

estate or interest of the defendant in the lands in question and that same be sold. Reference to Master at Walkerton. Costs subsequent to judgment to plaintiffs. No costs of appeal. Scale of costs to be that of County Court unless the interest of defendant sells for a larger sum than \$400, in which case scale to be that of High Court.

David Robertson, Walkerton, solicitor for plaintiffs.

• Frank J. Palmer, Walkerton, solicitor for defendant.

MACLENNAN, J.A.

MAY 10TH, 1902.

C. A.—CHAMBERS.

MURRAY v. WURTELE.

Costs—Appeal—Parties—Added Plaintiff.

Motion to settle certificate of judgment noted *ante* p. 298. The facts sufficiently appear in the judgment.

J. E. Jones, for defendants, appellants.

A. B. Aylesworth, K.C., for plaintiff Fraser.

MACLENNAN, J.A.—The question is whether Fraser ought to be ordered to pay the costs of the appeal. I have read and considered all the papers, and I see no ground on which Mr. Fraser can be released. The order of 22nd December recites that it was made upon Mr. Fraser's application to vary a previous order of 13th November, 1900, and for leave to be added as a party plaintiff. His consent to be added reads "to be added as a party plaintiff and to assume responsibility of carrying on the same from 22nd December, 1900." The order of 13th November stayed all proceedings in the action (19 P. R. 293), and, but for Mr. Fraser's application, the action could not have proceeded further, and no appeal by the defendants would have been necessary. By Mr. Fraser's intervention the stay was removed, and it became necessary for the defendants to appeal against the judgment, which they have done successfully. If the judgment had stood, Mr. Fraser would have had the benefit of it, for as purchaser of the note sued on the judgment was his property. The original plaintiff had no interest in resisting the appeal, except as to costs, and the whole substantial interest was in Mr. Fraser. Under these circumstances, notwithstanding that he did not appear by counsel on the argument, I think he cannot be relieved from payment of the costs of the appeal.