

THE MASTER:—The action of Barron v. Michigan Central R. R. Co. was coming on for trial in April last, when it was settled by payment of \$3,000 to the plaintiff and \$150 on account of costs to his solicitor.

When the cheques were received, the plaintiff was handed that for \$3,000, and he gave his own cheque for \$350 to his solicitor for the balance of his costs. This had been agreed on before settlement, as the solicitor says, and there is no impeachment of his affidavit in any way. He says that he asked his client at the time if he required a bill, and that the answer was: "No, never mind that. Fill out a cheque for the \$350, and I will sign it." If this is true, the client's affidavit is not candid when he says the solicitor "has retained in his hands \$350 to meet his charges."

It was argued that this was a waiver of a right to have a bill; but, in view of the cases in 18 P. R. 331 and 19 P. R. 37, Re Solicitors, it does not seem that a bill can be refused when, as here, the client (however unreasonably) repented of his generosity within a month. While he is entitled to an order, it may well be that, in view of such cases as Curry v. MacLaren, 12 O. W. R. at p. 1115, and the other authorities, he will gain nothing by a taxation. But that will be for him to consider. Under the decision in In re Walsh and Fitch, Solicitors, 7 O. L. R. 41, 3 O. W. R. 1, the solicitor will not be debarred from recovering more than \$350 if he is able to shew himself so entitled in respect of this and of the other business done for the client, as he admits on his cross-examination.

The taxation may be by one of the taxing officers in Toronto.

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CARTWRIGHT, MASTER.

JANUARY 22ND, 1909.

CHAMBERS.

### LAWLESS v. CROWLEY.

*Security for Costs—Assignment by Plaintiff for Benefit of Creditors pendente Lite—Judgment Sued on Included in Assignment—Re-assignment by Assignee to Plaintiff—Pleading—Stay or Dismissal of Action—R. S. O. 1897 ch. 147, sec. 9—Venue—Irregularity—Waiver—Costs.*

Motion by defendant for stay or dismissal of the action or for security for costs, in the following circumstances.