

lusion in the first notice of motion could have been tried and disposed of. What was done by the County Court Judge was at most but error in procedure, and as such was not the subject for either prohibition or injunction.

Appeal allowed with costs, STREET, J., dissenting.

Du Vernet and *Woods* for the appeal. *A. H. Marsh, Q.C.*, and *Lindsey*, contra.

Street, J.]

IN RE SOLICITOR.

[May 11.

Appeal—Consent order—Denial of consent—R.S.O. c. 51, s. 72.

An appeal by Henry S. Clarkson from an order of the local judge at Brampton. Clarkson, on the 22nd January, 1898, issued a præcipe order for the taxation of certain bills of costs delivered to him by his solicitor. The latter moved before the local Judge to set aside the order, upon the ground that one of the bills had been delivered several years before the order for taxation was made. Upon the return of this motion an order was drawn up, in the nature of a compromise, providing for the taxation of all the solicitor's bills, irrespective of any special agreements for fixed charges, and binding Clarkson not to set up the Statute of Limitations as to any of the items. This order appeared on its face to be a consent order. The appeal was on the ground that Clarkson did not consent to it. No leave to appeal was obtained from the local Judge.

Held, that the appeal could not be entertained; R.S.O. c. 51, s. 72.

T. J. Blain for the appellant. *J. H. Moss* for the solicitor.

Meredith, C.J., Rose, J., }
MacMahon, J. }

[May 11.

RONDOT v. MONETARY TIMES PRINTING CO.

Costs—Taxation—Depositions not used at trial—Counsel fee—Quantum—Review.

In an action for libel the defendants in support of their defence of justification obtained a commission and had the evidence of certain witnesses out of the jurisdiction taken thereunder for use at the trial. The evidence, however, was not used at the trial, owing to the plaintiff being called as a witness by the defendants, and admitting substantially what was stated by the witnesses in their depositions before the commissioner.

Held, that the defendants, having obtained judgment in their favour with costs, were entitled to tax against the plaintiff the costs of executing the commission, the taking of it having been, under the circumstances, not unreasonable, and the fact that it was not used not being sufficient to deprive the defendants of the costs of it.

The practice is not to interfere upon appeal with the discretion of a taxing officer as to the quantum of a counsel fee.

Swabey, for the plaintiff. *King, Q.C.*, for the defendants.