

3. The plaintiff was entitled to an order for the delivery over as asked for; and also to have an account taken of the dealings between himself and the defendant.

Further directions and costs reserved.

Culver, Q.C., and *Taylor*, for plaintiff. *Munson*, Q.C., for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.]

ARTHUR v. NELSON.

[Nov. 28, 1898.

Practice—Service of summons, to abridge time for setting down appeal, on solicitor who took out a taxation summons in same matter—Rule 30.

Appeal by plaintiff from an order of McColl, C. J., made 7th Nov., 1898, dismissing application to discharge order of Martin J., made 31st Oct., 1898, abridging the time for setting down defendants' appeal from judgment of Walkem J., delivered 1st Oct., quashing Nelson City Electric Light By-law. The ground of the application was want of proper service of the summons leading to the order of Martin, J. On 12th July, application was made to Walkem, J., under sec. 88 of the Municipal Clauses Act, for a rule to quash the above by-law. On that occasion an affidavit by Mr. Macdonald of Nelson, in which he stated that he was the solicitor for the applicant, was read. By some mistake the rule was not taken out in proper form, a Chamber summons of some kind being used. On the return day, objection was taken to the form of the summons, and Walkem, J., refused to deal with or hear the matter, until the rule had been issued in due form. An order dated 4th August, was taken out directing that the applicant should pay the costs of that "argument." The rule was then taken out, argued, and judgment given on 1st Oct., in favour of the applicant, but as no costs were to be taxed under the judgment, the proceedings thereunder were terminated at an early date.

In the meantime, however, the taxation of the costs under the order of Walkem, J., made 4th August, was being proceeded with, and an appeal was taken from the decision of the Registrar by means of a summons issued 18th August, by Mr. Duff, who in such summons described himself "solicitor for the applicant." The summons of 18th August had not been disposed of. The corporation desiring to make application to abridge the time for appealing from the judgment of 1st October, served, Mr. Duff with the summons, and the Chief Justice made an order abridging the time. The plaintiff appealed on the ground that Rule 30 does not authorize the other side to treat the solicitor who took out a taxation summons in respect