

MIDDLETON, J.

FEBRUARY 7TH, 1920.

RE SOLICITOR.

Solicitor—Undertaking of Person (not Client) with Solicitor to Pay Costs in Connection with Certain Proceedings—Taxation of Solicitor's Bill—Scope of Undertaking—Quantum of Allowance—Appeal from Taxation.

An appeal by the "client" from the taxation by a Local Master of a bill of costs rendered by the solicitor.

The appeal was heard in the Weekly Court, Toronto.

G. T. Walsh, for the appellant.

J. M. Ferguson, for the solicitor, respondent.

MIDDLETON, J., in a written judgment, said that the circumstances surrounding this taxation were quite unusual. The relationship of solicitor and client did not in fact exist. The solicitor was retained to take proceedings in a large number of matters pending in the Division Court at Haileybury, concerning the enforcement of liens claimed by workmen upon logs under the Woodmen's Lien Act. A motion had been made for prohibition, and, as ancillary to it, proceedings had been taken in all these actions to bring about a stay pending the hearing of the motion. The gentleman who had been designated as "client" was interested in the logs in question, and intervened for the purpose of having the proceedings stayed, and entered into an agreement with the solicitor that, in consideration of the application for prohibition being withdrawn, and the sale of the logs being allowed to proceed, he would pay the costs incurred by the solicitors in connection with the prohibition proceedings.

Both parties were quite capable of taking care of themselves, and the agreement was in writing.

In pursuance of the agreement, the prohibition proceedings were abandoned; and, the solicitor asking for payment of his costs, a dispute arose as to the amount payable. The question raised was, whether the undertaking to pay costs was intended to apply strictly to the costs of the motion, or whether it included the costs of the obtaining of the stay of proceedings in the Court below. The Taxing Officer had held in the solicitor's favour.

The intention of the agreement was that, upon the proceedings being abandoned, so that the judgments might be enforced, the solicitor should be paid all the costs of the "prohibition proceedings." It was significant that what was to be dropped was called "the application for prohibition." It was not intended that the