

The judgment of the First Divisional Court of the Appellate Division, *Jones v. Township of Tuckersmith and Re Jones and Township of Tuckersmith* (1915), 33 O.L.R. 634, was reversed by the Supreme Court of Canada, and the applicants, under the judgment of that Court, were entitled to the costs both of the action (in which they were plaintiffs) and the application to quash (twice heard) and appeals in relation thereto.

The applicants' costs of the action, in the Supreme Court of Ontario, were taxed at \$420.29; and their costs of the motion to quash in the High Court Division and the Appellate Division were taxed at \$197.20.

The present appeal was taken with a view to increase the latter amount.

William Proudfoot, K.C., for the appellants.

W. Lawr, for the township corporation, the respondents.

SUTHERLAND, J., in a written judgment, after setting out the facts, took up the items involved one by one:—

(1) Counsel fee on the original argument of the motion to quash the by-law, charged at \$75, allowed at \$50. The Taxing Officer had, in his discretion, considered \$50 sufficient, and there was no sufficient reason for interference.

(2) Counsel fee on argument of appeal from the order quashing the by-law, charged at \$120, and allowed at \$50. For the same reason, there should be no interference.

(3) Counsel fee for attendance of counsel before the appellate Court to settle the terms of the order which had been made, charged at \$50, and disallowed in toto. In the absence of a special direction from the Court, the counsel fee on the argument of the appeal must be held to include this attendance.

(4) Fee at trial of action on argument there (the second argument) of the motion to quash, charged at \$150, and disallowed in toto. The fee (\$100) allowed to counsel at the trial of the action was sufficient to cover the argument of the motion, and adequate for all purposes.

(5) and (6) "Judgment \$10, correspondence \$5," disallowed in toto. The same amounts were allowed in the taxation of the costs of the action; and the motion and the action were so interwoven that it would not be proper to allow double fees. The Taxing Officer exercised a proper discretion in taxing these items off the bill.

(7) Preliminary proceedings on the second appeal to the Appellate Division, charged at \$15, disallowed in toto, and properly so for the same reason as under (5) and (6).