

an allowance. I think that this plaintiff was a commissioner in charge of the area charged with the work, and I have dealt with that view.

6. The defendant has for the first time before us raised an objection to another matter which appears in the accounts of the commissioner. He goes behind the assessment made in the case by the assessors for this purpose. In an account of \$2,386.40 for the expense assessed on \$52,466.17, the aggregate valuations, the plaintiff's lands being valued at \$3,807.75, there is a sum of \$16 to be deducted, he says, from the former sum.

It is necessary to turn to a memo. printed on page 108 of the printed case which looks like an exhibit put in evidence at the trial but it is not. It is a compilation prepared from a book put in evidence for the purpose of proving the proceedings of the commissioner, and those pages were marked. But in it are also the commissioner's or clerk's accounts of the items of the cost. No reference was made at the trial to these pages from which the person collated that exhibit, embracing the accounts of the commissioner, and no explanation was required of the plaintiff when he was on the witness stand and possibly could have explained the matter. It was proved that the expenditure assessed for was paid. Moreover, in a letter written before the trial, p. 116, the solicitor for plaintiff wrote as follows (Jan. 16th, 1910):—

“If your clients object to specific items included in the assessment, and you will let me know what, I will undertake, if they are not assessable, the rate will not be enforced to the extent represented by such items, and Mr. Corbett will, if you require, furnish any reasonable indemnity against the collection of your client's share of any such objectionable items.” That would have been a fitting time to use the industry evinced since the trial. I think that these pages of that book were not put in evidence. However, it is contended that an item of \$8 paid for work appears twice in the clerk's accounts by a clerical mistake. It is nothing but a clerical mistake if it is one at all. Then there were some materials left over, \$5 worth and \$3 worth, disposed of to a third person, which the commissioner is debited with in the book kept by this clerk, but the work is not credited with. The cost of these materials was properly included in the expense when they were procured, and in the assessment, but it is contended that the remnants having been left over should have been credited. They could