knock at the door, and upon opening it to rush in with a felonious intent, or under pretence of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance in order to search for traitors, and then to bind the constable and rob the house. All these entries have been adjudged burglarious, though there was no actual breaking, for the law will not suffer itself to be trifled with by such evasions, especially under the cloak of legal process. And so, if a servant opens and enters his own master's chamber door with a felonious design; or if any other person, lodging in the same house, or in a public inn, opens and enters another's door with such evil intent, it is burglary. Nay, if the servant conspires with a robber, and lets him into the house by night, this is burglary in both, for the servant is doing an unlawful act, and the opportunity afforded him of doing it with greater ease rather aggravates than extenuates the guilt.' 4 Bl. Com. 226, 227. So it has frequently been held in this country that 'to obtain admission to a dwelling-house at night, with the intent to commit a felony by means of artifice or fraud, or upon a pretence of business or social intercourse, is a constructive breaking, and will sustain an indictment charging a burglary by breaking and entering.' *Johnson* v. *Commonwealth*, 85 Penn. St. 54; 82 id. 306; *State* v. *Wilson*, 1 N. J. Law, 439; 1 Am. Dec. 216; *State* v. *McCall*, 4 Ala. 643; 39 Am. Dec. 314; Bish. St. Crimes, § 312, and cases there cited. The same was held in Ohio under a statute against 'forcible' breaking and entering. *Ducher* v. *State*, 18 Ohio St. 308."

SUPERIOR COURT.

AYLMER (district of Ottawa), June 10, 1887.

[In Chambers.]

Before WÜRTELE, J.

EGAN et al. v. THOMSON.

Costs on putting in security for costs—Costs of Motion.

HELD:—*That the disbursement and fee for putting in security for costs form part of the costs of suit and follow the issue of the cause; but the fee allowed by the tariff to the plaintiff's attorney on the motion for security for costs does not form part of such costs of suit.*

Some of the plaintiffs did not reside in the province, and the defendant moved for security for costs, which was ordered to be given by the non-resident plaintiffs. Judgment was afterwards rendered in favor of the plaintiffs, and their attorney included in his bill of costs a fee of $3.00 for attendance when the motion was made, another fee of $3.00 for attendance at the putting in of the security, and $1.00 for the Prothonotary's fee for the bond. The defendant objected to these items; and the prothonotary struck off the first, but allowed the two others. The taxation was then informally submitted by the parties to the judge for revision.

PER JUDICEM. Every non-resident who brings an action in this province is bound, under the provisions of article 29 of the C. C., to give security for the costs which the party sued may become entitled to recover from him. The putting in of such security is a necessary proceeding in the cause, and the costs thus incurred are necessary costs. They therefore form part of the costs of suit, like the costs on any other act of procedure required by the code of procedure or the rules of practice.

When the plaintiff does not voluntarily put in the security for costs, he is in default, and the defendant may take proceedings to compel him to do so. The defendant then enforces the fulfilment of an obligation due to him against a debtor in default; and when the plaintiff is ordered to give the security, he, like any other losing party, must pay the costs incurred on the judicial proceedings adopted, and that whether the recourse be by dilatory exception or by motion. He does not receive but has to pay costs on the proceedings to enforce the fulfilment of his obligation. In the present case, the plaintiffs have therefore no right to recover the fee of $3.00 payable to their attorney for his appearance on the motion from the defendant.

I maintain the ruling of the Prothonotary in his taxation of the bill of costs.

Revision refused.

J. R. Fleming, Q.C., for plaintiffs.

Asa Gordon, for defendant.