County Court, but as the action was tried without a jury and rule 1172 did not apply, the taxing officer had no power to allow this set-off without the direction of the Court, and the judgment of the Court was amended so as to meet the case.

Aylesworth, for plaintiffs.

D. W. Saunders, for defendant George Dixon.

Q. B. Div'l Ct.] [Dec. 21, '89.

CARTY *v.* CITY OF LONDON.

Costs—Taxation—Evidence taken de bene esse—Attendance of medical man on examination—Service of subpoenas by solicitor—Rules 254, 1212, 1217—Tariff A., items 16, 17.

1. An order was obtained by the plaintiff, who sued for damages for bodily injuries sustained, for his own examination *de bene esse* before the trial. The order provided that after the conclusion of the plaintiff's examination he should submit to a personal examination by medical men on behalf of the defendants, and that the defendants might afterwards continue their cross-examination of the plaintiff, and that the examination might be given in evidence at the trial "provided the defendants had been able to continue and complete their cross-examination of the plaintiff after the said medical examination." The plaintiff was examined and partly cross-examined under this order, and was examined by the medical men, but his cross-examination was never completed. The plaintiff was not examined as a witness at the trial; the depositions taken were offered in evidence, but were rejected as inadmissible under the terms of the order. The plaintiff succeeded in the action.

Held, under the circumstances of the case, that the examination of the plaintiff *de bene esse*, was a proper and reasonable proceeding, and as the failure to complete it was through no fault of the plaintiff or his solicitor, and as it was not without use to the defendants, the costs of it should have been taxed to the plaintiff as part of the costs of the action.

Banfort v. Ashburnham, 13 C.B.N.S., 598; 32 L.J.N.S.C.P., 97; 7 L.T.N.S., 710; 11 W.R., 267; 9 Jur., 822, followed.

2. The plaintiff's own physician attended on him during the examination *de bene esse*, and was called as a witness at the trial, when he stated what his charges for attendance on the plaintiff would amount to.

Held, that, there being nothing to shew that he did not include in his statement the charge for attendance at the examination, they must be taken to have been included in the verdict, and could not be taxed to the plaintiff as part of the costs of the action.

3. *Held*, Armour, C.J., *dubitante*, having regard to rules 254, 1212, 1217, and items 16 and 17 of Tariff A., that the plaintiff was not entitled to tax anything for costs of service by his solicitor of writs of subpoena. Decision of Galt, C.J., varied.

G. W. Marsh, for plaintiff.

Flock, for defendants London Street Railway Company.

Swabey, for defendants City of London.

Street, J.] [Dec. 26, '89.

IN RE RYAN *v.* SIMONTON.

Evidence—Ex parte certificate of County Judge

No certificate of a judicial officer of proceedings had before him can properly be settled, where it is intended to be used as evidence unless in the presence of, or at least on notice to, all the parties concerned.

Aylesworth, for plaintiff.

W. M. Douglas, for defendant.

STREET, J.] [Dec. 26, '89.

ST. LOUIS *v.* O'CALLAGAN.

Writ of summons—Renewal of after expiry—Powers of local Judge—Certificate of lis pendens—Issue of before action—Adding parties—Statement of claim—Amendment.

Where a certificate of *lis pendens* purporting to be issued in this action was by an error of an officer of the Court issued before the action was begun, an order was made in the action so declaring and directing that it be set aside on that ground.

Held, also, that a local Judge has jurisdiction by the combined effect of rules 328 and 485 to make an order for the renewal of a writ of summons, even at a time when such writ has actually expired.

Re Jones, Eyre v. Cox, 46 L.J.N.S., Ch. 316, followed.

And where a local Judge, in 1887, and again in 1889, made orders renewing a writ of sum-