

MACMAHON, J.

JANUARY 27TH, 1905.

CHAMBERS.

KERR v. CANADIAN CONSTRUCTION CO.

Costs—Taxation—Witness Fees—Payment—Affidavit of Increase—Travelling Expenses—Railway Passes.

Appeal by plaintiff from certificate of local registrar at Cornwall on the taxation of the costs of defendants, taxed at \$870.11, on the ground that the witness fees allowed to defendants by the taxing officer were excessive; and motion for an order that the manager of defendants, William Daly, do attend at Cornwall for the purpose of being cross-examined on his affidavit of disbursements.

E. C. Cattnach, for plaintiff.

Grayson Smith, for defendants.

MACMAHON, J.—The record had been entered for trial at the Cornwall assizes, on 3rd October, 1904, before Meredith, J., and, on plaintiff's application, was adjourned until the non-jury sittings in November, costs to be to defendants if successful.

The action was tried in November before Anglin, J., who directed that judgment be entered for defendants dismissing the action with costs.

The affidavit on which the motion is founded is made by Mr. Cameron, a member of the firm of plaintiff's solicitors, and the only reference to the ground on which the motion is made is contained in the 10th paragraph, which states: "I am informed that the witness fees alleged to have been paid to witnesses Daly and Sutherland were never paid in fact, as both parties travel on a pass."

The affidavit of disbursements was made by William Daly, the manager of defendants, who is engaged on a contract for them at Sudbury, in the district of Nipissing, and in the affidavit he states that he was subpoenaed as a witness at the trial on defendants' behalf, and was paid his necessary expenses in going to and returning from the trial, \$56.35—there was taxed off this item \$17.55; that William Sutherland, a witness, was subpoenaed at Sudbury and was paid \$49.85, his necessary fee going to and returning from the place of trial. (The sum of \$5.95 was taxed off this item.) Sudbury is sworn to be 381 miles from Cornwall.

Although the aggregate amount paid for witness fees, as sworn to, appears to have been objected to, no objection was