

TUCK, J., }  
In Chambers.

[May 5.]

EX PARTE MYERS.

*Canada Temperance Act—Excessive costs—Habeas corpus.*

The defendant was convicted of an offence against the Canada Temperance Act and committed to gaol. The case was undefended and extended over a period of a month, during which time the case was before the magistrates seven different times. The costs taxed against the defendant were \$74.

The defendant applied for a habeas corpus on the ground that the costs were *prima facie* excessive; that the conviction should show how the costs were made up; and that the number of witnesses were unnecessary when the case was undefended.

It was shown by the prosecution that many of the witnesses had to be brought to the Court under arrest in order to get their testimony; that they had to be brought a great distance, and that the costs taxed were not nearly so much as might properly have been taxed under the scale of fees.

*Held*, that the question as to whether the witnesses were necessary or not could not be gone into on this application; and that the costs taxed, while amounting to a large sum, were not greater than was allowed by the scale of fees.

*Held*, also, that it was upon the defendant to show that the costs were excessive, and that the conviction need not show how the costs were made up.

*Mullin*, for the defendant.

*McCully*, for the prosecution.

## EQUITY COURT.

BARKER, J.]

[April 21.]

HANIGAN *v.* HANIGAN.

*Practice—Joinder of wife of a tenant in common in a partition suit.*

One of several tenants in common brought suit for partition, making the wife of one tenant in common a party. This defendant demurred to the bill on the ground that she should not have been made a party.

*Chandler* supported the demurrer.

*Borden* and *Allan*, contra.

BARKER, J.: The simple case of a partition presents little difficulty, because the authorities seem to agree that in such a case the wife's right of dower is confined to that portion of the land to which, on partition, her husband becomes seized in severalty.

The power of this Court to order a sale, so as to take away or interfere with the wife's right, is denied. It is contended that if a sale is decreed, such a sale must be made subject to the wife's right, and that there is no authority for selling such right, either with or without compensation. The methods by which Courts of Equity acted in effecting a partition of lands held in common, were essentially different from those adopted by common law courts. It was because of the greater power this Court had of dealing equitably between all parties interested, that its jurisdiction was invoked in such cases. The decree