

LANDLORD AND TENANT—COLLATERAL AGREEMENT—PAROL WARRANTY OF DRAINS.

In *De Lassalle v. Guildford* (1901) 2 K.B. 215, the plaintiff was lessee of the defendant under a lease under seal. Before the counterpart of the lease executed by the plaintiff was delivered he required an assurance that the drains were in good order. The lease contained no reference to the drains. The defendant verbally assured the plaintiff that the drains were all right, and the counterpart was thereupon handed to him. The drains were not in good order, and the action was brought to recover damages for breach of the parol warranty. The action was tried by Bruce, J., who gave judgment for the defendant, dismissing the action, being of opinion that even if there was a warranty it would not be collateral to the lease. The Court of Appeal (Smith, M.R., and Collins, and Romer, L.JJ.), however, reversed his decision on the ground that there was in fact a warranty of the drains, and that it was collateral to the lease, and therefore the plaintiff was entitled to judgment.

PRACTICE—COSTS—ALLOWING COSTS OF UNUSED DEPOSITIONS OR PROCEEDINGS.

In *Bartlett v. Higgins* (1901) 2 K.B. 230, the Court of Appeal (Collins and Stirling, L.JJ.) lay it down that there is no hard and fast rule that the costs of unused depositions or proceedings can in no case be allowed on taxation between party and party. In the present case the plaintiff was expecting to receive orders to set out for service as a soldier in South Africa, and in contemplation of his absence at the trial obtained an order for his examination *de bene esse*. It turned out that the plaintiff was not ordered to South Africa as expected, and was, consequently, able to attend and give evidence at the trial in person. On the taxation of costs between party and party he claimed to be allowed the costs of his examination *de bene esse*. The taxing officer disallowed the costs, and his view was sustained by Ridley, J. The Court of Appeal, however, took a more liberal stand, and held that the true test, in exercising discretion as to the allowance or disallowance of such costs, is whether they were necessarily or properly incurred for the attainment of justice, and the case was accordingly remitted to the taxing officer.