

Longley, J].

FERGUSON v. CHAPELLE.

[Aug. 31.

Costs and taxation—Taxable and non-taxable items.

In an action by plaintiff against defendant claiming damages for trespass committed upon plaintiff's land by entering thereon and cutting trees there was judgment in favour of plaintiff with costs. On taxation of costs before a Master of the court plaintiff sought to recover as part of his costs a sum of money paid to a number of men for going over the land in question and counting the stumps of trees cut and the Master having refused to tax this amount there was an appeal. By order 63 of the Jud. Act, rule 21, costs are to be taxed "according to the schedule of costs now in force."

Held, that the words of o. 63, r. 23, s. (7), "just and reasonable charges and expenses—properly incurred in procuring evidence and the attendance of witnesses" could not be given an interpretation to include the item claimed, and that the judgment of the Master must be affirmed.

Held, nevertheless, that under the words "maps, plans, surveys" plaintiff was entitled to tax for the services of men employed to assist the surveyor in making a survey of the land, such survey being necessary and having been rendered more difficult by reason of the action of defendant in destroying trees and obliterating blazed lines.

Robertson, K.C., in support of appeal. *Meagher*, contra.

Longley, J.].

[Aug. 31.

THE KING v. HECTOR McDONALD.

Customs Act, s. 216—Conviction for offence—Defect in warrant—Discharge of prisoner ordered under certiora.

Defendant was arrested under a warrant charging him with having been unlawfully on board a vessel liable to forfeiture for a violation of the Customs Act, having taken on board a quantity of liquors at St. Pierre and landed it secretly at an island in the county of Cape Breton. Defendant pleaded guilty and was convicted and fined, and in default of payment of the fine imposed was sentenced to imprisonment for the period of two months. The section of the Customs Act under which the penalty as imposed (216) contains the words "if he has been knowingly concerned in any of such acts."