

- (9) Questions arising upon the title to the lands in Mersea.
- (10) An adverse claim to a portion of these lands, which was compromised.
- (11) A claim by defendant J. J. Bell for compensation for improvements under mistake of title.
- (12) A claim by defendant J. J. Bell to \$4,000 of the moneys of the estate
- (13) A claim by the solicitor for defendant J. J. Bell to a lien upon his share of the estate in priority to costs awarded against him.
- (14) Various assignments of different shares made during the course of the proceedings, which complicated the settling of the final report.

The referee certified to the difficulty and labor of the reference, and that, in his opinion, taxed costs should be allowed in lieu of the usual commission. An affidavit of the plaintiff's solicitor set out in detail all the circumstances above referred to. "In all actions or proceedings instituted for administration . . . unless otherwise ordered by the court or a judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor and entitled to costs out of the estate . . . shall be entitled to his actual disbursements . . . and . . . a commission on the amount realized." Rule 1187.

Upon the case coming on for hearing on further directions before ROBERTSON, J., in Court, on the 8th January, 1896, all parties consenting, the plaintiff asked that taxed costs of all parties of the proceedings on the reference and of the interim distributions and further directions should be paid out of the estate.

Lash, Q.C., and *A. H. F. Lefroy*, for the plaintiff, and certain of the defendants, referred to two unreported cases before FERGUSON, J., in which taxed costs were allowed in lieu of commission—*Re Goodfallow, Traders' Bank v. Goodfallow*, 10th June, 1889, an administration matter, and *McCabe v. McCabe*, 14th September, 1892, a proceeding for partition or sale.

W. N. Miller, Q.C., *H. T. Beck*, *McBrayne*, *J. H. Moss*, and *Day*, for the other defendants.

Judgment was delivered on the following day.

ROBERTSON, J.: After reading the numerous papers handed in on the motion for further directions, the affidavit of Mr. Lefroy, and the certificate of the referee, I am of opinion that this is a case in which taxed costs should be allowed in lieu of commission. I think, however, that there was no necessity for the appearance before me of so many counsel on this motion; the whole matter could have been brought to the attention of the Court by one counsel; there was no dispute, no differences to be reconciled; the only question was as to the costs, and the affidavit of Mr. Lefroy and the certificate of the referee make it clear that the case is one for taxed costs. The taxing officer will allow, however, the attendance of each of these gentlemen as solicitors, except in the case of counsel for the plaintiff, who should be allowed an ordinary fee as upon a non-contentious application.