

under such terms of the tariff as 104, 145, 150, 153. But it has always been understood (see *Re Robinson*, 17 P. R. 426, and *Smith v. Harwood*, ib. 36), that the special referee, i.e., the Master who is charged with the solicitor and client reference, has power to exercise the discretion recognized by the tariff in increasing the amount chargeable for certain services ordinarily exercisable by the officer at Toronto in party and party taxations. Appeal dismissed with costs.

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TURNER v. DREW.

[BEFORE BOYD, C., THE 7TH MAY, 1897.]

Set-off of costs and damages—Solicitor's lien for costs not to be displaced by right of set-off between parties.

Judgment on question of set-off of costs and damages. The action was brought by Sarah Elsie Turner, daughter of the late William Turner, against the widow of the deceased, to enforce the terms of a trust deed, and to recover \$3,000 as the plaintiff's share of the rents of certain lands of her deceased father, and for an account. The action was tried before the Chancellor at Toronto, and judgment given on the 29th April last, declaring that plaintiff is entitled equally with defendant to the income of the property in question, and directing an account (if desired by plaintiff) of arrears due to her for six years prior to the action, and for payment of what may be found due by defendant, together with plaintiff's costs of action, after deducting from such arrears and costs, the costs of a former action ordered to be paid by plaintiff to defendant, and for payment by defendant to plain-

tiff during their lives of one-half of the future annual income of the property, as the same is received. After delivery of judgment counsel for defendant asked the Chancellor to consider whether the set-off directed should not be subject to the solicitor's lien upon the costs of the former action. Held, that there can be no set-off of damages or costs between the same parties in different actions to the prejudice of the solicitor's lien. That is the express effect of Rule 1205, the original of which dates back to Hilary Term, 2 Will. IV., *Dunn v. West*, 10 C. B., 420. The same practice obtains in England, though the rule there is differently phrased: *Hanel v. Stanby*, (1896) 1 Ch. 607. Nothing has happened to displace the solicitor's lien, which is simply a right to the equitable interference of the Court not to leave the solicitor unpaid for his services. The lien in this case exists if it is made to appear that he has not been paid his costs in the first case, and if that is so, no set-off can be ordered to his prejudice. Delamere, Q.C., for defendant. Hislop for plaintiff.

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REGINA v. ROBINSON.

[BEFORE ARMOUR, C.J., FALCONBRIDGE AND STREET, JJ., THE 10TH MAY, 1897.]

Criminal Code—Admissibility of evidence—Duty of husband to supply his wife with necessaries—Evidence of agreement by which wife to support herself.

F. C. Cooke, for the prisoner. J. R. Cartwright, Q.C., for the Crown. Case reserved by Ferguson, J., at the Sandwich Spring Assizes, 1897. The prisoner was indicted and convicted under section 210, sub-section 2, of the