

in particular, but no case referred to would justify a holding on this evidence that his preference was fraudulent, so as to make it "appear that" he "has concealed or made away with his property in order to defeat or defraud his creditors."

Motion refused without costs.

MEREDITH, C.J.

JULY 15TH, 1902.

CHAMBERS.

PENNINGTON v. HONSINGER.

*Costs—Taxation—Evidence—Brief of, Used by Counsel for Opposite Party.*

Appeal by defendants from allowance by the senior taxing officer, on the taxation of the plaintiff's costs, of the charge for brief for senior counsel on the argument of an appeal to a Divisional Court. Senior counsel was retained by plaintiff for the argument in the Divisional Court, and the brief in question was prepared for and handed to him, but, owing to the intricacy of the case and his other engagements, the counsel who was retained was unable to argue the case, and returned the brief to the plaintiff's solicitor, who acted alone as counsel for the plaintiff on the argument. When the appeal came on to be heard, counsel for defendants had not been furnished with any brief of the evidence, and after the appeal had been opened it was found to be impracticable on that account to conclude the argument, and at the suggestion of the Court the plaintiff's counsel handed the brief in question to counsel for defendants, in order that he might, when the argument was resumed on the following day, be prepared with reference to the parts of the evidence on which he relied in argument. Counsel for defendants made use of the brief for this purpose, and retained and still retains it. Under these circumstances the taxing officer allowed the plaintiff so much of the brief as consisted of the copy of the evidence.

W. J. Tremear, for defendants.

Shirley Denison, for plaintiff.

MEREDITH, C.J., held that the allowance made by the taxing officer was correct.

Appeal dismissed with costs.