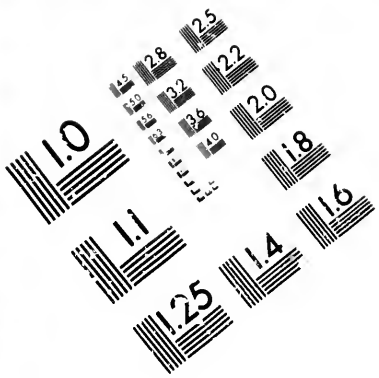


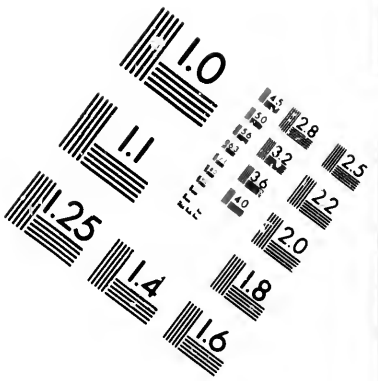
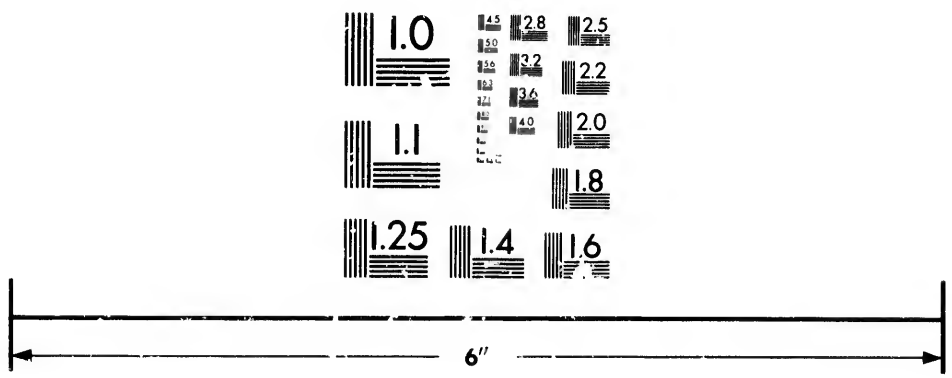
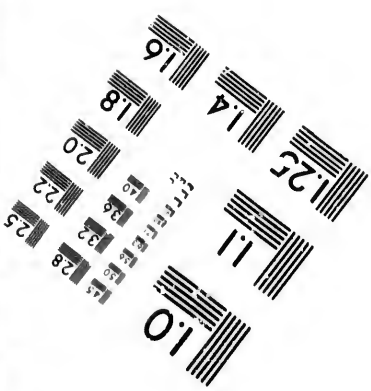
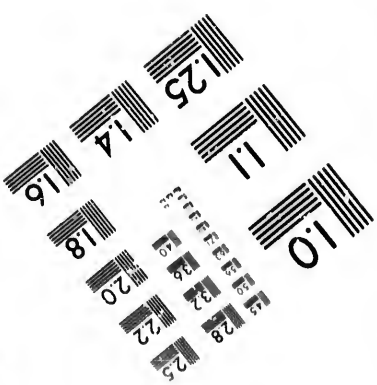


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

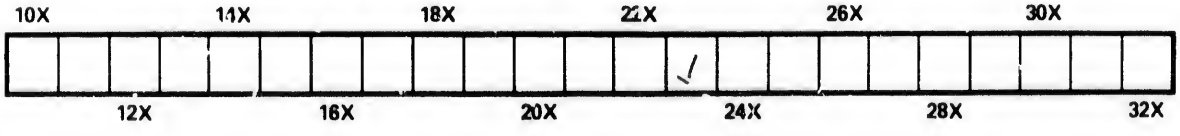
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires;

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☑ Coloured pages/ Pages de couleur
- ☑ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire.
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.



The copy filmed here has been reproduced thanks to the generosity of:

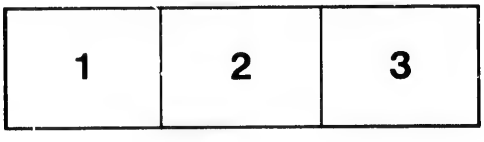
National Library of Canada

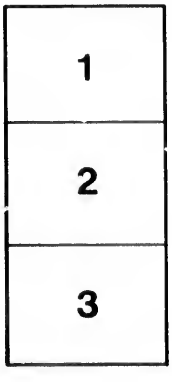
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

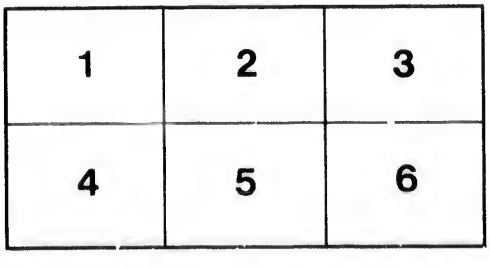
Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:







L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

ARMOUR (E. D.) ON TITLES. A Treatise on the Investigation of Titles to Estates in Fee Simple, with a Precedent for an Abstract, being the Third edition of Mr. Taylor's Work, 1888. Half-calf, $5.00

BARRON ON BILLS OF SALE AND CHATTEL MORTGAGES. Second edition. Enlarged and Improved, 1888. Cloth, $7.00; Half-calf, $7.50.

BOYS ON CORONERS. A Practical Treatise on the Office and Duties of Coroners. By W. F. A. (Judge) Boys. 2nd Edition, Half-calf, $2.00.

BURKE'S (Junius Jessel) LETTERS TO A LAW STUDENT, with a set of Examination Papers, giving the student an idea of the kind of questions generally submitted at Osgoode Hall, 1887. Cloth, $1.00.

CAMERON'S DITCHES AND WATERCOURSES ACT OF ONTARIO, with notes and cases. By M. G. Cameron, 1886. Cloth, 75c.

CAMERON'S LEGAL OPINIONS. A collection of upwards of 130 leading opinions on cases submitted to the late Hon. John Hillyard Cameron. Cloth, $1.00; Half-calf $1.50.

CAMERON ON DOWER. A Treatise on the law of Dower, giving all the Canadian and most of the English and American cases. By M. G. Cameron, 1882. Half-calf, $7.50.

CANADIAN (THE) FRANCHISE AND ELECTION LAWS. A Manual for the use of Revising and Municipal Candidates, Agents and Electors by C. O. Ermatinger, Q.C., 1886. Cloth, $1.00; Half-calf, $2.00.

CANADIAN LAW TIMES (THE) Containing Leading Articles, Digest of Cases decided in the Supreme Courts of Canada, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Manitoba, with full reports of many unreported cases, Reviews, Correspondence, etc., 7 vols., half-calf, $35. Subscription $5.00 per annum in advance beginning January of each year.

CANADIAN LAW TIMES ALMANAC BLOTTING PAD, containing useful information for Lawyers and their clerks. Price $1.00.

CASSELS' (R., Q.C.) DIGEST of all cases decided by the Supreme Court of Canada, since its organization in 1875, to 1st May, 1886, together with about 200 unreported cases. Half-calf, $10.00.

CASSELS' (R., Q.C.) MANUAL OF PROCEDURE in the Supreme Court of Canada, a new edition in press, revised to date, 1888.

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East, Toronto.

CLARKE ON BILLS. A Treatise on the Law relating to Bills, Notes, Cheques and I.O.U.'s as it exists in each of the Provinces. By S. R. Clarke. Half-calf, $2.00.

CLARKE'S (S. R.) CRIMINAL LAW OF CANADA. Second Edition. By S. R. Clarke and H. P. Sheppard. Half-calf, $6.00.

CLARKE'S (S. R.) INSURANCE. A Treatise on the Law of Insurance in Canada, and giving every case on Fire, Marine and Life up to date of publication. 1877. Half-calf, $2.00.

CLARKE'S (S. R.) MAGISTRATES' MANUAL. Second Edition. The cases since last edition take up more than 200 pages of the present work including Digest of Cases on Scott Act, 1888. Half-calf, $5.00.

DOUTRE'S CONSTITUTION OF CANADA. The B.N.A. Act, 1867; its Interpretation gathered from the Decisions of the Courts; the dicta of Judges, etc. By Jos. Doutre, Q.C. Half-calf, $5.00.

DOUTRE ET LAREAU DROIT CIVIL CANADIEN. Suivant l'ordre etabli par les Codes. Precedé d'une Historie generale du droit Canadien. Vol. I. (all published), 1492-1791. Half-sheep, $2.25.

EWART'S EXAMINATION QUESTIONS on Leith's Blackstone. By J. S. Ewart, Q.C. Paper, $1.

EWART'S INDEX TO THE STATUTES OF CANADA, since Consolidation (1859) up to and including 1878; also of Ontario to 1877: and Quebec, 1866 to 1876. By J. S. Ewart. Half-calf, $2.50.

EWART'S (J. S., Q.C.) MANUAL OF COSTS in Supreme Court of Canada, and Courts of Appeal, County Court, Division Court, etc. of Ontario; with Forms of Bills of Costs under Ontario Judicature Act. 1888. Cloth, $2.50; Half-calf, $3.00.

FORAN'S CODE OF CIVIL PROCEDURE of Lower Canada, with amendments thereto; Statutes relating to Procedure; Rules of Practice; Digest of Decisions, arranged under appropriate articles. Second edition. By T. P. Foran, M.A., B.C.L. 1885. Half-calf, $7.00.

FORAN ON OBLIGATIONS. 1887. Cloth, $1.50.

GRANT'S SCOTTISH ANECDOTES AND TALES. Paper, 25c.; Cloth, 50c. "A capital collection, illustrative of national character, and sure to be appreciated." "An excellent companion for a leisure hour."

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East. Toronto.

HANNAY'S NEW BRUNSWICK REPORTS. 2 vols., (being N.B.R. vols. 12 and 13.) Half-calf, each $7.50.

HARDY'S LEGAL DIRECTORY. 1883. Cloth, 50c.

HODGINS' ELECTION REPORTS of the Decisions for the Trial of Election Petitions in Ontario, relating to Elections to the Legislative Assembly, 1871 to 1879, and to the House of Commons of Canada, 1874 to 1878. By Thos. Hodgins, Q.C. Half-calf, $6.

HODGINS (W. E., M.A.) ON JOINT STOCK COMPANIES, being Synopsis of the Provisions of the Companies Act, Revised Statutes of Canada, chapter 119, and 50-51 Victoria, chap. 20, with Forms, etc. 1888. Cloth, $3.00.

HODGINS' (THOS., Q.C.) VOTERS' LIST for Legislative and Municipal Elections in Ontario, with Forms, etc. 1886. Cloth, $3.00.

HOWELL ON NATURALIZATION AND NATIONALITY IN CANADA; Expatriation and Repatriation of British subjects; Aliens, their disabilities and privileges in Canada, etc. By Alfred Howell. Cloth, $1.50; Half-calf, $2.

HOWELL'S SURROGATE COURT PRACTICE. A Treatise on the Law and Practice as to Probate, Administration and Guardianship, in the Surrogate Courts, in common form and contentious business, including all the Statutes, Rules, Orders and Forms. By Alfred Howell. Half-calf, $6.

JAMES' NOVA SCOTIA REPORTS. Half-calf, $6.

JONES' CONSTABLE'S GUIDE. The County Constable's Manual or Handy-Book, with subjects arranged alphabetically. By J. T. Jones, High Constable County York. Cloth, 50c.; Leather, 75c.

JONES ON PRESCRIPTION AND EASEMENTS. A practical Treatise on Real Property Limitation, with a complete Compendium of the Law of Easements. By H. C. Jones, M.A. Half-calf, $5.

JONES ON THE TORRENS SYSTEM of Land Transfer. A Practical Treatise on "The Land Titles Act of 1885, Ontario," and "The Real Property Act of 1885," Manitoba. Embracing all the English, Australian and Canadian Cases. By H. C. Jones, M.A. Cloth, $4.50; Half-calf, $5.

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East, Toronto.

TO

H. M. HOWELL, Esq., Q.C.,

NOW OF THE MANITOBA BAR.

THIS WORK

IS

(*Without His Permission*)

RESPECTFULLY INSCRIBED

BY HIS FORMER PUPIL.

A MANUAL

ON THE

TAXATION OF COSTS

IN THE

HIGH COURT OF JUSTICE;

WITH

CHAPTERS ON COSTS IN ALIMONY ACTIONS, AND COSTS IN INTERPLEADER PROCEEDINGS.

BY

CHARLES HOWARD WIDDIFIELD,

(Of Osgoode Hall, Barrister-at-Law.)

TORONTO:
CARSWELL & CO., LAW PUBLISHERS.
1891.

PRINTED BY
THOS. MOORE & CO., LAW PRINTERS
22 & 24 ADELAIDE ST. EAST
TORONTO.

PREFACE.

BEFORE I thought of compiling this small volume I had made, for my own convenience, a memorandum of cases relating to the taxation of costs. This memorandum I found of so much assistance to me in my practice when preparing and taxing bills of costs that the idea occurred to me that a work containing a digest of these cases, so arranged as to be available for immediate reference, would be found of considerable service to others.

No attempt has been made to treat of the principles of taxation, and, except in a few instances, I have not ventured my own opinion, but contented myself with digesting the decisions as I found them where they appeared to be applicable to our practice.

In citing many of the English decisions I have only referred to digests for authority, not having access to all the English reports in which the cases are found.

I can only ask the indulgence of a generous profession for the doubtless many imperfections in my first attempt at book-making.

C. H. WIDDIFIELD.

PICTON, 15th January, 1891.

TABLE OF CONTENTS.

TABLE OF ABBREVIATIONS.

App. R.	Ontario Appeal Reports.
Arch. Pr.	Chitty's Archbold's Practice, 14th ed.
A. & E.	Adolphus & Ellis' Reports.
B. & B.	Ball & Beatty's Reports.
B. & C.	Barnewall & Cresswell's Reports.
Beav.	Beaven's Reports.
Bing.	Bingham's Reports.
B. N. C.	Bingham's Reports, (New Cases).
Cababe.	Cababe on Interpleader.
C. B.	Common Bench Reports.
C. B., N. S.	Common Bench Reports, (New Series).
Ch. D.	Law Reports, Chancery Division.
Ch. Rep.	Chamber Reports.
Chy. Ch.	Chancery Chamber Reports.
Chitt.	Chitty's Reports.
Churchill.	Churchill on Sheriff.
C. L. Times.	Canada Law Times.
C. L. Journal.	Canada Law Journal.
C. L. J., N. S.	Canada Law Journal, (New Series).
C. L. R.	Common Law Reports.
Con. Rule.	Consolidated Rules of Practice.
C. & P.	Carrington & Payne's Reports.
Dan. Chy. Pr.	Daniel's Chancery Practice, 6th edition.
Dowl.	Dowling's Practice Cases.
D. P. C.	Dowling's Practice Cases.
D. & L.	Dowling & Lowndes' Reports.

D. & R.	Dowling & Ryland's Reports.
Eq.	Equity Reports.
El. & Bl.	Ellis & Blackburn's Reports.
Ex. D.	Law Reports, Exchequer Division.
Gr.	Grant's Chancery Reports.
Gale.	Gale's Exchequer Reports.
Ha.	Hare's Reports.
Hare.	Hare's Reports.
H. & N.	Hurlstone & Norman's Reports.
Ir. R.	Irish Reports.
Ir. Eq.	Irish Equity.
Jur.	Jurist.
Jur., N. S.	Jurist, (New Series).
K. & J.	Kay & Johnson's Reports.
L. J., Ch.	Law Journal, Chancery.
L. J., C. P.	Law Journal, Common Pleas.
L. J., Exch.	Law Journal, Exchequer.
L. J., N. S.	Upper Canada Law Journal (New Series).
Mac. & G.	Macnaghten & Gordon's Reports.
M. & G.	Manning & Granger's Reports.
Mad.	Maddock's Chancery Reports.
Man.	Manitoba.
Man. L. R.	Manitoba Law Reports.
Marsh.	Marshall's Reports.
Mor. & Wurt.	Morgan & Wurtzburg's Law of Costs.
Moore.	Moore's Common Pleas Reports.
M. & R.	Manning & Ryland's Reports.
M. & Scott.	Moore & Scott's Reports.
M. & W.	Meeson & Welsby's Reports.
Ont. R.	Ontario Reports.
O. S.	Old Series, Upper Canada.
P. R.	Ontario Practice Reports.
P. D.	Law Reports, Probate Division.
Price.	Price's Exchequer Reports.
Q. B. D.	Law Reports, Queen's Bench Division.

Rep. I. L. O.	Report of Mr. Winchester, Inspector of Legal Offices.
Scott.	Scott's Reports.
Scott, N. R.	Scott's New Reports.
Sm. & G.	Small & Gifford's Reports.
Taylor.	Taylor's Upper Canada King's Bench Reports.
Taylor on Ev.	Taylor on Evidence, 8th edition.
Taunt.	Taunton's Reports.
U. C. C. P.	Upper Canada Common Pleas Reports.
U. C. Q. B.	Upper Canada Queen's Bench Reports.
U. C. L. J.	Upper Canada Law Journal.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.
Whiteway.	Whiteway's Hints to Solicitors.

TABLE OF CASES CITED.

C.

D.

Y.

ERRATA.

Page 96, line 7, for "was allowed," read "were allowed."
Page 121, line 21, for "8 P. R.," read "9 P. R."
Page 129, line 13, for "Gandry," read "Gaudry."

A MANUAL

ON THE

TAXATION OF COSTS.

Abandoned Motion.

Where a party moving does not appear the motion is called an abandoned motion, and the opposite party is entitled to ask for the costs of it. *Barry* v. *Exchange Trading Company*, 1 Q. B. D. 77.

A motion for an injunction had been served by the plaintiff, and when it was brought on time was asked to answer affidavits, which was granted, and the motion stood over accordingly. Subsequently the plaintiff served the defendant with a notice that he intended abandoning the application.

Held, that the defendant was entitled to the costs of a motion refused, and not merely the costs of an abandoned motion. *Dennison* v. *Devlin*, 11 Gr. 84.

Where a notice of appeal is given, but the appeal is not put on the paper by the party giving the notice, the other party ought not to appear, but may make a substantive application for the costs of the motion. *Webb* v. *Mansel*, 2 Q. B. D. 11[illegible]

Under the former practice, where after a rule *nisi* for a mandamus had been served, the applicant gave notice that it would not be proceeded with, but did not offer to pay any costs, the Court on application discharged the rule with costs up to the time of the notice, and costs of the application. *Regina* v. *Justices of Huron*, 31 U. C. Q. B. 335.

A person in contempt cannot apply for the costs of an abandoned motion. *Ellis* v. *Walmsley*, 4 L. J. Ch. 461.

A motion cannot be renewed until the costs of an abandoned motion for the same purpose are paid. *Bellchamber* v. *Giani*, 3 Mad. 550.

Costs of affidavits prepared but not filed when the motion is abandoned, are taxable. *Harrison* v. *Leutner*, 16 Ch. D. 559.

Where a motion is treated as abandoned and the opposite party intends to ask for the costs of an abandoned motion, he ought before doing so to communicate his intention to the party by whom the motion was made. *Aitken* v. *Dunbar*, 25 W. R. 366; *Griffen* v. *Allen*, 11 Ch. D. 913; 28 W. R. 10.

Abortive Proceedings.

The costs of abortive proceedings are disallowed unless they are specially allowed by order or judgment.

Where an application was made to strike out a jury notice, and the motion was referred by the Local Master to the trial Judge, and nothing further was done, costs should be disallowed. *See* Report I. L. O. 1885, p. 25.

But see *Mounsey* v. *Earl of Lonsdale*, 10 Eq. 557, under "Motions."

Where the successful party is not to blame for the proceedings proving abortive this rule does not apply.

Where the first trial was abortive because the jury disagreed, and no order to the contrary was made by the Judge at the trial;

Held, that the party who ultimately succeeded was entitled to tax the costs of the first trial. *Copeland* v. *Blenheim*, 11 P. R. 54; and see *Christopher* v. *Noxon*, 10 P. R. 149.

The retirement of Blake, V.-C., who sat during the argument, occurred before judgment, whereupon it was ordered that the appeal should be re-argued before the Court as then constituted.

Held, following *In re Pender*, 10 Jur. 891, that the successful party was entitled to the full costs of both arguments. *Platt* v. *Attrill*, 3 C. L. Times 543; 19 C. L. Journal 348.

Adjournment into Court.

An adjournment into Court from Chambers is deemed to be part of the proceedings in Chambers; the costs of such adjournment follow the same rule as the costs in Chambers; and the party obtaining the adjournment into Court will not be ordered to pay the costs thereof, even if the question appears to be unarguable, unless there was, in the opinion of the Court, misconduct in requiring the opinion of the Judge on the question.

Where a respondent is ordered to pay the costs of an application, which has been adjourned into Court, but as to the costs of which no order would have been made if the question had been decided in Chambers, the costs payable

by him are simply the costs occasioned by the adjournment into Court. Dan. Chy. Pr. 973.

See *Re Flemming*, 11 P. R. 272.

Admissions.

Con. Rule 400. Each party is to admit such of the material allegations contained in the statement of claim or defence of the opposite party as are true; or he may give notice, by his own statement or otherwise, that he admits for the purposes of the action the truth of the case generally, or of any part of the case, stated or referred to in the statement of claim or defence of the opposite or any other party. J. A. Rule 240.

Con. Rule 617. Either party may call upon the other party to admit any documents, saving all just exceptions. J. A. Rule 241.

Con. Rule 1189. When anything in the course of an action or reference which ought to have been admitted, has not been admitted, the party who neglected or refused to make the admission may be ordered to pay the costs occasioned by his neglect or refusal. *See* Chy. O. 234; J. A. Rule 163.

Con. Rule 1190. No costs of proving a document shall be allowed unless a notice to admit has been given under Rule 617, except when the omission to give the notice is a saving of expense.

A party is not bound to rely on the admissions of an opposite party on his examination for discovery, and therefore the costs of procuring the attendance of a witness to

prove what was then admitted should be taxed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

See also *McIntyre* v. *Canada Co.*, 18 Gr. at p. 370.

See "Notice to Admit."

Advertisement of Sale.

An advertisement was not properly drawn through the neglect of the party having the carriage of the decree, who now asked to have it referred back to the Master. The advertisement was referred back to the Master, and the additional costs occasioned thereby were ordered to be paid by the applicant. *Heward* v. *Ridout*, 1 Chy. Ch. 244.

See "Sale."

Affidavits.

Burnham v. *Garvey*, 27 Gr. 80. Motion for an injunction.

SPRAGGE, C., "I give the plaintiff the general costs of the cause. I except, however, out of these costs, the costs of the affidavits used on this application. I do so because those put in to be read by me are scarcely legible; many words it is difficult to decipher, and they can hardly be made out except by reference to the context. This is in direct contravention of G. O. 67."

G. O. 67 does not appear to have been fully incorporated into the Judicature Act, or the Consolidated Rules of Practice, but no doubt the practice as to taxation in respect to affidavits contravening the rule therein laid down will be followed.

The costs of affidavits filed on a motion, but not entered in the order, will not be allowed even on a taxation as between solicitor and client. *Stevens* v. *Lord Newborough*, 11 Beav. 403; *Stuart* v. *Greenall*, 13 Price, 755.

It is proper and necessary to make an affidavit of service of subpœna and appointment on, and payment of, conduct money to a party to be examined for discovery. *McLean* v. *Bruce*, 12 P. R. 602.

Where an affidavit had been made to prove certain items of disbursements, and these disbursements were disallowed on taxation:

Held, that the charges for preparing the affidavit were also properly disallowed. *Re Robertson*, *Robertson* v. *Robertson*, 24 Gr. 555.

Where plaintiff filed many useless affidavits, and had a great many repetitions as well as idle statements on information and belief in affidavits filed, a direction was given to the Master that they should not be allowed to the plaintiff on taxation, though the defendant's summons was discharged with costs. *Hooper* v. *Burley*, 1 L. J. N. S. 225.

One bailiff had served four defendants and made four separate affidavits of service.

SPRAGGE, V.-C., "There is no necessity of four affidavits of service; the costs of one only should be taxed." *Boulton* v. *McNaughton*, 1 Chy. Ch. 216.

Costs of unnecessary affidavits were disallowed in *Redford* v. *Todd*, 6 P. R. 154; and in *Nash* v. *Glover*, 6 P. R. 267.

A barrister or solicitor attending for cross-examination on an affidavit made on a motion is entitled to be paid $4 conduct money. *Sutherland* v. *Phippen*, 7 C. L. Times 432.

The local officers acting as Clerks at Assize, etc., have now instructions to endorse on the Record the names of counsel engaged in the case at the trial, the number of witnesses sworn, and the time occupied by the trial. An affidavit to obtain increased counsel fees is, therefore, unnecessary, and will not be allowed on taxation. Report I. L. O. 1887.

Impertinence and Scandal in Affidavits. See Con. Rules, 421, 422.

In re Savage, 15 Ch. D. 557, parties lost their costs of a successful motion because they had filed an irrelevant affidavit containing improper imputations.

MORRISON, J., "I cannot refrain from noticing that in the affidavit made by the plaintiff's attorney, after negativing a statement of the defendant, and shewing why he declined to consent to delay at the Assizes, he states: "He (the defendant), then replied, I think it hardly fair that you should punish me for the act of my attorneys, and I then replied, that I considered keeping him dancing about the Court, and giving him a little trouble, might teach them all better manners for the future."

"Such a statement, besides being wholly irrelevant and impertinent, coming from an officer of the Court, is highly unbecoming, and an affidavit containing such matter ought not to have been read or filed, and the doing so would of itself justify me in ordering the plaintiff's attorney to pay the costs of this application."

And the plaintiff's attorney was accordingly ordered to pay the defendant's costs of the application. Anonymous, 4 P. R. 242.

An interpleader application by a sheriff:

OSLER, J. A., "I should not have given costs in any case, looking at the affidavit I have referred to, in which the Sheriff's officer is accused of intemperance, misapplication of moneys received by him, and which otherwise contains much that is irrelevant and beside the merits of the case." *Vanstaden* v. *Vanstaden*, 10 P. R. 428.

In re Fitch, 2 Chy. Ch. 288, affidavits containing allegations of misconduct on the part of the solicitor, altogether unconnected with the dealings between the solicitor and the client, were held scandalous and ordered to be taken off the files.

See also *Clark* v. *Chipman*, 26 U. C. Q. B. 170; *Corby* v. *Roblin*, 5 U. C. L. J. 225; *Davidson* v. *Grange*, 5 P. R. 258; *Sadlier* v. *Smith*, 7 P. R. 409; Mor. & Wurt. 36.

In drawing affidavits superlative words and needlessly offensive expressions should not be used, and where they are so made use of the costs of such affidavits should be disallowed on taxation.

WILSON, J., "I regret to find in several instances lately, that superlative words are used in stating facts in affidavits. There can be no stronger expression of the very truth than that it is stated on oath. If less certainly is intended, the statement should be qualified. The terms to which I object are, "*I most positively swear*," etc. I can only show my disapproval of such language, by refusing to allow costs to be taxed for affidavits drawn in this style, when costs are in my discretion. In one of the affidavits before me I observe the expression that the statement made by another person in another affidavit was 'false.' I suppose the affidavit was drawn by a young man of little experience,

for the one had detailed a transaction in one light, and the other had stated the transaction in another light, but the term 'false' as applied by one to the other, could in no way verify the statement of him who used the offensive expression." *Fisher* v. *Green*, 2 C. L. J. N. S. 16.

Agency Fees.

The former practice was to disallow all agency letters, where both principal and agent resided in the same county. Now necessary letters between a solicitor and his agent on the business of the cause are taxable as between party and party, whether the agent resides in the county town of the county where the solicitor resides, or in another county or in Toronto. *Agnew* v. *Plunkett*, 9 P. R. 456.

Mr. Winchester, in his report for 1885, states that the following letters had been disallowed in some bills of costs, and should have been allowed:

Letters to client, (1) advising of trial; (2) result of case where judgment reserved; (3) motion to change venue; (4) result of application to Divisional Court.

Letter to agents with papers to file and serve; letter from agents advising that papers served: letter from solicitor returning admission of service of papers sent by the opposite party.

Amendments.

The general rule is that where a party desires to amend his own pleading, leave to amend will be given, but he must pay all costs of and occasioned by the amendment. Mor. & Wurt. 33.

If a statement of claim is amended so as to set up a wholly different and inconsistent case from that originally

made, the defendant will be entitled to all the costs of the action up to the time of the amendment. Mor & Wurt. 35.

The original plaintiffs in the action were not entitled to any relief but by amendment, and a party plaintiff was added to whom relief was granted. The defendants were held entitled to the costs of the action up to the date of the amendment. *Clarkson* v. *White*, 4 Ont. R. 663.

Pleadings may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary: unless the amendments require the insertion of more than 200 words in any one place, or are so numerous or of such a nature that making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendment must be made by delivering a re-print or fresh copy of the pleading as amended. Con. Rule, 431.

Where, under Con. Rule 431, it becomes necessary to deliver a re-print or fresh copy of the pleading as amended, the solicitor (if he gets the costs of amendment) is entitled to ten cents per folio for each amended copy filed and served. He is also allowed twenty cents per folio for drafting the new matter for amendment, and not for the whole pleading as amended.

Where leave is given to a plaintiff to amend upon payment of costs, such costs should be paid or tendered before any further proceedings are had; otherwise the defendant may apply to the Court to stay proceedings until the plaintiff has made the required payment; and if default is made in payment of the costs the action may be dismissed with costs. *Blackmore* v. *Edwards*, W. N. (1879) 175; *White* v. *Bromige*, 26 W. R. 312.

Where an irregularity was trifling, such as an omission to fill in the date of the entry of judgment for default, an amendment was allowed without costs. *Dunn* v. *Dunn*, 1 L. J.; N. S. 239.

Where the material upon which a party is moving is defective, and he is allowed to amend or supply what is wanting, he cannot tax the costs of doing so. *Morris* v. *Armit*, 4 Man. L. R. 307; 7 C. L. Times, 180.

An application was made to amend the decree drawn up after judgment pronounced on the hearing, one of the terms having been omitted.

Blake, C., "We think it reasonable that the indulgence which the plaintiff finds himself obliged to ask in this case should be granted at his expense. That seems to us, as a general rule, to be highly reasonable. At law it is almost of universal application; and Mr. Daniel would seem to regard it as equally prevalent in this Court." *Emmons* v. *Crooks*, 1 Gr. 558.

Appeal, Proceedings in.

The appeal bond and the affidavits of execution and justification, are separate documents, and must be stamped as such when filed. *Macbeth* v. *Smart*, 1 Chy. Ch. 269.

Instructions for appeal, or to oppose appeal, $2.00; revising proof of appeal book, 10 cents per folio; fee settling reasons for appeal, or against appeal, in an ordinary case, $5.00.

Burton, J.A., "There is no item in the tariff for instructions for appeal, unless it is considered as instructions for a step in the cause. The $4 is confined to instructions to sue or defend. It is, therefore, simply a

question of whether anything should be allowed, or, by analogy to those proceedings wherein instructions are allowed during the progress of the cause, the fee of $2. I therefore decline to interfere, (the taxing officer had allowed $2 instead of $4.) I think there is no reason to interfere with the previous decision in this Court as to allowing 10 cents for revising proof. It is, I think, little enough if the work is properly done; and, if not properly done, then the Court should adhere to its rule and disallow this charge altogether.

I think a fee of $5 would not be unreasonable for revising and settling reasons of appeal in an ordinary case, and that would be a proper sum to allow here." *Barber* v. *Morton*, 2 C. L. Times, 340.

For correspondence during appeal, see item 134 of tariff.

As to printing appeal books, see Holmested & Langton, p. 681.

Parsons v. *The Standard Insurance Co.*, 4 App. R. 326.

Burton, J.A., "Our attention has been called to the unnecessary length of the appeal books in this case. The simple question for decision was, the construction to be placed upon the condition of a policy of insurance, and the case might have been stated upon two, or at least three, pages of this appeal book. Instead of this a mass of evidence and other matter has been printed, having no bearing whatever upon the point presented for adjudication, covering 129 pages, and imposing upon us an enormous labor and waste of time in the perusal of it. It appears to us to be a very grave abuse and violation of the rules which we have made on the subject, and we do not intend to impose upon the Registrar the task which the appellants

have cast upon us, of wading through this mass of matter for the purpose of discovering whether some portion of it may properly be applicable to this appeal, but we disallow the whole of the appeal books in the taxation. If a similar case should occur again after this warning, it will be our duty seriously to consider whether it is not a sufficient reason for refusing the whole costs of the appeal." Pages 329, 330.

Arbitrators and Arbitrations.

Where the taxing officer taxed to the arbitrators a *per diem* allowance, held, he was right in disallowing their travelling expenses.

The amount to be allowed *per diem* to arbitrators and counsel is a matter peculiarly within the province of the taxing officer, and will not, generally, be interfered with. *Re Hillyard and The Royal Insurance Co.* 12 P. R. 285.

In taxing the costs of an arbitration upon the County Court scale, no larger fee for attendance of counsel before the arbitrators than $25 can be allowed, even though the attendance is for several days. *Re Montague and The Township of Aldborough*, 12 P. R. 141 ; and see *Wood* v. *Fisher*, 6 P. R. 175.

Where subpœnas were served on witnesses in an arbitration matter where the arbitrators had no power to compel the attendance of witnesses :

Held, there was no power to tax the subpœnas as such, but as they operated as notices, the proper costs of notices should be allowed. *Re McRae and the Ontario and Quebec Railway Co.*, 12 P. R. 282, 327.

In re Autothreptic Steam Boiler Co., 21 Q. B. D. 182, it was held that the costs of negotiating and settling the

terms of a submission to arbitration by consent, but not in a cause, could be considered as part of "the costs of the reference" which were in the discretion of the arbitrator.

Attendances.

Where the Judge fixes a day to deliver judgment and defers it till a subsequent day, a fee of $2 is proper for attending to hear judgment, although judgment is not then given.

A fee of $2 for attending to hear judgment when it is given, should be taxed, although a fee of $2 on a previous attendance when judgment was deferred had been allowed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157. *Per* WILSON, C.J.

This would seem to overrule the decision to the contrary in *Ham* v. *Lasher*, 24 U. C. Q. B. 357, where it was held the attendance could only be taxed once, that is, when judgment is delivered. See also items 96, 97, of the tariff.

Where judgment was reserved at the trial of the action, and the written judgment of the Court was sent to the Registrar's office for perusal instead of being read in open Court, counsel attended at the Registrar's office and there read the judgment.

Held, that such an attendance was an attendance to hear judgment and that a fee of $2 should be allowed therefor. *Gage* v. *Canada Publishing Co.*, 3 C. L. Times, 267.—*Per* PROUDFOOT, V.-C.

There is no necessity for attending to settle a judgment which simply dismisses the action. Rep. I. L. O., 1887.

Attending to enter judgment is allowed as a common attendance in addition to the fee on judgment, and attending on taxation." Rep. I. L. O., 1885.

The local taxing officer refused to tax to a successful plaintiff on a party and party taxation two fees of fifty cents each for attending to bespeak for copies of the depositions of the plaintiff and defendants after issue joined, upon the ground that the solicitor attending on the examination could have ordered copies when the examination was completed, without making a special attendance therefor:

Held, WILSON, C.J., these fees should have been allowed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

"Attending to give admission of service of affidavits," cannot be taxed. *Malone* v. *Davies*, 10 C. L. Times, 18, Occ. N.

Attending for Præcipe Orders. Only one attendance of 50 cents should be allowed.

BOYD, C., "It is not usual to allow two attendances in procuring orders of course, even though the charge appears under the formula 'attending to bespeak and for.'" *Latour* v. *Smith*, 13 P. R. 214.

A counsel fee will not be allowed where counsel attends on a motion merely to show that the motion is irregular. *Waller* v. *Claris*, 11 P. R. 130.

Or where notice of appeal is served on a party whom the appeal does not effect, and he appears on the hearing of the appeal. *Ex. p. Webster*, 22 Chy. D. 136.

A Master or a single Judge has no discretion to allow more than $1 per hour on the taxation of a bill of costs, either between solicitor and client, or party and party; the tariff being fixed at that rate. *Re Totten*, 8 P. R. 385.

Plaintiff sued for damages for bodily injuries sustained and got a verdict. An order was made, before trial, for

the examination of the plaintiff by medical men on behalf of the defendants. The plaintiff's own physician attended on him during the examination, and was called as a witness at the trial, and stated what his charges for attendance on the plaintiff amounted to.

Held, that there being nothing to shew that he did not include in his statement the charges for attendance at the examination, they must be taken to have been included in the verdict, and could not be taxed to the plaintiff as part of the costs of the action. *Carty* v. *City of London*, 13 P. R. 285; 9 C. L. Times 457.

Administration Proceedings. Upon a warrant to consider the Master has power to direct what parties shall attend on the several accounts and inquiries. *See* Con. Rules 5ɔ, 322, 334; Holmested & Langton, 352; Mor. & Wurt. 137.

"The law stands in this way, that any persons interested who ought to be served can, under the general practice, attend, as of course, the proceedings; but that does not entitle them to the costs of attending. That is determined by the Judge in Chambers, who, under a general order, decides what parties interested in the estate shall attend the taking of the accounts at the cost of the estate; that is the subject of a special application. I cannot prevent anybody attending the proceedings; if there were fifty people, I could not prevent them instructing fifty solicitors to attend all the proceedings; but if they did, they would not only pay their own costs where I found forty-eight of them unnecessary, but I should make them pay the extra costs occasioned by attending unnecessarily. That has always been the practice in my Chambers since I have had the honour of sitting here." *Per* JESSEL, M.R., *Sharp* v. *Lush*, 10 Ch. D. 473.

Attending for writ. This is allowed as a common attendance besides the $2 for the writ. Rep. I. L. O. 1885, p. 24.

Attending sheriff with writ to serve. Attending sheriff for writ when served. Attending sheriff for fees (mileage). The solicitor is entitled to charge for each attendance. *Ib.*

Attending to enter action for trial,—attending to deposit Record. The solicitor is entitled to charge for both attendances. *Ib.*

Attending to have pleadings certified is a common attendance. *Ib.*

Attending on return of motion. Where a counsel fee is allowed no other fee is taxed for attendance on the motion. *Ib.*

Attending for certificate of taxation. No fee is allowed. If necessary, it should be obtained when the taxation is completed. *Ib.*

Attending for subpœna, a common attendance. Rep. I. L. O. 1889.

Attending to bespeak and for *lis pendens*. $1.00 should be allowed. *Ib.*

Attending return of writ from sheriff, where sheriff unable to serve it. Should be taxed as a common attendance. *Ib.*

Auctioneer.

"Sometimes a fixed sum for the entire sale, or for each lot sold or bought in, is arranged to be paid to the auctioneer, for his remuneration; and sometimes he is allowed a commission on each lot sold, and a fixed sum for each lot not sold. The amount in either case depends upon the

magnitude of the sale, the ability and position of the auctioneer, the trouble he has had, or is likely to have, in the business, and whether he is to pay any, and what expenses attending the sale, or to make any survey with a view of lotting the property, or any valuation preparatory to fixing the reserved bidding. In any case, the terms should be approved by the chief clerk before the proposed auctioneer is appointed to sell." Dan. Chy. Pr. 1079: *Re Page*, 9 Jur. N. S. 1116.

Where the Master acts as auctioneer he is entitled to charge $1.50 per hour, or if he travels more than two miles from his office $2 per hour, and 20 cents per mile travelled. Rep. I. L. O., 1889.

An auctioneer was held entitled to fees as a professional witness in *Re Workingmen's Mutual Society*, 21 Chy. D. 831.

Briefs.

The brief should contain copies of the pleadings, a statement of the case of the party, and such observations on the case of the other side, and such materials for cross-examination as may be necessary, and should correspond with the proofs of the witnesses proposed to be called. If counsel's opinion has been taken on the evidence it should be copied at the end of the statement of the case. Copies of notices to produce and admit, and of any correspondence, opinions, or other necessary documents, should accompany the brief. Arch. Pr. 601.

A solicitor should not part with original deeds belonging to his client, and in preparing briefs for counsel where these deeds are a necessary part of his case, they should be briefed and allowed on taxation. *In re Beamish*, 19 W. R. 740.—Ir. R.

Where one party, by his pleadings, puts in issue documents which the other may reasonably expect will be read in evidence, and he accordingly has them briefed, the taxing officer ought, in the exercise of his discretion, and having regard to the probable materiality and relevancy of these documents to the case as pleaded, to allow the costs of the brief containing them, if he considers that the party was justified in having them briefed; even though they were not read in evidence at the hearing. *Haslam* v. *O'Connor.* 6 Ir. Eq. 615.

A case having been made a remanet, a correspondence took place between the respective attorneys with a view to a reference, which failed:

Held, that the Master exercised a proper discretion in disallowing copies of this correspondence as part of the briefs in taxing the costs of the cause. *Pilgrim* v. *Southampton and Dorchester Railway Co.*, 8 C. B. 25.

"A brief of depositions or special affidavits is to be allowed only where fee and brief for second counsel is taxed." Rep. I. L. O. 1886.

The writer submits that this direction to the taxing officers is not wholly correct. Some portions of the examination of the opposite party are, generally, put in as evidence at the trial. These portions are required to be marked by counsel when put in. If the depositions are not briefed counsel can not know exactly what evidence has been put in in this way without referring to the exhibits. Where argument takes place after the trial, or before a Divisional Court, it would be extremely inconvenient not to have copies of the depositions on the brief, marked to correspond with the depositions put in at the trial. Wherever, therefore, depositions of the opposite party have been read at the

trial and put in as evidence, the solicitor should be allowed for briefing a copy of the depositions, even where there is one brief only.

Where a copy of the brief was actually prepared for second counsel for the defendant, the accidental absence of the counsel at the trial should not deprive the defendant of the charge for such brief. *Ham* v. *Lasher*, 24 U. C. Q. B. 357.

A second term brief was allowed at the amount for which a second copy of the evidence could have been procured from the shorthand writer. *Morris* v. *Armit*, 4 Man. L. R. 307; 7 C. L. Times, 180, Occ. N.

Where the brief itself is allowed instructions for brief should also be allowed. *McCallum* v. *McCallum*, 11 P. R. 179.

A plaintiff is not in any case entitled to the costs of preparing for trial, such as instructions for brief, drawing and copying briefs and documents, and advising on evidence, until after notice of trial is given. *Freeman* v. *Springham*, 14 C. B.; N. S. 197; 32 L. J. C. P. 249.

Where a bill had been dismissed, before notice of hearing was given, and the Master allowed a counsel fee of $15 on the allegation that the brief had been given to counsel immediately after the filing of replication,—

On appeal, STRONG, V.-C., said the English practice should be followed; and no brief or counsel fee allowed until after the cause is set down and notice of hearing given. *Dewar* v. *Orr*, 3 Chy. Ch. 141.

Cheques in Court.

See *Armitage* v. *Armitage*, 3 C. L. Times, 172, under "Commission in Lieu of Costs."

Commission in Lieu of Costs.

Con. Rule 1187. In all actions or proceedings instituted for administration, or partition, or administration and partition, unless otherwise ordered by the Court or a Judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor, and entitled to costs out of the estate, other than creditors not parties to the action or proceeding, shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed for the other costs of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned in the action or proceeding, which commission shall be apportioned amongst the persons entitled to costs, as the Judge or Master thinks proper. Such commission shall be as follows:—

On sums not exceeding $500.....	20	per cent.
For every additional $100 up to $1,500...	5	"
For every additional $100 up to $4,000...	3	"
For every additional $1,000 up to $10,000	2½	"
For every additional $1,000.....	1	"

and such remuneration shall be in lieu of all fees, whether between "party and party," "as between solicitor and client," or "between solicitor and client." Chy. O. 643.

The commission under this Rule does not cover costs of interlocutory proceedings, where one party is ordered to pay costs to another party.

The commission should only be apportioned among those parties to the action or proceeding who would otherwise be awarded taxed costs.

Parties added in the Master's office, and who have the same interests as other parties appearing by solicitor, and whose interests are thereby already sufficiently protected, should not share in the commission. *See* "References."

The division of the commission should be in fractional parts, proportionate to the work done and responsibility involved. *Dodge* v. *Clapp*, 8 P. R. 388; *Cameron* v. *Leroux*, 9 P. R. 304.

The commission covers all the costs of the action. On a motion for distribution the plaintiff asked that a lump sum be allowed for the costs and disbursements of the motion. The Chancellor refused to allow any sum for costs and disbursements over and above the amounts found in the report. *Re Fleury, Fleury* v. *Fleury*, 9 P. R. 87.

Where other matters are involved in the action besides a simple administration of the estate, *e.g.* where the construction of a will is asked for, taxed costs will be allowed up to judgment, in addition to commission. *Rody* v. *Rody*, 2 C. L. Times, 86.

But the commission does not cover the costs of getting out of Court the cheques for the parties entitled thereto. The plaintiff's solicitors were instructed by certain legatees to obtain cheques for the amounts found due them by the Master's report, and the solicitors procured the cheques and charged the legatees with the costs of procuring them. The legatees objected to pay these costs, on the ground that the plaintiffs' solicitors had already been paid therefor by the commission allowed them; and that the legacies should be paid to them without any deduction whatever;

Held, Mr. Dalton, M.C., that the solicitors were entitled to the costs in question; for it was no part of their duty, as solicitors having the conduct of the cause, to take out and deliver to legatees or creditors their respective cheques, but if they notify them that they may attend and procure their cheques they have done all that is required of them. *Armitage* v. *Armitage*, 3 C. L. Times 172.

The scope of Con. Rule 1187 is merely to aid in fixing a solicitor's remuneration. It is not intended to do strict

justice, but is only a sort of convenient expedient for fixing costs without taxation.

A very liberal compensation is not *per se* a reason for reducing the commission, or directing a taxation of the bill in its stead, nor *per contra* is a low or inordinate compensation a reason for increasing the commission or directing payment by a taxed bill.

Semble, that where any party interested in the estate desires that a solicitor should be paid on the scale of a taxed bill instead of by commission he should give notice to the solicitor to that effect, and have the Master note it in his book, at the earliest possible stage of the proceedings; but there is no practice authorizing the substitution of a bill of costs for commission at the option of any party. *In re Stuebing, Anthers* v. *Dewar*, 10 P. R. 236.

Where there has been an unusual amount of work done and responsibility borne by the solicitors the Court will increase the commission or give taxed costs. *In re Sayers, Sayers* v. *Kirkpatrick*, 1 C. L. Times 439.

The Master has no power to order taxed costs under this Rule; that can only be done by a Judge of the High Court. *Hendricks* v. *Hendricks*, 13 P. R. 79.

The proceeds of the personalty and the realty must be added together and the commission computed thereon as on one sum realized. *In re Woods, Whittrick* v. *Woods*, 4 C. L. Times 134.

Land was subject to a mortgage and the mortgagee refused to consent to a sale free from the mortgage.

Held, BLAKE, V.-C., that the Master was right in allowing commission only on the amount realized, being the actual value of the interest of the intestate in the land. Had the mortgagee consented to a sale free from his mortgage then the commission would have been estimated on the whole

amount. *Re McColl, McColl* v. *McColl*, 8 P. R. 480; 1 C. L. Times 283.

The commission, however, is to be calculated on the total amount accounted for, and not merely on the net amount in the hands of the accounting party.

Where the personal representative had received $2,451.17 and expended $1,625.97, leaving a balance of $825.20 in his hands, and the Master allowed commission on $2,451.17.

PROUDFOOT, J., "This matter has been mentioned to me by the accountant, who referred me to the case of *Re McColl, McColl* v. *McColl*, 8 P. R. 480. I at first thought that the case was governed by that decision, but on further consideration I do not think that it is, and that the Master has properly allowed the commission on the gross amount accounted for in this action." *Re Brown, Brown* v. *Brown*, 19 C. L. Journal 367; 3 C. L. Times 595.

And see *Re Batt, Wright* v. *White*, 9 P. R. 447.

Commission to Take Evidence.

The costs of a commission to take evidence in a foreign country form part of the costs of the cause. *Colborne* v. *Thomas*, 4 Gr. 169; *Prince* v. *Samo*, 4 D. P. C. 5.

The rule is the same where the commission is to examine a party on his own behalf. *Brunton* v. *Hardy*, 10 W. R. 562.

The expenses of sending a barrister as a commissioner to examine witnesses abroad may be allowed in a proper case. *Yglesias* v. *Royal Exchange Corporation*, L. R. 5 C. P. 141.

As to costs where parties join in a commission. *See* Con. Rule 603.

The costs of executing a commission are entirely in the discretion of the taxing officer; and where the amount

paid to the commissioner was twenty-two guineas, and the Master on taxation disallowed twelve, the Court refused to interfere.

MORRISON, J., "It can hardly be said that no matter what amount may be paid to a commissioner, the Master should allow it. A great deal necessarily depends upon the standing of the commissioner. If he is a professional gentleman, in some case ten guineas a day may be a reasonable charge to be allowed; that would depend entirely upon the standing of the commissioner, and the necessity for the services of a gentleman whose time is so valuable. In ordinary cases I should say that five guineas a sitting was reasonable." *Fox* v. *Toronto and Nipissing Railway Co.*, 7 P. R. 157.

In *Greey* v. *Smith*, 7 C. L. Times 168, $20 *per diem* was allowed as solicitor's charges for attending at Chicago on a commission issued by the opposite party.

A commission was taken out by the defendant to examine a witness in Paris. At the trial the plaintiff's counsel abandoned that part of his case to which the evidence under the commission applied, and the defendant had a verdict on that issue.

Held, that he was entitled to the costs of the commission. *Jewell* v. *Parr*, 17 C. B. 636; 2 C. B. N. S. 809.

The plaintiffs obtained an order for the issue of a foreign commission. The order contained the usual direction that the costs be costs in the cause. The evidence was taken, and the plaintiffs succeeded in the suit, but the evidence was not put in at the trial. The taxing officer disallowed the costs of the commission on the ground that the evidence was not used.

BOYD, C., held that the direction in the order as to costs did not preclude the taxing officer from disallowing the

costs of the commission to the plaintiffs. *Dominion, etc., Co.* v. *Stinson*, 9 P. R. 177 ; 2 C. L. Times 45.

See also *Curling* v. *Robertson*, 8 Scott. N. R. 288 ; 7 M. & G. 525, to the same effect.

If a witness is so old and infirm that it is a prudent course to take his examination, but he is afterwards able to attend the trial, the party may be allowed the costs of the commission, as well as the costs of the witness's attendance at the trial. *Beaufort* v. *Ashburnham*, 13 C. B. N. S. 598 ; 9 Jur. N. S. 822.

See also *Fox* v. *Toronto and Nipissing Railway Co.*, 7 P. R. at p. 161.

See *McIntyre* v. *Canada Co.*, 18 Gr. at p. 370, where the Court directed that the costs of a commission should not be allowed to the defendant where the facts were such that the defendant should have admitted them.

Copies.

Con. Rule 395. Every pleading may be either printed or written, or partly printed or partly written, but no more than four copies of any pleading or other document are to be allowed to any party in a cause or matter, exclusive of the draft, but inclusive of all other copies that may be required or made in the progress of the cause. J. A. Rule 129.

Con. Rule 396. If more than three copies exclusive of the draft are required of any pleading or other document, the party may have the pleading or other document printed for the purposes of the cause or matter, and in that case he shall in lieu of all charges for copies be allowed thirty cents per folio of the pleading or document, and his reasonable disbursements of procuring the same to be printed. J. A. Rule 130.

Con. Rule 452. The word folio shall mean one hundred words. Rules T. T. 1856, 167.

See Con. Rules 447 to 457 as to copies and printing. *See* Con. Rules 1183, 1184 as to copies of evidence and shorthand notes.

Costs will not be allowed for copies of shorthand notes of evidence which are not used on the hearing of an appeal, the decision turning on a point of law. *Ex p. Webster*, 22 Ch. D. 136.

Charges for procuring copies of opinions of judges in another action for the instruction of counsel, should not be taxed as between party and party.—Boyd, C. *Platt* v. *Grand Trunk Railway*, 7 C. L. Times 400; 23 C. L. Journal 373.

The trial began in October and continued four days, and was then adjourned till 22nd December after thirty-two witnesses had been examined, and 1185 folios of evidence had been taken. The plaintiff's solicitor procured a copy of this evidence for the use and convenience of counsel at the adjourned trial, when other witnesses were examined and the case argued. The taxing officer ruled that it was the duty of the junior counsel to take notes of evidence, and disallowed the disbursement for the copy of the evidence.

Held, PROUDFOOT, J., reversing his ruling, that the item should be allowed between party and party as a necessary disbursement at the trial of the action. *Gage* v. *Canada Publishing Co.*, 3 C. L. Times 267.

The Court of Appeal had ordered part of an affidavit filed on behalf of the plaintiff to be expunged as scandalous, and had given the defendants their costs of the application as between solicitor and client. The taxing master disallowed the costs of copies of the pleadings for the use

of the Council and the Judges, on the ground that it was not the practice to allow the expense of copies of pleadings except at the hearing.

The Court reversed the decision, and allowed the costs of the copies, holding that the general rule laid down by the taxing master could not be sustained, and that as the copies were necessary to enable the case to be properly argued they must be allowed. *Warner* v. *Moses*, 19 Ch. D. 72.

Costs Before Writ Issued.

The only costs allowed on taxation, before the writ is issued, where the writ has been issued, are necessary letters to defendants, unless by s[illegible]e, or the practice of the Court, the plaintiff is requi[illegible] to give some other particular notice, in which case the reasonable costs of the notice and service of it are taxable.

Where a solicitor is retained to demand a debt, and the debtor pays the amount before the writ of summons is issued, the solicitor cannot insist on payment of any costs for his letter, or for instructions to sue. *Caine* v. *Coulson*, 32 L. J. Exch. 97 ; *Holman* v. *Stephens*, 6 Jur. N. S. 124.

Where it was necessary to serve a railway company with notice of action the plaintiffs were allowed the costs of such notices. *Kent* v. *Great Western Railway Co.*, 4 D. & L. 481 ; *Edwards* v. *Great Western Railway Co.*, 12 C. B. 419.

R. S. O. 1887, chapter 73, requires notice to be given prior to action against a justice of the peace, or other officer or person fulfilling a public duty, for anything done by him in the performance of such duty.

R. S. O. 1887, chapter 57, requires notice to be given in certain cases in actions of libel.

The costs of preparing and serving these notices would be taxable. *Pringle* v. *McDonald*, 7 P. R. 152.

But in an action to set aside a conveyance as fraudulent the costs of preparing and tendering a reconveyance for execution, before service of the writ, are not taxable. *Pringle* v. *McDonald*, *supra*.

Costs in the Cause.

BURNS, J., "The rule of what forms costs in the cause I take to be this: all rules which form part of the regular proceedings in the cause, and where costs are not mentioned, the party substantially succeeding will be entitled to the costs of or opposing, as the case may be, as part of the costs of the cause. Costs accruing upon irregular proceedings should be provided for in any rule or order to be made, and if not provided for they do not form part of the costs of the cause." *Cameron* v. *Campbell*, 1 P. R. 170.

The phrase "costs in the cause" generally means the costs only of the party who is successful in the cause. But where the phrase was used in an award, as follows: "We also order and award that the plaintiff and defendants shall each pay half the costs of the cause, and that the defendants shall pay all the costs of the reference and award, our costs of which reference and award as arbitrators we assess at the sum of $201.50," it was held that the words "costs in the cause" meant the whole costs of the plaintiff and defendants.—Richards, C.J. *Scott* v. *The Grand Trunk Railway Co.*, 3 P. R. 276.

The costs of a special jury are costs in the cause, not costs of the day. *Whitehead* v. *Brown*, 2 O. S. 345.

The costs of shewing cause against a rule for setting aside an award are costs in the cause. *Essex* v. *Parke*, 12 U. C. C. P. 159.

The plaintiff had obtained a decree with costs against the defendant. Afterwards, by consent, a supplemental order varying the decree was made, which was silent as to costs.

Held, that the costs of such order and proceedings thereunder were not costs in the cause, and could not be taxed against the defendant. *Attorney-General* v. *Taylor*, 1 Chy. Ch. 362.

Where, after notice of motion to stay proceedings until the costs of a former suit for the same cause of action should be paid, such costs are paid ; the costs of the motion to stay proceedings will be made costs in the cause. *Little* v. *Hawkins*, 3 Chy. Ch. 78.

A motion was made to the presiding Judge at the Assizes to postpone the trial upon the ground of the absence of a necessary and material witness. The order was made and the question of costs reserved.

Rose, J., "I reserved my decision to look at the case of *Pattison* v. *McNab*, 12 Gr. 483. I have also referred to *McMillan* v. *McDonald*, 22 Gr. 362.

"It seems clear that in the Court of Chancery the rule was well established that where a party had made diligent efforts to secure the attendance of a witness within the jurisdiction of the Court, and failed to secure it from a cause which he could not control, then the costs of such an application would be costs in the cause, unless it was possible to take the evidence before a special examiner, or the knowledge of the fact that the attendance could not be secured, came to the applicant in time to enable him to advise the other side so that the witnesses might be notified not to attend.

"I think, on the facts before me, the plaintiff was in no default, and that the costs must be costs in the cause. The

rule appears to be a just one, and I willingly follow it." *Brown* v. *Porter*, 11 P. R. 250.

And see *Graham* v. *Machell*, 2 Chy. Ch. 376; and *Rees* v. *Attorney-General*, 3 Chy. Ch. 386.

Costs of the Day.

Under the Common Law Procedure Act, where notice of trial was given, and the party giving the notice did not bring the issue to trial, he was bound to pay the costs of the day to the opposite party. The rule for these costs could be drawn up on affidavit without a motion therefor being made in Court. R. S. O. 1877, chap. 50, secs. 275, 276.

For the former practice *see* Harrison's C. L. P. Act, 323.

The Master in Chambers has held that this practice is superseded by the Judicature Act; and though these costs may still be imposed as a very just condition, no officer of the Court has now power to issue a rule for such costs, nor has the Master in Chambers jurisdiction to entertain an application for such costs. *Hopkins* v. *Smith*, 9 P. R. 285.

Where the plaintiff is prevented from proceeding to trial by any act of the defendant, the defendant is not entitled to any costs of the day. *Fitzgerald* v. *Ludwig*, 7 P. R. 187; *Parkinson* v. *Thompson*, 44 U. C. Q. B. 29.

By an order of the Master in Chambers the cause was brought down to be heard at sittings for the trial of actions in the Chancery Division, but the trial Judge refused to entertain the case as it came from a Common Law Division.

Held, CAMERON, C.J., reversing the ruling of the taxing officer, that the plaintiff was entitled to the costs of the day. *Schwob* v. *McLaughlin*, 3 C. L. Times 172.

In an action for damages for trespass to lands where the line fence was in dispute, the defendant in his depositions taken before trial said he knew nothing about the line except what he had been told, but that he had traced the line as run by others.

The trial was adjourned at the plaintiff's request on payment of the costs of the day. The defendant, who resided in the Northwest Territories, swore that he had come to the trial for the sole purpose of giving evidence on his own behalf, etc. His counsel also certified that he was a material witness. The taxing officer refused to allow his witness fees as part of the costs of the day, on the ground that he knew nothing about the boundary, and no other issue was before the Court, and therefore his evidence could not be material.

Held, PROUDFOOT, J., reversing the ruling of the taxing officer, that it was premature for him to decide, at this stage of the case, that no material evidence could be given by the defendant. *Goodfellow* v. *Shuttleworth*, 3 C. L. Times 105.

In *Hogg* v. *Crabbe*, 12 P. R. 14; 23 C. L. Journal 79. Proudfoot, J., held that where the trial had been postponed at the Assizes upon payment of "the costs of the day" only one counsel fee of $10 was taxable.

In a more recent case this decision was dissented from by Armour, C.J., who said:—"My brother Proudfoot was clearly under a misapprehension, or was misinformed as to the practice that obtained at common law in taxing costs of the day. The phrase "costs of the day" is a general term applicable to different circumstances, and varying with those circumstances. There were costs of the day for not proceeding to trial pursuant to the practice of the Court; and in such cases no counsel fee was chargeable. There were costs of the day for not proceeding to trial according to notice, that is, where the plaintiff gave notice

of trial and did not countermand it, but did not enter his record; and in such cases it became and was the practice in the taxing office, although a counsel fee was chargeable, to tax only $10. There were costs of the day where the plaintiff gave notice of trial and entered his record, and afterwards withdrew it; and counsel fees were in such cases chargeable, but were taxable according to the discretion of the taxing officer, and not according to any arbitrary limit. And there were costs of the day where the plaintiff gave notice of trial and entered his record, and the defendant moved to postpone the trial, and it was postponed upon payment of the costs of the day; and counsel fees were in such cases chargeable, but were taxable according to the discretion of the taxing officer, and not according to any arbitrary limit.

"Under the term 'costs of the day' used in the order made by me in this case, counsel fees were chargeable and were taxable according to the discretion of the taxing officer, and not according to any arbitrary limit." *Outwater* v. *Mullett*, 13 P. R. 509; 10 C. L. Times. 299.

Where, before the commission day, an order had been obtained by the defendant to postpone the trial on payment of costs, and the plaintiff sought to tax a counsel fee as paid to the partner of the plaintiff's attorney, without shewing when or how paid; and it appeared that the Record had not been entered for trial, the Master refused to tax the counsel fee, and the Court sustained his ruling. *Manary* v. *Dash*, 9 L. J. 327.

A judgment purchased by the defendant from a third party, cannot be set off against the costs of the day, given to the plaintiff upon an application to postpone the trial, so as to defeat the solicitor's lien. *Bennett* v. *Tregent*, 6 P. R. 171.

And *see* Con. Rule 1205.

Counsel Fees.

In estimating the amount of fees to counsel the taxing officer should always have regard to the difficulty and complication of the questions of law and fact involved in the case, and the importance of the result of it to the parties.

The fees *bona fide* paid by a solicitor to counsel and fairly required by the magnitude or complication of the case should be allowed on taxation between party and party. *Robb* v. *Connor*, 9 Ir. R. Eq. 373.

Counsel fee should be exclusively, as for fee with brief at the trial. *Boulton* v. *Switzer*, 1 Ch. Rep. 83.

Harrison, C.J., "Where a brief has been delivered to counsel for the *bona fide* purpose of procuring his attendance at the trial, and his fee paid as it ought to be at the time of the delivery of the brief, the mere circumstance that he is, from no fault of his own, unable to be present at the trial, is no good reason for refusing to tax the fee paid to him in the event of the person paying him succeeding in the litigation. (*Taylor* v. *Clarke*, 13 I. C. L. R. 571. See also *Henderson* v. *Connor*, 3 U. C. L. J. 29.) In this Province a practice has sprung up of taxing fees to counsel in every case without any proof of payment, and the consequence is, that although the fees are taxed and paid, they do not always reach the counsel who earned them. But it must for the honor of the profession be stated that this does not often happen." *In re North Victoria Election*, 39 U. C. Q. B. 152.

A counsel fee with brief at trial is not taxable until notice of trial has been given. *Dewar* v. *Orr*, 3 Chy. Ch. 141; *Pegg* v. *Pegg*, 7 U. C. Q. B. 220.

Where a person who was both a barrister and solicitor in Ontario attended Chicago on a commission to take evidence,

the taxing officer ruled that a charge of $20 *per diem* was to be regarded as for a solicitor's attendance and not as a counsel fee. *Greey* v. *Smith*, 7 C. L. Times 168.

For counsel fees taxable under an order giving the costs of the day, see *Outwater* v. *Mullett*, 13 P. R. 509. *Ante*, under "Costs of the Day."

The Master declined to tax a counsel fee for consultation between counsel previous to the trial, and on appeal Morrison, J., declined to make a precedent for the allowance of such a disbursement. *Fox* v. *The Toronto and Nipissing Railway Co.*, 7 P. R. 157.

A counsel fee of $5 for each necessary and proper enlargement of a Court motion should be allowed. *McCallum* v. *McCallum*, 11 P. R. 179.

A counsel fee will not be allowed where counsel attends on a motion merely to shew that the motion is irregular. *Waller* v. *Claris*, 11 P. R. 130.

Or where notice of appeal is served on a party whom the appeal does not affect, and he attends on the hearing of the appeal. *Ex p. Webster*, 22 Chy. D. 136.

The local taxing officers cannot allow larger fees to counsel than $40 and $20 without fiat, even by the consent of the solicitors. Rep. I. L. O. 1887.

Where evidence taken before a Master sitting for a Judge was entered in the decree as having been taken in Court, the same fees were taxed to counsel before the Master as before a Judge. *Rae* v. *Trim*, 8 P. R. 405.

In an alimony suit a decree was made by consent whereby the defendant was ordered to "pay the plaintiff the sum of $75 *and all disbursements* in the suit as between solicitor and client."

Held, that the Master had properly allowed to the plaintiff a sum of $50, paid by her to her solicitors, they being

also counsel, for counsel fees on the examination and hearing of the cause. *Bucke* v. *Bucke*, 21 Gr. 77.

In taxing the costs of an arbitration upon the county court scale, no larger counsel fee before the arbitrators than $25 can be taxed, even though the attendance is for several days. *Re Montague, etc.*, 12 P. R. 141.

Where three actions were brought by three different plaintiffs against one defendant, the cause of action in each case being the same, and on appeal to the Court of Appeal, an order was made that only one appeal book should be printed for the three cases, and the three cases were argued together.

Held, that the Master was right in allowing separate counsel fees in each case. *Petrie* v. *Guelph Lumber Co.*, 10 P. R. 600.

Where costs were ordered to be paid out of an estate as between solicitor and client:

Held, by Mr. Thom, the taxing officer, that he was not restricted by order 29 of the Court of Appeal Orders (now item 155, Tariff of Costs) to the allowance of a fee not exceeding $80 to counsel for the executors, and an increased fee was taxed. *Archer* v. *Sever* , 3 C. L. Times 602.

And see *Cameron* v. *Campbell*, 1 P. R. at p. 173.

Where a solicitor sues in person he is entitled to tax costs for solicitor's services and disbursements, but if he acts as counsel at the trial he cannot tax a counsel fee in his own cause. *Smith & Crooks* v. *Graham*, 2 U. C. Q. P. 268.

But a solicitor trustee appearing for himself and his co-trustees in a suit was held entitled to full costs as if he was not a party, except so far as the costs were increased by his being a party. *Cradock* v. *Piper*, 1 Mac. & G. 664. Mor. & Wurt. 387, *et. sub.*

It was held in a Manitoba case, that in a proper case an appeal from the Master will be allowed upon the *quantum* of counsel fees. *Rankin* v. *McKenzie*, 6 C. L. Times, 502.

This is not, however, the practice in Ontario; and in a recent case the Divisional Court (Q. B. D.) held that the Court will not interfere with the discretion of the taxing officer either as to the *quantum* or *quoties* of fees; and this rule covers any question of distribution or allotment of charges among the different branches of the case. *Conmee* v. *North American Railway Contracting Co.*, 13 P. R. 433; 10 C. L. Times, 117.

Where, however, the taxing officer altogether omits to exercise any discretion, or decides on a wrong principle, there an appeal would lie from his decision.

Defendants Severing.

Con. Rule 1202. Where two or more defendants defend by different solicitors under circumstances that by the law of the Court entitle them to but one set of costs, the taxing officer, without any special order from the Court, is to allow but one set of costs; and if two or more defendants defending by the same solicitor separate unnecessarily in their defences, or otherwise, the taxing officer is, without any special order of the Court, to allow but one defence and set of costs. Chy. O. 315.

See also Con. Rules 49, 1188.

"It may be stated in general terms that defendants representing the same interests must join in defending, and be represented by the same solicitor upon terms of being allowed but one set of costs, if successful; and that defendants who have identical but separate interests need not join." See 18 C. L. Journal 3.

Where the House of Lords had, subject to certain directions, left it to the taxing officer to determine how

many sets of costs should be allowed to defendants who had severed in their defences, it was held that no appeal would lie from the ruling of the taxing officer on the point, unless he altogether omitted to exercise his discretion. *Boswell* v. *Coaks*, 36 Chy. D. 444.

In an action for damages for injuries caused to a drain, two contractors who had constructed the drain, and the assignee of one of them were added defendants. The two contractors were partners when the drain was constructed, but had dissolved partnership before the action was begun. One contractor defended by one solicitor, and the other and his assignee by another solicitor. Judgment was given dismissing the claim against the added defendants with costs.

Held, by ARMOUR, C.J., that there was no "law of the Court" which, under the circumstances of this case, justified the taxing officer in refusing to allow more than one set of costs to the added defendants. *Melbourne* v. *City of Toronto*, 13 P. R. 346.

A trustee who severed in his defence, because his co-trustee had refused to act in conjunction with him in the management of the estate, was refused his costs.—Mowat, V.-C. *Gibson* v. *Annis*, 11 Gr. 481.

Where the several members of classes of persons interested in an estate severed in instructing counsel, the Court, though it gave them costs out of the estate, directed the attention of the Master to the subject on taxation. —Proudfoot, V.-C. *Crawford* v. *Lundy*, 23 Gr. 244.

Where three plaintiffs brought separate actions against the same defendants for the same alleged cause of action, and on appeal to the Court of Appeal one appeal book was printed and the three cases argued together.

Held, that the taxing officer was right in allowing separate counsel fees in each case.

The actions were against a company and one McLean. The claim was for an alleged conspiracy to defraud. McLean defended meeting the charge directly; the other defendants did the same and said they obtained their information from McLean, and that they believed it to be true.

Held, that the taxing Master was right in allowing two bills of costs, one to the defendant McLean and one to the other defendants. *Petrie* v. *Guelph Lumber Co.*, 10 P. R. 600.

In an action of tort against two defendants, they paid money into Court; the plaintiff denied its sufficiency, and one of the defendants obtained leave to amend by severing in his defence and setting up other defences. The plaintiff succeeded against both defendants with costs. On the taxation the taxing officer taxed the costs occasioned by the defendants severing in his defence against him only, and not against his co-defendant, and the Divisional Court held that the taxing officer was right. *Stumm* v. *Dixon*, 22 Q. B. D. 99, 529.

In a suit for specific performance by a vendee against his vendor, and a person to whom he had sold after agreeing to sell to the plaintiff, the defendants severed in their defences and employed separate solicitors, and it was held each was entitled to tax a separate bill. *Barrett* v. *Campbell*, 7 P. R. 150.

In a suit for redemption the bill alleged that a deed absolute in form was really a mortgage. The grantee in the deed had died, and the defendants were his son, to whom the lands had been devised, and two executors. The defendants employed different solicitors and set up different defences.

Held, that the defendants were justified in severing in their defences, and could tax separate bills.

Held, also, that where one of several defendants is charged with fraud, the others are not obliged to connect their defence with his. *Connolly* v. *Hill*, 7 P. R. 441.

Demurrer.

Con. Rule 390. The party whose pleading is demurred to may, at any time within four days from delivery of the demurrer or before the demurrer is set down, on payment of $5 to the party demurring, obtain an order on præcipe to amend the pleading or that portion of it which is demurred to.

This is a new Rule, and the practice here laid down is adopted from the former Chancery practice. Before this Rule was made the Master in Chambers had held that the former Chancery practice was no longer in force, and that a plaintiff who submitted to a defendant's demurrer must pay taxed costs. *Privett* v. *Pearson*, 4 C. L. Times, 353.

Where a demurrer was held good on one ground, though overruled on another ground, the defendant was allowed to answer without costs. *Paine* v. *Chapman*, 6 Gr. 338.

Where a demurrer for multifariousness was overruled, and a demurrer *ore tenus* for want of parties was allowed, the practice was held to be that the demurrer for multifariousness should be overruled with costs, and the demurrer *ore tenus* allowed without costs. *Kelley* v. *Ardell*, 11 Gr. 579.

Where a demurrer was partly successful, and partly unsuccessful, neither party was awarded costs. *Attorney-General* v. *Midland Railway Co.*, 3 Ont. R. 511.

Where a count was drawn so as to invite a demurrer, the demurrer was overruled without costs. *Smith* v. *The Corporation of Ancaster Township*, 45 U. C. Q. B., 86.

Discontinuance.

Immediately on notice of discontinuance the defendant entered judgment for costs to be taxed, following form No. 164 (now form No. 178). On taxation the costs of entering judgment were objected to.

Mr. Clark, taxing officer, ruled that although the defendant under the strict interpretation of the rules was entitled to enter judgment for costs to be taxed, immediately on a receipt of notice of discontinuance, yet that the proper practice was to tax the costs first, and then enter judgment if they were not paid; and exercising his powers under Rule 442 (now Con. Rule 1214) he disallowed the costs of entering judgment. *Gage* v. *Campbell*, 4 C. L. Times, 151.

Where defendant paid a sum into Court as part of the plaintiff's claim, and the plaintiff, after issue joined, discontinued, it was held that he was entitled to his costs up to the time of payment into Court. *Suckling* v. *Gabb*, 36 W. R. 175.

A plaintiff who discontinues must pay costs of an interlocutory application in which he succeeded, costs being made costs in the cause. The St. Olaf, 2 P. D. 113.

Documents.

Con. Rule 617. Either party may call upon the other party to admit any document, saving all just exceptions. J. A. Rule 241.

Con. Rule 1190. No costs of proving a document shall be allowed unless a notice to admit has been given under Rule 617, except when the omission to give the notice is a saving of expense.

Con. Rule 1196. No allowance is to be made for any order for production or any notice of inspection under any of the Rules relating to production and inspection of docu-

ments unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for taking the order, giving the notice, or making the inspection. J. A. Rule 230.

The Evidence Act, R. S. O. 1887, chapter 61, makes provision for the proof of public documents by certified copies. Secs. 23, 24, 25.

As to proof of wills by notice, see secs. 38-41; registered instruments, secs. 42-45; other written instruments, sec. 46.

Before a party will be allowed to tax the costs of obtaining an exemplification of a judgment he must serve the other side with a notice to admit. The taxing officer, however, though he cannot allow the costs of exemplification without notice, may allow the costs of procuring a copy of the judgment. *Conger* v. *McKechnie*, 1 Ch. Rep. 220.

See "Notices."

A solicitor concerned for two or more parties is not entitled to charge for supplying to himself copies of documents which he has prepared. *Sharp* v. *Wright*, 1 Eq. 634.

A copy of any material document should be provided for each member of the Court of Appeal, and the costs allowed on taxation. *Re Randell*, 56 L. T. 8.

Enlargement of Motions.

A counsel fee of $5 for each necessary and proper enlargement of a court motion should be allowed. *McCallum* v. *McCallum*, 11 P. R. 179.

A party is not entitled to costs for enlarging the opposite party's motion for his own convenience. *Ham* v. *Lasher*, 24 U. C. Q. B. 357.

See "Abandoned Motions."

Examinations de bene esse.

With respect to the costs of examinations *de bene esse*, no specific rule appears to have been laid down which makes any distinction between them and the costs of examinations under ordinary circumstances; and the costs of such examinations will usually be directed to be costs in the cause. Dan. Chy. Pr. 659.

If a witness is so old and infirm that it is a prudent course to take his examination, but he is afterwards able to attend the trial, the plaintiff may be allowed the costs of the commission, as well as the costs of the witness attending at the trial. *Beaufort* v. *Ashburnham*, 13 C. B. N. S. 598.

And see *Fox* v. *Toronto and Nipissing Railway Co.*, 7 P. R. at p. 161.

The plaintiff sued for damages for bodily injuries sustained, and obtained an order for his own examination *de bene esse* before trial. The order provided that after the conclusion of the plaintiff's examination he should submit to a personal examination by medical men on behalf of the defendants, and that the defendants might afterwards continue their cross-examination of the plaintiff; and that the examination might be given in evidence at the trial "provided the defendants had been able to continue and complete their cross-examination of the plaintiff after the said medical examination." The plaintiff was examined and partly cross-examined under this order, and was examined by a medical man, but his cross-examination, owing to his ill-health, was not completed. The plaintiff was not examined as a witness at the trial; the depositions taken were offered in evidence, but were rejected as inadmissible under the terms of the order. The plaintiff succeeded in the action.

The Divisional Court held that under the circumstances of the case the examination of the plaintiff *de bene esse* was a proper and reasonable proceeding, and as the failure to complete it was through no fault of the plaintiff or his solicitor, and as it was not without use to the defendants, the costs of it should have been taxed to the plaintiff as part of the costs of the action. *Carty* v. *City of London*, 13 P. R. 285.

As to the costs of attendance of medical man on examination, see same case under "Attendances."

Examination of Parties.

Con. Rule 1177. The costs of every examination of parties or officers of corporations before the trial, or otherwise than at the trial of an action, shall be costs in the cause, but the Court or Judge in adjusting the costs of the action shall at the instance of any party inquire, or cause inquiry to be made, into the propriety of having made such examination; and if it is the opinion of the Court or Judge, or the taxing officer, as the case may be, that such examination has been had unreasonably, vexatiously, or at unnecessary length, the costs occasioned by the examination shall be borne in whole or in part by the party in fault. The taxing officer may make such inquiry without any direction. J. A. Rule 220.

If it was a proper and reasonable proceeding, and one likely to be of benefit, the costs of examination for discovery should not be disallowed merely because it was not used at the trial. *Carty* v. *City of London*, 13 P. R. 285; *Beaufort* v. *Ashburnham*, 13 C. B. N. S. 598.

The president of the plaintiff's company lived in the United States, but being in Toronto he was there subpœnaed on the 22nd April to attend on the 28th April for examina-

tion for discovery before a special examiner at Toronto. He was paid $1 and made no objection as to the amount, nor did he object that he was prevented by engagements from being present on that day, but he failed to attend.

Held, BOYD, C., that the president should have attended on the day appointed for examination, and he was ordered to attend for examination at Toronto at his own expense. *George T. Smith Co.* v. *Greey*, 22 C. L. Journal 268.

There is no provision in the tariff for attendance on examination of parties residing out of the jurisdiction. In one case $20 *per diem* was taxed to the solicitor for the successful party for attending on a commission to examine witnesses at Chicago. *Greey* v. *Smith*, 7 C. L. Times 168.

Instructions for Examination. *See* "Instructions."

See remarks of Mr. Justice Ferguson as to the abuse of the practice of examinations for discovery, 21 C. L. Journal 66.

The local taxing officer refused to tax to a successful plaintiff on a party and party taxation two fees of fifty cents each for attending to bespeak for depositions of plaintiff and defendant after issue joined, upon the ground that the solicitor attending on the examinations should have ordered copies when the examinations were completed without making a special attendance therefor. On appeal, Wilson, C.J., held these fees should have been allowed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Executions.

Prior to the Judicature Act the practice had obtained of giving an unsuccessful party, against whom judgment had been entered, time to receive communication from his solicitor advising him of the result of the taxation before issuing executions. The old cases are not always consistent, but it was undoubtedly irregular to take out a

fi. fa. the instant costs were taxed without allowing a reasonable time for the solicitor of the client who had to pay to communicate with his client. *Cullen* v. *Cullen*, 2 Chy. Ch. 94.

And see *Parkhill* v. *McLeod*, 2 C. L. Times 37; *Coolidge* v. *Bank of Montreal*, 6 P. R. 73; *Davidson* v. *Grange*, 5 P. R. 258.

It has been held, however, that the word "immediately" in Con. Rule 863 means "instanter," and a party to whom costs are awarded may issue execution therefor on the day of taxation. *Clarke* v. *Creighton*, 10 C. L. Times 342.

This rule also abrogates the old practice, under which a judgment creditor was held to have waived his right to costs by issuing execution for the debt before taxing his costs. *Harris* v. *Jewell*, W. N. 1883, 216.

Experts.

Con. Rule 207. The Court may obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, in such way as it thinks fit, the better to enable it to determine any matter in evidence in any cause or proceedings, and may act on the certificate of such perso . Chy. O. 541.

This rule does not authorize a Master to whom a cause is referred to employ experts.

Although a Master has no power to employ experts where, in an administration action he had at the instance of the plaintiffs, and with the consent of the creditors, engaged the services of an expert, and these services had been of benefit to the estate, the Court held that the creditors could not afterwards, on the taxation of costs, object to the allowance for the sums paid to such expert. *Re Robertson*, *Robertson* v. *Robertson*, 24 Gr. 555.

By Chy. O. 240 (now Con. Rule 73), the Master may substitute a different course of proceedings for that ordinarily taken. A Master had reported in a partition matter, but the report was referred back to him to take further evidence. The Master being, apparently, unable to devise a scheme of partition, appointed two skilled persons to prepare a scheme. This was done, and on the evidence of these witnesses the Master adopted a scheme of partition. The taxing officer disallowed two sums of $110 and $115 paid these two persons. Ferguson, J., held that the course adopted by the Master was a reasonable one, and that these fees should be taxed. *McKay* v. *Keefer*, 12 P. R. 256.

The travelling expenses of experts were allowed in *Churton* v. *Frewen*, 15 W. R. 559.

An allowance was made for preparing partnership accounts in the Master's office, where it was not the duty of either partner to prepare them. *Scott* v. *Griffen*, 8 C. L. Times 452. Taylor, C.J. (Man.)

See Holmested & Langton, pp. 261-262.

Fiats.

The Clerks of Assize have now instructions to endorse on the Records the names of counsel engaged in the trial, the number of witnesses sworn, and the time occupied by the trial. An affidavit to obtain increased counsel fees is therefore unnecessary, and will not be allowed on taxation. Rep. I. L. O. 1887.

Instructions to apply for Fiats will not be allowed. Rep. I. L. O. 1885.

The local taxing officers cannot allow larger fees than $40 and $20 without fiat, even by the consent of the solicitors. Rep. I. L. O. 1887.

Incumbrancers.

No creditor need make an affidavit or attend the Master's office in support of his claim (except to produce his security, if any), unless served with a notice to do so. Con. Rule 977.

Parties attempting to prove claims as creditors or heirs-at-law, who fail to establish their claim, may be ordered to pay the costs occasioned to the opposite party. Holmested & Langton, 904; *Hatch* v. *Searles*, 2 Sm. & G. 147, at p. 157; *Re Knight*, 57 L. T. 238.

The costs of proving a claim are added to the claim, and where there is a deficiency of assets the costs are only paid proportionately and not in priority to the debts. *Re Ætna Fire Insurance Co.*, 17 Gr. 160; *Morshead* v. *Reynolds*, 21 Beav. 638.

The costs of proving an ordinary claim in the Master's office on a mortgage security, judgment debt or simple contract, where the solicitor for the incumbrancer or creditor appears personally, is $8, and where an agent of the solicitor is required to attend $10. The Master's fee is $1.50 for hearing and determining, and 10 cents for filing, no bill of costs or taxation being necessary. Rep. I. L. O. 1885.

Where a person made a party to the action in the Master's office appears and disclaims he is not entitled to any costs, as by remaining inactive the same end will be attained as by his disclaiming. *Hatt* v. *Park*, 6 Gr. 553.

Injunction Motions.

Where a motion for an injunction is refused, the proper course is not to give the costs of the application; as, if the suit fails, the plaintiff must pay the costs; and if it succeeds, the judgment pronounced at the trial provides for the payment of them. *Carruthers* v. *Armour*, 7 Gr. 34.

Where an *ex parte* injunction is dissolved on the ground of concealment of the true state of facts, it is proper to dissolve it with costs; and the "with costs" in such case means "with costs payable forthwith." *Walton* v. *Henry*, 13 P. R. 390.

Where a suit is dismissed with costs a defendant is entitled to his costs of unsuccessfully opposing a motion for an injunction as "costs in the action." *Stevens* v. *Keating*, 1 M'N. & G. 659, 663.

Where the plaintiff succeeded in the suit, but was ordered to pay the costs of it up to a certain day, which was after an injunction obtained in the suit had been dissolved, it was held that he must pay the costs of the motions to obtain and dissolve the injunction. *Webster* v. *Manby*, L. R. 4 Ch. 372.

Where a judgment dismissed the action with costs, and no reference was made to the costs of an interim injunction adjourned to the trial, but not then brought on, it was held, nevertheless, that the costs of this motion should be taxed to the defendant as part of the costs of the cause. *Gosnell* v. *Bishop*, 38 Chy. D. 385.

The decree in the cause gave the plaintiff the general costs thereof.

Held, that this did not carry the costs of rehearing an interlocutory order made refusing an injunction, and which order was reversed on rehearing; the practice requiring that, where costs of rehearing are intended to be given they must be expressly mentioned in the decree or order giving the costs of the cause. *Mossop* v. *Mason*, 20 Gr. 406.

Pending a motion for injunction, the plaintiff took out a *præcipe* order to dismiss his bill.

Held, that the defendant's costs of the injunction motion were properly taxable under this order. *Jenkins* v. *Ryan*, 5 Man. L. R. 112 ; 8 C. L. Times 30.

Instructions.

Instructions for brief should be allowed where the brief itself is allowed. *McCallum* v. *McCallum*, 11 P. R. 179.

Instructions for brief cannot be allowed where the plaintiff, a solicitor of the Court, is acting in his own behalf. *Malone* v. *Davies*, 10 C. L. Times 18.

No instructions for brief, or brief, allowed on a motion in Chambers. Rep. I. L. O. 1885.

A bill had been filed but not served, and it was subsequently dismissed with costs by the plaintiff. It appeared that though no answer had been drawn the defendant's solicitor had received instructions to defend some two months before the dismissal of the bill.

Held, that the defendant was entitled to tax instructions and the costs of the taxation. *Bissett* v. *Strachan*, 8 P. R. 211.

A defendant who was himself a solicitor retained another solicitor to conduct his defence, and was awarded costs against the plaintiff.

Held, by the Master in Chambers, that the defendant was entitled to the usual costs of a defendant, which included instructions to the solicitor retained. *Clarke* v. *Creighton*, 25 C. L. Journal 380.

Instructions for order to produce is a common instruction—50 cents. Rep. I. L. O. 1886.

Instructions for the examination of the plaintiff $2, and instructions for the examination of the defendant $2, should be allowed, as well as attendance to bespeak copy of depositions of plaintiff, fifty cents, and attending to

bespeak copy of depositions : defendant, fifty cents.—Wilson, C.J. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Instructions for pleadings can only be taxed once in the course of the action. Where instructions for statement of claim had been allowed instructions for reply were taxed off. *Torrance* v. *Torrance*, 9 P. R. 271; 2 C. L. Times 311.

Instructions for appeal to the Court of Appeal should be allowed at $2. *See* "Appeal." *Barber* v. *Morton*, 2 C. L. Times 340.

No instructions should be allowed for an ordinary affidavit of disbursements. *Alexander* v. *School Trustees of Gloucester*, *supra*.

Instructions for suit cover instructions for *lis pendens*. Rep. I. L. O. 1886.

Where an order to examine a party is necessary $1 is a proper allowance for instructions for the order. *Ib.*

Where a solicitor makes an affidavit on which to get an order allowing service, instructions for the affidavit are not taxable. Rep. I. L. O. 1885.

Instructions to apply for fiats for increased counsel fees is not a taxable item. *Ib.*

Instructions will not be taxed for the ordinary præcipe order to produce documents. *Ib.*

Where the defendant appears to a specially endorsed writ of summons, and judgment is signed under Con. Rule 739, the plaintiff is entitled to $4 for instructions to sue. *Ib.*

Where instructions are allowed for a motion in Chambers not less than $1.00 should be taxed. *Ib.*

Instructions for affidavit on production of documents in ordinary cases $1.00. *Ib.*

The English practice provides for a further allowance for instructions to sue or defend, and for briefs, if the taxing officer shall on special grounds consider the fee in the tariff inadequate. There is no such provision in the Con. Rules, or the Ontario Judicature Act. *See* Order LXV. 27 (3).

Irregularities.

Where an irregularity is not moved against promptly no costs will be allowed. *Stevenson* v. *Hodder*, 15 Gr. 542; *Harrington* v. *Fall*, 15 U. C. C. P. 541.

Where defendant's solicitor was served with a short notice of motion, which was admitted to be defective:—

Held, that he was not entitled to the costs of counsel attending on the motion merely to show that the motion was irregular. *Waller* v. *Claris*, 11 P. R. 130.

Judgments.

In an action against two defendants for the price of a machine the plaintiffs signed judgment for default of appearance against the defendant Richards for the whole amount claimed against both defendants, but did not at the time tax costs against him. The defendant Garrett defended the action, but judgment was finally entered against him, also for the full amount claimed with costs, but no special direction was given as to the taxation of costs against the two defendants.

On an application for a direction as to the taxation of costs the Master in Chambers ordered "that the whole costs of action be taxed against the defendant Garrett, including the costs of entering judgment by default against the defendant Richards; costs up to and including such judgment to be also taxed against the defendant Richards,

and if recovered from either party to be credited on the judgment against both." *Wilkinson Plough Co.* v. *Garrett*, 7 C. L. Times 22.

Where the Judge directed reasons for judgment in the plaintiff's favour to be put in, the plaintiff's charges for drawing, settling, engrossing, &c., such reasons were held proper. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

There is no necessity for a notice of settling, or of attending to settle a judgment, which simply dismisses the action. Rep. I. L. O. 1887.

Attending to hear judgment, attending to enter judgment. See *ante* under "Attendances."

Judgment on discontinuance. See *ante* "Discontinuance."

Jury Fee.

The defendant gave notice for a jury and paid the jury fee. A verdict was found in his favour, but a new trial was directed. The plaintiff gave notice of trial again, but the prothonotary refused to enter the record until a further jury fee was paid. The plaintiff then moved to strike out the jury notice, and after argument such an order was made by Bain, J., but upon appeal to the full Court the order was set aside upon the ground that a second payment could not have been exacted. *Elliott* v. *Wilson*, 8 C. L. Times 451; 9 C. L. Times 71; 6 Man. L. R. 63.

See "Record."

Letters.

A practice obtained of disallowing all agency letters where both principal and agent resided in the same county. In this action it was decided that all necessary letters

between a solicitor and his agent on the business of the cause are taxable as between party and party, whether the agent resides in the county town of the county where the solicitor resides, or in another county, or in Toronto. *Agnew* v. *Plunkett*, 9 P. R. 456.

Mr. Winchester, Inspector of Legal Offices, in his report for 1885, states that the following letters had been disallowed in some bills of costs where they should have been allowed.

Letters to client (1) advising of trial; (2) result of case where judgment reserved; (3) motion to change venue; (4) result of application to Divisional Court.

Letter to agents with papers to file and serve.

Letter from agents advising papers served.

Letter from solicitor returning admission of service of papers sent by opposite party.

Letters written by a solicitor, before the writ is issued, demanding payment of a debt or other demand, are not chargeable against the debtor. *See* "Costs before Writ Issued."

Maps and Plans.

The taxing officers are authorized to make a reasonable allowance for maps and plans where they are used at the trial. The necessity for them must be shown by affidavit. Con. Rule 1213.

But expenses incurred for surveys and other special work of that nature, made in order to qualify witnesses to give evidence are not taxable between party and party, the English Chancery Order 120 (1845) not being in force here. Preliminary expenses for qualifying witnesses are matters that the Judge or jury may consider in awarding damages and the like, but so far as the taxing officer is concerned, it

is not in his power under the present tariff and practice to allow them to the successful party. *McGannon* v. *Clarke*, 9 P. R. 555.

The difference between the English and Ontario tariffs of costs in this respect is clearly pointed out by the Chancellor in the above case.

Motions.

It is now a settled rule that the party moving may be granted the costs of the motion, though they are not asked for in the notice of motion. Mor. & Wurt. 46; *Ontario Bank* v. *Leacock*, 6 C. L. Times 355; *Sanders* v. *Christie*, 1 Gr. 137; *In re Peck and The Corporation of the Town of Galt*, 46 U. C. Q. B. 211.

Generally the costs of a successful party on interlocutory applications will be costs in the cause without express directions. *Hind* v. *Whitmore*, 2 K. & J. 458; *Harris* v. *Hillard*, 20 L. T. 216.

Where a motion by the plaintiff was ordered to stand till the hearing, no order being made as to costs, and the plaintiff ultimately obtained a decree with costs, but the costs of the motion were not mentioned in the decree, it was held that the motion was substantially a successful one, and that the costs of it were costs in the cause. *Mounsey* v. *Earl of Lonsdale*, 10 Eq. 557; 6 Ch. 141; and see Mor. & Wurt. 48.

But *see* "Abortive Proceedings."

Where a motion is made in Chambers and argued as a Chamber Motion the Judge has no power to issue the order as a court order, so as to tax the costs of a court motion. *Re Flemming*, 11 P. R. 272.

Three interlocutory motions were made during the progress of the action, and the orders made thereon gave the

plaintiff costs of the motions "in any event of the action." The plaintiff succeeded, but was only awarded costs on the county court scale.

Held, that the costs of these motions should be taxed on the county court scale, as well as the general costs of the action. *Blake* v. *Toronto Brewing and Malting Co.*, 8 C. L. Times 123.

Where a motion is treated as abandoned, and the opposite party intends to ask for the costs of an abandoned motion, he ought before doing so to communicate his intention to the party by whom the motion was made. *Aitken* v. *Dunbar*, 25 W. R. 366; *Griffen* v. *Allen*, 11 Ch. D. 913.

The costs of all work relating to affidavits or pleadings reasonably and properly and not prematurely done, down to the time of an abandoned motion or discontinuance of an action should be allowed on taxation. *Harrison* v. *Leutner*, 16 Ch. D. 559.

And see Dan. Chy. Pr. 1557, 1561.

The costs of a successful motion to commit any person for contempt are payable by such person. *Pennel* v. *Roy*, 1 W. R. 271.

But where the object of the motion is to obtain an apology and payment of costs rather than a committal, the Court is inclined not to grant costs. *Plating Co.* v. *Farquharson*, 17 Ch. D. 49.

Where costs are reserved until the trial or further order they should, it seems, be mentioned to the Court and provided for by the judgment or subsequent order; where, however, an action is dismissed with costs this includes all costs reserved. Mor. & Wurt. 50.

Where the motion is occasioned by the default of the party moving he must pay the costs; or where the party moving is asking an indulgence from the Court. *Ib.* 51, 54.

Where the defendant's solicitor was served with a short notice of motion, which was admitted to be defective :—

Held, WILSON, C.J., that the defendant was not entitled to the costs of counsel attending merely to show that the notice was irregular. *Waller* v. *Claris*, 11 P. R. 130.

A motion for attachment when made for non-compliance with the rules of practice or with orders of course, should be made in Chambers; but when made for non-compliance with a judgment of the Court, should be made in Court. *Klein* v. *The Union Fire Insurance Co.*, 3 C. L. Times 602.

Where a motion is made in Court that could be made in Chambers, the party moving will be allowed no costs, other than those of a Chamber Motion. *King* v. *Connor*, 10 Gr. 364.

A person of the same name as the defendant was served, by mistake, with a copy of the writ. A motion was made for judgment under Rule 324 (now Con. Rule 744). The person served appeared on the motion and asked for costs.

OSLER, J., "As to costs, I think the person served is entitled to his costs of coming here to oppose the motion. He did not appear merely to ask for his costs, but *quia timet* an order would be made against him. See *The Great Northern Committee* v. *Trett*, L. R. 2 Q. B. D. 284, and *Campbell* v. *Holyland*, L. R. 7 Ch. D. at p. 175." *Lucas* v. *Fraser*, 9 P. R. 319.

A counsel fee of $10 was allowed on a motion for security for costs. *Bell* v. *Landon*, 9 P. R. 100.

Upon an interlocutory application the defendant refiled material used by him upon a previous application which he had made and which had been refused without costs. An order was granted upon the new application with costs. Upon taxation the Master allowed the costs of preparing the old material; but upon appeal,

Held, that such costs were improperly allowed. *Hooper* v. *Bushell*, 5 Man. L. R. 300; 8 C. L. Times, 261.

New Trial.

Where a new trial was occasioned by a misunderstanding between the counsel for the respective parties as to the terms on which a verdict had been taken, a new trial was granted without costs. *McLeod* v. *Boulton*, 2 U. C. Q. B. 44.

See Con. Rule 794 and Holmested & Langton's notes thereto.

Notices.

Con. Rule 617. Either party may call upon the other party to admit any document, saving all just exceptions. J. A. Rule 241.

A notice to admit or produce documents is available at any trial of the cause, and not merely at the first trial after the giving of the notice. If given the second time they would, probably, be disallowed as being unnecessary. *Wilson* v. *Baird*, 19 U. C. C. P. 98.

Notice to admit should be given even though the opposite side assert that the document is a forgery. *Spencer* v. *Barragh*, 9 M. & W. 425.

A party to a cause, proposing to adduce in evidence at the trial any written or printed document, ought to serve a notice to admit the same, although the document is not in his possession, or even in a place inaccessible to him; and in the event of his neglecting to do so, he will not be allowed the costs of proving it. *Rutter* v. *Chapman*, 8 M. & W. 388.

A mortgage provided that on default for three months the mortgagees might sell without notice. There being

default for more than three months the mortgagees exercised the power of sale and served notices of sale. Street, J., held that the mortgagees had the right to proceed after three months' default to sell with notice if they so desired, notwithstanding there was power to sell without notice, and that they were entitled to tax the costs of the notices. *In re Young and London and Ontario Investment Co.*, 10 C. L. Times 189.

There is no necessity for a notice of settling a judgment which simply dismisses the action. Rep. I. L. O. 1887.

Where a statute requires notice to be given before bringing an action, there the notice is really the first step in the action, and can be taxed between party and party. *Pringle* v. *McDonald*, 7 P. R. 152.

Where a railway company was entitled to notice of action, the plaintiffs were allowed the costs of the notice as a part of the costs of the action. *Kent* v. *Great Western Railway Co.*, 4 D. & L. 481; 16 L. J. C. P. 72; see also *Edwards* v. *Great Western Railway Co.*, 12 C. B. 419.

But where a conveyance of land was set aside as being fraudulent, the costs of preparing and tendering a reconveyance for execution before the service of the bill, were held not taxable against the defendant, as they were not necessary preliminaries to the suit. *Pringle* v. *McDonald*, *supra*.

Orders.

Evidence cannot be received by a taxing officer to make costs payable otherwise than they appear to be by the order awarding them when explained by the ordinary rules of construction. *Keim* v. *Yeagley*, 6 P. R. 60.

The Master in Chambers made an order to amend the writ and proceedings, the costs to be costs in the cause.

The plaintiff having succeeded in the action, claimed the costs of the amendment allowed by the order in taxing his costs of suit, which the taxing officer refused to allow, ruling that he could under Rule 442 (now Con. Rule 1214), exercise his discretion to disallow costs which he thought were improperly incurred.

Held, FERGUSON, J., that the taxing officer had no discretion, but was obliged to tax the costs as ordered, and that Rule 442 refers to the moderation of costs not disposed of by express order or judgment. *Edwards* v. *Pearson*, 3 C. L. Times 504; 20 C. L. Journal 93.

See *Dominion, etc.*, v. *Stinson*, 9 P. R. 177, under "Commission to take Evidence."

Præcipe orders are orders of the Court, and a fee of $1 should be allowed thereon, under item 116 of the tariff. *Gage* v. *Canada Publishing Co.*, 3 C. L. Times 267; 19 C. L. Journal 175.

Where a motion is made in Chambers, and argued as a Chamber Motion, the Judge has no power to make the order as a court order, so as to tax the costs of a court motion. *Re Fleming*, 11 P. R. 272.

Only one attendance should be allowed for obtaining a præcipe order. *Latour* v. *Smith*, 13 P. R. 214.

See the remarks of Boyd, C., in *Snider* v. *Orr, et al.*, 11 P. R. 140, as to the unnecessary multiplication of orders in respect of the same matter.

Costs of an affidavit filed but not read in the order will be disallowed even on a taxation as between solicitor and client. *Stevens* v. *Lord Newborough*, 11 Beav. 403; see, too, *Stuart* v. *Greenall*, 13 Price 755.

Where the costs of an interlocutory order have been dealt with by the Court of Appeal, and the case finally comes up

to the Court of Appeal for decision on the merits, the costs of the interlocutory order cannot be reconsidered. *Beynon* v. *Godden*, 4 Ex. D. 246.

The jurisdiction of the Court to stay proceedings in an action until compliance with an order for the payment of costs is founded, and ought to be exercised, on the principle and for the purpose of prevention of vexation and oppression, and does not depend on any old practice of the Court of Chancery under process of contempt, or on the mere fact of non-payment. *Re Wickham*, 35 W. R. 524 ; 35 Chy. D. 272 ; dissenting from *Re Neal*, 31 Chy. D. 437 ; *Re Youngs*, 31 Chy. D. 239.

Perusals.

Where a reply is a simple joinder of issue, no fee for perusal will be allowed. Rep. I. L. O. 1885.

No fee is allowed for perusal of depositions or examinations of an opposite party. *Ib.*

Item 90 of the tariff provides, however, for the perusal of interrogatories and cross-interrogatories on commission, in special or contested actions.

Where more affidavits than one relating to the same matter, or filed on the same motion, are served or delivered, and they do not together exceed twenty folios, no more than $1.00 will be allowed for perusal.

Pleadings.

Con. Rule 395. Every pleading may be either printed or written, or partly printed and partly written, but no more than four copies of any pleading or other document are to be allowed to any party in a cause or matter, exclusive of the draft, but inclusive of all other copies that may be required or made, in the progress of the cause. J. A. Rule 129.

Con. Rule 396. If more than three copies, exclusive of the draft, are required of any pleading or other document, the party may have the pleading or other document printed for the purposes of the cause or matter, and in that case he shall in lieu of all charges for copies be allowed thirty cents per folio of the pleading or document, and his reasonable disbursements of procuring the same to be printed. J. A. Rule 130.

Con. Rule 452. The word folio shall mean one hundred words. Rules T. T. 1856, 147.

Where parties by their pleadings do not make such admissions as should be made, the party neglecting to make the admission may be ordered to pay the costs occasioned thereby. Con. Rules [illegible] 1189.

Con. Rules 395, 396, do not apply to copies of subpœnas.

In taxing costs the taxing officer should look at the pleadings to see if proper admissions have been made, without any special direction to do so. *Baines* v. *Wormsley* 47 L. J. Chy. 844.

Pleadings should be in language and statements as brief and concise as possible, and neither matters of argument nor evidence should be introduced into them. When the costs of any such pleadings are disallowed on any of these grounds, the solicitor cannot claim them from his client. If he does it is open to the client to complain to the Court. *Kennedy* v. *Lawlor*, 14 Gr. at p. 229.

In *Malloch* v. *Grier*, 2 U. C. Q. B. 113, a great portion of the pleadings were disallowed on both sides as being unnecessarily pleaded. And in *The Canada Permanent Building and Savings Society* v. *Harris*, 16 U. C. C. P. 54, unnecessarily lengthy pleadings were ordered to be reduced by the Master at the party's expense.

A counsel fee for settling plaintiff's reply to defendant's counter claim should be taxed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Where a reply is a simple joinder of issue no fee for perusal will be allowed. Rep. I. L. O. 1885.

Where documents are embodied or copied in the pleadings, the solicitor will only be allowed 10 cents per folio for so much of the original pleading as consists of such copy, instead of 20 cents per folio.

Costs occasioned by scandalous matter in a pleading will, as a rule, be ordered to be paid by the offending party as between solicitor and client. *Christie* v. *Christie*, 8 Ch. 499; Mor. & Wurt. 36 *et seq.*

Postponing Trial.

It seems clear that in the Court of Chancery the rule was well established that where a party had made diligent efforts to secure the attendance of a witness within the jurisdiction of the Court, and failed to secure it from a cause which he could not control, then the costs of such an application would be costs in the cause, unless it was possible to take the evidence before a special examiner, or the knowledge of the fact that the attendance could not be secured, came to the applicant in time to enable him to advise the other side so that the witnesses might be notified not to attend. *Brown* v. *Porter*, 11 P. R. 250; 6 C. L. Times 126.

In all other cases costs will be disposed of according to the circumstances and in the discretion of the Judge. It makes no difference that the witness is a party to the record unless he is in the same interest with the party against whom it is proposed to call him, and then circumstances must govern. *Pattison* v. *McNab*, 12 Gr. 483.

Where the plaintiff ascertained on Sunday that a witness, who was his mother, was confined to her bed, and unable to attend at the sittings which began on the Tuesday following, but failed to give notice of this fact to the defendant, a motion made by the plaintiff to postpone the hearing was granted only on the terms of paying the costs. *McMillan* v. *McDonald*, 22 Gr. 362.

See Con. Rule 681 and the cases cited in Holmested & Langton's notes thereto.

Record.

Where the trial of a case is postponed from one Assize to another by the order of the Judge at the Assizes, the Clerk of Assize has no right to levy the fee for certifying the record and the entry and jury fees over again, the former payment holding good.

In this case an order had been made by the Master in Chambers on application to postpone the trial when the trial was coming on for the second time, that the case should be entered at the foot of the list in order that the plaintiff might be examined, but it was held, by Wilson, C.J., that this did not necessitate a re-entry of the case, and that the case once entered remained entered on the list until it was tried, struck out or withdrawn. *Morton* v. *Grand Trunk Railway Co.*, 19 C. L. Journal, 372.

See "Jury Fee."

References.

Con. Rule 49. Where, at any time during the prosecution of a reference, it appears to the Master, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class, to be represented by the same solicitor; and where the parties, constituting

such class, cannot agree upon the solicitor to represent them, the Master may nominate such solicitor for the purpose of the proceedings before him. Chy. O. 218, first part.

Con. Rule 1188. When two or more actions or proceedings are instituted for administration, or partition, or sale, the Judge may, in his discretion, disallow all or any of the costs of any action or proceeding which in his opinion has been unnecessarily prosecuted; where any one of the parties, constituting a class formed by a Master for representation in his office by one solicitor, insists on being represented by a different solicitor, such party is personally to pay the costs of his own solicitor of and relating to the proceedings before the Master, with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. Chy. O. 218 and 644.

Refreshers.

Wharton's Law-Lexicon defines a refresher as "A further or additional fee to counsel in a long case, which may be, but is not necessarily, allowed on taxation." *Laurie* v. *Wilson*, L. R. 10 C. P. 152.

Whiteway, p. 154, "In the Common Law Division the practice as to refreshers is not quite the same as in Chancery. On both sides in actions with witnesses refreshers are allowed in the case of actions which have taken up more than one entire day for each day afterwards; but where the action is tried on affidavit no refreshers are allowed. The amount is in the discretion of the Master, and depends upon the fee originally marked on the brief and the nature of the case. The true rule is stated by Jessel, M.R., in *Brown* v. *Sewell*, 16 Ch. D. 520.

When a case, the brief of which was delivered in one term, is not reached until another, a refresher is generally allowed.

"The meaning put upon this phrase ('the costs of the day') includes only a single counsel fee of $10, named a refresher, a term which would seem more appropriate if the case were adjourned for a day or so at the one assize, than to a case where the postponement is until another assize."—Proudfoot, J., *Hogg* v. *Crabbe*, 12 P. R. 14.

Refreshers to counsel are allowable only where the case is so circumstanced as that it may be called on, and are therefore not allowable when a cause has been ordered to stand over to await the decision of a Court of Error in another cause involving the same question, and therefore cannot by possibility come on. *Hughes* v. *Birkenhead Improvement Commissioners*, 16 L. T., N. S. 350, Q. B.

As to the allowance of refreshers on an argument in the Court of Appeal see *Swensden* v. *Wallace*, 16 Q. B. D. 27; *Easton* v. *London Joint Stock Bank*, 38 Ch. D. 25.

Retaining Fee.

A retaining fee to counsel will not be allowed on taxation as between party and party. *Green* v. *Briggs*, 7 Hare, 279; *Smith* v. *Earl of Effingham*, 10 Beav. 378; *Cullen* v. *Cullen*, 2 Chy. Ch. 94.

"No retaining fee will be allowed, on a solicitor and client taxation, to a solicitor who is himself also counsel. In England there is no such thing as a retaining fee to a solicitor. It is a fee paid to counsel only, and it is paid to secure his services either in a particular suit, or generally for any suit the client may be interested in. I do not think the argument that the solicitor being in this country both solicitor and counsel, the retaining fee is chargeable as if paid by the solicitor to retain his own services as counsel,

a sound one. If employed as a solicitor it is his duty to devote himself to further the interests of his client, and he certainly could not consistently with that duty hold a brief as counsel for the other side, so his services, if he intends acting as counsel, are already secured." *In re McBride, Farley* v. *Davis*, 2 Chy. Ch. 153.

If a retaining fee is actually paid it could not be recovered back by the client, but an unpaid retainer fee cannot be taxed by a solicitor against his client. *Re Geddes & Wilson, Solicitors*, 2 Chy. Ch. 447.

A retaining fee was paid by executors to a solicitor in an administration suit, and under the circumstances of the case, was held to be a reasonable disbursement, and allowed them in their accounts. *Chisholm* v. *Barnard*, 10 Gr. 479.

A solicitor acted for a client in defending him on a charge of arson, and in prosecuting actions against two insurance companies to recover for a loss by fire. At the time the solicitor's services were required the client had no money and had no prospect of getting any, and in consequence of the risk the solicitor ran of getting nothing and losing a considerable sum for disbursements, the client offered him a retaining fee, to be paid out of the insurance moneys when recovered, and it was agreed between them that such fee should be $150 for the two actions, the amount claimed being about $1250. Subsequently, and when some costs had been incurred, the client made an assignment to a third party of the moneys due to him from the insurance companies, in trust to pay the solicitor his costs, including the retaining fees agreed upon, and to pay the balance to creditors.

Held, FALCONBRIDGE, J., that the assignment in trust was a security for costs already incurred, a confirmation of the original agreement, and a *quasi* appropriation of the money;

and as it appeared that the client understood that the payment of retaining fees was voluntary, and that they could not be recovered from the opposite party, the retaining fees were properly allowed to the solicitor by the taxing officer; and under the exceptionable circumstances of the case the amount was not unreasonable. *Re J. S. Fraser, a Solicitor*, 13 P. R. 409.

The fact that retaining fees had been charged against a client were looked upon as a "special circumstance" to justify a taxation in Toronto instead of the county town where the solicitor resided. *Re George A. Skinner, a Solicitor*, 13 P. R. 276; 25 C. L. Journal, 623.

Revision of Taxation.

The taxing officers on revision of bills of costs have power not only to strike out items improperly allowed, but also to restore items improperly struck out, and generally to revise the taxation.

But the taxing officer cannot receive evidence to make costs payable otherwise than they appear to be by the order awarding costs when explained by the ordinary rules of construction. *Keim* v. *Yegley*, 6 P. R. 60.

The taxing officers have power to call for evidence on taxations before them.

Where the plaintiff was out of the jurisdiction, and a taxing officer had refused to proceed with the taxation of her costs of the action against the defendants until she was produced before him for examination, touching her retainer of the solicitor in whose name the proceedings in the action had been conducted, it was directed that the officer should first examine other witnesses, and then if unable to decide the question of retainer should report to a Judge in Chambers. *Williamson* v. *Town of Aylmer*, 12 P. R. 129.

Sale.

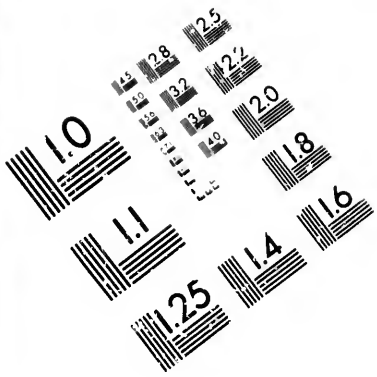
Sometimes a fixed sum for the entire sale, or for each lot sold or bought in, is arranged to be paid to the auctioneer for his remuneration; and sometimes he is allowed a commission on each lot sold, and a fixed sum for each lot not sold. The amount in either case depends upon the magnitude of the sale, the ability and position of the auctioneer, the trouble he has had, or is likely to have, in the business, and whether he is to pay any and what expenses attending the sale, to make any survey with a view to lotting the property, or any valuation preparatory to fixing the reserved bidding. The terms should be fixed by the chief clerk before the proposed auctioneer is appointed to sell. Dan. Chy. Pr. 1079. *Re Page*, 9 Jur. N. S. 1116.

Where the Master sells instead of an auctioneer he is entitled to charge $1.50 per hour, or if he travels more than two miles from his office $2 per hour, and 20 cents per mile travelled. Rep. I. L. O. 1839.

Where a sale under the judgment of the Court is put off the expense and delay of a new advertisement should not be incurred, but a note at the foot of the old advertisement stating the postponement should suffice. This, being less expensive, the increased costs of a new advertisement would be disallowed. *Thompson* v. *Milliken*, 15 Gr. 197.

See *In re Richardson*, 3 Chy. Ch. 144, where the practice is defined as to the manner in which a solicitor's costs for professional services rendered in the sale of lands and collection and transmission of the purchase money, will be taxed.

Instalments of purchase money (not the deposits on sale) were paid by the purchasers to the solicitors for the plaintiff, and by him paid into Court.



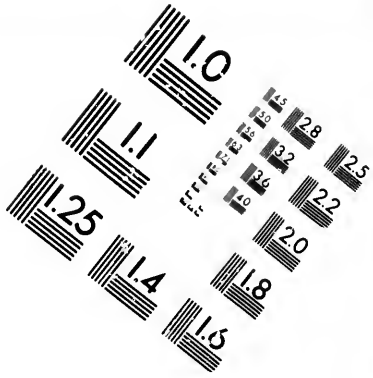
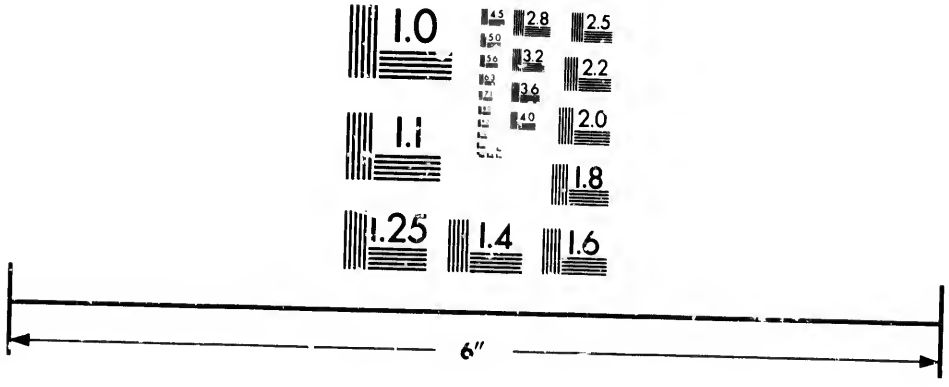
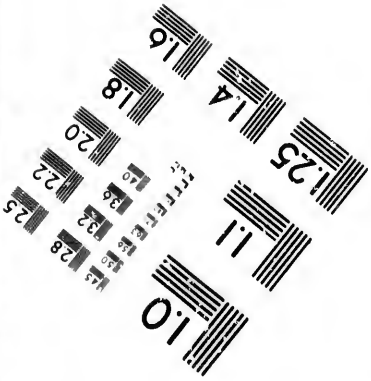
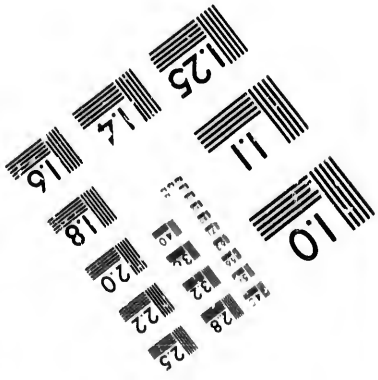


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Held, that he was not entitled to any remuneration from the estate for such services, it being the duty of the purchaser to pay these moneys into Court. *Re Robertson, Robertson* v. *Robertson*, 24 Gr. 555.

It is the duty of the vendor's solicitor on a sale by the Court to compare the conveyances tendered by the purchasers, and for so doing he is entitled to tax the necessary and reasonable costs thereof. *In re Robertson, Robertson* v. *Robertson, supra.*

Service of Paper and Process.

Con. Rule 254. Upon the delivery of a writ of summons at the office of a sheriff, to be served by him, he, his deputy or clerk, shall endorse thereon the time when it was so delivered; and in case the writ is not fully and completely served within ten days after such delivery, the plaintiff, his solicitor or agent, shall be entitled to receive back the same; and the sheriff, deputy sheriff or clerk, shall endorse thereon the time of the delivery; and the costs of the mileage and service of the writ by any literate person afterwards, shall, in case the person to be served was at any time during such ten days within the county, be allowed in the taxation of costs, as if the service had been by the sheriff or his officer. R. S. O. 1877, chap. 50, sec. 23; chap. 40, sec. 95.

Con. Rule 1212. No mileage shall be taxed or allowed for the service of any writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment has been made; and, except in cases provided for in Rule 254, no fees shall be allowed for the mileage or service of writs of summons unless served and sworn in the affidavit of service to have been served by the sheriff, his deputy or bailiff, being a literate person (or by a coroner when the

sheriff is a party to the action), nor unless a return of the sheriff or coroner (as the case may be) is endorsed thereon. R. S. O. 1877, chap. 50, sec. 335; Rule T. T. 1856, 160.

No fees can be taxed on a party and party taxation for service of subpœnas or mileage, if the service is not made by the sheriff, his deputy or bailiff. *McLean* v. *Evans*, 3 P. R. 154; *Ham* v. *Lasher*, 24 U. C. Q. B. 357.

McLean v. *Evans* was decided on the ground that a subpœna was a *mesne* process, and the charges for service were disallowed under section 277 of the Common Law Procedure Act, which read as follows:—"In the taxation of costs no fees shall be allowed for the mileage or service of writs of summons or other *mesne* process unless served by the sheriff or his deputy or bailiff," etc. This section is now represented by Con. Rule 1212 which omits the words "or other *mesne* process." In a recent case that came before the full Court it was contended that because of the omission of these words the service of subpœnas were taxable to the solicitor.

Held, ARMOUR, C.J., *dubitante*, having regard to Con. Rules 254, 1212, 1217, and items 16 and 17 of the Tariff, that the successful party was not entitled to tax anything for costs of service by his solicitor of writs of subpœna. *Carty* v. *City of London*, 13 P. R. 285.

A person of the same name as the defendant, served by mistake with the writ in the action, was held entitled to his costs of opposing a motion for judgment under Rule 324 O. J. A. (now Con. Rule 744). *Lucas* v. *Fraser*, 9 P. R. 319.

In *Rew* v. *Anthony*, 9 P. R. 545, costs were allowed for serving an infant defendant out of the jurisdiction. This is not now necessary, as Con. Rule 258, making service on the Official Guardian sufficient, would seem to apply to infant defendants residing out of the jurisdiction.

Similiter.

The costs of a similiter with a jury notice were held properly disallowed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Solicitor and Client Costs.

"The Court makes a distinction with regard to the principle upon which the officer of the Court is to proceed in the taxation of costs, and this distinction is marked by the terms of 'costs as between party and party' and 'costs as between solicitor and client,' the Court in the latter case permitting a larger proportion of actual expenditure than it allows in the former case. No definite rules can be laid down with respect to the difference between the costs allowed upon one principle of taxation and those allowed upon the other. In general, however, in taxations as between party and party only those charges will be allowed which are strictly necessary for the purposes of the prosecution of the litigation, or are contained in the tables of fees annexed to the general orders and regulations of the Court, while in taxations as between solicitor and client, the party will be allowed as many of the charges which the party would have been compelled to pay his own solicitor, for costs of suit, as fair justice to the other party will permit." Dan. Chy. Pr. 1233.

"There is a material difference between taxation between party and party and that between a solicitor and his client. Many charges are allowed in the latter case which would not be allowed in the former. Before a solicitor incurs expenses which would not in the ordinary course, be allowed on taxation between party and party, he should explain to his client that the proposed expenses would not be so allowed, and obtain his authority for incurring them. If he fails to explain this the costs may be dis-

allowed on taxation between himself and his client, even although he had the client's express authority for incurring them." Arch. Pr. 700.

"The costs in an action as between solicitor and client include, in my opinion, such costs as a solicitor can tax against a resisting client under the general retainer only to prosecute or defend the action."—Armour, C.J. *Cousineau* v. *City of London Insurance Co.*, 12 P. R. 512; 24 C. L. Journal 409.

"I take it to be the general rule of law, and an important rule, that is to be observed in all cases, that if an unusual expense is about to be incurred in the course of an action, it is the duty of a solicitor to inform his client fully of it, and not to be satisfied simply by taking his authority to incur the additional expense, but to point out to him that such expense will, or may, not be allowed on taxation between party and party whatever may be the result of the trial."—Baggallay, L.J. *Blyth* v. *Fanshawe*, 10 Q. B. D. 207. This was approved of in *Re Broad and Broad*, 15 Q. B. D. 252, affirmed in appeal, 15 Q. B. D. 420.

Where costs have to be paid by the opposite party and not by the client there is no difference between "costs as between solicitor and client" and "costs between solicitor and client"; both mean costs between party and party, to be taxed as between solicitor and client; and the plaintiff, in this case, was held entitled to tax against the defendant only such costs as a solicitor can tax against a resisting client under the general retainer only to prosecute or defend the action: but that the taxation should be as liberal as possible under the practice in favour of the plaintiff. *Heaslip* v. *Heaslip*, 10 C. L. Times 318; 14 P. R. 21.

The words "all costs incidental to the arbitration" were held not to extend to costs as between solicitor and client. *In re Bronson and Canada Atlantic Railway Co.*, 10 C. L. Times 154.

In the taxation of costs between solicitor and client where there is no tariff of costs regulating the charges for the business done, and in the absence of any specific contract the general custom and practice of solicitors in such cases is to be the guide for the compensation allowed, if any such custom or practice exists; if not, the value of the services rendered is to be estimated upon a *quantum meruit*. *In re Richardson*, 3 Chy. Ch. at p. 149.

"I think the defendant is entitled, as between attorney and client, to various attendances upon his client and for charges which the client would have to pay for, occupying the attorney's time, which could not be charged against the opposite party. So also with respect to the counsel fee. The tariff of fees is no guide in this last respect, except between party and party. What is a fair and proper fee commensurate with the importance of the case and the trouble the counsel has had with it should be allowed." *Cameron* v. *Campbell*, 1 P. R. 170.

In *Archer* v. *Severn*, 3 C. L. Times 602, Mr. Thom, taxing officer, held that he was not restricted to the allowance of a fee not exceeding $80 to counsel for executors, in an action in the Court of Appeal, where the costs were taxed as between solicitor and client.

"Business may be done between solicitor and client for which the tariffs make no provision; but for business which the tariff does specify it is binding for all purposes, with, I believe, the single exception of counsel fees, an exception which was made very early in the history of the

Court and has ever since been recognized." *Re Geddes & Wilson, Solicitors*, 2 Chy. Ch. 447, *per* Mowat, V.-C.; *re Totten*, 8 P. R. 385.

If charges in a bill are unusual or exceptional the solicitor has to make out a very clear case to have them allowed.

If, however, the usual charges are made, but the client complains of negligence or unskilfulness, not apparent on the bill, then the onus rests on him to establish the case. *In re A. B., Solicitor*, 8 L. J. N. S. 21.

The Court has a general and discretionary power to award costs as between solicitor and client to a successful party whenever the justice of the case may so require. *Andrews* v. *Barnes*, 39 Ch. D. 133.

In cases where something in the nature of scandal, such as gross charges of fraud which are not sustained, the Court will sometimes give the other party costs as between solicitor and client. *Turner* v. *Collins*, L. R. 12 Eq. 440.

Where solicitors instituted an action for administration by writ instead of by notice of motion, in the absence of evidence to show that the client had, with knowledge of the practice of the Court and the risk she ran, expressly instructed the solicitors to proceed the way they did, they could not tax against her any more costs than they would be entitled to had they proceeded by notice of motion instead of by writ of summons.

ROBERTSON. J., "I think it is a wholesome rule to apply, that solicitors should not be allowed to make litigation unnecessarily expensive, either to their clients or to those against whom they are employed. *Re Allenby and Weir, Solicitors*, 13 P. R. 403.

A party gave instructions to an attorney to commence an action for malicious arrest, without specifying the

Court in which the action was to be brought, and the attorney sued in the superior court and recovered £40 damages. The presiding Judge refused a certificate for costs, and the Master only taxed the plaintiff's solicitor county court costs.

Held, as the attorney had not informed the plaintiff that by bringing the action in the superior court he incurred the risk of recovering a verdict which would only entitle him to county court costs, the attorney could only recover from his client, between attorney and client, costs on the county court scale. *Scanlan* v. *McDonough*, 10 U. C. C. P. 104.

Where costs as between solicitor and client were to be paid by the plaintiff to the defendant, and it appeared that the defendant's solicitor had at the request of his client, made in good faith and on reasonable grounds, travelled from Sarnia to Toronto to attend the examination of the plaintiff for discovery.

Held, PROUDFOOT, V.-C., on appeal from the Master, that the defendant could tax against the plaintiff a sum of $60 paid to the defendant's solicitor for two days' services and $15.50 travelling expenses. *Gough* v. *Park*, 8 P. R. 492.

Where the circumstances of the case were somewhat exceptional, and the client understood that the payment of the fees was voluntary, and that they could not be recovered back from the opposite party, a solicitor was held entitled to retaining fees of $150 pursuant to an agreement between the solicitor and client. *Re J. S. Fraser, a Solicitor*, 13 P. R. 409. *See* "Retaining Fees."

The mere non-communication by a solicitor to his client of an offer of settlement does not prove that proceedings after the offer were unnecessary, and that the costs of them should be disallowed under Con. Rule 1215, unless it is shewn that the offer was an advantageous one, the acceptance

of which the solicitor ought to have advised, and it can be fairly inferred that he refrained from communicating it and advising its acceptance merely for the purpose of putting costs into his own pocket, and without regard to the interests of his client. *Re O'Donohoe, a Solicitor*, 12 P. R. 612; 24 C. L. Journal, 565.

Where the costs of any pleadings are disallowed because the pleadings are not as concise as they should be, or because they state matters of argument or evidence, the solicitor cannot claim these costs from his client. If he does it is open to the client to complain to the Court. *Kennedy* v. *Lawlor*, 14 Gr. 229.

Solicitor and client costs cannot be recovered as damages.

JESSEL, M.R., "I am of opinion that it is not according to law to give a party by way of damages the costs as between solicitor and client of the litigation in which the damages are recovered."

BRETT, L.J., "The damages in an action of tort must have been incurred when the action is brought, except in some cases where they include everything up to the time of trial, and they cannot include any expenses incurred in the action itself. The law considers the extra costs which are disallowed on taxation between party and party as a luxury for which the other party ought in no case to be liable, and they cannot be allowed by way of damages. *Cockburn* v. *Edwards*, 18 Ch. D. 449.

Where the directors of a company had power to appoint officers and agents and dismiss them at pleasure—

Held, that the appointment of a solicitor need not be under the corporate seal.

Where a solicitor had instructions to defend a suit, which was discontinued and a new one for the same cause of action commenced—

Held, that the original retainer to defend continued in the new suit. *Clarke* v. *Union Fire Insurance Co.—Caston's Case*, 10 P. R. 339.

In a creditor's action to set aside a conveyance or mortgage as fraudulent or preferential the plaintiff has a right to object to the other creditors coming in to share in the fund realized by the action until they have contributed to the additional costs as between solicitor and client.

The judgment at the trial declared that the mortgage was fraudulent and void as against the plaintiff and the other creditors of the defendant Cox, "as may contribute to the expenses of the suit," and directed that the plaintiff should be paid his party and party costs by the defendant McCall, and his additional costs, as between solicitor and client, out of the fund recovered for the creditors by setting aside the mortgage. The defendants appealed to the Court of Appeal and the Supreme Court of Canada, and the judgment at the trial was affirmed, but the additional costs as between solicitor and client were not given by the Court of Appeal or the Supreme Court.

On a motion by the plaintiff for a direction to the taxing officer to tax these costs incurred by him in the Court of Appeal and Supreme Court, Boyd, C., held that the plaintiff's expenses in saving the fund are not limited to party and party costs, but extend to those incurred as between solicitor and client to the end of the proceedings in the appeal to the Supreme Court. The English cases are referred to in the judgment. *Macdonald* v. *McCall*, 7 C. L. Times, 83.

Where a first mortgagee exercised the power of sale in his mortgage and sold thereunder, and a second mortgagee applied for an order to tax the costs of the solicitor for the first mortgagee, the order directed the taxation to be as between solicitor and client.

Re Crerar & Muir, 8 P. R. 56; and see *Re Macdonald, Macdonald & Marsh*, 8 P. R. 88.

Solicitor Suing or Defending in Person.

Where a person, not a solicitor, appears in person and carries on his own action he is only entitled to disbursements.

So an attorney suing as an unprivileged person would appear not entitled to charge fees. *Beardsley* v. *Clench*, Taylor, 309.

Attorneys suing in person were held entitled to tax the usual fees, with the exception of instructions, instructions for brief and preparing brief. And where the attorney also acts as counsel he cannot tax counsel fee. *Smith & Crooks*, v. *Graham*, 2 U. C. Q. B. 268.

The plaintiff, a solicitor, obtained a verdict for damages and costs in an action of libel, in which, although another solicitor appeared as acting for him in all the pleadings and proceedings in the suit, he actually did the work and carried on the suit himself.

Held, on appeal from the taxing officer, that full fees and disbursements except "instructions" had been properly allowed to him, and that his acting as agent for the solicitor whose name appeared in the proceedings as *his* solicitor did not affect his right. *King* v. *Moyer*, 9 P. R. 514.

In *Malone* v. *Davies*, 10 C. L. Times 18, it was held that "instructions for brief" could not be allowed where the plaintiff, a solicitor of the Court, was acting on his own behalf.

The defendant was himself a solicitor, but retained another solicitor to conduct his defence, and was awarded costs against the plaintiff.

Held, that the defendant was entitled as against the plaintiff to the usual costs of a defendant. *Clarke* v. *Creighton*, 9 C. L. Times, 313; 25 C. L. Journal, 380.

This case does not appear to be reported any more fully than as above, and there is nothing to explain what is meant by "the usual costs of a defendant."

Where a solicitor is a trustee, and he sues in person, either alone or on behalf of himself and his co-trustees, his right to profit costs is not always clear.

A solicitor trustee is not allowed, as against his *cestuis que trust*, any costs other than those out of pocket in respect of any professional services rendered by him, either in the administration of the trust estate out of court, or in conducting a suit by himself, or his own defence to a suit regarding the trust estate. Mor. & Wurt. 386.

The rule applies as well to a constructive as an express trustee. The rule also applies where the trustee is a member of a firm by whom the business is done. *Collins* v. *Carey*, 2 Beav. 128.

But it is said that a trustee solicitor may employ his partner, who will be entitled to full costs, provided the trustee does not participate in the profits. *Clack* v. *Carlon*, 30 L. J. Ch. 639; 7 Jur. N. S. 441. Spragge, C., refused to follow the decision in *Clack* v. *Carlon*. See *Meighen* v. *Buell*, 24 Gr. 503.

The Chancellor's judgment in the last case was reversed (25 Gr. 604) but no reference was made to *Clack* v. *Carlon*.

The rule depriving a trustee who acts as his own solicitor of profit costs, only applies between the trustee and his *cestui que trust*, where the costs are payable out of the trust funds, not where they are payable by an adverse party. *Colonial Trust Co.* v. *Cameron*, 24 Gr. 548; *Meighen* v. *Buell*, *supra*. Mor. & Wurt. 390.

It was held that a solicitor mortgagee defending his title to the mortgaged property will be entitled as against the mortgagor and subsequent incumbrancers to costs out of pocket only, if he acts for himself. *Selater* v. *Cottam*, 3 Jur. N. S. 630. *See* 24 Gr. p. 552 as to this.

The reasons for depriving a solicitor trustee of profit costs where he is a plaintiff would not seem to apply where he is a defendant. *Meighen* v. *Buell*, 25 Gr. at p. 606; *Ontario* v. *Winnaker*, 13 Gr. 443.

And see *Blakeley* v. *Ingram*, 9 C. L. Times 143.

A testatrix appointed a solicitor one of the executors and trustees of her will, and declared that any trustee who should be a solicitor should be entitled to charge for all business done in relation to the estate as if he had been a solicitor employed by the trustees. The solicitor trustee was one of the attesting witnesses.

Held, following the decision of Chitty, J., *In re Barber*, 31 Ch. D. 665, that the solicitor trustee was not entitled to any profit costs for business done by him for the estate, because his right could only arise under the will and by the Wills Act, section 15 (R. S. O. chap. 109, sec. 17), this benefit was invalidated as being a gift to a witness. *In re Pooley*, 40 Ch. D. 1.

Special Jury.

The costs of a special jury are paid, in the first instance, by the party suing out the writ of *venire facias juratores*. R. S. O. 1887, chap. 52 sec. 119.

The party suing out the *venire facias* cannot tax the costs of the special jury unless the trial judge certifies in open Court immediately after the verdict, or afterwards in Chambers, that the case was a proper one to be tried by a special jury. Sec. 127.

Where a special jury is summoned, but the cause is not heard, is provided for by sec. 128.

The Clerk of the Peace is not entitled to any fee from the parties to a cause for striking a special jury. *Hooker* v. *Gurnett*, 16 U. C. Q. B. 180.

The costs of a special jury are not costs of the day, but part of the general costs of the cause. *Whitehead* v. *Brown*, 2 O. S. 345.

In *Farquhar* v. *Robertson*, 13 P. R. 156, Mr. Justice Rose certified for the costs of a special jury in an action of libel. On pp. 164, 165, the rule as to costs of a special jury, and the reasons for allowing them in that case, are fully stated.

Where a case turned on a question of law, and there was no fact in dispute between the parties, the Judge refused to certify for a special jury. *Wemyss* v. *Greenwood*, 2 C. & P. 483.

Where the trial judge certifies that the case was a proper one for a special jury, the taxing officer must allow the full costs of the jury where the verdict is found in favour of the party by whom the jury was summoned. *Broadrick* v. *Clark*, 12 Price, 154.

Stop-Order.

Persons having claims on funds in Court are not entitled, under all circumstances, to the costs of obtaining a stop-order. *Grimsby* v. *Webster*, 8 W. R. 725.

A mortgagee of a fund in Court empowered by his mortgage deed to apply for a stop-order, is entitled to the costs of his so doing; he must, however, ask specially for them, as they will not be allowed by the taxing master, under the common order, to tax the mortgagee's costs. *Waddilove* v. *Taylor*, 6 Ha. 307.

An incumbrancer petitioning for a stop-order, after notice that a petition had been presented for payment out of the fund, was not allowed his costs. *Hoole* v. *Roberts*, 12 Jur. 108.

See Con. Rule 192, and Holmested & Langton's notes thereto.

Subpœna.

Con. Rule 561. Any number of names may be included in one subpœna, and no more than one subpœna shall be allowed on taxation of costs, unless a sufficient reason be established to the satisfaction of the taxing officer for issuing more than one. Rules T. T. 1856, 163.

In an arbitration under the Railway Act there was no power to compel the attendance of witnesses. Subpœnas, however, were issued, and the parties attended upon them and were examined.

Held, there was no power to tax the subpœnas as such, but as they operated as notices, the proper costs of notices should be allowed, and also the costs of the attendance of the witnesses. *Re McRae and The Ontario and Quebec Railway Co.*, 12 P. R. 282; affirmed, p. 327.

As to service of copies of subpœna, see *Carty* v. *London*, under "Service."

Taxation of Costs.

Con. Rule 197. All taxing officers shall, for the purpose of any taxation, have power to administer oaths and take evidence, direct production of books and documents, make certificates, and give general directions for the conduct of taxations before him. *See* J. A. Rule 438.

Con. Rule 1201. The taxing officer shall have authority to arrange and direct what parties are to attend before him

on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance the officer shall in his discretion consider unnecessary in consequence of the interest of the party in the fund or estate being small or remote, or sufficiently protected by other parties interested. J. A. Rule 440.

See *Williamson* v. *Town of Aylmer*, 12 P. R. 129, under "Revision."

Where solicitor and client contradict one another in affidavits the taxing officer should allow oral evidence to be taken under Con. Rule 197. *Re Evans*, 35 W. R. 546.

A Master or a single Judge has no discretion to allow a solicitor more than $1.00 per hour for attendance on the taxation of a bill of costs, either between solicitor and client, or party and party; the tariff being fixed at that rate by G. O. 608 (now item 99 of the Tariff). *Re Totten*, 8 P. R. 385; 17 C. L. Journal 49.

And a bargain between a solicitor and his client for $2.00 an hour would not be binding. *Re Geddes & Wilson, Solicitors*, 2 Chy. Ch. 447. But see *Gough* v. *Park*, 8 P. R. 492.

Telegrams.

Where a telegram was sent, by the direction of the Judge, advising defendants of the result of the judgment which had been reserved:

Held, Wilson, C.J., the charges for the telegram were taxable between party and party. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Where injunctions are obtained in cases where the matter is so urgent that the object of the injunction might be defeated if the party were bound to wait until the order could be issued and served, it is usual to telegraph the

defendant, or his solicitor, that the injunction has been granted, and shortly, the terms of it. In such cases the costs of telegrams are taxable.

Travelling Expenses.

A solicitor has no right to make journeys, either in England or elsewhere, at the expense of his client, without specific instructions: and, except under very special circumstances, the costs of such journeys will not be allowed. Mor. & Wurt. 502, and cases there cited.

In re Snell a solicitor had a retainer to act generally for a company, and also a special retainer to conduct a chancery suit on their behalf. Being employed by another client to go to America, he collected information on behalf of the company in furtherance of their suit, but without special instructions. On his return to England he reported to the company what he had done, and they made use of the information he had obtained. He also took three journeys to Paris to conduct negotiations for a compromise of the suit, without instructions from the company, but with the knowledge of some of the directors. The Court of Appeal held that, under the special circumstances of the case, he was entitled to charge the company for his professional services in America, and also for his professional services and expenses on his journeys to Paris. *Re Snell*, 5 Ch. D. 815; 25 W. R. 736.

A solicitor for a company was held entitled to charge such company for special work and journeys undertaken at the request of individual directors and the general manager. *Clarke* v. *Union Fire Insurance Co., Caston's Case*, 10 P. R. 339.

As to a solicitor attending on a client in the country, where correspondence would have answered the same purpose, see *Re Mortimer*, Ir. R. 4 Eq. 96; 18 W. R. 367.

The travelling expenses of experts were allowed in *Churton* v. *Frewen*, 15 W. R. 559.

Where costs as between solicitor and client were to be paid by the plaintiff to the defendant, and where it appeared that the defendant's solicitor had, at the request of his client, made in good faith and on reasonable grounds, travelled from Sarnia to Toronto to attend on the examination of the plaintiff, the Master allowed only **$6** for a special attendance of three hours.

Held, on appeal, that the Master could tax against the plaintiff a sum of $60 paid to the defendant's solicitor for two days' time and travelling expenses. *Gough* v. *Park*, 8 P. R. 492.

Trial.

A party is not in any case entitled to the costs of preparing for trial, such as preparing briefs and documents and advising on evidence, until after notice of trial is given. *Freeman* v. *Springham*, 14 C. B., N. S. 197; *Cooper* v. *Boles*, 5 H. & N. 188.

See "Witnesses and Witness Fees."

On the first trial of the action the jury disagreed, and on the second trial they found a verdict for the plaintiff. No order was made as to the costs of the first trial.

Held, ROSE, J., that the costs of the first trial were governed by Rule 428, O. J. A. (now Con. Rule 1170), and were costs in the cause to the plaintiff, and were taxable without any special directions. *Copeland* v. *The Corporation of the Township of Blenheim*, 11 P. R. 54.

See "Jury Fee," "Postponing Trial," "Record."

Unnecessary or Vexatious Costs.

Con. Rule 1194. Where any party appears upon any application or proceeding in Court or at Chambers in which

he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed. J. A. Rule 437.

Con. Rule 1195. The Court or Judge may, at the hearing of any action or matter, or upon any appeal, application or proceeding in any action or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any writ, pleading, petition, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed; or may direct the taxing officer to look into the same and disallow the costs thereof, or of such part thereof, as he shall find to be improper, unnecessary, or contain unnecessary matter, or to be of unnecessary length. In such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter or length; and in any case where such question shall not have been raised before and dealt with by the Court or a Judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any judgment or order), for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. See Chy. O. 71, J. A. Rule 435; App. O. 10.

Con. Rule 1215. If upon the taxation of costs it should appear to the officer taxing the same that any proceedings have been taken unnecessarily, and which were not calculated to advance the interests of the party on whose behalf the same were taken, it shall be the duty of the officer to disallow the costs of such proceedings, as well on the

taxation of costs between solicitor and client, as on a taxation between party and party, unless the officer shall be of opinion that such proceedings were taken by the solicitor because they were in his judgment, reasonably exercised, conducive to the interests of his client. It shall not be the duty of the officer, on the taxation of costs between a solicitor and his client, to disallow to the solicitor his costs of such proceedings where it is made to appear that such proceedings were taken by the desire of the client, after being informed by his solicitor that the same were unnecessary, and not calculated to advance the interests of the client. Chy. O. 306.

Where the object of a suit has been attained, the proper course is to apply to the defendant to have the question of costs disposed of on motion; unless he does so, he will not be given the extra costs occasioned by going on to a trial. *Webb* v. *McArthur*, 3 Chy. Ch. 364; *O'Sullivan* v. *Cluxton*, 26 Gr. 612.

It would appear that the costs cannot be so disposed of except by consent. *Merchants Bank* v. *Musgrove*, 7 P. R. 59.

If a defendant at any time during the progress of the action offers to submit to all the relief to which the plaintiff is entitled, the Court will not give the plaintiff the costs of the subsequent prosecution of the action if he brings it to a hearing. Mor. & Wurt. 102, 110.

The taxing officer must exercise the jurisdiction conferred upon him by Con. Rule 1215 as to inquiring into the propriety of proceedings in an action, although no special directions have been given for that purpose. *Re Wormsley, Baines* v. *Wormsley*, 47 L. J. Ch. 844.

Where unnecessary parties were made to an administration suit, the Court refused to burden the estate with any

of the extra costs thereby occasioned. *Rodgers* v. *Rodgers*, 13 Gr. 457.

Where a plaintiff filed a bill for an administration decree in a case in which a decree would have been made on notice without a bill, he was not given the costs thereby occasioned. *Sovereign* v. *Sovereign*, 15 Gr. 559; *Moore* v. *Buckner*, 28 Gr. 606; *Re Allenby and Weir, Solicitors*, 13 P. R. 403.

Where instead of demurring to a bill, the defendant put in an answer, and went to an examination and hearing: the Court on dismissing the bill, gave the defendant costs only as upon a demurrer. *Brouse* v. *Cram*, 14 Gr. 677; *Gildersleeve* v. *Cowan*, 25 Gr. 460.

Where the plaintiff instituted administration proceedings without any show of reason, or proper foundation for the benefit of the estate, they were ordered to pay the costs of all parties. *Re Woodhall, Garbutt* v. *Hewson*, 2 Ont. R. 456.

In selecting the form of action regard must be had not only to the interests of the plaintiff, but also to those of the defendant, and when a simple and inexpensive mode of procedure is open, and a more expensive and burdensome course is adopted, it must be at the peril of costs.

Where the amount due on a mortgage was $32, and an action was brought in the High Court, and there were no circumstances shewing the necessity for bringing it therein, no costs were allowed to the plaintiff. *Vanderwaters* v. *Horton*, 9 Ont. R. 548; and see *Gildersleeve* v. *Cowan*, 25 Gr. 460.

Where the defendant set up by counter-claim matters that should have been pleaded as a set-off;

Held, ARMOUR, C.J., that he was not entitled to have the costs dealt with as if what he had set up was properly a counter-claim. *Cutler* v. *Morse*, 12 P. R. 594; 24 C. L. Journal 540.

See the remarks of the Chancellor as to unnecessary and vexatious proceedings. *Snider* v. *Snider*, 11 P. R. 140.

Where separate days were appointed for payment of amounts found due in a mortgage action, and separate powers of attorney given, see *Goodhue* v. *Carter*, 1 Chy. Ch. 13.

Where unnecessary petition for foreclosure presented after abortive sale, see *Odell* v. *Doty*, 1 Chy. Ch. 207.

Where separate affidavits were made when only one necessary, see *Boulton* v. *McNaughton*, 1 Chy, Ch. 216, under "Affidavits."

The claimant having succeeded in the trial of an interpleader issue, moved for a final order barring the execution creditors, and served notice of the motion upon the sheriff. It was unnecessary to serve the sheriff. The claimant was ordered to pay the sheriff's costs of the motion without recourse over to the execution creditors. *O'Brien* v. *Bull*, 19 C. L. Journal, 211.

Where the guardian *ad litem* of an infant defendant had made no objection to the unnecessary proceedings, no costs were given either to the executors or the guardian, of such proceedings. *Springer* v. *Clark*, 15 Gr. 664.

In an administration suit the plaintiffs, who were next of kin, had incurred the expense of several journeys to examine the books of the estate and make inquiries, etc.; and also of other proceedings in the Master's office without the consent of the creditors who were alone beneficially interested, and after they knew that the estate was insolvent; such costs were disallowed. *Re Robertson*, *Robertson* v. *Robertson*, 24 Gr. 555.

Where a defendant appealed from a Master's report, where the matter might have been disposed of on an application before a Judge in Chambers, no costs were given. *Fauchier & Son* v. *St. Louis*, 13 P. R. 318.

See "Affidavits," "Attendances," "Witnesses and Witness Fees."

Vesting Order.

Although a purchaser, at a sale under judgment or order of the Court, must prepare the conveyance and tender it for execution, if he does this, and the parties entitled refuse to execute the conveyance and he is compelled to apply for a vesting order, he is entitled to the costs of the motion for the vesting order. *Lawrason* v. *Buckley*, 3 Chy. Ch. 270; *Re McMorris*, 3 Chy. Ch. 430.

Vouchers.

All vouchers or affidavits produced on taxation for the purpose of proving disbursements should be filed with the papers in the cause. Disbursements should not be taxed for which there are not proper vouchers or evidence of payment. *Wilson* v. *Moulds*, 4 P. R. 101.

On proving accounts in the Master's office the vouchers are not filed, but simply initialed by the Master and returned. The Master is not, therefore, entitled to any charge for filing. Rep. I. L. O. 1885.

Witnesses and Witness Fees.

Con. Rule 561. Any number of names may be included in one subpœna, and no more than one subpœna shall be allowed on taxation of costs, unless a sufficient reason be established to the satisfaction of the taxing officer for issuing more than one. Rules T. T. 1856, 163.

As to service of subpœnas, see "Service of Papers and Process." See also Con. Rule 1212.

Con. Rule 1213. All affidavits of increase must be made by the solicitor in the cause, or some clerk having the management thereof, or by the client. They must set forth the sums paid to counsel, naming them, and for what service, the names of witnesses, their places of abode, the place at which they were subpœnaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, that every such witness was necessary and material for the client in the cause, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be). The number of days which each witness was necessarily absent from home in order to attend such trial must be accurately stated. If a solicitor attends as a witness it must be stated whether or not he attended at the place of trial as solicitor or witness in any other cause, and whether or not he had any other business there. The day on which the trial occurred should be stated. If maps or plans were used at the trial, the necessity for them must be shewn in the affidavit, or no allowance will be made for them; the sum paid for them must also be set forth, and that they were prepared or procured with a view to the trial of the cause. The taxing officer is authorized in such case to make a reasonable allowance for maps and plans. Rules T. T. 1856, 165.

R. S. O. 1887, chap. 61, sec. 50. "It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto."

As to proof of wills by notice, see section 38.

As to expenses incurred in proving documents, see "Documents."

As to expenses of witnesses sworn or subpœnaed by the Crown, see R. S. O. 1887, chap. 87.

Witness Fees must be paid before taxation.

"All witnesses should be paid before taxation. The Master allows and taxes actual disbursements proved, and not mere engagements to pay. The affidavit of disbursements is required to state that they did not attend as witnesses in any other cause."—Draper, C.J. *Ham* v. *Lasher*, 24 U. C. Q. B. 357.

The witnesses in a cause should be actually paid before an affidavit of increase is made; and if the practice is not followed in this respect the Court will order the sums sworn to have been paid and allowed by the Master to be refunded. *Trent* v. *Harrison*, 2 D. & L. 941; 9 Jur. 873.

An affidavit of increase ought not to state that the expenses charged for witnesses have been paid to them, unless they have been actually paid at the time when it is made; the fact of money due to a witness for his attendance having been set-off against expenses incurred by the successful party in conveying him to the assize town, and keeping him there is insufficient. *Cross* v. *Durell*, 6 Jur. N. S. 638; 8 W. R. 630.

An affidavit of increase stated that the deponent had paid a certain sum as witness fees to one Creighton. The alleged payment was made after the trial but before swearing to the affidavit, and was in fact not an actual handing over of cash, but a setting-off, with the consent of the witness, a sum due by him to the defendant.

ARMOUR, C.J., held that the consent made the transaction quite different from a mere set-off, and that it was payment of the witness fees. *In re Solicitors*, 9. C. L. Times 35.

In a case of *Salois* v. *Walker*, decided by Rouleau, J. (North West Territories) reported 9 C. L. Times 386, it was held that an affidavit of increase stating that the plaintiff "was indebted to each of said witnesses for his loss of time," etc., was sufficient. This decision is not in accordance with the English and Ontario cases, and would not be followed here.

Where a witness is subpœnaed and paid by both parties to the action, the rule is that the successful party is entitled to tax the costs of the witness against the other party. *McLean* v. *Evans*, 3 P. R. 154.

Witness subpœnaed but not sworn.

Wilson, J., "The rule has always been as stated in Arch. Pr. 11th Ed. 512. 'The Master will allow the expenses of all necessary witnesses, and this although they were not called at the trial. So although the evidence of particular witnesses be not in strictness admissible, yet if there was reasonable ground for believing it to be admissible, the Master will allow the expenses of them, even although they were not examined at the trial. But the Master will not allow the expenses of witnesses whose testimony is clearly inadmissible, or whose testimony would not have supported any issue in the cause.' The Master is the judge of the materiality of witnesses, subject to the review of the Court; but he is generally the sole judge of the number of witnesses to be allowed in support of the same matter."

The Master allowed fees to seventy witnesses subpœnaed but not called, on charges of bribery by the petitioner, the election having been avoided on the evidence of other witnesses.

Held, that the Master exercised a proper discretion, even though the respondent's attorney swore he believed the

witnesses would have disproved the charges they were called to prove. *Re Prescott Election Case*, 32 U. C. Q. B. 303.

Where two witnesses were subpœnaed for the defendant but not examined at the trial, Macaulay, J., held that in the absence of anything to show them not material or not *bona fide* in attendance as witnesses in the cause, it was in the discretion of the Master, if satisfied they did so attend and were paid, to allow the charge. *Boulton* v. *Switzer*, 1 Ch. Rep. 83. And see *Morrison* v. *Harmer*, 5 Scott, 410.

Even where a witness is rejected by the Judge, it would seem that the taxing officer should decide whether such witness was necessary or not, and allow or refuse his expenses accordingly. *McLean* v. *Evans*, 3 P. R. 154.

But where a witness is rejected at *nisi prius*, and the ruling of the Judge is acquiesced in by the parties and upheld by the Court, the expenses of his attendance are not allowed on taxation between party and party. *Galloway* v. *Keyworth*, 2 C. L. R. 860; 15 C. B. 228.

In an action on a promissory note the defendant having pleaded fraud, the plaintiff brought up a witness to disprove the fraud, but the defendant failing to make out a *prima facie* case of fraud the witness was not called.

Held, that the plaintiff was entitled to the costs of such witness. *Miller* v. *Thomson*, 4 M & G. 260.

If, by an alteration in the state of the pleadings after notice of trial, certain witnesses are unnecessary, the party who subpœnaed them must make reasonable efforts to prevent their attendances, or their expenses will not be allowed. *Allport* v. *Baldwin*, 2 D. P. C. 599.

The costs of witnesses whose attendance becomes useless, owing to an admission being made by the opposite party

of the matter which they were summoned to prove, are in the discretion of the taxing officer. *Davis* v. *Thomas*, 5 Jur. N. S. 709.

But a party is not bound to rely on the admissions of the opposite party made on his examination for discovery, and the costs of procuring the attendance of a witness to prove what was then admitted was allowed on appeal from the local taxing officer. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157.

Where the plaintiff gave notice that he intended to raise a point on the question of value, which he was, at the trial, precluded by the defendant from going into, and the defendant succeeded,

Held, that he was not entitled to the costs of the witnesses brought by him to the Assizes to rebut the plaintiff's evidence on the point as to value. *Fisher* v. *Berrell*, 1 P. N. S. 565; 6 Jur. 282.

Where costs were awarded to the plaintiff upon a postponement of the trial, and the case was not tried until after the taxation of such costs was closed, but it appeared upon appeal from the taxation that some of the witnesses allowed for were not called when the case was actually tried, the taxing officer was instructed to reconsider the allowance of witness fees. *Conmee* v. *North American Railway Contracting Co.*, 13 P. R. 433; 10 C. L. Times 117.

Where the defendant subpœnas witnesses after notice of trial is given, he is entitled to the costs thereof if the plaintiff afterwards, and before trial, discontinues. *Pegg* v. *Pegg*, 7 U. C. Q. B. at p. 223.

Where the plaintiff's attorney sent notice of countermand of trial to his agent in town, but it arrived too late for service, and the defendant's witnesses attended for the trial;

Held, that the expense of such witnesses was rightly allowed in the costs of the day. *Spafford* v. *Buchanan*, 4 O. S. 325.

Where a witness is subpœnaed and paid, and in consequence of the cause being settled no trial takes place, and the witness incurs no expense, and does not act in consequence of the subpœna, the amount paid can be recovered in an action for money had and received. *Martin* v. *Andrews*, 7 El. & Bl. 1; Taylor on Ev. 1059.

The taxing officer has a discretion to allow the costs of evidence procured before notice of trial whether the action goes to trial or not. *Windham* v. *Bainton*, 21 Q. B. D. 185.

Witness, Foreign.

The taxing officer allowed the defendant for witness fees paid to a witness brought from Buffalo to give evidence as an expert, at the rate of $33 *per diem* and expenses. The plaintiffs appealed from this, on the ground that there is no power to tax such an item, as it is not provided for in the tariff.

On appeal, Boyd, C., held that the tariff now in force does not pretend to exhaust all possible items or services for which remuneration is to be made. And as the personal attendance of this witness, who was not accessible to subpœna, accomplished what could not have been done by interrogatories at a distance, the taxing officer was justified in making such allowance as he thought proper. *Ball* v. *Crompton Corset Co.*, 11 P. R. 256.

The plaintiff resided in England, and the action was tried in Toronto. A commission had been issued and the evidence of witnesses taken in London. The plaintiff was a necessary and material witness on his own behalf, and on the advice of his solicitors attended and gave evidence. The Master disallowed the plaintiff's expenses at the trial, £56.

Morrison, J., held that the plaintiff was entitled to his expenses, as it would not have been prudent, under the circumstances, to have been examined under the commission, and being the plaintiff in the case made no difference. *Fox* v *Toronto and Nipissing Railway Co.*, 7 P. R. 157.

Where a plaintiff brought over a foreign witness in order to judge by his testimony whether there was ground to bring the action, and afterwards sued and examined the witness at the trial;

Held, that the plaintiff might be allowed the costs of detaining him from the time the writ was sued out until the trial, and a reasonable sum for his sustenance during the same time, but not the costs of his passage or of his return. *Schimmel* v. *Lousada*, 4 Taunt. 695.

But if a witness is sent for to give evidence in one action which is discontinued, and the plaintiff calls him as a witness in another action against a different defendant, but arising out of the same transaction, he is entitled in the second action to the costs only of the witness's subsistence and detention for the purpose of the second action. *Tremain* v. *Barrett*, 1 Marsh. 463, 563.

Where a foreign witness appeared to be domiciled in England, he was held not entitled to the expenses of his return home. *Lopes* v. *DeTastet*, 7 Moore 120; 3 B. & B. 292.

Witnesses, Maintenance of.

The Ontario Rules and Tariff do not expressly authorize any allowance for the costs of maintenance and subsistence of witnesses; but by Con. Rule 1220 the practice of the former Courts of Queen's Bench and Common Pleas, relating to costs, and to the taxation of costs, so far as they are not inconsistent with the Judicature Act and the Rules

of Court, remain in force. Rule 154 T. T. 1856, provided that the practice of the Courts as to costs and the services to be allowed for, in all proceedings in the taxation of costs, should be governed in all cases not otherwise provided for, by the established practice of the Court of Queen's Bench in England. *See* Holmested's Rules and Orders, 2nd vol. p. 534.

In Holmested & Langton's notes to Con. Rule 1220 it is stated that the practice under Rules 154, 168 of T. T. 1856, not inconsistent with the Judicature Act, are in effect preserved in force by Con. Rule 1220. And see *Ball* v. *Crompton Corset Co.*, 11 P. R. 256. There would seem, therefore, to be no reason why the maintenance and subsistence of witnesses, in proper cases, should not be taxed.

In *Fox* v. *Toronto and Nipissing Railway Co.*, 7 P. R. 157, Morrison, J., refers to the cases of *Howes* v. *Barber*, and *Dowdell* v. *Australian Royal Mail Co.* (see *post*) with approval, and as authorities to be followed here.

The plaintiff, a captain of a ship, remained in England for the purpose of being examined at the trial, and the Master allowed his expenses from the service of the writ in the cause in September till the trial in January following. It was held that the Master might allow for his maintenance if his testimony was necessary and material, and if he attended for the purpose of giving evidence, and not merely to superintend the cause. *Howes* v. *Barber*, 18 Q. B. 588; 16 Jur. 614.

The plaintiff was a witness on his own behalf at the trial, when he obtained a verdict. The defendant obtained a rule *nisi* for a new trial, which was ultimately discharged. On taxation the Master allowed the plaintiff subsistence money from the time the rule was granted until it was discharged.

Held, if the plaintiff was a necessary witness, and remained for the purpose of giving evidence if a new trial was granted, and so incapacitated himself from earning his subsistence, the detention might, under the special circumstances, be considered as part of the costs of the cause, and the allowance was right. *Dowdell* v. *Australian Royal Mail etc. Co.*, 3 El. & Bl. 902.

So in another case the Court approved of the allowance of subsistence money for a witness, the captain of a ship, from the service of a subpœna till the time of the trial. *Temperly* v. *Scott*, 1 M. & Scott, 601 ; 8 Bing. 392.

Where the master of a merchant ship was detained by the plaintiff for a considerable time to give evidence in a cause, but before issue was joined or notice of trial given,

Held, that the Master was at liberty to allow the expenses of maintaining the witness during such detention. *Berry* v. *Pratt*, 1 B. & C. 276 ; 2 D. & R. 424.

And a witness who is *bona fide* detained in the country for the purposes of a trial is entitled to the expenses of his maintenance during the time he is so detained, and that although he may not be a seafaring man. *Ansett* v. *Marshall*, 17 Jur. 114.

The expenses of detaining a witness should not be allowed when it cannot be shown that such detention was necessary to insure his attendance to give evidence, nor where his detention was for some other purpose, such as to watch the proceedings in the suit. *The Bahia*, 14 W. R. 411 ; 11 Jur. N. S. 1008.

See also *Picasso* v. *Trustees of Maryport Harbour*, W. N. 1884, 85 ; 28 Solr. Journal 391, where costs of keeping a witness until a trial were allowed under special circumstances.

Witnesses, Professional.

Veterinary practitioners holding diplomas from the Veterinary College, are entitled to professional fees as witnesses in such cases as relate to the profession, by R. S. O. 1887, chap. 39, sec. 34.

An auctioneer was held entitled to fees as a professional witness in *Re Workingmen's Mutual Society*, 21 Ch. D. 831.

No allowance beyond ordinary witness fees can be made for attendance in the Master's office during the passing of accounts, of a person specially familiar with them; nor to a party in the cause so attending. *Scott* v. *Griffin*, 8 C. L. Times 452; 6 Man. L. R. 116.

A barrister is *prima facie* entitled to the expenses of a professional man, without proof of his being in practice. *Turner* v. *Turner*, 5 Jur. N. S. 839.

A practising barrister and solicitor made an affidavit on an interlocutory application. He was served with a subpœna and appointment for cross-examination on the affidavit and paid $1.00. He refused to be sworn unless he was paid $4.00. On a motion to commit, Rose, J., followed *Clarke* v. *Gill*, 1 K. & J. 19, and held that a witness who is a professional man, is entitled to the same allowance when subpœnaed for cross-examination on an affidavit as he would be if required to give evidence at the trial, where he is called on to give evidence in consequence of professional services. *Sutherland* v. *Phippen*, 7 C. L. Times 432.

The expenses of a witness at *nisi prius* to translate and explain ancient records of a public nature, and to watch and explain the records produced by the opposite party, were allowed on taxation between party and party. *Bastard* v. *Smith*, 10 A. & E. 213; 2 P. & D. 453.

VanKoughnet, C.—Mr. Cayley, Registrar of the Surrogate Court, declined to produce the original will of the testator, unless he was paid a larger fee than 3s. 9d. given to ordinary

witnesses. Looking at the responsibility with which a person in Mr. Cayley's position is charged, in keeping, searching for, and producing original documents, which it is of the greatest moment should be in proper custody; at the trouble and loss of time in addition which often occur in searching for and producing such documents; that Mr. Cayley is an officer paid by fees, and that in the progress of a case he may be kept waiting in Court for hours before he is called as a witness, I think $4.00 a day a reasonable allowance to him. I am told by the Clerk of the Crown that in a case of *Bennet* v. *Adams*, in 1859, Richards, C.J., ordered $4.00 to be paid to a Clerk of Assize, who attended to give evidence, in that capacity, as a witness. *In re Nelson*, 2 Chy. Ch. 252.

In a recent case at Assizes at Picton this case was cited to Armour, C.J., as an authority for paying $4.00 to a Registrar of Deeds, who had been subpœnaed to produce documents in his custody. The learned Chief Justice doubted whether the case was a guide under the present tariff.

A plaintiff will not be allowed his expenses in the construction of a model, nor for loss of time by scientific persons who had been sent to a distant part of the country to inspect a building there, although he could not safely have proceeded to trial without their testimony. *Bayley* v. *Beaumont*, 11 Moore 497.

Nor to sums paid to witnesses for inspecting, measuring and valuing improvements upon lands. *Murphy* v. *Nolan*, 7 Ir. R. Eq. 498.

The expenses incurred in qualifying witnesses to give evidence at the trial are not taxable between party and party. Such expenses are taxable in England under a special order which has not been adopted in Ontario. This

does not, however, prevent the taxation of the costs incurred for plans and maps used at the trial, which are provided for by Con. Rule 1213. *See* "Maps." *McGannon* v. *Clarke*, 9 P. R. 555.

Witnesses Materiality of.

The materiality of a witness is *prima facie* a question for the taxing officer, but the Court may review his decision on that point. *Galloway* v. *Keyworth*, 15 C. B. 228.

Where there is a reasonable ground to believe that the testimony of a witness will be admissible, his expenses may be allowed on taxation of costs against the adverse party. *Rushworth* v. *Wilson*, 1 B. & C. 267.

Where the taxing master had, in an action of libel, disallowed all witnesses called to prove innuendoes, the Court refused to interfere to make him review his taxation. *Skelton* v. *Seward*, 1 D. P. C. 411.

The plaintiffs subpœnaed seventeen witnesses to attend the trial at Hamilton. The trial was postponed because the defendants had not obeyed an order to produce, and the defendants were ordered to pay the costs of the hearing at Hamilton rendered nugatory by the postponement. These witnesses were examined at the abortive trial, and were examined at the adjourned trial, but their evidence related to matters which the trial judge held could not be interfered with by the Court.

The taxing officer refused to tax the plaintiff the costs of these witnesses, and on appeal, Proudfoot, J., held that the taxing officer did not erroneously exercise the discretion given him by Rule 442, O. J. A. (now Con. Rule 1214.) *Christopher* v. *Noxon*, 10 P. R. 149.

In an action for damages for trespass to land, the location of a boundary line was in dispute. The defend-

ant, in his depositions taken before trial, said he knew nothing about the line except what he had been told, but that he had traced two lines run by B. and W. from the blazes. The trial was adjourned at the plaintiff's request on payment of costs of the day. The defendant, being a resident of the Northwest Territories, swore that he had come to the trial for the sole purpose of giving evidence on his own behalf and not for the purpose of superintending the trial, and that he believed his evidence was necessary and material. In taxing the costs of the day the taxing officer refused to tax witness fees to the defendant, on the ground that he knew nothing about the boundary, and this being the only fact in issue, his evidence could not be material.

Held, reversing the ruling of the taxing officer, that it was premature for him to decide at this stage of the case, that no material evidence could be given by the defendant. *Goodfellow* v. *Shuttleworth*, 3 C. L. Times 105.

A party examining by means of an interpreter, a witness ignorant of the English language, must bear the expenses of the interpreter's services, as well on the cross-examination as on the examination in chief. *Plunkett* v. *Williams*, 6 Ir. Eq. R. 80.

But in *Earl of Shrewsbury* v. *Trappes*, 10 W. R. 663, the costs of employing an interpreter to prepare the answer of a foreign defendant were allowed on taxation as between party and party, but not the hotel and travelling charges occasioned by bringing him to town. See Mor. & Wurt. 497.

If a witness is so old and infirm, that it is a prudent course to take his examination, but he is afterwards able to attend the trial, the plaintiff may be allowed the costs of the commission, as well as the costs of the witness' attendance at

the trial. *Beaufort* v. *Ashburnham*, 13 C. B. N. S. 598. And see *Fox* v. *Toronto and Nipissing Railway Co.*, 7 P. R. at p. 161.

Witnesses on Different Issues.

The Master is the sole judge of the proper number of witnesses to be allowed in support of the same matters. Where the defendant succeeds on some of the issues an affidavit that the witnesses, whose expenses he claims, were called exclusively to support those issues, is not indispensible, provided the Master is satisfied of the fact by other means. *Pilgrim* v. *Southampton and Dorchester Railway Co.*, 8 C. B. 25.

A party succeeding on an issue is entitled to the costs of any witness called to give evidence on a fact involved in that issue, though the jury or arbitrator may find that fact against him. *Radcliffe* v. *Hall*, 1 Gale 140.

In taxing the costs of witnesses on several issues, where some issues are found for the plaintiff, and some for the defendant, it is for the Master to judge whether the evidence of such witnesses is exclusively applicable to such issues. *Elderton* v. *Emmens*, 5 D. & L. 680; 12 Jur. 728.

A party is not necessarily disentitled to the costs of witnesses called in support of an issue on which he succeeds because their testimony may, in a slight degree, be applicable also to an issue upon which he failed. The true question is, for what purpose were they called? *Jewell* v. *Parr*, 17 C. B. 636.

"The number of witnesses to be allowed to prove a point is usually a matter within the discretion of the Master, and so as to witnesses called to establish something on which the party calling them fails. It is for the Master to exercise his judgment in allowing or disallowing such items,

and he is not to tax them all indiscriminately merely on the ground that costs generally are given to the party taxing."—Boyd, C. *Latour* v. *Smith*, 13 P. R. 214.

When the jury return a verdict for the plaintiff for a distinct part of his claim, he will not be allowed the expenses of witnesses called to support a different part. although a verdict is entered for him generally. *Cocks* v. *Peachy*, 2 M. & R. 420.

Witnesses, Attendance of.

Where there is no daily peremptory list of cases at the Assizes, it is necessary to keep the witnesses in attendance from the first day, and the fees for such attendance should be taxed. *Alexander* v. *School Trustees of Gloucester*, 11 P. R. 157. *Cosgrave* v. *Evans*, 2 D. P. C. 443.

Where witnesses cannot reasonably reach their homes the same day they are dismissed they will be allowed expenses for the following day. *Fryer* v. *Sturt*, 16 C. B. 218.

Where the parties to a cause had produced and examined their witnesses at Toronto, all of whom resided at a distance therefrom, and in the proximity to a county town, the Court while awarding the general costs of the cause to the defendant refused him the costs of the attendance of his witnesses. *Ledyard* v. *McLean*, 10 Gr. 139.

Where the affidavit of increase stated the name of the witness as David Chapman instead of Daniel Chapman,

Held, immaterial if the Master was satisfied it was merely a misnomer. *Ham* v. *Lasher*, 24 U. C. Q. B. 357.

Writs of Summons.

The expense of serving a defendant out of the jurisdiction with the writ of summons, or reasonable efforts to serve him, is taxable as between party and party, and the

amount to be allowed is for the Master to determine on the materials before him. *White* v. *Brett*, 28 L. J., Exch. 32.

In the taxation of costs the taxing officer is justified in allowing the expenses of two writs issued in one action against the defendant into two counties, where it was doubtful in which county he was to be found. *Morris* v. *Hunt*, 1 Chitt. 544.

A defendant cannot escape the costs of a writ of summons by tendering the amount sued for before service but after the issue of the writ. *O'Malley* v. *Killmallack*, 22 L. R. Ir. 326.

Service of writs by solicitor. *See* "Service."

Unnecessary writs. See *Guéret* v. *Young*, W. N. (1883) 216.

COSTS IN ALIMONY ACTIONS.

Sec. 29 Jud. Act. "The High Court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights; and alimony when granted shall continue until the further order of the Court. R. S. O. 1877, c. 40, s. 43.

Con. Rule 1185. No application for costs in an alimony action is to be made until the time for delivering the defence has expired, and no costs shall be ordered to be paid *de die in diem* by the defendant beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor. R. S. O. 1877, c. 40, s. 47; Chy. O. 489.

Con. Rule 1186. In case the plaintiff in an alimony action fails to obtain a judgment for alimony, no costs beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor, shall be ordered to be paid by the defendant. R. S. O. 1877, c. 40, s. 48.

Prior to the passing of the Statute 32 Vic. chapter 18 (now Con. Rules 1185, 1186), the defendant husband in an alimony suit was bound to pay the costs of the plaintiff's solicitor in any event, following the authorities in the ecclesiastical courts. This was the case, even where the

wife was to blame, and failed to obtain a decree for alimony. *McKay* v. *McKay*, 6 Gr. 380.

And where the plaintiff succeeded she was entitled to her full costs of suit, that is, to costs as between solicitor and client. The reason given for this was the then state of the law with reference to the property of a married woman, it being at that time under the control of the husband by virtue of the martial relation. *Soules* v. *Soules*, 3 Gr. 113.

It does not appear that the legislation respecting married women has wrought any change in the law as to the payment of disbursements in England. It can only have that effect here, when the wife is actually in receipt of such independent and separate means of support as will enable her to live and pay the costs of litigation without alimentation pending the action for alimony. *Knapp* v. *Knapp*, 12 P. R. 105; and see *Magurn* v. *Magurn*, 10 P. R. 570; *Sinden* v. *Sinden*, 11 P. R. 140.

And the rule still appears to be to give a successful plaintiff in an alimony action costs as between solicitor and client. See *Roblin* v. *Roblin*; *Ferris* v. *Ferris*, *post*.

The only test in regard to the allowance of the costs of particular proceedings in alimony suits appears to have been whether or not they had been vexatiously incurred. Even if the proceedings were abortive, if they were had in good faith, then costs of such proceedings were taxable to the plaintiff's solicitor against the husband. *Glennie* v. *Glennie*, 1 Chy. Ch. 155.

An order for security for costs will not be made in an alimony action. As the wife would not, in any case, be ordered to pay costs, such an order would be merely a bar in the way of her proceeding without any possible benefit to the defendant.

Semble, if the wife is out of the jurisdiction and is acting in a manner that cannot be justified, and is abusing the process of the Court, or if she has separate property, the Court might alter the practice. *Bennett* v. *Bennett*, 7 P. R. 54.

The defendant by his answer offered to receive his wife and children and support them. At the hearing the plaintiff did not call witnesses, but agreed to accept the defendant's offer, whereupon a decree to that effect was drawn up whereby the defendant was ordered to pay the plaintiff's full costs; and in pursuance of such decree the plaintiff returned to the defendant's residence. The Court, on rehearing, refused, under the circumstances, to vary the decree as to costs, although the plaintiff was strictly entitled under the statute to cash disbursements only. *Keith* v. *Keith*, 25 Gr. 110.

Keith v. *Keith* was decided at the hearing by V.-C. Proudfoot, and in giving full costs as against the defendant, he acted upon the opinion that the consent given there by the husband to receive back and support the wife was equivalent to a decree for alimony within the meaning of that term in the statute. In a later case the learned Vice-Chancellor said he thought he had erred in this. *Ringrose* v. *Ringrose*, 10 P. R. 299.

A woman brought a suit for alimony seventeen years after the marriage, on the ground of refusal by the man to receive her as his wife. He set up the invalidity of the marriage, but while under examination stated that if it was determined that she was his wife he would receive her as such. The Court found there was a valid marriage, and directed that upon the defendant undertaking to receive the plaintiff as his wife, the bill should be dismissed; but ordered the defendant to pay the plaintiff's costs as between solicitor and client. *Roblin* v. *Roblin*, 28 Gr. 439.

The defendant in his defence alleged that he had refused, and still refused, to support the plaintiff by reason of her having committed adultery with M. The evidence shewed that the plaintiff, on being charged by the defendant with adultery, and ordered to go away, left his house, though, before she actually departed, he forbade her to go. The defendant persisted in the charge of adultery, but did not attempt to prove it. The plaintiff proved none of the acts of violence alleged in her statement of claim.

The defendant having, at the trial, after the plaintiff's evidence had been given, for the first time offered to take her back to his house,

Held, that the judgment for alimony should stand over for six weeks to see if this offer was carried out, and that the plaintiff was, in any event, entitled to her full costs of suit. *Ferris* v. *Ferris*, 7 Ont. R. 496.

During the pendency of a motion for interim alimony, the plaintiff returned to her husband.

The plaintiff's solicitor asked for an order against the defendant for his costs, and the Master in Chambers directed the defendant to pay the plaintiff's costs as between solicitor and client. *Leonard* v. *Leonard*, 9 P. R. 450.

The action was settled before trial, the plaintiff returning to live with the defendant, and the defendant agreeing to pay the plaintiff's solicitor's costs. He afterwards refused to pay anything but disbursements.

The Master in Chambers made an order against the defendant for the costs, holding that the plaintiff had not "failed" to obtain a decree. *Moore* v. *Moore*, 10 P. R. 284.

In a later case where the facts were the same as in *Leonard* v. *Leonard* and *Moore* v. *Moore*, the Local Judge at Orangeville had made an order for the defendant to pay

full costs. On appeal from this order these cases were relied on by the defendant, but Proudfoot, J., held that the English authorities cited in *Leonard* v. *Leonard* had no application, as there is no statutory provision in England equivalent to the provisions of what is now Con. Rule 1186. *Ringrose* v. *Ringrose*, 10 P. R. 299, affirmed 10 P. R. 596.

Upon an application for *interim* disbursements proof of the marriage is all that is required. *Nolan* v. *Nolan*, 1 Chy. Ch. 368.

Where the marriage is admitted the defendant will not be allowed to go into merits. *Carr* v. *Carr*, 2 Chy. Ch. 71; *Bradley* v. *Bradley*, 3 Chy. Ch. 329.

A marriage *de facto* may be inferred from conduct and reputation.

The authorities, English and Canadian, go to this extent, that where it appears from the admissions of the parties, or from the affidavits of the one not impeached by the other that there has been a ceremony of marriage between them and the real controversy is whether that is a valid marriage, then the Court adjudges that the litigation should be carried on at the expense of the putative husband, and that the plaintiff should receive *interim* support from him. The principle which underlies all the decisions is, that the allotment of alimony *pendente lite* depends upon the martial relationship of the parties existing *de facto*. *Walker* v. *Walker*, 10 P. R. 633.

The plaintiff applied for an order for witness and counsel fees in advance. The referee refused the order. The application was subsequently renewed at the hearing, and Proudfoot, V.-C., ordered the cause to stand until a sum for necessary witness fees (but not counsel fees) was paid by the defendant. *Haffey* v. *Haffey*, 7 P. R. 137.

On December 1st, 1883, the Master in Chambers made an order directing the defendant to pay the plaintiff before the trial "on account of her *interim* disbursements for witness fees $22.35, and on account of her disbursements for counsel $40." The defendant appealed.

FERGUSON, J.—"The order appealed from says that the $40 is given for a counsel fee, and I am to say whether or not this should have been done. See Bishop on Marriage and Divorce, vol. II. p. 394. After consultation with Mr. Justice Proudfoot in regard to the principle of his decision in *Haffey* v. *Haffey*, 7 P. R. 137, I am of opinion that the appeal must be dismissed with costs. The order appealed from might be fuller in regard to the fee not being payable to the solicitor for the plaintiff or his partner as counsel, but I cannot reverse it." *Ingram* v. *Ingram*, 10 P. R. 569.

The plaintiff obtained a judgment at the trial, and the defendant appealed to the Court of Appeal. The plaintiff now applied to a Judge of that Court in Chambers for an order for payment by the defendant to the plaintiff before the hearing of the appeal of a sum for the purpose of paying the wife's counsel fee.

OSLER, J.A.—"It seems clear that where the counsel fee is, or must be an actual disbursement by the wife's solicitor, the husband will be ordered to provide it. I have not found, nor have I been referred to any decisive authority that this will not also be done where the solicitor or his partner is or may be counsel as well. That seems to me to be merely an accident of the cause. I take it the solicitor has a right, if he is retained as counsel, to insist on payment of his fee in the usual way. He is not bound to give credit for it, and it becomes a disbursement of the wife in one case as well as in the other. I have spoken to some of my learned brethren, Justices of the Chancery Division, who do not dissent from this view.

"I shall act upon it in the present case as only carrying out the practice as I find it. But if it becomes my duty to reconsider the practice of ordering the husband to pay his wife's disbursements in suits of this nature, I should be strongly disposed to think that owing to the altered status of the married woman, the reason for it has ceased to exist. The order will be that the husband pay a sum of $40 for the purpose of paying the wife's counsel fee." *Magurn* v. *Magurn*, 10 P. R. 570. Dec. 21st., 1883. And see *Bucke* v. *Bucke*, 21 Gr. 77.

The Master in Chambers followed these two cases and ordered the defendant to pay the plaintiff's witness fees, counsel fee, and cash disbursements, before trial. March 4th., 1885. *Bradley* v. *Bradley*, 10 P. R. 571.

The Local Master at Chatham ordered the defendant to pay *interim* alimony, and also the plaintiff's solicitor's actual and prospective disbursements. It was shewn that the plaintiff was in possession of the homestead, the husband having deserted her, but the defendant failed to shew that she was deriving any income from the property. On appeal from this order. November 9th., 1885,

PROUDFOOT, J.—"I shall not interfere with the order upon the ground taken as to the altered status of married women under the Married Women's Property Act, 1884, or with the discretion of the Master in ordering *interim* alimony, although the plaintiff was in possession of the homestead. However, I shall set aside so much of the order as directs the payment of a sum of $40 to the plaintiff's solicitor as a prospective disbursement for counsel fee, as it is alleged and not denied that one of the firm of plaintiff's solicitors is to act as counsel. I do not lay down any general rule as to this; each case must stand on its own circumstances; and in this case I do not think the disbursements should be increased." *Lalonde* v. *Lalonde*, 11 P. R. 143.

Though the plaintiff may have a separate estate and income, and so make out no sufficient case for *interim* alimony, she may still be entitled to payment of disbursements for costs.

The change in the status of married women under recent legislation has no effect on the law as to disbursements in actions for alimony, unless the wife is actually in receipt of such independent and separate means of support as will enable her to live and pay the costs of litigation without alimentation pending the action for alimony. *Knapp* v. *Knapp*, 12 P. R. 105; 7 C. L. Times 161.

The defendant in an alimony action died during the pendency of the action. The wife's solicitor sued the husband's executor for the amount of his bill of costs, as for necessaries supplied to the wife.

KETCHUM, Jun. Co. J., of Northumberland and Durham, held that R. S. O. 1877, c. 40, s. 48 (now Con. Rule 1186), does not apply where a distinct and substantive action is brought by the plaintiff's solicitor for his costs as for necessaries supplied to the wife. In such case the law stands as before the Act, and the solicitor is entitled to recover full costs against the husband, or his executor, as for necessaries supplied to the wife, if they are necessaries. *Kerr* v. *Rickard*, 8 C. L. Times 335.

The decision in this case does not seem consistent with the construction placed on the statute in *Ringrose* v. *Ringrose*, *ante*. The plaintiff undoubtedly "failed" to obtain a judgment for alimony, just as much as if the parties had, before the trial, resumed co-habitation. If the defendant, instead of dying, had put an end to the alimony action by receiving the plaintiff back to his home and maintaining her, *Ringrose* v. *Ringrose* decides that the plaintiff's solicitor could only have recovered disbursements. In the latter case he could not, surely, have

defeated the statute by suing the husband for his full costs, "as for necessaries supplied to the wife"; and unless a distinction can be drawn between a failure to obtain a judgment, as in *Ringrose* v. *Ringrose*, and a similar failure by the death of the defendant, all a plaintiff's solicitor has to do to make the husband or his personal representatives liable for full costs is to sue him, or them, in a distinct action as for necessaries supplied to the wife.

The defendant having presented a bill to the Senate for a divorce from his wife, the plaintiff was retained by the wife as counsel before the Committee of the Senate to oppose the bill. The defendant being informed that he must pay from day to day into the committee the costs of his wife's defence, promised the plaintiff that if the plaintiff would not insist on defendant so paying his fees, he would pay them to the plaintiff when taxed. The committee having reported the preamble of the bill not proven, the wife applied to the Senate for a divorce and for maintenance, and retained the plaintiff to support such application.

Held, WILSON, J.—The Senate could have no power to award alimony, and the plaintiff could not recover for his fees in promoting a bill for that purpose. *McDougall* v. *Campbell*, 41 U. C. Q. B. 332.

The defendant did not appear, and an order had been made for *interim* alimony for the amount endorsed on the bill, which the defendant considered excessive; on a motion by him to set aside the order, a reference was directed on the defendant paying the costs of the application. *Hooper* v. *Hooper*, 3 Chy. Ch. 114.

The cash disbursements mentioned in Con. Rule 1186 do not include fees paid to agents for solicitors' services. Holmested & Langton, 997.

COSTS IN INTERPLEADER PROCEEDINGS.

Con. Rule 1153—The Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not provided for.

Con. Rule 1158—In case an issue is directed to be tried for the determination of the adverse claim in respect of property seized or taken under an order of attachment or writ of execution, the sheriff (or other officer) to whom such order is delivered or writ is directed may tax the costs incurred by him in consequence of such adverse claim, and may, when taxed, serve a copy of the certificate of the same upon each of the parties to such issue, and the successful party upon the issue shall tax such costs among his costs of the cause, and upon receipt thereof shall pay over the same to such sheriff or officer. R. S. O. 1877, c. 54, s. 15.

Con. Rule 1159—If after the service of such certificate the party succeeding upon the issue neglects or refuses to tax such costs, the sheriff or other officer may obtain an order that the successful party shall pay the same. R. S. O. 1877, c. 54, s. 16.

Con. Rule 1160—In case of any such proceedings being compromised between the parties thereto, such costs of the sheriff or other officer shall be paid by the party, plaintiff or defendant, by whom the execution or attachment was sued out. R. S. O. 1877, c. 54, s. 17.

Con. Rule 1161—In case, after the seizure of any property under attachment or in execution, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the sheriff or other officer who seized the same, the Court from which the writ or order of attachment issued, or any Judge thereof may make an order for payment to the sheriff or other officer of such sum for his trouble in and about the custody of the property as the Court or Judge deems reasonable; and the sheriff or other officer shall have a lien upon the property for payment of the same in the event of the issue being decided against the claimant, and only to the extent to which such issue shall be so decided. R. S. O. 1877, c. 54, s. 18; 49 V. c. 16, s. 13.

Con. Rule 1165—In respect of all such proceedings as shall be had in the County Court, the costs and disbursements shall be taxed upon the County Court scale. 44 V. c. 7, s. 3.

Con. Rule 1241—The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

This chapter is confined to the costs of sheriff's interpleader, no attempt being made to deal with the costs of interpleader by stakeholders, bailees or carriers, except in so far as the rules relating to such last mentioned costs are illustrated in dealing with the costs of the parties to the issue.

Creditors declining to join in contesting the claim of an adverse claimant may be excluded from any benefit which may be derived from the contestation. *See* Con. Rule 1152. See also section 4, sub-section 3, of The Creditors' Relief Act.

An interpleader proceeding by a sheriff is not an action, but a proceeding in an action. *Hamlyn* v. *Betteley*, 6 Q. B. D. 63; *Coulson* v. *Spiers*, 9 P. R. 491. In *Douglas* v. *Burnham*, 5 Man. L. R. 261, the contrary seems to have been decided. *See* 8 C. L. Times 261.

Scale on which Costs Taxed.

See Con. Rules 1155, 1156, 1162, 1163, 1164.

Where several writs of *fi. fa.* from different County Courts had been placed in the sheriff's hands, and an application for an interpleader order was made in the Superior Court, the Master in Chambers held that the sheriff was entitled to County Court costs only; and that the costs of the issues directed should be taxed on the same scale. *Masuret* v. *Lansdell*, 8 P. R. 57.

Where several writs had been placed in the sheriff's hands, of which one was from a County Court and the others from the Superior Courts, the County Court execution creditor contended that under *Masuret* v. *Lansdell*, the claimant, who was successful, was entitled to County Court costs only against him.

The Master in Chambers held that the claimant was entitled to Superior Court costs, as against all the execution creditors. As to the case of *Masuret* v. *Lansdell*, he remarked that he had since had reason to modify his judgment in that case. He was now of opinion that in interpleader matters, where all the writs are from the County Courts, the sheriff is entitled to County Court costs only, but that the costs of the issue directed between the parties should be taxed to the successful party upon the Superior Court scale, for the reason that the issue in such a case must be tried in the Superior Court. (The issue would now be tried in the County Court. See Con. Rule 1162.) *Phipps* v. *Beamer*, 8 P. R. 181.

In case of interpleader by two claimants, one an execution creditor in a County Court suit, and the other an execution creditor in a Superior Court suit, the application for an interpleader order was held properly made in the Superior Court, although the seizure was made under the County Court writ before the Superior Court writ came into the sheriff's hands. *Strange* v. *Toronto Telegraph Company*, 8 P. R. 1. And see now Con. Rule 1156.

An execution for $105, issued from the Chancery Division, and certain goods were seized, which the plaintiff herein claimed, but his claim was not sustained.

Held, that costs on the lower scale only should be taxed by the successful party on the issue. All interpleader issues involving under $400, in whatever Division arising, are now to be disposed of by the County Court. *Beaty* v. *Bryce*, 9 P. R. 320 per Boyd, C.

The decision in *Beaty* v. *Bryce*, was explained in a case decided a few months later by Cameron, J. In this case the execution was issued in the Common Pleas Division, and the issue was directed to be tried in the County Court, the amount being within the jurisdiction of that Court. The taxing officer only allowed the sheriff his costs on the County Court scale, but on appeal it was held that the sheriff was entitled to his costs on the scale of the Court out of which the process under which he seized the goods issued.

CAMERON, J., observed: "It is not necessary for me to express any opinion in this case as to the scale of costs on which the parties' costs should be taxed prior to the order directing the issue, but I may say I have no doubt in this respect they are in the same position as the sheriff. It is not the absolute right of a claimant or execution creditor to have the issue tried in the County Court, where the

amount of execution or value of the goods is under $400; that would seem to be a matter in the discretion of the Judge or person making the order, the language of the said section not being imperative but permissive as to this." *Arkell* v. *Geiger*, 9 P. R. 523.

Under an execution issued from the Queen's Bench Division a sheriff seized goods valued at $110, which were claimed by the plaintiff, and an order was made directing an interpleader issue in the High Court. The Master in Chambers afterwards directed the costs to be taxed on the County Court scale, following *Beaty* v. *Bryce*.

Held, CAMERON, J., that the scale of costs after the issue of an interpleader must be determined by the scale applicable to the forum in which the issue has to be tried, and before the issue, on the scale of the Court to which the sheriff is compelled to resort to obtain relief. As the litigants had not gone to the County Court to try the issue, as they might have done, the unsuccessful party should not be relieved of costs on the High Court scale. The decision in *Beaty* v. *Bryce* not followed. *Christie* v. *Conway*, 8 P. R. 529.

Sheriff's costs.

The English practice as to sheriff's costs of an interpleader application is not so favourable to the sheriff as our practice, and there appears to be no English Rule or Statute analagous to Con. Rule 1158. This must be borne in mind when comparing the English and Ontario cases.

The rule in England is thus stated by *Cababe*: "With respect to the costs of the proceedings in sheriff's interpleader, the cardinal rule with respect to the sheriff's costs, is, that he always pays his own, however proper and meritorious his conduct may have been; it being thought that the Act had conferred sufficient benefit on him by

allowing him to interplead at all and so relieve himself from a liability cast upon him by law." Page 85. And see *Barker* v. *Dynes*, 1 Dowl. 169; *Bryant* v. *Ikey*, 1 Dowl. 428; *Morland* v. *Chitty*, 1 Dowl. 520.

If, however, there were anything vexatious in the proceedings of the claimant he might have to pay the sheriff's costs. *Thompson* v. *Sheddan*, 1 Scott 697; *Cox* v. *Fenn*, 7 Dowl. 50.

But the sheriff will never be ordered to pay the costs of any of the disputants, unless there has been something wrong or vexatious in his conduct. *Morland* v. *Chitty*, *supra*; *Bland* v. *Delano*, 6 Dowl. 293.

Before the sheriff applies for an interpleader order he is bound to inquire into the nature of the claims set for, if he brings parties before the Court in consequence of a claim which is clearly bad on the face of it, in point of law, he will have to pay the costs. *Churchill*, 174; *Walker* v. *Niles*, 3 Chy. Ch. 59.

Where goods were taken in execution and a claim was set up under a bill of sale, which bore date *after* the levy, the Court discharged the sheriff's application for relief and made him pay the costs of the execution creditor. *In re Oxfordshire*, 6 Dowl. 136.

Where neither party appeared to shew cause to the rule, the claimant was ordered to pay the sheriff's costs. *Philby* v. *Ikey*, 2 Dowl. 222.

In a later case the decision in *Philby* v. *Ikey* was not followed by the Common Pleas. Tindall, C.J., in delivering judgment observed: "The sheriff is extremely well off in being indemnified at so cheap a rate as he is, and cannot have his costs. The Court of Exchequer has thought one way, but we think another. *Oram* v. *Sheldon*, 3 Dowl. 640; and see *Churchill*, 185.

Where the sheriff has been guilty of laches he will not be granted relief, and may be ordered to pay the costs of the other parties on the application. *Clarke* v. *Farrell*, 8 P. R. 234.

But where the parties agreed that the sheriff need not interplead until it was ascertained what the estate of the defendants would realize; it was held that the understanding entered into between the parties precluded the execution creditor from setting up the laches of the sheriff, and he was entitled to his costs of the application. *Wilkins* v. *Peatman*, 7 P. R. 84.

A delay from the 13th of February to the 5th of March, no opportunity of trial being lost, was held not unreasonable. The disposition of the Court is to be more liberal in relieving the sheriff now than formerly. *Darling* v. *Collatton*, 10 P. R. 110.

A sheriff in whose hands there were several executions, had made a sum which was insufficient to satisfy the prior executions, which were undisputed. There was a claimant to the debtor's goods, who disputed the subsequent executions, to which there were no funds applicable.

Held, that the sheriff had no right to ask for an interpleader order, and his application was dismissed with costs. *Canadian Bank of Commerce* v. *Bruce*, 2 C. L. Times 92, 103.

The claimant of goods seized under two executions brought trespass against the sheriff, and an interpleader was directed between the claimant as plaintiff and the two execution creditors as defendants. The claimant succeeded in the issue.

HAGARTY, C.J.—"I think the sheriff should be paid his costs of the defence of the action, and of the interpleader application to be taxed and paid in the usual way. The

execution creditors must pay the claimant's costs. They have joined in the issue as defendants, and I cannot apportion their liability." *Carter* v. *Stewart*, 7 P. R. 85.

Where sheriff's applications were dismissed with costs. *Adams* v. *Blackwell*, 10 P. R. 168; *Ogden* v. *Craig*, 10 P. R. 378.

Where neither the claimant nor the execution creditor appeared upon the summons, the sheriff was ordered to sell so much of the goods as amounted to his poundage and expenses of sale, and to abandon the remainder of the goods seized. *Eveleigh* v. *Salisbury*, 3 B. N. C. 298.

An execution creditor who has not specially directed the sheriff in making the seizure, is entitled to abandon his claim to the goods seized, on the return of the motion after seeing the claimant's affidavit without paying costs. *Canadian Bank of Commerce* v. *Tasker*, 8 P. R. 351.

But where special directions are given to the sheriff to seize particular goods, though not in contemplation of an adverse claim, if the execution creditor abandons after interpleader proceedings have been taken, he must pay the sheriff's and claimant's costs. *Vanstaden* v. *Vanstaden*, 10 P. R. 428.

An execution creditor directed a sheriff to interplead. Upon the return of the interpleader summons he obtained an enlargement to examine the claimant. Upon the further return the creditor abandoned.

Held, that the execution creditor ought to pay the sheriff's costs of the proceedings. *Stevens* v. *Rogers* (Man.) 10 C. L. Times 32.

A sheriff having made a seizure, and a claim having been made to the goods, an interpleader issue was directed. Security not having been given the sheriff sold the goods.

Before trial the plaintiff (the execution creditor) abandoned, and an order was made for payment by the plaintiff to the claimant and the sheriff of "their costs occasioned by said interpleader order and interpleader issue." This order was amended, and the plaintiff was further directed to pay the sheriff's possession money and other expenses occasioned by the sale and the costs of the sale.

Upon appeal from the settlement of the sheriff's account,

Held, (1) That the sheriff was not entitled to poundage;

(2) That the sheriff was entitled to possession money and other expenses by the terms of the orders, which had not been appealed from;

(3) That under the circumstances the charge for possession money was not unreasonable; nor was $2 a day too much too pay to a man for keeping possession:

(4) A charge of $2.40 for taking a man out of possession was disallowed.

(5) Adjournments of sale allowed at fifty cents each. *The Manitoba & N. W. R. Co.* v. *Routley*, 6 C. L. Times 494.

A claimant served a notice upon the sheriff claiming goods seized under a writ against another. Upon the return of the interpleader summons the claimant appeared, obtained two enlargements, and doing nothing to substantiate his claim was barred.

Held, that the claimant should pay the sheriff's costs. *Cochrane* v. *McFarlane*, 5 Man. L. R. 120; 8 C. L. Times 28.

Where a claimant abandoned his claim after an issue directed, the sheriff was held entitled to his costs from the time of directing the issue, and of the application for those costs. *Scales* v *Sargeson*, 4 Dowl. 231.

The sheriff's right to poundage and sheriff's fees depend on the legality of the seizure. If therefore it turns out that the goods belonged to the claimant, and ought not to have been seized, the sheriff will not get them. He cannot therefore retain them out of the proceeds of sale in the first instance, and he will only get them ultimately if the execution creditor succeeds. *Barker* v. *Dynes*, 1 Dowl. 169; *Morland* v. *Chitty*, 1 Dowl. 550.

The sheriff is entitled to be paid the expenses which he incurs in keeping possession of the goods seized, where he does so for the benefit of the parties who have agreed that he shall keep possession. He is further entitled to any expenses he has been put to in acting in obedience to the rule of Court. *Cababe*, 87, 88.

And although under the English practice the sheriff is not, as a rule, allowed costs, yet where he has retained possession of the goods seized, at the request of the execution creditor, and has sold them with the consent of all the parties, the execution creditor afterwards abandoning his claim, the sheriff has been held to be entitled to receive from him his costs of such possession and sale. *Churchill*, 185.

A successful party in an interpleader issue moving for an order barring the execution creditors, having given the sheriff notice of the motion, was ordered to pay the sheriff's costs of appearing on the motion, although such notice was unnecessary. *O'Brien* v. *Bull*, 9 P. R. 494; 19 C. L. Journal 211.

But where the sheriff is interested in the application, or any order made thereon may prejudice him, he is entitled to notice of such application, and if successful, to his costs of appearing on it. *Gray* v. *Alexander*, 10 P. R. 358.

In *Ontario Bank* v. *Revell*, 11 P. R. 249, the Master in Chambers ordered the sheriff to pay into Court the gross

proceeds of the sale, for the reason that if the claimant should succeed he would be entitled to the whole proceeds of the sale, without any deduction.

In a later case that came before the Divisional Court of the Chancery Division it was held that the practice laid down in the last case was not the proper practice, and the probable success of the claimant does not justify such an order. The claimant, by not giving security, accepts the alternative of a sale of the goods by the sheriff, and the sheriff in selling the goods acts under the interpleader order, and not for the execution creditor, and is entitled to retain his possession money and charges from the proceeds.

If the claimant succeeds his proper remedy is to recover these expenses from the execution creditor, which he can do in a summary way, as that is one of the questions reserved by the order to be ultimately disposed of. *Reid* v. *Murphy*, 12 P. R. 338; 8 C. L. Times 5.

See McLaren v. *Canada Central R. W. Co.*, 10 P. R. 328 *post*.

Costs of the Execution Creditor and Claimant.

As between the parties to the issue, the general rule as to costs applies as well to the trials of interpleader issues as to any other cases. *Janes* v. *Whitbread*, 11 C. B. 419.

These costs cover the costs of the sheriff's motion for interpleader, the costs of the trial of the issue, and costs of the subsequent applications. *Bellhouse* v. *Gunn*, 20 U. C. Q. B. 555.

Where an issue was directed to be tried between an execution creditor and a claimant, and the latter refused to try, and abandoned his claim, he was held liable to pay the execution creditor's costs down to the time of his claim

being abandoned, and of the applying to take the money paid in by the sheriff out of Court. *Wills* v. *Hopkins*, 3 Dowl. 346.

Where in consequence of a claim made to goods seized by a sheriff in execution, the Court ordered the claimant to proceed to trial upon paying a sum of money into Court, which he neglected to do, he was held liable for the costs occasioned by his false claim, as well as the costs of the application to compel him to pay such costs. *Scales* v. *Sargeson*, 3 Dowl. 707.

The execution creditor is entitled to see the claimant's affidavit in support of his claim, for the purpose of ascertaining the *bona fides* of the claim, before abandoning his seizure; and if he then abandons the claimant is not entitled to costs against him. *Wilkins* v. *Peatman*, 7 P. R. 84; *Canadian Bank of Commerce* v. *Tasker*, 8 P. R. 351.

But where special directions are given to the sheriff by the execution creditor or his solicitor to seize particular goods, and the execution creditor abandons after interpleader proceedings have been taken, he must pay the sheriff's costs, and probably the costs of the claimant. *Vanstaden* v. *Vanstaden*, 10 P. R. 428.

One of several execution creditors made parties to an interpleader issue, did not desire to contest the right of the claimant to its share of the proceeds of the goods seized and sold, but was willing that such share should be paid over to the claimant, in the event of the latter not succeeding on the issue.

Held, that such execution creditor was not under these circumstances liable to contribute to the costs of the issue; but, nevertheless, was properly made a party to the issue, and would be entitled, if the claimant failed, to its propor-

tion of the proceeds arising from the sale of goods. *Dundas* v. *Darvill*, 12 P. R. 347.

A successful claimant is entitled to recover from the execution creditor, as costs, the sheriff's charges subsequent to the interpleader order. *Goodman* v. *Blake*, 19 Q. B. D. 77.

Although the claimant upon the trial of an interpleader issue succeeds, yet the Court may, in its discretion, refuse to give him costs against the execution creditor.

The Court cannot, however, in such a case order the claimant to pay the sheriff his costs of taking possession of the goods claimed, or his possession money prior to the date of the interpleader order. *The Massey Manufacturing Co.* v. *Gandry*, 4 Man. L. R. 229; 7 C. L. Times, 127.

Upon the trial of the issue it may happen that the parties are both partially successful and partially unsuccessful, and the principle adopted in these cases is to apportion the costs of the two parties, according to the amounts in respect of which each succeeded. If necessary, too, the Court will, for the purpose of adjusting the costs justly, order the issues to be distributed. *Cababe*, 71; *Churchill*, 188.

An issue was directed between the claimant and the execution creditor to try whether five horses, or one or some of them, were, or was, when taken in execution, the property of the claimant. The jury found that two horses only belonged to him. On an application for costs the Court gave neither party the general costs of the issue, nor the costs of the trial, but gave to each such portion of the costs as applied to the part on which he had succeeded. *Lewis* v. *Holding*, 2 M & G. 875.

Where the claimant established his claim to all except a small portion of the goods,

Held, that he was entitled to the costs of the interpleader rule, and of the issue and trial, from which the execution creditor might deduct such costs as he had incurred in proving his claim to those goods which were found to belong to him. *Dempsey* v. *Caspar*, 1 P. R. 134.

The plaintiff recovered a large verdict against the defendants, and execution having issued a sheriff seized certain property which was claimed by the Canadian Pacific Railway Co., and the sheriff interpleaded. The defendants appealed and gave satisfactory security, and it was then arranged that the sheriff should go out of possession till the decision of the appeal.

It was held that as the plaintiff and defendants voluntarily placed the case in that position where there never could be a decision as to the right to the costs incident to the interpleader motion, the plaintiff and defendants must each pay their own costs thereof, and one moiety of the costs of the Canadian Pacific Railway Co. and of the sheriff. *McLaren* v. *Canada Central R. W. Co.* 10 P. R. 328.

Where a mortgagee claimed all the goods seized by a sheriff under execution, but it appeared on the trial of an interpleader issue between the mortgagee and the execution creditors that some of the goods seized, amounting to one-sixth of the total value, were not covered by the mortgage,

Semble, although the mortgagee was entitled to the general costs of the issue a deduction of one-sixth should be made in respect of the goods as to which he failed. *Segsworth* v. *Meriden Silver Plating Co.*, 3 Ont. R. 413.

Security for Costs in Interpleader.

The mere fact that a person is plaintiff in the issue does not entitle the defendant to call upon him to give security

for costs if he resides out of the jurisdiction, any more than, on the other hand, does the mere fact that a person is defendant in the issue relieve such person from giving security if his position is that of a plaintiff. *Cababe*, 68.

Where the plaintiff in the issue who resided abroad was really rather in the position of the party sued than the party suing, but had been made plaintiff in the issue solely for the convenience of the proceedings, while the defendant in the issue was practically the plaintiff, it was held that the plaintiff in the issue could not be called upon to give security for costs.

DENMAN, J., said: "I think the principle upon which security for costs is ordered is clearly this, viz., that one who is substantially in the position of plaintiff initiating an action, and is a foreigner residing abroad, shall be bound to give security for costs." *Belmonte* v. *Aynard*, L. R. 4 C. P. D. 221, 352. See *In re Ancient Order of Foresters and Castner*, 10 C. L. Times 365.

Where the claimant was plaintiff and the execution creditor defendant in the interpleader issue, and the execution creditor resided out of the jurisdiction,

Held, that he could be ordered to give security for costs. *Lovell* v. *Wardroper*, 4 P. R. 265.

Where the claimant was plaintiff in the issue, having left the jurisdiction, was ordered to give security for costs. *Walker* v. *Niles*, 3 Chy. Ch. 108.

A local Judge in whose county the proceedings in an action out of which the interpleader arises are carried on, and who himself made the interpleader order, has power to make an order in the issue for security for costs.

The plaintiff in the issue was the claimant and the defendant in the issue the execution creditor. The defendant resided out of the jurisdiction, and the local Judge at

Stratford ordered him to give security for the plaintiff's costs. On appeal this order was sustained, and the *dictum* of the Master in Chambers to the contrary in *Canadian Bank of Commerce* v. *Middleton*, 12 P. R. 121, not approved of. *Swain* v. *Stoddart*, 12 P. R. 490. In *re Ancient Order of Foresters and Castner*, 10 C. L. Times, 365.

Section 10 of the Interpleader Act, (R. S. O. 1877, ch. 54), authorized security to be ordered for the sheriff's costs from either or both parties. Under this section it was held that a sheriff was only entitled to such security under circumstances where it would be ordered between parties in an ordinary action. Where, therefore, the claimant was a married woman and in financial straits, it was held this was no ground for ordering security for the sheriff's costs. *Sweetman* v. *Morrison*, 10 P. R. 446.

The above section has not been carried into R. S. O. 1887, and is not embodied in the Con. Rules, but without such express provision the sheriff would appear under the present Rules to have the same right as formerly. Holmested & Langton, p. 882.

THE CONSOLIDATED RULES RELATING TO COSTS.

APPEALS FROM TAXATION.

---

851. Any party who may be dissatisfied with the certificate of the taxing master, as to any item or part of an item which may have been objected to, as provided by Rules 1230 and 1231, may apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just; but the certificate of the taxing master shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. J. A. Rule 449.

852. No appeal shall lie unless a notice thereof is given within four days from the day of the date of the certificate, and is brought on for argument within nine days from the said day.

853. Such application shall be heard and determined by the Judge upon the evidence which shall have been

brought in before the taxing master, and no further evidence shall be received upon the hearing thereof unless the Judge otherwise directs. J. A. Rule 450.

854. There may be an appeal by appointment without other notice from the taxing masters in Toronto to the Master in Chambers or to the Master in Ordinary pending the taxation in all cases. J. A. Rule 544 (1).

GENERAL RULES.

1170. Subject to the provisions of *The Judicature Act*, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court, but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the Judge before whom the action or issue is tried or the Court otherwise orders. J. A. Rule 428.

(*a*) Costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion, subject to appeal. *See* Chy. O. 225, 585.

1171. When several plaintiffs have been joined, and some or one of them only have or has been found entitled to relief the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who has or have not been found entitled to relief, unless the Court in disposing of the costs of the action otherwise orders. J. A. Rule 89, *part*.

1172. In case an action of the proper competence of a County Court is brought in the High Court, or in case an

action of the proper competence of a Division Court is brought in the High Court, or in a County Court, and is tried by jury, and the Judge or Court makes no order respecting the costs, the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between solicitor and client, and so much thereof as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, on on entering judgment, be set off and allowed by the Taxing Officer against the plaintiff's County Court or Division Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary, and if the amount of costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff. See R. S. O. 1877, c. 50, s. 347, and J. A. Rule 512, *first part.*

(*a*) The event shall in such case be to recover costs according to such scale, subject to such rights of set-off as to costs, as are herein mentioned. J. A. Rule 512, *last part.*

1173. The plaintiff in any action which is of the proper competence of a Division Court but is brought in a County Court shall not be entitled to full County Court costs, if judgment is recovered in such action by default for want of an appearance or defence, or on the ground only of a commission for the taking of evidence out of the Province having been issued therein or necessary, whether judgment be recovered by default or otherwise. R. S. O. 1877, c. 50, s. 349.

1174. In every case in which judgment is entered without trial, or the decision of a Court or Judge, or order as

to the costs, and where the amount of judgment, *prima facie*, appears to be within the jurisdiction of an inferior Court, the taxing officer shall not tax full costs of the High Court, without proof on affidavit to his satisfaction that the action was properly instituted therein; and if properly within the jurisdiction of the county, or Division Court, then the taxation shall be on the scale of fees in such Court. J. A. Rule 511. 48 V. c. 13, s. 22.

1175. When the plaintiff after non-appearance to a writ not specially indorsed delivers particulars of his claim under Rule 707, he shall not be entitled to the costs of the statement of the particulars of his claim, unless the taxing officer is satisfied that there was good reason for not specially indorsing the writ, so as to render unnecessary filing and serving such statement. J. A. Rules 74, 497.

1176. Where several actions are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or where several actions are brought against the maker and endorser of a note, or against the drawer, acceptor or endorser of a bill of exchange, there shall be collected or recovered from the defendant the costs taxed in one action only at the election of the plaintiff, and the actual disbursements only in the other actions, unless the Court otherwise orders; but this provision shall not extend to any interlocutory costs in the progress of an action. R. S. O. 1877, c. 50, s. 350.

1177. The costs of every examination of parties or of officers of corporations before the trial, or otherwise than at the trial of an action, shall be costs in the cause, but the Court or Judge in adjusting the costs of the action shall at the instance of any party inquire, or cause inquiry to be made, into the propriety of having made such examination; and if it is the opinion of the Court or Judge, or the taxing officer, as the case may be, that such

examination has been had unreasonably, vexatiously, or at unnecessary length, the costs occasioned by the examination shall be borne in whole or in part by the party in fault. The taxing officer may make such inquiry without any direction. J. A. Rule 220.

1178. Where the Court, or Judge, or officer exercising jurisdiction in Chambers or the Master deems it proper to award costs to either party, the judgment or order may direct payment of a sum in gross in lieu of taxed costs, to be fixed by himself or the officer who settles the order, and direct by and to whom such sum in gross is to be paid. See Chy. O. 225, 304, 305, 564, 585, 586.

1179. Where the official guardian or other guardian of an infant, lunatic, or person of unsound mind, is entitled to costs, or against any party to an action or proceeding, the Court or Judge may order the successful adult party, if any, to pay such costs and add them to his own.

1180. The costs of any application for an attachment of debts, and of any proceedings arising from, or incidental to, such application, including examination of the debtor or other person liable to examination, shall be in the discretion of the Court or a Judge. See J. A. Rule 378.

1181. Where the costs of one defendant ought to be paid by another defendant, the Court may order payment to be made by the one defendant to the other directly; and it is not to be necessary to order payment through the plaintiff. Chy. O. 319.

1182. The costs on all proceedings where a High Court case is tried in a County Court, or a County Court case in the High Court, shall be the usual costs of such cases in the Court in which the action was brought. R. S. O. 1877, c. 49, s. 43.

1183. The disbursements incurred in any cause, matter or proceeding in obtaining copies of the evidence for the purpose of moving against a judgment or for a new trial, shall, unless the Court otherwise orders, be costs in the cause to the party obtaining and paying for the same. C. L. Rules 10th March, 1876, 3.

1184. In cases not otherwise provided for, the Taxing Officer may in any cause, matter, or other proceeding, allow a reasonable sum for the expense of a shorthand writer, on the certificate of the Judge before whom the examination of any witness or witnesses in any such cause, matter, or other proceeding takes place. C. L. Rules 10th March, 1876, 7.

1185. No application for costs, in an alimony action, is to be made until the time for delivering the defence has expired, and no costs shall be ordered to be paid *de die in diem* by the defendant beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor. R. S. O. 1877, c. 40, s. 47; Chy. O. 489.

1186. In case the plaintiff in an alimony action fails to obtain a judgment for alimony, no costs beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor, shall be ordered to be paid by the defendant. R. S. O. 1877, c. 40, s. 48.

1187. In all actions or proceedings instituted for administration, or partition, or administration and partition, unless otherwise ordered by the Court or a Judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor, and entitled to costs out of the estate—other than creditors not parties to the action or proceeding—shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed for the other costs

of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned in the action or proceeding, which commission shall be apportioned amongst the persons entitled to costs, as the Judge or Master thinks proper. Such commission shall be as follows:

On sums not exceeding $500	20 per cent.
for every additional $100 up to $1,500	5 " "
for every additional $100 up to $4,000	3 " "
for every additional $1,000 up to $10,000	2½ " "
for every additional $1,000	1 " "

and such remuneration shall be in lieu of all fees, whether between "party and party," "as between solicitor and client," or "between solicitor and client." Chy. O. 643.

1188. When two or more actions or proceedings are instituted for administration, or partition, or sale, the Judge may, in his discretion, disallow all or any of the costs of any action or proceeding which in his opinion has been unnecessarily prosecuted; where any one of the parties, constituting a class formed by a Master for representation in his office by one solicitor, insists on being represented by a different solicitor, such party is personally to pay the costs of his own solicitor of and relating to the proceedings before the Master, with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. Chy. O. 218, and 644.

1189. When anything in the course of an action or reference which ought to have been admitted, has not been admitted, the party who neglected or refused to make the admission may be ordered to pay the costs occasioned by his neglect or refusal. See Chy. O. 234. J. A. Rule 163.

1190. No costs of proving a document shall be allowed unless a notice to admit has been given under Rule 617, except when the omission to give the notice is a saving of expense.

1191. The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the Court or a Judge directing by whom they are to be paid, be in the discretion of the taxing officer. J. A. Rule 463.

1192. In actions in the High Court of Justice no reference or examination for the purpose of discovery, or examination of a judgment debtor, on which fees may be payable otherwise than in law stamps, shall be taken before the Judge of the County Court, or local Judge of the High Court, or Local Master being also a Judge of the County Court, by whom the order or appointment for such reference or examination has been made.

(*a*) References in administration and partition matters under these Rules, and other like references in mortgage actions are excepted from the operation of this Rule. J. A. Rule 549.

1193. Where a petition in any action or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be $5. The party making the payment shall be allowed the same in his costs, provided the service was proper, but not otherwise; but this Rule is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. J. A. Rule 434.

1194. Where any party appears upon any application or proceeding in Court or at Chambers in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed. J. A. Rule 437.

1195. The Court or Judge may, at the hearing of any action or matter, or upon any appeal, application or proceeding in any action or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any writ, pleading, petition, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed; or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof, as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length. In such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or a Judge, the taxing officer may look into the same (and as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. *See* Chy. O. 71. J. A. Rule 435; App. O. 10.

1196. No allowance is to be made for any order for production or any notice or inspection under any of the Rules relating to production and inspection of documents unless it is shewn to the satisfaction of the taxing officer that there were good and sufficient reasons for taking the

order, giving the notice, or making the inspection. J. A. Rule 230.

Taxation.

1197. Where costs are awarded to be paid, it shall be competent to a taxing officer to tax the same, without an express reference to him for that purpose. Chy. O. 316.

1198. No bill of costs where the amount claimed exceeds $30 is to be taxed by the Registrars, the Master in Ordinary, the Master in Chambers or Clerk in Chambers, but every bill exceeding that sum is in Toronto to be taxed by one of the Taxing officers, notwithstanding anything to the contrary contained in the order for taxation. Chy. O. 310.

1199. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase, if any, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor in all cases where a notice to tax is necessary. Rules T. T. 1856, 48.

1200. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian. Rules T. T. 1856, 50.

1201. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance the officer shall in his discretion consider unnecessary in consequence of the interest of the party in the fund or estate being small or remote, or sufficiently protected by other parties interested. J. A. Rule 440.

1202. Where two or more defendants defend by different solicitors under circumstances that by the law of the Court, entitle them to but one set of costs, the taxing officer,

without any special order from the Court, is to allow but one set of costs; and if two or more defendants defending by the same solicitor separate unnecessarily in their defences, or otherwise, the taxing officer is, without any special order of the Court, to allow but one defence and set of costs. Chy. O. 315.

1203. Where any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. J. A. Rule 441.

1204. In any case in which a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or the officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. J. A. Rule 436.

1205. No set-off of damages or costs between parties shall be allowed to the prejudice of the solicitor's lien for costs in the particular action against which the set-off is sought; provided, nevertheless, that interlocutory costs in the same action awarded to the adverse party may be deducted. Rules T. T. 1850, 52.

1206. Costs may be taxed on an award, although the time for appealing from or moving against the award has not elapsed. Rules T. T. 1856, 142.

1207. All bills of costs or disbursements in actions brought for the administration of an estate, or for partition, or for the foreclosure, redemption or sale of mortgaged premises, and all bills in other actions where the amount is to be paid out of an estate or out of a fund in Court, or in which any infant, lunatic, or person of unsound mind is interested (or which shall be payable out of any estate in which any infant, lunatic, or person of unsound mind is interested), are to be revised by one of the taxing officers of the Supreme Court at Toronto, before the amount thereof is inserted in any certificate, report, order or judgment. J. A. Rule 439 and 593.

1208. The Local Master or other local officer is forthwith, after taxing any such bill of costs, to transmit the same by mail to Toronto, addressed to the proper taxing officer, and he is to allow in the bill the postage for the transmission and return of the bill, and shall prepay the same; and is to allow in the bill the sum of one dollar as a fee for the revision of the bill by the taxing officer at Toronto, and a law stamp for that sum, with postage stamps for the postage, is to be paid at the time of taxation by the party procuring the bill to be taxed; and the Local Master or other officer is to transmit with the bill to the taxing officer at Toronto, the law stamp, and the necessary stamps for postage on the return of the bill to the Local Master or other officer. Chy. O. 311.

1209. The taxing officer at Toronto, upon receiving the bill of costs, is to examine the same, and to mark in the margin such sums (if any) as may appear to him to have been improperly allowed, or to be questionable; and he is to revise the taxation either *ex parte* or upon notice to the Toronto agent (if any) of the solicitor whose bill is in question, as in his direction he may see fit; but notifying such agent (if any) in all cases where the taxation is

not clearly erroneous, or where the amount in question is so large as in the judgment of the taxing officer, to make such notification proper. Such notification may be by appointment mailed to the address of the agent (if any). If upon the revision the sums disallowed shall amount to one-twentieth of the amount allowed upon taxation, the taxing officer is to add to the amount taxed off, the amount of postages, and the sum of one dollar aforesaid, and is thereupon to re-transmit the bill so revised to the Local Master or other officer. Chy. O. 312.

1210. In any such case no sum is to be inserted in the report of a Local Master or other officer as taxed and allowed for costs, until such revision by a taxing officer; but in a case of urgency a writ of execution may issue to levy debt or costs, or both, upon the order of a Judge, subject to the future revision by the taxing officer. Chy. O. 313.

1211. Pending a revision, judgment may be entered and execution issued, unless the Court or a Judge otherwise orders; and in case of an execution being so issued, if the amount taxed is reduced on revision, the party entitled to the costs shall forthwith give notice of the reduction and of the amount thereof to the Sheriff or other officer in whose hands the execution had been placed; and the amount struck off on the revision shall be deducted from the amount indorsed on the execution. J. A. Rule 439 (*d*).

1212. No mileage shall be taxed or allowed for the service of any writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment has been made: and, except in cases provided for in Rule 254, no fees shall be allowed for the mileage

or service of writs of summons unless served, and sworn in the affidavit of service to have been served, by the Sheriff, his Deputy, or Bailiff, being a literate person (or by a Coroner when the Sheriff is a party to the action), nor unless a return of the Sheriff or Coroner (as the case may be) is indorsed thereon. R. S. O. 1877, c. 50, s. 335; Rule T. T. 1856, 160.

1213. All affidavits of increase must be made by the solicitor in the cause, or some clerk having the management thereof, or by the client. They must set forth the sums paid to counsel, naming them, and for what service, the names of witnesses, their places of abode, the places at which they were subpœnaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, that every such witness was necessary and material for the client in the cause, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be). The number of days which each witness was necessarily absent from home in order to attend such trial must also be accurately stated. If a solicitor attends as a witness, it must be stated whether or not he attended at the place of trial as solicitor or witness in any other cause, and whether or not he had any other business there. The day on which the trial occurred should be stated. If maps or plans were used at the trial, the necessity for them must be shown in the affidavit, or no allowance will be made for them; the sum paid for them must also be set forth, and that they were prepared or procured with a view to the trial of the cause. The taxing officer is authorized in such case to make a reasonable allowance for maps and plans. Rules T. T. 1856, 165.

1214. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to

the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party. J. A. Rule 442.

1215. If upon the taxation of costs it should appear to the officer taxing the same that any proceedings have been taken unnecessarily, and which were not calculated to advance the interests of the party on whose behalf the same were taken, it shall be the duty of the officer to disallow the costs of such proceedings, as well on the taxation of costs between solicitor and client, as on a taxation between party and party, unless the officer shall be of opinion that such proceedings were taken by the solicitor because they were in his judgment, reasonably exercised, conducive to the interests of his client. It shall not be the duty of the officer, on a taxation of costs between a solicitor and his client, to disallow to the solicitor his costs of such proceedings where it is made to appear that such proceedings were taken by the desire of the client, after being informed by his solicitor that the same were unnecessary, and not calculated to advance the interests of the client. Chy. O. 306.

1216. Where costs are to be taxed as between party and party, the officer taxing the same may allow to the party entitled to receive such costs, the like costs as are taxable where costs are directed to be taxed as between solicitor and client, in respect of the following matters:

1. Advising with counsel on the pleadings, evidence, and other proceedings in the cause;
2. Procuring counsel to settle such pleadings and petitions as may appear to have been proper to be settled by counsel;
3. Procuring and attending consultations of counsel;

4. The amendment of pleadings;
5. On proceedings in the Master's office.
6. Supplying counsel with copies of, or extracts from, necessary documents. Chy. O. 307.

1217. The table of costs set forth in the Tariff A appended to these Rules shall be that according to which all costs in civil actions in the High Court and in the County Courts shall be allowed and taxed, and no other fees, costs or charges than therein set down shall be allowed in respect of the matters thereby provided for.

1218. The fees and disbursements payable in stamps or otherwise upon proceedings in the High Court and the Court of Appeal shall henceforward be those enumerated in the Tariff B annexed hereto. *New.*

1219. The fees and disbursements mentioned in the 2nd or "Lower Scale" column of the tariffs A and B. shall be the amounts taxable in respect of the services or matters there enumerated in all actions where equitable relief is sought in any of the following cases:—

"(1) By a person entitled to, and seeking an account of the dealings and transactions of a partnership dissolved or expired, the joint stock or capital not having been over $800;

"(2) By a legal, or equitable, mortgagee, whose mortgage has been created by some instrument in writing, or a judgment creditor, or a person entitled to a lien or security for a debt, seeking foreclosure or sale, or otherwise, to enforce his security, where the sum claimed as due does not exceed $200;

"(3) By a person entitled to redeem any legal or equitable mortgage, or any charge or lien, and seeking to redeem the same, when the sum actually remaining due does not exceed $200;

"(4) By any person seeking equitable relief for, or by reason of any matter whatsoever, where the subject matter involved does not exceed the sum of $200."

1220. The practice of any Court, whose jurisdiction is vested in the High Court of Justice or Court of Appeal, relating to costs, and to the allowance of the fees of solicitors, and to the taxation of costs, existing prior to *The Ontario Judicature Act, 1881*, shall, in so far as they are not inconsistent with the Act and the Rules of Court, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. J. A. Rule 445.

1221. The solicitor or party instituting any action or proceeding, in respect of which he claims to pay the fees of Court, according to the tariff referred to in Rule 1219, is to file with the officer in whose office appearance is required to be entered, a certificate in the form No. 211 in the Appendix, of which certificate the said officer is, at the request of any solicitor or party acting in person in the suit or matter, to mark a copy. Chy. O. 554.

1222. On production of a copy of the certificate, the officers of the Court are to receive and file all papers and take all necessary proceedings upon payment by stamps, or otherwise, as the case may be, of the proper fees, according to the said tariff. Chy. O. 555.

1223. In every case certified for the said tariff in which it may happen that the solicitor becomes entitled to charge and be allowed according to the ordinary tariff, the deficiency of the fees of Court is to be made good. Chy O. 556.

1224. In any case in which the fees of Court have been paid, according to the ordinary tariff, and in which it may happen that the solicitor becomes entitled to charge and be allowed his own fees, only according to the lower

tariff, the excess of fees of Court so paid may be allowed upon the taxation of costs, if the circumstances of the case, in the judgment of the taxing officer, justify such allowance. Chy. O. 557.

1225. Where the seal is under the 126th section of the Judicature Act, impressed on any document which before the passing of *The Ontario Judicature Act, 1881*, did not require to be sealed, the fee of fifty cents mentioned in the 155th section of "*The Judicature Act*," shall not be payable on such document. J. A. Rule 503.

1226. When a client or other person is entitled to the delivery of a solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill or a copy thereof, as the case may be, is to be delivered within fourteen days from the service of the order.

(*a*) The bill delivered shall be referred to the proper master for taxation, and on the reference the solicitor is to give credit for all sums of money by him received from or on account of the client, and is to refund what, if anything, he may on such taxation appear to have been overpaid;

(*b*) The Master is to tax the cost of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the cost of the reference, to be paid according to the event of the taxation pursuant to the statute;

(*c*) The solicitor is not to commence or prosecute any action touching the demand pending the reference without leave of the Court or a Judge;

(*d*) The amount certified to be due shall be paid forthwith after confirmation of the certificate by filing, as in the case of a master's report, by the party liable to pay such amount;

(*e*) Upon payment by the said client or other person of what (if anything) may appear to be due to the solicitor, the solicitor (if required) is to deliver to the said client or other person, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client;

(*f*) The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom, and any other directions which the Court or Judge shall see fit to make. *See* J. A. Rule 443.

1227. When a solicitor's bill has been delivered, the order of reference shall be presumed to contain clauses (*a*) to (*e*) inclusive of Rule 1226, whether obtained by the solicitor, client or other person liable to pay the same.

1228. The order, when grantable of course, shall be issued on præcipe. J. A. Rule 444.

1229. When a party not principally liable to pay a bill applies for delivery of a copy thereof for the purpose of a reference, or for taxation of a bill delivered, and it appears that by reason of the conduct of the party principally liable, he is precluded from taxing the same, but is nevertheless entitled to an account by the party principally liable, it shall not be necessary for the party so applying to bring an action for an account, but the Court or Judge may, in a summary manner, refer a bill already delivered for taxation, or may order delivery of a copy of the bill, and refer the same for taxation, and may add such parties not already notified as may be necessary to do complete justice to all parties.

(*a*) The rights of the parties are to be adjusted by reference to the provisions of Rule 1226 as far as they are applicable, having regard to the relations of the parties to the application and reference.

1230. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same. J. A. Rule 447.

1231. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he thinks fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. J. A. Rule 448.

Sheriff's Fees.

1232. The fees and allowances set forth in the tariff C appended to these Rules shall be taken and received by sheriffs and coroners in civil proceedings in lieu of all fees to which they have been heretofore entitled under the tariffs heretofore in force. See tariff, 2 Feb. 1874.

1233. In case a part only is made by the Sheriff on, or by force of any execution against goods and chattels, the Sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum endorsed upon the writ, and in case the personal estate, except chattels real, of the defendant is seized or advertised on or under an execution,

but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the Sheriff on or by force of such execution, the Sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount endorsed on the writ, or such less sum as the Court or a Judge may deem reasonable. R. S. O. 1877, c. 66, s. 45.

1234. In cases of writs of execution upon the same judgment to several counties, wherein the personal estate of the judgment debtor or debtors has been seized or advertised, but not sold, by reason of satisfaction having been obtained under and by virtue of a writ in some other county, and no money has been actually made on the execution, the Sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the Court or a Judge, may allow him a reasonable charge for such services, in case no special fee therefor is assigned in any table of costs. R. S. O. 1877, c. 66, s. 46.

1235. In case any person liable on an execution is dissatisfied as to the amount of poundage, fees, and expenses of execution claimed by a Sheriff, he may, before or after payment thereof, and upon notice to the Sheriff, apply to the Court or a Judge, and if, upon a statement of the facts, the Court or Judge is of opinion that the amount is unreasonable, notwithstanding that it is according to the tariff, the same shall be reduced or ordered to be refunded upon such terms as to costs or otherwise, as the Court or Judge may think fit to impose. R. S. O. 1877, c. 66, s. 47.

1236. Upon the settlement of an execution, either in whole or in part, by payment, levy or otherwise, the Sheriff or officer claiming any fees, poundage, incidental

expenses or remuneration, which have not been taxed, shall, upon being required by either plaintiff or defendant, or the solicitor of either party, and on payment or tender of the expenses of such taxation, and the further sum of 25 cents for the copy of his bill in detail (which he shall be bound to render) have his fees, poundage, incidental expenses or remuneration, as the case may be taxed by one of the Taxing officers of the Supreme Court, in the County of York, and in other counties by the proper Taxing officer of the county wherein such sheriff keeps his office. R. S. O. 1877, c. 66, s. 48; 49 V. c. 16, s. 17.

1237. No sheriff shall without taxation collect any fees, costs, poundage or incidental expenses, after having been required to have the same taxed; and upon tender of the amount taxed, no fees, costs, poundage or incidental expenses in respect of proceedings subsequently taken shall be allowed to any sheriff. R. S. O. 1877, c. 66, s. 49.

1238. It shall be the duty of the taxing officer to tax the bills of costs presented to him for taxation, as herein required, upon payment or tender of his fees, and to give, when requested, a certificate of such taxation and the amount thereof. R. S. O. 1877, c. 66, s. 50.

1239. It shall be the duty of the taxing officer, upon proof of notice of the time and place of the taxation having been duly served upon the sheriff, deputy sheriff, or other officer charged with the execution of the writ, to examine the bills presented to him for taxation, as herein required, whether such taxation is opposed or not, and to be satisfied that the items charged in such bill are correct and legal, and to strike out all charges for services which, in his opinion, were not necessary to be performed. R. S. O. 1877, c. 66, s. 51.

1240. Either party dissatisfied with the taxation

may appeal therefrom as in ordinary cases. R. S. O. 1877, c. 66, s. 52.

1241. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

SECURITY FOR COSTS.

1242. Where it appears, by the writ of summons, notice, or other proceeding by which an action or matter is instituted, or by an indorsement thereon, that the plaintiff resides out of Ontario, the defendant shall be entitled on præcipe to an order requiring the plaintiff within four weeks from the service of the order to give security in $400 for the defendant's costs of the action staying all further proceedings in the meantime, and directing that in default of such security being given the action be dismissed with costs against such defendant, unless the Court or Judge upon special application for that purpose shall otherwise order. J. A. Rule 431.

1243. In addition to any cases in which a defendant in any action, may by any law or by the practice of the Courts, be entitled to obtain security for costs from a plaintiff, security for costs may be granted to the defendant or applicant in any action or proceeding in which it is made to appear satisfactorily to the Court or a Judge, that the plaintiff has brought a former action or proceeding for the same cause, which is pending either in Ontario or in any other country, or that he has judgment or order passed against him in such action or proceeding, with costs, and that such costs have not been paid; and such Court or Judge may thereupon make such rule or order staying proceedings until such security is given as to the

Court or Judge seems meet. R. S. O. c. 40, s. 97; c. 50, s. 70.

1244. In any action in which the plaintiff sues as an informer, or seeks to recover any penalty given to any informer or person who sues for the same as aforesaid, under any statute or law in which any penalty is given to any person who sues for the same, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown,—the person so sued, or his agent, or solicitor, may apply to the Court in which the action was instituted or is pending, or a judge thereof, for security for costs, upon an affidavit made by the defendant applying, showing that the action is brought to recover a penalty, and that in the belief of the deponent, the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a verdict is given or judgment rendered in favour of the defendant, and that he (the said defendant) has a good defence to the action upon the merits, as he is advised and believes; and the Court or Judge may make an order that the plaintiff or informer in the action shall give security for the costs to be incurred in the action, in the same manner and in accordance with the practice in cases where a plaintiff resides out of the Province, and the order shall be a stay of the proceedings in the case, until the proper security is given as aforesaid. R. S. O. c. 50, s. 71.

1245. In any action or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form, as the Court or a Judge may direct. J. A. Rule 429.

1246. Where a defendant in any action is entitled to obtain security for costs from a plaintiff, the Court or Judge may require the plaintiff to furnish the security

within a time to be limited in any order for such security, or by any subsequent order.

(*a*) If the plaintiff fails without sufficient excuse to comply with such order, he shall be liable to have his action dismissed as for want of prosecution, with costs, and the Court or Judge may make an order accordingly, 42 V. c. 15, s. 2.

1247. Where a bond is to be given as security for costs, it shall unless the Court or a Judge otherwise directs, be given to the party or persons requiring the security, and not to an officer of the court. J. A. Rule 430.

1248. Whenever a party is under an obligation to give a bond as security for costs, he may, without special order, pay into Court a sum of money not less than half the penalty of the bond required, and the same when so paid in shall stand as security in lieu of the bond required.

1249. The party so paying in money shall when paying the same in state the purpose for which it is so paid in, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment.

1250. The amount of security may be increased or diminished from time to time by the Court or a Judge.

1251. Where an action is brought by a foreign plaintiff liable to give security for costs, who indorses his writ of summons with particulars of his claim in such a manner that, upon motion under Rule 739, an order allowing him to sign judgment might be made, he may, on being served with an order for security for costs, pay into Court the sum of $50, as a partial compliance with such order, and

thereupon he shall be at liberty to proceed with a motion for judgment under Rule 739, but the order for security shall, nevertheless, in all other respects, have its full operation and effect.

1252. If upon such a motion the plaintiff is allowed to sign judgment for any portion of his claim, he may sign judgment and issue execution therefor, but shall not take any other proceedings until the order for security shall have been fully complied with.

TARIFF A.

TABLE OF COSTS

IN THE

HIGH COURT OF JUSTICE AND COUNTY COURTS.

General allowance for Plaintiffs and Defendants, as well between Solicitor and Client as between Party and Party.

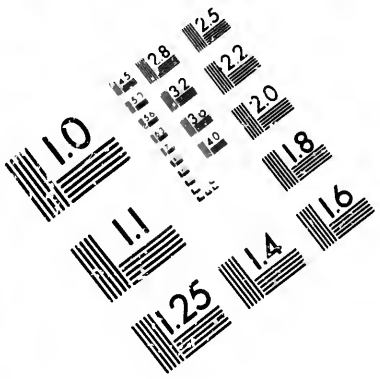
		Higher Scale.	Lower Scale and County Courts.
		$ c.	$ c.
1.	Instructions to sue in undefended cases	3 00	2 00
2.	In defended cases	4 00	3 00
3.	Instructions to defend	4 00	3 00
4.	Instructions for petition where no writ of summons issued	2 00	1 00
	Writs.		
5.	All writs, except writs of executions, subpœnas, and concurrent, and renewed writs	2 00	1 00
6.	Concurrent writ	1 50	0 75

		Higher Scale.	Lower Scale and County Courts.
		$ c.	$ c.
7.	Renewed writs (except writs of execution)	1 50	0 75
8.	All writs if over four folios, for every folio	0 20	0 20
9.	Subpœna *ad testificandum*	1 00	0 50
10.	Subpœna *duces tecum*	1 25	0 75
11.	All subpœnas if over four folios, additional per folio	0 15	0 15
12.	Notice of writ for service in lieu of writ out of jurisdiction and copy	1 00	0 75
13.	(Alias, and subsequent, writs, to be allowed as originals.)		
14.	Special indorsement of writ of summons	1 00	0 75
15.	Suing out any writ of execution	6 00	4 00
	Renewal of any writ of execution	4 00	2 50
	(In both cases, including placing same in the Sheriff's hands, all attendances, indorsements and letters in connection therewith.)		
	Copy and Service of Writs of Summons, and Other Process.		
16.	For copy, including copy of notices required to be indorsed, each	1 00	0 75
	If over four folios, for every additional folio	0 10	0 10
17.	Service of each copy of writ, if not done by the Sheriff or an officer employed by him, when taxable to solicitor on Sheriff's default	1 00	0 50
18.	If served at a distance of over two miles from the nearest place of business, or office of the solicitor serving same, for each mile beyond such two miles	0 13	0 10
19.	For service of writ out of jurisdiction	Such allowance as the Taxing Officer shall think fit.	Such allowance as the Taxing Officer or C. C. Judge shall think fit.
	Instructions after Commencement of Action.		
20.	To counsel in special matters	1 00	0 50
21.	To counsel in common matters	0 50	0 25
22.	For special affidavits when allowed by the taxing officer (or County Clerk in C. C. cases.)	1 00	0 50

	Instructions after Commencement of Action.—*Con.*	Higher Scale. $ c.	Lower Scale and County Courts. $ c.
23.	For special affidavit on production when allowed by the taxing officer	2 00	1 00
24.	For pleadings in action	1 50	1 00
25.	For counter-claim, when such claim could not prior to the Ont. Jud. Act, 1881, have formed the subject of a set-off	2 00	1 00
26.	For reply to such counter-claims	2 00	1 00
27.	To amend any pleading when the amendment is proper.	2 00	1 00
28.	For confession of defence under Rule 440	2 00	1 00
29.	For special case in course of action	2 00	1 00
30.	For special case when no writ issued, or pleadings had, and no instructions to sue allowed	3 00	2 00
31.	To add parties by order of Court or Judge	2 00	1 00
32.	For brief	2 00	0 50
33.	For every suggestion	1 00	1 00
34.	For adding parties in consequence of marriage, death, assignment, etc.	1 00	0 50
35.	For issue of fact, by consent, or Judge's order	2 00	1 00
36.	To defend added parties after suggestion of death of original party, or on revivor	2 00	1 00
37.	For confession of action in ejectment as to the whole, or in part	1 00	0 50
38.	To strike or reduce special jury	2 00	1 00
39.	For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a char.	2 00	1 00
	Drawing Pleadings, Etc.		
40.	Statement of claim	2 00	1 00
41.	If above ten folios, for every folio above ten, in addition	0 20	0 15
42.	Statement of defence, if five folios or under	2 00	1 00
43.	If above five folios, for every folio in addition	0 20	0 20
44.	Statement of defence and counter-claim, up to fifteen folios	3 00	1 50
45.	For every folio over fifteen	0 20	0 15
46.	Reply and other pleadings for or on behalf of plaintiff or defendant	2 00	1 00
47.	If above ten folios, for every folio in addition	0 20	0 15
48.	Demurrer	2 00	1 00
49.	Petition, per folio	0 20	0 15
50.	Issue for trial of facts by agreement or order, for every folio	0 20	0 20

		Higher Scale.	Lower Scale and County Courts.
	Drawing Pleadings, Etc.—*Con.*	$ c.	$ c.
51.	In special or contested actions or matters on the Higher Scale to be increased to such sum as the Taxing Officer in Toronto may think fit	0 20	0 20
52.	Special case, per folio	0 20	0 20
53.	Drawing interrogatories, or answers for any purposes required by law, per folio	0 20	0 20
54.	Drawing reasons for or against appeal, per folio	0 20	0 20
55.	(The above charges do not include engrossing, or copies to file or serve.)		
56.	Taking cognovit and entering judgment thereon, when there has been no previous proceeding, and the true debt does not exceed $200	8 00	8 00
57.	For same services when the true debt exceeds $200	12 00	10 00
58.	Drawing and engrossing cognovit, and attending execution, when there have been previous proceedings	2 00	1 00
	Copies.		
59.	Of pleadings, brief and other documents, when no other provision is made, and copies properly allowable	0 10	0 10
60.	Certified copy of pleadings, or issue, for use of Judge	1 50	0 75
61.	For every folio above 15, per folio	0 10	0 10
62.	Of special and common orders of Court or a Judge	0 75	0 50
63.	Of special order of Court above three folios, per folio	0 20	0 10
	Notices, including One Copy.		
64.	Of appearance, when duly entered and notice given on the day of appearance, but not otherwise	0 50	0 25
65.	To Sheriff, to discharge prisoner out of custody	0 50	0 50
66.	Notice, in action for recovery of land, to defend for part of premises; not to be allowed when defence limited by appearance	1 00	0 50
	If above three folios, per folio in addition	0 20	0 15
67.	Notice of claimant's or defendant's title in action for recovery of land, same fees.		
68.	Notice of entry of appearance in action for recovery of land by a party not named in writ	0 50	0 25
69.	Demand of particulars	0 50	0 50
70.	Particulars of claim, demand, set-off, or counter claim, five folios or under	2 00	0 75
	If exceeding five folios, per folio in addition	0 20	0 15

	NOTICES, INCLUDING ONE COPY—*Con*	HIGHER SCALE. $ c.	LOWER SCALE AND COUNTY COURT. $ c.
71.	Notice of admission of right and denial of ouster by a joint tenant	0 50	
	If above three folios, for every folio additional	0 20	
72.	Of discontinuance and one copy	0 50	0 40
	For every additional copy, per folio	0 10	0 10
73.	Of disputing amount of claim	0 50	0 25
74.	Of confession of action in action for recovery of land as to whole or part	0 50	0 40
75.	Notice in lieu of statement of claim, and one copy	0 50	0 25
	For every additional copy, per folio	0 10	0 10
76.	Of trial or assessment and one copy	0 50	0 25
	For every additional copy, per folio	0 10	0 10
77.	Demand of residence of plaintiff	0 50	0 25
78.	Demand of names of partners	0 50	0 25
79.	All common notices not above specified	0 50	0 25
80.	Notice to admit, and produce, if not exceeding two folios, and one copy	0 50	0 25
	For every additional copy, per folio	0 10	0 10
81.	For each necessary folio above two	0 20	0 20
82.	Notice of setting down on motion for judgment, or on further directions and one copy	0 50	0 25
	For every additional copy, per folio	0 10	0 10
83.	Notice of motion in Court, or Chambers, engrossing and copy to serve, per folio	0 30	0 15
	For every additional copy, per folio	0 10	0 10
84.	Notice of taxation, or appointment to tax, and one copy	0 50	0 25
	For every additional copy, per folio	0 10	0 10
85.	For preparing, and filing up for service, in any cause or matter, each notice to creditors to prove claims, and each notice that cheque may be received, specifying the amounts to be received for principal and interest, and costs, if any—including mailing	0 25	0 25
86.	Notice of filing affidavits, when required, and one copy (only one notice to be allowed for a set of affidavits filed, or which ought to be filed together)	0 50	0 25
	For every additional copy, per folio	0 10	0 10
87.	Notice by defendant to third party, under Rule 329	1 00	0 50
	PERUSALS.		
88.	Of each of the pleadings as defined by the Judicature Act	1 00	0 50



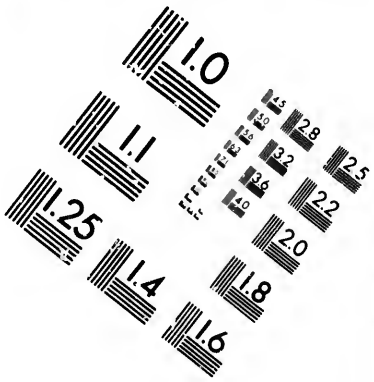
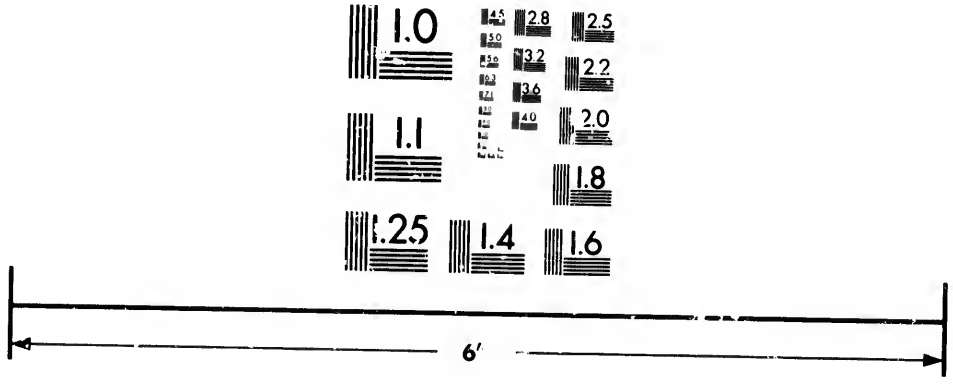
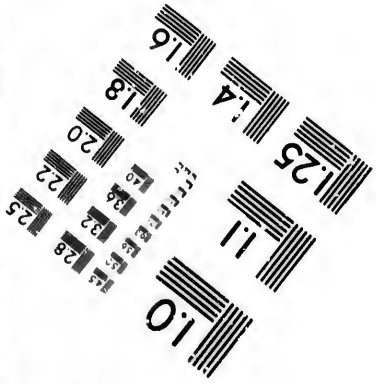
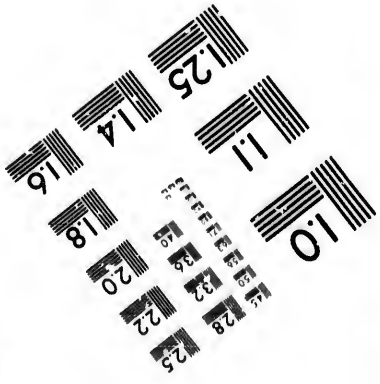


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

	PERUSAL—*Con.*	HIGHER SCALE. $ c.	LOWER SCALE AND COUNTY COURTS. $ c.
89.	Of special case by the solicitor of any party, except the one by whom it is prepared, when the case is submitted in the course of the cause	2 00	1 00
90.	And in special, or contested actions, or matters, or of interrogatories, and cross-interrogatories on commission	Such sum as the Taxing Officer in Toronto thinks fit.	0 50
91.	Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary if 20 folios or under	1 00	0 50
	On the Higher Scale per folio over 20 folios (Not in any case to exceed the sum of $5.)	0 05	
	ATTENDANCES.		
92.	Necessary attendances consequent on the service of a notice to produce or admit, or on inspection of documents when produced under order including making admission, altogether	1 00	0 50
	To be increased by Taxing Officer (or County Court Clerk) in cases of special, difficult and important nature, to	2 00	1 00
93.	Attending on return of motion, in Chambers	1 00	0 50
	To be increased in the discretion of the presiding officer, or in C. C. cases of the Judge, to	2 00	1 50
94.	On consultation, or conference, with counsel, in special, difficult, and important matters, in the discretion of the Taxing Officer in Toronto (or in C. C. cases of the County Court Clerk) to	2 00	1 00
	To be increased in the discretion of the Taxing Officer as between solicitor and client, to such sum as he shall see fit, or in C. C. cases in the discretion of the C. C. Judge to, not exceeding		3 00
	No special attendance to be allowed to a solicitor on proceedings on which he also appears as counsel.		
95.	Solicitor attending Court on trial of cause, when not himself counsel, or partner of counsel	2 00	1 00
	And in special, difficult, and important cases, each hour necessarily present at trial	2 00	1 00

	ATTENDANCES—*Con.*	HIGHER SCALE.	LOWER SCALE AND COUNTY COURTS.
		$ c.	$ c.
	In no case to exceed, per day	10 00	5 00
	(Provided the attendance of such solicitor, and the length of time of such attendance, be duly entered at the time in the book of the Registrar, Deputy-Registrar, Deputy-Clerk of the Crown, Clerk of Assize, C. C. Clerk, or other officer of the Court present at the time, or proved by affidavit.)		
96.	To hear judgment when not given on close of argument.	2 00	1 00
97.	To hear judgment when cause on list for judgment, but judgment not given	2 00	1 00
98.	On taxation of costs		1 00
99.	On taxation of costs, per hour	1 00	
100	On revision, per hour, when attendance required by Taxing Officer, or revision had on order	1 00	0 50
101.	On revision by County Court Judge on appeal		0 50
102.	To obtain or give undertaking to appear when service accepted by a solicitor	1 00	0 50
103.	Attendance to file, or serve	0 50	0 25
104.	Attendance on warrant, or appointment, of Master, Registrar, Examiner, Referee, or County Court Clerk, per hour	1 00	0 50
	To be increased in the discretion of the Taxing Officer in Toronto, or, in C. C. cases, the C. C. Judge, to not exceeding per hour	2 00	1 00
105.	Attendance on Master, or Registrar (or County Court Clerk), in special matters, per hour	1 00	0 50
106.	Every other necessary attendance	0 50	0 25
107.	On important points and matters, requiring the attendance of counsel, the Master, or Examiner, or Referee, Judgment Clerk, or Inspector of Titles, may certify the amount of counsel fee proper to be allowed (to be noted at the time,) for the guidance of the Taxing Officer in Toronto (or the Judge in C. C. cases,) who may allow the same in lieu of fees for attendance.		
	On the Lower Scale not to exceed $5		
108.	Or on special and important points, and matters requiring the attendance of counsel, before Examiner, Referee, or County Court Clerk, the County Court Judge may, in County Court cases in lieu of the fees for attendance, allow a counsel fee when counsel attend the same, not to exceed $5.		

		Higher Scale.	Lower Scale and County Courts.
	Briefs.	$ c.	$ c.
109.	For drawing briefs, five folios or under	2 00	1 00
110.	" " for each folio above five	0 10	0 10
111.	For drawing brief, per folio, for original and necessary matter	0 20	0 20
112.	Copy of documents, other than pleadings, per folio	0 10	0 10
113.	Copy of brief for second counsel, when fee taxed to him, per folio	0 10	
	Court Fees.		
114.	Fees after statement of claim, or, where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before Courts or any other step in the cause, and on judgments, other than præcipe judgments in mortgage cases. No two fees to be allowed to either party when such proceedings are taken, or had, between the first day of any sittings of the Courts, (fixed by Rule 216), or (R. S. O. 1887, c. 47, s. 12, as the case may be), and the first day of the following sittings so fixed	1 00	0 50
115.	Fee on certified copy of pleadings for Judge	1 00	0 50
116.	Fee on every order, or judgment to the party obtaining the same	1 00	0 50
117.	Fee on præcipe judgment in mortgage cases	4 00	2 00
	Affidavits.		
118.	Drawing affidavits, per folio	0 20	0 20
119.	Engrossing same to have sworn, per folio	0 10	0 10
120.	Copies of affidavits, per folio, when necessary	0 10	0 10
121.	Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath, and attendance to swear	1 00	0 75
122.	The solicitor for preparing each exhibit in town or country	0 10	0 10
	Defendants.		
123.	Appearance, including attending to enter	1 00	0 50
	For each additional defendant	0 20	0 10
124.	For limiting defence in action for recovery of land in appearance, besides above allowance for appearance; not to be allowed when notice of limiting defence served	1 00	0 50

JUDGMENT, RULES, OR ORDERS.	HIGHER SCALE. $ c.	LOWER SCALE AND COUNTY COURTS. $ c.
125. Drawing minutes of judgment, or order, per folio, when prepared by solicitor, under directions of Registrar, or Judgment Clerk, (or, in C. C. cases, of the C. C. Judge).....	0 20	0 20
126. Judgment for non-appearance on specially indorsed writs, and in action for recovery of land.....	1 00	0 50
127. Attending for appointment to settle or pass judgment, or order of Court, copy and service.....	1 30	0 50
128. When served on more than one party, the extra copies and services are to be allowed.		
129. For every hour's attendance before proper officer on settling or passing minutes.....	1 00	0 50
To be increased in the discretion of the officer in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether.....	5 00	2 50
LETTERS.		
130. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership, and when subject of suit relates to the transactions of their partnership.....	0 50	0 25
131. Common letters, including necessary agency letters.....	0 50	0 25
132. With power to the taxing officer (or in C. C. cases the C. C. Clerk), as between solicitor and client, to increase the fee for special and important letters, to an amount not exceeding.....	2 00	1 00
133. Postages—the amount actually disbursed.		
134. For correspondence during the progress of an appeal to the Court of Appeal a reasonable sum in the discretion of the Taxing Officer may be allowed not exceeding..	5 00	2 00
SALES BY MASTER, OR AUCTIONEER, OR REAL REPRESENTATIVE IN PARTITION SUITS.		
135. Drawing advertisements for the sale of real or personal estate under the direction of the Court, including all copies, except for printing.....	2 00	1 00
And for each folio over five, per folio.....	0 20	0 15
(To be increased in the discretion of the Master (or in C. C. cases the C. C. Judge) to a sum not exceeding ten dollars, when special information has been procured for the purpose of sale.)		

	Higher Scale.	Lower Scale and County Courts.
Sales by Master, Etc.—*Con.*	$ c.	$ c.
136. Copies for printing, per folio	0 10	0 10
137. Each necessary attendance on printer	0 50	0 25
138. Attending and making arrangements with auctioneer	1 00	0 50
139. Revising proof	1 00	0 50
140. Fee on conducting sale when held where solicitor resides	5 00	3 00
141. If solicitor is engaged for more than three hours, for every hour beyond that time	1 00	0 75
142. Fee on conducting sale elsewhere, besides all necessary travelling and hotel expenses, when solicitor attends with the approval of the Master (or real representative) previously given	10 00	5 00
If the sale occupies more than one day, the Master may allow him, in addition to his travelling expenses, *per diem*, a sum not exceeding twenty dollars.		
The Master may also allow to one other party to the suit his fees and expenses for attending sales, if, in his opinion, it is necessary and proper that he should attend.		
Miscellaneous.		
143. Statement of issues in Master's office, when required by the Master	2 00	1 00
In special matters to be increased in the discretion of the Taxing Officer in Toronto.		
144. For each folio over 10	0 20	0 20
145. When it has been satisfactorily proved that proceedings have been taken by solicitors out of Court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefor in the discretion of the Taxing Officer in Toronto (or Judge of County Court in C. C. cases).		
146. Drawing bill of costs as between party and party for taxation, (including engrossing and copy for Taxing Officer, or C. C. Clerk), per folio	0 30	0 20
147. Copy, per folio, to serve	0 10	0 10
Counsel Fees.		
148. Fee on motion of course, or on motion in matters not special	2 00	1 00
149. On special *ex parte* motion or application to the Court, (only one counsel fee to be taxed)	5 00	2 00

COUNSEL FEES—*Con.*	HIGHER SCALE.	LOWER SCALE AND COUNTY COURT.
	$ c.	$ c.
To be increased in the discretion of the Taxing Officer in Toronto, (or Judge of County Court in C. C. cases, who shall mark amount to be taxed on order of Court, if any, before taxation) to	10 00	5 00
150. Fee on argument on supporting or opposing application to the Court, or argument of demurrer, special case, or appeal	10 00	5 00
On Higher Scale and Lower Scale to be increased in the discretion of the Taxing Officer in Toronto.		
In C. C. to be increased in the discretion of the Judge, to		10 00
51. On consultations	5 00	2 00
52. Fee, with brief, on assessment	10 00	6 00
153. Fee, with brief, at trial	10 00	10 00
To be increased by taxing officer in his discretion to a sum not exceeding $40 to senior counsel, and $20 to junior counsel, in actions of a special and important nature, Provided that the Taxing Officer in Toronto shall have power to tax increased fees, but more than one counsel fee shall not be allowed in any case not of a special and important nature; not more than two in any case, Provided that if an application to increase fees be made in the first instance to the Local Taxing Officer, and a *fiat* granted, no application shall thereafter be made to the Taxing Officer at Toronto.		
To be increased by the Taxing Officer at Toronto or the Judge (as the case may require) in actions of a special or important nature and on appeals to the Court of Appeal, (on notice to the opposite party), to a sum not exceeding		25 00
(In C. C. cases no charge to be made by either party in connection with such application.)		
154. On argument or examination in Chambers in cases proper for the attendance of counsel and where counsel attends	2 00	1 00
To be increased in the discretion of the Master in Chambers, or the Master in Ordinary in High Court cases.		
To be increased in the discretion of the Judge in C. C. cases to a sum not exceeding		5 00
155. On argument of appeal in the Court of Appeal, in the discretion of Taxing Officer at Toronto, not exceeding $80 to the senior counsel, and $50 to the junior counsel (in ordinary cases larger fees than $40 to the senior		

COUNSEL FEES—*Con.*	HIGHER SCALE. $. c.	LOWER SCALE AND COUNTY COURT. $ c.
counsel and $20 to the junior counsel not to be allowed) in High Court cases and in County Court appeals not exceeding $25. (Two counsel fees not to be allowed except in difficult and important cases.		
156. To attend reference to Master, C. C. Clerk, or Referee, when counsel necessary	5 00	3 00
To be increased in special and important matters requiring the attendance of counsel, in the discretion of the Taxing Officer in Toronto, or County Court Clerk in C. C. cases, not exceeding)		6 00
157. Fee on drawing, and settling, allegations in præcipe for revivor, in special cases, proper for opinion of counsel.	2 00	1 00
To be increased in the discretion of Taxing Officer, (or C. C. Clerk in C. C. cases,) to an amount not exceeding	5 00	2 00
158. On settling pleadings, interrogatories, special cases or petitions, and advising on evidence in contested cases, in the discretion of the Taxing Officer, (or C. C. Clerk in C. C. cases,) not exceeding	5 00	3 00
159. On settling the appeal case and reasons for or against appeal	5 00	2 00
To be increased in the discretion of the Taxing Office at Toronto in special and important matters to a sum not exceeding	20 00	5 00
160. When any fee is subject to be increased, in the discretion of the Taxing Officer in Toronto, either party to the taxation may, during its progress, require that such item shall be referred by the Local Taxing Officer to the Taxing Officer in Toronto, whose decision shall be final as to that item, but this shall not prevent an appeal from such taxation.		
161. The necessary letters and attendances incurred in obtaining the decision of the Taxing Officer in Toronto in any matters which are in his discretion shall be allowed as part of the costs of the cause.		
162. The Taxing Officer in Toronto may apply to a Judge, or the Courts, on the taxation of any item which is in his discretion, or is referred to him.		

Counsel Fees—*Con.*	Higher Scale. $ c.	Lower Scale and County Court. $ c.
163. No application shall be allowed by either solicitor, or counsel, to a Judge, or the Court, in reference to any item which is in the discretion of the Taxing Officers in Toronto, but this is not to prevent an appeal from a Taxing Officer.		
164. On arbitrations, counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those hereinbefore prescribed for counsel fees at trials.		

Note 1.—In taxing costs between solicitor and client, the Taxing Officer or County Court Clerk, in County Court cases, may allow for services rendered not provided for by this tariff, a reasonable compensation as far as practicable analogous to its provisions.

Note 2.—On appeals to the Court of Appeal where the fees are not above provided for the same fees and allowances shall be taxed as are allowed for similar services in the High Court or County Court, as the case may be. App. O. 28-51.

TARIFF B.

TARIFF OF DISBURSEMENTS.

(*Referred to in Rule 1218.*)

The following fees and allowances shall be taken and received by the officers and persons herein mentioned in Civil Actions in the High Court and Court of Appeal and in the County Courts in lieu of all fees payable to those officers and persons under the tariffs heretofore in force in the said Courts:—

FEES TO BE PAYABLE IN STAMPS OR OTHERWISE TO OFFICERS OF THE COURTS. (*Inclusive of all Fees expressly imposed by Statute.*)	Higher Scale.	Lower Scale and County Courts.
REGISTRAR OF COURT OF APPEAL.	$ c.	$ c.
Setting down for argument (*a*)	4 00	0 50
On every judgment or order of the Court passed and entered (*a*)	2 00	
Certificate on discharging appeal	0 90	0 90
On every order in Chambers	0 50	0 50
For other services the like charges as are to be taken by the Registrars of the High Court for similar services.		

(*a*) Imposed by R. S. O. 1887 c. 44, s. 156.

MASTER IN ORDINARY, LOCAL MASTERS, AND OFFICIAL AND SPECIAL REFEREES.	HIGHER SCALE	LOWER SCALE AND COUNTY COURTS.
	$ c.	$ c.
Filing and entering judgment or order in Master's book	0 20	0 10
Every warrant or appointment	0 50	0 10
Administering oath or taking affirmation	0 20	0 20
Marking every exhibit	0 20	0 10
Drawing depositions (in infancy matters only) reports or orders, per folio, to include time occupied	0 20	0 20
Fair copy, per folio (when necessary)	0 10	0 10
Copy of papers given out when required, per folio	0 10	0 10
Every attendance upon any proceeding or enlargement thereof or selling property	1 50	0 50
For each additional hour	1 50	0 50
Fee on report signed (only one to be allowed in each action or matter, on first report)	2 00	*Nil.*
Every certificate, if not longer than two folios	0 50	0 20
For each folio over two	0 20	*Nil.*
Filing each paper, or subsequent order	0 10	0 10
Taxing costs, per hour	1 00	
Taxing costs, including attendance		0 80
Making up and forwarding depositions, bills of costs and proceedings in Master's office	0 50	0 10
Every special attendance out of office within two miles, per hour occupied by reference or sale	2 00	0 50
Every additional mile above two for travelling expenses	0 20	0 10
Every attendance on application to a Master in Chambers ...	1 00	0 50
Every order in Chambers	0 50	0 20
Searching files in office		0 10
Do. on Higher Scale same allowance as to Deputy Registrar.		

FEES TO BE PAYABLE IN STAMPS, ETC.

CLERK OF THE PROCESS, CLERK OF RECORDS AND WRITS, REGISTRARS, LOCAL REGISTRARS, DEPUTY REGISTRARS, DEPUTY CLERKS OF THE CROWN, CLERK IN CHAMBERS, ACCOUNTANT AND TAXING OFFICERS IN THE HIGH COURT, AND THE CLERKS OF THE COUNTY COURTS.		
Every writ	0 50	0 50
Every concurrent, alias, pluries or renewed writ	0 50	0 40
Additional on every Writ by Statute *(b)*	0 50	

(*b*) Imposed by R.S.O. 1887 c. 33, s. 155, and payable in stamps.

Fees to be Payable in Stamps, Etc.—*Con.*	Higher Scale. $ c.	Lower Scale and County Courts. $ c.
Every appearance entered, and filing memorandum thereof..	0 20	0 15
Every appearance, each defendant after the first.....	0 10	0 10
Filing every affidavit, writ, or other proceeding.....	0 10	0 10
Amending every writ or other proceeding.....	0 30	0 25
Upon payment of money into Court.....	0 30	0 30
Upon payment of money out of Court.....	0 30	0 30
Passing and certifying Record (payable in cash to Deputy Clerks of the Crown, Local Registrars and Deputy Registrars not paid by salary).....	1 00	0 50
Entering action for trial or assessment (including H. C. cases entered for trial at C. C.) payable in actions in the Chancery Division to the present Deputy Registrars so long as they retain office and are not paid by salary : in other cases payable to the Deputy Clerk, Local Registrar, or Clerk of Assize.....	2 00	0 50
(The fee of $2 payable by Statute to be payable in cash to Deputy Clerks of the Crown, Local Registrars and Deputy Registrars not paid by salary. An additional fee of $5 cash to be also paid to the present Deputy Registrars so long as they retain office and are not paid by salary).		
On setting down on the paper for argument every demurrer or special case.....	0 20	0 20
Additional fee payable by Statute *(b)*	0 30	
Setting down a cause for any other purpose	0 50	0 20
Subpœna, including filing præcipe	0 50	0 20
Additional fee by Statute *(b)*.....	0 50	
Every reference, inquiry, examination, or other special matter for every meeting not exceeding one hour	1 00	0 75
Every reference, inquiry, examination, or other special matter for every additional hour or less.....	1 00	0 50
Fee on report made on such reference, etc.....	1 00	1 00
Attending on opening Commission	1 00	0 50
Every certificate made evidence by law, or required by the practice, including any necessary search	0 50	0 50
Additional fee where seal is required *(b)*	0 50	
Every certificate for registration.....	0 50	0 20
Additional fee for Seal of Court or office *(b)*	0 50	
Entering certificate of title or conveyance, per folio	0 10	0 10

(*b*) Imposed by R.S.O. 1887 c. 44, s. 155, and payable in stamps.

FEES TO BE PAYABLE IN STAMPS, ETC.—*Con.*	HIGHER SCALE.	LOWER SCALE AND COUNTY COURTS.
	$ c.	$ c.
Every ordinary rule or order	0 30	0 30
Additional fee by Statute *(b)*	0 20	
Every special rule or order, not exceeding six folios, per folio	0 20	0 20
Additional fee by Statute *(b)*	0 20	
Every Chamber Order	0 50	0 50
Every interlocutory judgment or judgment by default	0 50	0 30
Additional fee by Statute *(b)*	0 60	
Every final judgment otherwise than judgment by default	0 50	0 50
Additional fee by Statute (*b*)	0 60	
Taxing bill of costs, and giving allocatur or certificate	0 70	0 80
Additional fee by Statute (*b*)	0 20	
Entering order when necessary, per folio	0 10	0 10
Taking account on præcipe judgment	1 00	0 50
Exemplification, or office or other copy of papers or proceedings required to be given out, per folio, besides certificate and seal when required	0 10	0 10
Additional fee by Statute for Seal of Court (*b*)	0 50	
Examining and authenticating papers when copy prepared by solicitor—every three folios	0 05	0 05
Every search, if within one year	0 10	0 10
Every search, if over one year and within two years	0 20	0 10
Every search, if over two years, or a general search	0 50	0 20
Every affidavit, affirmation, etc., taken before them	0 20	0 20
Every allowance and justification of bail	0 30	
Taking recognizance of bail	0 30	
Entering satisfaction on record, and filing satisfaction piece, including any necessary search	0 50	0 30
Every commission for the examination of witnesses	1 00	0 50
Making up and forwarding papers including bills of costs	0 50	0 10
Every commission for taking bail and affidavit (to be on parchment)	2 00	
Entering exoneretur on bail piece	0 30	0 20
Making up records of conviction, or of acquittal, per folio	0 10	
Entering and docketing judgment	0 50	
For making the entry required in the debt attachment book and in cognovit book	0 50	0 50

(*b*) Imposed by R.S.O. 1887 c. 41, s. 155, and payable in stamps.

CLERKS OF THE COUNTY COURTS (*Additional*).	HIGHER SCALE. $ c.	LOWER SCALE AND COUNTY COURTS. $ c.
Every verdict taken, non-suit, jury discharged, record withdrawn, or rule or order of reference at the trial		0 50
Drawing appointments made by the Judge		0 25
Attending at every special hearing before the Judge under R. S. O. 1887, c. 53, s. 1, and at taking examination and evidence and at sittings in reference to the C. C. Judge from the H. C. not exceeding one hour		0 50
Every additional hour or less		0 50
Every appointment for taxation of costs or otherwise, made by C. C. Clerk		0 10
Every meeting under R. S. O. 1887, c. 53, s. 9, not exceeding two hours		2 00
For each additional hour or less (to be taxed by the C. C. Judge)		1 00
For every Jury sworn		1 00
Every enlargement on application to the Judge in Chambers, including search, if marked by the Clerk		0 15
DEPUTY REGISTRARS NOT PAID BY SALARY.		
Additional, only so long as the present officers retain office and are not paid by salary).		
Marking every exhibit produced on the examination of witnesses	0 20	
Swearing each witness	0 20	
Attending on inspection of documents, produced with affidavits on production, per hour	1 00	
SPECIAL EXAMINER.		
Every appointment	0 50	0 10
Administering oath or taking affirmation	0 20	0 20
Marking every exhibit	0 20	0 20
Taking depositions per hour	1 50	0 75
Fair copy for solicitor, per folio (when required)	0 10	0 10
Every attendance out of office when within two miles	2 00	0 50
Every attendance over two miles out of office—extra per mile	0 20	0 10
Every certificate	0 50	0 25
Making up and forwarding answers, depositions, etc., including filing præcipe	0 50	0 25
For every attendance upon an appointment, when solicitor or witnesses do not attend and examiner not previously notified	1 00	0 50

Referee of Titles.	Higher Scale. $ c.	Lower Scale and County Court. $ c.
Every warrant or appointment	0 30	
Administering oath or taking affirmation	0 20	
Marking every exhibit	0 20	
Drawing depositions, reports or orders, per folio	0 20	
One fair copy when necessary, per folio	0 10	
Copy of papers given out when required, per folio	0 10	
Every attendance upon a reference	1 00	
For each additional hour	1 00	
Every certificate	0 50	
Filing each paper	0 10	
Taxing costs, including attendance	1 00	
Making up and forwarding answers and depositions	0 30	
Every special attendance out of office within two miles	1 00	
Every additional mile above two	0 20	
Reading affidavit, per folio	0 02	
Matter added, per folio	0 20	
Searching files in office	0 20	
Every deed in the chain of title other than satisfied mortgage	0 50	
Drawing and engrossing certificate of title, or conveyance in duplicate	4 00	

Real Representative.

The Real Representative acting under the Act respecting the partition and sale of Real Estate (R. S. O. 1887, c. 104) shall, in the case of proceedings being instituted in the High Court or a County Court, be entitled to demand and receive for all services performed by him under the said Act, the same fees as nearly as may be as are allowed to Local Masters or Special Examiners for similar services. Rule of Q.B. and and C.P., 6th June, 1878.

Crier.

Calling every case, with or without jury	0 60	0 50
Swearing each witness, or constable	0 15	0 15

Commissioners.	Higher Scale.	Lower Scale and County Court.
	$ c.	$ c.
For taking every affidavit	0 20	0 20
For taking every recognizance of bail	0 50	0 50
For marking every exhibit	0 10	0 10
Allowance to Witnesses.		
To witnesses residing within three miles of the court house, per diem	1 00	1 00
To witnesses residing over three miles from the court house	1 25	1 25
Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem	4 00	4 00
Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem	4 00	4 00
If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each cause only.		
The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.		

N.B.—In all applications and proceedings before the County Court Judges not relating to suits instituted in any Court of Civil Jurisdiction there shall be payable to the Clerks of the County Courts the same fees as in this Table so far as the same are applicable.

TARIFF C.

FEES OF SHERIFFS AND CORONERS IN CIVIL MATTERS.

(*Referred to in Rule 1232.*)

FEES PAYABLE TO SHERIFFS AND CORONERS.

General Matters.	Higher Scale. $ c.	Lower Scale and County Court. $ c.
Receiving, filing, entering, and indorsing all writs, pleadings, rules, notices, or other papers, each	0 25	0 10
Return of all process and writs, except subpœnas	0 50	0 25
Return of pleadings, rules, notices, or other papers	0 25	0 15
Every search, not being by a party to a cause or his solicitor	0 30	0 30
Certificate of result of such search, when required (a search for a writ against lands of a party shall include sales under writ against same party, and for the then last six months)	0 75	0 75
Where a certificate respecting executions against lands is required, the Sheriff, if so requested, is to include in one certificate any number of names in respect of which the certificate may be required in the same matter or investigation, but shall be entitled to the same fees as if one certificate were given for each name, provided that no greater sum than $4 shall be charged or collected in respect of such certificate. (50 V. c. 7, s. 5).		
Every warrant to execute any process *mesne* or final, directed to the Sheriff, when given to a bailiff	0 75	0 50

SHERIFFS AND CORONERS' FEES—*Con.*	HIGHER SCALE. $ c.	LOWER SCALE AND COUNTY COURTS. $ c.
Every jury sworn, or cause tried before a Judge	1 00	0 80
Every letter written (including copy) required by party or his solicitor respecting writs or process, when postage prepaid	0 50	0 30
Drawing every affidavit when necessary and prepared by Sheriff	0 25	0 25
Service of Process and Papers.		
Service of non-bailable process, each defendant (no fee for affidavit of service in such cases to be allowed, unless service made or recognized, by Sheriff; on Lower and County Court scales, including affidavit of service)	1 50	1 00
Serving subpœnas, rules, notices, or other papers (besides mileage)	0 75	0 50
For each *additional* party served	0 50	0 25
Actual and necessary mileage from the Court House to the place where service of any process, paper or proceeding is made, per mile	0 13	0 13
Arrest and Attachment.		
Arrest, when amount does not exceed $200	2 00	2 00
" " " $400	4 00	4 00
" " over $400	6 00	
Bail Bond or Bond to the limits	2 00	1 00
Assignment of the same	1 00	0 25
Mileage going to arrest when made, per mile	0 13	0 13
" conveying party arrested from place of arrest to the gaol, per mile	0 13	0 13
Bringing up prisoner on attachment or *Habeas Corpus*, besides travel at 20c. per mile	1 50	1 00
Absconding Debtors.		
Seizing estate and effects on attachment against an absconding debtor	3 00	1 50
Valuators, each	1 00	1 00
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Taxing Officer or in the C. C. by order of the Court or a Judge.		
Drawing bond to secure goods taken under an attachment against an absconding debtor, if prepared by Sheriff	1 50	1 50

Replevin.	Higher Scale.	Lower Scale and County Courts.
	$ c.	$ c.
Precept or warrant to bailiff in replevin	0 75	0 40
Drawing notice for service on defendant in replevin	0 75	0 40
Delivering goods to the party obtaining the order of replevin.	3 00	1 50
For writ *de retorno habendo*	1 00	0 50
Drawing replevin bond	2 00	1 00
Assignment	1 00	0 25
All necessary disbursements for the possession, care and removal of property taken in replevin.		

Juries.

Notice of appointment for ballot of jury	0 50	0 25
Notice to Clerk of Peace of such appointment	0 50	0 25
Fee on balloting special jury	5 00	2 50
Fee on striking "	2 50	1 25
Serving each special juror (besides mileage at 13c. per mile)	0 50	0 25
Returning panel of special jurors	1 00	0 50
Keeping and checking pay list of special jurors' attendance, in each case	1 00	1 00

Sales, Poundage, Etc.

Poundage on executions, and on attachments in the nature of executions, where the sum made shall not exceed $1,000 (in the C. C. on the sum made)	6 per ct	5 per ct
Where the sum is over $1,000 and under $4,000, upon the excess over $1,000 (in addition to the poundage allowed up to $1,000	3 per ct.	
Where the sum is $4,000 and over, upon the excess over $4,000 (in addition to the poundage allowed up to $4,000)	1½ per ct	
(Exclusive of mileage, for going to seize and sell, and of all disbursements necessarily incurred in the care and removal of property).		
Schedule taken on execution, attachment, or other process, including copy to defendant, not exceeding 5 folios	1 00	0 50
Each folio above 5	0 10	0 10
Drawing advertisements when required by law to be published in the official *Gazette* or other newspaper, or to be posted up in a Court House or other place, and transmitting same, in each suit	1 50	0 75

SHERIFFS AND CORONERS' FEES—*Con.*	HIGHER SCALE.	LOWER SCALE AND COUNTY COURTS.
	$ c.	$ c.
Every necessary notice of sale of goods (not more than 3), in each suit	0 75	0 40
Every notice of postponement of sale, in each suit	0 25	0 20
The sum actually disbursed for advertisements required by law to be inserted in the official *Gazette* or other newspaper.		
Sequestration.		
Upon seizure of estate and effects under writ of sequestration	4 00	1 00
Schedule of goods taken in execution (including copy for defendant) if not exceeding five folios	1 00	0 50
Each folio above five	0 10	0 10
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Taxing Officer, or by order of the Court or Judge.		
(Poundage upon sequestration followed by sale and collection —as on other executions).		
Writ of Possession.		
Executing writ of possession and serving and executing writ of restitution, besides mileage	6 00	2 00
Hab. Fac. Seisin.		
Viewing lands, and instructing surveyors under Hab. Fac. Seisin, exclusive of mileage, per day	5 00	
Giving possession, exclusive of mileage and assistance	5 00	
All necessary disbursements to surveyors and others for surveying the lands and giving possession, to be allowed to the Sheriff.		
On a View by a Jury.		
For travelling expenses to the Sheriff, shewers, and jurymen —Expenses actually paid, if reasonable.		
Fee to the Sheriff, when the distance does not exceed five miles from his office	2 00	

SHERIFFS' AND CORONERS' FEES.—*Con.*	HIGHER SCALE.	LOWER SCALE AND COUNTY COURTS.
	$ c.	$ c.
Where such distance exceeds five miles	3 00	
In case he shall be necessarily absent more than one day—then for each day after the first, a further fee of	3 00	
Fee to each of shewers—the same as to the Sheriff, calculating, etc.		
Fee to each common juryman, per diem	1 00	
Fee to each special juryman, per diem	2 00	
Allowance for refreshment to the Sheriff, shewers, and jurymen, common or special, each, per diem	1 00	
To the Sheriff for summoning each juryman, whose residence is not more than five miles distant from the Sheriff's office	0 40	
And for each whose residence exceeds five miles from Sheriff's office	0 60	
Rules T. T., 1856, 39.		
Writ of Enquiry, Escheat, Etc.		
Presiding or attendance on execution of writ of enquiry, or under any writ of escheat, or other writ of a like nature	5 00	4 00
Summoning each juror in such case	0 50	0 50
Bailiff's fee summoning jury, mileage per mile	0 13	0 13
Hire of room, if actually paid, not to exceed $2 per day.		
Mileage from the Court House to the place where writ executed, per mile	0 13	0 13
CORONERS.		
The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, execution and return of process, as allowed to Sheriffs for the same services above specified.		

(Sgd.) JOHN H. HAGARTY, C.J.O. (Sgd.) W. PROUDFOOT, J.
" GEO. W. BURTON, J.A. " THOMAS FERGUSON, J.
" C. S. PATTERSON, J.A. " JOHN E. ROSE, J.
" F. OSLER, J.A. " THOMAS ROBERTSON, J.
" J. A. BOYD, C. " W. G. FALCONBRIDGE, J.
" THOMAS GALT, C.J., C.P.D. " W. P. R. STREET, J.
" J. D. ARMOUR, C.J., Q.B.D. " HUGH MACMAHON, J.

KEHOE'S CHOSES IN ACTION. An exposition of the Law relating to the assignment and Transfer of Securities, with the practice thereunder. By J. J. Kehoe. Cloth, $2; 1881, Half-calf, $2.50.

LEGGO'S FORMS AND PRECEDENTS of Pleadings in the Court of Chancery. Second edition. By W. Leggo, 1876. Half-calf, $5.

LEWIS' (E. N.) INDEX TO ONTARIO STATUTES. An Alphabetical Index to Ontario Statutes, down to and including the year 1881, including the Revised Statutes of Ontario down to and including 1881, 1884. Cloth, $2.50; Half-calf or sheep, $3.

LEWIS' JUSTICES MANUAL. Containing a short Summary of the usual practice and manner of procedure in ordinary cases, coming under the observation of Justices of the Peace, Coroners, Constables, Landlords, Bailiffs, etc. By E. N. Lewis. Cloth, $1.50; Half-calf, $2.

LEWIS (E. N.) ON SHIPPING. A Treatise on the Law of Shipping respecting Inland and Sea coast Shipping of Canada and the United States. 1885. Half-calf or Sheep, $5.

LOWER CANADA JURIST. A collection of Decisions, 1857-1875. 20 vols. Half-calf, $100. N.B.—This Series is continued to date.

LOWER CANADA LAW JOURNAL and Magazine of Jurisprudence, containing cases not elsewhere reported. 1866-8, 4 vols. Half-calf, $10.

MACLENNAN'S (JAS., Q.C.) JUDICATURE ACT 1881, and subsequent Rules of the Supreme Court of Judicature and the High Court of Justice, with the orders of the Court of Appeal. Second edition. By Thos. Langton, M.A., LL.B. Half-calf, $5.

MANITOBA REPORTS. (Temp. Wood). A collection of Decisions in the Court of Q.B. of Manitoba, in the time of Chief Justice Wood. Half-calf, $10.

MARITIME COURT RULES. The General Rules of the Maritime Court of Ontario to date with Forms, Tariff of Costs and Fees. 1878. $1.

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East, Toronto.

NEW BRUNSWICK REPORTS. Reports of Cases determined by the Supreme Court of N. B. Subscription in advance $6. Half-calf $7 per vol. as follows :—

N. B. R. vol. 2 (Berton.)
" " " " 10 & 11 (Allen vols. 5 & 6.)
" " " " 12 & 13 (Hannay 2 vols.)
" " " " 14, 15 & 16 (Pugsley 3 vols.)
" " " " 17 to 20 (Pugsley and Burbidge 4 vols.)
" " " " 21-24.

NOVA SCOTIA REPORTS. Subscription $5 per vol.

N. S. R. vol. 2 (James.)
N. S. R. " 19, 20 (Russell and Geldert 7, 8.)

O'SULLIVAN'S CONVEYANCER. A Manual of Practical Conveyancing, with Forms, Precedents and References. By D. A. O'Sullivan, LL.B. 1882. Half-calf, $4.

O'SULLIVAN'S (D. A., LL.B.) HOW TO DRAW A SIMPLE WILL. 1883. Paper, $1.

O'SULLIVAN'S (D. A., M.A., D.C.L.) MANUAL OF GOVERNMENT. A Manual of Government in Canada; or the principles and institutions of our Federal Constitutions. 2nd edition, 1887. Cloth, $3.25; Half-calf, $4.

ROGERS' (R. VASHON, Jr.) LAW AND MEDICAL MEN. A Treatise on the law relating to Physicians, Dentists and Druggists. 1884. Cloth, $1.50; Half-calf, $2.

ROGERS' (R. VASHON, Jr.) LAW OF THE ROAD; or the Wrongs and Rights of a Traveller. 1881. Cloth, $1 50; Half-calf, $2.

SPLINTERS. A collection of humorous anecdotes from various sources. Cloth, $1.50.

STEPHENS' (C. H.) JOINT STOCK COMPANIES. A practical exposition of the law of Joint Stock Associations, including the Canada Clauses Act, 1877, and the Acts of Ontario and Quebec. 1881. Half-calf, $7.

STEVENS (J. G., Judge), on Indictable Offences and Summary Convictions. 1880. Cloth, $1.50. Half-calf, $2.00.

STEVENS' (J. G., Judge) DIGEST of the reported and unreported cases of the Supreme Court of New Brunswick from 1825-1879. Second Edition. Half-calf, $13.00.

STEVENS', DITTO, from 1880-1887. 1888. Half-calf, $5.00.

TACHE'S (Louis H.) LEGAL HAND BOOK AND LAW LIST for the Dominion of Canada and a Book of Parliamentary and General Information. 1888. Cloth, $3.00.

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East, Toronto.

TASCHEREAU'S (Hon. Mr. Justice) CRIMINAL LAW. Consolidation and Amendment Acts in force on 1st day of March, 1887. 2nd Edition. 1888. Half-calf or circuit, $10.00.

TAYLOR'S EQUITY JURISPRUDENCE. A Commentary on Equity Jurisprudence, founded on Story. By T. W. (now Chief Justice) Taylor, M.A., Q.C. 1875. Half-calf, $5.00.

TAYLOR'S PRESBYTERIAN STATUTES. A collection of the Public Statutes relating to the Presbyterian Church in Canada, with Acts and Resolutions of the General Assembly and By-laws for the government of the Colleges and schemes of the Church. By T. W. (now Chief Justice) Taylor, M.A., Q.C. Cloth, 75c.

TIFFANY'S (E. H.) REGISTRATION OF TITLES. Registry Offices—Registrars—Books of Office—Instruments to be Registered—Proof of Registration—Manner of Registering—Effects of Registering or omitting to Register—Fees—Forms, etc. 1881. Half-calf, $5.00.

TODD'S BRITISH COLONIES. Parliamentary Government in British Colonies. By Alpheus Todd. 1880. Cloth, $5.00 Half-calf, $6.00.

TRAVIS' (J.) CONSTITUTIONAL LAW. A Treatise on the Constitutional Powers of Parliament and of the Local Legislature under the British North America Act. 1884. Paper, $1.00; Cloth, $1.25.

WATSON'S POWERS OF CANADIAN PARLIAMENTS. By S. J. Watson, late Librarian of the Parliament of Ontario. 1880. Cloth, $1.00.

UPPER CANADA REPORTS, 1823 to 1867, 70 vols., as follows:
Taylor's K. B., 1 vol; Draper's K. B., 1 vol.; Q. B. O. S., 6 vols.; Q. B., 25 vols.; C. P., 16 vols.; Chy., 12 vols.; Chy. Cha., 1 vol.; Prac., 3 vols.; Error and Appeal, 3 vols. C. L. Cha., 2 vols.

WALKEM ON WILLS (R. T., Q.C.). A Treatise on the law relating to the Execution and Revocation of Wills and to testamentary capacity. 1873. Half-calf, $5.00.

YOUNG'S VICE-ADMIRALTY DECISIONS. The decisions of Sir Wm. Young, Kt., LL.B., Judge of the Court of Vice-Admiralty for the Province of Nova Scotia. 1865-1880. Edited by J. M. Oxley. Half-calf, $6.00.

The above named books are published and owned by us, and will be sent to any address, carriage prepaid, on receipt of the price.

CARSWELL & CO., LAW PUBLISHERS, Etc.,

26 & 28 Adelaide Street East, Toronto.