

The Solicitors Act, R.S.O. 1897 ch. 174, sec. 34 (now 2 Geo. V. ch. 28, sec. 34), provides that no action shall be brought for the recovery of "fees, charges or disbursements" for business done by a solicitor, until one month after the delivery of the bill.

No doubt, full justice can be done under the judgment; but the question still remains whether the Act has been complied with.

The weight of authority, English and Canadian, is against the sufficiency of the bill as rendered. The fact that no tariff is provided for conveyancing, which forms the principal items of this bill, presents no obstacle to taxation: *O'Connor v. Gemmell*, 26 A.R. 27, at pp. 39, 40; *Re Solicitors*, 10 O.W.R. 951. . .

[Reference to *Wilkinson v. Smart*, 33 L.T.R. 573; *Philby v. Hazle*, 8 C.B.N.S. 647, 29 L.J.C.P. 370.]

*Wilkinson v. Smart* was followed in *Black v. Hummell*, 51 L.T.R. 430. It was also held in *Black v. Hummell* that, where a substantial part of a bill of costs is improperly set out and described, and a substantial part is properly set out and described, the whole bill is not bad, but the solicitor can recover upon those items that are properly described.

The plaintiff relied upon *Re Johnston*, 3 O.L.R. 1, but that case is quite distinguishable. . . .

See *Re Mowat*, 17 P.R. 180; *Re Pinkerton and Cook*, 18 P.R. 331; *O'Connor v. Gemmell*, 26 A.R. 27.

The items for disbursements were properly given, amounting to \$49.12; and I was under the impression that the plaintiff might have judgment for this amount, with leave to deliver and tax a further bill, but my brother Riddell has drawn my attention to *Re Davey* (1865), 1 U.C.L.J. N.S. 213, and cases cited. The effect of giving judgment for the plaintiff for part of the bill would be to give judgment for the defendant for the remainder, so that no further bill could be rendered. If the plaintiff elects, he may have judgment for \$49.12, subject to taxation, with costs here and below on the County Court scale, without set-off, which would be in full of his bill.

Otherwise, the appeal must be allowed with costs of appeal; no costs below.

*Order accordingly.*

[See *Gundy v. Johnston*, ante 788, 28 O.L.R. 121.]