

APRIL 17TH, 1905.

DIVISIONAL COURT.

EARLE v. BURLAND.

Costs—Appeal to Judicial Committee of Privy Council—Costs Incurred in Canada—Taxation—Order for—Rules 818, 1255.

Appeal by plaintiffs from an order of FALCONBRIDGE, C.J., dated 8th February, 1905, upon a petition of defendants, directing that it should be referred to the senior taxing officer to ascertain the amount to which the petitioners were entitled under the terms of the order of the Privy Council of 10th December, 1901, with reference to the costs incurred in Canada in relation to an appeal to the Judicial Committee, and directing plaintiffs to pay to defendants the costs of the petition and reference.

D. L. McCarthy, for plaintiffs.

W. E. Middleton, for defendants.

The judgment of the Court (MEREDITH, C.J., TEETZEL, J., CLUTE, J.), was delivered by

CLUTE, J.:—R. S. O. 1897 ch. 48, sec. 7, provides that costs awarded by the Privy Council upon an appeal shall be recoverable by the same process as costs awarded by the Court of Appeal. Rule 818, after providing that the decision of the Court of Appeal shall be certified, etc., enacts that "all subsequent proceedings may be taken thereupon as if the decision had been given in the Court below." The order of the Judicial Committee of the Privy Council has been filed and has become an order of the High Court. Rule 1255 (818a) provides that on filing the Privy Council order with the officer of the High Court with whom the judgment appealed from is entered, he shall cause the same to be entered, etc., "and all subsequent proceedings may be taken thereon as if the decision had been given in the Court below." This Rule is simply giving effect to the above Act and to Rule 818, and does not carry the procedure beyond what is therein provided for. It is a rule of procedure, and applies, I think, to the present case. But, even without Rule 1255, plaintiffs are entitled under the above Act and Rule 818 to have the costs ascertained "as if the decision had been given in the Court below."

I think the appeal should be dismissed with costs.

(See Earle v. Burland, 3 O. W. R. 702.)