SECOND DIVISIONAL COURT. DECEMBER 10TH, 1918.

*RE SOLICITORS.

Solicitors—Order for Taxation of Itemised Bill of Costs—Lump Sum Allowed by Taxing Officer—Reference back with Direction to Adjudicate upon each Item—Non-tariff Items—Evidence.

An appeal by the executors of William Robertson, deceased, from an order of ROSE, J., in the Weekly Court, dismissing an appeal by the executors from a certificate of the Senior Taxing Officer upon a reference for taxation of a bill of costs of the solicitors.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.
H. S. White, for the appellants.
R. McKay, K.C., for the solicitors, respondents.

MULOCK, C.J. Ex., read a judgment in which he said that William Robertson, since deceased, under a guaranty given by him and others to the Molsons Bank, became liable to pay certain solicitors' fees, charges, and expenses; and, after his death, an itemised bill thereof was rendered to his executors. Thereupon the latter applied for and obtained an order for the taxation of the bill, they submitting to pay what, if anything, should be found due to the solicitors upon such taxation.

The Taxing Officer, instead of taxing the various items, allowed the solicitors a bulk sum of $450, and from his certificate the applicants appealed to Rose, J., who dismissed the appeal, and this was an appeal by the executors from such decision.

The order having directed that the itemised bill be taxed, it became the duty of the Taxing Officer to adjudicate upon each item. This he had not done, but, instead, had allowed a bulk sum. That was not a taxation within the meaning of the order; and the certificate of the Taxing Officer should be set aside, with costs, and the matter be referred back to that officer to be dealt with as directed by the order.

During the argument, counsel for the appellants stated that the bill included some non-tariff charges. Should such be the case, the officer must determine the value of such services on evidence.

The appellants should have their costs throughout, which costs the solicitors might set off pro tanto against any amount to which they might be found entitled.