

FALCONBRIDGE, C.J.K.B., IN CHAMBERS.

MAY 29TH, 1916.

RE CARPENTER LIMITED.
HAMILTON'S CASE.

Costs—Taxation—Proceedings under Winding-up Act—Contributories—Appeal—“Originating Motion in Court”—Tariff “A,” Item 17.

Appeal by D. Hamilton and four others from the taxation of their costs under the order of CLUTE, J., 35 O.L.R. 626, 9 O.W.N. 447, by which they were allowed their costs of proceedings before a Referee, in the winding-up of the company, in which the placing of their names on the list of contributories was confirmed, and of their successful appeal from the Referee's order.

K. F. Mackenzie, for the appellants.

J. A. Macintosh, for the liquidator, respondent.

FALCONBRIDGE, C.J.K.B., said that the taxation had proceeded upon a wrong basis—as under item 11 of Tariff “A,” “Contested interlocutory motions in Court.” The proceeding was not interlocutory, but, subject to the right of appeal, if any, resulted in a final judgment removing the names of these appellants from the list of contributories.

The matter should be remitted to the Taxing Officer to tax as under item 17 of Tariff “A” (originating motion). He should also tax and allow to the appellants the costs of this appeal.

MORRIS v. MORRIS—MIDDLETON, J.—MAY 22.

Contract—Agreement as to Land by Tenants in Common—Intention to Sell—Judgment for Partition or Sale—Postponement of Proceedings under, until Expiry of Period Mentioned in Agreement.—Action for an injunction and other relief, tried without a jury at Toronto. An incorporated company owned land used as a nursery-garden. The only shareholders were the plaintiffs (E. C. Morris and his wife) and the defendants (D. G. Morris and his wife). One Plumb proposed to purchase all the capital stock of the company and its assets except the land. The shares in the company were transferred to Plumb or his nominees; and the land was conveyed by the company to its shareholders as beneficial owners. They intended to sell the land, but had not