

## CANADIAN NOTES.

## COSTS IN CRIMINAL CASES.

*Sec. 1.—Costs Payable out of Official Funds.*—See Code sec. 1044(4).

*Sec. 2.—Order for Payment of Costs by Defendant or Prosecutor.*

Costs and expenses of prosecution, allowance for loss of time, etc., may be ordered to be paid by the party convicted. See Code sec. 1044.

Where judgment is given for defence in cases of libel, the defendant recovers costs from prosecutor. See Code sec. 1045.

*Origin of Enactment.*—The same provision was contained in the Criminal Procedure Act, R.S.C. 1886, ch. 174, secs. 153 and 154, and originated in the Criminal Libel Act (Can.) (1874), 37 Vict. ch. 38, secs. 12 and 13.

*Costs from the Prosecutor.*—The mere fact that the Crown prosecutes by a counsel it appoints for the purpose will not necessarily make it a proceeding not carried on by or for a private prosecutor, within the proper meaning of the statute, otherwise every criminal prosecution in Ontario would be a Crown prosecution, and this enactment be of no kind of use. Adam Wilson, J., in *R. v. Patteson* (1875), 36 U.C.Q.B. 129, 150.

*Taxation.*—In a Quebec case the plaintiff had been prosecuted by defendant in a Criminal Court for defamatory libel and acquitted. No demand was made when the verdict was given for a condemnation of defendant for costs, but plaintiff afterwards sought to recover them by action. After hearing the cause in the Superior Court, the presiding Judge discharged the *délibéré* to enable the plaintiff to have his costs taxed before the Judge who presided at the criminal trial, which was done, and the cause was reheard. It was held that plaintiff could claim his costs and disbursements from defendant by an ordinary action, though he had not asked for a condemnation against defendant therefor at the time of the verdict; also that the Judge who presided at the criminal trial could, even after proceedings in such action, tax such costs and disbursements. *Mackay v. Hughes* (1901), 19 Que. S.C. 367 (Sup. Ct.); and see sec. 1047.

In British Columbia, following the practice there in civil cases, the costs of taking evidence under commission abroad on behalf of the defendant in a prosecution for criminal libel cannot be taxed against