IRISH REPORTS.

COURT OF COMMON PLEAS.

THE GALWAY ELECTION PETITION.
TRENCH v. NOLAN, AND NOLAN v. TRENCH.

Taxation of costs of Election Petition—Fees to counsel—Expenses of witnesses not certified by the Registrar—Expense of obtaining copies of short-hand writers' notes of the evidence—Retainers.

Where, on taxation of costs of an election petition the Master disallowed a general retainer to the senior counsel, and cut down the fees on their briefs, it was held that he had no right to interfere with the discretion of the attorney acting *bona fide* for the interest of his client.

Several witnesses, who had not obtained a certificate from the Registrar, were paid their expenses by the petitioner. The Master disallowed this item, but the Court reversed his decision.

Sums paid to short-hand writers, for copies of the notes taken of the evidence, should be allowed.

[May, 4-9, 1873. Ir. L. T., Oct. 11th, 1873.]

This was an appeal by the petitioner against the decision of the taxing master, in taxing the bill of costs in the matter of the Galway election petition. The respondent also appealed against certain items which the master had allowed. A retaining fee of £10 10s. had been given to both the senior counsel for the petitioner. One of these retainers the master disallowed altogether, the other he cut down to £5 5s. On the brief to the two senior counsel a fee of 150 guineas was paid. Twenty guineas a day refresher, and five guineas consultation fees, were paid. A consultation was held every day during the trial which lasted fifty-seven days. The master allowed only one senior counsel, cut down his fee to 100 guineas, cut down the refreshing fee to fifteen guineas, and the consultation fee to two guineas, and allowed only forty-five consultations. The petitioner charged £474 for attending short-hand writers, obtaining their notes of the evidence, and briefing the same to counsel. This item the master disallowed. Some of the witnesses who attended to give evidence were not examined; to these the registrar refused to give a certificate. The master refused to allow the sums paid to these witnesses. Against the disallowance of all these items the petitioner appealed. The respondent objected to allowing so many consultations as forty-five; also, that the registrar had not given his certificate to witnesses till after the expiration of the judge's term of office as a judge on the rota, and that, consequently, he had no power to give a certificate, and without it the witnesses could not get their expenses. Some of the witnesses were summoned to sustain a charge of treating. This charge was not sustained at the trial, and the judge in his judgment only found the respondent guilty of undue influence. The respondent contended that the expenses of all those witnesses who were called to sustain the charge of treating should not have been allowed by the master. At the desire of the Court both the appeals were taken together.

Armstrong, Serjeant (with him *Murphy*, Q.C., and *Bewley*), for the petitioner.—This application is made under 31 & 32 Vict., c. 125, sec. 41, which provides that, all costs, charges of and incidental to the presentation of a petition under that Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by that Act otherwise provided for, shall be defrayed by the parties to the petition. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed. The retainers to counsel, would have been allowed in the taxation of Chancery costs. To secure the services of counsel before proceedings have been actually instituted, it was necessary to give a general retainer. By the bar rules, not less than ten guineas can be given as a general retainer. This was a very exceptional case, and petitioner was entitled to secure the services of such counsel as he saw fit. The master, in allowing for the service of subpœnas, laid down a rule that two names must be inserted on each subpœna. It was necessary for us to serve subpœnas with only one name inserted, for had the names of others appeared on the subpœna, the witnesses would have been warned of the fact, and would have removed themselves, so as to render service impossible. The master should have allowed us for these subpœnas, which we only made use of when absolutely necessary. As to these short-hand writers' notes, they have been frequently allowed: *Clark* v. *Malpas*, 31 Bev., 554; *Malins* v. *Price*, 1 Phill., 590. The taxing-master in England has informed the master that costs for short-hand writers' notes are allowed. It was most useful to counsel in this case. It would have caused great delay and consequent expense if counsel had been obliged to take down notes of the evidence. As to the expenses of witnesses, some were called whom it turned out not to be necessary to examine. It was very uncertain what amount of proof would be required for some