the administration of her father's estate. A next friend was appointed who was a friend of the defendant's, the executor's and trustees of the will, and guardians of the infants, and accepted the office at their request, and on an indemnity from their father. The solicitors on the record for the plaintiff were the solicitors of the executors. On an application in the name of the infant by M., the husband of her paternal aunt, as next friend *pro hâc vice*, to remove the next friend and substitute M.

Held, that although nothing was alleged against the character, circumstances or conduct of the next friend, his connection with the executors made him an improper person to act as next friend, and that he ought to be removed and M. substituted.

Per COTTON, L. J.—It is a settled principle that a party ought not to be both plaintiff and defendant. Mr. O. (the next friend), no doubt is a respectable gentleman who intends to do what is right, but he is put in by the trustees and executors. On being put in by them he gets an indemnity from their father. I do not think that is itself material, but it shows how completely he is connected with them, and he leaves the matter entirely with his solicitor who is acting with his executors. There ought not to be either in form or substance the same person both plaintiff and defendant; there ought to be some person acting independently as plaintiff against the defendant.

IN RE PICKERING.

PICKERING v. PICKERING.

Imp. O. 31, *r.* 11 (1875)—*Rule* 221.

Production—Sealing up entries—Partnership books.

[L. R. 25 Ch. D. 247.

The defendant and W. P. were partners. W. P. died and appointed the defendant his executor. In an action by a person interested under W. P.'s will against the defendant a decree was made for administration of W. P.'s estate, and for taking accounts of the partnership as between the defendant, as surviving partner, and W. P.'s estate. An order having been made for the production of the partnership books by the defendant, he claimed to seal up such entries as related to his own private affairs.

Held, that, inasmuch as the plaintiff and defendant were both interested in the partnership property, the defendant was not entitled to the ordinary power to seal up such entries as he might swear to be irrelevant to the matter at issue in the action, but only to seal up entries which related to certain specified private matters mentioned in the order.

IN RE INDERWICK.

Solicitor—Order for delivery and taxation—R. S. O. c. 140, *s.* 40.

[C. A.—L. R. 25 Ch. D. 279.

Where an agreement has been made for the remuneration of a solicitor, and the solicitor alleges that the remuneration was for non-professional work, the person chargeable cannot obtain the common *ex parte* order for the delivery and taxation of the bill of costs.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

Ontario.]

GRASETT v. CARTER.

Boundary line—Equitable estoppel—Description of land by reference to plan—Construction of deed—Extrinsic evidence of boundaries—Conflicting evidence—Duty of Appellate Court.

T. was the owner of lot nine, and C. owner of lot eight adjoining it on the south. Both lots had formerly belonged to one person, and there was no exact indication of the true boundary line between them. T., being about to build, employed a surveyor to ascertain the boundary. The surveyor went to the place, and asked C. where he claimed that his northern boundary lay. C. pointed out an old fence, running part of the way across the land between the lots, and an old post, and said the line of the fence produced to the post was his boundary line. The surveyor then took the average line of the fence and produced it till it met the post. He staked out this line, C. not objecting. A few days afterwards, T., with his architect and builder, went on the ground, and, in the presence of C., the builder again marked out the boundary by means of a line connecting the surveyor's marks, C. not objecting. Excavating was commenced according to that line