

UNITED STATES *v.* COSTEN.

(Circuit Court, D. Colorado. January 14, 1889.)

ATTORNEY AND CLIENT—DISBARMENT—BREACH OF TRUST.

An attorney who, after having been employed by one party to a litigation, and having ceased to be thus employed, seeks employment by the adverse party, offering to impart to the latter important information, is guilty of such a breach of trust as requires his disbarment.¹

Proceeding for Disbarment.

Hugh Butler and respondent *pro se*.

BREWER, J., (*orally*.) This is a proceeding to disbar. The facts are these: The respondent was counsel for the complainant in certain litigation in this court. After acting as counsel for complainant awhile, he ceased to be thus employed, possibly by reason of a transfer of the interests on that side; and after he had ceased to act as counsel he proposes to the other side employment by it, and advises its counsel that he is in possession of facts of great importance to that side; he desires employment, but that the fact be concealed. Plainly, from the letters which he wrote, as plainly as language can express, he says to the other side: "I have acquired knowledge during my employment of facts of great importance. I am no longer employed by the complainant. I want to be employed by you, and I will put you in possession of these facts, though I do not want to be known as under your employment." The letters, whose writing is admitted, are attached to the charges presented by the committee. Now, it is the glory of our profession that its fidelity to its client can be depended on; that a man may safely go to a lawyer and converse with him upon his rights or supposed rights in any litigation with the absolute assurance that that lawyer's tongue is tied from ever disclosing it; and any lawyer who proves false to such an obligation, and betrays or seeks to betray any information or any facts that he has attained while employed on the one side, is guilty of the grossest breach of trust. I can tolerate a great many things that a lawyer may do,—things that in and of themselves may perhaps be criticised or condemned when done in obedience to the interest or supposed interest of his own client, and when he is seeking simply to protect and uphold those interests. If he goes beyond, perhaps, the limits of propriety, I can tolerate and pass that by; but I cannot tolerate for a moment, neither can the profession, neither can the community, any disloyalty on the part of a lawyer to his client. In all things he must be true to that trust, or, failing it, he must leave the profession. The motion for disbarment will be allowed.

¹Respecting grounds for the disbarment of attorneys at law, see *State v. Burr*, (Neb.), 28 N. W. Rep. 261, and note; *In re Stephens*, (Cal.) 19 Pac. Rep. 646.

*In re UPCHURCH.**(Circuit Court, E. D. North Carolina. February 18, 1889.)*

UNITED STATES COMMISSIONERS—APPOINTMENT OF DEPUTY-MARSHALS.

Rev. St. U. S. § 1983, provides that the circuit courts of the states and the district courts of the territories from time to time shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with violation of the election laws. Section 1984 empowers "the commissioners authorized to be appointed by the preceding section" within their respective counties to appoint one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue, etc. *Heid*, that since the appointment of commissioners was not authorized for the first time, but merely directed, by section 1983, the power to appoint process servers, given by section 1984, must extend to all commissioners. In any case it would be impossible to distinguish from the rest the class in terms designated by this section.

In the Matter of the Account of John R. Upchurch against the United States for services rendered as special deputy marshal.

A. W. Shaffer, for petitioner.

SEYMOUR, J. A. W. Shaffer, Esq., the United States commissioner holding the appointment for this judicial district of chief supervisor of elections, shortly before the election of November last, appointed the petitioner, in writing, to execute "all such warrants or other process" as should issue to him from such commissioner in the lawful performance of his duties, and especially such warrants or other process as might issue under the provisions of chapter 7, tit. 70, Rev. St.; that is, under the law in relation to crimes against the elective franchise and the civil rights of citizens. The question now made is as to the power of the commissioner to appoint a person other than the marshal, or one of his deputies, to execute process. The authority to make the appointment is claimed under section 1984 of the Revised Statutes. That and the two preceding sections read as follows:

"Sec. 1982. The district attorneys, marshals, and deputy-marshals, the commissioners appointed by the circuit and territorial courts with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the president, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter 7, of the title 'Crimes,' and to cause such persons to be arrested and imprisoned or bailed for trial before the court of the United States, or the territorial court having cognizance of the offense. Sec. 1983. The circuit courts of the United States, and the district courts of the territories, from time to time, shall increase the number of commissioners so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Sec. 1984. The commissioners authorized to be appointed by the preceding section are empowered within their respective coun-