

ROSE, J., IN CHAMBERS.

JANUARY 4TH, 1919.

*NEWCOMBE v. EVANS.

Costs—Taxation—Appeal—Items Disallowed by Local Officer—Fees of Witnesses Examined upon Foreign Commission—Motion to Strike out Pleading—Conduct Money Paid to Witness not Called—Affidavit of Disbursements—Preparation for Trial—Costs Thrown away by Postponement—Tariff A., Item 6—Correspondence—Motions for Postponement of Trial—Disbursements for Photographs—Disputed Signature—Documents not Capable of Production—Rule of Court of December, 1913—Fees Paid to Foreign Witnesses—Evidence—Review by Taxing Officer at Toronto.

Appeal by the defendant from the certificate of the Local Registrar at Sandwich upon the taxation by him of the defendant's costs of the trial, pursuant to the judgment pronounced at the trial, as varied by the order made by a Divisional Court on the 23rd April, 1918: *Newcombe v. Evans* (1918), 43 O.L.R. 1.

Frank McCarthy and A. H. Foster, for the defendant.
J. H. Rodd, for the plaintiff.

ROSE, J., in a written judgment, took up the items disallowed by the officer as follows:—

1. Fees of witnesses examined upon commission in Massachusetts. There was an affidavit by an attorney practising in Massachusetts that the disbursements were necessarily made. This made a prima facie case, and, in the absence of any contradiction, would have justified the allowance of the fees, subject to its appearing to the satisfaction of the officer, that it was necessary or reasonable to examine the witnesses. This item must be reconsidered, and upon the reconsideration either party may, if so advised, adduce further evidence as to the law of Massachusetts.

2. Costs of a motion, made at the trial, to strike out a portion of the statement of defence. This motion was not abandoned; and, there being no order awarding the costs of it, the appeal should be dismissed.

3, 4, 7, 10. Conduct money, Maud Gauthier. The witness was not called at the trial, and the affidavit of disbursements was silent as to the necessity of having her at the trial. The appeal should be dismissed.

5, 8, 12. Preparation for trial. The case was on the list for trial at the sittings held in September, 1916, November, 1916, and January, 1917, and was finally tried in May, 1917. A fee of \$50