The Legal News.

Vol. III. JANUARY 3, 1880. No. 1.

A QUESTION OF COSTS.

The appeal in the case of *Montrait & Williams* raised a question of costs of considerable importance. The judgment of the Court was unanimous, but the unanimity can hardly be said to go much further than this: that costs are a matter very much in the discretion of the tribunal of first instance, and that the Court of Appeal will require a very clear case of injustice to induce it to interfere with the adjudication on this head by the Court below. The action was between husband and wife—the latter suing for a separation—and after the case had been a long time in litigation, and one judgment in favor of the plaintiff had been set aside in appeal on account of irregularities, the husband induced the wife to sign a settlement, by which she was to receive $40 per month of alimony, in consideration of which she agreed to discontinue the action, *but without costs.* There is no doubt that these words were introduced into the settlement at the suggestion of the husband for the purpose of depriving the wife's attorneys of their costs; and when the husband produced the deed in Court, the Judge simply granted him *acte* of its production, and declared the action to be terminated on payment of the costs due to plaintiff's attorneys. The Court of Appeal confirms this judgment, and, as the note in our next issue will show, the three Judges who spoke in the case were all agreed not only that the Judge had a discretion to exercise, but that under the circumstances he had exercised it wisely. Mr. Justice Monk, apparently, was not disposed to go further than this. He held himself free to treat each case on its individual merits. The Chief Justice and Mr. Justice Ramsay were not in accord upon the question of the right of a lawyer to continue a suit for costs, after a settlement between the parties. The Chief Justice was of opinion that where the defendant has settled the case by paying the demand or part of it, and thus acknowledged that the plaintiff had justice on his or her side, but has stipulated for discontinuance of the suit without costs with the object of defrauding the plaintiff's attorneys of their costs, the Court may, in its discretion, grant the discontinuance subject to payment of the attorney's costs. Mr. Justice Ramsay, on the other hand, took the ground that the plaintiff's attorneys should trust to the solvency of their own client for their costs, and should not advance funds for the maintenance of suits on behalf of impecunious suitors. But the learned Judge arrived at the same result as his colleagues, on another ground, viz., that by Art. 205 C. P., no one can revoke the powers of his attorney without paying his costs, and there can be no discontinuance in the case without the attorney's privity and consent. Therefore, even after an agreement by both parties to discontinue, the discontinuance could not be recorded in the cause while the attorney's claims were unsatisfied.

We are inclined to think that Mr. Justice Ramsay's view,—that the attorney must trust to his own client's ability to pay him,—is the one which is practically acted upon every day by the Courts of first instance. It constantly happens that the costs of an action or a contestation are divided,—the action or contestation is dismissed, or maintained, but without costs, and this for some reason personal to the client or the cause, and not having anything to do with the attorney's management of it. Is not the exercise of such a power by the Court based on the assumption that the attorney is sufficiently protected by his recourse against his own client? Otherwise, in striking at the suitor the Court would often be punishing the attorney; in dismissing an action without costs, for example, the defendant's attorneys might be made to suffer vicariously.

THE COURT OF REVIEW.

The business of this Court has increased very considerably, and is still increasing. At the present time there are probably as many cases taken to Review as to the Court of Queen's Bench, and as neither the factums nor the evidence is printed, the labor entailed upon the Judges is evidently of no light description. A good deal might be said as to the expediency of continuing this Court at all. Since the establishment of the Supreme Court, there are four