then, and have not now, the data for making a complete statement, and believe I have largely overstated the amount of remuneration paid Ferguson by us.

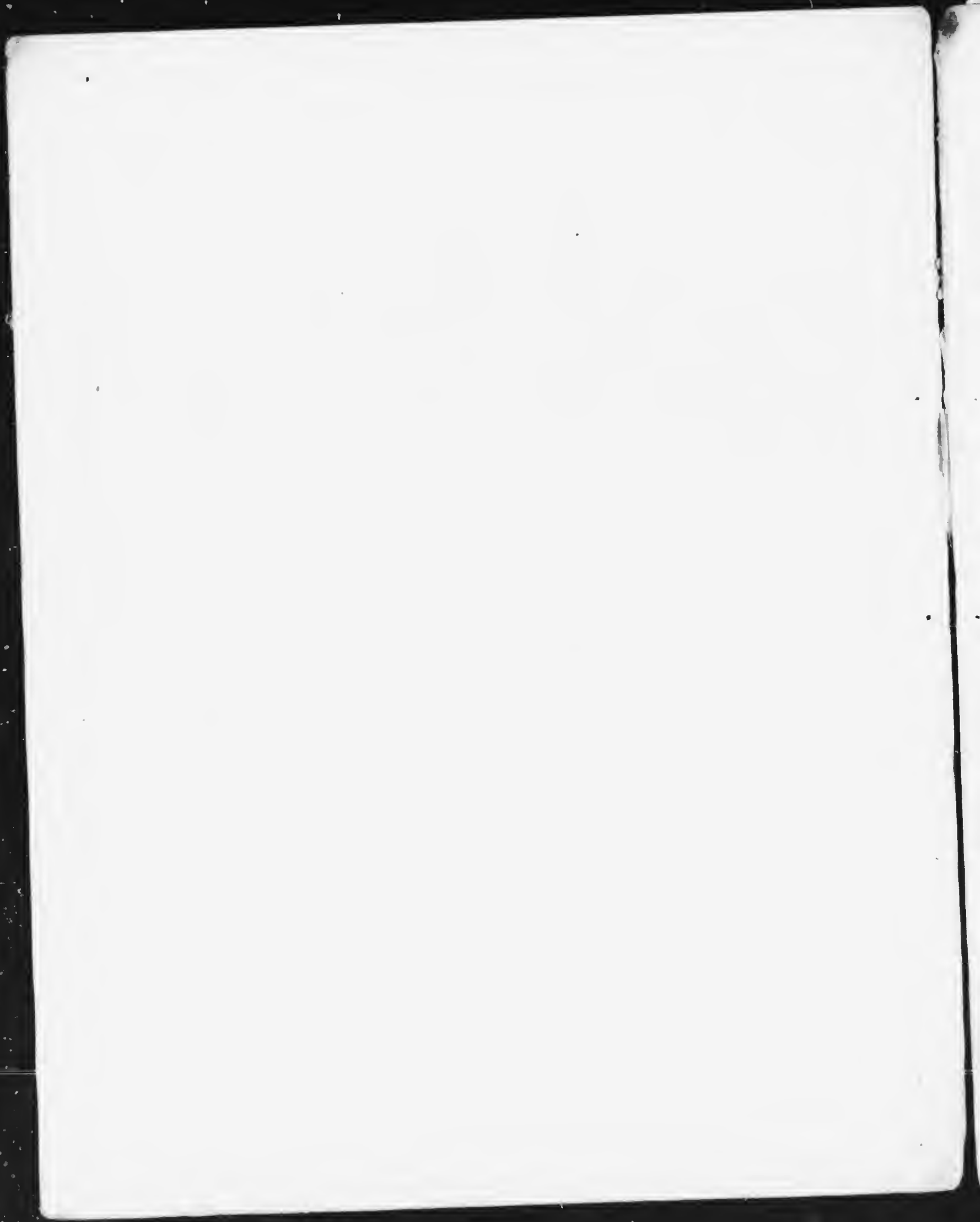
(Sgd.)

EDWIN D. KING.

10

20

30



STATEMENT OF MR. BARSS.

With regard to the matter in question, the business has been principally with Mr. King. The first I knew about the matter, Ferguson spoke to me on the Dartmouth boat. He told me that he was going to establish a Collection Office—that there would probably be accounts he would want to have sued. He asked if our firm could do it. I said he had better see Mr. King. I made no arrangement whatever with him. I never remember seeing any such card as the one in evidence. I have frequently seen his card published in the newspapers. I had nothing to do with issuing of card, and did not know till recently of its having been issued. No business has been solicited by Ferguson at my request, nor did I ask him to bring any to us. The advance was made by him in the first place. I never authorized him to sign my name or the firm's name, or Mr. King's name in blank, nor to use them in any way without our knowledge. I never knew of any contract being made with Ferguson, as stated in the Complaint, did not authorize it, and would not do it. I have been careful in every case to ask Ferguson, "Do clients want us to sue this?" He always replied that they did. In re Moseley vs. Hall, I saw Mr. Mosely; I am well acquainted with him, and had several consultations with him previous to trial. He knew we were acting for him.

10

(Sgd.)

WILLIAM L. BARSS.

FINDINGS OF COUNCIL, AND KING & BARSS' COMMENTS THEREON.

RESOLUTION PASSED AT A MEETING OF THE COUNCIL OF THE BARRISTERS' SOCIETY, ON
THE 15TH DAY OF APRIL INSTANT.

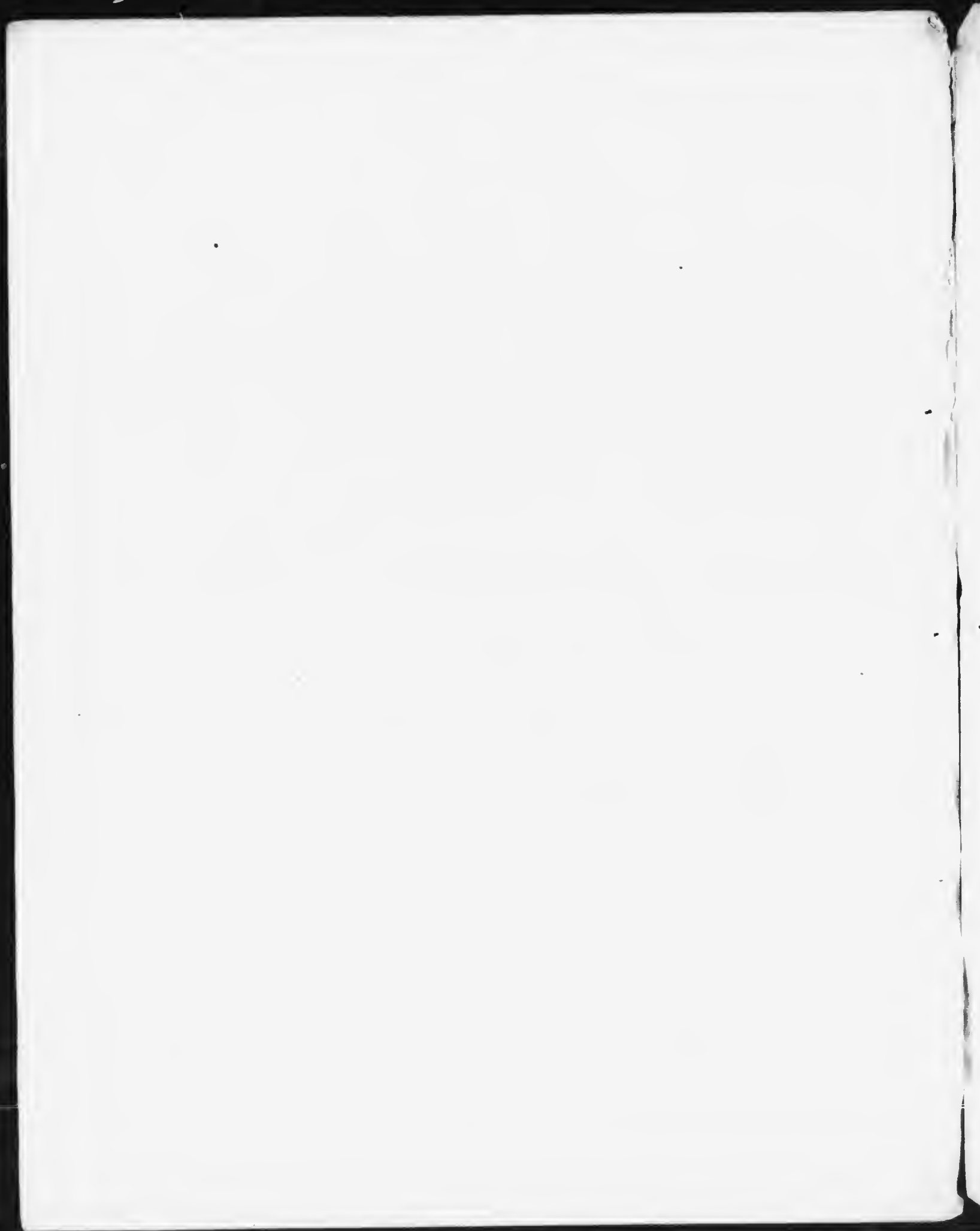
20

A written Complaint, a copy of which is hereunder written, having, on the 18th day of February last, been made by Messrs. James J. Ritchie, N. H. Meagher and T. Ritchie, against Messrs. E. D. King & William L. Barss, and an investigation of such Complaint by this Council pursuant to the Bye-Laws having been demanded, and this Council having duly notified the parties complained of thereof, and the said complainants and the said E. D. King and W. L. Barss having appeared before the Council with their respective witnesses, and all the evidence offered having been taken, this Council do find that the following facts have been proved:—

30

1. In the year 1883 one W. H. Ferguson established, on his own account and in an office of his own, an Agency at Halifax for the collection of debts. By advertisement and business cards he represented that he would make no charge against the persons employing him unless successful in collection.

COMMENT.—Finding No. 1 is misleading, and does not state the *whole* truth. The evidence shows that Mr. Ferguson's undertaking to "make no charge against the persons employing him unless successful," referred solely to *commission*, and that such persons agreed to pay, and in *numerous* cases *did* pay, Attorney's costs and Court fees *in full*, although no



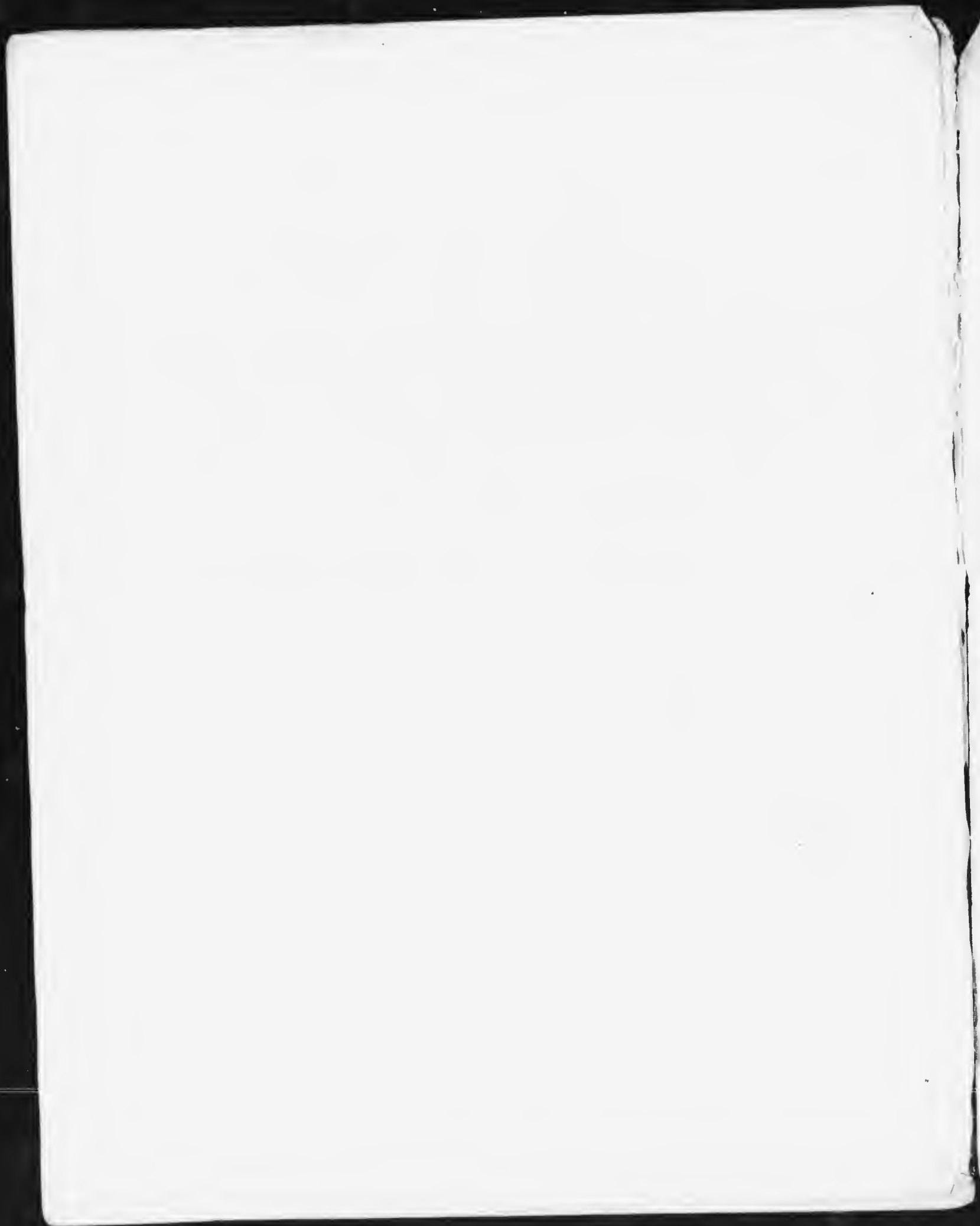
collections whatever were made. See Evidence, pages 8: 29; 3: 16-25; 6: 34-43; 7: 1-7; 8: 14-21; 10: 39-41.

2. Previous to the establishment of such Agency, he entered into an agreement with Messrs. King & Barss by which they were to receive from him all such accounts as required legal process for collection, and he was to be employed by them to do certain work in each suit so brought them, and was to receive remuneration therefor in proportion to the amount of work done.

COMMENT.—Finding No. 2 is untrue, and is in direct conflict with the evidence. W. H. Ferguson never agreed to give "all such accounts as required legal process for collection" to King & Barss; nor did he agree to give *any* such accounts to them, nor was he ever asked or required by King & Barss to do so. King & Barss, on the other hand, did not agree that Mr. Ferguson should do "certain work in each suit so brought them," nor were they bound by any agreement or arrangement or understanding to give him work in "each suit" nor in *any* suit so brought them. See Evidence, pages 5: 33-40; 6: 1-6; 7: 26-30; 11: 5-9 and 29-31.

3. Since such agreement was made, Mr. Ferguson has continuously, with the aid of Messrs. King & Barss, been doing Solicitors' work. A large number of writs have been issued in connection with the Agency in question. In a majority of such cases the whole of the work, from the issue of the writ to the obtaining of judgment and the final collection of the claim, has, with the exception of signing the Solicitor's name to process and the filling up of *præcipes*, been done by Mr. Ferguson—forms of proceedings having been supplied to him with the concurrence of Messrs. King & Barss. He opened an account with the Sheriff at Halifax, and he was charged like a Solicitor for all services rendered by the Sheriff. The Sheriff paid him moneys collected under execution, and he paid the same to the persons entitled without any reference to the Solicitors on the record.

COMMENT.—Finding No. 3 is untrue and contrary to the evidence. The evidence shows that "no such agreement was made" at any time; that Mr. Ferguson has never "been doing Solicitors' work" or other work than that ordinarily done by a Solicitor's clerk; that every writ, execution and other process referred to was carefully prepared under the direction of and carefully examined by King & Barss before being issued; and that the majority of writs mentioned are wholly in the handwriting of one of the members of the firm of King & Barss; that all such writs were issued, without reference to "the Agency in question," directly from the office of King & Barss, who kept office copies of writs, and entered the cases in their *præcipe* book; that King & Barss acted in every case as the Solicitors of the plaintiffs and with their knowledge, consent and authority, and in all cases before issuing the writ required evidence of such consent and authority, and that plaintiffs should furnish the money necessary for disbursements; that all the work done by Mr. Ferguson in such cases was performed by him at the request of King & Barss and as their clerk, and that while such blank forms were provided to Mr. Ferguson by King & Barss as their work required, *no writs or other process signed in blank* were ever so provided; that the Sheriff at Halifax always in cases referred to took his instructions from King & Barss, like every other Sheriff; that he took receipts for moneys collected and paid over under execution in their name in every case, and that he kept his accounts with respect to such moneys with them, and not with Mr. Ferguson, invariably;



that Mr. Ferguson was in all cases provided with money, either by King & Barss or by plaintiffs in such suits, at the request of King & Barss, to pay Sheriff's fees so soon as the same could be ascertained; and that the alleged "account opened with the Sheriff at Halifax" was a private memorandum kept by the Sheriff for his own convenience in respect to fees only, without the request, concurrence or knowledge of King & Barss. The moneys received by Mr. Ferguson from the Sheriff were so received on the receipt of "King & Barss, per F" with King & Barss's authority, and in every case have been promptly reported and immediately paid to King & Barss, or otherwise disposed of under their instructions. See pages 3: 28-44; 4: 1-40; 5: 1-24; 6: 2-33; 7: 7-20 and 37-43; 8: 1-13 and 22-42; 9: 1-11; 10: 6-14 and 22-33; 11: 40 46; 12: 1-3 and 6-16.

10

4. For the work done by him he was paid in cases resulting in collections sums ranging from \$1.50 to \$5, in other cases nothing, and in these latter cases he had no claim for remuneration from Messrs King & Barss.

COMMENT.—Finding No. 4 is untrue and against the evidence. The evidence shews that King & Barss either have paid or expect to pay Mr. Ferguson in every case where they have employed him according to the work done by him, whether collections resulted or not; that \$5 was the most ever paid in any one case, while, taking *all the cases together in which he has been employed*, his average remuneration would be \$2 or even less; that there has been no case in connection with which work has been done by him in which "he had no claim for remuneration from Messrs. King & Barss," and that he has been paid in numerous cases in connection with which work had been done by him, although no collections resulted. See pages 9: 12-18 and 28-32; 10: 20-21; 11: 1-3 and 18-28.

20

5. The relation of Messrs. King & Barss to the said Ferguson is not the ordinary one of a Solicitor to his client, nor is it that of a Solicitor to his clerk. They contract to pay him for such business as he brings to their office, while he is to perform the mechanical portion of the work required thereby.

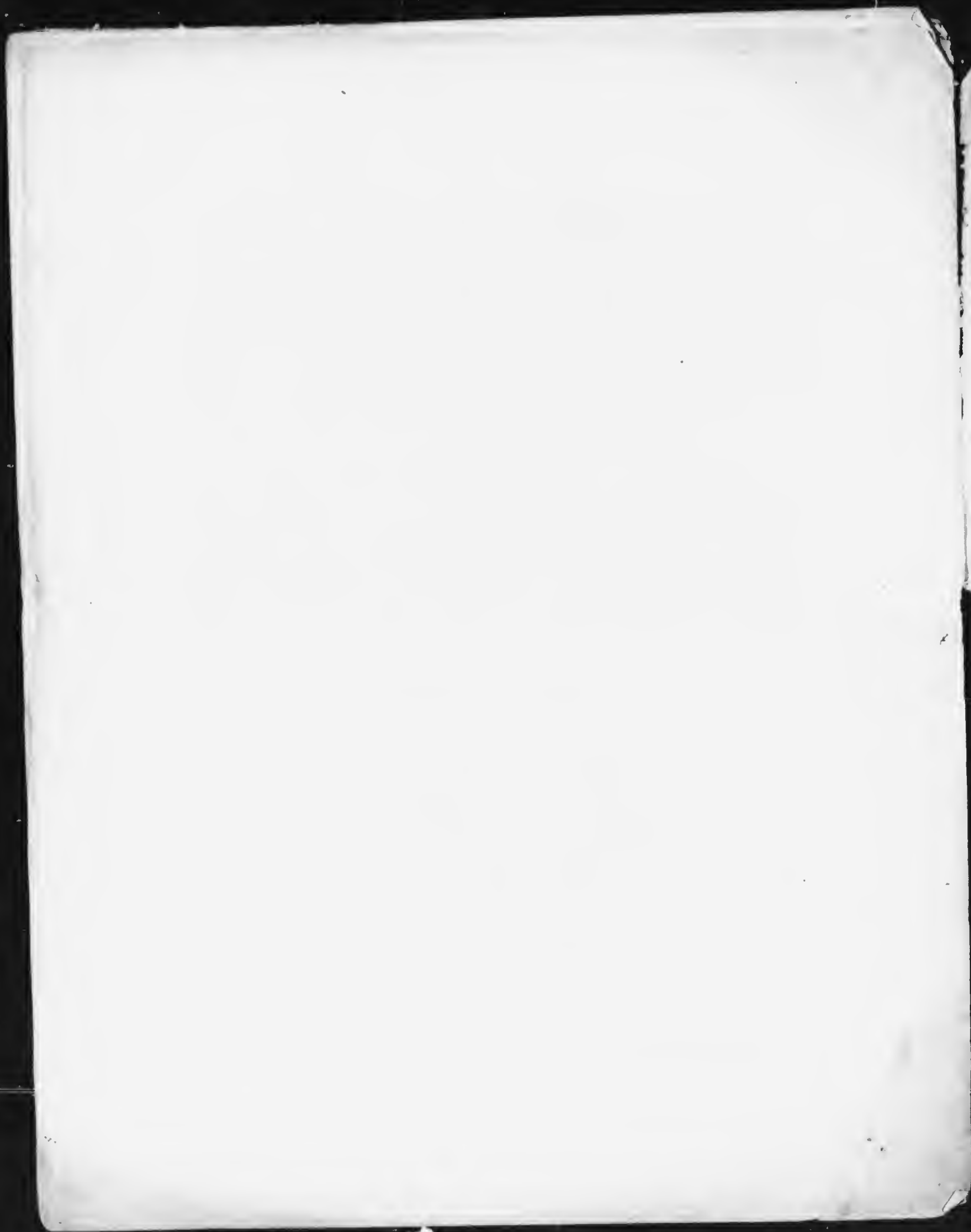
COMMENT.—(1). Finding No. 5 is untrue and is in direct conflict with the evidence. The evidence shews that Mr. Ferguson, in some business transactions, sustained the ordinary relation of client to King & Barss, while in other transactions their relation was the ordinary one of a Solicitor to his clerk. See pages 6: 20-23; 10: 15-20 and 41-42; 11: 17-18. (2). There is no evidence of any contract to pay Mr. Ferguson for such business as he brought to King & Barss's office, as alleged; on the contrary, the evidence shews that no such contract ever existed. See page 11: 6-9. (3). There is no evidence of any contract by which Mr. Ferguson was "to perform the mechanical portion of the work required by such business. The evidence shews that it was optional with King & Barss whether or not they should employ Mr. Ferguson in every case, and that the only pay he received was for work done. See page 11: 5-8.

30

This Council resolve that Messrs. King & Barss, by entering into and carrying into effect the agreement above detailed, are guilty of unprofessional conduct, and have become amenable to, and do hereby receive the censure of, this Council.

40

N.B.—This assumption of penal jurisdiction by certain members of the Council is too absurd for comment.



RECAPITULATION.

Three distinct charges have been made in the Complaint of Messieurs. Meagher and others.

1. That King & Barss have been employing a "broker or agent" named W. H. Ferguson to solicit and procure business, and that business of merchants has been solicited by such agent and placed in their hands for suit!!

2. That in soliciting business, said agent undertakes that such business will be conducted without fee or reward, except a commission in the event of success, and "business so obtained" is handed to King & Barss!!

3. That King & Barss have violated Section 16 Chapter 93 Revised Statutes, 4th Series, by allowing said Ferguson to prosecute and defend actions in their names!! 10

It will be seen that the evidence does not sustain these offensive charges in any respect, and that they have been dropped.

The slanders uttered by certain members of the Council of the Barrister's Society under the thin guise of "Findings," are infinitely more reprehensible, and are equally without foundation in fact.

NOTICE AND GROUNDS OF APPEAL.

TO THE COUNCIL OF THE NOVA SCOTIA BARRISTERS' SOCIETY:

Take notice that the undersigned Edwin D. King and William L. Barss hereby appeal from the findings and decision of said Council contained in a certain resolution of Council bearing date the 15th day of April, instant, and delivered to the said Edwin D. King and William L. Barss on the 25th day of April instant, in the afternoon of said day, and alleged to be the findings and the decision of said Council on the evidence taken on the investigation of a certain complaint against the said Edwin D. King and William L. Barss made on the 18th day of last February, by Messieurs. James J. Ritchie, N. H. Meagher and Thomas Ritchie, and the said Edwin D. King and William L. Barss appeal from the said findings and decision to the next General or Special Meeting of the said Nova Scotia Barristers' Society, on the following grounds, namely: 20

1. Because the Council of the Nova Scotia Barristers' Society had no authority to make the said findings and decision, and the same are *ultra vires* and beyond the jurisdiction of the said Council. 30

2. Because the said findings are against evidence.

