

North-West Territories.

SUPREME COURT.

NORTHERN ALBERTA JUDICIAL DISTRICT.

Rouleau, J.]

MONGENAIS v. HENDERSON.

[Oct. 28, 1897.

Costs—Taxation—Counsel fees—Practice in N.W.T. as to setting cause down for trial differs from English practice.

Appeal by the defendant, Henderson, from the Clerk of the Court to the Judge against the disallowance by the Clerk, on taxation of costs, of fees for brief, including counsel fee, advising on evidence and fee with brief at trial.

On June 23, plaintiffs took out an order to "set this cause down for trial at the next sittings of this Honorable Court, commencing on Tuesday the 2nd day of November, 1897 . . . and that advocates for the plaintiffs do give to the advocates for the defendants eight days' notice of such trial, after which the cause may come on to be heard."

On October 22nd the plaintiffs with the consent of the defendant Henderson procured an order to discontinue as against him "on payment of his costs forthwith after taxation." On the taxation of costs all items respecting brief, counsel fee, advising on evidence and counsel fee with brief at trial were disallowed by the Clerk, on the ground that the notice of trial provided for in the order setting down had not been given.

On appeal it was contended for plaintiffs that cause had not been set down, and that defendant was not entitled to costs of brief until after notice of trial given: *Freeman v. Springham*, 32 L.J. C.P. 249; *Cooper v. Boles*, 5 H. & N. 188.

For the defendant it was contended that the practice in the North-West Territories in this matter differed from that in England. The order setting down virtually covered the English notice of trial and order entering.

ROULEAU, J.: The English practice is set out in E.M.R. 435, 436, 439 and 444. Our procedure is laid down in J. O., section 154, which provides that "After the close of the proceedings the plaintiff may at any time, on notice to the defendant, apply to the Judge for and obtain an order setting down the cause for trial . . . at such time and place as the Judge shall direct. . . . But if such application be not made within three months after the close of the pleadings, the defendant on notice may apply for and obtain an order to set the cause down for trial."

It is quite clear that the practice in the Territories with regard to setting a cause down for trial differs from the practice in England in that behalf. With us the order setting down takes the place of the English notice of trial and order entering. No importance is to be attached to the fact that in the order setting down, provision is frequently made for notice of trial before hearing. This notice is a mere matter of courtesy, and the order is not