

The appeal from the decision of MEREDITH, C.J.C.P., was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

R. McKay, K.C., for the appellants.

J. M. Bullen, for the plaintiffs, respondents.

THE COURT held:—

(1) That the appeal lay without leave under Rule 507 (2), for the order appealed against finally disposed of the right of each defendant to receive certain money by way of costs.

Talbot v. Poole (1893), 15 P.R. 274, approved and followed notwithstanding the change in the law.

(2) That the defendants were justified in setting down their cases for trial and giving notices of trial.

(3) That thereupon the defendants' solicitor became entitled to deliver briefs to counsel, and, if intending to take his own brief as a barrister, was entitled to a counsel fee at trial.

(4) That, while the general rule is that the discretion of the Taxing Officer as to quantum cannot be interfered with, the Court is not precluded from doing so under very special circumstances; and there were such circumstances in this case.

(5) That, as the costs between party and party are the costs of the litigant, each bill of costs was a separate matter; and, each being taxed by itself, a counsel fee should be taxed in each.

(6) That in each case a counsel fee of \$50 should be allowed as "counsel fee at trial."

The order below was varied accordingly; the costs of the appeal, fixed at \$75, to cover all costs of appeal, to be paid by the plaintiffs; no costs of the appeal to the Chief Justice in Chambers.