

transferred to the Court of King's Bench under s. 63 of the Surrogate Courts Act, R.S.M. 1902, c. 41, it is necessary that a statement of claim in the King's Bench should be filed and served before any other step in the cause is taken. *Doll v. Howard*, 11 M.R. 73, followed.

The party who commenced the litigation in the Surrogate Court by petitioning for probate should be the plaintiff in the King's Bench.

*Trueman*, for plaintiff. *A. B. Hudson*, for defendant.

Mathers, C.J.] DESAULNIER v. JOHNSTON. [April 22.

*Practice—Solicitor and client—Præcipe order for delivery of bill of costs—Undertaking to pay amount taxed.*

*Held*, 1. A præcipe order for the delivery and taxation of a solicitor's bill of costs, taken out by a client under Rule 964(a), added to the King's Bench Act by 10 Edw. VII. c. 17, s. 12, should, under s. 43 of the English Solicitor's Act, 6 & 7 Vict. c. 73, which is still in force in Manitoba, be styled in the matter of the solicitor and not in the action in which the costs were incurred.

2. It is not necessary that such an order should contain an admission of the retainer.

3. Neither is it necessary that such an order should contain a submission on the part of the client to pay the amount found due on the taxation: see King's Bench Act, Form 104; although when the client applies, after a month from the delivery of the bill, for a reference to taxation it would be proper to require such submission; and in no case is there authority to impose such a condition when the application is merely for the delivery of the bill.

4. Under said Rule 964(a) an order may be taken out for the delivery of a bill simply without adding the word "taxation."

*In re West King and Adams* (1892) 2 K.B. 107; *Duffett v. McEvoy*, 10 A.C. 300, and *Re McBrady v. O'Connor*, 19 P.R. 37, followed.

*Phillips*, for plaintiff. *Blackwood*, for solicitors.