

BOVD, C.]

[Dec. 11.

CARLISLE v. ROBLIN.

*Costs—Taxation—Searching affidavit—Registrar's abstract—Counsel fee on ex parte order—Filing order—Engrossing—Counsel fees—Discretion—Witness fees—Brief.*

Upon taxation of costs, the following items should not be taxed against the opposite party :

- (1) Attendance to search affidavit on production.
- (2) Attendance to bespeak and for registrar's abstract to prepare for litigation or prove title.
- (3) Counsel fee on attendance to obtain *ex parte* order.
- (4) Attendance to file order for subpoena.
- (5) Engrossment of same order.

The question of the allowance of counsel fees is one for the discretion of the taxing officer ; and where the action is strenuously contested on both sides, it is proper to allow fees to both senior and junior counsel.

Where witnesses in attendance at the trial are not called, the onus is on the party subpoenaing them to show their relevancy ; and in this case he failed to do so.

Where fees paid to such witnesses are disallowed, the portions of counsel's brief containing their evidence should also be disallowed.

*Alcorn, Q.C.*, for the plaintiff.

*D. Armour* for the defendants.

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WELBOURNE v. CANADIAN PACIFIC R.W. CO.

*Discovery—Examination—Pleading—ChamPERTY and maintenance.*

Discovery will not be enforced in equity in cases of champerty and maintenance, nor should it be under the equivalent remedies given by the Judicature Act ; and a plaintiff should not be compelled, on examination, to answer questions touching an alleged champertous agreement.

*Semble*, that the rigorous rules which obtained in earlier days in England are not to be imported into the dependencies of England without some modification.

*Ram Coomar v. Chunder*, 2 App. Cas. at p. 210, specially referred to.

To an action under Lord Campbell's Act the defendant pleaded that it was brought and maintained under a champertous agreement which disentitled the plaintiff to sue.

*Held*, that this defence should not be struck out ; if proved, it was for the court to say what effect should follow.

*W. J. Elliott* for the plaintiff.

*Angus MacMurchy* for the defendants.