

By sec. 185, Rules regulating the practice and procedure, including costs, may be made by the Judges of the Supreme Court, and as to matters not provided for in those sections or by Rules of Court, the practice and procedure of the Supreme Court is to be applicable. No Rules having been made under this authority, and the power to award costs being given by the Act itself, the Rules have to be resorted to only for the purpose of ascertaining the scale upon which costs are to be allowed and the machinery for taxation.

Since the repeal in 1888 of the old Election Rules, it has been the practice to tax costs upon the ordinary tariff; and it is applicable to all proceedings in this Court where there is no express provision to the contrary.

The proceedings before the Master were upon an originating notice, and the costs were properly taxable under item 17 of Tariff A., as of an originating motion in Chambers. The motion was in no sense interlocutory—it involved the final determination of the issue raised in the proceedings.

A counsel fee of \$50 was allowed by the Taxing Officer. By item 17, the fee is in the discretion of the officer, and that discretion will not be interfered with on appeal upon a question of quantum; *Conmee v. North American Railway Contracting Co.* (1890), 13 P.R. 433; *In the Estate of Ogilvie*, [1910] P. 243. Had any error in principle been pointed out, the learned Judge might have interfered.

As to the costs of the appeal to the Judge in Chambers, no appropriate item is found in the Tariff, and so resort must be had to analogy, as provided by Rule 2. The appeal was clearly not an interlocutory motion; nor an originating motion, for the case was already in Court. There was no analogy to an interlocutory motion; and the question was, whether the real analogy warranted the application of the same tariff as that applicable to the original hearing before the Master, or whether the analogy should be found in item 20, relating to appeals to the Appellate Division. The learned Judge preferred the former. The allowance for preliminary proceedings should not be increased, as no affidavits were necessary. The fees should be: preliminary proceedings, \$15; counsel fee, \$50; issuing order, \$15: an increase of \$50 in the amount as allowed by the Taxing Officer.

Upon the cross-appeal the relator contended that the examination of witnesses before an examiner for use upon the motion must be taken to be covered by the item "preliminary proceedings." The learned Judge said that he was not able to find any authority for the examination of witnesses before an examiner, but no