

*Semble*, that s. 5 of the Dominion statute of 1893, respecting witnesses and evidence, will, when it comes into force, supersede the privilege now existing in cases of this kind.

*Tyler* for the plaintiff.

*Kilmer* for the defendant.

BOVD, C.]

[MAY 3.

IN RE SOLICITORS.

*Solicitor and client - Taxation of costs - Precept order - Application of third party Account between solicitor and client - Rule 1220*

All *ex parte* orders are *periculo petentis*.

And where the defendants in a certain action had agreed with the plaintiff to pay the costs of the solicitors, and, being furnished with a bill of such costs, obtained on *precept* an order for the taxation thereof, which order was drawn up as an order to tax upon an application by the client, and directed that the taxing officer should take account of all sums of money received by the solicitors for or on account of the applicants, such order was vacated with costs.

*Held*, that the defendants were to be regarded as third persons liable to pay, and were entitled to an order for taxation; but they should have disclosed all the facts and applied for a special order; and the plaintiff should have been made a party to the proceeding under Rule 1220, for the purpose of taking an account between him and the solicitors.

*A. G. Murray* for the applicants.

*L. G. McCarthy* for the solicitors.

BOVD, C.]

[MAY 4.

FRELBORN v. VANDUSEN.

*Reference - R.S.O., c. 44, s. 101 - Report - Confirmation - Rules 818, 819 - Trustee - Will - Remuneration.*

The statute and rules applicable to references should not and need not be so read as to produce the result of two distinct lines of practice by reference to reports of masters and referees.

The well-settled procedure in the case of the ordinary report is extended to the statutory reports of referees under s. 101 of the Ontario Judicature Act, R.S.O., c. 44.

And a motion to vary a report upon a reference under that section, although made at the same time as a motion for judgment on the report, can not be entertained unless made within the time limited by Rules 848 and 849. *Raymond v. Little*, 13 P.R. 364, not followed.

*Semble*, that the limitation of a will as to the amount to be paid for the services of the original trustees under it does not apply to a trustee afterwards appointed by the court at the instance of the *cestui que trust*.

*Williams v. Roy*, 9 O.R. 534, distinguished.

*W. H. Blake* for the plaintiffs.

*Hoyles, Q.C.*, for the defendant.