

Statement. for Brief, \$2," and "Drawing Brief, \$2." The plaintiff applied to review.

Argument. *E. L. Elwood*, for the plaintiff, supported the review.

J. T. Brown, for R. J. Campbell, a subsequent encumbrancer, *contra*.

Judgment. WETMORE, J.—A "brief" is defined in an old edition of Jacob's Law Dictionary to be "an abridgment of the client's case made out for the instruction of counsel on a trial at law." That definition, however, will not apply to this country, where the advocate is both attorney and counsel, and the tariff of advocates' fees evidently contemplates that an advocate may charge for a brief although no other counsel than himself has been engaged, and when he is entitled to charge for a brief he is entitled to charge for instructions for brief, although he has not instructed any other counsel, for the very next item in the tariff (item 13) provides a fee for instructions "to counsel in special matters when the counsel is not the advocate in the cause," thus indicating that the next preceding item, "instructions for brief," was taxable whether the counsel is the advocate on the record or not. It would almost seem as if the instructions for brief were assumed to come from the client. I conceive, however, that the real object of the tariff was to enable the advocate to obtain or recover from his client, as near as it can be effected, the same fees that could be exacted if the attorney and counsel were separate persons. By the English Practice the solicitor is entitled to charge for instructions, the counsel for brief. See 2 An. Prac. (1895), pp. 180 and 181 (Fees 79 to 83). The definition in Jacobs is also not correct at the present day in limiting it to an abridgment of the case made out for the instruction of a counsel *on a trial at law*. By the English practice, briefs are made out and are taxable for many other purposes; for instance, in the Chancery Division they are taxable on the argument of a demurrer: Dan. Ch. Prac. (6th ed.) 542, note (s); on an application for further consideration: Ib. 1158, note (i); on a motion to the Court; Ib. 1554, note (1); on a petition: Ib. 1567, note (a); on a special case: Ib. 1969, note (i); and in 2 An. Prac. (1895), p. 184 (Fees 96, 97, 98 and 99). I find fees for briefs in a number of cases. I also draw attention to the note to Fee 79, at p. 180.