

application for administration has been made. But for a mere routine attendance, I think the special charge is not properly made. The wording of the schedule is, "On every special attendance, or for purpose of audit, \$1," from which it is plain that an attendance merely to sign an order is very different from an attendance "for purpose of audit," and that a "special attendance" must also be very different from it, when the special attendance is placed on the same footing, and is remunerated on the same scale as an attendance for the purpose of audit, which latter business must require special care and a special adjudication, quite unlike the mere granting of an ordinary fiat in a non-contentious proceeding.

In my opinion the Registrar is not entitled to the ninth item, of 50c., which is, according to the tariff, for "Attending and entering every order made or proceeding had on a special attendance, or attendance for audit by Judge."

I think also the Registrar is not entitled to the eighth item, of 10c., which the tariff allows to him for "Drawing special orders or other instruments directed by the Judge, per folio," because this is not a special order, and it is not one which can be paid for by the folio, or was intended to have been so paid. The order can only be in the nature of a fiat, and most likely is in all cases endorsed on the application or petition—"Let grant of administration be made to ——— as within prayed;" and for which the Legislature thought 50c. to be an ample remuneration, considering the very small allowances made to all persons for their services under the statute.

The rule will formally be made absolute. There will be no necessity to proceed further, as the parties stated they would be satisfied with the decision of the Court, and conform themselves to it.

MORRISON, J., concurred.

*Rule absolute.*

## CHANCERY.

(Reported by ALEX. GRANT, ESQ., Barrister-at-Law,  
Reporter to the Court.)

### ROMANES V. FRASER.

*Married woman's deeds—Magistrates interested—Evidence against certificate.*

The solicitor of the husband being City Recorder, was held not to be disqualified to take, as a magistrate, the examination of a married woman for the conveyance of her land. [SPRAGGE, C., *dubitante*.]

Magistrates interested in the transaction are not competent to take the examination of a married woman for the conveyance of her land. The solicitor of the husband is not as such disqualified.

Where, after the decease of one of the Justices of the Peace by whom an examination was taken, the other, an old man of seventy-three, gave evidence that he did not recollect and did not believe that the wife was examined as the certificate stated, the Court gave credit to the certificate notwithstanding the evidence.

[29 U. C. C. R. 267.]

This was a re-hearing at the instance of the defendants. The decree on the original hearing is reported *ante* volume 16, page 97.

Mr S Blake, for the defendant.

Mr McLennan, for the plaintiff.

SPRAGGE, C.—I entirely agree with my brother Mowat as to the weight to be given to the solemn certificate signed by the two magistrates, where-

by they declared that the married woman had been examined before them touching her consent to part with her real estate, and that it must outweigh the mere recollection of one of them, the other being dead, as to what passed upon the occasion.

I confess I do not feel equally clear upon the other point. It was the manifest intention of the Legislature to afford to married women protection against the alienation of their real estate except with their free and voluntary consent. An examination before certain public functionaries is the machinery provided for that purpose. The examination is to be apart from the husband, so as to provide for the absence of any constraining influence, and the examiners are to ascertain her own will in the matter, and to certify their own opinion:

It is evident that to carry out the intention of the Legislature in its spirit, these public functionaries should stand perfectly indifferent between the parties. Does the solicitor of the husband stand in that position? Where, even the presence of the husband is not tolerated should his solicitor be allowed to act in a judicial capacity? Consider the position of the woman. The law presumes that there may have been coercion, or that the woman may be acting from fear of coercion, even though she gives her consent. Can she feel as free to disclose her real feelings and wishes when one of those to whom she makes answer upon these points is her husband's professional agent? Whether justly or not, she will almost certainly apprehend that any appearance of disinclination on her part would be reported to her husband.

Further, a person standing in that relation to the husband would have a leaning in favor of his client, at least most men would, and might so conduct the examination as to make it less a reality than it ought to be. He would practically, as well as theoretically, be in a false position, exercising a judicial function with one party for his own client.

There seems to me, therefore, to be very grave objections to such a practice, and I must confess that I am not convinced of its propriety by what has been done in England, and I hope that solicitors will not in future place themselves in so anomalous a position. On the other hand there is force in the consideration, that I believe weighs with my learned brothers, that the security of titles might be endangered by holding conveyances so executed, not duly executed—solicitors conceiving probably that they were free to act as examiners if magistrates; and, if aware of the practice in England, holding that they were warranted in adopting the like practice here. I am not sorry, therefore, that my learned brothers have been able to come to the conclusion at which they have arrived.

STRONG, V.C.—As to the evidence of Mr. Donald Aeneas Macdonell, I entirely agree that my brother Mowat's judgment ought to be conclusive, and that it must be taken that the *prima facie* evidence afforded by the certificate is not displaced. With reference to the other question I think it established by the evidence that Mr. Archibald John Macdonell, one of the examining justices, was the solicitor in the mortgage transaction of Mrs. Fraser's husband the mortgagor; and upon this the defendant contends that the