Devereux v. *Kearns*, 11 P. R. 452, discussed.

W. R. Meredith, Q.C., and *R. M. Meredith*, for the plaintiff.

Hoyles, for the defendants.

Boyd, C.] [June 7.

MILLAR v. CLINE.

RE MILLAR, A SOLICITOR.

Solicitor and client—Order for taxation—Taxing officer, powers of—Order for payment over.

Under the common order for taxation of a solicitor's bill of costs, Form 136, O. J. A., a taxing officer has power to investigate and dispose of questions of carelessness, impropriety and negligence in the conduct of the business to which the bill relates; and the officer's certificate is conclusive as to all matters within his jurisdiction.

Where, therefore, after action brought upon a bill of costs there has been a taxation under such an order, there is an end to litigation, and it only remains to enforce payment of what has been found due, which may be done upon a subsequent application by the solicitor.

The original order for taxation may reserve questions of retainer, and negligence, in a proper case, but if it does not, the client should not be allowed a double chance of defeating the solicitor's claim by proceeding to defend the action on the ground of the solicitor's negligence, or other grounds, after the conclusion of the taxation.

Re Clark, 9 P. R. 337, and *Macdonald* v. *Piper*, 10 P. R. 586, distinguished.

Hoyles, for the plaintiff.

Dewart, for the defendant.

Robertson, J.] [June 7.

MACKAY v. MACFARLANE.

Action begun without authority—Dismissal—Costs—Procedure after judgment—Creditors.

An action was brought on behalf of the plaintiffs and all other creditors of V. to obtain from the defendant, the assignee of V. for the benefit of creditors, an account of all moneys received by him from the estate of V., and for payment of what might be found due. Judgment was pronounced in favour of the plaintiffs, directing a reference to take the accounts, and reserving further directions and costs. The judgment was not issued, and after it was pronounced, the defendant and the plaintiffs' solicitor both died. The executrix of the defendant obtained from a local judge a summons to compel the plaintiffs to revive the action, or to dismiss it with costs. On the return of the summons, counsel for the plaintiff stated that they would consent to an order dismissing the action without costs, but if that were not agreed to, that they desired an enlargement to show that the plaintiffs had never authorized the bringing of the action, and that they had no knowledge of it until the service upon them of the summons now in question. The local judge, however, made an order dismissing the action with costs.

Held, on appeal, that the local judge would have been justified in dismissing the action without costs, if it had been shown to him that it was brought without the authority of the plaintiffs, and that he should have granted an enlargement for that purpose, and if he had, after the enlargement, been satisfied of the truth of the plaintiff's statement, he should have discharged the summons; for a party should not be required, against his will, to continue in his name an action which he never authorized to be begun.

The old Chancery rule that an action can be dismissed on the application of a plaintiff who has not authorized his name to be used, only on payment of costs, is not now in force, but the plaintiff is now entitled to an order to stay the proceedings without payment of costs.

Reynolds v. *Howell*, L. R. 8 Q. B. 398, and *Nurse* v. *Durnford*, 13 Chy. D. 764, followed.

Held, also, that an action of this kind should not have been dismissed after judgment pronounced, for the creditors other than the plaintiff should not have been deprived of the benefit of the judgment.

A. H. Marsh, for the appellants.

D. W. Saunders, for the respondent.

Chy. Div. Ct.] [June 17.

BROWN v. WOOD.

Trial by jury—Discretion of trial judge—C. L. P. Act, s. 255.

The trial judge has, by sec. 255 of the C. L. P. Act, a discretion to try any case with, or