

British North America Act, and an appeal from such decision was brought on in the regular way ; but, as it plainly appeared to the Court of Appeal that the decision involved no such question, and the certificate of the Attorney-General appeared to have been granted inadvertently in consequence of an authentic copy of the reasons for the judgment of the court below not having been brought before him, the appeal was quashed, and with costs to be paid by the prosecutor, the appellant, whose proceeding was in the nature of a *qui tam* action.

A. E. O'Meara, for appellant. *DuVernet*, for defendant. *J. R. Cartwright*, Q.C., for Attorney-General.

Practice.]

ELGIE *v.* BUTT.

[June 2.

Costs—Set-off—Interlocutory costs—Solicitor's lien—Rule 1165—Judgment—Order for set-off—Necessity for.

The costs of a motion, and appeals following, to discharge the defendant out of custody under an order for arrest before judgment, are properly interlocutory costs, though partly incurred after judgment ; and where such costs are awarded to the defendant, they ought to be set off against the judgment which the plaintiff has obtained against the defendant in the action, and which the defendant is unable to pay. As against such a set-off, the defendant's solicitor has no lien on the costs which the plaintiff has been ordered to pay, and such costs may be ordered to be set off or deducted, as provided in Rule 1165. In this case the order allowing the defendant costs was not made until after judgment, and therefore an application to the court for a direction to set off was necessary ; had the order been made before judgment, the taxing officer would have made the deduction.

J. H. Moss, for plaintiff. *W. M. Douglas*, for defendant.

HIGH COURT OF JUSTICE.

Street, J.]

DYER *v.* EVANS.

[April 5.

Division Courts—Jurisdiction of—Prohibition.

After the recovery of judgment in a Division Court against the primary debtor and garnishee, but before the payment of the amount recovered, the debtor made an assignment for the benefit of creditors, whereupon an application was made by the garnishee to the Judge for an order discharging the debt, which was refused.

Held, that the matter being one within the jurisdiction of the Division