

against the defendant, and for an order setting aside the judgment.

Shirley Denison, K.C., for the defendant, applicant.

H. S. White, for the plaintiffs, contra.

HON. MR. JUSTICE KELLY:—On the evidence adduced I do not think summary judgment should have been given in this case. The defendant shewed a reasonable ground for his objection to the claim put forward by the plaintiffs that the \$1,800 directed by sec. 6 of 2 Geo. V., ch. 125, to be paid by the township of Tilbury East to the defendant as his costs as between solicitor and client, in the litigation therein referred to, was intended to be in payment of plaintiffs' solicitor and client costs against him in that litigation, and that they are entitled to all of that sum.

Defendant's objection is *bona fide*, and of such a kind that opportunity should have been afforded of disposing of the matter in dispute in the ordinary way, and not on a summary application for judgment.

Then as to the items in the endorsement on the writ of summons, other than the \$1,800 item, defendant has taken the objection that those items are subject to taxation before judgment being given upon them, and his objection is well taken.

For these and other reasons the judgment should, in my opinion, be set aside.

It is stated that the township, in whose hands the \$1,800 or part of it is, has been notified of the solicitors' lien claimed by plaintiffs, and that defendant acknowledges such lien to the extent of whatever may be the true amount due by him to the plaintiffs.

In view of this the money should not be withdrawn from or paid over by the township pending the determination of the questions in dispute.

The costs of this application and of the motion for judgment now set aside are reserved to be disposed of at the trial or other final disposition of the matter.