

1880

## MINUTES AND PROCEEDINGS.

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Under Ad. J. Act, a person is appointed as an examiner who resides out of the County Town, and after he has taken the evidence, instead of returning in accordance with Cap. 50, Sec. 165, R.S.O., hands the examination to the Counsel at whose instance appointment was made, and who keeps the examination until he takes all copies thereof that he requires, then hands examination to Clerk for his office. How could this be remedied?

The only remedy I see is to have proper capable men appointed as examiners, men who understand their duty and will do it, not mere nominees and tools of parties to a suit. In such a case as is put above, I would not allow for the copies so taken on taxation, except under 41st Vic. Cap. 8, Sect. 8. The examiner having taken the examination should at once return it, and he is then functus officio; but under that act he can always certify to a copy of the examination which is made evidence to the same extent as the original would be, and an Attorney having legitimately got a copy, could from it make as many copies as the case would require and be allowed for same.

Some lawyers contend that the affidavit of serving civil Subpoena, when served by the Sheriff should be allowed. I have disallowed it.

I think the Sheriff should be allowed for affidavit when made, and that it should be taxed.

A case was brought in the Superior Court and a verdict obtained for plaintiff, which was moved against in Toronto. Plaintiff's counsel applied to short hand writer for copy of evidence for his counsel in Toronto, for which he paid \$17.45. Is this item taxable to plaintiff?

Yes, if he succeeded on the application and discharged defendant's rule. Item, (affidavit of) service of appointment under A. J. Act, Lawyer's claim. This I have disallowed—that it is not necessary to show me whether party has been so served or not. If he does not attend, then counsel would have to prepare his affidavit of service to lay before the Judge, in initiating proceedings against him for not appearing.

When an appointment is given for the examination of a party to a suit, and the party obtaining the appointment attends on its return and the party called upon does not, the first thing the examiner should require would be proof of the service, and until such proof be given he should take no proceedings of any kind in the matter. I therefore think that the party procuring the appointment should come with the proof ready, and should be allowed the affidavit of service in case he becomes entitled to the costs of the examination.

A writ issued against an absconding debtor who is reported by his own family to be in a certain County in the United States, and upon the strength of these rumors plaintiff sends his Writ of Attachment to the Sheriff of that county, who fails to find defendant and makes affidavit to that effect, and upon this affidavit chiefly, plaintiff gets an order for substitutional service. Plaintiff paid Sheriff in the U. S. \$5. Is this item taxable to plaintiff? I disallowed it.

The above proceedings having been all perfectly *bona fide*, and the court having acted on them as disclosed in the Sheriff's affidavit, and they being really the foundation upon which the subsequent proceedings rested, I would have allowed the plaintiff the \$5 paid the Sheriff.

Should Deputy allow \$40 Counsel fee on my certificate, when the affidavit of increase only shows \$30 really paid?

Certainly not. The certificate, as far as the Deputy is concerned, shews him what fee it is thought the case would justify, if paid, where it is a disbursement, and indeed would not be given without an affidavit being produced that it was paid. But the Deputy should never allow more than is