stood to be a matter of consent between the parties, unless the judge has made an express order in the term, allowing such a period to prepare it.

It is ordered by the court, that the *mandamus* as prayed for be and the same is hereby refused; and that the rule heretofore granted in this cause be and the same is hereby discharged.

Rule discharged.

Ex parte JOHN L. TILLINGHAST, Esquire. [*108

Attorneys.

That a counsellor practising in the highest court of the state of New York, in which he resides had been stricken from the roll of counsellors of the district court of the United States for the northern district of New York, by the order of the judge of that court, for a contempt, does not authorize this court to refuse his admission as a counsellor of this court.

This court does not consider the circumstances upon which the order of the district judge was given within its cognisance; or that it is authorized to punish for a contempt, which may have been committed in the district court of the northern district of New York.

Hoffman moved the Court for the admission of John L. Tillinghast, as a counsellor of this court. He stated, that he was a counsellor of court of chancery of the state of New York and of the supreme court of that state, and was, at this time, in the full exercise and enjoyment of the rights and privileges of a counsellor of those courts. He exhibited the certificates, in due form, of the time of the admission of Mr. Tillinghast, to practice in the courts, and that he is now a practitioner of the same. He was enabled to say, from knowing the opinions of three of the judges of the supreme court of New York, that Mr. Tillinghast was respected, and had their confidence.

It was understood, that the rule of this court was, to admit persons who practised in the highest courts of the several states, and Mr. Tillinghast was therefore completely within the rule. It would be disingenuous, not to refer to a circumstance which had occurred in relation to Mr. Tillinghast, in the district court of the United States for the northern district of New York. In that court, he had been stricken off the roll of counsellors of the court, by order of the district judge.

If the causes of that proceeding are now to be inquired into, under the relations which existed between him and Judge Conklin, and the respect he entertained for him, Mr. Hoffman said, he should not interfere. But this court will not look into this circumstance; and the mere fact of an *individual having been stricken off the roll, would not in itself induce [*109
the court to refuse his admission here. This might occur at the request of the individual, or it might be the effect of his acceptance of an office which disqualified him to practice; as that of marshal. Upon this fact alone, the court will not reject this application.

But if the court will go into an examination of the circumstances of the case, Mr. Tillinghast is fully prepared, and willing to proceed; in which he will have the aid of other counsel. He is desirous that this court would hear the facts and decide upon them, and he expects to be able, in the investigation, fully to vindicate himself from all reproach.

It is understood, that on a former occasion, when a *mandamus* was applied for to the district judge, to restore the applicant to the roll of coun-

sellors, this court would not go into an examination of the facts of the case, and they may not now be disposed to do it.[1] It might also be objected to it, that it would be *ex parte*, and will give to Judge Conklin no opportunity to be heard on the matter.

The certificates of the admission of Mr. Tillinghast to practice in the highest courts of New York, and of his now being a counsellor of those courts, were then filed by Mr. Hoffman.

Marshall, Ch. J.—The court has had under its consideration the application of Mr. Tillinghast for admission to this bar. The court finds that he comes within the rules established by this court. The circumstance of his having been stricken off the roll of counsellors of the district court of the northern district of New York, by the order of the judge of that court, for a contempt, is one which the court do not mean to say was not done for sufficient cause, or that it is not one of a serious character; but this court does not consider itself authorized to punish here for contempts which may have been committed in that court. When, on a former occasion, a *mandamus* was applied for to restore Mr. Tillinghast to the roll of counsellors of the
*110] district *court, this court refused to interfere with the matter; not considering the same within their cognisance. The rules of this court having been in every respect complied with, Mr. Tillinghast must be admitted a counsellor of this court.

On consideration of the motion made by Mr. *Hoffman*, it is ordered by the court, that John L. Tillinghast, Esq., of the state of New York, be admitted as an attorney and counsellor of this court, and he was sworn accordingly.

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*111] Boyce & Henry, Plaintiffs in error, *v.* Timothy Edwards, Defendant in error.

Bills of exchange.—Promise to accept.—Interest.—Lex loci contractûs.

Action on two bills of exchange drawn by Hutchinson, on B. & H., in favor of E., which the drawees, B. & H., refused to accept, and with the amount of which bills, E. sought to charge the defendants as acceptors, by virtue of an alleged promise, before the bills were drawn.

The rule on this subject is laid down with great precision by this court, in the case of Coolidge *v.* Payson, 2 Wheat. 75, after much consideration, and a careful review of the authorities; that a letter written, within a reasonable time, before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill in the credit of the letter, a virtual acceptance, binding on the person who makes the promise.[2] p. 121.

Whenever the holder of a bill seeks to charge the drawee as acceptor, upon some occasional or implied undertaking, he must bring himself within the spirit of the rule laid down in Coolidge *v.* Payson. p. 121.

The rule laid down in Coolidge *v.* Payson requires the authority to be pointed at the specific bill or bills to which it is intended to be applied, in order that the party who takes the bill upon the credit of such authority may not be mistaken in its application. p. 121.

The distinction between an action on a bill, as an accepted bill, and one founded on a breach of promise to accept, seems not to have been attended to; but the evidence necessary to support the one or the other, is materially different. To maintain the former, the promise must be applied to the particular bill alleged in the declaration to have been accepted; in the latter,

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[1] The *mandamus* was refused, on the ground of want of jurisdiction. See 19 How. 13.

[2] See notes to Coolidge *v.* Payson, 2 Wheat. 66.