

LENNOX, J., IN CHAMBERS.

NOVEMBER 5TH, 1915.

FOORD v. FOORD.

Husband and Wife—Action for Alimony — Interim Disbursements—Counsel Fee—Agency Fees—Undertaking of Plaintiff's Solicitors—Practice.

Appeal by the plaintiff from an order of the Senior Local Judge of the Supreme Court at Hamilton, in an action for alimony, fixing \$100.20 as the amount to be paid by the defendant in respect of the plaintiff's interim disbursements.

A. W. Langmuir, for the plaintiff.

H. Cleaver, for the defendant.

LENNOX, J., said that the items of disbursement were set out in an affidavit of one of the solicitors for the plaintiff as amounting to \$200.17, and were estimated by a local taxing officer (upon request) at \$199.37. Of this total, \$100 was for counsel fee at the trial, as to which the solicitor swore that he had retained counsel, outside his own firm, and become liable to him for payment of \$100. There was also included an item of \$39.17, for which the plaintiff's solicitors had become liable to their Toronto agents for services rendered in this action. The learned Local Judge, receiving the estimate of the taxing officer, was apparently of opinion that only \$40 should be allowed for counsel fee and that the \$39.17 should not be allowed at all.

LENNOX, J., said that, with very great respect, he was of opinion that the agency fees and a counsel fee of \$100 should be allowed. The \$39.17 was an actual disbursement—the actual net amount for which the solicitors had become liable to their agents.

The cases relied upon by the defendant were *Cowie v. Cowie* (1908), 17 O.L.R. 44, and *Gallagher v. Gallagher* (1897), 17 P.R. 575. LENNOX, J., entirely concurred in all that was said in those cases. It was true that in the *Cowie* case a counsel fee of \$40 only was allowed; but each case must be decided on its own facts. The question was, what was right in this instance; and, having regard to the fees usually paid now to efficient and experienced counsel, and it being shewn that this was a liability bona fide and actually incurred by the plaintiff's solicitors, the \$100 fee was a disbursement proper to be allowed.

The plaintiff's solicitors must give an undertaking to account