

LOUNT, J.

AUGUST 15TH, 1902.

WEEKLY COURT.

RE WICKETT.

*Solicitor—Costs—Consolidation of Actions.*

Appeal by the client from the certificate of the taxing officer at St. Thomas allowing costs of two actions upon a taxation between solicitor and client. The appellant contended that the solicitor should have consolidated her two actions into one, alleging that both actions rested on the same transactions.

F. A. Anglin, K.C., for appellant.

Shirley Denison, for respondent.

LOUNT, J., held, that the officer was right: see *Niagara Grape Co. v. Nellis*, 13 P. R. 181, 258, per Osler, J.A., and Street, J. The questions in the two actions were not all substantially the same. The fact that the cases were tried together does not advance this. The nature of the actions must be considered, the facts before the solicitor, the pleadings in both actions, and the evidence in preparing for trial, to determine the solicitor's course. A change of solicitors took place after issue of writs, but before appearance, but neither at this stage nor any stage before trial would the solicitor have been justified in moving to consolidate, nor would it have been ordered, and consolidation is a matter of discretion, and made as a favour to and for the benefit of defendants. The solicitor acted with reasonable judgment and discretion in not moving to consolidate, and should not be deprived of his costs. See *Smith v. Harwood*, 17 P. R. 36. Appeal dismissed with costs.

Murphy, Sale, & O'Connor, Windsor, solicitors for appellant.

McLean & Cameron, St. Thomas, solicitors for respondent.

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TRIAL.

BAXTER v. JONES.

*Contract—Negligent Performance—Fire Insurance—Compromise.*

Action for damages sustained by plaintiffs through the negligence of defendant, who promised and undertook with plaintiffs, that if certain insurances against loss by fire were effected through him he would see after the insurance and