

I think that the effect of the letter of 16th August was an admission by defendants' solicitors that defendants had in their hands money to be paid to plaintiffs in settlement of the action, from which plaintiffs' solicitor's costs were first to be satisfied. The parties not being able to agree as to the proper amount, plaintiffs' solicitor as early as 7th September was anxious to have the amount ascertained, and forwarded the necessary order for taxation, with a request that defendants would consent to it, and save the expense of a motion. This was the proper course to take, and should have been agreed to by the other side. The issue of the *præcipe* order was unnecessary, though not irregular, unless perhaps as made on the application of one only of the plaintiffs: see *Port Hope Brewing and Malting Co. v. Cavanagh*, 9 O. W. R. 974. But this point was not taken on the argument, and I refrain from any express decision upon it.

It was not necessary to move against the *præcipe* order, and that motion will be dismissed, but without costs; and an order will be made on the other motion referring it to one of the taxing officers to ascertain the amount due to the solicitor, consolidating with it the *præcipe* order, and giving the conduct of the matter to plaintiffs' solicitor, as he moved first and is the party on whom the onus lies.

The costs of this motion will be disposed of by the taxing officer in the reference, in view of the offer of defendants' solicitor of \$15. The other offer was not sufficiently definite to be taken into consideration on this point.

FALCONBRIDGE, C.J.

OCTOBER 7TH, 1907.

TRIAL.

FRICKER v. BORMAN.

Covenant — Restraint of Trade — "Carry on or be Engaged in Business"—Assisting Another in Business—Suspicious Circumstances — Costs.

Action for damages for alleged breaches of a covenant contained in an agreement of sale by defendant to plaintiff of a hotel business in Stratford, and for an injunction.