

And upon the material before the local judge, his refusal to set aside his order was right upon the merits.

*W. H. P. Clement* for the plaintiff.

*Cavell* for the defendant *Eliza Airth*.

IN RE CLARKE AND HOLMES, SOLICITORS.

*Costs—Solicitor and client—Taxation—Interlocutory costs—Set-off—Discretion.*

Decisions of the Master in Chambers and ROSE, J., 15 P.R. 269, refusing to order a set-off of certain interlocutory costs against the amount alleged to be due to the solicitors upon bills in course of taxation, affirmed on appeal.

*Held*, that as the taxation had never been completed, and the solicitors declined to proceed with it, they were not entitled to the set-off.

If the taxation had been completed, the fact of the interlocutory costs being ordered to be paid forthwith after taxation would not have prevented their being ordered to be set off; but it raised an inference that it was not intended by the orders awarding such costs that they should be set off.

Whether the costs in question should be set off or not was in the Master's discretion, and, having regard to the fact that they had been assigned, and to the other circumstances before the court, it could not be said that an improper discretion had been exercised.

*S. R. Clarke* for the solicitors.

*G. G. Mills* for the client.

MCALLISTER v. COLE.

*Venue—Change of—County Court action—Rule 1260—Appeal from Master in Chambers—Judge in Chambers—Divisional Court.*

Where an application is made to the Master in Chambers, under Rule 1260, to change the place of trial in a County Court action, no appeal lies from his order thereon to a Judge in Chambers; and no appeal lies from the decision of a Judge in Chambers to a Divisional Court.

*Aylesworth, Q.C.*, for the plaintiff.

*C. Millar* for the defendant.

C.P. Divl Court.]

[March 3.

DAVIS v. NATIONAL ASSURANCE COMPANY OF IRELAND.

*Pleading—Rule 423—Denial of liability—Tender and payment into court—Prejudice—Costs—Rules 632-640.*

In an action upon an insurance policy the defendants pleaded denying their liability, and also tender before action and payment into court. The plaintiff replied that there was due to him a larger sum than that paid in.

Upon a motion to strike out the defences in denial;

*Held*, that they did not tend to prejudice, embarrass, or delay the fair trial of the action, within the meaning of Rule 423.

Discussion as to the effect of the defences of tender and payment into court upon the question of costs and otherwise.

Rules 632-640 considered.

*W. H. P. Clement* for the plaintiff.

*Aylesworth, Q.C.*, for the defendants.