

The motion before the Master was to set aside the default judgment, upon the ground, among others, that the part of the judgment allowing the plaintiff costs was not warranted by the practice, Rule 43 providing that the plaintiff in an action for the recovery of land shall not be entitled to costs unless he files an affidavit shewing that the defendants at the time of the commencement of the action were in actual adverse possession of the land, or obtains an order allowing him to sign judgment for costs. No affidavit was filed, and no order had been obtained, yet the Local Registrar who signed the judgment allowed costs which were taxed at \$73.28 and \$20 for discharge of mortgage and solicitor and client costs. The Master in Chambers condoned this irregularity, by allowing the affidavit to be filed *nunc pro tunc*. His order also provided that, upon payment of principal, interest, and costs, within 7 days, the action should be dismissed, and there should be no costs of the motion before him. It was from this order that the appeal was taken.

The learned Judge was of opinion that it was not competent for the Master in Chambers to permit the affidavit to be filed *nunc pro tunc*; and that his discretion should not have been exercised in favour of the plaintiff. Costs should have been allowed to the defendants as against the plaintiff in any event of the cause. In the absence of any evidence of the service of the amended writ of summons (amended pursuant to an order of a Judge in Chambers), the judgment was irregular and improper. The costs, too, were taxed at an excessive amount—the plaintiff was not entitled to more than \$34.25.

The allowance of costs not taxable under the practice is oppressive in the extreme, and tends to bring the Court and the administration of justice into disrepute.

In all the circumstances, the learned Judge allowed the appeal and vacated the judgment and extended the time for the entry of appearance to 10 days from this date, so as to allow the defendants an opportunity of paying the debt, without the incurring of any further costs. The costs of the motion before the Master and of this appeal should be paid by the plaintiff to the defendants in any event of the action, and if necessary should be set off *pro tanto* against the mortgage-debt. The costs of the proceedings under the power of sale appeared to be extraordinarily large, and these ought to be taxed if the defendants desired. If this taxation should occasion any delay, the proceedings should be stayed for a further time, upon the terms that the principal money and interest due upon the mortgage be in the meantime paid to the plaintiff.