

were reasons for imposing terms; and it was ordered that upon the taxation the books of the solicitor should be *prima facie* evidence of the correctness of his charges; or if the books were not available that the bill should be so taxed as to throw the *onus* of impeaching any charges on the applicants.

George Bell for the executrix.

George Ritchie for the applicants.

BOYD, C.]

[Oct. 2.

SANDERSON *v.* ASHFIELD.

Costs—Action for price of work—Inferiority of work—Not subject of set-off in counter-claim.

The plaintiff claimed \$1,205, the balance of the contract price for work done, and the defendant claimed that by reason of imperfect work the balance should be reduced by \$900. The defendant was allowed \$266.54 in respect of his claim for reduction, and the plaintiff therefore recovered \$938.46.

Held, that what the defendant claimed was neither a set-off nor a counter-claim; and as the plaintiff had substantially succeeded he should get the general costs of the action and reference, less the costs incurred by the defendant in establishing the items of improper work in which he succeeded.

Cutler v. Morse, 12 P.R. 594, followed.

John Greer for the plaintiff.

Walter Read for the defendant.

Miscellaneous.

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