same shall be in full of all monies owing by Escott upon any account whatever. That in the suit of Escott against Fraser, each party shall pay his own costs. That each of the parties shall pay his own witnesses on the arbitration, and that the other costs of the arbitration, $60, shall be paid by Escott, being for arbitrators fees, $56, and for room, $4. And that the parties shall within 15 days next ensuing the date of the award, execute releases one to the other.

Escott swears that on the first day of the arbitration Clinies did not attend the arbitration, notwithstanding which the other two arbitrators proceeded and examined a number of witnesses. Fraser swears this was so, but that when Clinies came he was shown the whole of the evidence taken, and read it.

It appears the arbitration lasted four days after this, being five days altogether, and that Escott was present, as I gather, during the whole time and probably at this very time and occasion, and although he remonstrated fully against other things, he never made any objection to this.

The second objection then I cannot now entertain. The sixth objection has nothing in it. The fifth objection was not pressed. The first objection is of no weight, because the submission taken in connection with the bond was, I think, to the three arbitrators or any two of them. All three therefore had the right to participate. The fourth objection as to costs is only entitled to prevail as to the particular portion. This leaves the third objection only remaining to be considered.

As to the third objection, the charge or conviction for selling whiskey was not specially referred, the words are general, all and all manner of actions, &c., and the award is that Escott shall pay Fraser $8 for costs incurred in the suit entered by Fraser against Escott for selling whiskey without license, which charge the arbitrators consider sustained by the evidence before them. The affidavit shews that Escott was convicted of this offence by magistrates and fined $20 and costs, from which conviction he appealed to the Quarter Sessions; and it was while this appeal was pending and undetermined, and without the leave of court, that the arbitrators took it up and adjudicated upon it, as they unquestionably did.

By the Municipal Act, sec. 253, one half of the penalty goes to the informer and the other half to the municipality. And the question is whether this is an exercise of power beyond the authority of the arbitrators.

I have no doubt on this exposition of the law that a prosecution for selling whiskey without license cannot be compromised without the leave of the court, and therefore cannot form the subject of a reference to arbitration, because it is a matter of public concern and the prosecutor has no claim or interest in it for any private injury to himself, so that he could sustain an action against the party charged and recover damages. But the offence was not submitted although it certainly was tried for the purpose of determining the liability of the parties as to costs. If this could be done, the same might be done also as to the prosecutor's share of the penalty. But this would be manifestly against public policy, and so I think is the former, for it lessens the prosecutor's zeal in completing the prosecution which he has begun, and it is recompensing him for what he has begun but not completed.

This portion of the award I conceive to be separable from the rest, and as the defect appears on the face of the award itself, I may dispose of it without finally determining those formal and preliminary questions, which might have occupied me for some considerable time, perhaps not profitably, unless it can be said that every investigation of law must be presumed to be an interesting duty.

The rule moved on behalf of Escott will therefore be absolute, setting aside so much of the award as relates to the $8 costs of the prosecution and also as to the other item of $60 costs, and discharged as to the rest, but without costs on either side. And the rule moved on behalf of Fraser will be absolute, less the items before mentioned.

Rules accordingly.

COMMON LAW CHAMBERS.

(Reported by Robert A. Harrison, Esq., *Barrister-at-Law.)*

Gordon v. Robinson.

Practice as to costs under the 22nd and 23rd rules of pleading T. T., 1856.

[Chambers, Aug. 26, 1865.]

The defendant in this case having obtained leave to plead several matters on which issue had been joined, subsequently obtained leave to add another plea containing matter of defence that had arisen subsequent to the institution of the suit, the plaintiffs thereupon filed a replication confirming the truth of this plea, and praying judgment for costs. The master declined to tax the costs of suit, or to enter judgment, while the other issues remained undisposed of upon the record.

J. A. Boyd, for the plaintiff, applied in Chambers to have these issues struck out, and for directions to the master to tax the costs, as if there had been no such other issues.

J. B. Read, for the defendant, contended that they were entitled to the costs of pleading several matters, in the same way as if the issues upon all the pleas except the one confessed had been found in their favor.

A. Wilson, J., inclined to this view, and made an order that all the pleas, and the issues thereon, except the plea confessed upon the record, should be struck out, and that the costs of such pleas should be set off against the plaintiff's general costs of the cause, to be taxed upon entering up judgment. No costs of the application to either party.

Kerr v. Cornell.

Certiorari—Costs of application for same.

[Chambers, Aug. 30, 1865.]

This cause was removed by *certiorari* from the Division Court into the Common Pleas, at the instance of the defendant, who succeeded in obtaining a verdict in the court above. On the