HIGH COURT OF JUSTICE.

Meredith, C.J.] WALKER *v.* GURNEY-TILDEN CO. [June 28.

Costs—Recovery against opposite party—Liability to solicitor—Indemnity.

If the client be not liable to pay costs to his solicitor, he cannot recover these costs against the opposite party. *Jarvis* v. *Great Western R. W. Co.* 8 C.P. 280, *Meriden Britannia Co.* v. *Braden*, 17 P.R. 77, followed.

This rule applied to a case where the defence to an action for damages for personal injuries sustained by a workman in the employment of the defendants was undertaken by a guarantee company who had contracted to indemnify the defendants against such claims, and who employed their own solicitors to defend the action, exercising a right given by the contract; and extended, beyond the actual costs of the defence, to subsequent costs arising out of an application made by the plaintiff's solicitors, where the defending solicitors continued to act upon the retainer of the guarantee company.

Washington, for plaintiff's solicitors. *J. H. Denton*, for defendants.

Boyd, C., Ferguson, J., Robertson, J.] [June 21.

TORONTO AUER LIGHT CO. *v.* COLLINS.

Patent for invention—Process and product—Purchaser of articles infringing—Profits and damages—Keeping accounts—No justification of sale of infringing articles—High Court—Final Court of Appeal—Deference to other Courts—Onus of proof.

A patent granting the exclusive right of making, constructing, using and selling to others to be used an invention described in the specifications setting forth and claiming the method of manufacture protects not only the process but the thing produced by that process and an action will lie against any person purchasing and using articles made in derogation of the patent no matter where they come from, and although the plaintiff cannot have both an account of profits and also damages against the same defendant, he may have both remedies as against different persons (e.g. maker and purchaser) in respect of the same article.

A keeping of the accounts pending the action against the importers does not operate as a license to justify the sale of the articles, it is only an expedient to preserve the rights of all parties to the close of the litigation.

As the infringing articles were manufactured in the States and brought into Canada for sale, there was sufficient evidence given that they were made according to the plaintiff's process to throw the onus on the defendants of showing the contrary.

Although the High Court may be a final Court of Appeal it is its duty to defer to previous cases decided and affirming the validity of a patent and