

setting aside præcipe order and directing delivery by the solicitor of bills of costs within two weeks. Applicant to have costs of both applications against the solicitor.

BOYD, C.

MARCH 27TH, 1903.

CHAMBERS.

HALLIDAY v. RUTHERFORD.

*Costs—Scale of—Action in High Court—Payment of \$300 into Court—
Inquiry as to Creditors' Claims—Certificate for County Court
Costs—Refusal of Set off.*

The Master in Chambers, having summarily determined claims to a sum of \$300 paid into the High Court (1 O. W. R. 816) afterwards gave a certificate shewing that he had ruled that plaintiff was entitled to costs on the scale of the County Court without any set-off to defendant. Defendant moved to set aside the certificate.

John MacGregor, for defendant.

F. C. Cooke, for plaintiff.

BOYD, C.—By the Law Reform Act of 1868 the equity jurisdiction of the County Court was abolished, and provision was made for carrying on such cases as were of minor importance in the Court of Chancery, with provision for a lower scale of costs—which were approximately such as would be taxed in a County Court equity action. This lower jurisdiction in Equity was retained in the Superior Court till 1896, when equitable jurisdiction was restored to the County Court: 59 Vict. ch. 19, sec. 3 (O.)

A phrase has remained from this state of equitable jurisdiction between 1868 and 1896, which has been used by the Master in this case. He has awarded costs to plaintiff on "the lower scale." That per se imports taxation on the footing of the County Court tariff, but excludes the allowance of any set-off of costs. The Master's intention in this case was so to award the costs that the plaintiff should tax County Court costs without any diminution. That has been made plain by a supplementary certificate, which is now moved against.

It was competent for the Master so to make plain his award of costs, but his meaning was plain enough without such a certificate.

Apart from discretion, less was given to plaintiff than on the merits he might have claimed. The County Court has equitable jurisdiction where relief is sought in respect of any