Boyd, C.] [June 18.

MCGANNON V. CLARKE.

Taxation—Costs of survey and plans—Master's fees.

An action to restrain waste and for ejectment. The plaintiff and defendant were the owners of adjoining lots, and the defendant claimed title to, and cut timber upon land enclosed by the plaintiff, the defendant claiming by possession, and also asserting that the line between the lots was not properly drawn. Judgment was given for the plaintiff with costs of the action. The costs were taxed by the Local Master at Ottawa, and were subsequently revised by one of the taxing officers at Toronto. Upon appeal by the plaintiff, desiring to have allowed certain items, which were disallowed upon revision :

Held, that the English Chancery Order 120 (1845) providing that the Master might allow such just and reasonable charges as appear to have been properly incurred in procuring evidence and the attendance of witnesses, has not been incorporated into our practice. Outlay for surveys and other special work of that nature made and undertaken in order to qualify the surveyors to give evidence, are not taxable as between party and party.

The taxing officer refused to allow charges for maps prepared to identify the details of the line mentioned in the judgment as that which the judge considered the true line, considering that although they were useful and convenient it was not proper, in the circumstances, to allow them. He also refused to allow charges for procuring a certificate of the state of the cause, for a letter advising of judgment, and for instructions on motion for judgment.

Held, that these were all within the discretion of the officer, and that his ruling should not be disturbed.

Held, that the Master at Ottawa, who is paid by means of fees and not by salary, acted properly under the Chancery Tariff of 23rd March, 1875, which allows him at the rate of $1 for each hour engaged in taxing costs.

F. Arnoldi, for the plaintiff.

T. Langton, for the defendant.

Mr. Dalton, Q. C.] [June 19.

ABELL V. PARR.

Foreclosure—Adding parties after judgment.

An action upon a mortgage for foreclosure. The original defendants, Henry and Joseph Parr, did not appear, and judgment of foreclosure was given against them.

Pendente lite, and before judgment, Hannah and Samuel Parr became interested in the equity of redemption, having been before the action, and still continuing to be, in possession of the mortgaged premises.

On the 1st of May, 1883, upon the application of the plaintiff, an order was made *ex parte* adding Hannah and Samuel Parr as parties defendant, and directing that they be bound by the judgment of foreclosure. Upon motion (11th June, 1883,) to rescind this order,

Held, that Hannah and Samuel Parr should have been added before decree, and should not have been made parties to a foregone judgment by which their rights were concluded. These persons, being in possession, must be heard in their defence by the proper tribunal before they can be turned out.

C. J. Leonard, for the added defendants.

T. Langton, for the plaintiff

COLE V. CAMPBELL.

Interpleader issue—New trial, when tried by jury—Application to the Divisional Court.

Upon the 5th June, 1883, the defendant in an interpleader issue applied to a single judge in court for a new trial of the issue, which was sent from the Chancery Division to be tried at the London assizes, and was there tried by a judge with a jury.

Held, that Rule 307, O. J. A. which provides that when there has been a trial by jury any application for a new trial shall be to the Divisional Court, embraces every application of this kind, not excluding interpleader proceedings.

Application enlarged before the Chancery Divisional Court.

No costs were given against the defendant in the first instance as the former Chancery practice authorized the application, and the plaintiff may have been misled by *Barker* v. *Leeson*, 9 P. R. 107, which was decided since the O. J. A. but in which the interpleader order was made before the Act, and no objection was taken to jurisdiction.

E. Stonehouse, for the defendant.

Colin Macdougall, for the plaintiff.