

MIDDLETON, J., IN CHAMBERS.

OCTOBER 14TH, 1919.

MURRAY v. FITCH.

Costs—Taxation—Action Brought in Supreme Court—Costs Adjudged to be Paid on Scale of County Court—Allowance of Increased Counsel Fee—Powers of Taxing Officer at Toronto—Practice—Rule 2.

An appeal by the defendant from the taxation of the plaintiff's costs of an action brought in the Supreme Court of Ontario.

W. J. Hanley, for the defendant.

F. W. Denton, for the plaintiff.

MIDDLETON, J., in a written judgment, said that by the judgment in the action costs were given to the plaintiff on the scale of the District Court without set-off. The Senior Taxing Officer at Toronto had allowed an increased counsel fee within the limits of the County Court tariff. The sole contention of the defendant was, that where, in a Supreme Court action, costs are awarded upon the lower scale, the Taxing Officer is limited by the tariff of County Court costs to a maximum fee of \$25. The Judge of the County Court may increase the fee, but it is said that the Taxing Officer has no such power. The learned Judge was of opinion that this contention could not prevail. The taxation was in the Supreme Court; the officers of the Supreme Court were to seek to apply to the taxation the provisions of the tariff of the County Court; and the Senior Taxing Officer at Toronto had jurisdiction to allow an increased fee. This certainly had been the practice for the last 40 years, and it ought not to be interfered with. Rule 2 says that as to all matters not provided for in the Rules the practice shall be regulated by analogy thereto.

The appeal should be dismissed, with costs fixed at \$20.