facts, and when these facts had once been proved we would not have been justified in taking up the time of the Court in piling proof upon proof. But we should have been most negligent had we not had these witnesses at hand to call if necessary. The expenses of the witnesses should have been allowed. It is objected on the other side that the registrar did not give his certificate till after the judge's term of office as an election judge had expired, and that he, consequently, had no power; we think he had. But the words of the Act directing the certificate are not negative, and the certificate is not a condition precedent. In England the registrar's certificate is not considered necessary. As to the fees allowed to counsel, considering the magnitude of the case, they were reasonable and should not have been cut down.

Butt, Q.C., (with him *Exham*, Q.C., and *Martin*), for respondent.—The general principles on which this case should be decided are laid down in *The Southampton case*, L. R. 5 C. P. 178. All the costs which were reasonably incurred in the ordinary course of business should be allowed. Would these costs have been allowed in equity? Would a solicitor be allowed to give a general retainer by which he was entitled to the services of counsel in every cause he might engage in? If this be allowed in this case there is no reason why it should not be allowed in every Nisi Prius case. The putting one name on the subpœnas was a case of extra precaution. Had it been allowed the master have looked into each case to see whether such a course was necessary there. As to the fees to counsel, and the consultation fees, that is a question of amount. In the *Tamworth* case and the *Penryn* case, L. R. 5 C. P. 181, only 100 guineas were allowed to senior, and 75 guineas to junior counsel. As to the consultations they were allowed for forty-five days. The master should only have allowed them where it was necessary for the purposes of the case. Consultations were allowed even where counsel were speaking. In the *Southampton* case it was held that consultations should be held from time to time when different points and phases of the case are developed. As to the short-hand writers' notes, the short-hand writer is provided by the Act of Parliament for the convenience of the House of Commons and the Attorney-General, not of the parties. The cases cited on the other side are inapplicable. "The rule, as stated in *Malins* v. *Price*, only applies to an issue, and the reason is that the counsel engaged in law are not the same as those in equity, and it is consequently necessary to instruct the equity counsel of what took place at law; but on an appeal the counsel are assumed to have notes on their briefs of what took place below:" *Smith* v. *Earl of Eppingham*, 10 Beav. 382. There was a third counsel in this case whose duty it was to take down the notes of the evidence. The proper person to inform counsel is the counsel himself: *Croomes* v. *Gore*, 1 H. & N. 14. The certificate of the officer is necessary under 31 & 32 Vict., c. 125, sec. 34. It is the fault of the parties themselves if they do not take out the certificate. The certificate is meant as a defence against the witness. As to the charges of treating, the case failed altogether, but yet the expenses of the witnesses on this point were allowed. Some exception should have been made.

Murphy, Q.C., in reply.—The *Tamworth* and *Penryn* cases were of the most ordinary description. But in the *Southampton* case, where there was more difficulty, the master was held wrong in not having exercised more liberality. The true principle is that as between party and party there is to be a certain scale of taxation, and as between attorney and client there is to be an extension of these allowances. This is subject to some limitation, and is confined to such costs as may have been reasonably incurred: *Doe d. Ryde* v. *Mayor of Manchester*, 12 C. B. 474. As to the consultations, they were held by advice of counsel, and where an attorney gets a direction from counsel it is always taken into the consideration of the Court: *Foster* v. *Davies*, 8 L. T. N. S. 626.

KEOGH, J.—The general principles upon which we should proceed in this case are clearly laid down by Bovill, C.J.—"It is impossible to lay down with exactness any rule upon the subject, but generally it would seem that all such costs should be allowed as a solicitor would ordinarily incur in the conduct of his client's business, excluding those extraordinary costs which may have been occasioned either by the default of the client, as by his incurring a contempt, or by his express instructions to employ an unusual number of counsel. It appears to us that the parties entitled to their costs under the orders, were entitled to an indemnity for all costs that were reasonably incurred by them in the ordinary course of matters of this nature, but not to any extraordinary or unusual expenses incurred in consequence of over-caution or over-anxiety as to any particular case, or from consideration of any special importance arising from the rank,