

bill, but which might be in part covered by some general heading in the party and party bill.

The discretion given to the Taxing Officer at Toronto in cases in the Supreme Court and to the Judge of the County Court in County Court cases, in party and party taxations, has no place in a taxation between the solicitor and his client. The officer taxing must deal with all questions that arise.

As between solicitor and client, outside of the formal matters as to which the party and party tariff forms a guide, only to be departed from in exceptional cases, the taxation between the solicitor and his client resolves itself into an assessment on the quantum meruit basis, into which all factors essential to fair play and justice enter.

Examination for discovery were had in the County Court actions covered by the bill, and the bill contained, in the disbursement column, the examiner's fees. These were properly allowed, though they were not paid at the time the bill was rendered—they were paid before the taxation. *Sadd v. Griffin*, [1908] 2 K.B. 510, distinguished. In any case where there is liability on the part of the solicitor and no dishonesty, the mere fact that the amount has not been paid ought not to preclude recovery.

The solicitor intended an item in his bill to be, "Counsel fee at trial—lasted all day, 10.30-5—\$50." By a clerical error, the words "counsel fee at" were omitted. The fee charged was recovered from the opposite party in one of the actions, and was brought into account. The error was properly corrected—and the item allowed—no case determines that a clerical error cannot be corrected.

The appeal should be dismissed with costs.

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KELLY, J.

MAY 14TH, 1920.

**\*ELLIS v. HAMILTON STREET R.W. CO.**

*Street Railway—Injury to Passenger Alighting in Highway between Stopping Places—Street-car Stopped at Point between Stopping Places—Duty of Company to Safeguard Passenger—Passenger Injured by Motor-vehicle—Municipal By-law—Motor Vehicles Act, sec. 15—Findings of Jury—Negligence—Contributory Negligence—Evidence.*

Action against the street railway company and one Stiles to recover damages for injury sustained by the plaintiff by being struck by a motor-car owned and driven by the defendant Stiles