

Can. Rep.]

WOOD V. THE QUEEN.

[Exch. Court.]

Byles, J., added that "the attorney's letter does not prevent the tender of the principal without any costs." The writ was set aside accordingly. That case, therefore, is an authority against the right of an attorney to recover the costs of a preliminary letter before writ issued. That case was cited, but distinguished by Palles, C. B., in *Allen v. O'Callaghan*, appearing in our present issue (10 Ir. L. T. R. 135); but the interlocutory *dicta* of the Court, exclusively recorded in our Report, will be found to support at least a *semble*, that an attorney of a creditor, retained to demand a debt, has no right to insist on payment of any costs of his letter demanding the debt, previously to issuing a writ of summons and plaint.

It will thus be seen that the authorities on this question are rather conflicting; but it must be allowed that it would be a hard thing if a creditor who was kept out of his money should be obliged to pay his attorney for trying to get it, without redress against the debtor, who, by tendering the debt in such case, adopts the attorney's letter, by reason of which alone he obtains authority to tender at all to the attorney.—*Irish Law Times*.

## CANADA REPORTS.

### DOMINION.

#### IN THE EXCHEQUER COURT OF CANADA.

#### IN CHAMBERS.

(Reported for the *Law Journal*, by Robert Cassels, Jr., Barrister-at-law).

#### WOOD V. THE QUEEN.

*Petitions of right—Application for security for costs. When to be made.*

**Held**, 1. Where by a letter addressed to the suppliant the Secretary of the Public Works department stated that he was desired by the Minister of Public Works to offer the sum of \$3,950 in full settlement of the suppliant's claim against the department, an application on behalf of the Crown for security for costs was refused on the ground that the Crown could suffer no inconvenience from not getting security, as

well as on the ground of delay in making the application.

2. Application for security for costs in this Court must be made within the time allowed for filing statement in defence, except under special circumstances.

[OTTAWA, Nov. 28, 1876.]

The petition of right in this cause was filed on the 1st September, 1876, by the suppliant who described himself therein as "of the city of London and county of Middlesex, in that part of Great Britain and Ireland called England," claiming a sum of \$50,000 for alleged services in connection with the Parliament Square in the city of Ottawa.

On the 27th September, the day before the statement in defence was due, the counsel for the Crown asked the solicitors for the suppliant for further time to answer, and obtained one week. The statement in defence was not filed at the expiration of the week, but on the 27th October the solicitors for the Crown wrote to the solicitors for the suppliant stating that the statement in defence was in the hands of the printer, and, for the first time, asking security for costs. Some correspondence ensued, but security was refused. On the 13th November, the agents of the solicitors for the Crown took out a summons calling upon the suppliant to show cause why security for costs should not be given, and and for a stay of proceedings. This summons was enlarged until the 27th November, when

*Cockburn*, Q.C., shewed cause. There is some obscurity about the practice to be followed in this Court on such an application—whether that of the Court of Chancery or that of the Common Law Courts. In Chancery the application must be made before time for answering expires or is extended, when the residence of the plaintiff appears on the face of the bill. This application is too late, further time to answer having been given; see *Smith v. Day*, 2 Chy. Ch. 456. *Arthur v. Brown*, 3 Chy. Ch. 396. But the government have security in their own hands. By a letter from the Secretary of the Public Works department the suppliant is offered the sum of \$3,950 in full settlement of his claim against the department. A copy of this letter with an affidavit verifying it, was read, and see *Re Carroll*, 2 Chy. Ch. 305, and *Lenomand v. Prince of Capua* there cited and Ch. Arch. 12th ed. 1418.

*McIntyre* for Attorney-General. There is no rule of the Exchequer Court applicable to security for costs. But rule 258 provides that "in proceedings to which the provisions of rule 1 shall not apply, and which are not otherwise provided for by these rules, the practice in use