SECOND DIVISIONAL COURT. DECEMBER 10TH, 1918.

*FLEXLUME SIGN CO. LIMITED v. GLOBE SECURITIES CO.

Costs—Counsel Fees—Taxation between Party and Party of Defendants' Costs of Several Actions Stayed to Abide the Result of another Action—Right of Defendants to Give Notices and Set Actions down for Trial—Counsel Fee Allowed in each Action—Quantum—Interference with Discretion of Taxing Officer—Special Circumstances—Appeal to Divisional Court from Order of Judge in Chambers on Appeal from Taxation—Right to Appeal without Leave—Rule 507 (2).

An appeal by the defendants from an order of MEREDITH, C.J.C.P., in Chambers, on appeal from the taxation of the defendants' costs of the above and eight other actions, brought by the same plaintiffs against nine different defendants, reducing the amounts of counsel fees allowed to the defendants by the Taxing Officer.

The actions were for infringement of a patent for an invention.

An action was brought by the plaintiffs—not one of the nine actions—against the Macey Sign Company Limited; it was tried by SUTHERLAND, J., who, on the 29th May, 1916, dismissed it: Flexlume Sign Co. Limited v. Macey Sign Co. Limited (1916), 10 O.W.N. 305.

The nine actions had been commenced before judgment was given in the Macey action. On the 1st June, 1916, the defendants in the nine actions gave notices of trial and entered the actions for trial. On the 7th June, the plaintiffs moved before the Master in Chambers to stay the trial of the nine actions. The motion was refused. The plaintiffs appealed, and upon the appeal BOYD, C., on the 21st June, 1916, stayed the proceedings in the nine actions until the result of an appeal in the Macey case should be known, on the plaintiffs undertaking that they would allow judgment to be entered for the defendants with costs if the appeal in the Macey case should be determined against the plaintiffs: Flexlume Sign Co. v. Globe Securities Co. (1916), 10 O.W.N. 380.

The appeal in the Macey case failed: Flexlume Sign Co. Limited v. Macey Sign Co. Limited (1917), 12 O.W.N. 89.

The nine actions were accordingly dismissed with costs to the defendants; and on the taxation of these costs the Taxing Officer allowed a counsel fee of $100 in each action. On appeal MEREDITH, C.J.C.P., reduced the amount to $100 as counsel fee for and in all the nine actions.