them off against the plaintiff's judgment debt and costs, but the defendant, Calvert's solicitor, asserting a lien on the costs awarded to him, the taxing officer refused to make the set-off.

The motion to ROSE, J., was by way of appeal from the taxing officer's ruling, and also a substantive motion for an order directing a set-off.

Rule 1164 provides that "where a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is liable to pay, and may adjust the same by way of deduction or set-off, or may delay the allowance of the costs such party is entitled to receive, until he has paid or tendered the costs he is liable to pay; or the officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto, in the same manner as costs ordered to be paid may be recovered. Rule 1165: "A set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought; but interlocutory costs in the same action awarded to the adverse party may be deducted."

H. T. Beck, for the defendant Calvert, contended that the costs awarded him were not interlocutory costs, and, even if they were, the granting of a set-off was in the discretion of the taxing officer, and no appeal from such discretion lay to a Judge in Chambers or other tribunal.

Clute, Q.C., for the plaintiff.

Held, that the costs were interlocutory costs, and a set-off was properly directed by the Judge in Chambers, to whom an appeal lay from the taxing officer's ruling.

Appeal dismissed with costs, to be fixed by the Registrar.

Armour, C.J., Falconbridge, J., Street, J. [May 4.

BANK OF TORONTO *v.* KEYSTONE FIRE INS. CO.

Trial—Jury notice—Striking out—Duty of Judge presiding at jury sittings—Transfer to non-jury list.

An appeal by the defendants from an order of MEREDITH, C.J., made when presiding at the Toronto Jury sittings, striking out the jury notice served by the defendants, and transferring the action for trial to the Toronto non-jury sittings, was allowed, STREET, J., dissenting, and the case was ordered to be reinstated on the list of actions for trial with a jury, and the jury notice restored; but this not to interfere with the right of the Judge presiding at the trial to direct that the action should be tried without a jury; and the costs to be costs in the cause.

Per ARMOUR, C.J.—The Chief Justice of the Common Pleas was not the Judge presiding at the trial of the action within the meaning of s. 110 of the Judicature Act, for he declared as soon as it was called that he would not try it, and then ceased to have any power over it. Nor could the order be supported as one made in Chambers under s. 44 of the Judicature Act, for the order, as issued by the plaintiffs, did not profess to have been made in Chambers, nor did the Chief Justice in making it profess to make it as a Judge sitting in Chambers, nor was any foundation laid for it as for an order in