THE MASTER:—The bill of costs sued upon was incurred in respect of an action brought by plaintiff as solicitor for defendant. That action was dismissed by the trial Judge. His decision was reversed by the Court of Appeal, and a further appeal to the Supreme Court of Canada was quashed. The taxed costs were paid to the now plaintiff. They amounted to $1,264.73. Defendant had also paid $126 and given a note for $82.50, making in all $1,473.23. At the end of the litigation plaintiff rendered a bill for $1,755.89. He gave credit for the above $1,473.23. This left a balance of $282.66. For this, as well as for the $82.50 note, which was not paid, the present action was brought.

The bill was rendered more than a year ago, and no order for taxation was taken out, because negotiations were pending for settlement, it is said.

On 2nd March defendant commenced an action in a County Court to recover back from plaintiff $173.04, being moneys received by plaintiff to use of defendant. Plaintiff appeared in the County Court action, and then on 13th March commenced this action in the High Court to recover $370.33. In this latter action defendant appeared. . . .

The motion for summary judgment is based on the fact that the bill has been rendered more than a year ago, and is therefore prima facie admitted, as no order has been taken out for taxation.

Defendant has made affidavit that plaintiff, through pressure, and pending the appeal to the Supreme Court, induced him to give a mortgage for $1,000, on the representation that if that appeal were successful there would in some way be something left for him out of the wreck, through the mortgage. Defendant also denies that he ever consciously signed a retainer; and further alleges that plaintiff "took up the case on condition that he was to get his costs out of defendants; that if we failed all I would have to pay was the defendants' costs. It was on this understanding he went into it."

Mr. Moss argued that the agreement set up by defendant could not be heard as a defence to plaintiff's action, because it was champertous and savoured of maintenance. He cited Anson on Contracts, 10th ed., p. 216, . . . With this contention I am unable to agree. The agreement alleged is