

## COSTS OF SOLICITOR AND COUNSEL ACTING IN PERSON.

point was decided in favour of an attorney in this Province. While a solicitor acting in person is thus assured of his right to recover profit costs, it seems somewhat anomalous that a barrister acting in person should not also be entitled to recover for professional services rendered in his own behalf, and yet it seems equally settled by the authorities, as they at present stand, that he cannot. In *Smith v. Graham*, 2 U. C. R. 268, it was laid down that a counsel acting in person cannot recover any fee for his services from the opposite party, and the same rule was re-affirmed by the Queen's Bench in *Re North Victoria Election*, 39 U. C. R. 147; but in *Henderson v. Comer*, 3 U. C. L. J. 29, it was held that this rule did not prevent the recovery of a counsel fee, where the partner of one of the litigants acts as counsel.

In *London Scottish Permanent Benefit Society v. Chorley*, it was argued that costs are only allowed by way of indemnity for expenses incurred; that in fact "costs" mean "what it has cost," and a *dictum* of Bramwell, B., to that effect in *Harrold v. Smith*, 5 H. N. 381, was relied on. Denman, J., however, was of opinion that "the word 'costs' may well apply and include a fair indemnity for the labour and skill a solicitor has had to bestow upon his own case, and which, if he had not conducted his own case, he would have had to pay another solicitor for. His time is valuable, and he bestows his labour and skill as a solicitor when prosecuting or defending a claim in person. Hence 'costs' may fairly include an indemnity for work done by him which would have had to be done by another solicitor supposing he had not done it himself."

If, for the word "solicitor" in this passage, we substitute the word "barrister," it is plain that the reason upon which the right of a solicitor acting in person to recover profit costs is based, would apply

with equal cogency to the claim of a barrister acting in person to recover for his services.

Every suitor may perform for himself, if he is able, the professional work which is ordinarily transacted by solicitors, and he may also, if he is able, perform for himself the duty of an advocate. It is, generally speaking, only because non-professional suitors have not the ability to conduct their own causes that they find it to their interest to entrust them to professional lawyers; but while a non-professional suitor may act for himself, he cannot act either as attorney, or counsel, for any other person. In this respect there is no distinction whatever between the two branches of the profession.

In one point of view it might be said that attorneys' and solicitors' fees are based upon the principle that they are intended as a recompense for services rendered as an attorney, and that as no man can act as attorney, except for somebody else than himself, the fees of an attorney cannot be said to be earned when he is not acting as an attorney, but in his own person, and on his own behalf. But Mr. Justice Manisty, we think, very properly laid down the rule that a solicitor acting in person is entitled to recover profit costs because he is a solicitor.

A non-professional person acting in person is not entitled to recover solicitor's fees, even though he discharge duties ordinarily discharged by a solicitor, because he is not a solicitor. The right to recover those fees depends, not merely on the performance of the particular services for which they are provided as a remuneration, but on the person by whom they are performed; the person discharging them, whether acting in person or for another, must be a practising solicitor.

The same line of argument, it seems to us, may properly be adopted with regard to counsel fees. A counsel conducting his